

MIGRATION AND EMPLOYMENT IN THE CONSTRUCTION INDUSTRY

PILOT STUDY

July 2010



**FORCED MIGRATION
STUDIES PROGRAMME**

University of the Witwatersrand

In collaboration with

DEPARTMENT OF LABOUR



labour

Department:
Labour
REPUBLIC OF SOUTH AFRICA

This report was produced by the **FORCED MIGRATION STUDIES PROGRAMME** at the University of the Witwatersrand, in collaboration with the **DEPARTMENT OF LABOUR**. The research for this report was conducted by Tesfalem Araia, Xoliswa Dilata, Mariane Tsoeu, Erma Cossa, and Phefumula Nyoni. The report was written by Tesfalem Araia, Soraya Kola and Tara Polzer.

We would like to thank the National Department of Labour, and especially Tendani Ramulongo (Director: Research Unit in DoL), as well as Loren Landau (FMSP Director), for their valuable input in conceptualising this pilot study.

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ABBREVIATIONS

BACWU	Building Construction and Allied Workers Union
BCEA	Basic Conditions of Employment Act
BEE	Black Economic Empowerment
BIBC	Building Industry Bargaining Council
CAPES	Confederation of Associations of Employment Services
COSATU	Confederation of South African Trade Unions
DoL	Department of Labour
FMSP	Forced Migration Studies Programme
ILO	International Labour Organisation
LDC	Limited Duration Contract
LOSC	Labour Only Subcontractors
LRA	Labour Relations Act
NUM	National Union of Mine Workers
OHSA	Occupational Health and Safety Act
SAFCEC	South African Federation of Civil Engineering Contractors
STATS SA	Statistics South Africa
TES	Temporary Employment Services
UIF	Unemployment Insurance Fund
VBF	Voluntary Bargaining Forum

EXECUTIVE SUMMARY

This report outlines the findings of a pilot study of the construction industry in Johannesburg, and the impacts which migration from the region has had on the sector. The focus of the study is on labour conditions and standards. The aim of this initial pilot study, conducted from November 2009 to March 2010, was to identify key issues affecting migrant as well as local workers in the construction sector, and thereby to inform further research, including in other parts of the country. The study was conducted as a collaboration between the Forced Migration Studies Programme at the University of the Witwatersrand and the Department of Labour.

The study surveyed 120 construction workers in the Braamfontein and Rosebank areas of Johannesburg, including 72 foreign citizens and 48 South African citizens (of whom 8 were born in another country but have since become South African citizens). The focus was on manual and semi-skilled work, rather than on professionals. 47 currently 'employed' respondents were identified and surveyed on construction sites where they were working, while 73 currently 'unemployed' respondents were surveyed at recruitment sites. In-depth interviews were conducted with fifteen South African and foreign workers as well as with employers, union representatives, a representative of the International Labour Organisation (ILO), and a labour sub-contractor. Neither the survey nor the in-depth interviews are statistically representative of the broader population of construction workers and construction-related institutions in Johannesburg, given the small sample sizes and our convenience sampling process. Therefore, the findings should be seen as indicative of probable trends and concerns, but they cannot be generalised to the entire industry in Johannesburg, Gauteng or the country.

The findings of this study indicate that:

On demographics and migration:

- There are a significant number of international migrants involved at different levels of the construction sector. Most are from neighboring SADC countries, with the largest numbers from Zimbabwe and Mozambique. Zimbabweans have recently replaced Mozambicans as the predominant foreign group in the construction sector. This shift is probably attributable to increased numbers of Zimbabweans entering South Africa since 2000, with a particular increase since 2005.
- Most South African nationals interviewed were domestic migrants from Provinces outside Gauteng, suggesting that construction attracts domestic as well as international migrants.
- 80% of the foreign respondents claimed to have documents giving them the right to work, with most holding either an asylum seeker permit (Section 22 permit, under the 1998 Refugees Act) or refugee status (Section 24 permit). Furthermore, the study found that lack of documentation did not preclude working, but that those without documents tended to be hired by subcontractors rather than larger contractors.
- Construction workers are relatively well educated, with 45% having completed secondary education and 10% having a tertiary qualification.

On recruitment practices and basic labour standards:

- Both South Africans and foreign nationals, currently employed or unemployed, relied primarily on personal networks to find employment. None of the respondents, whether currently employed or not, had found work through a broker or an advertisement.
- Overall just over half of employed respondents had a written contract. Of those with contracts, three-quarters had signed them with general contractors and a quarter with subcontractors. Most respondents without written contracts had a verbal agreement with their employer (mostly subcontractors).
- Neither subcontracted nor directly employed workers were guaranteed basic labour rights such as sick leave or UIF. Only 13% of employed respondents received both sick leave and UIF. For each kind of additional benefit (pension, medical aid, annual leave, etc.), more or less two thirds of employed respondents did not receive it.
- The survey found that most respondents, whether currently employed or not, earn under R150 a day, with foreign nationals more likely to be earning R100 or less or being paid per job rather than daily wages.
- The most vulnerable workers in the industry are the day labourers. They are much less likely to have a written contract, and more likely to work in dangerous conditions without adequate safety equipment.
- Even though this study did not find evidence of wide-spread brokerage, many respondents were employed by subcontractors and both employers and unions confirmed the existence of a range of employment practices in the sector that allow employers to circumvent national and international labour standards.
- In addition to global trends towards casualisation and informalisation of employment relations in sectors such as construction, there are conflicting regulations and incentive systems for employers for South Africa. The legal requirement that 70% of the workforce must be from the locality of the construction site, for example, works against the retention of workers beyond projects. There are also increasing numbers of black-owned 'emerging contractors' working as Labour Only Subcontractors (LOSCs), with whom large construction companies and public projects are encouraged to partner, but which may not be registered or may not conform to legal minimum employment standards.

On labour standard monitoring and enforcement:

- There is a lack of labour inspection on working sites, including on large construction projects.
- The collapse of the Gauteng Building Industry Bargaining Council (BIBC) has affected collective bargaining in the construction sector, despite the establishment in 2000 of the Voluntary Bargaining Forum (VBF) by a few large companies and three unions. Apart from the voluntary bargaining council for the civil engineering services, employers are not organised and most of the LOSCs are not registered.

- Unions in the sector are fragmented and migrants are by and large not members of unions. Daily labourers, who are usually employed short-term by subcontractors or private individuals, are excluded from union membership due to their employment status.

Way forward:

- Existing national employment data does not provide detailed enough information about the impacts of domestic and international migration on labour conditions in the construction sector, nor indeed in other important economic sectors such as agriculture, domestic work and the hospitality sector. To establish the extent and cost of such effects, whether positively or negatively for workers, employers and the economy as a whole, further multi-sited research is necessary.
- This pilot study has provided important lessons relating to sampling strategies and key questions which will inform future research. The combination of quantitative and qualitative methods of enquiry were also important for this pilot and remain useful for future work.

SECTION 1: INTRODUCTION

Labour migration has played an integral role in the economic history of South Africa. Since the discovery of precious minerals in the second half of the 19th century, migrant workers, mainly from the present day SADC region, were recruited to work first in the mining sector and later in other sectors of the emerging economy. Post-Apartheid South Africa has also experienced different forms of migration. The establishment of the democratic dispensation in 1994 was followed by economic growth and political stability. Consequently, migrants from the African continent and beyond sought the protection of this country after fleeing persecution and conflicts in their countries of origin. At the same time, migrants mainly from the SADC region continued migrating to South Africa in pursuit of economic opportunities. Estimates based on Statistics South Africa data place the approximate number of foreign nationals living in South Africa in 2009 at between 1.6 and 2 million.¹

The presence of migrants in the country is likely to have some degree of socio-economic impact. Many contradictory assumptions are made about the nature of this impact in public, policy and media discussions, including that migrants are 'stealing' South African jobs, furnishing scarce skills which create jobs, bringing down wages and labour standards by accepting lower pay, or refusing to participate in collective action to improve labour conditions. However, to date there is little empirical evidence with which to either confirm or reject these assumptions. National employment data from Statistics South Africa (StatsSA) provides some indications of broad trends in migration and employment patterns, as presented in Section 2 of this report. However, this data does not include enough detail on wage levels, labour standards, and the contexts in which workers make decisions about acceptable wage levels or labour organisation. National statistics also do not give insight into the systemic and specific calculations made by employers regarding their choices in who to hire and under what conditions.

Thus, comprehensive and targeted national research should be conducted before any attempt is made at describing the extent of the impact of migrants on South Africa's economy and labour market. Sound empirical data will help to inform national and local policy makers in addressing misconceptions about the presence of migrants in the country and therefore supporting the development of appropriate measures to increase overall employment levels and labour standards for all. Although this study focuses only on the construction sector, ideally other employment sectors should also be studied to help develop a more comprehensive understanding of the impact of migration. StatsSA data suggests that international migrants are most prevalent in the most labour-intensive sectors, which absorb large numbers of unskilled workers.² Apart from construction, these include agriculture, mining, hospitality, domestic work, and to some extent the security sector. Various studies have identified these sectors to be the major areas of non-standard

¹ FMSP. 2010. *Population Movement in and to South Africa. FMSP Migration Fact Sheet*, Johannesburg, <http://www.migration.org.za/report/population-movements-and-south-africa>, accessed 29 July 2010.

² Gallo-Mosala, S. (ed.), 2008. *Migrants' Experiences within the South African Labour Market*, Scalabrini Centre of Cape Town, p.90.

employment practices and exploitation of workers,³ irrespective of nationality. Nonetheless, there is no compelling data showing the level of migrant participation and its impact on these sectors.

This pilot study takes cognisance of the context in which discussions on migration and employment in South Africa play out. South Africa has a very high level of structural unemployment. According to the recently released StatsSA Labour Force Survey, the expanded (including those people who are discouraged from actively searching for work) measure of unemployment stands at 35.9%.⁴ This is among the highest in the world for an economy with very low levels of subsistence agriculture. South Africa also has extensive skills shortages, including in artisanal skills such as those required for construction (electricians, plumbers, etc.) Due to historical inequalities in education access, a large proportion of South Africa's poor are unskilled or inappropriately skilled for a modern service-oriented economy, and are therefore dependent on limited and shrinking economic sectors which employ unskilled manual labourers. On the other hand, as discussed in Section 2 on legal frameworks, South Africa has a highly regulated labour market, with minimum wages and labour standards established for many of the labour intensive industries, including agriculture and domestic labour. There is to date no sectoral dispensation setting out minimum wage levels for the construction industry.

Given this context, this report considers three distinct but related standards against which to judge the impacts of migration on the labour market. First is a legal perspective, comparing the conditions in which any worker works, regardless of origin and legal status, with the minimum conditions set out in labour law. The survey used in this study was designed to measure adherence to specific labour law provisions. The second perspective relates to organised labour, where the exclusion of particular groups from minimum labour standards, the ability to organise, and negotiate collectively harms overall labour employer relations. Some survey questions, as well as in-depth interviews with workers, unionists and employers, aimed to address this perspective. Finally, there is the broader political economy approach, which considers the relationship between labour issues and other structural factors in the economy in determining the sustainability and growth potential of a sector and the economy overall. This study, given its small scale, is not able to speak to this element comprehensively, but a wider national study would need to take such questions into account.

³ Human Rights Watch, 2009. *Unprotected Migrants: Zimbabweans in South Africa's Limpopo Province*, <http://www.hrw.org/2006/southafrica0806/5.htm>. Accessed 26 July 2010. Also see Bezuidenhout et al report on *Non-standard employment and its policy implications*, Report Submitted to the department of Labour, 30 June 2004.

⁴ Statistics South Africa, 2010. *Quarterly Labour Force Survey, Quarter 2, 2010*, <http://www.statssa.gov.za/keyindicators/qlfs.asp>, accessed 28 July 2010.

SECTION 2: CONTEXT

NATIONAL LEGISLATION AND POLICY FRAMEWORK

After the establishment of democracy in 1994, South Africa amended and developed national labour laws in order to redress past discriminatory labour practices. Accordingly, the Labour Relations Act (LRA), Basic Conditions of Employment Act (BCEA), Employment Equity Act (EEA), and Occupational Health and Safety Act (OHSA) were enacted or revised to protect workers and at the same time to address the needs of the economy. While these laws do not specifically deal with international migrants, they protect all 'workers' without making any specific references to documentation, nationality or citizenship. This is in accordance with Section 23 of the Bill of Rights in the 1996 Constitution, which further stipulates the right to 'fair labour practices' irrespective of nationality or immigration status. These laws serve as the benchmarks against which employment standards are measured in South Africa. For instance, the BCEA states, "the purpose of this Act is to advance economic development and social justice... the primary objectives of this Act are- ...to regulate the right to fair labour practices....enforce basic conditions of employment...give effect to obligations incurred by the Republic as a member state of the International Labour Organisation."⁵ In order to facilitate fair labour practices, independent institutions like the Commission for Conciliation, Mediation and Arbitration (CCMA) were established to address labour abuses and disputes affecting all workers, including undocumented migrant workers.⁶

While South Africa's constitution and labour laws are therefore very progressive and inclusive, the country's immigration laws (Immigration Act 2001 and subsequent regulations) are less so. The refugee protection legislation (Refugee Act, 130 of 1998) is also unusually progressive for the continent and the world by granting asylum seekers and refugees the right to seek employment. However, the Immigration Act and regulations do not match this since they fail to recognise the need to protect the constitutional labour rights of 'illegal immigrant' workers. The Immigration Act of 2002 has made it clear that "No person shall employ- (a) illegal foreigner..."⁷ which is contrary to the prevalent realities of migration in South Africa where there are many undocumented migrants. Criminalisation of such employment and strict immigration laws run the risk of exacerbating the conditions of work for many migrants (documented or otherwise). It creates conditions where such workers are discouraged to report abuses and exploitation by employers who are also keen to avoid consequences stipulated in the Act for hiring undocumented migrants.

Moreover, immigration policies have failed to adequately address the dynamics of labour migration in the region. The Immigration Act makes provision for skilled individuals to enter the country on work permits, and it allows employers to apply for a corporate permit through which larger numbers of unskilled foreign workers can be employed (for example, in agriculture) in cases where no South African workers can be found. However, there is no permit which allows semi- or unskilled workers

⁵ Republic of South Africa, *Basic Condition of Employment Act. 1997, 1(2)*.

⁶ Polzer, T. , 2008. *Migrant Employment in South Africa: New Data from the Migrant Rights Monitoring Project*, Presented to the Workshop on the Impact of Migration on the Local Labour Market, Scalabrini Centre of Cape Town. Also see a Labour Court Case No. JR 2877/06 Discovery Health Vs Commission for Conciliation, Mediation and Arbitration, Commissioner E L E Myhill, German Lanzetta, 2006, Johannesburg, http://www.legalbrief.co.za/filemgmt_data/files/Discovery%20Health.pdf, accessed 28 July 2010.

⁷ Republic of South Africa, *No. 13 of 2002: Immigration Act, 2002, 38 (1)(a)*.

or traders to enter the country independently and work legally, even though this represents the profile of the largest proportion of regional migrants. Since strict border controls aiming to limit entry have proven ineffective globally in contexts of long land borders,⁸ South Africa's only options are to enable legal migration from the region or to deal with the impacts of undocumented migration. An immigration regime which creates large-scale undocumented migration and then attempts to address this through arrest and deportation, as South Africa has done, leads to a situation in which undocumented workers feel unable to resist or organise against labour abuses because of fear of arrest. This is against the interests of all workers. Labour unions, globally and in South Africa, by and large have recognised that protecting migrants (regardless of status) is part of the struggle to create decent working conditions and employment standards. The confederation of South African Trade Unions (Cosatu) has opposed the claim that migrants are to blame for the high unemployment rate in South Africa and said that migrants "are themselves victims of the same unemployment, poverty and crime ... even if they were all to leave tomorrow the levels of unemployment would remain about the same ... we must stand together to defend the rights that our constitution and laws give to all those living within our boundaries."⁹

What this discussion shows is that South Africa's labour laws can only be effective for all if they are regularly monitored, but also if there is reform of immigration legislation to recognise the reality of economic migration and provide legal economic migration options.

MIGRATION AND EMPLOYMENT

While detailed information about the impacts of international migration on the economy and labour market is scarce, national statistics do illuminate some broad trends. It is important to note that national statistics as well as the pilot study presented here show significant effects relating to migration within South Africa (which we call domestic migration) as well as migration across South Africa's national borders.

According to the 2007 StatsSA Community Survey, 65% of the employable black population¹⁰ born in another country and 49% of the employable black population born in another province than their current residence have some kind of paid activity, including being self-employed or employed by someone else. This compares with only 37% of the black population born in the province in which they currently live. The percentage with formal employment shows a similar trend, with 48%, 37% and 27% respectively of international black migrants, domestic migrants and locals holding such jobs.

⁸ Massey, D.S., 2005. *Beyond the Border Buildup: Towards a New Approach to Mexico-U.S. Migration*, "Immigration Policy IN FOCUS", Vol. 4, Issue 7, September 2005, p.4, <http://www.immigrationpolicy.org/special-reports/beyond-border-buildup-towards-new-approach-mexico-us-migration>, accessed 29 July 2010.

⁹ Cosatu, 2008. *Cosatu says No to Xenophobia*, Press Statement, 22-05-2008, <http://www.cosatu.org.za/show.php?include=docs/pr/2008/pr0522.html&ID=1683&cat=Media%20Centre>, accessed 28 July 2010.

¹⁰ The employable population is defined as anyone between the ages of 18 and 65. Since the vast majority of both South African and foreign workers employed in the lower skilled segments of the construction industry are black, we present the national statistics regarding relative employment levels only for the black population.

The Community Survey also suggests that black foreign nationals are not all in the lowest income brackets, with 51% earning more than R1600 per month, compared with 44% of domestic migrants and 26% of locals. These broad generalisations, however, do not tell us much about the reasons for these differentials, nor about the experience of migrants in specific sectors, such as construction.

THE CONSTRUCTION SECTOR

The construction sector has been undergoing significant changes in terms of organisation and practice for the past decade. This transformation has largely had negative implications for labour security and the welfare of the workers that depend on the sector for their livelihoods. The biggest transformation in this respect is the gradual transition from formal to informal practices of employment and the emergence of outsourcing and broking of labour.¹¹ These transformations have been happening globally.¹²

In line with this international trend, employers in South Africa have pressed for greater labour flexibility to enable them more freedom to restructure employment arrangements away from permanent and full time employ to more temporary and casual forms of employment. These changes in employment structures have led to changes in working conditions and the emergence of new forms of labour recruitment. Labour broking and labour subcontracting have emerged as two such labour recruitment strategies.¹³

Labour broking, formally known as Temporary Employment Services (TES), is recognised as a legitimate labour recruitment practice by national labour legislation. Labour brokers are hired by construction companies to recruit and manage predominantly unskilled labour. Labour brokers take complete responsibility for the workers and the workers in turn are responsible to the labour broker. Under these circumstances there is no direct relationship between the workers and construction companies. In recent years, labour broking has undergone its own transformation, resulting in the proliferation of unregistered brokers who are difficult to monitor and regulate. Interviews with labour representatives revealed that one of the main problems with an unregulated system is that unregistered brokers do not consider themselves employers in accordance with the Labour Relations Act (LRA) and under these circumstances workers in essence have no legitimate or accountable employer.

The role of labour brokers has been hotly debated recently, with a move in Parliament in 2009 to outlaw the practice entirely. While brokers argue that their services are contributing positively to the economy by providing employment to many, unions and the Department of Labour have contested this claim. The unions and the Department of Labour have made it clear that labour broking is the main source of non-standard employment practices and hence should be banned. Labour brokers argue that temporary work is critical to the economy. From the Confederation of Associations of Employment Services (CAPES) point of view, "the need for a flexible labour force is critical to South

¹¹ Bezuidenhout, A., Godfrey, S., & Theron, J., 2004. *Non-standard Employment and its Policy Implications, Report submitted to the Department of Labour [SA]*, 30 June, p.11.

¹² Bezuidenhout, et al. 2004.

¹³ Bamu, H. P. and Godfrey, S., 2009. *Exploring Labour Broking in the South African Construction Industry*, in "Building & Wood Workers' International", A report commissioned by the labour research service on behalf of BWI, Labour and Interprise Policy Research Group (UCT), Cape Town.

Africa's continued economic growth and skills development, now more than ever in the current global economic crisis."¹⁴

Sub-contracting is another significant and emerging form of labour arrangement in the construction sector. Traditionally the sector has always sub-contracted specialized services such as plumbing, electricity, carpentry, air conditioning and the like. Recently, however, there has been a move towards Labour Only Subcontracting, a function performed by Labour Only Subcontractors (LOSCs). This distinct phenomenon, like labour broking, is an element of the casualisation of labour arrangements in the sector. Enterprises or building projects that previously employed their own labour now fulfil their labour needs through third party subcontractors. This is often achieved by encouraging previous employees to turn themselves, often with the assistance of their previous employers, into self-employed or commercial intermediaries who are then contracted to perform certain functions within a project. These subcontractors employ workers on a short-term basis or informally, outside of conventional or standard labour practices, relieving the construction company of responsibility for the workers on their projects. As with informal labour brokers, many subcontractors employ workers without a formal contract as prescribed in the labour laws.

The size of these subcontractors varies from medium to micro levels which leads to multi-level stratification with relatively larger subcontractors hiring small subcontractors. Larger construction companies have therefore become management enterprises, keeping their core administrative or supervision staff and outsourcing the rest of their labour needs to subcontractors. By saving on the social support costs for permanent staff, this system reduces costs for construction companies.

A parallel trend in South Africa is the emergence of small and medium sized black-owned enterprises in the sector. As Bezuidenhout notes, "there appears to be a lot of overlap between LOSCs and so-called emergent contractors, i.e. small black-owned building firms. The growth in the number of emergent contractors has been encouraged by preferential tendering arrangements in terms of the policies of BEE and small business development. However, these tender requirements generally do not stipulate registration with a bargaining council (or compliance with labour legislation). Hence emergent contractors as a rule do not register with bargaining councils or comply with labour legislation..."¹⁵

In the wake of the changes in employment structures and the absence of intermediary formations such as the bargaining councils, there are consequent changes in working conditions in the construction sector. The move towards casualisation and informalisation of employment arrangements has had a significant negative impact on critical issues such as wage levels, social security, skills development, health and safety, and collective bargaining.

An example of casualisation practices is the dominance of Limited Duration Contracts (LDCs), rather than longer term or permanent contracts that come with benefit packages. Some employers hire workers on LDCs for different consecutive projects, even though the same individual is effectively working for the same employer, project after project, for many years. Unions such as NUM have motivated for greater regulation of such practices, so that after 18 months of employment on the

¹⁴ CAPES, 2009. *TES Industry Seeks Clarity on Labour Minister's Assault on Labour Brokers*, a statement issued by CAPES in response to the Minister's call on banning TES, 29 March, Johannesburg.

¹⁵ Bezuidenhout, et al. 2004. p.47

basis of LDCs, workers should be upgraded to a permanent contract. This is already the agreement in the case of civil engineers, based on negotiations between the unions and the employers association SAFCEC. Unions are also suggesting an arrangement through which construction workers can accumulate contributions towards a pension fund, even if when they work intermittently with various employers.

It is important to note that the institutional structures which lead to informalisation and casualisation of employment patterns – e.g. the proliferation of smaller subcontractors dealing with labour issues – also make it more difficult for traditional oversight and monitoring mechanisms such as Department of Labour inspectors and unions to function effectively. It becomes harder to identify and hold accountable the actual employers, and more difficult to reach and mobilise dispersed and casualised workers. Given that the global trend is unlikely to be entirely reversible, this raises the question of whether traditional monitoring and enforcement institutions can adapt their strategies to effectively oversee the construction sector in its current form.

SECTION 3: STUDY AIM AND METHODOLOGY

AIM OF THE STUDY

Employment access and labour standards have become a highly contested issue in South Africa. The construction industry has been a particularly contested sector in this regard. The government, labour unions, employers and workers are debating issues related to the organisation and structure of labour in the sector. Amongst the most contested issues are labour broking and excessive sub-contracting (often characterized by informalisation and outsourcing of labour).¹⁶ The position of international migrants as workers in the sector has, on the one hand, been largely ignored in these debates, and on the other hand, has become a politicised issue by being viewed as either taking employment opportunities from South Africans or depressing wages.

Perceptions of employment competition have also fuelled violent attacks on foreign nationals, as during the May 2008 'xenophobic' violence which led to the deaths of at least 62 people and the displacement of over 100,000 around the country, and more recently the displacement of thousands of farm workers in De Doorns, Western Cape. Since the rise of casualisation and similar non-standard forms of employment are global trends, the presence of migrants cannot be viewed as the cause for the emergence of these forms of employment. Both locals and migrants working in the construction sector are affected by these trends. Nonetheless, it is important to understand how migration and employment casualisation interact in the specific context of South Africa. The aim of this study is to provide preliminary information on the labour conditions within the construction sector with a view to better understanding the impact of migrants in the sector and to help identify key areas for further research.¹⁷

METHODOLOGY

This pilot study focused on workers in the construction industry based in Johannesburg. It used a combination of qualitative and quantitative methodologies, consisting of in-depth interviews and a small survey respectively. A total of 120 interviews were conducted around the Rosebank and Braamfontein areas of Johannesburg, including at construction sites targeting employed workers, as well as informal recruitment sites, restaurants, taxi ranks and bus stations, where unemployed construction workers were found. The aim of including currently unemployed workers looking for employment in construction was to understand who seeks work in the construction industry and their experiences of acquiring work. At construction sites and recruitment sites, the focus was on interviewing workers in manual and semi-skilled positions, rather than professionals. The survey respondents were nationals as well as non-national construction workers. Of the 120 construction

¹⁶ Mahlong, A., 2009. *Minister pushes labour broking ban, The labour minister will not compromise on proposals to eliminate labour broking*, IT WEB, http://www.itweb.co.za/index.php?option=com_content&view=article&id=25304:ministe... 2009/10/02

¹⁷ Misago, J.P., 2009. *Violence, Labour, and the Displacement of Zimbabweans in De Doorns, Western Cape*, Migration Policy Brief 2, Forced Migration Studies Programme, University of the Witwatersrand, Johannesburg http://www.migration.org.za/sites/default/files/reports/2009/FMSP_Policy_Brief_2_De_Doorns_Dec09_FINAL_2_0.pdf

workers interviewed for the survey, 80 workers were born outside South Africa and 40 were born in South Africa. Data from the quantitative interviews were initially captured in excel and transferred to SPSS for statistical analysis.

Due to the exploratory nature of this pilot study, the survey respondents were selected through a convenience sampling method, rather than trying to achieve a statistically representative sample. Construction sites and recruitment sites were selected based on their accessibility in the Rosebank and Braamfontein areas of Johannesburg, and individual respondents were selected based on their availability and willingness to conduct the interview. This was not without challenges, since workers on sites and at recruitment points often had little time or attention to spare, given their need to work to deadline or to catch the attention of potential employers. Due to this convenience sampling method, the limited geographic scope (two neighbourhoods of Johannesburg), and the small number of respondents, our findings cannot be generalised in terms of statistical representativity and can only be interpreted as indicating general trends. These trends can then be used to inform future, more representative research.

In order to supplement and probe some of the more interesting and important issues that came up in the survey, in-depth interviews were conducted with 15 workers, including South Africans and foreign migrants. In-depth interviews were also conducted with two employers/managers,¹⁸ two union representatives, an ILO representative and a Labour Only Subcontractor (LOSC). Data collection took place between November 2009 and March 2010.

¹⁸ The employers/managers interviewed represented construction companies that use the services of either subcontractors or labour brokers.

SECTION 4: RESEARCH FINDINGS

The findings section of this report covers four broad themes. These include:

- a demographic profile of the interviewed construction workers;
- workers' migration histories;
- recruitment practices;
- working conditions, earnings and benefits, and health and safety issues; and
- relationships with unions.

The information in this section results from the survey as well as in-depth interviews with various stakeholders including workers, employers, labour and ILO representatives and subcontractors. Because the survey was not representative, the percentages presented should not be read as generalisable to the entire construction sector in Johannesburg, Gauteng or South Africa. The findings are only indicative of trends and of issues of concern to be investigated further through additional research.

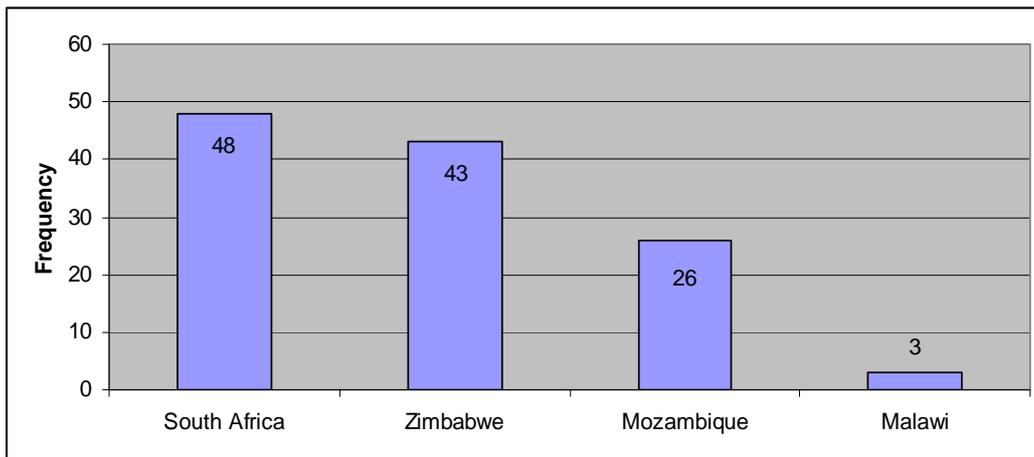
DEMOGRAPHICS

As noted above, of the 120 construction workers interviewed for the survey, 80 were born outside South Africa and the remaining 40 were South African nationals. However, eight of those born outside the country had since received South African citizenship, and so the majority of the analyses presented below compare 72 foreign nationals with 48 South African citizens. Among the South African nationals, 30 were domestic migrants coming mainly from the Eastern Cape (8% or n=9), KZN (5% or n=6), the North West and Limpopo (5% or n=4 each). Not surprisingly, the overwhelming majority of respondents were men (94% or n=113).

Among the foreign-born workers who were interviewed, the largest proportion came from Zimbabwe (54% or n=43) followed by Mozambique (41% or n=33) and Malawi (5% or n=4). This indicates a shift in the composition of migrant construction workers from the past when there was a dominance of Mozambicans.¹⁹

¹⁹ Rogerson, C.M., 1999. *Building Skills: Cross-border migrants and the South African Construction Industry*, Migration Policy Series No. 11, Cape Town: Idasa.

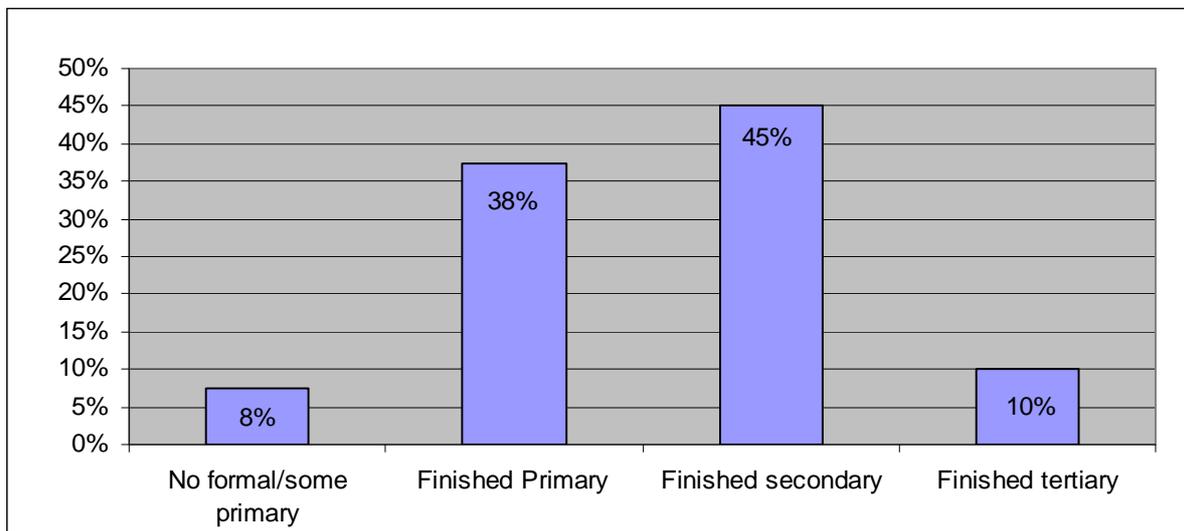
Figure 1: Citizenship of Respondents



The average age of respondents was 32, with no difference between South Africans and foreign nationals. There were also some older workers including a 63 and a 72 year old. South Africans were significantly more likely to be single (63%) compared with foreign nationals (31%).

In total seven women were included in the sample, all of them foreign. Four of the seven women came from Mozambique and three from Zimbabwe. The women in the sample were generally older than the men and married or in partnerships, with four between the ages of 31 and 35 years, two between 36 and 40 years and the remaining one being 50 years old.

Figure 2: Level of Education

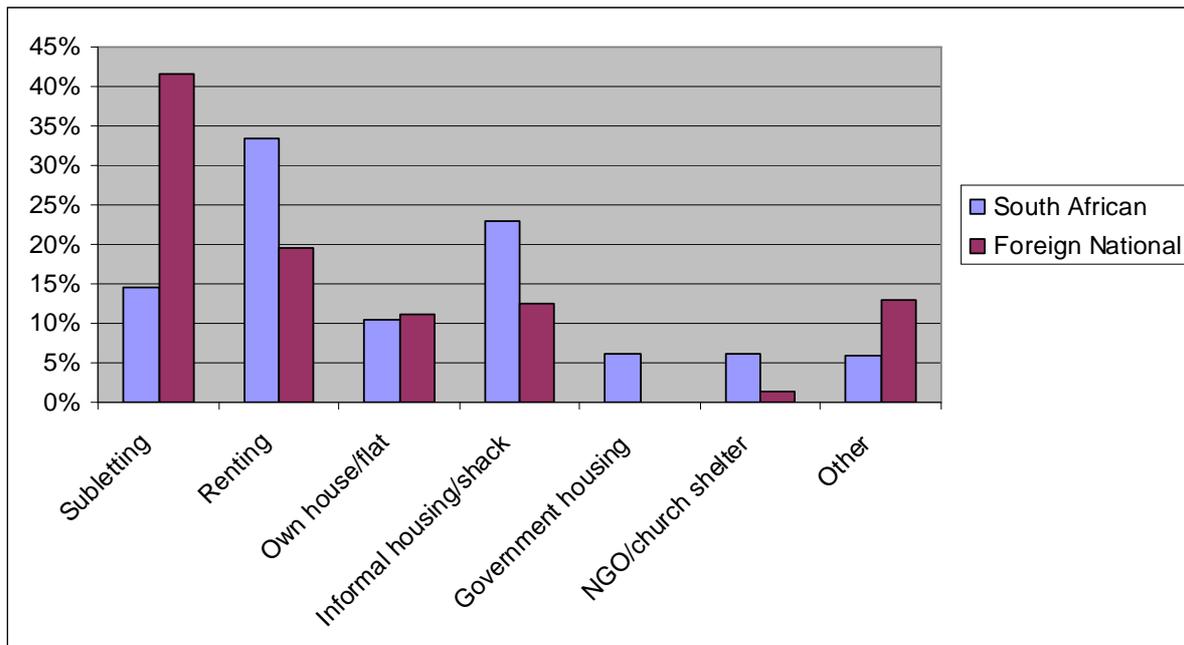


Among both South Africans and foreign nationals the largest proportion of respondents had finished secondary school. There was no real difference between the education levels of South African and foreign workers, which is striking, given that foreign nationals in South Africa often have higher education levels than locals.²⁰ Although there were no respondents with post-graduate or vocational

²⁰ Statistics South Africa, 2007. *Community Survey 2007*, http://www.statssa.gov.za/community_new/content.asp, accessed 29 July 2010.

training, the overall education levels of respondents were quite high. This suggests important human potential in the construction industry, but also that educated individuals (particularly foreign nationals) may be entering the sector because they cannot find employment in other sectors for which they are qualified. This interpretation is supported by the fact that all unemployed respondents with a tertiary education were foreign nationals.

Figure 3: Shelter



In terms of shelter, foreign nationals are significantly more likely to be living in subletting agreements, while South African citizens are more likely to rent as the main tenant. South Africans are more likely than foreign nationals to live in informal housing. Our sample did not find any foreign nationals living in government-subsidised housing. The average household size for both South Africans and foreign nationals was approximately 2.5, with no significant difference between the group averages. South Africans are slightly more likely to be living alone.

On average, the construction workers who were interviewed had approximately four dependents. Due to the low number of respondents we cannot generalise, but there are indications that people born in Johannesburg have fewer dependents on average (2.43) than domestic migrants (3.85) and foreign migrants (4.44). Zimbabweans have a significantly higher average of dependents (5.16) than other foreign groups. On average, respondents had only two of their dependants living with them, suggesting that most of the respondents, including domestic and international migrants, remit resources to other households in other parts of the country or region.

MIGRATION HISTORY

Of the respondents with South African citizenship, only 14 had always lived in Johannesburg, with four more from other parts of Gauteng and 25 coming from other Provinces. The remaining five lived outside South Africa as their last location before moving to Johannesburg. This finding shows that

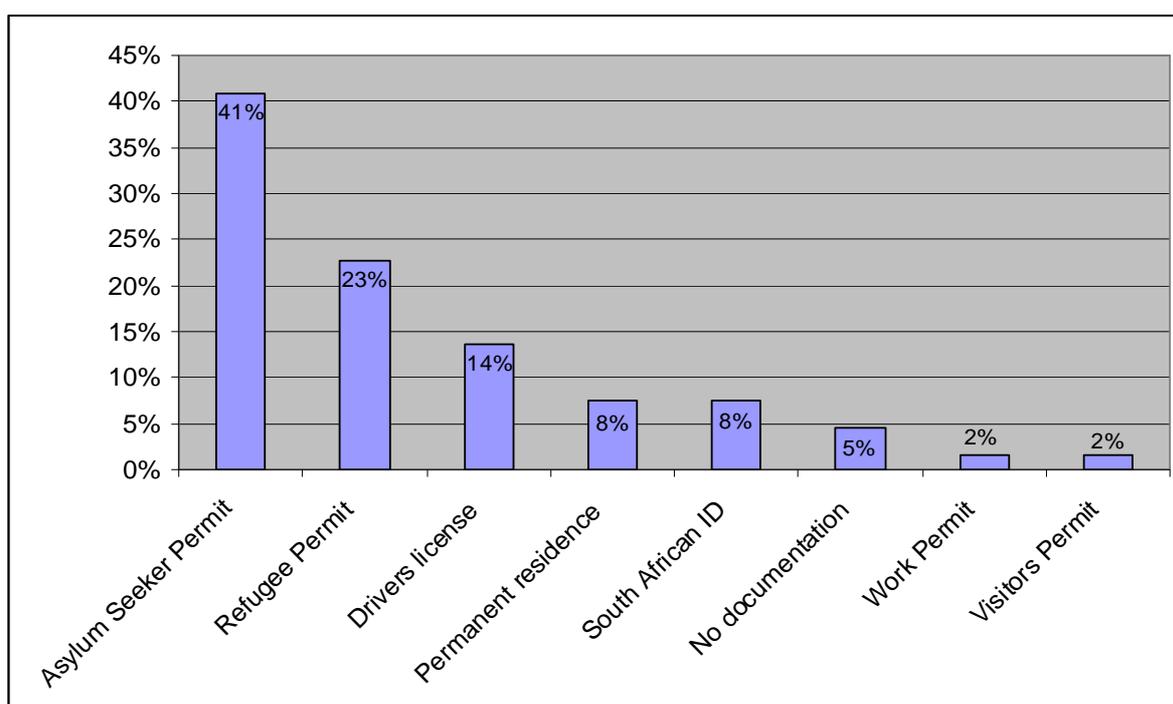
the construction sector attracts domestic as well as cross border migrants. Of the foreign nationals, 59 came directly to Johannesburg when arriving in South Africa, while 7 stated that they first spent time in other parts of the country.

Table 1: Year of arrival in South Africa (foreign-born only)

	Percentage	Frequency
1980-1985	4	3
1986-1990	4	3
1991-1995	6	5
1996-2000	16	13
2001-2005	25	20
2005+	45	36
Total	100	80

Among the surveyed foreign nationals, 11 (14%) had arrived in South Africa before or around the time of democratisation. Since then, there has been a steady increase in the number of annual arrivals in the sample, with a marked increase after 2005. Over half (54% or n=23) of the Zimbabweans who were interviewed arrived after 2005.

Figure 4: Type of document use for identification in South Africa (foreign nationals only)



Political and public actors have expressed concern about the numbers of migrants coming into South Africa and working without the necessary documentation. We asked foreign national respondents which documents they used for identification purposes in South Africa. Sixty-six of the 80 foreign nationals answered this question, with the rest choosing not to answer. Of the 66 we found that 53 had appropriate documents that allowed them to work in the country, including asylum seeker permits, refugee permits, permanent residence, work permits and South African identity documents. It is important to note that work permits are currently not a common way of documenting foreign construction workers, while the asylum system is taking on this role.

Before their arrival in Johannesburg, foreign citizens were significantly more likely to have come from an urban context (77% or n=51), while domestic migrants were more likely to come from rural areas (56% or n=19). The majority of the migrant construction workers, including domestic and international migrants, left their place of origin for economic reasons. Among foreign nationals, 88% (n=63) cited this reason, while 20% (n=14) left to escape conflict or political oppression.²¹ Both foreign nationals as well as domestic migrants chose Johannesburg because it offered better employment opportunities. This was also reflected in the in-depth interviews conducted with some of the workers.

In other places there is no money but in Joburg even though there are no jobs but when you get it, you earn more than other companies here in South Africa.²²

The main attraction of Johannesburg for both domestic and international migrants was the employment opportunities, while being reunited with relatives and already knowing someone in the city were important additional draw factors. Although the majority of all respondents (69% or n=82) said they lived with family or friends when they first arrived in Johannesburg, this was true for a higher proportion (75% or n=60) of foreign nationals compared to South African nationals (56% or n=22).

EMPLOYMENT IN THE CONSTRUCTION INDUSTRY

The construction sector is project-based or cyclical, often experiencing fluctuating investment opportunities. There are seasons when the sector experiences a boom with many new projects emerging, and there are times when there are no major investments in the sector. Such fluctuations are directly linked to the status of the national or even international economy. The recent economic recession has had a significant impact on all sectors of the economy including construction. However in the latter the impact was offset to some extent by the government's expanded public works programme and the infrastructure preparations for the 2010 World Cup, for which stadiums and other facilities were constructed.

Since we wanted to reflect the experiences of people looking for work as day labourers in the construction sector, 73 (61%) of the 120 respondents interviewed were currently unemployed and

²¹ More than one answer per person was possible.

²² Interview with foreign worker, F7, 25 November 2009

looking for work.²³ Due to our sampling strategy, we cannot extrapolate from our findings the relative likelihood of finding work in the construction sector by nationality. In our sample, the employed respondents (n=47) were approximately half South African and half foreign. Among the unemployed, two thirds were foreign.

Finding work – networks, labour brokers and subcontractors

Both South Africans and foreign nationals relied primarily on personal networks to find employment. Employed South Africans found their jobs firstly through relatives, followed by friends. Employed foreign nationals found work primarily through friends, followed by people who came from their hometown and relatives.²⁴ People looking for daily work were also primarily connected to recruitment sites through personal networks. None of the respondents, whether currently employed or not, had found work through a broker or an advertisement.

Of the 27 currently employed respondents who answered the question about who employed them, 10 were employed by a large construction company, 9 by a subcontractor, 2 by a labour broker, 2 by a private property owner and 1 by the government. While these numbers are too small to draw any broad conclusions or to make any significant distinctions between South African and foreign workers, they do suggest that some workers remain employed directly by construction companies.

Union representatives who were interviewed were particularly concerned about companies' increasing use of short-term contract workers. The union representative reported that the project based nature of the work often meant that employers were reluctant to employ permanent staff. This, as well as government regulation stipulating that 70% of employees have to come from the locality of the project, puts enormous pressure on workers in the industry. Union representatives explained that contract workers did not receive any benefits, had no job security and were unable to join unions, which meant that they did not have the advantage of collective action or bargaining.

[The nature of the construction industry] is not like other industries because it works on projects and when projects are finished the job is finished. That is the problem that we are facing in this industry and because of that the employers are no longer prepared to employ people permanently. They can rather employ people on the basis of fixed time or rather people like the LDCs (Limited duration contracts). The LDCs means after that period the job is finished. Our members are not benefiting out of those conditions because if they are employed under such conditions there are certain benefits that they can't enjoy, social benefits, because if a person is employed maybe for 3 months, 6 months, it is not easy for him to be on a pension fund or provident fund, medical aid and other things because the job is just there for that time only. In a way the employers are just trying to cut costs abusing our members. Why do I say so, because when the job is finished they will advise them to go to a certain area where they will employ them again and you find

²³ These respondents were identified and interviewed at recruitment sites, taxi ranks, restaurants, etc. as discussed in the methodology section above.

²⁴ Given the small absolute number of employed respondents (27), providing percentages for each different kind of work-finding strategy would be misleading.

*that a person has been in the industry for more than 10 years but working under such conditions.*²⁵

Another union representative explained the workers' predicament in the following way:

*I am a contract employee but I don't benefit anything. I am only benefiting the income, hand to mouth, but I don't have benefits. These people who are permanent, they are having provident fund, they are having everything and they are eligible to get increase and all those things. If there are bonuses they are going to get bonuses but for me there is no such.*²⁶

Not surprisingly, the majority of unemployed respondents were day labourers who were employed mainly by private homeowners, followed by individual subcontractors. None of the South Africans included in the survey were employed by labour brokers, but among foreign nationals two reported that they were employed sometimes by labour brokers. This was the case for both employed as well as unemployed foreign nationals.

Union representatives and employers confirmed that the use of labour brokers and subcontractors was common practice but they had different opinions about its usefulness. As discussed earlier, union representatives were particularly concerned about labour brokers, saying that they support the call to ban the practice, while employers felt the practice benefited the construction sector. They felt that the labour brokers performed a useful function that was particularly advantageous for them.

*The advantage is that you don't have to commit to the labour, you don't have to worry about paying the labour, you don't have to worry about sorting the labour problems. The labour broker that you are paying must visit the site once or twice a week, if not every day, speak to his people, make sure that everybody is happy, everybody is working properly. If anyone has a problem they will solve it.*²⁷

Employers were open about the fact that using labour brokers is cheaper for them, and in this way makes their projects more affordable and increases their profits.

No we can't afford to draw it directly. Labour, nobody can afford. We may need to pay their tax as well as their medical aid, the pension, all the clothing that they wear, all that sort of thing. At the end of the day if we put in to win a tender we have to tell a labour broker to do it and he says R100 a day. But if we employ a guy directly we have to pay all that and so I will have to double it per day. So we can never win a tender from that, doubling up your labour cost. You can never do it. That's where these labour brokers come in for cheaper labour. Then we don't have to pay the medical aid and the pensions, so its up to them if they want to give the guys the pension and the medical scheme. I mean that's their problem, but if we do it we have to

²⁵ Interview with union 1 representative, 20 November 2009

²⁶ Interview with union 2 representative, 09 December 2009

²⁷ Interview with employer (medium size company), E1, 24 November 2009

*struggle too. To supply the clothing, to buy boots, the overalls, it will cost a fortune.*²⁸

From the employers' perspective, subcontractors and labour brokers are the legal "employers" and hence should be responsible for the workers and for maintaining any legal minimum employment standards. By contracting out responsibility for labour to another entity, construction companies not only no longer take responsibility for paying benefits, but also reduce their costs in terms of advertising, selecting employees and the provision of safety gear.

Concerning the future of labour broking, employers who were interviewed believe that the banning of labour broking will result in the practice going underground, making it impossible to monitor.

*[If you ban labour broking] it will go underground. We have a lot of immigrants into the country now and [they will be] taking away work from the locals. That is what will happen. So you will employ the Mozambicans, the Zambians, and the Zimbabweans. You will employ them because they will be half the price, so that is what will happen. The government will shoot themselves in the foot.*²⁹

Employers were aware that this practice was a great disadvantage to the worker but at the same time they saw this as an international trend and one on which they depend to make their businesses viable.

I know it's a wrong way of doing it but the guys [workers] get screwed ... The guys that are working for R80 a day, they work for the company that makes R100 a day but they don't get the benefits. But that's the way it works, even overseas. I have worked overseas. It's like that. The main contractor guy gets a little more than the labour broker guys. It's already rotten.

*I have seen Europeans working overseas, they are just so glad to have 50 Euros in their pockets. It's the same with these guys. They are happy with their R50 in their pocket, yah, as long as it gives them some food and clothes for their family and their children. It's a weird game.*³⁰

Types of Work

As broken down in Table 2, both the South African and foreign workers we surveyed performed a variety of functions, whether at the construction site where they were currently working or in terms of previous work in the case of the currently unemployed.

²⁸ Interview with employer (medium-size company), E1, 24 November 2009

²⁹ Interview with employer (medium-size company), E1, 24 November 2009

³⁰ Interview with employer, E1, 25 November 2009

Table 2: Types of work currently or commonly carried out
(Number of respondents)

	Unemployed		Employed	
	South African	Foreign	South African	Foreign
Foreman	0	0	0	2
Bricklayer	1	12	1	3
Carpenter	3	5	0	1
Tile maker	10	12	2	1
Electrician	2	10	1	1
Plumber	9	8	3	3
Project Manager	2	0	0	1
Flag waver	0	0	0	2
Driver	1	0	1	0
Machine Operator	0	0	1	2
Surveyor	0	0	1	0
Total	28	47	10	14

Contracts

Overall just under two thirds (57% or n=27) of employed respondents had a written contract. Among South African respondents who were employed we found that 65% (n=15) had signed a written contract. This figure dropped to 50% (n=12) among employed foreign nationals. Of those with contracts, 77% (n=20) had signed them with general contractors and 23% (n=6) with subcontractors. Of the 20 respondents without written contracts, 14 had a verbal agreement with their employer (8 with subcontractors, 3 with the general contractor, 2 with a private property owner and 1 with a labour broker.)

Among the unemployed respondents, around 90% of South Africans and foreign nationals did not generally get signed contracts. Most unemployed respondents stated that they had a verbal agreement with the employer, but five foreign nationals (11%) said they did not even have that.

We observed how informal recruitment systems play a role in negotiating wages and terms. Apart from the workers who initially went to the offices or sites of projects, most who were recruited from informal recruitment sites did not have the chance to negotiate or enquire how much they will be paid, even on a verbal basis. Depending on the number of workers needed, the employers or recruiters select people without doing interviews or having any extended conversation, and the 'lucky few' go with the recruiters without discussing the amount they will be paid or any other related terms. In the case of such casual workers, if the employers are not 'happy' with the work done, they simply disregard the original 'promise' and the employees cannot do anything but leave

with whatever amount is paid to them.

All respondents, irrespective of nationality and employment status, felt it was important to have a contract with an employer, primarily to safeguard themselves from unscrupulous employers.

No, we had a verbal agreement because when they give you a job, they say you are supposed to sign the contract but you can work months without signing the contract. They will say we are still waiting for the contract forms and they never come so maybe that was their way of robbing us.³¹

Documentation

As mentioned earlier we asked all non-national respondents which documents they used for identification purposes. Unfortunately the numbers were too small to come to any conclusive findings about the role of different forms of documentation and employment. We found that overall for foreign nationals, lack of documentation did not preclude working. However, those without documents tended to be hired by subcontractors rather than larger contractors. For both documented and undocumented respondents, approximately one third was employed and two thirds unemployed, reflecting the overall levels of employment in our sample.

Fourteen (19%) of the foreign nationals did not answer the question about documentation, which could imply that they did not have the relevant documents. As a matter of interest only three of these 14 respondents were employed.

We enquired of all respondents if they were asked for identity documents in order to be employed. We found that all employed workers said they were almost always asked for some proof of identity, irrespective of nationality. In spite of this, however, we found four respondents who were employed without having documents allowing them to work legally. Among unemployed workers a higher proportion of South African workers (72% or n=18) said they were usually asked for identity documents compared to the group of unemployed foreign nationals (48% or n=22).

Working conditions

Respondents were asked a number of questions dealing with their working conditions. These questions included asking about number of days worked, earnings, benefits (such as social security and health), safety issues, skills development, and collective bargaining. This section shows that most employees in the construction industry, irrespective of nationality, were not receiving minimum employment standards and protections.

Employed respondents worked an average of 23 days a month, although 7 reported working more than 26 days per month. Unemployed respondents worked an average of 10 days a month with the largest proportion for both nationality groups working between 11 and 15 days.

³¹ Interview with foreign worker, F2, 10 December 2009

Over half the employed workers we interviewed said they worked a ten hour day, and a further 31% worked for nine hours. Among the unemployed, daily hours varied too greatly to make a clear statement.

From the survey it appeared that visits from either the Department of Home Affairs or the Department of Labour were infrequent. It is however important to remember that many of the unemployed respondents worked for private homeowners where such visits would be highly unlikely. On large construction sites, it is also possible that all workers may not be aware of visits when they occur.

Table 3: Problems experienced by employed respondents
(number of respondents)

	South Africans	Foreign nationals
Denied my full/part of salary	1	1
Dangerous working conditions and lack of safety precautions	1	0
Lack of regular time off/leave	1	1
Lack of sick leave or loss of job or payment when sick	1	0
Verbal or physical attacks by employer	2	0
Language (don't understand co-workers)	1	0
Money is too little	1	0
Threat of being fired	0	1
Charge less than what the job is worth	0	1
Total	8	4

When asked whether they had experienced problems at work, employed South Africans were more likely to report experiencing problems (43% or n=9) compared with foreign workers (16% or n=4). Table 2 lists the problems employed respondents reported. Due to the small numbers in the sample, no generalisable conclusions can be drawn on the prevalence of specific problems or on the relative experiences of South Africans and foreign nationals. Nationals were more likely to go the police whereas foreign nationals would rather negotiate with the employer if they experienced any problems at work.

Basic Employment Conditions and Benefits

Basic employment conditions, which should apply to any form or length of employment, include sick leave and contributions to the unemployment insurance fund (UIF). Additional benefits, usually attached to longer term employment, include the possibility of medical aid, pension contributions, annual and paid leave, bonuses and transport allowances.

Out of 22 employed workers who answered questions about benefits, 7 received neither UIF nor sick leave. Six of these were South African. Only six respondents received both forms of basic right, with 9 respondents receiving either one or the other (8 only sick leave and 1 only UIF).

Concerning more substantial benefits, most workers received some benefits but not others. The distribution can be seen in Table 4.

Table 4: Benefits and basic labour rights received by employed respondents
(number of respondents)

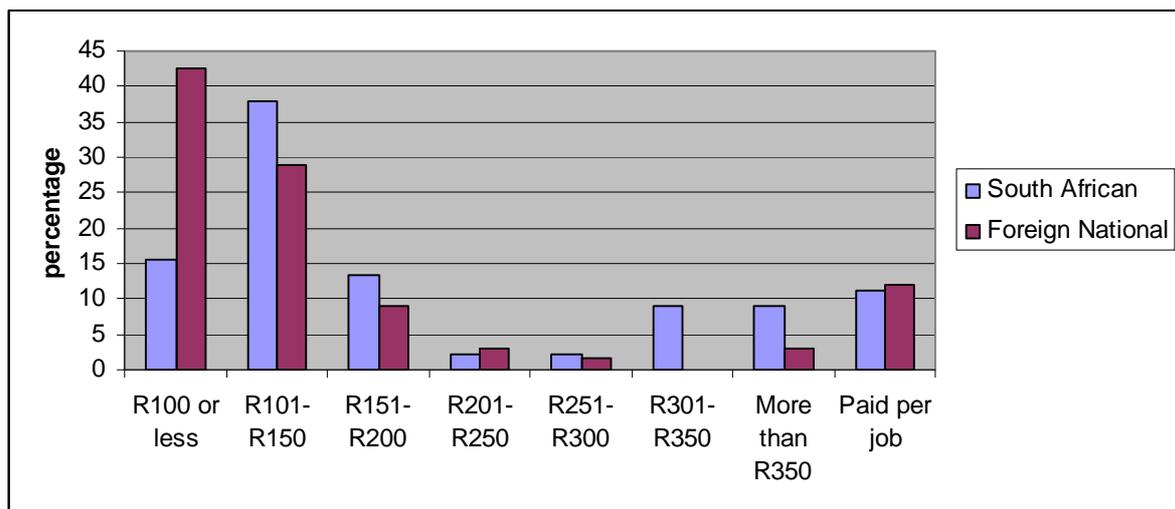
	South Africans (n=23)	Foreign nationals (n=24)	Totals (n=47)
Medical aid	8	3	11
Pension	6	8	14
Annual leave	4	8	12
Paid leave	10	9	19
End of year bonus	5	1	6
Transport allowance	4	0	4

Table 4 shows that for each kind of benefit, more or less two thirds of employed respondents did not receive it (e.g. only 19 out of 47 respondents received paid leave, only 14 out of 47 received a pension, etc.). While this finding may not be representative of the entire sector, it does confirm that many employers in the sector are moving away from retaining a permanent workforce that is entitled to receive all the relevant benefits.

Earnings

There is no legal minimum wage agreement for the construction industry, as there is for farm workers, domestic workers and hospitality workers. Due to the varied kinds of work in construction, a general agreement may be difficult to develop, and in this context, negotiated agreements between employers and organised labour take on particularly important roles.

Figure 4: Daily earnings of all respondents



According to our findings many workers are not only denied benefits but also work for low wages, often at the discretion of the employers. The survey found that most respondents, whether currently employed or not, earn under R150 a day (64% n=71), with foreign nationals more likely to be earning R100 or less or being paid per job rather than daily wages. The average daily earnings of employed construction workers included in the study was under R140. Comparing foreign nationals and nationals we found that on average South Africans earned slightly more at R139.77 a day compared to foreign nationals who earned an average of R137.36 a day.³² Four of the six women who were interviewed earned between R101-R150 a day. Our information on the exact work which different respondents were doing is not detailed enough to be able to judge whether the differences in average daily wage stem from South Africans and foreign nationals doing different kinds of work, or whether they are being paid different amounts for the same work. Future research with larger samples would need to address this important issue directly.

Both nationals as well as foreign national respondents were unhappy with the amount of money they earned. One of the foreign employees lamented:

[We] foreigners don't have [a] choice, so if you say 'no I don't want that little money' you are gonna die of hunger, but those South Africans they came here to look for jobs but if they didn't get work they are gonna go to where they stay and get food or something, but us if we don't go for that little money we go

³² One of the respondents was a foreman who earned R600 a week. He was the only foreman in the study and, as a Zimbabwean, significantly increased the average earning of non-nationals. To avoid misrepresenting the group, this value was removed as an outlier and the average calculated without it.

*there...nobody is gonna buy food for us so we want to work for that small money because we don't have choice.*³³

This context was generally confirmed even by their local counterparts and union representatives. Another Zimbabwean worker argued that:

*Sometimes it's not about agreeing to lower pay but you get picked and then when you start working you discuss pay and then instead of your expected 80 rand he will propose to pay 50 rand and then you say instead of going back to market 'let me just work, as this money can help in paying my rent or buying food', but on the [next day] when he comes to the site with a proposal of 50 rand you refuse.*³⁴

Interestingly, foreign nationals were less likely to perceive unfair wage differentials than South Africans. When asked whether they thought other people working with them at the same level and with the same skills were being paid differently, over two-third of employed and unemployed foreign nationals said no or don't know, while two-thirds of unemployed and half of employed South Africans said yes. In only three cases, however, did any of the employed respondents explicitly mention nationality or legal status as a factor in differential wage levels.

For many workers it is a question of daily survival and with no other source of income they are forced to accept an unfair deal. A South African respondent describes this desperation saying that:

*Some of those guys [that work for lower pay] are desperate. Some of them you know the problem is they don't have even one cent in their pockets, so they prefer to go and work for that 20 rand for the day, for them to buy food just for today. So they force themselves to go and work but it's not good for people to work for 20 or 30 rand a day.*³⁵

Of course some locals do complain about the competition and wage depression by foreign nationals or even other locals who find themselves under similarly desperate financial conditions. A South African daily labourer complains saying that "foreigners drop our wages below our discussed benchmark, they are everywhere. We South Africans are three, the rest [are] about fifty. They are not South Africans, they drop the wages, and we can't live on fifty rand."³⁶

One of the main perceptions about foreign nationals is that they are preferred employees because they accept lower wages. This perception is not supported by this research, since there is no evidence that foreign nationals or those accepting lower wages are more likely to be working than South Africans. However, further and larger-scale research would be needed to confirm this. A second wage-related perception is that foreign nationals are lowering the wages which all workers are offered for work (i.e. they are willing to be paid less so employers are not willing to pay anyone a fair wage). This research was not designed in a way that could test this perception, and it would be

³³ Interview with foreign worker, F1, 25 November 2009

³⁴ Interview with foreign worker, F2, 10 December 2009

³⁵ Interview with foreign worker, F5, 09 December 2009

³⁶ Survey response by South African worker

difficult to disentangle different wage-depressing factors (including general domestic and international economic conditions). Further and different forms of research would be needed for this.

Skills development

All respondents were asked if they were able to develop their skills in their current situation. Not unexpectedly, a higher proportion of employed respondents (66% or n=31) answered yes compared to respondents who were not employed (42% or n=29). Over 80% (n=19) of South African employed workers felt they could develop their skills at work, while this only applied to half (n=12) of employed foreign nationals.

As in many other sectors of occupation, skills development is vital for construction workers. Apart from the wages they earn, it is important that they gain experience and prepare themselves for better opportunities. However, the informalised nature of the current employment arrangements does not provide workers with the opportunity to progressively gain experience, especially in terms of specialized artisanal skills. In some cases, the difficulties of finding work, especially work with the potential of growth and career progression, discourages people from trying to find work at all. The ILO has reported that the number of working age persons who have given up looking for work in South Africa increased from 1.1 million in 2008 to 1.6 million in 2009.³⁷

One of the reasons employers hire foreign nationals is their skills as artisans. The unions recognize and lament the lack of such artisan skills among South Africans and note that the SETA's responsible for providing the training to fill this gap are not fulfilling their mandates. According to a union representative, government "[should realize] that because the country is running short of skills, that's the reason why we hire people from outside the country".³⁸

Health and safety

The survey found that employed respondents were very likely to use protective gear and work under relatively safe conditions and were seldom asked to do any dangerous work. However this was not always true for unemployed respondents (irrespective of nationality), whose work, when they had it, was generally of a more temporary and casual nature. Almost half of these respondents claimed that the type of work they did was not always safe, and over a third stated that they did not always wear protective gear and were sometimes asked to do dangerous work. In addition, almost a third of these respondents had hurt themselves while working, compared with just over 10% of those in more regular employment. Exposure to such dangerous working conditions without adequate protection indicates again that vulnerability is a common feature among the casually employed, irrespective of nationality.

With the shift to outsourcing employment arrangements, smaller subcontractors are seen as less likely to comply with labour and safety standards. The situation is even worse with labour brokers

³⁷ ILO Report, 2010. "Global Employment Trends", p.26

³⁸ Interview with union 2 representative, 09 December 2009

and LOSCs. Construction enterprises pass the costs and responsibilities for maintaining safety standards to the subcontractors. A manager at a building site said:

*The companies [labour brokers] have to cover them [costs for safety gear]. You can't charge them [workers for gear], so you get them two pairs per year, overalls, two pairs of boots but for us to do that we will never get anything. That is why for labour brokers it is cheaper. I know it is a wrong way of doing it but the guys [workers] get screwed.*³⁹

According to a manager at one of the sites, labour brokers are given the responsibility for providing protective gear and admitted that:

*Sometimes the labour brokers don't bring the safety gear on time and we cannot wait until they come. We try to protect them from danger but they work like that, because the agreement we have with the brokers is they handle their workers themselves.*⁴⁰

Collective bargaining and the Unions

The Labour Relations Act (LRA) makes provision with regard to collective bargaining, and employers' associations and labour unions are encouraged to form bargaining councils to negotiate agreed on labour standards. To this end, regional councils were formed. However the reconfiguration of the employment structure in the construction sector has made it more difficult for workers to organize themselves. This has resulted in many regional councils, including the Gauteng Bargaining Council, collapsing. The study shows that among the employed, only six (29%) of the 21 South African nationals reported being a member of a union compared to nine (35%) of the 26 employed foreign nationals. This is a surprising finding and would need further investigation. In addition to this we found that almost a third (32% or n=11) of employed workers did not know what unions did. This figure was made up mainly of foreign nationals (7 of the 11). One of the union representatives felt that foreign nationals should be encouraged to join unions

The thing is if they can join us we are interested in them joining us so that we can eradicate this exploitation thing of them because we are also worried for them. They are our brothers, but the conditions they are working under they are not good, and the more they increase the more the battle that we are fighting we are going to lose it. Because sometimes the employers will ignore us at the negotiations if this thing continues, knowing that they have got people who will accept anything. Then it will turn to Xenophobia.

.... we have got a certain belief that workers are workers. That's why we do not want to go the way of the employers where they categorise workers, others as casual, others as migrants, others are subcontractors. We regard

³⁹ Interview with employer, E1, 25 November 2009

⁴⁰ Interview with employer, E2, 11 December 2009

workers as workers. So we don't see ourselves having meetings to say this meeting is for, this meeting is for, we address the issues of workers. If in the topic we have to deal with the issue of migrants, we talk in the meeting of everybody, not specifically saying now the issue is migrants. No, we will not be discriminating them, we need them to feel to be part of the working class.⁴¹

The union representative felt that unions could help foreign nationals without proper documentation, saying that:

You see the law of the country says if one can prove that they have been in the country for so many years he can have the citizenship of the country. But if they are isolated, some of the things they don't know and even if they are under that man who is hiding them they have no proof that they were in this country for so long and then they may start to enjoy benefits because that man is isolating them. Nowhere is it written that they were in this country. If they were our members, we start to count that they were in this country from this year, it's a proof in our records they are there.⁴²

In spite of being optimistic, both union representatives and workers were aware that there are challenges in the areas of unionisation and forming bargaining councils. These include:

- The temporary (LDC) or part-time nature of employment does not allow workers, including migrants, to be members of unions. This can happen either in circumstances when the projects end or the workers are retrenched after a short time period.
- Labour brokers and subcontractors threaten workers with ending their “contracts” if they attempt to be members of unions or organise themselves in any way.
- The fragmentation of unions within the same sector weakens the organisation and influence of a collective voice. Apart from the larger NUM and BACAWU unions, there are many other smaller unions representing workers in the construction sector.
- Union membership fees, both in terms of fee levels and modalities of payment, are a barrier to many construction workers. In some unions, membership fees are paid only electronically as per union policy (e.g. NUM) and the requirement is that employers should contribute a percentage of the member's salary.⁴³ These systems are not aligned with the reality of workers employed by subcontractors and brokers. Among the casually employed, only one stated he was usually paid through the bank, while among the more regularly employed, 36 out of 47 received electronic payments.

⁴¹ Interview with union 1 representative, 20 November 2009

⁴² Interview with employer, E1, 25 November 2009. Immigration law provides that a person who has been in the country *legally* for five years may *apply* for permanent residence, and after five years of permanent residence may *apply* for citizenship.

- Existing unions do not have means of including day labourers as members because they are not considered to be 'employed'. Day labourers are aware of this, as 26 out of 56 gave their lack of regular employment as the reason they are not union members. This leaves a bulk of the work force in the construction sector outside the collective bargaining scope. Labour unions say that it is impossible to unionise this group because they do not have a permanent income to determine their membership fees and they don't have known employers with whom the unions can negotiate terms.

In the context of informalised labour arrangements, it is very difficult to identify who is an "employer," and who is therefore responsible for hire and fire decisions and the maintenance of basic labour and safety standards, and with whom unions or other negotiation and oversight mechanisms should therefore engage. For example, in instances when workers are originally recruited by a labour broker to work for a third party that pays their salaries, the latter supervises them at work and can fire them. In such contexts, the original "recruiter" may tell unions attempting to prevent retrenchments that he was not the one who fired the worker, while the third party may also deny responsibility for labour arrangements.

SECTION 5: CONCLUSION

Given its methodology, the findings from this pilot study can only be generalized to a limited extent. The research does confirm the extensive presence of foreign nationals, mainly from the SADC region, working in the construction sector, even though it cannot conclude on numbers or percentages of the overall workforce. It also shows the importance of domestic migration to Gauteng labour market patterns.

This study illustrates the general levels of labour insecurity in the construction industry. The key distinction is between workers in more regular (even if not permanent) employment, and workers doing casual and day-to-day jobs, although even regularly employed workers often do not receive basic labour rights or benefits. Foreign nationals are present in significant numbers in both kinds of employment, but this study has not been able to show a conclusive difference in recruitment patterns, wage levels, benefits or other forms of treatment.

The dominant trend in the industry, which has led to increased labour insecurity, is the casualisation and informalisation of recruitment practices and employment relations. Stratified sub-contracting practices have delinked responsibility for providing legally minimum and adequate labour conditions from the major construction companies and transferred them to bodies such as brokers or subcontractors who may not accept that legal responsibility or indeed may not have a legally registered identity through which they can be held accountable. These systems also make it more difficult for labour unions to organize workers.

A key challenge is therefore to adapt negotiation, monitoring and enforcement mechanisms concerning labour standards to the current structure of the industry. This may include steps to encourage the formation of regional bargaining councils and associations that include subcontractors; different forms of site inspection, including recruitment site inspection; and new forms of unionization which do not limit membership to workers with formal contracts and employer membership contributions.

The background research conducted for the pilot study also confirmed that there is insufficient empirical knowledge about employment conditions in the construction sector. Debates about labour broking and subcontracting, as well as debates about the impact of migration on the sector, are therefore held in a vacuum, without data on which to base policies or law enforcement interventions. This pilot can inform the development of a larger and more representative study to address some of these questions more comprehensively. Among the additional issues to be taken into account in future research are:

- Comparing the nature of the construction industry in the major urban centres with practices in the urban periphery and smaller towns. Levels of foreign involvement in non-urban areas may be different, and levels of oversight and unionisation may be even lower.
- Considering the mobility of workers between labour intensive sectors, including in and out of construction work, and into and out of employment. The aim is to understand the options workers have, their ability to negotiate terms, and their cumulative access to benefits.
- Comparing large-scale public or private construction sites with smaller private sites.