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Determinants of unfair labour practices on African migrant labourers employed in selected labour sectors in South Africa

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Abstract. Migration for the purpose of improving one's economic status is one of the major reasons for human mobility. Over the years South Africa has been the biggest host of migrants in the continent. The objective of this study was to describe factors that predispose migrant workers to unfair labour practices. African-born migrant workers were conveniently selected to participate in this descriptive qualitative study through the use of a focus group and individual interviews. The findings show that migrants experience exploitation in their workplaces on account that they enter the country illegally, they are desperate to find a source of income, they are afraid to speak out about the labour injustices that they experience, and there exists a corrupt relationship between authorities and employers. Employers need to abide by labour regulations that are relevant to their sector. There is also a need to protect the rights of migrant workers, irrespective of their status in the country.

Keywords. African migrants; labour practices; poverty; desperation; fear

Introduction

People who decide to emigrate from their birth countries view migration as a strategy to escape dire living conditions such as poverty with the hope of accessing better job opportunities in the receiving countries. The World Bank (2018) points out that not all human mobility is solely influenced by economic motivation, but that other social and political factors are considered prior to one taking the ultimate decision to migrate. Lack of employment opportunities, political instability, and poor economic prospects in countries of birth are cited as the biggest drivers of migration (World Bank, 2018). These conditions in the sending regions propel the human mobility to places deemed favourable. South Africa is politically and economically more stable in comparison to other countries in the Southern African Development Community (SADC) region. This is a strong pull factor for people who choose South Africa as their destination country. South Africa has seen a spike in the flow of people from African countries in the recent past (Blaauw, 2012; World Bank, 2018). With an estimated 5 million immigrants living in the country (World Bank, 2018), South Africa is a host to various foreign-born nationals from Central, Eastern and Southern Africa, Europe, South Asia and China, making it an African country with the largest population of foreigners. On account of the fact that South Africa has experienced a big influx of foreign-born nationals, IOM (2019)

stresses that it is difficult for host countries with big influxes to cater for the economic needs of immigrants.

The decision to move to a foreign country is accompanied by feelings of uncertainty about the migrants' survival in the host country, which is why they seize any opportunity that is presented to them once they arrive in the destination country (Msabah, 2019). The desperate nature of their life circumstances make it easy for them to fall victim of exploitation. Lack of education and lack of support as a result of the death of their parents make young migrants vulnerable and exposes them to labour abuses (IOM, 2018). Sexual exploitation is the most prevalent form of exploitation that women and children in Africa experience (UNICEF, 2003). The violations of human rights are however not limited to sexual exploitation through forced prostitution.

Migrants who are at times victims of trafficking, are also subjected to economic exploitation in the form of child and migrant forced or unfair labour practices. This is attributable to the willingness of indigent or desperate migrants especially from Mozambique, Zimbabwe and Malawi to accept exploitative jobs (Vettori, 2017; Blaauw, 2012). The demand for cheap labour in domestic work, commercial agriculture and hospitality sector is a major factor of economic exploitation (UNICEF, 2003). These workers do not get paid despite having wage negotiations prior to working (Blaauw, 2012). Exploitation of migrant labourers is worsened by non-compliance of labour laws by employers who exploit the labourers' legal status in the country. UNCTAD (2018) rightfully points to the fact that undocumented migration is influenced by economic circumstances and to a certain extent, desperation. Migrants are also

not unionised, lack the knowledge or do not have financial resources to pursue their rights as workers (Vettori, 2017; Vanyoro, 2019). These factors present migrant workers with little recourse (Blaauw, 2012) further perpetuating their problems.

Ogunyemi (2012) stresses that basic human rights upon which labour laws are protracted, are natural to all people. This study thus sought to describe factors that influence unfair labour practices endured by migrant workers in South Africa.

Methods

This paper describes determinants of unfair labour practices experienced by African migrant workers in the Republic of South Africa. Worker who took part in the study were from the SADC region, with domicile of origin in Lesotho, Zimbabwe, Mozambique, and Republic of Congo. A qualitative study approach with a descriptive design was useful in helping the researchers to be able to describe factors that influence unfair and unlawful labour practices endured by African migrant workers (Carey, 2012). Participants were selected using a non-probability convenient sampling technique which ensured that appropriate study subjects were chosen (Dudley, 2011). Data was collected from nine migrant workers with the use of a focus group discussion as well as individual interviews. Four workers were individually interviewed and an additional five participated in a focus group discussion. Workers were employed in the agricultural, domestic, construction and hospitality sectors. The Covid-19 regulations were followed during interactions with the participants.

Findings

This section thematically presents the factors perceived by African migrant workers to be influencing the exploitation they experience at their workplaces.

Poverty experienced by migrant workers

Foreign migrants are among the population groups that are prone to labour exploitation. Their proneness to unfair labour practices is largely due to the push factors in their home countries, which make them desperate to accept any job opportunity they get. This is the experience of one migrant worker:

'I was happy when I found a job. I was finally going to help my siblings back home.....no, you can't say anything even when you are robbed of your money by your boss. We all just want to get something at the end of the month. We have people who need our help back home because there are no jobs there and the money is too little, for example, a domestic worker in South Africa earns more than a teacher in my country.'

Phiri (2015) asserts that although migrants are aware that they are vulnerable, they feel like they cannot do anything about the unfair labour practices that they are faced with. This is attributable to their fear of losing their source of income which was the main reason for their move to South Africa.

Lack of documentation

Some migrants who took part in the study cited that they did not have proper documentation required to be in the country legally. This is how a woman shared her experience in the hospitality sector:

'When I started working, they did not ask to see any permit, not even a resume. I got the job through my fellow countryman who was already working there. I just showed up and was told to start working.....we were not registered with the Department of Labour because we had no work permits'

Bostick (2012) suggests that the most likely group of people to find employment in South Africa are the irregular migrants given that they are more exploitable and are willing to accept lower wages. The employment of migrant workers with irregular status in the country means that those particular workers are not registered with the Department of Labour, which is a contravention of the labour and immigration regulations of the country. Furthermore, their illegal status and limited rights make it difficult to seek recourse when they fall victim to labour exploitation. Employers are prohibited in terms of the Immigration Act 13 of 2002 from employing illegal immigrants. The study revealed that some employers are in contravention of this statute.

This is how another migrant relayed their story:

'I do not have any identification papers, there are people who wait by the river to help us cross the border to South Africa. They are also on the lookout for police or soldiers who patrol the area. When the coast is clear, they help us cross for R10,00 a person. It is easy to get into the country.'

Nshimbi and Fioramonti (2014) have noted that Southern African countries' borders are very porous and characterised by informal or irregular cross-border movement. Lack of documentation and work contracts increase the likelihood for migrants to be fired from their jobs (Phiri, 2015; Vanyoro, 2019) with impunity.

Employer impunity for employing non documented, nonregistered workers

Employers default on the implementation of labour laws in that they feel that the labour regulations are unfair on their part and that they favour employees (Vanyoro, 2019). This could explain the absence of labour trafficking policies in the participants' workplaces, leaving workers with unclear channels of reporting exploitation incidents.

HSRC (2008) is of the view that the ignorance of the minimum wage law by employers and their preference to employ illegal migrants creates competition amongst the poor as they continue to accept to work for lower wages.

'When our boss heard that there was an operation by the Department of Labour to crack down on businesses that employed illegal migrants, he just instructed us to not come to work anymore.....there was nothing we could do..... so that is how I lost my job in that place'

Meyer et al (2019) also indicate that authorities are at times called to arrest or deport vocal workers who disagree with their employers. This act reinforces workers' fear to report labour injustices that they encounter.

Fear of disclosing unfair labour practices

Despite the maltreatment received from the employers, migrants rarely make their grievances known. They find solace in each other and a few native co-workers who are in the same position. All of the migrant workers in the hospitality industry indicated that they do not report their exploitation to their immediate supervisors or anyone. They are just glad to be earning some money that they are able to remit back in their sending countries.

'We mostly don't raise issues with our bosses. Nobody can say anything because we all want to keep working. What if you say you are brave and speak up, then the next day you don't have a job while the people you were also speaking for continue to work?'

The non-disclosure of exploitation is largely due to the migrant workers' fear of possible deportation and loss of income which not only sustains them but their families back home as well. Another important barrier or factor that makes them powerless to report exploitation is that migrants are not aware of the labour protective laws available to assist them (Mbiyozo, 2018). On account of the fact that victims of labour exploitation are mostly irregular migrants without proper documentation, workers are unable to unionise and are therefore deprived of representation in labour related issues such as representation in disciplinary actions against the workers as well as negotiating for better working conditions (Vettori, 2017).

Vanyoro (2019) states that in certain instances, it is not that workers are not aware of their rights, it is their fear of losing their jobs that prevents them from seeking help. The decision by migrant workers to remain in precarious, exploitative forms of work is influenced by their fear of deportation (Kiwauka & Monson, 2009), which may be as a result of approaching authorities to report unfair labour practices.

Corruption

Corruption has been cited as one of the features of labour exploitation. The participants in this study indicated that they believe corruption has a role to play in fuelling the exploitation of migrant workers.

Corruption features at different phases of labour exploitation. From permitting irregular migrants to gain entry in the country, to officials who sell documents to migrants, and labour inspectors who accept bribe from unscrupulous employers who do not follow the set labour regulations.

This is one worker's view regarding corruption:

'There is a lot of bribery to law enforcers. I think South Africa has good laws but corruption is rife and the law enforcement is poor. I also think corrupt officials are just criminals who take advantage of migrants.'

Waller (2006) avers that migrants who do not qualify to be issued with work permits resort to forging or buying documents to help them find work, after gaining entry into the country with the help of corrupt officials.

Discussion

On account of the fact that South Africa is the biggest host of migrant population in Africa, it is highly likely that the number of migrants will rise, particularly because according to the European Commission (2015), people migrate to places that they have established network ties. This has a potential to further burden the labour economy that is already overburdened with job seekers from within and outside the country. The bigger the pool of workers, the more likely the workplace is to be exploitative.

The state of the economy, not only in the sending countries, but also in the receiving regions, leave workers with very limited choices when they experience exploitation. The dire economic situation facilitates the exploitation of workers by employers who according to Mbiyozo, (2018) prefer hiring undocumented migrants. The employers in question in the context of this study are based in the hospitality, domestic, and construction sectors.

Bostick (2012) makes an important point that has to do with the history of migrant labourers in South Africa. They argue that during the apartheid era, it was advantageous to have migrant labourers compared to natives because migrants' presence in the country was not permanent. It seems that despite the change in labour laws, employers still prefer to hire migrants who have limited rights and whom they somehow are not obligated to treat with dignity.

Being irregular migrants puts workers at the mercy of employers who hire them to do precarious jobs which many locals perceive to be below them. Many of them are thus employed in places that are not worker-friendly and are consequently subjected to certain acts of human rights violations such as sexual and other abuses because as Mbiyozo, (2018) states, it is difficult for migrants to find work.

Participants who stated that they were ill-treated in their workplaces also shared that they did not raise their grievances with their immediate supervisors, stating that they feel their employers do not care about how they feel. Workers reported that being migrants is the most probable cause that they were abused by their employers. Migrant workers revealed that their

desperate economic situation facilitate labour exploitation by their employers. There is a lack of labour trafficking policies in the workplaces of the workers who participated in the study. This therefore means there are no guidelines of reporting exploitation incidents. Employers without their own labour trafficking policies are highly likely to violate regulations set out by government such as paid leave and payment for overtime, which was found to be true

in the findings of the study. The condition set in the Immigration Act that no one shall employ an irregular immigrant is also disregarded by employers.

What exacerbates the desperation of migrant workers is their lack of knowledge of labour laws and lack of implementation of such laws by employers. Non-implementation of labour regulations is facilitated by poor monitoring by the Department of Labour. According to Vettori, (2017) establishments that are in the far flung remote areas renders it difficult not only for the Department of Labour to monitor and enforce labour laws but also for trade unions to recruit members. However, wherein monitoring is done and employers are found to be in contravention, corruption plays a big role in assisting the employers to avoid accountability. This study found that corrupt officials may be in cahoots with employers who are guilty of labour exploitation by offering bribes or paying such when they are solicited by officials who are supposed to be holding them accountable for contravening the labour laws. The plight of migrant workers is worsened by the absence of worker benefits such as the Unemployment Insurance Fund, medical aid and pension funds (Vettori, 2017), due to their non-registration with the Department of Labour. Workers are left with little to no recourse because they are not unionised or do not belong affiliate to any trade union which is crucial in negotiating better working conditions for their members. Vettori (2017) attributes the absence of unionisation to fear of being fired for having a union affiliation.

Conclusion

Foreign migrants travel to South Africa in search of opportunities that will better their lives. South Africa has thus become a destination country for both regular and irregular migrants. On the account of the fact that foreign migrants without proper documentation are likely to be victims of labour trafficking, legalised entry into the country should be a priority for both sending and receiving countries through cross-border partnerships to ensure that people who cross sovereign borders are legible to do so.

It emerged from the study results that corruption is one of the main features of labour exploitation that occurs on various levels and forms. Corruption has to be rooted out as it contributes to the plight of exploited workers. Enforcing anti-corruption laws will play an important role in ending impunity for the corrupt.

Workers who experience the most exploitation are unregulated migrants. Employers ought to uphold the Provision of Section 23 subsection 1 of the constitution which provides for the right of fair labour practices for everyone. Migrant workers should strive to have proper documentation so that they can insist to be registered with the Department of Labour. Being registered will also afford them protection from unfair labour practices that they have to endure in order to keep their jobs.

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