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Migrant Labour in Africa (The South African Case Study)

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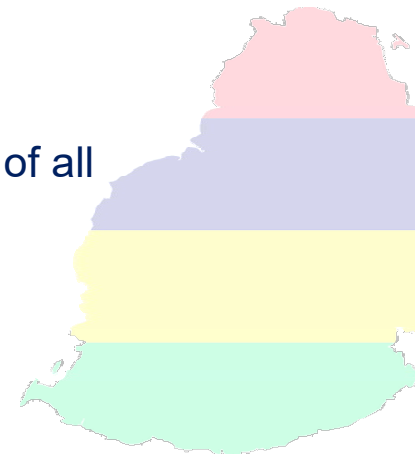
Introduction

- South Africa has been a migrant-receiving country for decades and have been going on since the mineral revolution of the late 19th century.
- For a very long time, migrant labour provided abundant cheap African labour for white-owned mines and farms, and it continues to be significant in South Africa to this day
- Employment of unregulated foreign labour enabled mine-owners to exploit the available manpower in pursuit of maximum output.
- Farmers seeking to avoid the South African employment practices increasingly seek to employ migrant workers to whom they extend minimal employment benefits.



Introduction

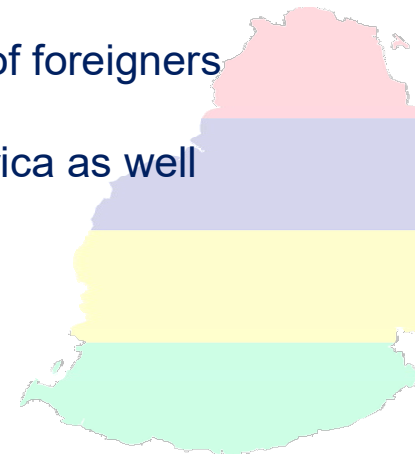
- According to a StatsSA report on migration dynamics, the consistently high rate of migration from SADC countries is due to a colonial and apartheid-era regional “history of labour migration, especially from Mozambique, Lesotho, Malawi, Zimbabwe and Swaziland.”
- The 2011 census reported that more than 75% of foreign-born (international) migrants living in South Africa came from the African continent.
- African migrants from SADC countries contributed the vast majority of this, making up 68% of total international migrants.
- Immigrants from African countries outside of the SADC region made up just 7.3% of all international migrants.



Regulation of Migrant Employment

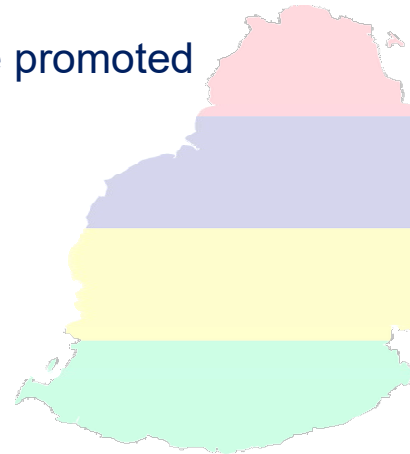
Apart from the Basic Conditions of Employment Act and the Labour Relations Act, employment of foreign national is regulated by:

- The Employment Services Act 4 of 2014 which came into effect in August 2015 aims to support the employment of foreigners which is consistent with the provisions set out in the Immigration Act.
- The Immigration Act 13 of 2002 is also responsible for regulating foreign employment in the Republic of South Africa. This act lays out the rules and regulations for admission of foreigners into South Africa, their residence in South Africa and their departure from South Africa as well as the ability for foreigners to work within the Republic.



Root Causes

- The 1999 White Paper on International Migration is limited to compliance rather than managing international migration strategically, as a result there is a lack of a proactive management of international.
- The policy relies on the mechanical application of rules to manage risks, rather than the integrated intelligence-based approach that is best practice globally.
- The 1999 White Paper was designed in response or to correct the apartheid immigration legislation and it adopted the formal principles of immigration administration that are promoted by the UN.



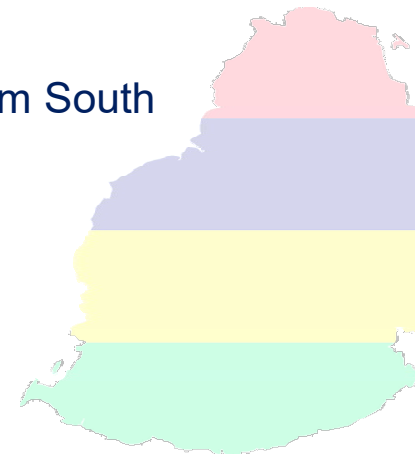
Root Causes Cont.....

- The 1999 White Paper excludes policy on asylum seekers and refugees, which is covered in the Refugees Act.
- Department of Home Affairs has been regarded as the sole department responsible for the management of international migration and this has contributed to the lack of approaches involving the whole of the government and civil society, which is contrary to best practice globally.
- There are policy gaps regarding asylum seekers and refugees, the asylum seeker and refugee regime that was established through the 1998 Refugees Act has serious gaps that have only been partially addressed through amendments.



Recruitment practices of foreign nationals in South Africa

- In South Africa, the employment framework for foreign nationals working in South Africa requires employers to confirm with the department of Home Affairs
- If South African employers employs a foreign national, the employer and employee have to confirm employment in terms of the Immigration Act.
- Foreign nationals coming into South Africa on a general work permit must give the director general of home affairs proof that the worker is still gainfully employed, and provide a job description for that employee.
- The result of non-compliance can see the permit voided, the employee excluded from South Africa and cost the employer a great loss in terms of investment and talent.
- The department of Public Service and Administration also regulates recruitment and employment of foreign nationals in the public service.



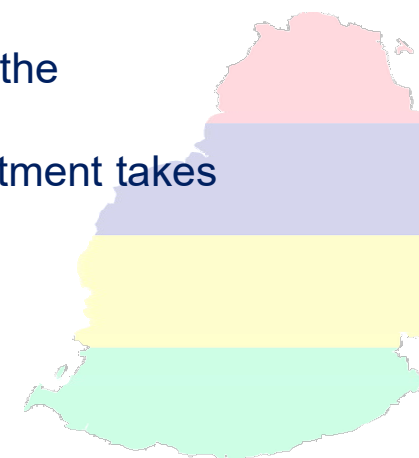
Policy on the Employment of Foreign Nationals in the Public Service

- In order to address skills shortages in the Public Service, South Africa adopted a Human Resource Development Strategy for the Public Service that defines a number of strategies to be rolled out.
- These strategies also included a Scarce Skills Development Strategy that calls for a number of activities to be undertaken in regard to the recruitment and provisioning of scarce skills in the Public Service.
- The Department of Public Service and Administration (DPSA), being a stakeholder in improving human resource management throughout the Public Service, developed a Policy on Employment of Foreign Nationals.



Policy on the Employment of Foreign Nationals in the Public Service

- Emphasis is placed on the concepts of “critical occupations” and “critical skills” as the basis for the application of the policy as well as the need to comply with the Immigration Act, 2002.
- The policy also stipulates that, foreign nationals must be employed in critical occupations as determined by departments, South African citizens and permanent residents must receive preference and the recruitment of foreign nationals can only be considered as a last resort.
- Contracts of employment must provide for the transfer of skills to South African employees and the standard recruitment processes and approaches are to be applied, except that the Department of Foreign Affairs must be approached to facilitate the process if recruitment takes place in terms of treaties and bi-lateral agreements.



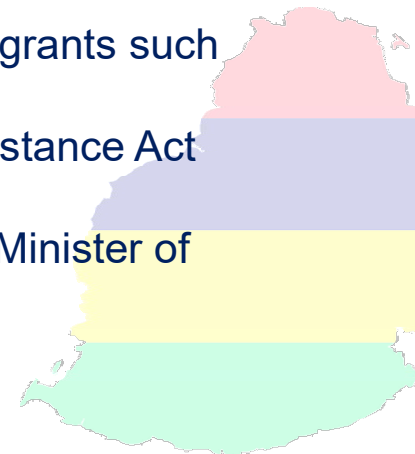
Social Protection Rights regarding Migrants in South Africa

- Irregular migrants receive limited social protection however, courts have played a positive role in the development and broadening of the social protection afforded to migrant workers, especially in the form of labour security.
- The limitations in the legislative instruments that regulate labour security are being extended to give effect to the courts' decisions.
- Although the provision of social protection in South Africa is relatively comprehensive and embedded in legal frameworks and instruments, particular categories of migrants are excluded and discriminated from accessing these benefits. Non-nationals are generally excluded from social security protection, in particular social assistance.



Social Protection Rights regarding Migrants in South Africa

- Public insurance schemes extend to workers in the formal sector.
- Irregular migrant workers who work in the informal job market are automatically excluded due to the fact that they do not contribute to any of the public social insurance schemes.
- As a direct consequence of South Africa's legal regulations governing access to social protection benefits, temporary residents are excluded from accessing social assistance but qualify for specific forms of social insurance.
- The constitutional and legal frameworks explicitly exclude categories of irregular migrants such as undocumented migrants from accessing social security however, the Social Assistance Act makes provision for the Minister of Social Development, with the agreement of the Minister of Finance, to provide social relief to distressed individuals who qualify.



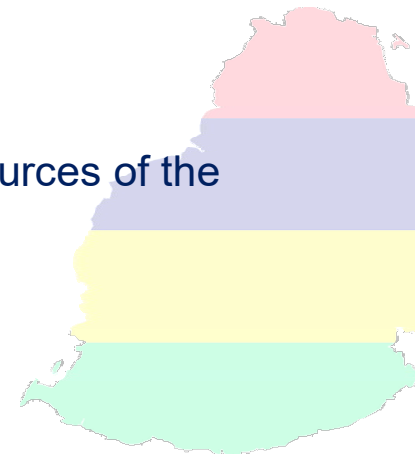
Legal framework for protection of migrants

- South Africa has a progressive and modern constitution which protects most if not all categories of human rights that are ordinarily included in international human rights instruments and these rights are enforceable through the judiciary
- These rights are applicable to everyone and are not discriminative according to any person based on their citizenship, migration status or legality of work.
- This then mean that, even irregular migrants would also be entitled to some social security protection under the Constitution of South.
- The International Convention on Migrant Workers also provides labour protection to irregular migrants in so far as they may not be exposed to exploitation in the workplace, and that the Constitution of South Africa protects everyone's right to fair labour practices.
- This initiative promotes opportunities for everyone to obtain decent and productive work, in conditions of freedom, equity, security and human dignity.



Conclusive Remarks

- South Africa have a burden of being on the receiving end of international migration and has been evidently struggling to manage migration into the country.
- As a result, South Africa is struggling in curbing human trafficking, although there have been a number of efforts and arrests in this regard, it is far from enough to eliminate the problem.
- Although it's only a drop in the sea, The Directorate for Priority Crime Investigation (Hawks) have made numerous arrests of police and border officials for extortion of money from foreign nationals attempting to enter South African borders.
- There is a lack of research to determine the impact of illegal immigrants on the resources of the country.



Thank
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