

**Migration in post-apartheid South Africa**  
**Challenges and questions to policy-makers**

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## RÉSUMÉ

### Introduction:

La question migratoire est un sujet particulièrement sensible en Afrique du Sud. Douze ans après la fin de l'apartheid, le pays attire un nombre important de migrants – leurs effectifs exacts étant régulièrement l'objet de controverses. Le gouvernement dirigé par le Congrès National Africain (ANC) a officiellement déclaré que l'Afrique du Sud avait besoin d'attirer des migrants hautement qualifiés pour alimenter certains secteurs clés de son économie et a reconnu l'articulation entre le rôle des migrations internationales, y compris en provenance d'autres pays d'Afrique, et le développement de l'Afrique du Sud. Alors que de très nombreux Sud-Africains vivent dans une grande pauvreté, beaucoup ont le sentiment que le gouvernement devrait donner la priorité à l'emploi à ses propres citoyens plus qu'il ne le fait aujourd'hui. Dans ce contexte, différents analystes ont souligné l'augmentation de la xénophobie surtout vis-à-vis des réfugiés politiques et des migrants irréguliers venant du reste du continent africain.

### *Le contexte politique*

La 'signification' de l'immigration en direction de l'Afrique du Sud et des réactions sud-africaines à celle-ci ne peuvent être comprises indépendamment d'une référence à l'histoire du pays et de la région australe, comme le note le premier chapitre de ce rapport. L'inquiétude qui domine aujourd'hui la scène publique sud-africaine vient essentiellement du constat de disparités économiques très marquées et croissantes et relègue aujourd'hui à l'arrière-plan les divisions raciales des décennies précédentes. Cet élément guide la réflexion gouvernementale sur un certain nombre de questions, y compris celle des migrations.

Quelques années après l'arrivée au pouvoir du premier gouvernement post-apartheid en 1994, les prises de position officielles et l'opinion publique se sont fortement polarisées autour de la question de l'immigration : d'un côté, l'immigration était construite contre l'intérêt national, de l'autre, xénophobie et racisme s'opposaient à la rhétorique panafricaniste. Plus récemment cependant, la position gouvernementale sur les questions migratoires a considérablement évolué. Parmi les étapes importantes de cette évolution, on peut citer : la loi sur l'immigration de 2002, l'amendement de 2004, et différentes déclarations de membres du gouvernement en commençant par le président Mbeki. Au niveau supérieur d'élaboration de la politique migratoire, il existe une reconnaissance claire de la nécessité d'une politique plus nuancée fondée sur l'appréciation du rôle des mouvements migratoires dans la société et l'économie sud-africaines dans leur ensemble et pas uniquement dans l'agriculture et le secteur minier.

La phase la plus récente de la stratégie gouvernementale de développement est l'Initiative de Croissance Accélérée et Partagée pour l'Afrique du Sud (en anglais *Accelerated and Shared Growth Initiative-South Africa* ou ASGISA). Dans le cadre de sa politique économique, telle que redéfinie par ASGISA, le gouvernement a lancée une nouvelle initiative destinée plus particulièrement à aider les travailleurs qualifiés. Cette initiative est connue sous le nom de JIPSA – Initiative conjointe pour l'Acquisition de Compétences Prioritaires. L'objectif est de coordonner l'activité de différents ministères. Présidée par la Vice-Présidente Phumzile Mlambo-Ngcuka, cette initiative a, semble-t-il, reçu le soutien du ministère des Finances sud-africain.

Ces prises de position sont révélatrices de la pénurie de compétences à laquelle doit faire face l'Afrique du Sud et qui ne peut être résolue, sur le court ou le moyen terme en tout cas, qu'en

encourageant l'immigration de travailleurs qualifiés. Il s'agit là d'un important changement de la politique gouvernementale en matière d'immigration. Les réflexions sur cette question se focalisent surtout sur la Coupe du Monde de Football que l'Afrique du Sud accueillera en 2010. Les importants projets d'infrastructures qui comporteront la construction de stades, de moyens de transport et d'autres installations aux standards internationaux nécessiteront l'emploi temporaire de nombreux travailleurs qualifiés étrangers.

Dans le même temps, il est évident que la politique migratoire officielle du gouvernement n'est pas soutenue par l'ensemble de l'administration ni même des militants ANC. Des factions politiques importantes et certains services de l'administration continuent à avoir une attitude ambivalente voire opposée à l'immigration. En particulier, on note l'état déplorable dans lequel se trouve le ministère en charge des principales tâches d'administration de la politique migratoire, le ministère de l'Intérieur sud-africain. Ce ministère clé est considéré de manière générale dans l'opinion comme inefficace et rongé par la corruption.

### *L'Afrique du Sud dans le monde*

La question migratoire repose également sur le positionnement de l'Afrique du Sud sur l'échiquier international, dans les domaines à la fois diplomatique et économique. L'Afrique du Sud est classée au rang des puissances « intermédiaires ». Elle occupera un siège au Conseil de Sécurité des Nations Unies pour la première fois à partir du 1<sup>er</sup> janvier 2007 et est déterminée à obtenir un siège permanent au Conseil de Sécurité dans le cadre de la réforme générale des Nations Unies. L'Afrique du Sud a développé un partenariat avec d'autres puissances intermédiaires comme le Brésil et l'Inde afin de rechercher des positions communes dans des organisations comme l'Organisation Mondiale du Commerce. Elle préside à l'heure actuelle le groupe des 77. Sa diplomatie pro-active lui a permis de se présenter comme le représentant de l'Afrique dans les affaires internationales. Championne de la cause panafricaine, elle développe des relations très denses avec le reste du continent tant sur les plans commercial et politique que social.

Conformément à sa stratégie économique néo-libérale, le gouvernement sud-africain a également ouvert les frontières commerciales du pays dans de nombreux domaines. La politique sud-africaine vis-à-vis de ses voisins en Afrique australe ressemble fort à un marché commun avec une élimination progressive des barrières tarifaires entre les états-membres afin de stimuler le commerce et produire de la richesse. En réalité, des tensions importantes existent entre l'ambition sud-africaine de créer une zone de libre-échange en Afrique australe voire un marché commun et son désir d'accorder la préférence en matière de création d'emplois aux Sud-Africains. Ces tensions sont reflétées en matière migratoire.

Les contradictions de la politique régionale sud-africaine, entre poursuite 'réaliste' de ses intérêts nationaux et principes panafricanistes, transparaissent très clairement sur le Zimbabwe. L'écroulement catastrophique de l'économie zimbabwéenne est une source de grandes difficultés pour l'Afrique du Sud, en particulier avec l'augmentation importante du nombre de réfugiés tentant de pénétrer dans le pays à sa frontière nord.

Ce rapport étudie de manière approfondie certaines dimensions clés de l'expérience migratoire sud-africaine contemporaine. Le **premier chapitre** présente une étude de **l'expérience historique de la migration** et analyse plus spécifiquement les **évolutions des positions gouvernementales tout au long du 20<sup>ème</sup> siècle**, remontant aux racines des idées et des dilemmes actuels. Les **chapitres deux, trois et quatre** complètent cette analyse de la capacité de l'Etat sud-africain à réformer et gérer la situation migratoire en s'intéressant à trois

aspects souvent négligés de la compréhension des phénomènes migratoires en contexte de développement : le chapitre deux envisage la question de la **main-d'œuvre qualifiée**, sujet épineux dans un contexte de marché du travail déséquilibré comme en Afrique du Sud ; le chapitre trois traite de **l'immigration irrégulière en Afrique du Sud** et des défis que celle-ci pose aux acteurs étatiques et non étatiques ; enfin, le quatrième chapitre s'intéresse à **l'impact des migrations sur le gouvernement local dans les villes sud-africaines** et plus particulièrement à l'importance des réponses apportées par le gouvernement local, leurs limites ou leur absence, et les conséquences de ces interactions sur la planification des villes, l'accès aux services, la santé, la sécurité et la transparence des institutions politiques.

Une **annexe** à ce rapport complète les différentes études par une mise en perspective de la question des chiffres de l'émigration et de l'immigration en Afrique du Sud en soulevant quelques uns des problèmes méthodologiques liés à leur calcul. L'annexe fournit également un ensemble de statistiques récentes et une chronologie des principales évolutions des questions migratoires en Afrique du Sud dans le contexte régional et international de 1990 à 2006.

## **CHAPITRE 1. REFORMER LA POLITIQUE D'IMMIGRATION DANS L'AFRIQUE DU SUD POST-APARTHEID (1990-2006) : SIGNIFICATION ET MOYENS**

Ce chapitre explore essentiellement **trois dimensions** : 1. la position développée par le parti au pouvoir en matière de migrations internationales depuis la fin de l'apartheid ; 2. la capacité (ou l'absence de capacité) du parti au pouvoir à transformer l'identification d'un 'problème' migratoire en une réforme de politique publique ; 3. enfin, le rôle joué par les acteurs non étatiques sud-africains et étrangers dans le débat en cours avec le gouvernement sud-africain sur les questions migratoires.

Les **dynamiques démographiques** de l'immigration en Afrique du Sud et la polémique qui entoure leur mode de calcul ne doivent pas faire penser que la situation migratoire dans cette région est particulièrement spécifique : **en valeur absolue, les chiffres y demeurent plutôt insignifiants** par rapport à d'autres régions du monde. On a par exemple estimé que l'Afrique du Sud avait accueilli à un moment donné un peu plus de 300 000 réfugiés mozambicains. Elle octroie aujourd'hui environ 9 millions de visas temporaires par an, essentiellement de tourisme et d'affaires. Il est plus révélateur d'examiner la **capacité des institutions gouvernementales sud-africaines** à se réformer en interne et à l'extérieur et à gérer des flux toujours croissants dans une période de grands bouleversements politiques. Afin d'étudier la capacité réelle de l'Etat sud-africain à maîtriser les systèmes migratoires tant mondial que régional dans lesquels le pays s'insère, le chapitre revient sur la structuration du système migratoire discriminatoire sud-africain au 20<sup>ème</sup> siècle et examine les trajectoires administratives et les effets d'autonomie produits par ce système et qui sont encore opératoires aujourd'hui.

De 1990 à aujourd'hui, l'Afrique du Sud a été le théâtre de plus de changements politiques et économiques que pendant le reste de son histoire. Le **bouleversement constitutionnel** introduit avec le nouveau contexte politique a forgé le cadre dans lequel **différents groupes d'intérêt** sont venus se positionner, identifiant la question migratoire comme un nouveau lieu d'intervention, pour différentes raisons. D'où l'émergence d'un **nouveau paradoxe** : en dépit d'un cadre juridico-légal offrant globalement aux migrants plus de droits et de garanties qu'ils n'en ont jamais eu dans le pays auparavant, leur situation en termes d'atteinte aux droits de l'homme, d'accès aux droits sociaux et économiques et d'interactions sociales quotidiennes, demeure préoccupante. Des incidents xénophobes comme les récents assassinats de marchands somaliens au Cap et les critiques régulières du secteur privé sud-africain à l'encontre de l'incapacité de l'Etat sud-africain à attirer et conserver la main-d'œuvre qualifiée étrangère et les



investisseurs illustrent bien les tensions quotidiennes qui émaillent la question migratoire. Le paradoxe vient en partie de **l'absence flagrante de l'immigration dans la plupart des discours programmes de l'ANC** depuis le cadre initial social-démocrate du *Redistribution and Development Programme* (RDP) jusqu'au virage néo-libéral de 1996 avec le Plan pour la Croissance, l'Emploi et la Redistribution (en anglais *Growth, Employment And Redistribution* ou GEAR) : à aucun moment les dynamiques migratoires ne sont prises en considération comme outil de politique publique. La transformation du cadre de la politique d'immigration est ainsi le produit d'un triple processus : **l'héritage des administrations d'apartheid**, les contraintes créées par les **règles négociées au moment de la transition** (les fameuses *Sunset Clauses*) et l'introduction dans le jeu de **nouveaux acteurs et de nouveaux groupes** qui véhiculent des modèles inédits et parfois contradictoires de gestion migratoire.

La politique d'immigration dont hérite le **gouvernement de Klerk** en 1989 repose sur **trois caractéristiques**. Elle est premièrement le prolongement d'une **politique classique de colonie de peuplement** se concentrant sur le développement des besoins quasi-exclusifs de la minorité d'origine européenne et son corollaire, le maintien dans une position précaire d'une main-d'œuvre noire bon marché. Deuxièmement, la gestion des flux migratoires et des étrangers est **discrétionnaire** et repose sur des pratiques opaques dépourvues de contrôle. Enfin, le mode de transformation et d'évolution de la politique est **incrémental**, très rarement fondé sur l'évaluation ou ouvert au débat public. La politique d'immigration est donc globalement à cette époque **déconnectée des flux migratoires en cours et de l'évaluation des besoins réels en termes de qualifications** des différents secteurs de l'économie sud-africaine.

La **loi sur le contrôle des étrangers (Aliens Control Act) de 1991**, surnommée la 'dernière loi de l'apartheid', devient alors la clé de voûte de la politique d'immigration sud-africaine tout au long des années 1990. Rédigée afin d'unifier et de simplifier l'ensemble des textes précédents depuis la loi de 1937 et marquer une rupture avec le passé, cette loi va en réalité devenir l'emblème des contradictions entre la période pré- et post-apartheid dès l'avènement du régime démocratique en 1994. **En contradiction sur différents points avec la Constitution intérimaire de 1993 puis la Constitution définitive de 1996**, la loi sur les étrangers de 1991 est jugée anticonstitutionnelle et passible d'un contrôle de constitutionnalité pouvant la rendre caduque en 2002. Cette **contradiction intrinsèque** joue alors un rôle important dans la décision prise par le nouveau gouvernement de réformer en profondeur la législation sur l'immigration et conduit à l'ouverture d'un **processus consultatif** dès 1996.

Le **nouveau régime** qui prend le pouvoir en 1994 doit faire face à une **situation migratoire en pleine évolution avec un dispositif légal focalisé sur une vision policière et coercitive de la gestion migratoire** et très peu du recul politique nécessaire à l'évaluation de questions pressantes comme le **nombre croissant de demandeurs d'asile, les phénomènes de 'fuite (et d'arrivée) des cerveaux', les besoins en termes de main-d'œuvre qualifiée et la question des droits des migrants en situation irrégulière**. Les pratiques, les administrations et les institutions responsables de la gestion migratoire et le dispositif légal assurent alors la continuité d'une politique nationale d'immigration en mal de redéfinition.

La période de dix ans qui va de 1994 à 2004 est le théâtre d'un vaste processus consultatif et législatif et du vote de la nouvelle loi sur l'immigration de 2002 et de son amendement en 2004. Cette période, cruciale dans la définition des positionnements et la structuration des réseaux politiques sur les questions migratoires, n'a pas d'équivalent dans l'histoire sud-africaine ou dans celle d'autres pays africains. Trois **types d'orientations politiques divergentes** vont organiser les acteurs du débat :

- Premièrement, un **positionnement plutôt néo-libéral**, soutenu par une partie du ministère de l'Intérieur dans la période 1996-2002, en faveur d'un retrait de l'Etat, de la sous-traitance des tâches de contrôle migratoire aux employeurs, de l'incitation à l'immigration de la main-d'œuvre hautement qualifiée et des investisseurs et d'une réforme politique accélérée reposant sur une simplification des procédures administratives ;
- Deuxièmement, une **approche interventionniste** en faveur d'un contrôle migratoire équilibré, prenant en considération à la fois les engagements démocratiques et la capacité réelle de l'Etat sud-africain pour la mise en place d'une politique migratoire souple, transparente et réactive. Cette approche, soutenue globalement par les ONG, insistait sur une réforme politique en profondeur et une prise en considération importante de la dimension régionale ;
- Troisièmement, une **approche centrée sur les notions de sécurité et de souveraineté**, soutenue par une partie de l'ANC et les niveaux intermédiaires et inférieurs des administrations reposant sur une définition étroite de l'intérêt national dans la continuité du régime précédent.

La période plus récente présente **deux modifications importantes** de la position adoptée par l'ANC sur l'immigration : premièrement, **l'immigration est réintégrée à l'ensemble de la politique gouvernementale** à travers deux apports idéologiques, celui de la Renaissance africaine d'une part, et celui d'un retour d'une analyse néo-marxiste de l'économie de l'autre. Deuxièmement, le **fossé entre élites et militants ANC** semble bien se creuser. L'ANC est clairement confronté aux **tensions** auxquelles tout gouvernement social-démocrate fait face entre **acceptation des règles du marché** qui incluent la libre circulation de la main-d'œuvre et les **conséquences du poids limité de l'Afrique du Sud** dans l'économie mondialisée. Cependant, à l'inverse des régimes sociaux-démocrates occidentaux, l'Afrique du Sud, en tant qu'état africain, doit faire face à une situation plus complexe dans laquelle les élites se situent souvent à l'opposé des perceptions de l'opinion, particulièrement dans un environnement urbain aussi changeant que les villes sud-africaines post-apartheid.

Trois éléments ont caractérisé la **mise en œuvre de la politique d'immigration post-apartheid** :

- la persistance de **pratiques coercitives** ;
- le **durcissement de l'entrée sur le territoire et du contrôle interne ainsi que de l'accès à la citoyenneté** sud-africaine ;
- et finalement, **l'incapacité du ministère de l'Intérieur sud-africain et d'autres services publics à réformer efficacement la gestion de l'immigration** dans la période post-apartheid.

Les évolutions les plus récentes de la politique d'immigration (amendement de 2004 de la loi de 2002) confirment que l'ANC est passé de l'indifférence à un véritable intérêt constructif pour les questions migratoires. Il ne fait aucun doute que le parti au pouvoir est à l'heure actuelle aux prises avec la **structuration de l'immigration en tant que facteur de développement** pour l'ensemble des Sud-Africains et non plus seulement pour le secteur privé sud-africain et ses stratégies d'approvisionnement en main-d'œuvre ou encore pour combler les lacunes créées par dix ans de gestion erratique des questions de renforcement des capacités dans le secteur public. Cependant, les **obstacles** demeurent nombreux et caractérisés par une mauvaise coordination interministérielle, l'absence de mécanismes de production de données sur les flux migratoires et leur impact et le manque de capacités et la corruption des personnels du ministère de l'Intérieur en particulier.



## CHAPITRE 2. L'AFRIQUE DU SUD ET LES MIGRATIONS INTERNATIONALES : LE ROLE DE LA MAIN-D'ŒUVRE QUALIFIEE

De l'arrivée au pouvoir du gouvernement du parti majoritaire en 1994 à 2002, le gouvernement sud-africain s'est montré globalement **défavorable aux mouvements de main-d'œuvre qualifiée**. Ses efforts se sont concentrés sur la stimulation de l'emploi pour les citoyens sud-africains et, en ce qui concerne le marché du travail hautement qualifié, le gouvernement a surtout donné la priorité au redressement des discriminations passées vis-à-vis des noirs sud-africains. Depuis 2002 cependant, le gouvernement a déclaré de plus en plus clairement sa conviction que **le pays devait encourager l'immigration qualifiée dans des secteurs clés de l'économie comme l'ingénierie et les technologies de l'information**. Ce repositionnement a été particulièrement énoncé dans le plan **JIPSA** – une composante importante de la stratégie économique gouvernementale.

Le secteur des **services**, secteur de recrutement de l'emploi qualifié, est en effet en passe de devenir le secteur le plus dynamique de l'économie sud-africaine, devançant les secteurs plus anciens comme les mines ou l'industrie. Les personnes employées dans ce secteur sont très recherchées à l'international et les gouvernements des pays d'Amérique du Nord, d'Europe et d'ailleurs développent des politiques de recrutement agressives dans les pays du Sud y compris en Afrique du Sud. Bien que l'Afrique du Sud soit capable de produire des personnels qualifiés dans des secteurs clés, le pays reste handicapé par un **système éducatif** qui, du fait des politiques passées, n'est **pas à même de produire en nombres suffisants des personnels hautement qualifiés dans des professions clés**, notamment dans celles qui requièrent un niveau élevé en mathématiques.

La **cohérence de la politique gouvernementale** en ce qui concerne le marché international de la main-d'œuvre qualifiée pâtit des **dysfonctionnements sérieux qui caractérisent le ministère de l'Intérieur**, ministère principalement en charge de l'administration de la politique migratoire. De plus, certaines factions clés de l'ANC, notamment les **syndicats**, soutiennent une **politique de préférence nationale pour l'emploi**, pas toujours facilement conciliable avec la nécessité de recruter des effectifs suffisants de personnels qualifiés, qui doivent parfois venir de l'étranger. Certaines des tensions qui en découlent sont susceptibles de s'aggraver au fur et à mesure des préparatifs de la Coupe du Monde de Football de 2010 qui nécessitera la réalisation de grands projets d'infrastructures reposant sur l'apport de main-d'œuvre qualifiée.

## CHAPITRE 3. MIGRATIONS IRRÉGULIÈRES : RISQUES ET MYTHOLOGIES (1998-2005)

Le gouvernement sud-africain rencontre également des difficultés pour faire face au problème de **l'immigration irrégulière**. Les « clandestins » sont perçus comme un risque sérieux pour la nation remettant en question ses objectifs de transformation politique et de développement économique.

En l'absence de données fiables sur l'immigration irrégulière ou de procédures ou d'institutions représentatives appropriées pour ces migrants, le discours public sud-africain repose essentiellement sur **quelques mythes**. Les Sud-Africains sont convaincus que l'immigration irrégulière est un phénomène nouveau, qu'il y a des millions de migrants irréguliers en Afrique du Sud et que la présence des clandestins fait augmenter les statistiques de la criminalité. En dépit d'un ensemble d'éléments qui tendent à démontrer le contraire, la plupart des Sud-Africains estime que le pays traverse une crise de l'immigration d'une gravité et à une échelle très importantes. Ces 'mythes' encadrent et contraignent la mise en œuvre de la politique migratoire,

limitant les possibilités de réforme et autorisant des pratiques abusives d'arrestation et de détention. La gouvernance sud-africaine des migrations irrégulières n'est pas seulement un motif d'inquiétude en raison d'une convergence d'éléments documentant les nombreuses atteintes aux droits des citoyens comme des étrangers. Les **méthodes autoritaires** dont use l'Afrique du Sud pour gérer ce qui est perçu comme une crise de l'immigration génèrent aussi de **nouveaux risques pour la consolidation du développement et de la démocratie** en Afrique du Sud.

La **gouvernance des migrations irrégulières** a cruellement manqué d'orientation au point de s'écrouler complètement. L'un des héritages les plus problématiques de l'apartheid est qu'aucune agence gouvernementale unique n'est chargée des questions migratoires. Ce manque s'est vu exacerber par l'indécision et les erreurs de gestion de la période post-apartheid. Pendant toute la période où l'Inkatha Freedom Party a contrôlé le ministère de l'Intérieur (1995-2004), l'ANC a joué l'obstruction, attaquant et sabotant le processus législatif sans développer d'alternative claire. Ceci a débouché sur un déclin constant du ministère de l'Intérieur.

Les difficultés de communication **entre les élites** prenant qui élaborent les politiques et orchestrent le processus législatif et les **fonctionnaires ministériels** en charge de mettre en œuvre la politique d'immigration se sont creusées de plus en plus. Les fonctionnaires ministériels ont révélé leur **manque de compétence** pour faire face à leurs responsabilités ou simplement remplir leurs obligations professionnelles de base. Dans ce contexte de vide bureaucratique, les institutions sud-africaines ont identifié l'immigration irrégulière comme un problème et mis en place des lois discrétionnaires sur l'immigration. Les Services de Police Sud-Africains (SAPS) ont identifié de temps à autre des liens entre migrants irréguliers et criminalité et ont cherché unilatéralement à éradiquer le problème.

Cette **mise en application à géométrie variable** des procédures de contrôle migratoire est à l'origine d'un ensemble de conséquences problématiques. De nombreux fonctionnaires de l'immigration considèrent qu'une majorité de migrants est en situation irrégulière ou qu'il s'agit de criminels en puissance. De ce fait, il est devenu extrêmement difficile de migrer légalement en Afrique du Sud sans recourir à la corruption. Par ailleurs, les fonctionnaires sont en général peu respectueux des procédures et perçoivent généralement les pratiques corrompues comme une simple facilitation, une assistance apportée aux individus pour les aider dans leurs démarches vis-à-vis d'une structure bureaucratique globalement trop complexe. **Les migrants ont ainsi été poussés progressivement vers les espaces marginaux du non-droit et de la criminalisation où ils sont victimes de différentes formes de traitements peu scrupuleux.** Différents groupes travaillant et vivant en toute légalité en Afrique du Sud sont aussi régulièrement arrêtés, détenus dans les centres de rétention et expulsés illégalement.

Les **migrations irrégulières** sont essentiellement perçues comme un **risque** pour l'Afrique du Sud. Cette analyse repose en général sur un ensemble de croyances qui voient dans l'arrivée de nombres importants de migrants relativement pauvres en provenance des pays voisins une menace, celle d'envahisseurs venant piller les ressources du pays. Ceci contraint le contexte discursif d'élaboration de la politique migratoire sud-africaine alors même que les structures de décision et d'implémentation fonctionnent indépendamment les unes des autres, et, dans le cas du ministère de l'Intérieur, semblent incapables d'introduire efficacement de nouvelles politiques ou simplement d'assumer leurs responsabilités. La mise en œuvre de la législation sur l'immigration paraît fonctionner de manière autonome, suivant les conceptions assez vagues de fonctionnaires de police souvent corrompus. Si l'on admet que le développement de l'Afrique du Sud post-apartheid repose en grande partie sur la consolidation d'une culture démocratique et de l'état de droit, **l'augmentation des cas de criminalisation de l'administration publique et la**

**généralisation des dysfonctionnements institutionnels et du mépris pour les droits des individus** sont les conséquences les plus inquiétantes des migrations irrégulières.

#### **CHAPITRE 4. DECENTRALISATION, MIGRATION ET DEVELOPPEMENT DANS LES MEGAPOLES SUD-AFRICAINES.**

Les études de la relation entre migration et développement se concentrent typiquement sur des données agrégées et les cadres de politique publique migratoire au niveau national. Il est nécessaire de compléter ces analyses par une attention accrue portée aux **processus sociaux, à moindre échelle et parfois souterrains qui animent les phénomènes de mobilité humaine**. Sans une meilleure compréhension de ce qui guide les bénéficiaires et ceux avec lesquels ils interagissent, la capacité des acteurs étatiques et non étatiques à atteindre les objectifs assignés aux politiques semble fortement compromise. Le risque est également de ne pas identifier du tout les nombreux défis et opportunités liés à ces phénomènes.

La nécessité de mener des études localisées et replacées dans leur contexte social est particulièrement vraie dans le contexte sud-africain pour trois raisons au moins :

1. Les migrations ont un **impact relativement différencié sur les villes et les provinces sud-africaines**. En ce qui concerne les migrations internes, sept provinces sud-africaines enregistrent un déficit démographique alors que deux ont une balance migratoire positive et voient une densification de leur population à l'intérieur et autour des villes du Cap, de Johannesburg et de Pretoria. Les migrations internationales ont également des effets spatiaux qui montrent un effacement des dynamiques anciennes vers les régions minières et agricoles au profit des mouvements en direction des principales villes du pays.
2. Beaucoup de Sud-Africains continuent à réaliser des migrations pendulaires entre les zones urbaines et rurales ou entre les centres urbains. Les migrants internationaux sont également souvent en transit, se déplaçant fréquemment entre les villes ou retournant chez eux ou bien migrant vers d'autres destinations internationales. Ceci a pour conséquence des **formes imprévisibles d'investissement, de structures familiales et d'engagements politiques**.
3. Même si la plupart des élus locaux et leurs électeurs regrettent les jours anciens de l'*'influx control'* (le contrôle de la mobilité résidentielle sous l'apartheid), il est évident que les municipalités des grandes villes (les *'Metros'*) n'ont **pas le choix aujourd'hui de décider si elles doivent répondre aux besoins des effectifs croissants de migrants nationaux et internationaux**.

Les résultats de nos travaux suggèrent que tandis que les pouvoirs publics locaux sud-africains acceptent progressivement de devoir jouer un rôle dans la gestion des migrations internes et internationales, ils se trouvent confrontés à de sérieuses difficultés pour trouver des réponses efficaces. Au-delà d'une réticence généralisée à identifier la migration comme une question de développement, ces difficultés sont entre autres :

- **La définition de l'appartenance**. Les villes sont de plus en plus souvent chargées de créer de l'appartenance, du lien social, mais l'objectif vers lequel doivent tendre leurs efforts demeure ambivalent dans le contexte de fragmentation et de mobilité des centres urbains sud-africains. Dans la mesure où beaucoup de gens perçoivent les villes comme des lieux de transit, l'engagement dans les structures sociales et politiques des villes ne correspond pas forcément à ce que les populations visent.

- ***Le défi du contact.*** La fluidité des populations migrantes et le manque d'incitation des leaders politiques pour entrer en contact avec elles rendent particulièrement difficiles l'évaluation de leurs intérêts et de leurs intentions à travers des mécanismes qui construiraient des relations de confiance mutuelle.
- ***Le manque de connaissances.*** Les villes n'ont pas d'accès à des bases de données sur leurs propres habitants et rencontrent des difficultés encore plus importantes dans l'estimation du nombre d'étrangers. En l'absence de données fiables, les mythes liés à l'immigration et à la mobilité sont les éléments qui guident le plus souvent les décisions politiques.
- ***L'absence de coordination interministérielle.*** La plupart des tentatives de coordination se sont révélées insatisfaisantes. Ceci n'est pas spécifique aux questions migratoires mais transparaît d'autant plus que ces questions nécessitent des réponses à différentes échelles.

Les tendances et les problèmes qui viennent d'être soulignés apparaissent sous un jour d'autant plus cruel dans la piètre réponse apportée à la question du **VIH-Sida**. Le contrôle de cette épidémie exige une compréhension culturelle approfondie des populations affectées, un défi qui est amplifié par la diversité culturelle, une connaissance précise de l'articulation entre migration et maladie et des réponses institutionnelles trans-locales pour le traitement et la gestion des dossiers des malades.

Les conséquences de la difficulté des pouvoirs publics locaux à gérer la question migratoire se font déjà ressentir dans un certain nombre de domaines cruciaux pour le développement de l'Afrique du Sud. Ceux-ci incluent entre autres :

- ***Les services financiers et les marchés.*** Absence de documents d'identité, lois bancaires discriminatoires, absence d'accès au crédit marginalisent encore un peu plus ces migrants.
- ***Services sociaux.*** Discrimination, ignorance des droits des migrants et mauvaise gestion administrative rendent l'accès aux services sociaux impossible pour de nombreux migrants nationaux et internationaux sur leur lieu de résidence. Ceci aura inévitablement des conséquences économiques et sociales de long terme pour les individus et les communautés. C'est déjà le cas en ce qui concerne les réponses apportées à la question du VIH-Sida.
- ***Enquêtes, détention et arrestations.*** Les arrestations, détentions et expulsions arbitraires de dizaines de milliers de personnes chaque mois, sont autant d'occasion d'atteintes aux droits de l'homme, de temps de travail perdu, d'argent dépensé dans le paiement de la corruption, de dé-légitimation des fonctionnaires d'Etat et d'expansion des réseaux policiers corrompus.
- ***Milices, violence et police (ou absence de police).*** La xénophobie largement répandue parmi les services de police et la population sud-africaine ainsi que l'inefficacité des services de police ont conduit à la constitution de milices dans de nombreuses villes sud-africaines. La police poursuit rarement les auteurs de méfaits xénophobes ce qui progressivement érode les chances de voir s'enraciner en Afrique du Sud un état de droit au niveau local.

- **Transparence et planification.** Le succès économique et politique de l'Afrique du Sud repose en grande partie sur le développement d'institutions publiques transparentes. Pour l'ensemble des raisons citées plus haut, l'incapacité à protéger les populations et à accomplir les tâches de service public porte atteinte à la confiance dans ces services et à l'engagement civique. Au lieu d'être accueilli dans la ville, l'étranger y est plutôt victime d'un phénomène de bouc émissaire politique qui permet de détourner l'attention des populations des problèmes structurels et administratifs plus fondamentaux.

Alors que les lois sur la citoyenneté et l'asile doivent demeurer nationales, il est de plus en plus nécessaire de mieux comprendre les acteurs locaux et l'influence qu'ils ont (que ce soit à travers des politiques interventionnistes ou en l'absence de celles-ci) sur les régimes d'asile et migratoire du pays. **Les villes et les provinces sud-africaines doivent se rendre compte qu'elles peuvent avoir une influence décisive sur un mode de gestion des migrations qui suscite le sentiment d'appartenance et l'amélioration des services publics à l'ensemble des résidents.** Elles devraient en tout état de cause y être encouragées. Ceci doit se faire en collaboration avec les élus nationaux, provinciaux et locaux des autres villes, dans le cadre de discussions plus larges sur la **signification de l'appartenance.**

Il paraît également nécessaire de susciter et de soutenir des recherches sur les contextes locaux dans le cadre d'un cadre de réflexion comparatiste plus large. Comme le montre ce chapitre, la violence à l'encontre des étrangers est largement répandue mais ne peut être comprise que dans des contextes spécifiques, très localisés. Il est bien sûr utile de développer des données agrégées mais il faut également comprendre la spécificité des réponses et des attitudes dont les trajectoires sont forgées par l'histoire raciale, politique et économique d'un même quartier. Pour les élus locaux, les différences entre les villes qu'ils sont responsables de gouverner sont parfois aussi importantes qu'à l'intérieur de celles-ci. Il est donc **primordial d'évaluer et d'analyser de façon critique l'immigration et les migrations à l'échelle de la ville dans la mesure où leurs effets seront très différents selon qu'il s'agit d'une immigration d'étrangers ou de Sud-Africains.** Les villes qui enregistrent des pertes démographiques sèches auront besoin de développer des modes de calcul différents. Comme le montre ce chapitre et d'autres passages de ce rapport, il sera nécessaire **d'augmenter et d'améliorer les capacités d'analyses statistique, institutionnelle et sociale** afin de développer le type de compréhension adaptée à des contextes spécifiques auquel il est fait référence plus haut. Ceci est bien sûr important au niveau national mais ne l'est pas moins à toutes les autres échelles de l'action publique. Enfin, il est également nécessaire de réfléchir à la création de **mécanismes permettant que ces analyses, lorsqu'elles seront disponibles, soient effectivement prises en considération dans les processus de décision.** Faute de quoi, il est probable que la gestion migratoire échouera et que les effets supposés néfastes de la mobilité humaine sur la prospérité et la sécurité le deviendront réellement.



## RECOMMANDATIONS EN MATIERE DE RECHERCHE ET D'ELABORATION DES POLITIQUES MIGRATOIRES

Ce rapport explore les contextes historique, institutionnel, économique et social qui permettent de comprendre les migrations et l'immigration en Afrique du Sud. Bien qu'il s'agisse essentiellement de fournir des données sur ces questions, cette étude fournit des éléments qui permettent d'énoncer différentes recommandations en matière de recherche et d'élaboration de politique migratoire. Ces recommandations sont les suivantes :

1. ***Développer des cadres de référence en matière de politique migratoire qui reconnaissent le fait que migration et immigration sont essentielles à la prospérité sud-africaine.*** Etant donné les ambitions économiques du pays, les efforts actuels pour déboucher sur une intégration régionale et la pénurie sévère de personnels qualifiés, l'immigration est essentielle à la compétitivité internationale du pays. Ceci est évident dans les grandes entreprises mais également dans les PME et le tourisme. Des restrictions continues formelles et informelles et une mauvaise gestion des migrations, dans les lois, les pratiques administratives, et à travers une xénophobie répandue, menacent de ruiner les perspectives économiques du pays.
2. ***Développer au niveau interministériel des outils de rassemblement des données et de mise en cohésion des politiques ainsi que des outils de renforcement des capacités.*** Les incohérences observables dans l'élaboration des politiques migratoires entre les différents ministères viennent en partie d'un manque de données centralisées, fiables et disponibles et de méthodes de rassemblement des données cohérentes entre les ministères. Les divergences de vue en matière de politique migratoire, inhérentes aux différentes missions ministérielles, bénéficieraient de la création d'espaces internes au niveau interministériel qui permettraient de les laisser s'exprimer et d'explorer de meilleures méthodes de coordination. Le renforcement des capacités émerge comme l'une des dimensions critiques handicapant la gestion des migrations particulièrement au niveau du ministère de l'Intérieur sud-africain. S'il est important de résoudre ce problème au sein de ce ministère, seul le développement de compétences au niveau interministériel débouchera sur l'amélioration générale des conditions de gestion des migrations et permettra aux personnels responsables des questions migratoires d'être à la fois au fait de la réglementation en matière de contrôle mais aussi des dimensions sociales, économiques et des questions de droits de l'homme.
3. ***Une amélioration de la convergence et de la coordination sous-régionales.*** Bien que les implications régionales des migrations dépassent le cadre du présent rapport, différents éléments indiquent un manque de consultation au niveau sous-régional, le renforcement des accords bilatéraux au détriment d'accords multilatéraux et l'inefficacité des organisations non spécifiques (SADC) et spécifiques (Migration Dialogue for Southern Africa). L'horizon très limité du Protocole sur la Facilitation du Mouvement des Personnes en Afrique australe illustre bien l'incapacité de la SADC à contrebalancer le poids politique et économique de l'Afrique du Sud dans la région. Une consultation régulière et efficace des organisations de main-d'œuvre (syndicats, agences de recrutement) et des représentants du secteur privé au niveau régional fait aujourd'hui défaut en dépit de recommandations à cet effet déjà formulées dans le Livre vert sud-africain sur les migrations internationales (1997).



4. ***Une implication locale plus importante dans la gestion des questions migratoires.*** Alors que les législations sur la citoyenneté et l'asile doivent demeurer nationales, il devient plus que jamais nécessaire de s'intéresser à l'influence exercée par les acteurs locaux sur les régimes migratoire et d'asile. Les villes et les provinces sud-africaines doivent se rendre compte qu'elles peuvent (et doivent être encouragées à) avoir une influence décisive sur un mode de gestion des migrations qui suscite le sentiment d'appartenance et l'amélioration des services publics à l'ensemble des résidents. Ceci doit se faire en collaboration avec les élus nationaux, provinciaux et locaux des autres villes, dans le cadre de discussions plus larges sur la signification de l'appartenance.
5. ***Une adoption d'approches pragmatiques pour l'accès et la qualité des services publics.*** Faciliter l'accès aux services publics tels que les services d'urgence des cliniques et des hôpitaux, et aux services légaux sans considération pour la nationalité ou le statut d'immigré contribuera à construire des communautés plus sûres et plus transparentes. Lutter contre l'exclusion fondée sur l'origine des personnes ne construira pas en soi des conditions de vie plus sûres et plus élevées, ni des institutions plus transparentes ou des communautés plus unies. Mais cela pourra en revanche rendre ces objectifs atteignables.
6. ***Mener des recherches contextualisées à intervalle régulier.*** Il est bien sûr utile de développer des données agrégées mais il faut également comprendre la spécificité des réponses et des attitudes dont les trajectoires sont forgées par l'histoire raciale, politique et économique d'un même quartier. Pour les élus locaux, les différences entre les villes qu'ils sont responsables de gouverner sont parfois aussi importantes qu'à l'intérieur d'entre elles. Ceci est bien sûr important au niveau national mais ne l'est pas moins à toutes les autres échelles de l'action publique. Enfin, il est également nécessaire de réfléchir à la création de mécanismes permettant que ces analyses, lorsqu'elles seront disponibles, soient effectivement prises en considération dans les processus de décision. Ce n'est qu'à travers un tel investissement sur l'immigration que l'Afrique du Sud peut espérer éviter les échecs politiques et les peurs actuelles concernant les effets de la mobilité humaine sur la prospérité et la sécurité.
7. ***Le développement d'une approche réaliste de l'impact des réformes de politique publique.*** Le débat actuel sur migration et développement part souvent du présupposé que l'abolition des entraves à la mobilité humaine permet une réduction de la pauvreté. Au-delà du questionnement de cette relation mécanique entre migration et allègement de la pauvreté, le présent rapport met en garde contre les recommandations naïves en matière de réforme des politiques migratoires. En Afrique du Sud comme ailleurs, les effets de la migration sur le développement (particulièrement de la migration peu qualifiée) sont négligés au profit de considérations sécuritaires dans le processus d'élaboration de la politique migratoire. En outre, même lorsque les réformes des politiques adoptent une perspective développementale, il est important d'admettre que l'Afrique du Sud ne dispose pas aujourd'hui d'une capacité institutionnelle lui permettant d'endiguer la corruption ou de traduire uniformément ses priorités en matière de politique migratoire dans la pratique.

## **EXECUTIVE SUMMARY**

### **Introduction:**

International migration is an exceptionally sensitive subject in South Africa. Twelve years after the end of apartheid, the country attracts a substantial number of migrants – precisely how many is a matter of sometimes heated debate. The African National Congress (ANC) government has stated South Africa's need to attract highly-skilled migrants to work in key sectors of the economy and has moved towards an articulation of the role of international migration, including from other African countries, in South Africa's future development. Yet large numbers of South Africans live in great poverty, and many South Africans feel that the government should prioritize its own citizens for employment to a greater extent than it does at present. Many commentators have remarked on what they perceive to be a certain xenophobia directed particularly at political refugees and undocumented migrants arriving from elsewhere in Africa.

### *The political context*

The 'meaning' of immigration in South Africa, and of South African attitudes to it, can not be fully understood without reference to the history of the country and the southern Africa region, as the first chapter of this study makes clear. Concern at the great and growing economic disparity is in many respects superseding the racial divisions of previous decades as the dominant division in South African life. This is guiding government thinking on a range of issues, including on migration.

For some years after the establishment of the country's first post-apartheid government in 1994, official attitudes to immigration tended to fall into a rather crude dichotomy: ideas of both officials and the wider public were situated either in a discourse of immigrants versus the national interest, on the one hand, or of xenophobia and racism in contrast with the rhetoric of pan-Africanism, on the other hand. In recent years, however, government thinking on migration has changed substantially. Milestones in this process include the *Immigration Act of 2002*, a subsequent amendment to the Act in 2004, and various statements by officials from President Mbeki downwards. At least at senior levels of policy-making, there is a clear recognition that a more nuanced policy on migration is necessary and that this should be based on an appreciation of the role of migration in regard to South Africa's society and economy in the largest sense, and not merely to certain sectors such as agriculture and mining.

The most recent phase of the government's long-term economic strategy is the Accelerated and Shared Growth Initiative-South Africa, known as ASGISA. Within the framework of its economic strategy, as amended by ASGISA, the government has launched a further initiative that particularly aims to develop skilled workers. This is known as JIPSA – the Joint Initiative for Priority Skills Acquisition. It aims to coordinate the activity of various government departments. JIPSA is headed by Deputy President Phumzile Mlambo-Ngcuka and is reported to have the strong support of the national treasury in particular.

Much of the significance of these developments is that South Africa is facing a skills shortage that, in the short to medium term at least, can be solved only by encouraging immigration by skilled workers. This adds a new and important element to government policy on immigration. Thinking is particularly being concentrated by the looming prospect of the 2010 football world cup finals, which South Africa will host. The extensive infrastructure projects that will be

required to bring stadia, transport and other facilities to the required standard appears to require the temporary employment in South Africa of numbers of skilled workers from abroad.

At the same time, it is clear that the government's official migration policy does not have the support of every part of the administration or every part of the ANC's own political constituency. Significant political constituencies and administrative services remain ambivalent or even opposed. A particular factor is the parlous state of the government department that has the leading responsibility for the administration of policy on migration, the Department of Home Affairs. This key department is regarded by just about every shade of opinion as being both inefficient and rife with corruption.

### *South Africa in the world*

The question of migration is also embedded in South Africa's position in international affairs, in both diplomatic and economic matters. South Africa is widely considered a 'middle power'. It will take up a seat on the UN Security Council for the first time on 1 January 2007, and is determined to acquire a permanent seat on the Council in the context of a general reorganisation of the UN. South Africa has developed a partnership with some other middle powers – notably Brazil and India – in seeking common positions in bodies such as the World Trade Organisation. It is currently chair of the G77 group. South Africa has cultivated an active diplomatic role, regarding itself as a representative of Africa in global affairs. Its championing of the pan-African cause implies vigorous commercial, political and social exchanges between South Africa and other African countries.

Furthermore, in keeping with its neo-liberal economic strategy, the South African government has thrown open the country's borders in many areas of trade. South Africa's policy towards its neighbours in the southern Africa region has borne many of the hallmarks of a common market, with a progressive elimination of trade barriers between member-states with a view to stimulating trade and the creation of wealth. In reality, there are tensions between South Africa's fitful ambition to create a southern African free-trade zone and perhaps even a common market, and its desire to prioritise South Africans in job creation. Such tensions are visible notably in regard to migration.

The contradictions in South Africa's regional policy between its 'realist' pursuit of national interests, and its pan-Africanist principles, is readily apparent in regard to Zimbabwe. The catastrophic collapse of the Zimbabwean economy has created great difficulties for South Africa, not least in the form of greatly increased numbers of refugees seeking to enter the country from the north.

The present report studies in depth some **key aspects of South Africa's migration experience**. **Chapter One** consists of a study of the country's **historical experience** of migration and, in particular, analyses the changes in official attitudes throughout the twentieth century, indicating the **roots of contemporary ideas and dilemmas**. **Chapters Two, Three and Four** complement this analysis of the South African State's capacity to reform and manage the South African migration situation by looking at three often neglected dimensions in the understanding of migration in a development context: the first explores the question of **skilled labour**, a crucial question given the unbalanced structure of the South African labour market; the second examines **undocumented migration** to South Africa and the challenges it raises to both State and non-State actors; finally, the impact of migration on **local government in South African cities** is envisaged with a specific emphasis on the importance of local government

responses, failures to levy such a response, and subsequent implications for urban planning, service delivery, health, security, and political accountability.

The **Annexes** to this report discuss the highly contested figures on South African migration and raises methodological issues pertaining to their calculation. It also provides a set of updated statistics and a chronology of South African migration developments in the regional and international context between 1990 and 2006.

## **CHAPTER 1. REFORMING SOUTH AFRICAN IMMIGRATION POLICY IN THE POST-APARTHEID PERIOD (1990-2006): WHAT IT MEANS AND WHAT IT TAKES**

**Three main dimensions** are explored here: 1.the position developed on international migration by the ruling party in the post-apartheid period; 2. the capacity (or incapacity thereof) of the ruling party in Government to transform ‘problem’ identification into public policy reform; and 3. the role played by South African and foreign non-State actors in engaging with the South African government on migration issues.

The actual **demographics** of immigration to South Africa and the very polemical discussions their calculation has raised are only one aspect of **a situation that remains in absolute terms rather insignificant** compared to other regions in the world. It has been estimated for instance that South Africa might have hosted at some point over 300 000 Mozambican refugees and currently grants approximately 9 million temporary permits and visas every year, essentially for touristic and business purposes. The **ability of South African State institutions** to reform internally and externally in a time of tremendous political changes in the country and of managing increasing migration flows is certainly a more telling dimension to observe. In order to shed light on the actual capacity of the South African State to deal with the present global and regional migration system in which the country is embedded, an overview of the structuring of the South African discriminatory migration system over the 20<sup>th</sup> century is provided and prolonged with a study of the administrative trajectories and autonomy effects fostered by this system.

From 1990 onwards, South Africa has perhaps undergone more political and economic changes than throughout the rest of its history. In particular, the **constitutional changes** introduced with the new political dispensation created a framework in which **various interest groups** have been able to position themselves, identifying the migration question as a new battle field, for different reasons. Hence **a new paradox**: despite the overall legal framework offering migrants in general more rights and guarantees than ever before, their situation in terms of human rights’ abuses, economic and social rights and day-to-day interactions remains a source of concern. Recurrent xenophobic outbreaks as in the recent killings of several Somali traders in Cape Town, and regular complaints from the private sector about the South African State’s incapacity to attract and keep foreign skilled labour and investors illustrate the day-to-day tensions around migration issues. Part of the paradox lies in the **striking absence of immigration in the ANC major policy positions** from the initial social-democratic framework with the Redistribution and Development Programme (RDP) to the neo-liberal 1996 shift with the Growth, Employment And Redistribution plan: migration is at no stage considered as a political tool. The transformation of the immigration policy framework should then be seen as the product of a triple process: the **legacy of apartheid administrations**, the **constraints created by transition rules** (the famous Sunset Clauses) and the **introduction into the game of new actors and groups** carrying with them new and often competing models of migration management.

The immigration policy inherited by the **de Klerk administration** in 1989 bore **three characteristics**. It was first based on a **classical colonial settlement policy** focusing on the almost exclusive development of the needs of the European minority and its corollary, a cheap Black labour maintained in a precarious position. Secondly, the management of migrations and foreigners was **discretionary** by nature and often based on opaque practices. Finally, the development mode through which this policy was meant to evolve was **incremental**, very rarely providing enough space for assessment or even public debate. It was thus **largely disconnected from either ongoing migration trends and dynamics or from actual assessments of skills' needs** in the various sectors of the South African economy.

The **1991 Aliens Control Act**, nicknamed 'Apartheid's last act', became the cornerstone of South African immigration policy throughout the 1990s. Drafted in order to unify and simplify all previous immigration laws since 1937 as well as to mark a break away from the past, this Act, however, endorsed a fundamental paradox right from the advent of the 1994 democratic regime. **In contradiction with the 1993 Interim Constitution and the 1996 Constitution** in many respects, the 1991 *Aliens Control Act* was then declared unconstitutional and liable to constitutional review by 2002. This **intrinsic contradiction** played a great role in the decision to reform deeply immigration legislation with the official opening of a **consultation process** on the issue from 1996 onwards.

The **new regime** that came into office in 1994 had to face a **rapidly changing migrant situation with a legal instrument focused on a policing and coercive vision of migration management** and little or none of the necessary political distance required to assess **pressing issues such as increasing numbers of asylum seekers, brain drain and brain gain phenomena, skills' needs or the question of undocumented migrants' rights**. Existing practices, administrations and institutions in charge of migration management and the legal apparatus available ensured the continuity of a national immigration policy awaiting redefinition.

The **ten-year period (1994-2004)** that saw a wide consultative and legislative processes and the votes of the new *Immigration Act* in 2002 and the *Immigration Amendment Act* in 2004 was certainly **crucial in shaping positions and structuring networks on migration issues** perhaps as never before in South African history and certainly as in very few other African countries. **Three diverging routes** were then followed by various clusters of actors:

- first, a Home Affairs rather **neo-liberal agenda**, asserted as from 1994 by the Minister, favouring State withdrawal, the sub-contracting of administrative processing of control to employers, incentives to highly skilled labour and investors and accelerated policy reform simplifying administrative procedures;
- second, an **interventionist approach** in favour of balanced migration control, taking into account democratic commitments and State capacity for a flexible, reactive and transparent migration policy. This approach, shared by the NGO sector with multiple nuances, called for more profound policy transformation and a regional thrust;
- third, a **security and sovereignty-centred agenda** favoured both by part of the ANC and departments' medium to lower bureaucratic strata, based on a narrowly-defined notion of national interest bearing many resemblances to positions held by the previous régime.

The more recent period shows **two major moves in ANC position on immigration**: first, the **reintegration of immigration within the broader ANC political line** thanks to two specific ideological inputs, that of African Renaissance on the one hand and that of a neo-marxist analysis of the world economy on the other; second, the **gap between elite and rank-and-file ANC members on the issue seems to be widening**. The ANC is clearly confronted with the



**tensions** shared by most social-democratic governments caught between the **acceptance of market rules** that include the free circulation of labour and the **consequences of South Africa's limited weight in the global economy**. Yet, as opposed to Western social-democratic regimes, South Africa, as an African state, faces up to a more complex situation in which elites often seem very remote from perceptions of migration on the ground, especially in an urban environment as rapidly changing as post-apartheid South African cities.

Three elements have characterised **post-apartheid immigration policy implementation**:

- the persistence of **coercive practices**,
- the **hardening of entry and control** as well as of **access** to South African citizenship,
- and finally the **failure to transform the Department of Home Affairs and other public services** in charge of immigrants

Recent developments in immigration policy (the 2004 *Immigration Amendment Act* for instance) confirm that the ANC has moved from indifference to genuine and constructive concern. It makes no doubt the ruling party is currently grappling with **structuring immigration as a development factor** for all South Africans and not only for the South African private sector and its labour strategies or to fill the gaps created by ten years of poorly effective capacity-building in the public sector. However, the stumbling blocks remain numerous and characterised by poor interdepartmental coordination, the absence of data production mechanisms on migration flows and their impact and the lack of capacity and corruption among Home Affairs staff in particular.

## CHAPTER 2. SOUTH AFRICA AND MIGRATION: THE ROLE OF SKILLED LABOUR

From the establishment of majority-elected government in 1994, until 2002, the South African government was generally rather **unfavourable to the movement of skilled labour**. It attached the highest importance to stimulating employment among South African citizens and, in regard to the market for highly-skilled workers, it was particularly concerned to reverse the historical discrimination against black South Africans. Since 2002, however, the government has stated with increasing clarity its conviction that **the country needs to encourage immigration by skilled workers in sectors that are vital for the economy**, such as **engineering and information technology**. This has been most clearly articulated in the **Joint Initiative for Priority Skills Acquisition (JIPSA)** – an important component of the government's overall economic strategy.

In effect, the **service sector** – a major employer of skilled labour – is emerging as the most dynamic sector of South Africa's economy, outstripping the older industries of mining and manufacturing. People employed in this area are much sought-after in global labour markets, with governments in North America, Europe and elsewhere aggressively seeking to recruit from elsewhere, including South Africa and other countries in the South. Although South Africa is able to produce skilled workers in key sectors, the country remains handicapped by an **educational system** that, as a result of policies implemented in an earlier period, is **ill-adapted to producing large numbers of workers highly skilled** in key professions, especially those requiring a high level of attainment in mathematics.

The coherence of government policy in regard to the international market for skilled labour is handicapped by **serious deficiencies at the Department of Home Affairs**, the government department that takes a lead role in the administration of migration policy. Furthermore, some of the ruling party's core constituencies – most notably in the **trade unions** – lend their **support to a 'South Africa first' employment policy** that is not always easy to reconcile with the



country's overall need to recruit sufficient numbers of skilled workers, including from abroad where necessary. Some of the resulting tensions are likely to become sharper in the run-up to the 2010 soccer world cup, which is to be hosted by South Africa and which will require the completion of major engineering and infrastructure projects requiring large inputs of skilled labour.

### **CHAPTER 3. UNDOCUMENTED MIGRATION: RISKS AND MYTHS (1998-2005)**

The South African government is also struggling to address the problem of **undocumented migration**. 'Illegal foreigners' are seen as a significant risk for the nation and its ambitious agendas of political transformation and economic development.

In the absence of either reliable data on undocumented migration, or adequate representative procedures or institutions for undocumented migrants, **South African public discourse tends to be dominated by a set of tenuous beliefs about 'illegal migration'**. South Africans wrongly believe that illegal migration is a new phenomenon, that there are many millions of undocumented migrants in South Africa, and that the presence of illegals tends to increase crime rates. Despite the prevalence of evidence to the contrary, most South Africans tend to concur that the nation is suffering from an immigration crisis of tremendous proportions and gravity. These 'myths' guide and constrain the immigration enforcement regime, limiting the scope for reform, and licensing exploitative arrest and detention practices. South African governance of undocumented migration is not only a cause for concern because of the growing evidence of abuse of citizen and foreigner rights. **The authoritarian methods South Africa uses to manage this perceived immigration crisis, are generating new risks for the consolidation of development and democracy in South Africa.**

The governance of undocumented migration has lacked direction and stuttered to the point of collapse. One of the most problematic legacies of the apartheid era is that **no single Government agency is in charge of migration**. This gap has been exacerbated by post-apartheid indecision and mismanagement. While the Inkatha Freedom Party controlled the Home Affairs Ministry (1995-2004), the ANC played a stalling role, attacking and sabotaging the legislation, without developing any clear alternatives. As a result, the Department of Home Affairs (DHA) has been experiencing a steady decline.

There has been a regular break-down in communication between the policy-making elite that were driving the legislative process and the departmental officials in charge of immigration enforcement. **Immigration officials have lacked the professional competence to understand their task, or fulfill their basic duties.** In this bureaucratic vacuum various South African governing bodies have deemed illegal migration to be a problem, and set about autonomously enforcing immigration laws. The South African Police Service has intermittently identified linkages between undocumented migrants and crime, and independently sought to eradicate this problem.

Since many immigration officials assume that high proportions of migrants are frauds and/or potential criminals, it has become extremely difficult to migrate legally to South Africa without paying a bribe. On the other hand, officials also have little regard for procedure, and tend to view corrupt practices as mere facilitation, assisting individuals to negotiate an overly complex bureaucratic structure. This loose implementation of immigration enforcement procedures has produced a variety of problematic outcomes. **Migrants have been pushed into a criminalized and lawless underground where they suffer a variety of forms of unconscionable**

**treatment.** A variety of groups with certified rights to work and live in South Africa have been caught up in the deportation process, arrested and held illegally in detention centres.

Undocumented migration is commonly seen as a risk for South Africa. This assessment is usually informed by a variety of beliefs regarding the threat of large numbers of relatively poor migrants from neighbouring countries swamping the country and looting its resources and opportunities. This is a dangerous discursive context for policy-making in South Africa, where decision-making and enforcement structures function independently, and in the case of the DHA, appear incapable of efficiently introducing new policies or implementing its existing mandate. Government enforcement of immigration laws appears to carry on under its own steam, driven by the loosely conceived ideas of often corrupt police officials. If one accepts that democracy and the rule of law are the cornerstones of development and progress in a post-apartheid South Africa, the **mounting evidence of official criminality, institutional breakdown and disregard for individual rights would appear to be the most worrying risk associated with the phenomenon of undocumented migration.**

#### **CHAPTER 4. DECENTRALIZATION, MIGRATION, AND DEVELOPMENT IN SOUTH AFRICA'S PRIMARY CITIES**

Studies of migration and development typically focus on aggregated trends and national policy frameworks. There is a need to complement such analyses with consideration of the **social, sub-national, and occasionally subterranean processes associated with human mobility.** Without a more robust understanding of intended beneficiaries and those with whom they interact, the ability of state and other actors to achieve desired outcomes is severely compromised: Important risks, challenges, and opportunities will also go unrecognized.

The need for **localised and socialised studies** is particularly important in the South African context for at least **three reasons:**

1. **Migration affects South African cities and provinces in substantially different ways.** In terms of internal migration, 7 Provinces are losing people while only 2 are gaining resulting in population densification in and around Cape Town, Johannesburg, and Pretoria. International migration has similarly spatialised effects with long standing patterns of migration to agricultural and mining areas being overshadowed by movements into the country's primary cities.
2. Many South Africans continue to oscillate between urban and rural areas or between urban centres. International migrants are also frequently in transit, moving frequently within cities and frequently returning 'home' or moving elsewhere. This results in still **unpredictable forms of investment, household structures, and political engagements.**
3. However much local government officials and members of their constituencies may long for the days of influx control, **metropolitan municipalities (Metros) do not have a 'choice' in deciding whether or not to respond to growing communities of domestic and international migrants.** Not only are people coming to the cities, but the local and provincial governmental spheres are constitutionally charged with many core development responsibilities: housing, health care, education, economic development and, in some field, policing.

Our findings suggest that while local government in South Africa is slowly accepting the role for addressing the challenges of domestic and international migration, there are significant challenges in developing effective responses. Apart from a generalised reluctance to see migration as a development concern, these include, *inter alia*, the following:

- ***Defining inclusion.*** Cities are increasingly dedicated to fostering inclusion, but the objective of these efforts remains elusive amidst South Africa urban centres' fragmentation and mobility. Given that many people see cities as transit sites, it is not clear that people wish to be included in cities' social or political structures.
- ***The Challenge of Mutual Engagement:*** The fluidity of migrant populations and the lack of incentive to engage with them on the part of political leaders make it particularly difficult to gauge their interests and intentions through mechanisms that build mutual trust.
- ***Lack of Knowledge:*** Cities are unable to draw on established data about their own citizenries and face even more acute difficulties in estimating the number of non-citizens in the cities. In the absence of sound data, myths about migration and mobility continue to inform policy decisions most of the time.
- ***Lack of Intergovernmental Coordination:*** In almost no instances have collaborations among government departments been successful. This is not unique to migration but is particularly evident given the need to develop multi-sited response mechanisms.

The patterns and problems outlined above particularly evident in the poor response to **HIV/AIDS**. Controlling this epidemic requires a deep cultural understanding of the affected population—a challenge heightened by cultural diversity—information on the association of migration and disease, and trans-local institutional responses for treatment and record management.

The consequences of the poor local response to migration are already evident in a number of areas that are critical to South Africa's development. These include, *inter alia*:

- ***Markets and Financial Services:*** Lack of identity documents, discriminatory banking laws, lack of access to credit.
- ***Social Services:*** Discrimination, ignorance about migrants' rights, and poor record keeping mean that many migrants—international and domestic—are unable to access social services where they live. The long-term economic and social consequences will be felt by both individuals and the communities in which they live. As discussed above, this is particularly evident regarding responses to HIV/AIDS.
- ***Investigations, Detention, and Arrests:*** Arbitrary arrest, detention, and deportation of tens of thousands of people a month leading to human rights violations, lost work time, lost money in the form of bribes, distrust of public officials, and the expansion of corrupt policing networks.
- ***Vigilantism, Violence, and (Non)policing:*** Widespread xenophobia on the part of the police and citizens coupled with ineffective policing has led to vigilantism in many

South African cities. As the police rarely investigate or prosecute in these cases, such actions are slowly eroding South Africa's chances of establishing a local rights-based system of law.

- ***Accountability and Planning:*** South Africa's economic and political success hinges on developing accountable public institutions. For many of the reasons outlined above, the failure to protect populations and deliver services is undermining trust and civic engagement. More importantly, rather than welcoming immigrants into the polis, foreigners are frequently victims of political scapegoating, a process that distracts people from more fundamental structural and administrative problems.

While citizenship and asylum laws must remain national, there is a heightened need for increased attention to sub-national actors as they continue to assert their influence—through commission and omission—on the country's immigration and asylum regime. **Cities and Provinces need to recognise that they can, and indeed should be encouraged, to actively advocate for an immigration regime that helps foster inclusion and service delivery for all residents.** This must, moreover, be done in collaboration with national, provincial, and neighbouring local government official. These must be accompanied by **broader discussions about the meaning of inclusion.**

There is also a **need for further, localized research undertaken within a broader comparative framework.** As this chapter demonstrates, violence against foreigners is widespread, but is motivated and understood within specific, highly localized contexts. While it is useful to develop aggregated trends, responses and attitudes may be shaped by the particular racial, economic, and political history of a single neighbourhood. For local government, differences within the cities they are responsible for governing may be as important as those among cities. If nothing else, there is a **need to evaluate and critically analyse immigration and migration at the level of the city as the effects will be vastly different for those experiencing in-migration of foreigners versus those that are primarily destinations for South African citizens.** Those who are net population losers will need to employ yet different calculations to understand the challenges they face. As indicated in this chapter and elsewhere in this report, **developing the kind of context specific understandings called for above will require heightening capacity for statistical, institutional, and social analyses.** While this is critical at the national level, **all spheres of government** should be encouraged to collaborate and develop the capacity for data collection and analysis at all levels. Lastly, **mechanisms should be created to ensure that these analyses—when they eventually become available—are fed into decision making processes.** Doing otherwise will ensure policy failure and may help realize many planners' current fears about the effects of human mobility on prosperity and security.

## RECOMMENDATIONS FOR RESEARCH AND POLICY DEVELOPMENT

This report provides the historical, institutional, economic, and social contexts for understanding migration and immigration in South Africa. Although its focus is on documenting these issues, the account points to a series of further recommendations for research and policy development. These include:

**1. *Develop policy frameworks recognising that migration and immigration are critical to South Africa's prosperity.*** Given the country's economic ambitions, ongoing efforts to foster regional integration, and acute skills shortages, immigration is critical to the country's international competitiveness. This is evident in the corporate sector, but also in small business formation and tourism. Continued formal and informal restrictions on and mismanagement of immigration—including laws, administrative practice, and widespread xenophobia—threaten to undermine the country's economic prospects.

**2. *Develop efficient interdepartmental data gathering and policy cohesion tools as well as capacity-building mechanisms.*** The observable inconsistencies in policy-making between the different government departments partly stem from a lack of centralised, reliable and available data and consistent data gathering methods across departments. Divergence of policy views, inherent to the various departmental mandates, would benefit from the creation of internal interdepartmental avenues to express these and explore better coordination. Capacity-building emerges as one of the most critical dimension plaguing the management of migration especially within the Department of Home Affairs. Whereas addressing this issue is important within Home Affairs itself, only interdepartmental skills development allowing staff in charge of migration to be aware of immigration control regulations as well as social, economic and human rights dimensions will foster a general improvement of migration management conditions.

**3. *Greater sub-regional convergence and coordination.*** Although the regional implications of migration were beyond the scope of the present report, many elements point to the lack of sub-regional policy consultation, the reinforcement of bilateral rather than multilateral agreements, and the ineffectiveness of existing non-specific (SADC) and specific (Migration Dialogue for Southern Africa) platforms. The very limited scope of the Protocol on the Facilitation of the Movement of People in Southern Africa is emblematic of SADC's incapacity to counter-balance South Africa's political and economic weight in the region. A more regular and effective consultation with labour organisations (trade unions, labour recruitment agencies) and the private sectors at regional level is currently lacking despite recommendations to that effect already formulated in the 1997 South African *Green Paper on International Migration*.

**4. *Greater sub-national engagement in migration management.*** While citizenship and asylum laws must remain national, there is a heightened need for increased attention to sub-national actors as they continue to assert their influence—through commission and omission—on the country's immigration and asylum regime. Cities and Provinces need to recognise that they can, and indeed should be encouraged, to actively advocate for an immigration regime that helps foster inclusion and service delivery for all residents. This must, moreover, be done in collaboration with national, provincial, and neighbouring local government officials.

**5. *Adopting pragmatic approaches to service delivery.*** Facilitating access to primary care clinics, life saving medical care, and legal services without regard to nationality or immigration status can help build safer and more accountable communities. Countering exclusion based on individuals' community of origin will not ensure secure and sustainable livelihoods, accountable institutions, and unified communities. It can, however, make achieving these objectives a possibility.

**6. *Conduct ongoing contextualised research.*** While it is useful to develop aggregated trends, responses and attitudes may be shaped by the particular racial, economic, and political history of a single neighbourhood. For local government, differences within the cities they are responsible for governing may be as important as those among cities. Developing context specific understandings will require heightening capacity for statistical, institutional, and social analyses. All spheres of government should be encouraged to collaborate and develop the capacity for data collection and analysis at all levels. Mechanisms should also be created to ensure that these analyses—when they eventually become available—are fed into decision-making processes. Only through such 'migration mainstreaming' can South Africa hope to avoid policy failures and help avoid current fears about the effects of human mobility on prosperity and security.

**7. *Developing a realistic understanding of the scope for policy reform.*** The debate on migration and development is often premised on ideas that lowering barriers to human mobility reduce poverty. Apart from challenging the relationship between migration and poverty alleviation, this report warns against naïve recommendations about migration policy reform. Within South African policy making--as elsewhere--the development effects of migration (especially low skilled migration) are secondary to security concerns. Moreover, even where policy reforms may be developmental, there is a need to recognise that the South Africa currently lacks the institutional capacity to overcome entrenched corruption or to otherwise ensure policy priorities are uniformly translated into practice.



**INTRODUCTION**  
**MIGRATION IN POST-APARTHEID SOUTH AFRICA**

By Stephen Ellis  
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International migration is an exceptionally sensitive subject in South Africa. Twelve years after the end of apartheid, the country attracts a substantial number of migrants – precisely how many is a matter of sometimes heated debate. The African National Congress (ANC) government has stated South Africa's need to attract highly-skilled migrants to work in key sectors of the economy and has moved towards an articulation of the role of international migration, including from other African countries, in South Africa's future development. Yet large numbers of South Africans live in great poverty, and many South Africans feel that the government should prioritize its own citizens for employment to a greater extent than it does at present. Many commentators have remarked on what they perceive to be a certain xenophobia directed particularly at political refugees and undocumented migrants arriving from elsewhere in Africa.

The present report is an in-depth study of some key aspects of South Africa's past and current migration experience.

*The political context*

The 'meaning' of immigration in South Africa, and of South African attitudes to it, can not be fully understood without reference to the history of the country and the southern Africa region, as the first chapter of this study makes clear. Certainly the country's ruling party is intensely conscious of the historical dimension of the various issues and problems that the country faces today. Among the most pressing of these is poverty, with some 15.4 million out of a population of 47.4 million being considered very poor: in recent years, some 34% of the population have been living on under \$2 per day. The official unemployment rate is 26.7%, although most estimates put the figure at around 40%. Closely related to the disturbing levels of

poverty and inequality is the skewed distribution of skills and resources that is so obviously rooted in the country's past, most particularly in the legacies of a two-track system of education which encouraged the simultaneous emergence of an elite of high-achievers, able to compete in leading sectors in global markets, and of a mass of people whose education was deliberately stymied during the apartheid period.

Concern at the great and growing economic disparity is in many respects superseding the racial divisions of previous decades as the dominant division in South African life. This is guiding government thinking on a range of issues, including on migration. South Africa's government has presided over thirty quarters of sustained economic growth – a feat unsurpassed in the country's history. Its economic policy has earned it praise from business leaders and from many international partners, but it has not brought prosperity to all. It is in this context that government policies on migration and related issues may be broadly situated and understood.

For some years after the establishment of the country's first post-apartheid government in 1994, official attitudes to immigration tended to fall into a rather crude dichotomy: ideas of both officials and the wider public tended to be situated either in a discourse of immigrants versus the national interest, on the one hand, or of xenophobia and racism in contrast with the rhetoric of pan-Africanism, on the other hand. In recent years, however, government thinking on migration has changed substantially. Milestones in this process include the *Immigration Act* of 2002, a subsequent amendment to the Act in 2004, and various statements by officials from President Mbeki downwards. At least at senior levels of policy-making, there is a clear recognition that a more nuanced policy on migration is necessary and that this should be based on an appreciation of the role of migration in regard to South Africa's society and economy in the largest sense, and not merely to certain sectors such as agriculture and mining.

The most recent phase of the government's long-term economic strategy is the Accelerated and Shared Growth Initiative-South Africa, known as ASGISA. This was unveiled in early 2006. It is not a new policy, but is officially described as 'a limited set of interventions that are intended to serve as catalysts to accelerated and shared growth'. The ultimate aim of ASGISA is to halve unemployment and poverty by 2014. To do this, the government calculates that the country must achieve economic growth of 4.5% per annum up to 2009 and 6% per annum from 2010 to 2014. Meanwhile, South Africa's economy is changing fast. The largest

sector in the economy, in terms of value added, is now finance,<sup>1</sup> which grew at a rate of 8% in the second quarter of 2006. The financial sector now far surpasses mining, a traditional employer of foreign labour on a massive scale, almost all of it low-skilled or semi-skilled. (Manufacturing is currently South Africa's second-largest sector, and retail third.) The service sector employs relatively high numbers of skilled people as a percentage of total personnel by comparison with the old job-creating staples of manufacturing and mining, for example.

Within the framework of its economic strategy, as amended by ASGISA, the government has launched a further initiative that particularly aims to develop skilled workers. This is known as JIPSA – the Joint Initiative for Priority Skills Acquisition. It aims to coordinate the activity of various government departments. JIPSA is headed by Deputy President Phumzile Mlambo-Ngcuka and is reported to have the strong support of the national treasury in particular. JIPSA is led by a committee of relevant ministers, business leaders, trade unionists and experts in education and training. Its purpose is to identify what skills are needed and to seek solutions. These may include creating special training programmes, and bringing in retired persons or South Africans who are currently living outside the country, 'drawing in new immigrants where necessary' according to the government. JIPSA is designed to coordinate the work of relevant government departments in harmony with the policy on immigration administered by the Department of Home Affairs.

Much of the significance of these developments is that South Africa is facing a skills shortage that, in the short to medium term at least, can be solved only by encouraging immigration by skilled workers. This adds a new and important element to government policy on immigration. Thinking is particularly being concentrated by the looming prospect of the 2010 football world cup finals, which South Africa will host. The extensive infrastructure projects that will be required to bring stadia, transport and other facilities to the required standard appears to require the temporary employment in South Africa of numbers of skilled workers from abroad.

At the same time, it is clear that the government's official migration policy does not have the support of every part of the administration or every part of the ANC's own political constituency. Significant political constituencies and administrative services remain ambivalent or even opposed. A particular factor is the parlous state of the government department that has the leading responsibility for the administration of policy on migration, the Department of Home

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<sup>1</sup>Statistics South Africa, Gross Domestic Product, Second Quarter 2006, <http://www.statssa.gov.za/publications/P0441/P04412ndQuarter2006.pdf> (accessed 3 November 2006).

Affairs. This key department is regarded by just about every shade of opinion as being both inefficient and rife with corruption. Government officials acknowledge that the Department of Home Affairs has serious problems. They point out that efforts are being made to rectify these, including through the deployment of a special task force from the national treasury. The government has also assigned personnel from the National Intelligence Agency to the department at a senior level, apparently with the aim of identifying corrupt networks. However, none of these initiatives has resulted in the elimination of corruption or in any significant improvement in the workings of the department.

### *South Africa in the world*

The question of migration is embedded in South Africa's position in international affairs, in both diplomatic and economic matters. South Africa is widely considered a 'middle power'. It will take up a seat on the UN Security Council for the first time on 1 January 2007, and is determined to acquire a permanent seat on the Council in the context of a general reorganisation of the UN. South Africa has developed a partnership with some other middle powers – notably Brazil and India – in seeking common positions in bodies such as the World Trade Organisation. It is currently chair of the G77 group. South Africa has cultivated an active diplomatic role, regarding itself as a representative of Africa in global affairs. Its championing of the pan-African cause implies vigorous commercial, political and social exchanges between South Africa and other African countries.

Furthermore, in keeping with its neo-liberal economic strategy, the South African government has thrown open the country's borders in many areas of trade. South Africa's policy towards its neighbours in the southern Africa region has borne many of the hallmarks of a common market, with a progressive elimination of trade barriers between member-states with a view to stimulating trade and the creation of wealth. The Southern Africa Development Community (SADC) Trade Protocol that came into effect in 2000 has now resulted in the elimination of tariffs on some 80% of South African imports from the region. However, the vision of a southern African common market is also clearly running up against calls for the protection of jobs within South Africa. If the vision of a SADC common market were really to progress, it would imply South Africa developing a regional industrial strategy. The latter would imply South African manufacturing firms relocating their activities to countries in the region that can offer much cheaper labour, while South Africa itself concentrates on its most advanced

sectors, based on high-knowledge industries. In reality, there are tensions between South Africa's fitful ambition to create a southern African free-trade zone and perhaps even a common market, and its desire to prioritise South Africans in job creation. Such tensions are visible notably in regard to migration.

The contradictions in South Africa's regional policy between its 'realist' pursuit of national interests, and its pan-Africanist principles, is readily apparent in regard to Zimbabwe. President Robert Mugabe of Zimbabwe has himself used a radical pan-Africanist rhetoric to defend his policies from criticism. In regard to South Africa, the point implicit in President Mugabe's position has been to the effect that any hint of South African cooperation with British and US positions on Zimbabwe would be evidence that South Africa's commitment to the pan-Africanist principle was only superficial. This has in effect enabled President Mugabe to insulate himself from any adverse policy by his powerful South African neighbour. However, the catastrophic collapse of the Zimbabwean economy has created great difficulties for South Africa, not least in the form of greatly increased numbers of refugees entering the country from the north.

#### *The present study*

These brief lines provide some background for the more detailed studies of migration in South Africa that follow. Chapter One consists of a study of the country's historical experience of migration and, in particular, analyses the changes in official attitudes throughout the twentieth century, indicating the roots of contemporary ideas and dilemmas. This chapter contains three sections aimed at shedding light on the policy transformation process: first, it provides a brief overview of 20<sup>th</sup>-century migration policy in South Africa; second, it will envisage the position developed on international migration by the ruling party in the post-apartheid period and its capacity (or incapacity thereof) to transform problem identification into public policy reform; and finally, it considers the role played by South African and foreign non-State actors in engaging with the South African government on migration issues and their impact on the current policy framework.

Chapters Two, Three and Four complement this analysis of the South African State's capacity to reform and manage the South African migration situation by looking at three often neglected dimensions in the understanding of migration in a development context: the first



explores the question of skilled labour, a crucial question given the unbalanced structure of the South African labour market; the second examines undocumented migration to South Africa and the challenges it raises to both State and non-State actors; finally, the impact of migration on local government in South African cities is envisaged with a specific emphasis on the importance of local government responses, failures to levy such a response, and subsequent implications for urban planning, service delivery, health, security, and political accountability.

The Annexes to this report discuss the highly contested figures on South African migration and raises methodological issues pertaining to their calculation. It also provides a set of updated statistics and a chronology of South African migration developments in the regional and international context between 1990 and 2006.

## **CHAPTER 1**

### **REFORMING SOUTH AFRICAN IMMIGRATION POLICY IN THE POST-APARTHEID PERIOD (1990-2006): WHAT IT MEANS AND WHAT IT TAKES**

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*They come from all over, and they are all sorts, the new African migrants. There are the professionals – the doctors and academics, highly educated and hoping that in this country their skills can at last earn them a living wage. There are the traders, buying up what the shopping malls have to offer, and travelling home twice a month with bulging suitcases, knowing they can sell everything at a profit in the markets of Lagos, Kinshasa or Dakar. There are the hawkers and hustlers, who travel south out of desperation, and are willing to turn their hands to anything. And then there are the criminals; the drug dealers, the pimps and fraudsters. (And South Africans, of all colours, will invariably tell you that there are far too many who fit into this category.)*

*The signs of the African invasion are there, all over the city. From the streets of Yeoville, jostling with Zimbabweans who have fled economic collapse, to the discreet hotels of Illovo and Rivonia, where the corrupt Congolese and Angolan elites come to play, and spend their ill-gotten gains. It's enough to make apartheid's planners turn in their graves. But that's no bad thing.*

Barnaby Phillips, BBC correspondent, « Out of Lagos », in Heidi Holland & Adam Roberts, *From Jo'burg to Jozi, Stories about Africa's infamous city*, London, Penguin Books, 2002, p.206.

*Une politique réellement démocratique doit se donner les moyens d'échapper à l'alternative de l'arrogance technocratique qui prétend faire le bonheur des hommes malgré eux: et de la démission démagogique qui accepte telle quelle la sanction de la demande, qu'elle se manifeste à travers les enquêtes de marché, les scores de l'audimat ou les cotes de popularité.*

Pierre Bourdieu, *La misère du monde*, Paris, Ed. Seuil, Coll. Points, 1993, p.1450.

#### **Chapter question:**

*Three main dimensions will be explored here: 1.the position developed on international migration by the ruling party in the post-apartheid period; 2. the capacity (or incapacity thereof) of the ruling party in Government to transform problem identification into public policy reform; and 3.the role played by South African and foreign non-State actors in engaging with the South African government on the transformation of migration policy.*

The role played by international migration in development is often considered within the narrow context of a debate over migration's potential for development in both sending and receiving countries in terms of skills, remittances, knowledge transfers and States' control

capacity. In other words, international migration is often assessed as a zero-sum game. Analysts often position themselves as pro- or anti-migration depending on the “benefits” they associate with the phenomenon. Econometric analyses do little to really clarify the reasons behind political failures or successes in the field of migration as the number of factors to be taken into account on both sides limits the applicability of those measurement methods<sup>2</sup>. In the South in particular, decision-makers are left at best with risk assessments, interest groups’ pleas and opinion polls to decide.

That is partly due to the fact that, in countries of the South, academics and experts have not yet produced abundant data bases, either quantitative or qualitative, on South-North or even less on South-South migration. This is not only a question of research capacity, but also of the symbolic and ideological space occupied by migration in nation-building narratives. Another limitation deriving from this is the very limited number of analyses of migration looking at it as any other sector of public policy-making, that is understanding the actual mechanisms at play behind decision-making and implementation and not only the extent of the “problem” or the “efficiency of means deployed to get rid of it”. South Africa, despite a profile bearing many resemblances with other “newfound lands” such as the United States, Canada or Australia in terms of colonial settlement and migration, has not produced the intellectual debate over migration that would give it weight among its political elites and enable decision-makers to consider it as anything other than a legacy from colonialism and apartheid as far as white immigrants are concerned and a post-apartheid phenomenon for their black counterparts. Although largely relying on migration throughout its historical industrial and general economic development, South African society has paid scant attention so far to both the implications of this on the texture of its population and the means to utilise this legacy and its modern avatars as a tool for development. The South African post-apartheid debate has essentially been characterized by a security-based approach to migration as the opening to the rest of the African continent and the world constituted a major political and intellectual revolution in a country severed from its natural hinterland for forty years, and many more in symbolic terms.

More often than not, post-apartheid immigration issues were analysed in terms of risk factors, push and pull systems, migrant “floods”, etc. with immigrants systematically playing the

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<sup>2</sup> For a detailed discussion of migration and development, see Maurice Schiff, 1996, « South-North Migration and Trade. A Survey », *Policy Research Working Papers*, n°1696, Washington, The World Bank International Economics Department, International Trade Division; Develyn R. Agunias, 2006, *Remittances and Development, Trends, Impacts and Policy Options, A Review of the Literature*, Washington D.C., Migration Policy Institute, and A.Wa Kabwe – Segatti, 2006, “Migrations en Afrique australe : Levier de la Renaissance ou facteur d’inégalités ?”, *Transcontinentales*, N°2, Paris, Armand Colin, p.77-99.

bad guys' role, something which was confirmed in opinion surveys, revealing high and widespread dislike for foreigners<sup>3</sup>. However, understanding the South African migration situation today requires doing much more than that. The actual demographics of immigration to South Africa and the very polemical discussions their calculation has raised are only one aspect of a situation that remains in absolute terms rather insignificant compared to other regions in the world. It has been estimated for instance that South Africa might have hosted at some point over 300 000 Mozambican refugees and currently grants approximately 9 million temporary permits and visas every year. The ability of South African State institutions to reform internally and externally in a time of tremendous political changes in the country and of managing increasing migration flows is certainly another major dimension. It does not simply consist in inventorying the administrations in charge and the legislation in use, but also understanding how the de Klerk administration, on the eve of dismantling apartheid, generated a system that would last for the next ten years. The *1991 Aliens Control Act* actually survived until 2002, with only incremental modifications despite mounting criticisms from the NGO and academic sectors as well as the business community. In order to shed light on the actual capacity of the South African State to deal with the present global and regional migration system in which the country is embedded, one ought to look at the structuring of the South African discriminatory migration system over the 20<sup>th</sup> century, at the trajectories of administrations and at the autonomy effects fostered by this system.

Between 1994 and now, South Africa has perhaps undergone more political and economic changes than throughout the rest of its history. In particular, the constitutional changes introduced with the new political dispensation created a framework in which various interest groups have been able to position themselves, identifying the migration question as a new battle field, for very many different reasons. Hence a new paradox: despite the overall legal framework offering migrants in general more rights and guarantees than ever before, their situation in terms of human rights' abuses, economic and social rights and day-to-day interactions remains a preoccupying one. Recurrent xenophobic outbreaks as in the recent killings of several Somali traders in Cape Town<sup>4</sup>, and regular complaints from the private sector about the South African State's incapacity to attract and keep foreign skilled labour and investors illustrate this clearly. Part of the paradox lies in the striking absence of immigration in the ANC major policy positions from the initial social-democratic framework to the neo-liberal 1996 shift with the Growth

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<sup>3</sup> See Robert Mattes, et al., 1999, "Still Waiting for the Barbarians: South African Attitudes to Immigrants and Immigration", *Migration Policy Series*, No.14, Cape Town / Queen's, IDASA / SAMP.

<sup>4</sup> See Mariette le Roux, 2006, "Somali refugees fear deadly violence in Cape Town", *Mail & Guardian*, 17 September, and Chapter 3 in this report.

Employment And Redistribution plan: migration is at no stage considered as a political tool. The transformation of the immigration policy framework should then be seen as the product of a triple process: the legacy of apartheid administrations, the constraints created by transition rules (the famous sunset clauses) and the introduction into the game of new actors and groups carrying with them new and often competing models of migration management.

Chapter One thus unfolds in three directions aimed at shedding light on the policy transformation process: first, it will give a brief overview of 20<sup>th</sup> century migration policy in South Africa; second, it will envisage the position developed on international migration by the ruling party in the post-apartheid period and its capacity (or incapacity thereof) to transform problem identification into public policy reform; and finally, the chapter will consider the role played by South African and foreign non-State actors in engaging with the South African government on migration issues and their impact on the current policy framework..

## **Methods**

This chapter draws from primary and secondary data gathered between 1995 and 2006 on immigration issues in South Africa. In particular, it draws from the author's Masters' and PhD theses respectively on South African academic discourses on migration and the transformation of South African immigration policy from 1986 to 2003. Both works have included participant observation at national and local level in the consultative process initiated in 1996 to transform South African immigration policy, formal and informal interviews with NGO, academic, institutional and political actors as well as archival research. More recently this work draws from data gathered through a joint research initiative from the Forced Migration Studies Programme (University of the Witwatersrand) and the French Institute of South Africa to study Immigration, transit and urban transformation in Southern African post-apartheid cities (Johannesburg, Lubumbashi and Maputo).

## **An overview of South Africa's apartheid immigration policy: The genesis of a discriminatory migration system (1910-1991)**

### ***The specificities of a migration system: the two-gate policy***

The specificity of the South African case does not reside so much in the introduction of increasingly drastic selection criteria according to social, racial and religious prejudices prevailing in this type of colonial society. Indeed, a number of other immigration countries including

European ones<sup>5</sup> adopted very similar policies. The South African specificity rather comes from the parallel and simultaneous movement of denationalisation of the indigenous population to serve the political economy of apartheid<sup>6</sup>.

The major part of the 20<sup>th</sup> century was thus characterised by the progressive consolidation of a system labelled ‘two-gate policy’: one front gate welcoming populations corresponding to the criteria of attractiveness defined by the minority in power, the other, the back gate, with a double function, on the one hand preventing unwanted migrants from entering and on the other, letting in but only on a temporary basis cheap and docile labour. This system intricately connected to the ‘grand apartheid’ scheme, particularly through the homelands policy, blurred the border lines between citizens and foreigners in a way achieved by few other societies. The various laws and regulations on migration passed throughout the 20<sup>th</sup> century (see Annex 3), the proactive White (and Protestant) immigration policy of successive Nationalist governments, the relations between the South African state, the agricultural and mining sectors and labour-sending neighbouring countries<sup>7</sup>, and finally apartheid legislation itself, specifically on residential segregation and preferential job areas, all contributed to mainly coercive migration management practices and to shape stereotyped images of foreigners.

The situation that prevailed under the de Klerk administration resulted from ninety years of legislative juxtaposition aiming at serving a certain vision of society. Three periods can be identified regarding immigration legislation in South Africa:

- from 1913 to 1937, legal criteria defining foreigners and their access to South African territory were set up and regulated;
- from 1937 to 1986, the existing legislation was gradually aligned on the racist criteria of ‘separate economic development’ and served the objectives of the two-gate policy;
- lastly, from 1986 to 1994, there was a widening gap between harboured intentions of legislative normalisation within the context of the deep political transformations then at work in the country and the reality of deeply entrenched practices.

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<sup>5</sup> In 1901, the *Immigration Restriction Act* founded the White Australia policy which was only officially terminated in 1973; in 1910, racial criteria on entry to Canada were made explicit; in 1921, the first quota laws based on national origin were implemented in the United States and in 1924, the *Johnson-Reed Act* was adopted in order to preserve the racial composition of the American population; in 1974, France officially put an end to all non-European immigration apart from family reunification.

<sup>6</sup> M. Morris, “State, Capital and Growth: The Political Economy of the National Question”, in S. Gelb, Ed., 1991, *South Africa’s Economic Crisis*, Cape Town, David Philip; H. Marais, 1998, *South Africa – Limits to Change: the Political Economy of Transformation*, Cape Town / London, UCT Press / Zed Books; S. Peberdy & J. Crush, “Rooted in Racism: The Origins of the Aliens Control Act”, in J. Crush, ed., 1998, *Beyond Control: Immigration and Human Rights in a Democratic South Africa*, Cape Town / Queen’s, IDASA / SAMP.

<sup>7</sup> See frame 1.



At the beginning of the 1990s, laws regulating immigration were essentially inherited from the 1937 Aliens Control Act, a piece of legislation adopted in a context of widespread anti-Semitism aimed at the influx of refugees from Eastern Europe following the rise of Nazi Germany. It is through the Aliens Control Act of 1937 that the term ‘alien’ was first officially established in the legislation as in everyday language. Above all, the Act introduced, for the first time explicitly, the ‘racial’ criterion as a condition of entry into South African territory<sup>8</sup>. This law was soon complemented by the Aliens Registration Act of 1939 that marked a decisive turn in the control of foreigners on South African territory. Until then, the legislation on immigration was essentially meant to work as a ‘racial sift’ on entry into South African territory. The 1939 Act stressed for the first time not only control on entry but also the monitoring of foreigners inside the territory of the Union.

From 1948 onwards, the National Party (NP) passed three major laws that closely bound together immigration policy — and therefore the status of foreigners — and citizenship and the management of indigenous populations: the 1950 Population Registration Act (on racial classification), the 1962 Commonwealth Relations Act (that ended uncontrolled trans-border movements in Southern Africa) and the 1955 Departure from the Union Regulation Act (requiring an authorisation to depart from South African territory).

Yet, it was not before 1961 that in addition to selection on entry and drastic control measures at the borders, an actual proactive White immigration policy was developed with the creation of a specific government department entirely devoted to immigration. So far, immigration had essentially been outsourced to private initiatives after unsuccessful governmental attempts at the beginning of the century with the Milner administration. In the 1950s, the NP faced a dilemma. To suppress purely and simply immigration, at the time largely Anglophone, meant to expose the white population to the risk of “sinking into an ocean of colour” whereas if Anglophone immigration continued, the NP still essentially Afrikaner, would lose its majority in Parliament. In the early 1960s, the political context had changed and the NP, then politically strengthened, decided to set up a proactive policy to face the increasing dearth in qualified White labour. Between 1961 and 1991, several programmes were implemented and subsidies and direct State aid allowed for the settlement of tens of thousands of European immigrants. Those

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<sup>8</sup> Section 4(3)(b) of this act actually stated that all applicants should be ‘likely to become readily assimilated’ with the European inhabitants of the Union and that they did not represent a threat to ‘European culture’.

subsidies, at times very substantial — reaching for instance 3 576 000 Rands in 1972-1973 — were only suppressed in 1991, that is two years after F.W. de Klerk took office.

Regarding asylum, South Africa gave for a long time the impression, because of the authoritarian apartheid regime, that she was an issuing rather than receiving country for refugees in a region otherwise widely affected by civil conflicts, in the period following the independence of colonial territories. South Africa was at the time endowed with a relatively higher border monitoring capacity than her neighbours, protecting her from massive inflows, at least, up until the Mozambican 1980s civil war; whence a particularly contrasted situation: on the one hand, South Africa was the source of refugees towards the region as a whole while refusing to receive any on her territory, except immigrants fitting the discriminatory selection criteria of her “white” immigration policy. On the other hand, the region was affected by refugee-generating tensions that were partly due to the regional destabilisation strategy implemented by Pretoria from the 1980s, with asylum systems being progressively put into place. Southern Africa was indeed not protected from the major refugee movements experienced by the rest of the continent at the beginning of the 1990s: the Angolan and Mozambican crises and, soon, the Burundian and Rwandese crises.

No asylum system existed in South Africa before the 1990s, not only because of the inflow of refugees being less important than elsewhere, but also because of the isolation of Pretoria at the international level. Until then, asylum followed South African segregationist immigration policies instead of international agreements. Different waves of European immigrants aspiring to refugee status were welcomed throughout South African history: Lithuanian Jews fleeing pogroms, Italian prisoners during WWII, Greeks fleeing the dictatorship of the Colonels, Belgians and Portuguese fleeing the Congolese then Angolan and Mozambican independence, not to mention the French Huguenots of the 17<sup>th</sup> and 18<sup>th</sup> centuries. For these various waves of immigrants, and sometimes despite religious and anti-Semitic reservations within the white community, their assimilation did not require that a specific status be created or that their motivations for coming to South Africa be formalised. Solidarity networks were even sometimes created, such as those around former North Rhodesian or Mozambican repatriates. Nonetheless, hosting these repatriates was done progressively and often in a discriminatory way. In the eyes of apartheid bureaucrats, the Portuguese represented at first a problem due to their religion, Catholicism, as well as what was seen as their “Latin tendency” and weak “racial awareness”, making them more open to mixed marriages. The Portuguese settlers of

Mozambique were thus sometimes simply assimilated to Coloureds. Giving in to these concerns, the South African immigration administration reduced Portuguese inflow from 6 139 to 1 669 immigrants originating from Portugal, and from 1 739 to 690 immigrants originating from Mozambique, between 1966 and 1968 respectively. The attitude vis-à-vis Portuguese settlers changed when Mozambique and Angola became independent. Various committees in support of Portuguese refugees were then created and a Central Aid Fund for Refugees was set up by the Department of Welfare. The same right-wing elements who had called for a complete stop to non-Protestant immigration called on the South African government to stop the expulsion of Portuguese refugees “as long as the right to the existence of the White man [was] not established.”<sup>9</sup>

The Intergovernmental Committee for European Migration (ICEM), ancestor of the International Organisation for Migrations (IOM), also played an important role during the 1960s and the 1970s. Established in 1952 to resolve the European refugee issue, the ICEM contributed from 1952 to 1974 to almost 11% of the “white” immigration towards South Africa: 66 765 people were transported towards South Africa of whom 50 000 as part of the Migration National Programme and 11 765 as part of the Refugees Migration Programme<sup>10</sup>.

However, the situation became different with the repercussions of the regional destabilisation policy conceived by P. W. Botha at the beginning of the 1980s. The Mozambican conflict thus created an important inflow of refugees in a difficult period during which the regional balance was rapidly disrupted. The inflow of Mozambican refugees in South Africa from 1984 onwards was the only massive inflow of refugees to South Africa in recent history, excepting only the current inflow of Zimbabweans whose acknowledgement as refugees is problematic today<sup>11</sup>. The Mozambican inflow had major repercussions on the asylum and immigration policies developed during the 1990s by the new post-apartheid government. Agreements signed between the High Commissioner for Refugees and the South African government from 1993 onwards made it possible (after a laborious process) to afford Mozambican refugees a status. However, outside of a legally scrutinised national legislation

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<sup>9</sup> *Herstigte Nasionale Party* during the “Southern African Solidarity Conference” of December 1974. Quoted in *White Migration to Southern Africa*, 1975, Centre Europe Tiers-Monde, Genève, p.202.

<sup>10</sup> *White Migration to Southern Africa*, op.cit., p.37.

<sup>11</sup> See for example today’s concerns raised by the refolement practiced by the South African authorities as described by association International Refugees, <http://www.refugeesinternational.org/content/country/detail/4720/?PHPSESSID=5ce00f92779c166324e1d>, accessed on 15/05/2006.

framework, recognition of the Mozambican refugee status came about much later<sup>12</sup>, leading either to the criminalisation of several thousands of them<sup>13</sup>, to voluntary repatriation as part of an inefficient programme or to the legalisation of a very small number<sup>14</sup>.

While the set of reforms initiated by P.W. Botha from 1982 onwards could lead one to think employment priority would then at last be given to the South African Black, Indian and Coloured population, the South African State actually continued promoting White immigration well into the negotiation period that started after the '2 February 1990' speech. The result of this was that the immigration policy inherited by the de Klerk administration in 1989 bore three characteristics. It was first based on a classical colonial settlement policy focusing on the almost exclusive development of the needs of the European minority and its corollary, a cheap Black labour force maintained in a precarious position. Secondly, the management of migrations and foreigners was discretionary by nature and often based on opaque practices. Finally, the development mode through which this policy was meant to evolve was incremental, very rarely providing enough space for assessment or even public debate. It was thus largely disconnected from either ongoing migration trends and dynamics or from actual assessments of skills' needs in the various sectors of the South African economy.

### **Frame 1. Mining and migrant labour during and after apartheid.**

Until the 1960s, foreign labour, although employed since the beginning of mining in South Africa, never outnumbered South Africans. The economic boom of the 1960s and the rapid growth of the South African economy then led to job creation in services encouraging large numbers of South Africans to leave the mines. The South African mining sector increased the proportion of its foreign miners to the point of becoming highly dependent on it with 83% foreign miners in 1973. In 1976, the proportion of foreign vs. South African miners had come back to the 40-60 desirable ratio. However, South African dependence on foreign labour has remained consistent until now. On the one hand, the interest of South African companies and the South African State were converging to identify foreign labour as a stabilising force for many reasons: low pressure on wages, divisive factor against the rise of trade-unionism, temporary nature of foreign black labour allowing for the demographic weight of the white population to remain stable and finally, financial flows towards the region's countries that reinforced their

<sup>12</sup> For a detailed and critical study of the Voluntary Repatriation Programme of Mozambican refugees in South Africa, cf. A.Wa Kabwe – Segatti, 2002, "Du rapatriement volontaire au refoulement dissimulé – Les réfugiés mozambicains en Afrique du Sud" (*From Voluntary Repatriation to Disguised Expulsion: Mozambican Refugees in South Africa*), *Politique africaine*, Dossier Réfugiés, exodes et politique, N°85, March, Paris, Karthala, p. 75-92.

<sup>13</sup> According to the annual reports of the South African Home Affairs Department between 1988 and 2003, almost 1,3 million Mozambicans were expelled from South Africa as irregular migrants. Department of Home Affairs, *Annual reports*, Pretoria, Government of South Africa, 1988-2003. Figures compiled by the author.

<sup>14</sup> For an overview evaluation of Mozambican refugee regularisation in South Africa, see N. Johnston, 2001, "The Point of No Return: Evaluating the Amnesty for Mozambican Refugees in South Africa", *Migration Policy Brief N°6*, Southern African Migration Project, Le Cap, Idasa, Ottawa, Queen's University.

economic dependence vis-à-vis Pretoria. On the other hand, neighbouring governments identified labour export as strategies for unemployment and poverty alleviation, the prevention of political and social unrest and a dependence tool giving them often illusionary leverage on Pretoria. A case in point is Mozambique which, despite being historically the main labour provider to South African mines, remained and still is largely dependent on South Africa's goodwill and whims. In 1986, in order to retaliate against ANC bombings and reassert its regional supremacy, P.W. Botha decided to repatriate 61 500 Mozambican miners overnight and only relented under pressure from the Chamber of Mines. Yet, 30 000 of them were sent back. With setbacks in Zambia, Tanzania, Zimbabwe and Malawi, and in the perspective of the Mozambican independence, a debate over foreign labour and wages eventually opened in the late 1970s between the South African Government, South African mining companies and labour-sending countries.

The modernisation of the South African economy throughout the 1980s and 1990s resulted in large numbers of job losses not only in mining but also in the farming and industrial sectors. Whereas the proportion of foreign miners in South African mines had gone back below 40% in 1985, since 1999, it has now comprised between 40 and 50%, certainly not as high as it used to be in the 1970s but still significant. According to The Employment Bureau of South Africa (TEBA), in 2004, approximately 21% of miners were Mozambicans (see graphs 1 & 2). Unemployed foreign miners either resort to undocumented migration for survival or to mining sub-contractors for whom they represent cheap, qualified and docile labour often on the most dangerous sites. What is quite striking is the specialisation of foreign miners depending on their origin, Basothos miners occupying better skilled positions whereas South Africans are in intermediate and younger Mozambicans in the lower, most risky ones. Throughout the period however, the South African mining sector has consistently reiterated its "freedom of choice" regarding labour supply often claiming it had some historical debt to the region and also pointing to South African Blacks' dislike for mine work. Despite clear strategies on the side of mine management to divide labour along ethnic and national lines and also intrinsic cleavages between better educated, urban, politicised South African miners and Malawian or Mozambican, rural, older, career miners, the striking feature of the 1990s was the decrease in miners' conflicts and the convergence of interests relayed by the National Union of Mineworkers and the Confederation of South African Trade Unions. The unions participated in the 1990s consultative process on migration policy and pushed for the adoption of a regional multilateral perspective on migration issues. The progressive opening of permanent residence to foreign labour after 1995 contributed to stabilising this labour in South Africa. But the younger generations, badly hit by large job losses in the 1990s—it has been estimated that 150 000 jobs were lost between 1991 and 1999 in the mining sector and 500 000 jobs in all sectors—, had no choice but to enter a new cycle of impermanence through sub-contracting, casualisation and undocumented migration.

### ***From 1986 to 1991: preparing tomorrow's transformation with yesterday's tools***

Paradoxically, a fundamental reform, in principle, occurred in 1986. An amendment to the Aliens Control Act of 1937 was voted thus deleting from the texts for the first time since the creation of this legislation the definition of 'European' from section 4(3)(b) of the Act. Adopted at a time when the country was plunged in the state of emergency at the heart of one of the harshest crises in the apartheid system, this amendment met national and international policy challenges. Removing the 'racial' criterion from the 1937 Act was meant to show tangible signs of

institutional transformation in the system but also to enable the influx of qualified yet cheap personnel from other African countries into the homelands. J.C.G. Botha, the then Minister of Home Affairs, insisted that “the Government has irrevocably committed itself to removing discriminatory and offensive measures from the Statute book”<sup>15</sup>. The 1986 amendment thus pertains to the series of measures aimed at proving the commitment of the Botha government to reforming the system. Until then, the immigration of non-Europeans, initially made impossible by the Aliens Control Act of 1937, was regulated by two pieces of legislation: the Black (Urban Areas) Consolidation Act of 1945 and the Black Labour Act of 1964. These acts strictly limited entry into the South African territory of Black foreigners to the temporary clauses provided for within the framework of bilateral labour agreements. Family reunification in particular was forbidden. The 1986 amendment fulfilled the need to rid the legislation of politically incorrect apartheid terminology but without fundamentally transforming existing policies: selective and qualified immigration and cheap migrant labour in the mining and agricultural sectors. As very clearly stated by J.C.G. Botha, immigration policy remained a selective policy aimed at “fulfilling the country’s labour needs [...] bearing in mind the needs and interests of South Africa”<sup>16</sup>. Finally, this amendment also intended to send signs of good will to the newly represented Indian electorate in the Tricameral Parliament: the Aliens Control Act amendment was voted simultaneously with the repeal of two acts restricting the immigration and settlement of Indians in the Orange Free State and Natal.

Criticised by the representatives of the Conservative Party as one of the “most dangerous Bills which had ever been introduced by the governing party”, the 1986 amendment had in actual fact very few consequences on the granting of permanent residence. Racial criteria continued to be applied not officially but in actual practice with the Immigrants Selection Board keeping its entire grip over the applicants’ selection process<sup>17</sup>. If an applicant no longer had to be European, he was still supposed to, “within a reasonable period of time after his entry into the Republic become assimilated with any community of the Republic”<sup>18</sup>. The level of qualifications and applicants’ financial resources became, after race, the major acceptability criteria for immigrants from then on.

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<sup>15</sup> J.C.G.Botha, in Republic of South Africa, 29 April 1986, *House of Assembly Debates*, Hansard, Vol.8, Cols 2333-4876, p.4429.

<sup>16</sup> *Ibid.*, p.4430.

<sup>17</sup> Interview with P.J.Colyn. Director-General of Home Affairs from 1989 to 1997, Strand, Western Cape Province, 16 November 2001.

<sup>18</sup> Republic of South Africa, 13 June 1986, Matters Concerning Admission to and Residence in the Republic Amendment Act No.53 of 1986, *Government Gazette*, Vol.252, No.10277, p.5.



The arrival of F.W. de Klerk to power in 1989, the end of the East-West bipolarity with the fall of the Berlin Wall and the decision to abandon the apartheid system and the regional destabilisation policy through negotiations, all these elements contributed to the adoption of a new immigration law in 1991. However, closer scrutiny reveals that here again, the 1991 legislation was meant to tackle domestic issues rather than to be a long-term management instrument for regional migrations. The particularly volatile situation of the early 1990s and the long isolation of South Africa from the rest of the continent then contributed to entrap immigration issues in an almost exclusively security logic, despite the post Cold War context.

That is precisely when the question of Mozambican refugees, that was to become one of the most thorny migration issues in the decade, came to the fore. While the number of Mozambican refugees, who were only tolerated in the homelands, kept on increasing, Pretoria opened up to the possibility of acknowledging refugee status through the signature of agreements with the United Nations High Commissioner for Refugees (UNHCR)<sup>19</sup>. This partial acknowledgement of refugee status stood as the beginning of a highly controversial voluntary repatriation programme for Mozambican refugees. Yet, almost simultaneously, a policy of systematic and massive forced repatriation was set up and would go from strength to strength throughout the following decade<sup>20</sup>.

The *1991 Aliens Control Act*, nicknamed ‘Apartheid’s last act’, became the cornerstone of South African immigration policy throughout the 1990s. Drafted in order to unify and simplify all previous immigration laws since 1937 as well as to mark a break away from the past, this Act, however, endorsed a fundamental paradox right from the advent of the 1994 democratic regime. In contradiction with the Interim Constitution and the 1996 Constitution in many respects, the 1991 Aliens Control Act was then declared unconstitutional and liable to constitutional review by 2002. This intrinsic contradiction played a great role in the decision to reform deeply immigration legislation with the official opening of a consultation process on the issue from 1996 onwards.

In the meantime, the *Aliens Control Act of 1991* survived twelve years into the post-apartheid period fulfilling the political and economic needs of the de Klerk, Mandela and Mbeki administrations. Yet, this law perpetuated a policing vision of immigration characterised by the

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<sup>19</sup> *Memorandum of Understanding* between South Africa and the UNHCR, 1991; *Basic Agreement*, UNHCR – South African Government, 6 September 1993; *Tripartite Agreement*, South Africa / Mozambique / UNHCR, 15 September 1993.

<sup>20</sup> Wa Kabwe-Segatti 2002, op.cit. see also figures and an update on the issue of repatriation and undocumented migration in Chapter 4.

suspicion against and the coercion of migrants. Its section 55 in particular established that “no court had any jurisdiction to review, quash, reverse, interdict or otherwise interfere with any proceeding, act, order or warrant of the Minister, a board, an immigration officer or a master of ship.”<sup>21</sup>. In the tradition of ‘pass laws’, undocumented migrants were deprived of even basic rights, their time in detention and the conditions of their deportation or repatriation beyond borders being almost entirely left to the discretion of immigration officers, the police or the army. The notion of ‘public order’ (section 47) in particular allowed for considerable restrictions to undocumented migrants’ fundamental constitutional rights. This was the situation faced by a majority of Mozambicans whose refugee status was not acknowledged in urban areas before the mid-1990s. Provisions for appeal in the 1991 Act were indeed very limited thus exposing a number of South African citizens, victims of racial prejudice entrenched in police practices, to arbitrary and often extremely precarious situations (arrest, detention, erroneous deportation, etc.). Finally, the 1991 Act did not modify the 1984 legislation which had denationalised citizens from the homelands: they indeed remained foreigners subject to immigration legislation on the territory of White South Africa until 1993<sup>22</sup>. As a matter of fact, thousands of them were deported every year between 1984 and 1993.

Overall, what can be said about the situation of immigration in South Africa when the ANC came to power in 1994? The gap between immigration and emigration had kept on decreasing since 1991<sup>23</sup>, the ratio becoming consistently negative as from 1994. In this context of sharp decrease in official permanent immigration, the proportion of African immigrants also decreased until 1992-1993 while the numbers of Asian immigrants sky-rocketed. The proportion between the three main sources (Africa, Europe and Asia) then stabilised<sup>24</sup>. Quite predictably, the restriction imposed on permanent residence led to an explosion in temporary entries that went from approximately 400 000 a year in 1988 to almost 700 000 in 1992<sup>25</sup>. This boom essentially benefited migrants from Africa, more specifically African students who represented up to 60% of foreign students enrolled at a South African university in 1996<sup>26</sup>. At the same time, renewals for temporary work permits constantly diminished between 1993 and 1995. Broadly speaking, there

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<sup>21</sup> Republic of South Africa, 27 June 1991, Aliens Control Act No.96 of 1991, *Statutes of the Republic of South Africa – Aliens and Citizens*, Section 55.

<sup>22</sup> Date of implementation of the Interim Constitution reintegrating homelands.

<sup>23</sup> 1991 is the last year for the granting of high subsidies to European immigration. In that year only, over 8 million Rand were directly spent on European immigration and support to organisations welcoming immigrants which resulted in a positive immigration-emigration ratio of over 10 000 people. Department of Home Affairs, 1992, *Annual Report 1991*, RP63, Republic of South Africa.

<sup>24</sup> Department of Home Affairs, 1995, *Annual Report 1994*, RP125, Republic of South Africa.

<sup>25</sup> Ibid.

<sup>26</sup> M.Ramphela, “Immigration and Education: International Students at South African Universities and Technikons”, *Migration Policy Series*, No.12, Cape Town / Queen’s, IDASA / SAMP.

were less permanent immigrants to South Africa, those permanent immigrants no longer being exclusively Europeans. The turn of the 1990s was also the time when increasing numbers of white collars and professionals from Africa and Asia reached South Africa. Unable to access permanent residence because of low economic financial resources (permanent residence fees were prohibitively high at the time), they progressively occupied employments deserted by the white minority, but only in a precarious way given their status in the migration system (temporary work permits).

The new regime that came into office in 1994 had to face a rapidly changing migrant situation with a legal instrument focused on a policing and coercive vision of migration management and little or none of the necessary political distance required to assess pressing issues such as increasing numbers of asylum seekers, brain drain and brain gain phenomena, skills' needs or the question of undocumented migrants' rights. Existing practices, administrations and institutions in charge of migration management and the legal apparatus available ensured the continuity of a national immigration policy awaiting redefinition.

### **The emergence of a democratic reformist movement (1991-2003)**

#### ***A general context conducive to change: migration and politics***

##### *Migration*

Post-apartheid international migration movements towards South Africa are characterised by three major demographic features that distinguish them from the situation in the late 1980s: the diversification of migrants' origins, younger migrants and feminisation. The great post-apartheid change is the massive influx of both permanent and temporary African and Asian migrants. Although European permanent immigrants continued to dominate in absolute terms until 1998, most migrants have since 2000 been coming from Africa, Asians and Europeans now sharing the rest of permanent residence permits (see Graph 3).

This is undoubtedly an unprecedented change in permanent migration to South Africa since the Union was established. As a matter of fact, Africans are for the first time the large majority of permanent residents in South Africa. If one looks at legal immigration through permanent residence permits over the period 1940-2004 (see Graph 4), what is quite striking is the constant negative ratio from 1994 onwards, a ratio that is certainly only underestimated as

definitive departures are not systematically reported<sup>27</sup>. Immigration and emigration to South Africa are clearly closely linked to the international and national political context. The five major emigration peaks over this period were: 1948-1952, arrival of the National Party and adoption of the foundational apartheid laws; 1961, departure from the Commonwealth and republican moment; 1976-1978, Soweto uprising and its aftermaths; 1985-1988: widespread civil unrest and state of emergency; 1994, first democratic elections. The three major immigration peaks or periods were: 1946-1950, post-World War II period; 1961-1985, White immigration policy; 1991: last substantial subsidies to White immigration just after the “2 February 1990” speech by F.W. de Klerk. The consequences of the 1986 opening are not immediately visible on African migrants whose numbers only increase significantly from 1992 onwards to reach approximately 50% of legal permanent residence permits today.

Besides this major transformation of permanent immigration to South Africa—which, however, remains limited in terms of demographics with only a total of 10 714 permanent resident permits delivered in 2004—all the other forms of residence (temporary work and study permits, business, asylum and undocumented) have increased in absolute figures and changed in nature. The duration and temporality of migration to South Africa has thus been considerably modified in the post-apartheid period. Whereas South African migration policy under apartheid was characterised by permanent White immigration and temporary Black migration, the post-apartheid policy has shown a clear tendency to favour temporary, short term migration, through legislation, policy documents and official discourses and limited permanent immigration increasingly for the African elite<sup>28</sup>. For instance, the number of temporary work, study and business permits has constantly increased since the end of apartheid as well as the number of tourist visa entries (for stays inferior to 90 days). The overall number of temporary permits and visas thus went from 3 to 9.9 millions between 1992 and 1999<sup>29</sup>. During the same period, permanent immigration permits went from 14 000 a year in 1990, to 4000 at the end of the 1990s to come back to 10 000 a year in 2004<sup>30</sup>. Temporary permits and visas are also increasingly granted to Africans. This tendency is confirmed by qualitative studies. Robert Mattes et al. have demonstrated in a 1999 study that the profile of qualified migrants and immigrants is revealing of a divide between those who settled in South Africa before 1991 and those who arrived since. This study indicates that out of a sample of 400 people interviewed, 73% of qualified European

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<sup>27</sup> For a discussion of migration statistics, see Appendices 1 & 2.

<sup>28</sup> For a detailed study of African elites in South Africa, see recent works by France Bourgoïn, 2006, “The Emergence and Success of Elite African Immigration to South Africa”, paper presented at the XVI World Congress of Sociology, Durban.

<sup>29</sup> Department of Home Affairs, *Annual Reports*, 1992-1999.

<sup>30</sup> Department of Home Affairs, *Annual Reports*, 1990-2004.

migrants arrived before 1991 whereas 87% of qualified African migrants outside SADC countries had arrived after that, with SADC migrants equally distributed in the two groups. The study also clearly shows that the current influx of qualified migrants essentially comes from the highly skilled population categories of various African countries (Nigeria, Democratic Republic of Congo, Kenya, Tanzania). The study further confirms this dichotomy in status and skills between migrants arrived before and after 1991. Thus, three quarters of the qualified migrants who entered South Africa before 1991 were permanent residents whereas a very large proportion of those arrived after 1991, essentially Africans, only held temporary permits<sup>31</sup>.

### *Politics*

When the ANC came to power after the April 1994 elections, a number of political analysts and migrant groups hoped for a more open immigration policy. They were confusing the advent of democracy and the change in regime with a change in core national interests, which of course did not occur. For some at the time, the democratisation of the country and the new “Black” Government were to bring the discriminatory apartheid immigration policy to an end. In a July 1994 newspaper article, an undocumented Zairean immigrant stated that he “believe[d] the new government [would] give more leeway to people who settle[d] [t]here illegally. We should be more welcome by a black government.”<sup>32</sup>. This kind of expectation was rather widespread at the time among NGOs, particularly among lawyers specialised in asylum claims, and business circles<sup>33</sup>. Chris Landsberg, from the Centre for Policy Studies (CPS), highlighted the moral imperative South Africa had set for itself and what it meant in terms of migrants’ treatment by the South African Government:

There is [also] a crucial moral imperative: the republic is riding a wave of moral legitimacy and it must navigate responses in line with its global standing; it can ill-afford to turn a blind eye to xenophobia and human rights abuses generally.<sup>34</sup>

The South African liberal press, when it discovered immigration legislation had remained unchanged since 1991, also expressed its surprise at this apartheid vestige and its contradictions with the Interim constitution<sup>35</sup>. Soon, academia, activists, the liberal press and NGO circles as well as some ANC politicians introduced the idea of a moral debt owed by South Africa to the

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<sup>31</sup> R. Mattes et al., 2000, “The Brain Gain : Skilled Migrants and Immigration Policy in Apartheid South Africa”, *Migration Policy Series*, No.20, Cape Town / Queen’s, IDASA / SAMP.

<sup>32</sup> Sibusiso Nxumalo, 1994, « The invisible fugitives for whom Joburg is paradise », *The Mail & Guardian*, 15 July.

<sup>33</sup> Interviews granted in 1999 and 2002 by Lee Ann de la Hunt, then working for the UCT Legal Clinic, Jacob van Garderen, Lawyers for Human Rights, Pretoria, Vincent Williams, IDASA & SAMP, Cape Town.

<sup>34</sup> Chris Landsberg, 1995, “Accepting the ‘Aliens’”, *West Africa*, 1-07/05, p.672.

<sup>35</sup> Eddie Koch, 1994, “The Pass Laws Keep on Prowling”, *The Mail & Guardian*, 15 July.

rest of the continent. An editorial from the *Mail & Guardian*, as early as September 1994, warned both Government and South African citizens that:

The response is taking on an increasingly racial and nationalistic tinge as some political groupings try and whip up xenophobia, presumably to set the ground for a ruthless clampdown.

There are good moral reasons to warn against such sentiments. After all, this country, with its previous policy of destabilisation, bears a good deal of responsibility for the economic chaos of our neighbours.<sup>36</sup>

It is in this context that the Institute for a Democratic South Africa (IDASA) initiated a fact-finding mission on trans-border migration in 1995 with, among others, the Chairpersons of the Parliamentary Portfolio Committees for Foreign and Home Affairs (respectively Raymond Suttner and Desmond Lockey), and of Minerals and Energy (Marcel Golding). Led by IDASA's director, Wilmot James (from IDASA), this mission concluded that regional solution should be found as South Africa could be considered responsible for the region's imbalances causing migration flows. He also declared:

In Mozambique, the morality of our actions became even more stark [sic]. South Africa played an integral part in the war that ravaged Mozambique's economy and its officials clearly believe South Africa has a moral responsibility in promoting development there. Unfortunately, that means maintaining the migrant labour system.<sup>37</sup>

The post-apartheid migration policy reform was thus initiated from December 1994 when the South African Department of Home Affairs decided to accept IDASA's invitation. Following this first report, the Department of Home Affairs and its minister, Mangosuthu Buthelezi, the leader of the Inkatha Freedom Party, the ANC's historical rival but ally in the Government of National Unity, decided in November 1996 to appoint a Task Team responsible for writing a Green Paper on International Migration. The consultative process which was thus initiated would take seven years to be finalised into new legislation and political vision<sup>38</sup>. This entire consultative process was to receive regular protracted media coverage and went through various complex episodes that created space for the various activist, business and scholarly interest groups to define their positions and assert their objectives on migration. However, in this area of public intervention as in a few others since the advent of democracy in South Africa (land and HIV/Aids being perhaps the most obvious cases in point), it is unsure how this consultative ritual impacted on the actual decision-making process and ongoing management of

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<sup>36</sup> Editorial "Take back your tired your poor huddled masses...", 1994, *The Mail & Guardian*, 23 September.

<sup>37</sup> Wilmot James quoted in Rehana Rossouw, 1995, "SA's 'moral duty' to migrants", *The Mail & Guardian*, 23 June.

<sup>38</sup> For a detailed chronology a immigration policy transformation in relation to other major political South African and international events, see Annex 3.



migration over ten years. The publication of the Green Paper was then followed by two White Papers, the White Paper on Refugees Affairs (1998) and the White Paper on International Migration (1999), a very confusing document trying to amalgamate a stance for stringent migration control and clear war on illegal migrants and mechanisms for a new and more open skills-based system. In the words of one analyst and actor of the process; “there is not a great deal of evidence that this particular consultative process has shaped the new legislation in significant ways”<sup>39</sup>. This is what the next part of this chapter will analyse.

***The redeployment of South African human rights activism and the emergence of a consultancy/academic market on international migration***

Compared with other African countries, South Africa presents the specificity of both a vibrant human rights and NGO community in general with a century long experience fighting discrimination and arbitrariness and a robust legal and constitutional apparatus, certainly one of the most advanced worldwide in terms of anti-discrimination and basic rights protection. The attachment to legal traditions goes much further back than the advent of democracy and was perhaps one of the most paradoxical features of South Africa’s racially and socio-economically divided society throughout the 20<sup>th</sup> century. In this context, with the advent of democracy and the re-opening of the country to the African continent and the rest of the world in 1994, South Africa found itself in a very specific situation as far as migration was concerned. Contrarily to other African countries, it had a much better State capacity to control its borders and manage migration internally even though this would prove rather illusory in the longer term. But it was also in a historical position, both domestically and internationally, where its moral commitment to democracy at home and in the region prevented its government from adopting a strictly anti-immigration stance. If one looks at South African immigration policy over the century, it is quite clear that each significant political turn went along with harsher immigration measures and in this sense, the 1994 regime change shows continuity with previous immigration policy. Peberdy has shown that the first impulse of each new government has been to redefine notions of belonging to and exclusion from the national community. Highly restrictionist and conservative discourses on migration control and management were thus adopted in 1910, 1948, 1963 and again after 1994<sup>40</sup>.

On the other hand, compared this time with Western countries, South Africa's actual capacity was limited and had close its proximity to migrant sending countries with largely porous land and sea borders. Whereas the ANC had not developed any specific position on recent immigration trends when it came to power in 1994, human rights activism especially with its experience in supporting homeland migrants against apartheid's Group Areas Act and Influx Control measures, shifted its interest to international migrants, victims of police abuse, and to refugees and asylum seekers caught in the nets of inconsistent migration policies as refugee specific legislation only came into effect in 2000. While South Africa was repealing apartheid legislation and definitively abandoned the homeland system with the adoption of the 1996 final Constitution, it also became signatory to all the international treaties on refugees and asylum seekers by 1994. This had a direct consequence on the redeployment of South African human rights activism and its involvement in the international migration debate that began in 1996 with the Green Paper process.

In the meantime, another group of actors, scholars and researchers working on migration, with many overlaps with the NGO group, emerged in the debate and played a prominent role in the consultative process as well as became closer to Government over the period considered. Interestingly, the space created by Government with the setting up of rounds of consultations from 1994 enabled the emergence and / or consolidation of several research structures and think tanks that not only produced data in a field characterised by a dearth of knowledge at the beginning of the 1990s but also largely shaped, in conjunction with other interest groups, namely business and trade unions, the various policy options elaborated in the 1990s and 2000s.

One of apartheid's legacy at the turn of the 1990s, and also something partly inherited from an ad hoc policy management in a period of vast political upheaval, was a dearth in both quantitative and qualitative data on migration. Scientific production on migration in the 1990s was characterised by three aspects. First, South African research had not devoted significant money and capacity to the issue for such a long time that it was essentially caught off-guard in 1993-1994 when the first bouts of xenophobia erupted. These factors left decision-makers largely devoid of actual updated knowledge on the migration situation apart from broad statistics on legal entries and annual forced repatriation and deportation figures. The first post-apartheid studies only emerged in 1996 and especially 1997-1998. Second, approaches to migration were very much influenced by past categorisations. Whereas economic migration from the rest of the sub-region and continent were becoming durable and should thus have been considered, if not

from a strictly legal point of view then from a sociological one, as permanent immigration, South African researchers carried on dealing with official categories, either looking at migration as a labour or as a security issue. South African studies of migration in the 1950s-1970s although uncritically adopting the divides of the official two-gate policy were essentially considering migration as a development tool. The late 1980s and 1990s context shows a clear shift towards an understanding of migration as a security threat and a strong focus on “illegal aliens”, perhaps partly reflecting in this the concerns of a dying and isolated regime. Third, South African research on migration in the mid-1990s was also characterised by scarce empirical data. Pro- and anti- immigration actors confronted each other resorting to anachronistic data and archetypical situations borrowed from other countries (the Mexican-American border, Europe) without any fact-based knowledge on the actual impact of immigration on South African society and economy.

One of the results of this was the predominance of State sources in the media and academic publications in the period 1994-1998/99. In a study of the South African press undertaken in 1996, Dolan and Reitzes underscore the bias in favour of official sources and the press’s lack of methodological distance. According to them, the three departments in charge of migration, Home Affairs, Security and Defense, were quoted more often than the totality of other sources. Immigrants themselves only represented 2% of quotes whereas researchers and specialists working on migration were simply never quoted<sup>41</sup>. As the legal challenge to immigration regulations and practices became more structured, the media began using newly published research data that started appearing after 1998 from the academia and NGO sector. This imbalance in favour of official sources would regress after that and more direct contacts between the press and research groups and NGOs became more regular in opposing systematic challenge to Government statements.

The ten-year period (1994-2004) that saw the wide consultative process and the votes of the new *Immigration Act* in 2002 and the *Immigration Amendment Act* in 2004 was certainly crucial in shaping positions and structuring networks on migration issues perhaps as never before in South African history and certainly as in very few other African countries. From the idea of in-depth transformation and rupture with the past that animated the IDASA group, the migration policy framework gradually moved towards a rather narrowly defined agenda limiting government’s

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<sup>41</sup> Chris Dolan & Maxine Reitzes, 1996, “The Insider Story? Press Coverage of Illegal Immigrants and Refugees”, *Research Report*, N°48, Johannesburg, Centre for Policy Studies, p.11.

action to incremental amendments and compromise. Three diverging routes were then followed by various clusters of actors (see Graph 5):

- first, a Home Affairs rather neo-liberal agenda, asserted as from 1994 by the Minister, favouring State withdrawal, the sub-contracting of administrative processing of control to employers, incentives to highly skilled labour and investors and accelerated policy reform simplifying administrative procedures;
- second, an interventionist approach in favour of balanced migration control, taking into account democratic commitments and State capacity for a flexible, reactive and transparent migration policy. This approach, shared by the NGO sector with multiple nuances, called for more profound policy transformation and a regional thrust;
- third, a security and sovereignty-centred agenda favoured both by the ANC and departments' bureaucratic strata, based on a narrowly-defined notion of national interest bearing many resemblances to previous positions.

The Minister's team of advisors, in particular Mario Ambrosini, first tried to speed up the policy transformation process by conducting a process of legislation-drafting in parallel to the consultative circuit. Having perceived the divide between the human rights/regionalist approach supported by the NGO sector and the ANC's more protectionist position, the Minister and his team tried to marginalise the NGO sector in order to allow its bill to make it to Parliament. However, the minister's minority position within the Government of National Unity and the new visibility created for NGOs through the consultative process eventually led to the Inkatha Bill being sidestepped. The ANC position, above the fray, consisted in letting Buthelezi take responsibility for the other side of his neo-liberal approach to migration, which was stringent control and systematic repatriation of undocumented migrants. However, when the ANC realised its government was about to adopt a piece of legislation that would not only continue to favour mining and farming interests but be less favourable to the protection of South African unskilled labour, it organised an eleventh-hour reaction that took the form of the patchwork 2002 Immigration Act, a last-minute law meant to "accommodate them all"<sup>42</sup>.

The wide 1990s consultative process was therefore not what eventually gave birth to the final legislation adopted in 2002 but it definitely shaped the policy options (see Table 6), fostered research initiatives from all sides in order to enrich the debate with empirical data and reorganised the policy framework in such a way that Government soon realised, at the expense of

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<sup>42</sup> Mpho Scott, Chair, Parliamentary Portfolio Commission for Home Affairs, 2002. *Hansard: House of Assembly Debates*, 4<sup>th</sup> Session, Cols 2313-2810, 14-17 May, p.2702.

Home Affairs in particular, that its every move on migration issues would be subject to close scrutiny by the legal, human rights and more recently the immigrant and refugee coalition. This led to a number of major changes considered as breakthroughs by these groups.

### ***The reformists' breakthroughs and their impact on the new migration agenda***

After twelve years of public debate on migration and despite new legislation on both refugees and migration, some analysts still consider little was achieved to transform the apartheid migration management model into a more relevant post-apartheid ethically sound and efficient system<sup>43</sup>. Yet, the situation of foreigners in 2006 South Africa is different from what it was in 1994 in at least three respects: refugee matters, public accountability and due process of migration policy, and an official condemnation of xenophobia. In addition to that, of course, the main difference between pre- and post-apartheid immigration policy has been the abandonment of racist selection criteria, although this had already been made possible by the 1986 Amendment to the Aliens Control Act.

The refugee area was certainly the one area where immediate progress occurred as it took only one year after the publication of the *Green Paper on International Migration* (1997) for new legislation incorporating the standards of international conventions to be adopted. The *Refugee Act* was adopted in 1998 and came into effect in 2000. South Africa clearly had to honour its obligations as a signatory of international conventions and with growing instability in the Horn and in the Great Lakes regions, it was facing unprecedented arrivals of asylum seekers. Despite widely acclaimed progress in terms of refugees' protection<sup>44</sup>, the 1998 *Refugee Act* and the discussion it gave rise to illustrate the confrontation between two discourses: that of international human rights law and that of the sovereign State supported by the Department of Home Affairs and Cabinet. Unsurprisingly, the Department tried to implement the most regressive parts of the Act and to amend it so as to make it more restrictive. Each time, the human rights groups fought back in the courts and have so far succeeded in preventing major amendments to the Act including the adoption of the camp solution or the contestation of third country applications. Yet, despite legal progress in favour of refugees, the Department of Home Affairs clearly lacks the capacity to honour its commitment to refugee protection as indicated by the existing backlog in asylum seekers' applications. It was thus estimated that approximately 140 000 applications were

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<sup>43</sup> J.Crush, 2001, "Introduction to Special Issue ...", op.cit.

<sup>44</sup> Jeff Handmaker, Lee Ann De La Hunt & Jonathan Klaaren Eds., 2001, *Perspectives on Refugee Protection in South Africa*, Pretoria, Lawyers for Human Rights.

pending at the end of 2005 and the Department of Home Affairs admitted in April 2006 that it was behind with the processing of 103 410 cases at national level, while also admitting that the figures of the Johannesburg office were unavailable and the archives of various reception centres had sometimes been lost over six-month periods<sup>45</sup>.

Another major difference in immigration policy-making and management since 1994 is the transformation of immigration into an issue pertaining to the public domain. This in itself is no guarantee that discretionary measures are not taken by the different government departments in charge. However, compared to the pre-1994 situation, the space created for public accountability and, above all, the way in which NGOs, academics and the private sector have seized this opportunity in order to exert their right to comment or even oppose government have given a totally new twist to immigration policy. The activation of a consultative process has in fact triggered accountability phenomena that probably neither the then Minister of Home Affairs, Mangosuthu Buthelezi, or the newly elected governing party, the ANC, even suspected at the time. The redeployment of the human rights NGO sector, the wide media coverage received by immigration issues<sup>46</sup>, the *Immigration Act* legislation process itself and its media coverage and the multiplicity of actors and interest groups have transformed an issue which used to be a rather confidential one into both a much wider societal topic and a truly multi-sector policy. What used to be discussions restricted to civil servants from Home Affairs, the South African Police, MPs in charge of this portfolio and the mining sector, has become a topic widely debated in the public arena and across government departments. The Interdepartmental commission appointed in 1999 is an example of that, even if its efficiency and actual capacity to coordinate government action and counterbalance the still predominant weight of Home Affairs remains to be proven.

A second major breakthrough is certainly the recourse to the Constitution as a bulwark against a return of discretionary, authoritarian and abusive practices both at policy-making and management levels. Because the 1991 *Aliens Control Act* and 1995 *Aliens Amendment Control Act* governed immigration in actual fact throughout the 1990s, constitutionality checks rapidly became the only way for the NGO sector to ensure compliance with the Constitution and migrants' protection from various sources of abuse, whether originating in the State or in civil society.

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<sup>45</sup> Busisiwe Mkhewebane-Tshehla, Director for refugees, South African Home Affairs Department, Mercury press agency, 24-11-2005.

<sup>46</sup> The media coverage of immigration issues in South Africa remains problematic in terms of methodologies (uncritical use of statistics, stereotyping of categories of migrants, bias in favour of official sources). However, each stage of the policy-making process has been covered extensively and investigations have even enabled human rights NGOs to prevent abusive treatments such as illegal deportations. The financial press (the *Financial Mail* and *Business Day* in particular) is also regularly denouncing the Department of Home Affairs mishandling of company and investors permits.



Constitutionalism enabled the NGO sector to protect the breakthroughs obtained in the field of refugees and asylum seekers' legislation in the face of repeated attempts from the South African government to restrict access to asylum and harden the conditions of stay in South Africa. Since 1998 when the South African *Refugees Act* was voted to this day, South African courts have condemned the Department of Home Affairs on:

- asylum seekers' and undocumented migrants' detention for long periods without judgement;
- the refoulement and deportation of refugees and asylum seekers towards countries where they are at risk of being persecuted and the restriction of freedom of movement (which corresponded to an attempt at creating camps);
- the reassessment of refugee status every second year;
- the contestation of third country asylum applications.<sup>47</sup>

The fact that the Department of Home Affairs spent its litigation budget almost completely every year between March and July in the post-1998 period clearly showed that Home Affairs was not only ill-equipped both legally and strategically to manage asylum but also, that it now had to face a well-organised, far-reaching network of human rights and asylum seekers' activists.

The situation of immigration was radically different from that of asylum. The wider protection of asylum seekers and refugees was obtained essentially thanks to a transformed policy framework characterised by international conventions, a strong NGO involvement in the policy-making process, the fact that government because it was lacking international human rights expertise had no option but to work closely with NGO experts as well as the relatively simple administration of asylum cases compared to the immense variety of migration situations and their volume. As far as immigration was concerned, not only did the policy-making and legislative process stall for almost eight years, but the real changes in immigration policy were much more difficult to channel thanks to constitutional checks. The 1996 Constitution, and its Bill of Rights in particular, encompassed not only citizens' but all persons' fundamental rights, be they legal or undocumented migrants. The type of rights foreigners can aspire to in South Africa is however potentially limited by Section 36 of the Constitution which is the limitation clause. It enables the State to distinguish between different categories of rights and only grant some to different categories of people without breaching the Constitution. In addition, most non fundamental rights are conditioned to State capacity to deliver. One interesting jurisprudence case, *Larbi-Odam v. MEC for Education (North West Province)* which went to the Constitutional Court in 1997, resulted

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<sup>47</sup> Jeff Handmaker, Lee Ann De La Hunt & Jonathan Klaaren Eds., 2001, *op.cit.*

in the Court condemning the MEC for refusing to grant a job on the ground of nationality whereas a work permit had been delivered legally to the plaintiff. To sum up a complex situation, legal and illegal foreigners in South Africa benefit in theory from the protection of a range of fundamental human rights by the Constitution. In addition, non discriminatory access to the South African labour market is also guaranteed for legal migrants thanks to jurisprudence and the amended *Immigration Act* of 2002. However, the reality of foreigners' situation in the country is that they remain victims of multiple abuses, both of fundamental human rights and discrimination. Constitutional protection only plays a role against the potential abuse enshrined in current and future legislation provided it is activated by resorting to a jurisdiction. This means clearly that only the minority of those most publicised or wealthiest plaintiffs will be able to claim protection on constitutional grounds. African foreigners in particular are often deprived of any such support network and in a system essentially relying on jurisprudence, they remain at the mercy of xenophobic attitudes and discriminatory practices from public services in general<sup>48</sup>. The post-1994 context is therefore a combination of constitutional guarantees resulting from the broader political transformation and persistent NGO interventionism producing a solid jurisprudence reference framework yet reserved to a limited number of migrants except for a few decisions on asylum applying to larger numbers.

Finally, looking back over the last twelve years, it is possible to say that officials' positions on xenophobia and generally on foreigners' abuse have transformed substantially. The transformation referred to here has to do with a passage from repeated xenophobic (particularly anti-African) statements from high-profile government officials in charge of immigration (both ANC and IFP) to a public campaign (the Roll Back Xenophobia Campaign launched in 1998) orchestrated by parastatal agencies (National Consortium on Refugee Affairs and the South African Human Rights Commission) supported by the Presidency and many among ANC and IFP. These developments mark a move from uncontrolled public speeches by government officials conveying stereotyped perceptions of foreigners and African foreigners in particular to a much more politically correct treatment of foreigners and a clear condemnation of xenophobia from the highest authorities. One should perhaps insist here on the distinction between intents and results. Assessing the actual impact of this campaign and of official condemnations of everyday instances of xenophobia is difficult but quite clearly, the South African government has perceived the need to regain control over the official discourse on immigration and immigrants in

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<sup>48</sup> For a specific discussion of undocumented foreigners' rights in the post-1994 South African constitutional context, see Xavier Philippe, 1999, "Les droits et les libertés des étrangers en situation irrégulière en Afrique du Sud", Université du Western Cape, Department of Law, unpublished version.

South Africa in a way that would shelter it from NGOs and media attacks both domestically and internationally. This in itself has not prevented regular attacks on foreigners in most South African cities like the killings of Somalis in Cape Town in 2006 or of Zimbabweans in Pretoria in 2005 (see next chapter). Yet, this limitation imposed from above has prevented immigration from becoming too easily a scapegoating phenomenon subject to recuperation by local politicians. A survey among local councillors in Johannesburg's immigrant neighbourhoods has revealed the impact of presidential statements on local speeches. Caught between political correctness and strong stereotypes, one ANC councillor would come with a rather contradictory speech:

I don't want to say foreigners or what, you know, but people who are from one area behave differently from people who come from elsewhere. We are brought and taught differently. [...] Yes, there are foreigners but you know we have a belief that when you're an African in Africa, you're not a foreigner, it's when you get out of Africa.

In the same sentence, he would confirm that although in disagreement with ANC immigration policy, he respects the party's guidelines on the issue and sticks to the panafrican line:

The ANC is the ruling party. In fact it's the government of South Africa. Whatever happens it will be pinned onto the ANC so they've got to play their cards right. And some of these people [foreigners], they were the ones accommodating the ANC when it was outside the country. [...] I as a person I am not very happy [with immigration policy]. It is not as tight as it used to be, we are a very lenient and accommodating country.<sup>49</sup>

Yet, despite being broadly negative on the current immigration policy, on the issue of foreigners' access to community services, this councillor was clear that they should have the same access as others. Another Johannesburg ANC councillor from a crime-ridden immigrant neighbourhood would state "We cannot just say that illegal immigrants or refugees are responsible for crime, we must come up with facts. We must acknowledge their presence"<sup>50</sup>. These excerpts show that despite deeply entrenched prejudice against African foreigners living in their wards, these councillors have moved from a situation where they would speak against foreigners in public fora to a situation where they are aware of the ANC's official line on immigration, have incorporated the pan-African stance, and although possibly in disagreement with government policy which

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<sup>49</sup> IFAS – FMSP (Wits Univ.) survey on local councillors in Johannesburg's inner city wards, August 2006, interview with local councillor A. Unpublished.

<sup>50</sup> Op.cit., interview with local councillor C.

they might judge too lenient, have acknowledged the durable presence of these people from the rest of the continent and the fact that whatever their status is in South Africa, they are, like South African citizens, entitled to basic human rights.

The 1998 Roll Back Xenophobia campaign and regular protests and statements by NGOs did create some form of self-consciousness that has since triggered down to the local level of government. Neither the ANC nor opposition parties have recently come up with openly xenophobic statements and each comment on any immigration-related issue is now carefully prepared. Yet, neither the breakthroughs in refugee legislation, nor constitution-based jurisprudence, or anti-xenophobia campaigns have really transformed the deeply rooted structural characteristics of immigration management in post-apartheid South Africa. The reformist circles found their expectations crushed by the challenge posed by institutionalized and reactionary interests to which we shall now turn.

### **The challenge of overcoming institutionalized and reactionary interests (1994-2006)**

The 1994-2006 period in South African history is without doubt a period of intense public policy-making in all areas of State intervention: access to housing and basic amenities, land reform, local government, economic policy, education, health, crime, etc... The institutional and constitutional overhaul that began in 1993 and the increasing power granted to the ANC, election after election (from 62 to 70% in Parliament), created the conditions for what Keeler called a “macro-window” of opportunities for innovation in public policy<sup>51</sup>. However, as Booysen and Erasmus write, the uncertainty of the beginning of the 1990s after receding around the first democratic elections, reappeared in the late 1990s:

Policy debates were increasingly polarized regarding the extent of direct state engagement in reconstruction vis-à-vis the state as mere facilitator of conditions conducive to social transformation.<sup>52</sup>

In addition to that, four different dimensions impacting on policy-making in the post-apartheid period have been identified by analysts:

1. the tension between former and new civil servants, between the technical experience of the former and the innovation and idealism of the latter;

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<sup>51</sup> J.T.S. Keeler, 1993, “Opening the window for reform: mandates, crises, and extraordinary policy-making”, *Comparative Political Studies*, Vol.25 (4), p.433-486.

<sup>52</sup> Susan Booysen & Erwin Erasmus, “Chapter 8. Public policy-making”, in Albert Venter (Ed.), 2001, *Government and Politics in the new South Africa*, 2<sup>nd</sup> edition, Pretoria, Van Schaik Publishers, p.242.

2. the sometimes difficult dichotomy between two reference frameworks, that of the Constitution and that of community fora;
3. the nation-building process vs. historical and socio-economic divides;
4. the limited position of South Africa in the global economy<sup>53</sup>.

The field of immigration policy was equally affected by these general trends. Among the most specific constraints surrounding it, one can cite domestic and international economic imperatives, budgetary deficits inherited from the previous governments, a strong inter-departmental rivalry and difficulties in making existing bureaucracies, often in conflict with the new political leaders, accept changes and an ambiguous tension within the Government of National Unity between the ANC Presidency and the Inkatha Minister of Home Affairs. Two elements in particular seem to have aggravated the narrowing of transformation opportunities perhaps more than in other areas of public policy: one is the visible difficulty with which the ANC came to define a durable position and plan of action on the issue both internally and officially, the other is the autonomy of institutional practices and its impact on policy-making.

### ***The slow emergence of an ANC position and the explanation of an eight-year impasse***

Little is actually known about policy-making processes within the ANC to date. The party's tradition of secrecy and extremely tight internal discipline have not helped produce much data on its internal mechanisms despite the fact that given the ANC's ultra-hegemonic position, the great majority of political changes is directly geared from within the party and not as outsiders might imagine from the new consultative and legislative institutional framework. This is all the more important as three elements at least have clearly contributed to a shift towards greater centralisation of power after the 1999 elections: first, the ANC's absolute majority with 70% seats in Parliament has given government all powers including that of changing the Constitution (although it has never used it so far); Mbeki's personal style of power and finally, the disappointing failure of the Provincial system. Tito Mboweni, an important ANC figure and the Governor of the South African Reserve Bank, once underscored the complexity and importance of internal ANC policy-making as well as its current centralisation tendency:

[t]he policy-making process in the ANC has a number of layers ... the constitutional structures; the policy departments; the positions of the allies of the ANC (in particular COSATU); the experiences of developing countries; the lobbying efforts of capital, the media, Western governments, and independent commentators ; and policy research work

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<sup>53</sup> Simon Bekker, 1996, "The policy-making predicament", *Indicator South Africa*, Vol.13 (4), p.17-20.

of the IMF and World Bank. [...] Parliament thinks it can make policy on behalf of people. This is not so. [Parliament's] role is to implement ANC policy.<sup>54</sup>

In the case of immigration, this process proved particularly cumbersome. In the words of one researcher involved in the process:

To argue that the new government has been actively hostile to immigration would be an overstatement. Benign indifference would be a better description. There is little evidence that the ruling African National Congress (ANC) saw any role for immigration in its social and economic transformation plans. Even the growing acceptance of neo-liberal economic doctrine and the scurry for foreign capital did not produce any shift in thinking about the potential value of immigration. Only in 2001, in response to perceptions of a massive brain drain and the entreaties of the private sector, has the ANC suddenly declared a new policy direction, an aggressive international hunt for skilled immigrants.<sup>55</sup>

Yet, in 2006, this “aggressive international hunt for skilled immigrants” remains very discreet and other areas of immigration have not been radically transformed so that even government’s neo-liberal conversion is not completely obvious as far as immigration is concerned.

Both the Reconstruction and Development Programme (RDP) and the Growth, Employment And Redistribution (GEAR) were very silent on migration in general but could lead one to think that the new policy framework would call for a transformation of a policy inherited from the imbalances of apartheid’s economic and racial policy. The 1996 Presidential Commission to investigate Labour Market Policy in a way heightened these expectations as it gave clear indications of directions to be followed to reform the South African immigration system<sup>56</sup>. The emergence of immigration as a structured policy issue within the ANC only occurred in the late 1997. Prior to that, there is no evidence of any specific internal study group among the party’s National Executive Committee and its sub-sections. Although no document can attest to it, different observers refer to the emergence of a more formal discussion of immigration after 1997 with both the creation of the Policy Coordination and Advisory Services (PCAS) and a study group on the topic within the ANC parliamentary group. However, none of these structures has published any public reference document to date. Very few public statements were made over this twelve-year period by ANC officials. The occasions were limited to official events: the vote of the 1995 Amendment to the *Aliens Control Act of 1991*; the ANC National conference of 1995, 1997 and 2002, a press conference celebrating the first four years of

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<sup>54</sup> Tito Mboweni, 1994, “Formulating policy for a democratic South Africa: some observations”, *Ids Bulletin*, Vol.25(1), January, p.69.

<sup>55</sup> Jonathan Crush, 2001, *Africa today*, op.cit.

<sup>56</sup> Department of Labour, 1996, *Restructuring the South African Labour Market: Report of the Presidential Commission to Investigate Labour Market Policy*, Cape Town, Government Printer.



governance by the ANC in 1998, the vote of the 1998 *Refugees Act* and of the 2002 *Immigration Act*. In a few cases though, members of the party will issue comments outside official channels, as for instance after the 2001 lynching of African immigrants on a Pretoria train or in August 2001, in the ANC publication, *ANC Today*, where Thabo Mbeki expressed his opinion on xenophobia after the Pretoria train episode.

The analysis of available official comments reveals a timid although increasingly consistent political line over time but also dissenting voices from within the party. Between 1997 and 2004, the position of the ANC consisted in distancing itself as much as possible from that of the Home Affairs minister. When it came to power in 1994, the ANC was totally divided on the issue, some of its members and rank-and-file often using the ambient xenophobic terminology, favouring the reinforcement of control, more stringent measures to access the South African territory and the curtailment of both permanent and temporary permits. In 1995, during the parliamentary discussion of the *Amendment Act*, two trends emerged. Robert Davies, ANC economist in exile in Mozambique and Chairperson of the Parliamentary Portfolio on Foreign Affairs since 1994, expressed a clear criticism of Home Affairs policy. Davies' position consisted in highlighting the prominent role played by immigration on the Foreign Affairs agenda by reminding Parliament of ANC official position on immigration as expressed during the 1995 ANC National Conference:

- recognition of the historical role played by South Africa in the creation of the causes of immigration hence a need for a discussion on South Africa's new regional role;
- the need to distinguish between different categories of irregular migrants by acknowledging the responsibility of the previous regime's discriminatory policy in creating this irregularity;
- the necessity to take into account the repercussions of any decision taken by South Africa on its neighbours.

Davies openly criticised the debate on migration on two grounds: first, the excessively unilateral vision of South Africa and second, the neglect of long term solutions to favour actions based on control<sup>57</sup>. As opposed to this, Penuell Maduna, the then ANC deputy-minister of Home Affairs defended the following points:

- the condemnation of xenophobia;

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<sup>57</sup> Robert Davies, 1995, , Vol.5, Cols 1104-1478, Proceedings of Extended Public Committee, Appropriation Bill, Debate on Vote No.16, 18/05, p.1476.

- legal immigration as a source of income for the country;
- concern for national interest at the economic, social and security levels;
- respect for undocumented migrants' constitutional rights;
- the need to align the Aliens Control Act on constitutional demands before a more comprehensive reform<sup>58</sup>.

If concessions were made to the 1995 ANC Congress resolutions, by and large, Maduna reflected the security concerns that prevailed at the time.

In 1997, at the next ANC Congress, the regional and historical dimensions were abandoned in favour of two specific themes: asylum policy and undocumented migration. The role of legal immigration in general in post-apartheid socio-economic transformation was completely absent. The final document insisted on the considerable pressure placed on certain sectors of the South African economy by “illegal immigration from the rest of the continent”. According to the document, it was the “competition for scarce resources” deriving from this pressure that caused xenophobia. Although long term strategies were alluded to, the fight against illegal immigration was identified as a priority with the following resolutions:

- tightening of border security;
- improved cooperation between the Departments of Home Affairs and Security;
- the fight against corruption within the Department of Home Affairs<sup>59</sup>.

Despite a dearth of data on the actual socio-economic impact of undocumented migration on the South African economy, the ANC clearly considered that it was by and large negative and the kind of interdepartmental cooperation proposed, excluding Foreign Affairs, Labour and others, reflected the predominantly securitarian approach that never ceased to prevail since the previous regime. In 1998, a press conference given by Lindiwe Sisulu, the next ANC deputy-minister for Home Affairs, confirmed this trend. The adoption of a clearer position on asylum with the vote of the *Refugees Act* was then used as a justification for harsher policy on undocumented migration and a refocus on security dimensions justified by the relation between immigration and crime. Sisulu thus explained that:

[T]he refugee policy is premised upon two sets of inter-related threshold considerations. On the one hand, the policy is constructed so as to reflect but also to enable the fulfilment of the international and constitutional obligations, and on the other hand, it touches upon a number of other directly and indirectly state and national interests and

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<sup>58</sup> Penuell Maduna, 1995, *Hansard: House of Assembly Debates*, Vol.6, Cols 4225-4242, Proceedings of Extended Public Committee, Aliens Control Amendment Bill, Second Reading Debate, 13/09, p.4225-4239.

<sup>59</sup> African National Congress, 1997, *50<sup>th</sup> National Conference*, Johannesburg, ANC, December, p.56-57.

priorities. [...] It does not consider refugee protection to be the door for those persons who wish to enter South Africa by the expectation for opportunities for a better life or brighter future. [...] The most important priorities of these concern the migration control objectives, law and order, concerns over gun-running, drug trafficking and racketeering, money laundering and international crime syndicates, and cartels, various other aspects of national and state security, social and economic interests, as well as bilateral, regional and international relations.<sup>60</sup>

The 2002 ANC Congress was even briefer on immigration than the previous one. Only two resolutions were adopted, in an attempt to reconcile the two tendencies:

1. The ANC and government revisit and deal with necessary amendments of the Immigration Act, which must include measures to deal firmly with illegal immigration.
2. We remain committed to accelerate the economic growth of countries in Africa, within the framework of NEPAD as the economic prosperity of these countries will contribute to the reduction of the number of so-called economic refugees.<sup>61</sup>

These various quotes reflect the difficulty for the party in power to find a consistent position between its two historical trends, that of the National Democratic Struggle on the one hand and that of the Black Consciousness Movement and its pan-Africanist stance on the other. The period 1994-2001 was emblematic of this difficulty to homogenize its public discourse while part of its constituency, rank-and-files and elites shared xenophobic ideas.

In 2001, for the first time, President Mbeki, first in regard to the lynching referred to previously and then subsequently in the following years in interviews and publications, began voicing a more pro-active vision of immigration policy, based on an anti-xenophobia stance, clear recognition of South Africa's needs for skilled immigrants, regional challenges and the respect of international conventions. Yet, despite a rich and complex approach to immigration developed since in numerous other articles by Mbeki himself or other ANC officials<sup>62</sup>, the ANC appears to remain stuck in a double contradictory dialectic: that of immigrants vs. national interest on the one hand, and that of xenophobia and racism vs. African Renaissance on the other. ANC discourse on immigration today is split between the domestic and the international.

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<sup>60</sup> Lindiwe Nonceba Sisulu, 1998, ANC Press Conference "Media Summit on Four Years of ANC Governance", 19/08, ><http://www.home-affairs.gov.za/speech98/0W86098.820>

<sup>61</sup> African National Congress, 2002, *Resolutions adopted by the 51<sup>st</sup> National Conference of the African National Congress*, Stellenbosch, ><http://www.anc.org.za/documents>

<sup>62</sup> Thabo Mbeki, 2001, "Xenophobia: Intolerance towards fellow Africans must be tackled", *ANC Today*, 24-30 August, Vol.1, No. 31; Thabo Mbeki, 2005, "Is there anybody there?", *ANC Today*, Vol.5, No. 40, 7 - 13 October; Malusi Gigaba, Deputy-Minister of Home Affairs, 2006, "Skills and Development: Time to Pursue a South African 'Brain Gain'", *ANC Today*, Vol.6, No. 14, 14—20 April; Malusi Gigaba, Deputy-Minister of Home Affairs, 2006, "Migration: Blame Crime on Criminals, not Foreigners!", *ANC Today*, Volume 6, No. 26 • 7—13 July.

Domestically, the end of the policy impasse, that was largely due to the Inkatha / ANC confrontation, has given rise to speeches recognizing the skills shortage, condemning xenophobia, looking positively at the diaspora and committing government to migrants' rights protection. Internationally and regionally in particular, Mbeki's speeches have emphasized an African exception on the issue of undocumented immigration. The major symbolic change introduced by Mbeki's 2001 article consisted in refusing the so far widely accepted hypothesis of the socio-economic costs associated with immigration:

[...] as South Africa proceeds to extend public goods and services to the once-excluded majority; and reallocate scarce resources, unfounded perceptions of the additional burden created by migrants, especially from sub-Saharan Africa, have contributed to friction and in some cases xenophobia.

Not only did Mbeki refuse the association, but interestingly he also indicated in this article that the presence of sub-Saharan immigrants was not contradictory with the social transformation of South African society. Continuing with a clear condemnation of xenophobia, the document then states the specificity of African undocumented migrants in South Africa as another legacy of the apartheid system:

Among them [economic refugees] would be people who would have wanted to make the trek to South Africa a long time ago but were prevented from doing so by apartheid. In fact, Africans from the continent, whether they were political or not, became, immediately they set foot in the country, victims of apartheid and the oppressive laws that dehumanized all black people. [...] The ANC will work to ensure that its structures are equipped to assist immigrants to legalise their stay in South Africa.<sup>63</sup>

This idea of a historically constructed specificity of African migration, coupled with contemporary economic imbalances, was reiterated in 2006 in another *ANC Today* article following the Ceuta and Melilla incidents. In this more recent text, Mbeki unravels a refined analysis showing a global understanding of the issue in a very moving and lyrical style that enables him to establish a parallel between English poet T.S. Eliot's poem "To Walter de la Mare" and the current situation of 'global apartheid'. Mbeki, in this article, concludes that:

The poor will not ride away as did Walter de la Mare's Traveller. The deprived of Africa and the world will not cower like dogs or flutter like bats, when confronted by the prospect of the witches' sabbath of the maiden aunts. They will hammer upon the doors of the rich, including the European rich, for a third, a fourth... time.

Despite the physical barriers, the two worlds of wealthy Europe and poor Africa will continue to meet, and intersect, and change. As they traverse the world, obliged by hunger to cross forbidding deserts and menacing seas, to reach the imagined world of plenty, the

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<sup>63</sup> Thabo Mbeki, 2001, "Xenophobia: Intolerance towards fellow Africans must be tackled", op.cit.

itinerant poor, more numerous than ever before, will continue to knock on the moonlit doors calling out -"Is there anybody there?"<sup>64</sup>

Beyond the lyricism of this text, what is interesting here is that the two articles (2001 and 2006) confirm two major moves in ANC immigration policy: first, the reintegration of immigration within the broader ANC political line thanks to two specific ideological inputs, that of African Renaissance on the one hand and that of a neo-marxist analysis of the world economy on the other; second, the gap between elite and rank-and-file ANC members on the issue seems to be widening. Indeed, the President's analysis of immigration issues hinges on a global understanding of both cultural and socio-economic phenomena that is probably very remote from what preoccupies the majority of ANC supporters, not to mention South Africans in general. In addition to this, Mbeki's analysis of immigration in the 2001-2006 period also reflects the contradictions at play more broadly within the ANC, including the Presidency, on political economic issues. These contradictions contrast a neo-liberal turn in 1996 confirmed for instance with the conversion of the ANC to a skills-based approach with an analysis of immigration as a global reflection of socio-economic imbalances produced by the excesses of the capitalist system. In a way, this confirms that the ANC is clearly confronted with the tensions shared by most social-democrat governments caught between the acceptance of market rules that include the free circulation of labour and the consequences of South Africa's limited weight in the global economy. Yet, as opposed to Western social-democrat regimes, South Africa, as an African state, faces up to a more complex situation in which elites often seem very remote from perceptions of migration on the ground, especially in an urban environment as rapidly changing as post-apartheid South African cities. One last aspect to be envisaged here is that of actual policy implementation on the ground.

***The resilience of apartheid policy, policing and administrative structures (1994-2003) and the uncertainties of the new context (2004-2006)***

Three elements have characterised post-apartheid immigration policy implementation: the persistence of coercive practices, the hardening of entry and control as well as of access to South African citizenship, and finally the failure to transform the Department of Home Affairs and other public services in charge of immigrants.

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<sup>64</sup> Thabo Mbeki, 2005, "Is there anybody there?", op.cit.

*Towards harder entry and control ...*

The constitutional problems raised by the 1991 text triggered a first legislative reform in the form of an amendment: the *Aliens Control Amendment Act* voted shortly after the ANC took office in 1995. Section 55 of the 1991 Act, problematic for the lack of appeal procedures it offered, was deleted in the 1995 text and the protection of certain fundamental constitutional rights introduced (section 54(6) on dignity, freedom, the security of persons and the right to private property). Yet, by and large, the 1995 amendment was meant to confirm the political hardening of immigration initiated in 1991. A protectionist approach to employment and subsidised education, selection according to qualifications and the amplification of measures against undocumented migrants and, therefore, the domestic monitoring of foreigners, became the overall objectives of the Department of Home Affairs headed by the newly appointed Mangosuthu Buthelezi, leader of the Inkatha Freedom Party (IFP) and member of the Government of National Unity.

One of the main changes introduced in the 1995 text was the interdiction to change the purpose of stay once already inside the country<sup>65</sup>. The second objective of the 1995 amendment was to cut down the Department's expenditures, particularly on forced repatriation. To this end, the use of deposits for visas and the repossession of undocumented foreigners' belongings were systematised in order to fund forced repatriation. Visa prices were raised. Thirdly, detention procedures were modified. Time spent in detention without trial of persons suspected of being "prohibited" that is undocumented migrants, was increased to 48 hours renewable up to thirty days and then 90 days without judgement<sup>66</sup>. Yet, two sectors remained unchanged through the possibility for exemptions: the mining and agricultural sectors whose contract labourers were still exempt from general legislation as their periods of contract were not even considered as temporary work. As a result, this category of workers could never apply for permanent residence. This situation was denounced by unions and human rights organisations which resulted in contract periods being taken into consideration in applications for permanent resident status as from 1996 onwards.

Passed almost one year after ANC victory, the 1995 amendment can be considered as a rather clear indication of continuity and consolidation of the same selective immigration policy. In parallel to this consolidation process, three rather cumbersome amnesties — the last one was

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<sup>65</sup> Section 30(2)(e), *Aliens Control Amendment Act* No.76 of 1995.

<sup>66</sup> Section 55(5), *op.cit.*



only set up in 2002 — for undocumented migrants were implemented from 1996 to 2002<sup>67</sup>. Mainly addressing the situation of citizens from neighbouring countries, i.e. migrant workers and ex-Mozambicans refugees, these measures were designed as evidence of South African good will within the wider framework of its incorporation into the South African Development Community (SADC). Similarly, the consolidation of refugees and asylum seekers regulation regime along with ensuing collaboration between the Department of Home Affairs and the UNHCR which resulted in an upsurge in asylum applications as from 1995, were also indications of Pretoria's commitment to sharing Africa's wider preoccupations.

In many other fields, the hardening initiated since 1991 was pursued and the legacy of negative stereotypes targeting African migrants in particular was obvious through a number of elements: police practices resorting to serious human rights abuses<sup>68</sup>, xenophobic and overtly hostile demonstrations against foreigners from representatives of various grass-root organisations, demagogic xenophobic speeches from political leaders, broadly unbalanced security discourses calling for more coercive measures from immigration officials. These typical features were characteristic of migration management during the period 1994-2003. The systematic forced repatriation and deportation policy and its corollary abuses, despite being constantly denounced, largely intensified: a total of over one million people were thus deported between 1988 and 2000<sup>69</sup>.

The adoption of this coercive approach, regularly criticised even by Minister of Home Affairs Buthelezi himself at the time, as too costly and globally inefficient, raises doubts regarding South Africa's regional vision. The management of undocumented Mozambican migrants who are constantly being arrested, repatriated and who eventually come back to South Africa, encloses these populations originating from Southern Mozambique into a precarious cycle that prevents a durable reconstruction of this sub-region, and points to a widening of socio-economic inequalities with the South African neighbour. The stalling of the SADC Protocol on the Free Movement of Persons for ten years by South Africa, Namibia and Botswana is a case in point. This Protocol, eventually voted by SADC in October 2005, has in the meantime been transformed into a benign Protocol on the Facilitation of Movement that basically encompasses

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<sup>67</sup> For a global assessment of these amnesties, see Handmaker, Jeff, Johnston, Nicola & James Schneider, 2001, *The Status 'Regularisation' Programme for Former Mozambican Refugees in South Africa*, LHR/University of the Witwatersrand Refugee Research Programme.

<sup>68</sup> These abuses were documented in various reports, the most complete being that of Human Rights Watch, 1998, *"Prohibited Persons" Abuse of Undocumented Migrants, Asylum Seekers and Refugees in South Africa*, New York, Human Rights Watch.

<sup>69</sup> Accumulated figures from the Department of Home Affairs, 1988-2001. It is very likely that the same persons were arrested and repatriated several times. Yet, this figure remains quite substantial.

at multilateral regional level what already existed between several SADC member states at bilateral level. The fact that the richer Southern African States have delayed this process and eventually managed to turn it into an innocuous regional agreement exemplifies SADC incapacity to impose binding supra-national mechanisms, its inability to create discussion frameworks, and its subordination to the respective weight of the member States, notwithstanding the fact that the Protocol ratification might take another ten years

... as well as access to South African citizenship

Under apartheid, immigration and citizenship were closely associated. When the National Party came to power in 1948, it immediately voted the *South African Citizenship Act of 1949*, which was then amended a number of times, in 1961, 1973, 1978, 1981, 1984, 1991 and 1993. In the post-apartheid period, citizenship was not associated with the consultative and legislative processes on international migration. Yet, the *Green Paper on International Migration* did advise to replace the *Aliens Control Act of 1991* by a law on “Immigration, Naturalisation and Migration” but without specifying the content of the naturalisation dimension<sup>70</sup>. In 1993, the *Restoration and Extension of South African Citizenship Act* partly settled the issue of homeland citizens and exiles. It was then completed by the *South African Citizenship Act* n°88 of 1995, the first post-apartheid piece of legislation that unified all South African legislations on citizenship. This law established three types of citizenship: citizenship through birth on the South African territory, citizenship through birth from at least one South African parent and citizenship through naturalisation after at least five years of permanent residence for unmarried people or two years for persons married to South African citizens. In this new context, permanent residence became the paramount condition to access South African citizenship which de facto linked citizenship through naturalisation to immigration policy and legislation. Whereas naturalisations had started growing again as from 1994, they have been stagnating since 1998. On average since 1994, between 13 000 and 15 000 people have become South Africans every year. These figures are very low in proportional as well as absolute terms and this is despite the three amnesties decided by the post-apartheid South African government to redress past discrimination in access to permanent residence. These amnesties, conducted between 1995 and 2002, and which were essentially targeting miners from the region and ex-Mozambican refugees, only resulted in the granting of

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<sup>70</sup> Task Team on International Migration, 1997, *Draft Green Paper on International Migration* - 13 May 1997, Government Gazette, n°18033, , 30 May, Chap.5, 5.4.2.

permanent residence permits in the range of 200 000<sup>71</sup>. In this context, and given the annual figures of permanent residence, it is clear that the current policy on legal immigration and naturalisation has an extremely limited impact on the transformation of South African demographics (approximately 20 000 to 25 000 new South Africans and permanent residents combined every year for a population of 47 millions compared to 200 000 people a year with comparable status in France for instance for a population of 65 millions). These figures confirm that legal immigration to South Africa has not been considered over the first twelve years of democracy as a tool to transform the durable composition of South African society.

*Home Affairs: "A Department coming apart at the seams"*

In absolute figures the Department of Home Affairs, the Department primarily in charge with immigration issues as well as a Department with national competence and no provincial relay, is poorly endowed. With approximately 6 700 personnel, the Department's annual budget in the years 2000s was between R1,4 and R2,8 billion, compared with R15 billion for the South African Police Services, the largest budget at national government level, or Defence with R13 billion, Education with R7 billion and Health with R6 billion<sup>72</sup>.

Between 1994 and 2004, although its budget increased substantially, the Department remained subject to numerous and regular criticisms for its management of migration. The problems went from cases of corruption, fraud, organised trafficking, passport smuggling, to backlogs in dealing with business permits and asylum seekers applications, lack of planning, ad hoc and uninformed decisions, issuing of unconstitutional regulations and absence of border control staff. Mangosuthu Buthelezi would regularly denounce in Parliament his Department's lack of financial means and present it as some form of political tactics from the ANC against him. Yet, despite the objective underfunding of Home Affairs, numerous reports since 1994 have highlighted instances of serious mismanagement. In 1996, writing on the Immigrants Selection Board, the Labour Market Commission indicated that "The development is severely hampered by a lack of accurate and comprehensive data ... Labour shortages are thus determined in a rather ad hoc manner. It is vitally important for the development of a coherent labour migration policy that current methods of data collection be reviewed, expanded and updated."<sup>73</sup>

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<sup>71</sup> For a detailed account and results of the three amnesties, see Jonathan Crush & Vincent Williams, 1999, *The New South Africans? Immigration Amnesties and their Aftermaths*, Cape Town, IDASA/SAMP, and Jeff Handmaker, Nicola Johnston & James Schneider, 2001, *The Status Regularisation Programme for Former Mozambican Refugees in South Africa*, Lawyers for Human Rights / University of the Witwatersrand Refugee Research Programme.

<sup>72</sup> Republic of South Africa, 1996, *Exchequer Personnel: supplement to annual report, Department of Public Service and Administration*, Pretoria, CTP, (for Government Printer) and *Appropriation Act of 2000*.

<sup>73</sup> Quoted in Marion Edmunds, 1996, "Immigration Policy Needs an Overhaul", *The Mail & Guardian*, 28/06.

Home Affairs Annual reports as well as the Minister's annual budget speeches in Parliament would blame budgetary overspending on underfunding as well as systematic litigation procedures against the Department from the NGO sector and poor human resources. In 2001 for instance, M. Buthelezi warned Parliament of a particularly difficult financial situation leading to a freeze in job creations and a deficit of equipment in border control posts. MPs from both the majority and the opposition then supported him in his claims. Yet, the same month a report from Auditor-General Shauket Fakie pointed to a number of instances of gross mismanagement such as, among others, the costly repatriation system. In April 2001, the Fakie report was followed by a report from the Public Service Commission (PSC) that again condemned the management of the Department. The PSC report concluded that "the Department had all the financial and human resource management policies and procedures it needed in place but lapses in adherence to these had occurred. [...] These (lapses) are ascribed to the integrity of the individuals involved and the dubiousness which arises when rules are perceived as hampering effective service delivery"<sup>74</sup>.

The Department was indeed slow to respond to these major accusations and probably overwhelmed by the extent of the task. Home Affairs officials were and still are arrested and condemned regularly for corruption and fraud cases. In 1998, the multiplication of blatant corruption and fraud cases reported in the press pushed the Department to set up an Anti-Corruption Unit with the help of the National Intelligence Agency. In its first year of activity, the Unit received 225 cases of fraud, 69 persons were prosecuted and condemned. They were 104 in 2000. However, itself underfunded, the Anti-Corruption Unit's impact remains limited to date.

Since 2004 and the change in ministers, a number of changes have been observed in the management style of the Department of Home Affairs. In May 2005, a strategic plan for the period 2005-2010 was presented by the Department to Cabinet. The result of internal consultation, this plan highlights both important new directions and continuities with the past understanding of immigration management. The most striking feature perhaps is the opening sentence of the Immigration section stating that "Immigration is a critical element in maintaining the integrity of the Republic of South Africa as a sovereign state"<sup>75</sup>. The Plan formally linked immigration policy to two dimensions: South Africa's shortage of skills and South Africa's

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<sup>74</sup> "UDM calls on Mbeki to fire Buthelezi", 2001, South African Press Agency, Cape Town, 06/04.

<sup>75</sup> Department of Home Affairs, 2005, *Strategic Plan 2005-06 - 2009-10*, Prepared by the Chief Directorate, Strategic and Executive Support Services, Office of the Director-General, Department of Home Affairs, Pretoria, May, p.39.

regional policy within the frameworks of SADC, NEPAD and the African Union. Thus, although the core understanding of what immigration management is about had probably not reached the new National Immigration Branch (inaugurated in 2005), it is evident that mindsets at policy-making level are more sensitive to the developmental dimension of migration both domestically and regionally. The two dimensions put to the fore in the 2005 Strategic Plan were taken up and illustrated in the Minister's 2006 Budget Speech in which she insisted on the fact that the recent amendments to the Immigration Act also sought "to meet [South Africa's] foreign policy objectives in respect of the region"<sup>76</sup>, two examples of this move being changes in favour of policy traders (in particular women) and African students no longer required to pay repatriation deposits. In addition to that, the Department has pursued its technical assistance agreements with the Democratic Republic of Congo pertaining to Population Registration and immigration management capacity and enlarged it to Rwanda.

This Speech has also highlighted the need for profound transformation and a rupture with past practices including in terms of financial management:

We presented a plan that recognised that nothing short of fundamental transformation and reorganization could ensure a proper turn around for the department. [...] 2004/05 has been the year during which the department was given a disclaimer audit opinion by the Auditor General. This opinion had been a serious indictment in the manner in which the finances of the department were being managed.<sup>77</sup>

A closer retrospective look at Home Affairs finances reveals that the Department has been allocated substantial budget increases since 1999 in particular and more substantially since 2003-2004: its overall budget thus went from R433 million in 1996-1997, to R 1,3 billion in 1999-2000 and R2,9 billion in 2005-2006 . For migration alone, the Home Affairs budget has gone from R106 in 1996-1997, to R127 million in 1998, R171 million in 2001-2002, R281 million in 2002-2003, R339 million in 2003-2004,. Since 2005, budget expenditure for immigration is merged within the Department Programme 2: Delivery of Services to citizens rendering the reading of actual budget devoted to immigration more difficult. Yet, of the three main domains of intervention falling under Home Affairs mandate (population register, immigration and Auxiliary services such as printing, film boards and electoral commission), immigration remains the smallest budgetary post within the Department throughout the period.

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<sup>76</sup> Nosiviwe Mapisa-Nqakula, 2006, *Address for the 2006 Budget Vote of the department of Home Affairs (Budget Vote 4)*, in the National Assembly, Cape Town, May 30.

<sup>77</sup> Ibid.

In terms of human resources management, Home Affairs certainly suffers from all the general blemishes affecting South African public service in general and despite its commitment to fighting against corruption, increasing internal leadership and capacity-building, it still suffers major shortcomings in all of these instances. Chapter 4 gives empirical examples of the consequences of Affirmative Action plans, the lack of middle management resources, the lack of basic competence at street level staff and the generalization of rampant corruption and patronage.

**Frame 2. The *Immigration Act of 2002* and the *Immigration Amendment Act of 2004*.**

The *Immigration Act of 2002* was called by the ANC Chairperson of the Parliamentary Portfolio Committee on Home Affairs “a product that [...] all of us can live with”, a phrase reflecting perhaps unintentionally the heterogeneous character of post-apartheid migration legislation. Passed after a seven-year consultation process, the Act was to be almost immediately amended to Thabo Mbeki’s request in 2004 and the final Regulations to be published in late 2005 bringing to a close a ten-year long process, certainly the most cumbersome legislative and policy-making process of the new era.

Despite this, the expectations raised during this process and the post-1996 constitutional constraints, the new South African legislation on international migration exemplifies much continuity with the previous one. Indeed, the new legislation essentially reflects three options which the ANC finally opted for in 2002: the first one is the minimal constitutional conformity that was in fact started with the 1995 Aliens Control Amendment Act, hence some progress on spouses’ rights in particular, including for homosexual couples; the second is the pursuit of a dual system of permanent highly skilled immigration and temporary lower skilled migration; the third one is the conservation of control power within central government services and the concentration within Home Affairs. This last point is clearly confirmed in the 2005 Home Affairs Strategic Plans that reiterates control and sovereignty as core values guiding immigration policy in South Africa.

Four major constraints can be seen as having informed the policy framework on international migration throughout the 1990s and 2000s:

- a global consensus among political actors, government and civil society that a modernised management of migration was needed;
- fundamental disagreement between major stakeholders on access to the South African labour market;
- disagreement on the role to be played by the State and the market in the control and management of migration;
- the reduction of the political agenda to strictly administrative and economic issues and the progressive marginalisation of other issues such as the role of migration in foreign policy, the integration of foreign populations or gender issues.

The 2002 Act and its subsequent amendment have indeed been attempts at accommodating all these contradictory trends without questioning the core elements of continuity referred to above. Thus, the *Immigration Act of 2002* definitively eliminated prospects of an externalised Immigration Service and State control over access to the South African labour market. The Act confirms the choice of incremental change in condoning South Africa’s hegemonic position in the region. This shows the ANC’s ability to remain both independent from neo-liberal choices on which the first Immigration Bill was premised (it was clearly aligned on the General Agreement on Trade and Tariffs) and the voices of organised labour. This was made clear as the common contribution of CODESA, NACTU and FEDUSA to the



Immigration Bill in 2002 was largely ignored in terms of regional socio-economic development and the cessation of the differed-pay system.

The 2005 Final Regulations remained focused on discouraging illegal immigration into the country. On the progressive side, a range of measures were adopted to facilitate access to permits and limit administrative delay: the regulation dealing with study permits provides that a deposit shall not be required from African students, provided their governments submit a written undertaking to pay all deportation expenses in respect of such students, should this become necessary; workers from neighbouring and other states are now allowed to easily be replaced upon death by someone from their family without immigration complications for the work permit. On the more conservative side, the period of time before accessing permanent residence for foreigners married to South Africans was increased to five years in an attempt to fight fraudulent marriages. The introduction of the Regulations was reportedly very poorly handled by the Ministry and resulted in many disruptions in work permit renewals and delays for first applicants leading to numerous protests from foreign embassies and the corporate world. In the words of Wilmot James, chairperson of the Immigration Advisory Board, the Department of Home Affairs' skills assessment function crystallizes discontent:

Reportedly, quota work permit applications are not being accepted by the department, while work permit applications are delayed due to the necessity to obtain evaluations from the South African Qualifications Authority, which is not properly equipped to handle these requests.<sup>78</sup>

Interestingly, this was confirmed by the Minister's 2006 Budget Speech in which she pinpointed the limitations and difficulties encountered in the skills' area by saying that:

Members must also realize that as Home Affairs we only facilitate the import of needed skills into the country. As Minister of Home Affairs, I do not decide what those skills are. The Act requires me to consult with other Ministers and their departments in deciding on quotas and with the recent launch of the JIPSA (of which we are part) we will revise the current quotas in consultation with other stakeholders.<sup>79</sup>

This patchy legislative apparatus has led some commentators to the conclusion that:

Overall, post-apartheid migration policy demonstrates an attempt to construct a non-racial, territorial "modern" identity in contrast to the racial boundaries of the previous era. As it shifts from apartheid-era isolation to globalization, human rights principles come into play. Yet outsiders, especially from the southern African region, remain a threat to social stability, especially as competition for unskilled jobs. Economics replaces race as the basis for a xenophobia that views South Africa in, but not of, Africa.<sup>80</sup>

## Conclusion:

Since the departure of Mangosuthu Buthelezi and the appointment of his deputy-minister, Nosiviwe Mapisa-Nqakula as Home Affairs Minister in 2004, statements from the new

<sup>78</sup> Wilmot James quoted in "Struggle to apply new laws causes immigration chaos", *Cape Times*, 11/11/2005.

<sup>79</sup> Ibid.

<sup>80</sup> Audie Klotz, 2004, "State Identity in South African Foreign Policy", paper prepared for Walter Carlsnaes, Deon Geldenhuys and Philip Net (ed.), *South African Foreign and Security Policies in the Post-Apartheid Era*, forthcoming.

minister as well as new appointments and several public meetings seem to indicate a desire on the side of the ANC to speed up the immigration policy transformation process in a more truly collaborative way. The minister thus recruited Lee Ann de la Hunt, a former academic and activist who participated in the drafting of the 1998 *Refugees Act*, as her personal advisor on Refugees issues. The Department has also convened a number of meetings and elaborated some rapprochement with the Global Commission on International Migration (GCIM), since the publication of its report on international migration in 2005. In particular, the South African representative of the GCIM, Mamphela Ramphele (a former academic and historical figure as the spouse of anti-apartheid leader, Steve Biko), has recently played an instrumental role in organising a meeting between the Department and the media and the NGO and business community to prepare South African participation to the High Level United Nations Dialogue on International Migration that took place in October 2006. It is during this meeting that the Minister called for the creation of a think-tank on migration. Since the mid-1990s, the Department had essentially relied on information provided by the Southern African Migration Project, a project hosted by the South African NGO Idasa and that works thanks to British and Canadian funding. More recently, SAMP has been contracted by the Department for several training projects in South Africa and the region, a move that also shows South Africa is intending to play a regional role although it clearly favours the bilateral way to the SADC multilateral approach.

Recent developments in immigration policy (the 2004 *Immigration Amendment Act* for instance) confirm that the ANC has moved from indifference to genuine and constructive concern. It makes no doubt the ruling party is currently grappling with structuring immigration as a development factor for all South Africans and not only for the South African private sector and its labour strategies or to fill the gaps created by ten years of poorly effective capacity-building in the public sector. In this respect, a paper published by Malusi Gigaba, the current deputy-minister for Home Affairs in his capacity as member of the ANC National Executive Committee, in 2006, is emblematic of the new interest the South African government has recently developed in skilled immigration:

The recent decisions taken by the South African government seek to achieve exactly this goal to transform our country into one of the major beneficiaries of the complex system of skilled labour migration. The fact is that we cannot stop or prohibit migration and, in particular, the emigration of skilled South Africans. The challenge for us is to manage the process such that we are able to develop our own skills, recruit others from abroad and re-recruit émigré South Africans working abroad. The open-mindedness of the Joint Initiative on Priority Skills Acquisition (JIPSA) and the recruitment of 90 people about whom the President spoke in his State of the Nation Address in Parliament must be seen in this light. South Africa needs these skills and has the capacity to return them back

home. Our comparative advantage as a country is that in terms of living and working standards for professionals -- that is, in political, social, cultural and economic terms -- South Africa is competitive.<sup>81</sup>

Yet, the ANC's achievements regarding migration in the past twelve years are scarce. We have highlighted a few in the second section of this chapter that were not to be attributed directly to the ANC. So far, the party has at least managed to prevent migration and xenophobia from becoming an electoral platform, a fact which seems to be confirmed at both national and local level, elections after elections. Although ANC elected officials have been heard and can still be heard today, especially at local level, developing xenophobic discourses on foreigners, the lack of political competition and new official party guidelines have served as a bulwark against the most dangerous populist uses of problems related to migration.

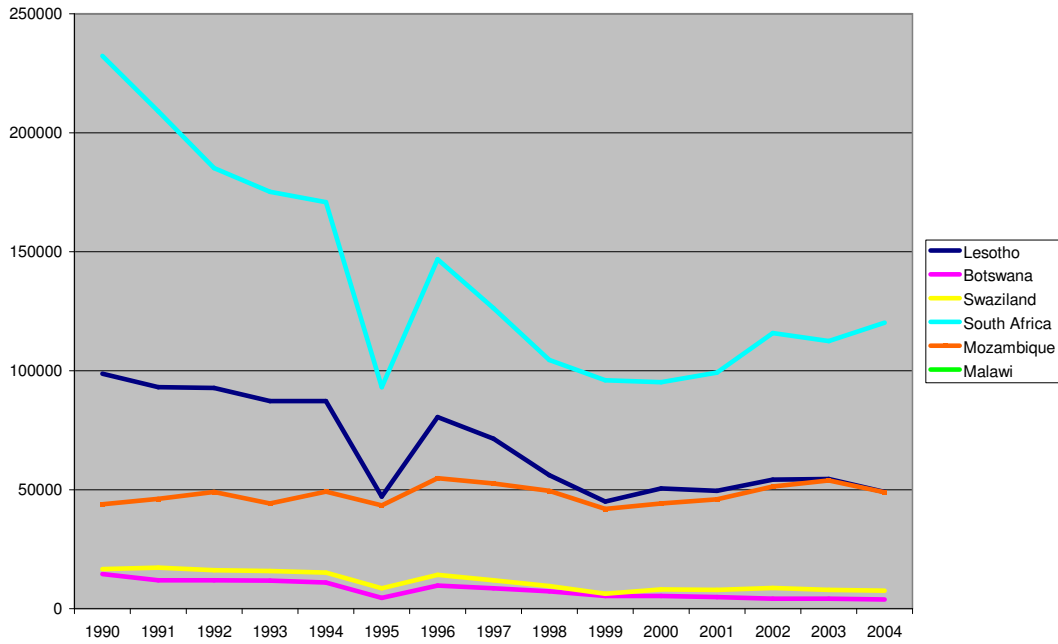
What this chapter has tried to demonstrate is that the major obstacles to a modernization of South African immigration policy lie in the transformation of the ANC's vision of what role migration should play in the country's development. Changes at the macro-level and in elites' perceptions are not synonymous with profound transformation in the daily treatment of foreigners in South Africa. The enormous stumbling blocks remain the state of the Department of Home Affairs and of the public services in charge of controlling migration, as well as government's overall incapacity to manage migration policy across its departments. These three points need to be addressed in priority for any positive change to occur and trickle to the different levels at which migration impacts on societies, be it locally, nationally or regionally.

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<sup>81</sup> Malusi Gigaba, Deputy-Minister of Home Affairs, 2006, "Skills and Development: Time to Pursue a South African 'Brain Gain'", op.cit.

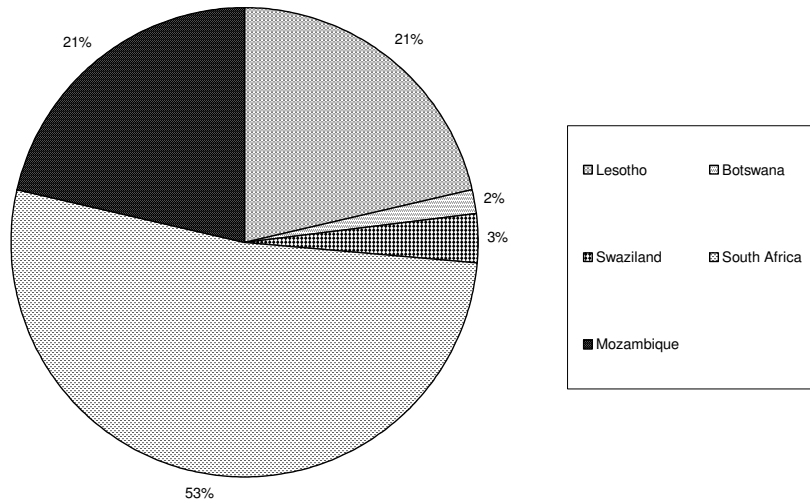
Tables and graphs:

Graph 1. Number of minerworkers employed at mines through TEBA 1990-2004



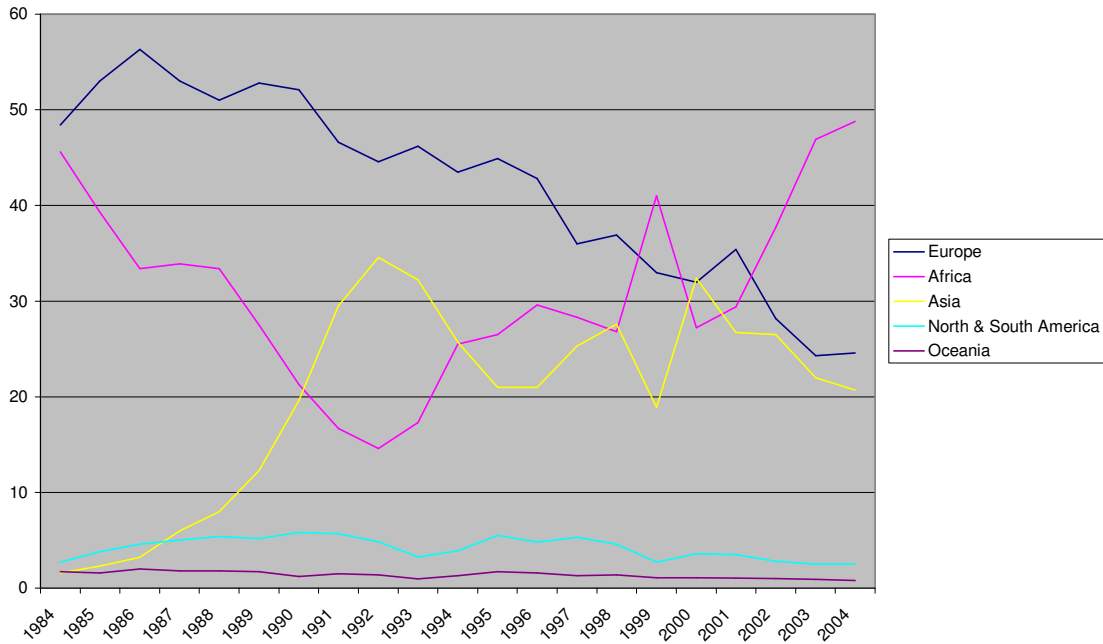
Source ; The Employment Bureau of South Africa.

Graph 2. Miners in South African mines per country of origin. 2004

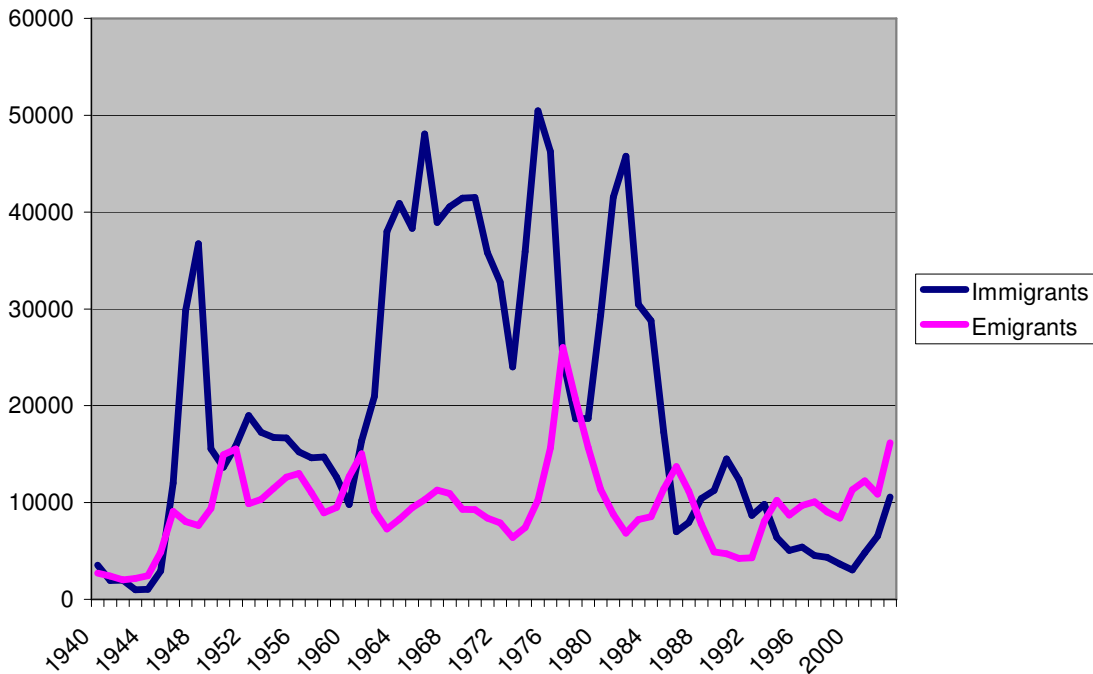


Source ; The Employment Bureau of South Africa.

**Graph 3. Permanent resident permits per region of origin as a percentage of all permanent residence permits. 1984-2004**



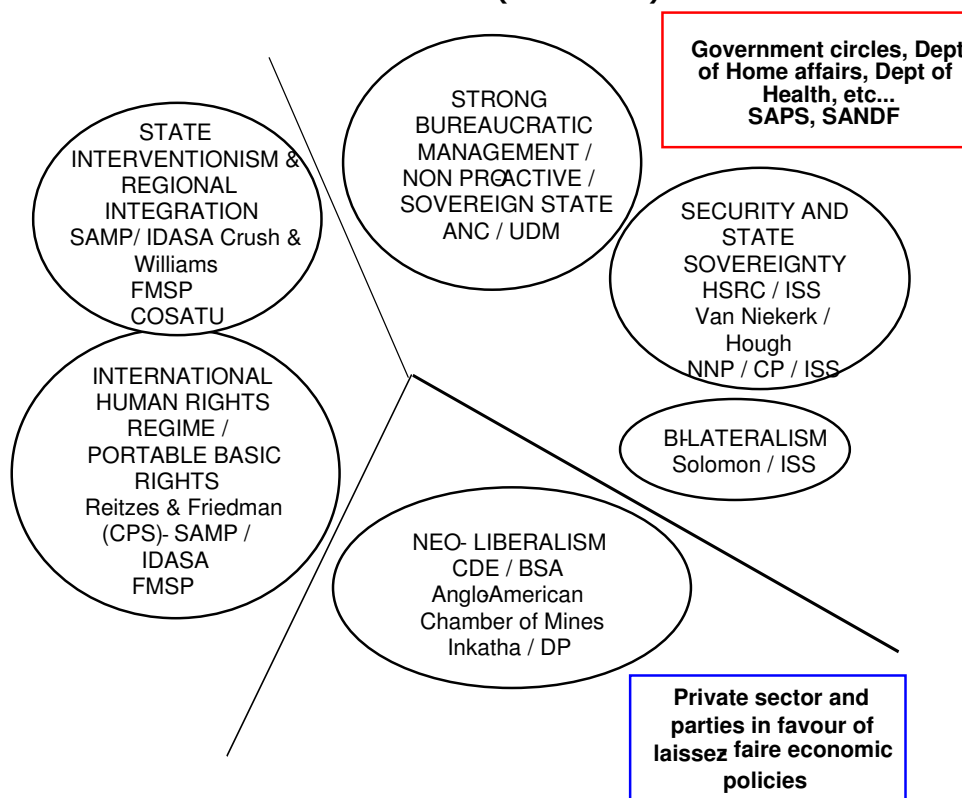
**Graph 4 - Legal migration to/from South Africa 1940-2003**



Source: Annual Reports, Department of Home Affairs; Statistics South Africa Tourism and Migration Reports, 1973-2004.

NB: Since 2004, departure forms are not required from South African citizens leaving South African territory. Home Affairs has not yet released figures regarding legal immigration since 2004.

**Graph 5. Positioning of interest groups within the South African migration policy framework (1996-2003)\***



\*For acronyms, see list at the end of this volume.

**Table 6. Synthetic overview of political options within South African migration policy framework (1994 – 2006)**

	Internal control	Border control	Regional cooperation	Migrants' rights	Access to South African job market	Sanctions to employers
<b>Securitarian approach</b>	Yes	Yes	No Bilateral temporary work contracts	Limited	Limited to highly qualified people and investors	Yes
<b>Neo-liberal approach</b>	Limited	Yes but ought to disappear eventually	Maximum regional integration / Suppression of tariff barriers and of limiting regulations to access foreign labour / Hegemonic vision favouring bilateral contracts	Limited	Free access / restrictions only reg. terrorism and crime syndicates	No / very limited
<b>International human rights approach</b>	Limited	Yes but limited	Yes /Pro-active migration policy/ Regional integration / Cooperation / Specific visas, quotas for unskilled workers	Universal basic human rights. Pragmatic version : neg.rights to be constitutionally defined	Free access / restrictions only reg. terrorism and crime syndicates	Yes
<b>Bureaucratic / interventionist</b>	Yes	Yes	Moderate and rather bilateral	Yes within the limits of State sovereignty and « national interest »	Under State control (Dept of Employment) Strictly restricted to the needs of the South African economy	Yes



## CHAPTER 2

### **SOUTH AFRICA AND INTERNATIONAL MIGRATION: THE ROLE OF SKILLED LABOUR**

**By Stephen Ellis,  
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**Chapter question:**

*This chapter seeks to provide an overview of the role of skilled labour in the South African international migration policy. The main questions raised in this chapter are that of the transformation of the South African education system, the brain drain – brain gain imbalances and the resistance of certain constituencies such as trade unions. It also explores the obstacles to improving the management of skilled labour migration, particularly within the Department of Home Affairs.*

#### *Introduction*

From 1994 until 2002, the South African government's official position was generally unfavourable to both the immigration and emigration of skilled labour. Despite the liberal views concerning international labour markets espoused by the former Minister of Home Affairs, Chief M.G. Buthelezi, and his principal advisor, Mario Ambrosini, the government has focused its attention on stimulating employment among South African citizens. In regard to the market for highly-skilled workers, it was particularly concerned to reverse the historical discrimination against black<sup>82</sup> South Africans. While there was no legal impediment to South Africans, skilled or unskilled, emigrating in search of work, ministers sometimes expressed a view that such people were unpatriotic or were leaving because they were unwilling to accept the new post-Apartheid. For reasons discussed more below, the combination of a poor education system under apartheid and the emigration of significant numbers of skilled workers have created significant challenges for development in South Africa. There is a significant multiplier effect associated with skilled emigration. There are estimates that each skilled South African who leaves the country creates ten redundancies. Consequently, migration may cost the country 800 million Rands per year in lost tax revenue.

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<sup>82</sup> Used in this context to include categories referred to under apartheid as Coloured, Indian, etc.

*The skilled labour problem*

After considerable reluctance to embrace skilled migration, there has been a change in the government's position. This change in the government's views on the movement of skilled labour internationally has been informed by far more than an appreciation of the immediate losses of skills and revenue, but also to the changing character of the South African economy, and the nature of the international labour markets into which it is integrated. There is fierce international competition for skilled labour generally, and particularly in certain categories such as information technology, engineering and medicine in which South Africa has real expertise, although only producing relatively small numbers of people with the highest levels of skill. The largest sector in the South African economy in terms of value added is now finance, which grew at a rate of 8% in the second quarter of 2006. The financial sector now far surpasses mining, a traditional employer of foreign labour on a massive scale, almost all of it low-skilled or semi-skilled.<sup>83</sup> (Manufacturing is currently South Africa's second-largest sector, and retail third.) The service sector employs relatively high numbers of skilled people as a percentage of total personnel by comparison with the old job-creating staples of manufacturing and mining, for example. SAMP found in its 2000 study sub-titled *Skills Migration and the South African Brain Drain* that the most skills-intensive sectors are computers and information technology (where 57% of those employed were skilled), business services (47%), education and health (41%) and banking and finance (29%). Currently, market-based services account for some 47% of employment in South Africa, direct or indirect. Manufacturing accounts for only 14% of total formal employment, having declined by 1.2% between 1994 and 2004.<sup>84</sup> As a result of these shifts and global changes, there is fierce international competition for skilled labour generally, and particularly in certain categories such as information technology, engineering and medicine in which South Africa has real expertise. (Although the country only produces relatively small numbers of people with the highest levels of skill.)

Regarding the total size of the skilled labour sector, a report published by the Southern African Migration Project in 2000 estimated that the size of South Africa's skilled labour sector was some 1,600,000 people, which at that time was 9% of the economically active population. Among the skills most needed for South Africa's economy to grow at the required rate is

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<sup>83</sup> Statistics South Africa, Gross Domestic Product second quarter 2006, table 1, <http://www.statssa.gov.za/publications/P0441/P04412ndQuarter2006.pdf>

<sup>84</sup> *Losing Our Minds*, p.43.

expertise in such areas as engineering, information technology, accounting and management, all of which are lacking in the national workforce at present.

The shortage of skilled labour is especially felt, therefore, by companies that work in such internationally competitive fields as these. Business lobbies - especially 'big business', including multinational companies - have pressed hard to draw the government's attention to the difficulties in securing permits for foreigners to work in South Africa, even in sectors where qualified people are clearly lacking. Major corporations complain of delays of up to a year in obtaining work permits for staff recruited overseas for highly specialised positions, even when they employ local law firms or other professional intermediaries to facilitate the procedure. Home Affairs is said by immigration lawyers to have a backlog of some 30,000 applications for work and residence permits, but has insufficient administrative capacity to process these at the necessary rate. Frustration at acquiring legal documentation is a consistently recurring theme among business executives, representatives of business organisations and recruitment agencies. In April 2006, the British Chamber of Business in South Africa described immigration problems as 'having a detrimental impact on the short-term effective running of local and international business in South Africa'.<sup>85</sup>

According to SAMP, before the election of 1994, only 2% of companies rated South Africa's brain drain as 'significant', with the rest considering emigration to be having little or no impact on them. By 1998-9, one-third of enterprises surveyed regarded the problem as 'significant'. A similar survey conducted today would be most likely to find that perceptions of the impact of the shortfall of skilled personnel, in part due to the loss of skilled labour to emigration, are still more significant. The sectors most affected by the brain drain were found by the same survey to be education and health (59%), business services (47%), banking and finance (43%), information technology and industrial high tech (both 35%).

Specifically regarding the complaints from business operators, government sources claim to have redressed these imbalances, including in revisions to immigration legislation that were effected in July 2005. However, there continue to be complaints of a similar nature, including that foreign executives working on intra-company work permits have been refused extensions to their two-year documentation. The consensus view among business and professional staff seems to be that the system for allocating work permits has, if anything, become less flexible than ever. The government has established a quota system for work permit applications in regard to certain

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<sup>85</sup> Quoted in 'Companies hit at immigration law', *Financial Times*, 19 April 2006.

skills and professions, but business operators complain that the quotas were drawn up without proper consultation and that they do not correspond to the actual needs of business. The problem is particularly acute for multinational companies, which rely on rotating personnel between different offices or programmes within their sphere of operation, generally for relatively short periods. The difficulties faced in securing work permits for intra-company movements appear to affect most particularly personnel originating in the UK, Germany, the USA, Italy and Australia.

*Who are the skilled workers, and why do they emigrate?*

In addition to the tens of thousands who left South Africa during the oppressive apartheid era, there was a substantial measure of emigration in the years immediately before and after the political transition of 1994. Some 233,000 South Africans emigrated between 1989 and 1997 to just five countries: the UK, the USA, Canada, Australia and New Zealand.<sup>86</sup> The emigrants of these years certainly included a disproportionate number of white South Africans, no doubt including some who were leaving on account of the political changes that were taking place. They also included a disproportionate number of highly-skilled people. In 2000, the South African High Commission in India reckoned that there were some 500,000 South Africans living in the United Kingdom, 80,000 in Canada, 300,000 in the USA, and 300,000 in Australia and New Zealand.<sup>87</sup> There are indications that the proportion of PhD holders among South Africans living abroad may be twice that of those remaining in South Africa.

South Africa's history has produced some highly unusual patterns of skills acquisition, since high-quality education was for so many years the preserve of whites. Much of the emigration in the period 1990-2000, noted above, was of whites. In 2000, the Southern African Migration Project found that over two-thirds of the sample of highly-skilled people whom it had surveyed declared themselves to have given some thought to the idea of emigration.<sup>88</sup> Interestingly, though, this was not predominantly an attitude associated with white South Africans, as 68% of blacks said they had given emigration some thought. In fact, one of the main points of interest in the SAMP report on the migration of skilled people was the degree to which it challenged the widespread assumption that those who wished to leave South Africa were overwhelmingly whites. But it should be noted that the fact that so many skilled people have

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<sup>86</sup> Southern African Migration Project, 2000, *Losing Our Minds: Skills Migration and the South African Brain Drain* Migration Policy Series no.18, Southern African Migration Project, Cape Town,, p.24.

<sup>87</sup> [http://www.sahc-india.com/n\\_part\\_diaspora.html](http://www.sahc-india.com/n_part_diaspora.html)

<sup>88</sup> *Losing Our Minds*.

given some thought to emigrating, does not mean that they are on the verge of doing so. The number of people in the 2000 survey who thought it likely or very likely that they would leave in the next two years was much lower, at 25%. The SAMP researchers concluded that, at the time of their investigation, only 2% of their sample of skilled workers fell into the category of having very high emigration potential, with a further 10% having a high emigration potential. In other words, skilled South Africans show a distinct propensity to emigrate, but this needs to be placed in proper perspective. It is neither a flood nor a crisis. On the other hand, given the country's skills shortage, even a small number of skilled emigrants does pose a crucial challenge to government policy.

Overall, studies in 2000 suggested that the greatest areas of emerging skills shortages were in the field of computing and information technology. Detailed questioning revealed some highly specific areas of shortage. Companies lamented that apprenticeships or similar types of training scheme were less effective than in the past. One person interviewed argued that: 'No one is coming through the ranks...young people do not want to go through apprenticeships and consequently we will be suffering shortages in the near future'.<sup>89</sup> Many companies wishing to hire skilled personnel use the services of recruitment bureaus. As noted above, professional recruiters in 2006 complain consistently about the difficulty in securing work permits or other documentation from government departments that is necessary for the appointment of people from abroad.

The reasons why highly-skilled people of different racial groups might think about emigrating are complex and include, for example, concerns about the cost of living, high taxation, fear of crime, and the standard of public and commercial services in South Africa. Thus, 74% of those skilled workers polled for the 2000 SAMP study pronounced themselves dissatisfied with the level of taxation, 71% were dissatisfied with the cost of living, and 68% were concerned by the safety of themselves and their family.<sup>90</sup> The favourite destinations for emigration at that time were the USA (24% of those polled), Australia (22%), United Kingdom (15%), New Zealand (12%) and Canada (11%). Worryingly, the interest in emigration seems to be remaining strong even among a younger generation of skilled workers. In a 2002 study by SAMP, many final-year students in colleges and universities were shown to be considering emigration upon graduation.

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<sup>89</sup> *Losing Our Minds*, p.48.

<sup>90</sup> *Losing Our Minds*, table 1.17.

A study of large-scale firms conducted in 2000 among 200 enterprises, again conducted by SAMP, throws further light on the nature of skilled workers in South Africa.<sup>91</sup> Together, these employed some 101,000 skilled personnel. At that time, these companies were employing a remarkably small number of non-South Africans, only some 2-3,000 out of the total number of employees in the companies polled. The SAMP report, based on research carried out in the preceding two years, revealed that 50% of the companies surveyed employed a skilled workforce consisting only of South African nationals or permanent residents, while a further 46.5% employed some foreign workers in positions demanding high skills. These foreign workers were overwhelmingly from Europe. The number of skilled workers recruited from other African countries at that time was very small, with the main providers being Zimbabwe and Ghana. If similar research were done today, it would quite probably reveal a higher number of skilled workers coming from outside South Africa, and a higher proportion from Zimbabwe and other African countries than from Europe, relative to the situation in 2000.

There are almost certainly more skilled workers from the rest of Africa residing in South Africa than may be suggested by the above survey figures from six years ago. Largely because of continuing legal restrictions, many skilled Africans who enter South Africa do not work in their professional fields, but take up menial jobs. Anecdotal evidence as well as research-in-progress suggests that substantial numbers of qualified Zimbabweans, for example – widely known for the high quality of their educational attainments – work in menial jobs far below the level for which they are suited by their qualifications. In Gauteng especially, Zimbabwean graduates are working in positions way below their abilities, for example as waiters, newspaper-sellers and parking attendants. Many may not be registered with any government department or agency.

The official figures for documented immigrants with high-level skills are very low. For example, in 2003 the government recorded a total of 1,011 new immigrants that it described as ‘economically active’, of which almost half were described as being in ‘professional, semi-professional and technical occupations’.<sup>92</sup> When calculated against the number of emigrants recorded in the same year, there was a net loss of 9,529 economically active people, including the loss of 547 industrial and production engineers, 542 natural scientists, 693 medical personnel and 703 accountants. Among economically active immigrants from Africa officially recorded in 2003, there were notably 1,698 people from Nigeria and 959 from Zimbabwe. Skilled Zimbabwean

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<sup>91</sup> *Losing Our Minds*, chapter 2.

<sup>92</sup> Statistics South Africa, *Documented Migration, 2003*, report no. 03-51-03 (2003) (Pretoria, 2005), p.3.



immigrants scored highly in comparison with other nationalities, notably in the managerial, executive and administrative category.

In regard to business ownership, notwithstanding the number of high-profile black empowerment schemes, less than 2% of the top 200 companies listed on the Johannesburg stock exchange are owned by blacks. To be sure, many companies now have at senior executive levels black South Africans who have gained prominence during the political and social struggles of the 1980s and 1990s, and who are spearheading the government's black empowerment policy. Black empowerment, though, has not created the number of jobs the economy requires. Professor Hussein Solomon of Pretoria University lists a number of factors that work against the creation of jobs, in addition to the poor state of school education and the skewed system of tertiary education. Among these are an educational system that is not able to produce the level of labour necessary for the knowledge-based economy to which South Africa aspires. He also mentions the country's well-known exposure to the HIV/AIDS pandemic. According to figures from the Actuarial Society of South Africa, almost one in five South Africans between the ages of 20 and 64 is HIV positive.<sup>93</sup> This is bound to have a negative impact on productivity and on employment profiles generally.

It is in connection with these factors that government officials and leaders of the ruling party acknowledge that, in effect, South Africa has no alternative in the short to medium term other than to acquire skilled labour from abroad, if it is to fulfil the targets that the government has set itself. This in turn means developing an immigration policy that will facilitate such recruitment, building on the 2002 Immigration Act. However, surveys by the Southern African Migration Project and others suggest that South Africa's 'brain drain' is likely to continue, albeit at a lower level than in the recent past. Importantly, research findings in this regard concern black South Africans as much as whites. Skilled workers both black and white continue to leave the country for destinations particularly in the United States, the United Kingdom, Australia and Canada, and surveys conducted among students indicate that this tendency is sustained.

#### *Current government policy on skilled labour migration*

As indicated above, there have been significant shifts in Government thinking on migration since the Immigration Act of 2002 and the 2004 departure from government of G.C. Buthelezi as Minister of Home Affairs. Buthelezi's departure appears to have had the effect of

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<sup>93</sup> Hussein Solomon, 'Why COSATU has got it WRONG', Cips electronic briefing paper, Centre for International Political Studies, No.41/2006, University of Pretoria.

allowing other parts of the government – and notably Thabo Mbeki’s powerful presidency – a greater breadth of conception and manoeuvre in regard to migration policy. The government has now become convinced of the significance of South Africa’s serious shortage of skilled labour, and this factor is now being integrated into a new phase in the government’s economic strategy.

The leading edge of the government’s enhanced economic strategy is the Accelerated and Shared Growth Initiative-South Africa, known as ASGISA.<sup>94</sup> This was unveiled in early 2006. It is not a new policy but, rather, an attempt to better coordinate existing policies. The government’s fundamental economic strategy has shown its value in delivering a sustained high rate of growth. ASGISA is officially described as ‘a limited set of interventions that are intended to serve as catalysts to accelerated and shared growth’. The ultimate aim of ASGISA is to halve unemployment and poverty by 2014. To do this, the government calculates that the country must achieve economic growth of 4.5% per annum up to 2009 and 6% per annum from 2010 to 2014. ASGISA, then, is a new initiative that aspires to combine growth with more assistance to those living in acute poverty.

It is in this context that the shortage of skilled labour is most obvious to senior government officials, since it forms a major impediment to the ASGISA vision of growth and distribution. Within the framework of its economic strategy, as amended by ASGISA, the government has launched a further initiative that particularly aims to develop skilled workers. This is known as JIPSA – the Joint Initiative for Priority Skills Acquisition. It aims to coordinate the activity of various government departments. JIPSA is headed by Deputy President Phumzile Mlambo-Ngcuka and is reported to have the strong support of the national treasury in particular. JIPSA is led by a committee of relevant ministers, business leaders, trade unionists and experts in education and training. Its purpose is to identify what skills are needed and to seek solutions. These may include creating special training programmes, and bringing in retired persons or South Africans who are currently living outside the country, ‘drawing in new immigrants where necessary’ according to the government. JIPSA is designed to coordinate the work of relevant government departments in harmony with the policy on immigration administered by the Department of Home Affairs. Home Affairs, however, is in such a serious state of disorganization that it remains a moot point whether it will be able to develop and administer a policy appropriate to these considerations of labour recruitment. Furthermore, Home Affairs in many ways remains a bastion of anti-immigration sentiment.

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<sup>94</sup> ‘Deputy President briefing on Accelerated and Shared Growth Initiative’, 6 February 2006: [www.pmg.org.za/briefings/briefings.php?id=246](http://www.pmg.org.za/briefings/briefings.php?id=246)

At the same time, there are other pressures that make it difficult for the government to implement such a policy single-mindedly. These include, notably, pressure from many quarters to give absolute priority to the employment of South Africans – most especially black South Africans. The government asks foreign companies to advertise in the local press for positions that would otherwise be filled by expatriates. A further complication arises from South Africa's 'African renaissance' foreign policy, which aspires to lead the whole continent in a comprehensive regeneration that begins with bringing an end to the many armed conflicts that have disfigured Africa in the post-Cold War period. South Africa is faced with the puzzle of advancing its own national interests while also helping in the development of a continent (or perhaps more narrowly, the southern African sub-continent) with which it is closely connected. In some respects, a South African policy of recruiting skilled labour from abroad sits uneasily with a foreign policy that places such a high importance on stabilising countries throughout southern and central Africa and encouraging their economic development. In attracting skilled labour from neighbouring countries, South Africa risks making it less likely that those countries will be able to achieve the level of development to which they aspire.

These complex and often contradictory pressures often pull various government departments in different directions and make it difficult for the government to develop a truly coherent policy on migration. It is a conundrum that is hardly unique to South Africa, but that poses itself there in a particular context. The shortage of skilled labour in South Africa is a problem that is felt in many sectors. The Nigerian professor Aderanti Adepaju, one of Africa's leading experts on continental migration, estimates that, in total, there are no less than 300,000 unfilled posts in South Africa that require skills apparently not possessed by South African nationals.<sup>95</sup> In 2003, the Ministers of Home Affairs, Labour, and Trade and Industry collectively decided that South Africa would benefit from issuing 740,000 work permits, although in practice the government has come nowhere close to this number.

The health sector is generally regarded as one of the most critical areas of understaffing. In April 2006, for example, a leading newspaper reported that the government was 'aggressively hiring' healthcare professionals as it struggled to plug the gaps caused by emigration. Public

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<sup>95</sup> 'Leading issues in international migration in sub-Saharan Africa', in Catherine Cross, Derik Gelderblom, Neil Roux and Jonathan Mafukindze (eds), *Views on Migration in Sub-Saharan Africa* (Human Sciences Research Council, Pretoria, 2006), p.30.

hospitals were reported to be short of no fewer than one-third of the doctors they need. Investigations by journalists report a high incidence of poor conditions among nurses and low morale among health workers generally.

Regional government, too, suffers from a chronic skills shortage: provincial and local government is generally weak and often understaffed. In many instances, local government is unable to estimate their own needs or spend the budgets allocated to them (see Chapter Four). Some analysts consider that this lack of administrative capacity goes some way to explaining the government's controversial and often puzzling stance on the question of HIV/AIDS. A recent index of labour trends in the economy suggested that almost 70% of positions advertised in a leading register of professional and executive recruitment were for vacancies in government departments, parastatals or non-governmental organizations. Of the government advertisements, 23% were for posts in the Department of Health. Newspapers contain columns of advertisements for senior vacancies in government departments. Yet, a study completed in 2003 by the Organisation for Economic Cooperation and Development (OECD) found that there were 23,407 medical personnel of South African origin working in Australia, New Zealand, Canada, the United States and the United Kingdom.<sup>96</sup>

Official policy is for South Africans to be trained to replace foreigners in positions where they are employed, but the deep structural problems of South Africa's education and training system suggest that such a transformation will not occur at any time soon. However, the rapid expansion of finance and other service sectors, with their exceptionally high proportion of skilled workers, implies that South Africa needs to import highly-skilled people at once if it is to reach its target growth rate of 6% per annum by 2010.

According to employers, the main points they look for in graduate employees are good communication skills, the ability to solve complex problems, and computer skills. They find that these qualities are often lacking in South African university graduates. Foreigners often make ideal replacements, particularly the large numbers of qualified Zimbabweans now living in South Africa. Thus, notwithstanding the formal obstacles to success, there are many examples of immigrants from elsewhere in Africa who have achieved success in South Africa, such as Trevor Ncube, owner of the *Weekly Mail and Guardian* newspaper, and Strive Masiyiwa, a leader in the telecommunications sector. Masiyiwa is the chairman and chief executive officer of Econet

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<sup>96</sup> Quoted in *Moneyweb* [South Africa], 15 June 2006.

Wireless, a company with an income of over 300 million dollars per year. The chief executive of the financial services company, Alexander Forbes, is a Zimbabwean chartered accountant, Peter Moyo. Several prominent bankers are Zimbabwean, and many previously white-run corporations now have Zimbabwean executives in leading positions. Nor is it only Zimbabweans who are able to thrive in South Africa. A Congolese entrepreneur of Rwandan origin, Miko Rwayitare, left Kinshasa in 1996 at the start of a period of armed conflict. He has established a company in Johannesburg, Telecel, that is now present in 13 African countries and now owns a prestigious wine estate in the Cape. Kalaa Mpinga, son of a former prime minister of Zaire, has worked as a senior executive for the Anglo-American company.<sup>97</sup>

The recruitment of senior managers from among immigrants to South Africa has several advantages for established South African businesses such as Anglo-American. It gives them access to knowledge and networks of influence in other parts of Africa, such as the Democratic Republic of Congo, where they are seeking to purchase assets and to do business. At the same time, it enables them to demonstrate a commitment to black economic empowerment, which has become a political necessity – and even a legal obligation - in South Africa.

Foreign employment is not only limited to the private sector and newcomers from elsewhere in Africa are occasionally employed in public services. One example is Claude Mondzanga, since 1997 the deputy director of the enormous Baragwanath hospital in Soweto. However, public services remain generally reluctant to recruit foreigners, preferring to give priority to South African nationals. A Zimbabwean nurse known to the author of this report, for example, applying for a job in a state institution, received a reply from the Department of Health informing her that she could only be employed under the terms of a government-to-government agreement. Such a person has the option of offering her or his skills in the private sector, but this requires recognition of a nursing diploma acquired outside the country. Obtaining such recognition is a time-consuming process.

### *The educational system*

The skills shortage is not a problem that can be solved quickly, as the South African educational system appears to be poorly adapted to producing the kind of graduates most required by business. Reforming the educational system and changing people's attitudes towards

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<sup>97</sup> Valérie Hirsch, 'Congo-Johannesburg', unpublished ms., 4pp.

education, skills acquisition and entrepreneurship are hardly things that can be achieved in a short period. South Africans themselves are often described as lacking in entrepreneurial skills. The Global Entrepreneurship Monitor reveals that, among 35 countries surveyed, South Africa has the lowest level of entrepreneurial activity among developing countries. Only 1.3% of the South African adult population manage a business that has paid wages for more than three and a half years.<sup>98</sup> Moreover, businesses are more likely to fail in South African than in any other country participating in the survey.

The educational system, then, is poor at encouraging entrepreneurship. There are also indications that the educational system is not investing sufficiently in research at the highest level – a trait that extends to the economy more generally. According to an article by two researchers from the Human Sciences Research Council,<sup>99</sup> citing figures issued by the Department of Science and Technology, South Africa's national spending on research and development declined from 1.1% of Gross Domestic Product in 1990 to just 0.7% in 1994. By comparison, the OECD countries spend on average 2.2% of GDP across the public and private sectors, while some countries, including Finland and South Korea, spend up to 3.5% of GDP on research and development. The HSRC study suggests that South Africa's share of global research output has declined from 0.8% in 1990 to 0.5% by 2001. Such low levels of spending on research and development bode ill for South Africa's aspiration to sustain or enhance its international competitiveness in knowledge-based sectors of the economy in future years.

South Africa's scientific personnel, the HSRC research suggests, are mainly white and male, and ageing rapidly. Government policy aims to promote a new generation of researchers who will more accurately reflect the general profile of the population. This will pose enormous pressure on the educational system. South Africa has some 700,000 university students and 400,000 students training in other tertiary institutions. Although South Africa can boast some world-class universities, this profile is markedly different from the international norm, in which university students form only a small proportion of total students in higher education. Many South Africans consider a university degree primarily as a passport to a salaried job in government or in another bureaucracy. In fact, a significant number of university graduates are unable to find work and lack skills required by employers. There are historical reasons for these imbalances. Most obviously, schooling for black South Africans especially is often of poor quality, as a legacy of the apartheid past, and is particularly bad at training in mathematics and

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<sup>98</sup> Quoted in Solomon, 'Why COSATU has got it WRONG'.

<sup>99</sup> Adam Habib and Sean Morrow: to be published in the journal *Transformation*.



other skills necessary for the high-tech training to which the government aspires. In 2002, of a sample of 15,000 black school-leavers who had acquired their matriculation certificate, only 3,335 had passed the higher grade in mathematics.<sup>100</sup> Of these, few intended to proceed to higher qualifications in science and technology. In short, South Africa's education system does not produce the requisite numbers of people in these fields. Although the government's policy on university education has already for some years been heavily oriented towards science, engineering, computer skills and business skills, the basic educational system remains poorly adapted to provide the type of tertiary students the government is seeking to encourage.

Altogether, then, a fairly clear picture emerges. The sectors of the economy that have traditionally employed large numbers of unskilled or semi-skilled workers, such as mining, are in long-term decline. The number of foreign workers employed in South Africa's mines was 490,000 in 1970, 211,000 in 1986, and 165,000 in 1995.<sup>101</sup> Today, there are altogether only half as many miners employed in South Africa as ten years ago, both South African and foreign. In regard to manufacturing, which made great strides in South Africa from the 1940s onwards to become an economic bastion, the astonishing rise of Chinese manufacturing is now posing a serious challenge. South African textiles are protected by a 40% tariff against most international competition, but so great is the challenge to South African garment and textile manufacturers in particular that the South African government in September 2006 announced import quotas for Chinese-made garments in a bid to save South African jobs. (According to the Minister of Trade and Industry, the clothing sector in South Africa employs 80,000 people and, together with textiles, has a turnover of R25-34 billion per year). The announcement of quotas to be applied to Chinese imports has attracted considerable debate in the business pages of the South African newspapers. Textile manufacturers and trade unionists, unsurprisingly, approve of the new quotas; retailers do not, claiming that the quotas will have the effect of putting up prices for clothes in the shops, thus acting against the interests of consumers. The majority of analysts consider that the quotas will provide no more than a short-term defence of South African manufacturing, in the absence of any longer-term strategy of restructuring that could make the sector competitive with China. Immediate effects might be to encourage retailers to buy imports from other low-cost producers in Asia, and possibly even to encourage the smuggling of Chinese-made goods from neighbouring countries into South Africa.

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<sup>100</sup> Lyndith Waller, 2006, *Migration of Skills in South Africa: Patterns, trends and challenges*, Migration Policy Brief no.20, Southern African Migration Project, Cape Town, para 5.5.1.

<sup>101</sup> Quoted in Hussein Solomon, 2005, 'Turning back the tide: illegal immigration into South Africa', *Mediterranean Quarterly*, 16, 4, p.90.

South Africa's hosting of the 2010 football world cup is concentrating minds on the skills issue to an unprecedented degree. A successful world cup will cement South Africa's place as the premier African country and will boost its prestige worldwide, at a time when it aspires not only to middle-power status, but also to a permanent seat on the UN Security Council. Among the major infrastructure projects planned for 2010 is the Gautrain – a train line connecting Johannesburg and Pretoria, whose motorway link is currently clogged with traffic for hours of every working day. An acute shortage of engineering skills leaves the country little time to recruit the necessary talent and to implement the Gautrain project and other schemes. South Africa is looking primarily to India for the engineering skills it needs, but sources connected to the recruitment exercise suggest that, with little more than three and a half years to go before the World Cup, little progress has so far been made. In the budget unveiled in February 2006, the government announced that it had set aside 5 billion Rands for infrastructure designed for the World Cup. In addition, the transport company Transnet is to invest R34.1 billion in railways over five years, R24.9 billion in its ports, R4.9 billion in a fuel line, and R600 million in other projects. Much of this money could end up going to foreign firms due to critical staff shortages. Failure to complete the planned infrastructure on time would be deeply embarrassing to the government.

*South Africa first: a political question*

The government recognises the realities of a situation in which some of the most dynamic sectors of the South African economy are embedded in international labour markets in which skilled workers are encouraged to regard the entire globe as one vast market-place for their talents, and in which some governments aggressively encourage recruitment from abroad. At the same time, however, South Africa's government counts organised labour as a key part of its constituency. Indeed, the ANC formally is part of a triple alliance consisting of itself, plus the South African Communist Party and the Congress of South African Trade Unions, COSATU. The ruling party is subject to significant political pressures that are both ideological and based on the demand to create or preserve jobs for South Africans in the first instance.

In keeping with its neo-liberal economic strategy, the South African government has thrown open the country's borders in many areas of trade. It is the leading architect and champion of the New Partnership for Africa's Development (NEPAD) and a leading force

behind the abolition of the Organisation of African Unity and its replacement by the far more dynamic African Union (AU). NEPAD, especially, is a projection of many of the neo-liberal economic views of the South African government. South Africa's policy towards its neighbours in the southern Africa region has borne many of the hallmarks of a common market, with a progressive elimination of trade barriers between member-states with a view to stimulating trade and the creation of wealth. The Southern Africa Development Community (SADC) Trade Protocol that came into effect in 2000 has now resulted in the elimination of tariffs on some 80% of South African imports from the region.

However, the vision of a southern African common market is also clearly running up against calls for the protection of jobs within South Africa. If the vision of a SADC common market were really to progress, it would imply South Africa developing a regional industrial strategy. The latter would imply South African manufacturing firms relocating their activities to countries in the region that can offer much cheaper labour, while South Africa itself concentrates on its most advanced sectors, based on high-knowledge industries. Such a regional industrial strategy has in the past been advocated by many officials in the Department of Trade and Industry (DTI), in imitation of similar policies followed by an earlier generation of industrialising countries in south-east Asia, such as Malaysia. (Malaysia is widely admired both inside the ANC and among trade officials as a country that has both overcome various postcolonial political impediments and has become a highly successful economic power). Those in the DTI who advocate a regional industrial strategy, therefore, broadly support the alignment of industrial strategy with a policy on migration that facilitates the movement into South Africa of highly skilled personnel and that would have the effect of creating low-wage jobs in manufacturing in neighbouring countries. While such a regional industrial strategy is advocated by some officials for purely commercial reasons, it would also have the effect of helping to reduce the number of illegal immigrants into South Africa by eliminating one of the main 'push' factors stimulating people to travel south.

Government policy on these issues is increasingly influenced by the trade unions, which have established a strong influence over trade and industrial policy. There are, then, tensions between South Africa's ambition to create a southern African free-trade zone and perhaps even a common market, and its desire to prioritise South Africans in job creation. Such tensions are visible notably in regard to migration. Thus, despite powering ahead on the lowering of tariff barriers within SADC, South Africa for some ten years delayed agreement on the SADC Protocol

on the Facilitation of Movement of Persons. This document was finally approved in 2005, having been signed by two-thirds of member-states. To date, only Mozambique has ratified it. The Protocol provides for visa-free entry for citizens of member-states for a period up to three months and facilitation of residence and work permits. South Africa is concerned not only by public perceptions that immigrants may take jobs from South African citizens, but also that the presence of immigrants will put pressure on South African social services that are already very fully stretched.

In short, government migration policy, including on the skills question, faces a number of contradictions. Thus, the South African government has expressed its concern at the scale of the African 'brain drain', as skilled Africans move to Europe and North America especially, in many cases permanently. Although figures vary widely, some authorities reckon that 23,000 university graduates and 50,000 executives leave Africa every year; there are said to be some 40,000 African PhD holders living outside the continent. The International Organisation for Migration reckons that 20,000 professionals have left Africa every year since 1990. In the context of the UN High-Level Dialogue on Migration and Development, South Africa's Minister of Home Affairs, Ms. Nosiviwe Mapisa-Nqakula, has spoken in favour of encouraging the African diaspora to participate in Africa's own development. In conformity with such a view, stimulating skilled South Africans to return home is part of the JIPSA initiative. A delicate matter, however, is that a high proportion of these expatriate South Africans are white, and those who left in the years around 1990-1994 have often been regarded by South African government officials as people the country is well rid of. But a policy of encouraging skilled people from Africa's diaspora to return home might easily run into real political problems if it were applied single-mindedly, in the case of South Africa, as it would challenge some basic elements of the government's black empowerment policy.

The present government seems rather divided on the approach to take to the problems posed by migration generally. In regard to internal migration, the government has little option other than to do its utmost to create jobs for the urban unemployed and to provide social services in the form of electricity, housing, medical services, and so on. The ANC is proud of its record in these areas, but also conscious that it needs to do more if the potentially explosive problem of poverty is to be addressed. Where the government is more ambiguous is on the matter of international migration. At the highest level, presidential pronouncements and measures such as the JIPSA initiative indicate that the ANC has (rather belatedly) accepted that

South Africa's serious shortage of skilled labour can be rectified in the short to medium term only by attracting skills from abroad, and that a globalised economy implies a global market in labour for those with marketable skills. President Mbeki also appears to accept that South Africa's chronically high level of violent crime both deters skilled workers from abroad and is an incentive to skilled South Africans to move abroad, thus depriving the country of their much-needed services. This observation seems to be as true of black South Africans as of whites. By the same token, the government also believes that Africa as a whole needs to use the skills of its diaspora, attracting back some of the hundreds of thousands of PhDs and other qualified people that the continent needs.

In South Africa's case, a contradiction arises in two regards: first, many in the ANC, including some government ministers, continue to hold a view deriving from the party's nationalist history that jobs should go in the first instance to South Africans, and even to black South Africans. Whatever the government may say in its documents concerning JIPSA, the considerable numbers of white South Africans who have emigrated over the past twenty years may not find that every part of the government would really welcome their homecoming. Second, it is clear that the Department of Home Affairs, in addition to being massively inefficient, also contains numbers of officials who do not subscribe to government policy on migration and do little to implement it, including in regard to skilled labour. In these circumstances, government policy on migration risks being seen as no more than lip service.

South Africans often say that their country is divided into a 'first world' society and a 'third world' society that exist uncomfortably alongside one another. This situation is not likely to change fundamentally in the foreseeable future. If the country is indeed able to attract skilled labour from abroad, its 'first world' component of financial and other services may continue to prosper. If not, it runs a risk of trying to preserve manufacturing and mining sectors that are in decline and that cannot easily keep pace with Chinese or other competition, particularly not if the government continues with a high-wage labour strategy.

## **CHAPTER 3**

### **UNDOCUMENTED MIGRATION: RISKS AND MYTHS (1998-2005)**

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#### **Chapter question:**

*Five main dimensions will be explored here: 1. the main characteristics of undocumented migration in South Africa; 2. the methodological difficulties involved in generating data on undocumented migration; 3. perceptions of risks associated with undocumented migration in South African public discourse; 4. intersections between these perceptions and official methods of enforcing immigration laws; and 5. risks generated by enforcement strategies.*

#### ***Introduction***

The South African government is struggling with the problem of undocumented migration. 'Illegal foreigners' are seen as a significant risk for the nation and its ambitious agendas of political transformation, economic development and broadly speaking, modernization attempts. Undocumented migrants compete with locals for jobs, and are perceived as frustrating state efforts to regulate health, education and housing sectors. Being 'illegal' makes one a target for exploitation and victimization by unscrupulous employers and corrupt officials. Large-scale clandestine movements of people provide trans-border criminal networks with accomplices and easy prey.

Groups on all sides of the political spectrum concur that official responses to this issue have been inadequate. The humanitarian lobby charges the government with neglect of its legal obligations.<sup>102</sup> For example, a recent Human Rights Watch study of farm workers in Limpopo noted that undocumented migrants' constitutional rights to personal freedom and security, conditions of detention which are consistent with human dignity, and fair labour practices are

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<sup>102</sup> See for example: Human Rights Watch, 1998, *Abuse of Undocumented Migrants, Asylum-Seekers, and Refugees in South Africa*, 2000, *Lindela: at the crossroads for detention and repatriation*, Johannesburg, South African Human Rights Commission, 2006, *Unprotected Migrants: Zimbabweans in South Africa's Limpopo Province*, Human Rights Watch.



infringed upon by violations of immigration and employment laws and also deficiencies in these laws.<sup>103</sup>

Conservative observers complain that the government has not acted decisively enough against migrants who contravene the country's immigration laws.<sup>104</sup> Even those charged with responsibility for migration governance have thrown up their hands in despair. In October 2003, Dr. Mangosuthu Buthelezi, the former Minister of the Department of Home Affairs (DHA), said "...to think we will ever overcome the problem is a dream."<sup>105</sup>

This report shows that South African public discourse is dominated by a set of tenuous beliefs about illegal migration. Despite the prevalence of evidence to the contrary, most South Africans tend to concur that the nation is suffering from an immigration crisis of tremendous proportions and gravity. These 'myths' guide and constrain the immigration enforcement regime, limiting the scope for reform, and licensing exploitative arrest and detention practices. The continued abuse of citizen and foreigner rights are not the only a cause for concern. The authoritarian methods South Africa uses to manage this perceived immigration crisis, are generating risks for South African development and democracy.

### ***Method***

This report is based on data collected by the History of Migration Policy Initiative at the Forced Migration Studies Programme. The data consists of Departmental Reports, Hansard, Parliamentary Committee minutes and newspaper reports from 1998 to 2005. The work also draws on a series of interviews with officials from the Department of Home Affairs, Department of Safety and Security and non-government organizations conducted in 2006.

### ***Defining illegal foreigners***

The Immigration Act (n. 13 of 2002) defines any individual who is neither a citizen nor a resident in the Republic, and who is in contravention of the Act as an 'illegal foreigner'. Non-

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<sup>103</sup> Human Rights Watch, 2006, *Unprotected Migrants: Zimbabweans in South Africa's Limpopo Province*.

<sup>104</sup> See for example: "Home Affairs negligence is criminal", *Independent*, 27 September, 2003, Clyde Bawden, "Editorial: Corrupt officials must go", *Pretoria News*, 24 October, 2003, Ian Gray, "Uphill battle for cops", *The Herald*, 27 February, 2004, Il Stemala, "We must get first bite of the economic pie", *Star*, 16 November, 2004. At its worst, this belief has been used to justify protests and vigilante attacks against foreigners, ostensibly to prevent undocumented migrants' encroachment on citizen entitlements. See for example: Boyd Webb, "Train from hell to Irene station: Smouldering bodies after assault by job-hunters", *Pretoria News*, 4 September, 1998, Louis Oelofse and Gill Gifford, "Police save two illegal aliens from mob", *Pretoria News*, 22 August, 2001, Africa Ka Mahamba, "Youth march against foreigners", *Daily Sun*, 31 July, 2006.

<sup>105</sup> Cited in Basildon Peta, "Illegal immigrants are a perpetual problem compounded by corruption, says Buthelezi", *Cape Times*, 14 October, 2003.

nationals tend to contravene South Africa's immigration laws in three main ways. First, they enter the Republic clandestinely by crossing the border at a place other than a recognized port or post. Large portions of South Africa's land borders are guarded by an electric fence that was set to 'lethal mode' during the Apartheid era. However, at present the fence is only enabled to detect crossings, and it takes only a few minutes for a small group of individuals to cross by land into South African territory.<sup>106</sup> There are a variety of sites, including various places along the Limpopo river where migrants can simply walk and swim across. For those who can afford it there is a lively road transport network operating between Southern African cities and regional centers that can be selectively adapted to assist clandestine border crossings.<sup>107</sup>

#### **Textbox i: Futility of Border Control**

'...the border control wasn't really a way of effective Aliens control. I think then you would have to have an official every ten yards [laughs] it was impossible.' Interview with Attie Tredoux, Former Chief Legal Officer, Department of Home Affairs.

'...I can't remember numbers but I think, I do not know is it 7000 miles or 70 000 miles or 700 000 miles of border we have taking land and sea borders into consideration. It's obvious we can't control the borders, it's stupid if you think you can control the borders.' Ivan Lambinon, Interview with Ivan Lambinon, Former Deputy Director General for Migration, Printing Works & Publication Control, Department of Home Affairs.

Second, after entering South Africa legally, some migrants contravene the terms of their residence permit, by staying beyond the allowed period, failing to renew, or by working/trading/studying/receiving government services in defiance of their permit conditions. Metropolitan Gauteng has been recognized as a place of high concentration of undocumented migrants. High-profile cases tend to grab the attention of the media, such as busts of the elite sex industry, university lecturers, rap-stars, basketball players, journalists of the SABC or bureaucrats in the employ of provincial government agencies. However, it is likely that most undocumented migrants find more ordinary forms of work in mining, construction, domestic labour, informal trade and informal services. Many do not end up in the cities, finding employment, often on a seasonal basis, in farms in Limpopo and Mpumalanga.<sup>108</sup>

<sup>106</sup> Eleanor Momberg, "Cross-border crime crisis", *Citizen*, 3 September, 2001.

<sup>107</sup> Jonathan Martens, Maciej Pieczkowski and Bernadette van Vuuren-Smyth, 2003, *Seduction, sale & slavery: trafficking in women and children for sexual exploitation in Southern Africa*, International Organization for Migration, Pretoria, International Organization for Migration.

<sup>108</sup> Human Rights Watch, 2006, *Unprotected Migrants: Zimbabweans in South Africa's Limpopo Province*.

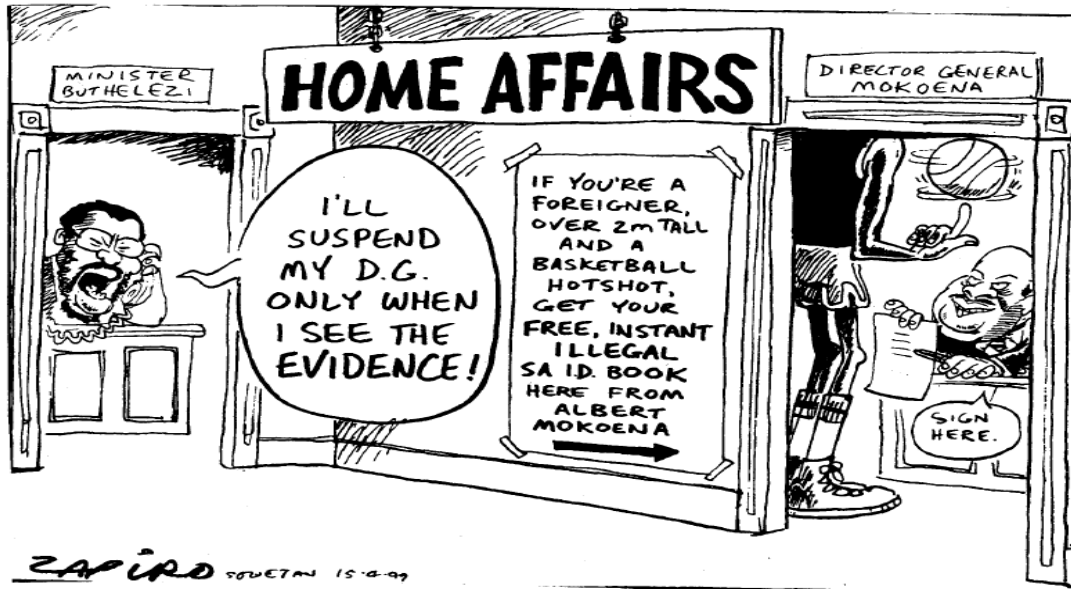


Figure 1: Cartoon illustrating high-profile identity fraud. Source: *The Sowetan*, 15 April 1999.

Finally, migrants may acquire fraudulent documents prior to coming, or during their stay. Instances of migrants being registered as citizens they have never met, or making fraudulent applications for refugee status are two of the more publicized versions of this offence. However, the distribution of South African ID books has also been corrupted, such that some senior officials regard large numbers of people claiming citizenship as ‘illegals in disguise’.<sup>109</sup> Work practices at the sites where IDs are produced and sorted are lax. Documents from the various regions are placed in large stacks with post-it notes indicating their destination office. Workers throw passports across the floor, joking about photographs and names with little or no supervision. It is somewhat unsurprising that suppliers in South Africa’s lively market for fraudulent IDs have plundered this environment for their own purposes.<sup>110</sup>

**Textbox ii: Examples of Headlines on ID Fraud**

‘Accused ‘broke every rule in the book’ to get an ID’ (Source: *Daily News*, 12 September 2002)

‘Married to a Stranger’ (Source: *The Sowetan*, 12 February 2002)

‘Elvira Discovers she’s married!’ (Source: *Sunday Tribune*, 28 July 2002)

<sup>109</sup> Interview with Willem Vorster, Assistant Director of Investigations, Department of Home Affairs, 2006, Interview with Attie Tredoux, Former Chief Legal Officer, Department of Home Affairs, 2006.

<sup>110</sup> Personal observations, Department of Home Affairs Head Office, Pretoria, & July 2006.

### ***Data limits***

Reliable data on undocumented migration is difficult to acquire. Using deportation figures, we can suggest that significant numbers come from the neighbouring countries of Lesotho, Zimbabwe and Mozambique. However, even these indicators must be qualified by a) our inability to account for numbers leaving the country without registering at a border post; b) the fact that many migrants reportedly utilize deportation processes as a 'free ride home' during festive seasons; c) and our inability to know how many deportees are 'repeat offenders'.<sup>111</sup>

To venture much further on the numbers question is to enter the realm of speculation. The condition of being undocumented makes one virtually invisible to national methods of recording population numbers.<sup>112</sup> When entering the country clandestinely, one has a specific interest in not interacting with government officials. Even if we could come up with a figure of all those who the government tends to treat as undocumented migrants, it is not clear that this figure would be representative of the people who legally ought to be classed as such. The difficulties experienced by refugees and asylum seekers in acquiring and maintaining their documents, the failure of the government to provide its own citizens with adequate documentation, and officials' relatively poor understanding of status determination procedures, mean that the state is constantly transforming people with the right to work, live and reside in South Africa into potential deportees.<sup>113</sup>

The more significant issue is the inability of researchers to generalize about undocumented migrants' livelihood strategies, or to clarify the nature of their role in South African society. Undocumented migrants are unlikely to participate in research surveys, or to participate in a way that would produce reliable data. For example, in inner city Johannesburg, a site where large numbers of undocumented migrants are routinely arrested and deported and believed to reside, all population groups, whether South African or foreign, tend to be suspicious of researchers, unwilling to provide information regarding their migration status, and disinclined to speak frankly about their socio-economic status.<sup>114</sup> This relative 'invisibility' of undocumented migrants may have as much to do with feelings of vulnerability associated with living in areas of high crime, discrimination against foreigners, and persecution by government officials as their fear of 'being found out'. Importantly, this is not to say that there is *no* reliable data on illegal

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<sup>111</sup> Interview with Attie Tredoux, Former Chief Legal Officer, Department of Home Affairs, 2006.

<sup>112</sup> The two most important systems are the Population Register for citizens and the Movement Control System for non-nationals.

<sup>113</sup> Jonathan Klaaren and Jaya Ramji, 2001. "Inside illegality: Migration policing in South Africa after Apartheid", *Africa Today*, 48(3): 34-47.

<sup>114</sup> These issues were revealed in a debrief session held for Johannesburg surveyors in the African Cities Project at Wits University, June 2006.

foreigners or their livelihood strategies, but that there is a lack of conclusive data that could be utilized to strongly check spurious generalizations.

This problem is compounded by the lack of political representation for undocumented migrants. There have been no procedures or institutions in place to ensure that undocumented migrants' concerns are consistently and coherently raised and defended in national public debate. Neighboring countries, that depend upon migrants for remittances, have complained about the domestic impact of the large numbers of deportations,<sup>115</sup> and have sought to widen the channels for legal migration through the instruments of the Southern African Development Community. However, they have not developed a collective approach to the plight of their nationals while in South Africa, or sought to motivate on their behalf. South Africa's growing migrant NGO sector has advocated strongly for protection of the rights of refugees and asylum seekers who are consistently mistaken for, and subject to the same enforcement practices as, undocumented migrants. These organizations have tended to rally, and appear increasingly likely to organize around high profile cases of undocumented migrant abuse, such as the Lindela detention center or Operation Crackdown, but have not developed a consistent approach or campaign around the cause.<sup>116</sup> Finally, South African unions have adopted an ambivalent stance on foreign nationals, vacillating between appeals to worker solidarity and complaints about the loss of jobs to foreigners.

### ***Myths about undocumented migration***

In the absence of adequate data and representative organisations, public debate on this issue has been skewed. There is no clear anti-immigrant consensus. Critical and humanitarian views share the stage with emotional and xenophobic counterparts. Nevertheless, discussion has tended to be shaped by a series of highly problematic and often fantastic 'images' of undocumented migrants, who they are, how they behave and their role, in particular, in undermining South African development and modernization goals. Some of the prominent myths worth investigating are:

- 'that illegal migration began after the end of Apartheid' ;
- 'that there are many millions of undocumented migrants in South Africa' ;
- 'that illegals tend to increase crime'.

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<sup>115</sup> Interview with *Attie Tredoux*, Former Chief Legal Officer, Department of Home Affairs, 2006.

<sup>116</sup> For an important exception see the International Campaign on Detention

Importantly, these ‘myths’ should not be regarded as blatant lies, invented by a malevolent anti-immigrant lobby, and subsequently imposed on the public through subversive propaganda. With the possible exception of the second in the list, these ideas are informed by real events and observations, and passed on through a number of reputable reporting practices. The myths function like public rumors. They are created by a variety of relatively diffuse discursive practices that are often difficult to detect, interrogate, or displace. A variety of sources, and particularly the media, tend to regularly reinforce, or lend credence to these ideas in their reporting of migration news. Over time, often regardless of repeated contestation, these myths become the benchmarks of public debate. It is worth investigating each of these ideas independently, to explore how they are produced and their impact on the way the problem is conceived.

*A new undocumented migration problem*

While South Africa has undoubtedly experienced a jump in the numbers of undocumented migrants, in particular, from the African continent, clandestine movements across South African borders are not new.<sup>117</sup> They were an important concern of the Apartheid government, which sought to manage international movements with the same enforcement structures it had designed for limiting the ‘influx’ of black South Africans to white areas. The euphemistically titled Department of Co-operation and Development was responsible for punishing and removing black South Africans who disobeyed pass laws, as well as deporting black foreigners who were not entitled to live and work in the Republic. After the demise of influx control in the late 1980s, the Reference Bureau for illegal aliens was transferred to the Department of Home Affairs and, an unexamined, but nonetheless troubling sequence of events took place. As prosecutions under the Group Areas Act and other influx control laws declined, deportations of both citizens from the homelands and undocumented migrants began to increase.<sup>118</sup>

Despite this shared history, ‘illegal migration’ is widely understood to be a problem that began c. 1994-5, during or after the transition to democracy and ANC rule. The basic assumption is that the poor peoples of surrounding countries began coming to South Africa en masse once the Apartheid regime was removed and economic opportunities increased. For example, in May 2000 the Chair of the Parliamentary Committee on Home Affairs remarked that South Africa is

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<sup>117</sup> Jonathan Crush, 1999. "The Discourse and Dimensions of Irregularity in Post-Apartheid South Africa", *International Migration*, 37(1): 125-151.

<sup>118</sup> Annual Reports Departments of Home Affairs, Interior, Co-operation and Development, Internal Affairs (1979-89)



perceived by the rest of the continent as the 'USA of Africa'.<sup>119</sup> This notion tends to serve two functions in political debates. First, it paints an image of undocumented migrants as intentionally exploiting the fortunes of the new South Africa. This allows them to be presented as inherently undeserving of the rights and protections promised to everyone under the constitution. Second, it disconnects international migrants from the shared experience of poor treatment with black South Africans; presenting contemporary xenophobia, arrests and deportations in a separate category from the less tolerable Apartheid phenomena of racism, disappearances and forced removals.

### *The numbers issue*

The most troubling myth is the claim about numbers. During the mid-1990s, working in close collaboration with the DHA, the Human Sciences Research Council, produced estimates suggesting that there were between 2.5 and 4 million illegal foreigners in the country but that the figure could be as high as 12 million. These HSRC used a sample method to estimate the number of illegal migrants. Going from door to door across the country the surveyors asked residents how many non-citizens lived on the property. The sample figure was then extrapolated and the number of legally resident non-citizens subtracted. These figures, and the methods used to generate them, were immediately contested by scholars and, somewhat unsurprisingly, formally retracted by the HSRC. Since then, DHA officials have publicly stated that there are no reliable estimates of the numbers of illegal foreigners.<sup>120</sup> Despite these critiques and capitulations, the estimates themselves lived on. In 1998 the National Party cited the research as evidence of the costs of illegal migration to the taxpayer and the need to take a stronger stance on immigration enforcement.<sup>121</sup> In 2002 the infamous DHA Director General Billy Masetla reported these figures as baseline research to Parliament in order to suggest that current figures were probably higher.<sup>122</sup> As recently as 2003 a book put out by the University of South Africa, ironically titled 'Of Myths and Migration', referred to the HSRC estimates as the product of 'sterling research', and used these figures to suggest that undocumented migrants were a growing security threat.<sup>123</sup> The figures are now offered with no reference to the HSRC report, as simple fact,<sup>124</sup> primarily because numbers are useful for those seeking to generate an image of demographic crisis. These figures

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<sup>119</sup> See for example the comments of the former Home Affairs Director General, Dr. K. Z Mbatha and the Chair (Mr. A.D. Mokoena in Parliamentary Monitoring Group, *Minutes of the Portfolio Committee on Home Affairs*.

<sup>120</sup> See Comments by Willem Vorster cited in Virginia Keppler, "30 'illegals' held at Groenkloof construction sites", *Pretoria News*, 30 October, 1998.

<sup>121</sup> "Illegal immigrants cost SA R2,5-bn", *The Star*, 5 January, 1998.

<sup>122</sup> Parliamentary Monitoring Group, *Minutes of the Portfolio Committee on Home Affairs*.

<sup>123</sup> Hussein Solomon, 2003. *Of myths and migration: illegal immigration into South Africa*, Pretoria, UNISA: Pages.

<sup>124</sup> "Home from home for foreigners", *The Sowetan*, 24 February, 2003.

are generally cited in an effort to imply that migrants constitute a massive and unwarranted drain on public services. Building on the notion of migrants as opportunists, the numbers help to create the image of a subtle invasion of South African territory that requires an immediate and direct response.

### *Migrants and crime*

The image of a threatening tide becomes a more ominous one of seditious infiltration when combined with stories about the criminal proclivities of undocumented migrants. South Africans are unquestionably the victims of inordinate levels of crime; crime that is often violent in nature. Furthermore, local and international intelligence supports the notion that some categories of illegal migration have been responsible for increases in the flow of drugs and guns across South African borders.<sup>125</sup> However, it is highly unlikely that foreigners can be held responsible for changes in South African crime rates. Figures from the Department of Home Affairs of foreigners who were convicted of crimes in South Africa between 1998 and 2004 range between 606 in 1999 and 1586 in 2002.<sup>126</sup> Senior SAPS and DHA officials doubt that illegal migration has much to do with the crime problem, or that tackling illegal migration is an effective means of bringing down national crime rates.<sup>127</sup> In defiance of these assertions, the public impression remains that undocumented immigrants are more prone to criminal activity than South Africans, and are responsible for South Africa's rising crime rate. A Cape Town Official's description of the inhabitants of an informal settlement illustrates this type of belief: "most of these people, if not all, are foreigners, many of them illegal immigrants and due to their having no income they have turned to crime to survive".<sup>128</sup> The media has helped cultivate this image – by dutifully and uncritically reporting suspected linkages between migrants and criminal activity, while avoiding investigations of these groups' non-criminal activities and experiences. Each new reported incident of crime involving undocumented migrants tends to provoke fresh rounds of finger pointing, blaming migrants for more general crime trends.<sup>129</sup>

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<sup>125</sup> See for example, in 2000 United Nations Office for Drug Control released a Report saying SA must target Hillbrow and confidential report handed from MI5 by British Foreign Office to SA Police: "The drug problem", *The Star*, 1 March, 2000, Paul Kirk, "SA is 'top drug smuggling base'", *Mail & Guardian*, 18-24 February, 2000.

<sup>126</sup> Lyndith van der Westhuizen, 2005, *Illegal Migration in South Africa during the first ten years of democracy*, Cape Town, Immigration Advisory Board.

<sup>127</sup> Malusi Gigaba, "Blame crime on criminals", *Daily Dispatch*, 17 July, 2006, Interview with A.H. Lamoer, Divisional Chief of Operational Response Services, South African Police Service, 2006.

<sup>128</sup> Helen Bamford, "N1 squatter camp breeds crime - and its growing", *Saturday Weekend Argus*, 24 September, 2005.

<sup>129</sup> See, for example the current Deputy Minister for Home Affairs public response to the spate of uninformed finger pointing after a shoot-out with police involving non-nationals in Jeppestown Malusi Gigaba, "Blame crime on criminals", *Daily Dispatch*, 17 July, 2006.

'Illegal foreigners are new'. 'Illegal foreigners come in vast multitudes'. 'Illegal foreigners are criminals'. The cumulative effect of these myths is to make it extremely difficult to augur measured policy change on immigration. Once the general public accepts that millions of opportunistic undocumented migrants are swamping South Africa, stealing and dealing drugs as they go, the space for balance and reason in the policy has already narrowed significantly. While DHA officials commonly speak, in reference to the dilemma faced by many developed nations, of the difficulty of making policy when pressured simultaneously by nationalist anti-immigrant a rights-oriented lobbies,<sup>130</sup> these distorted ideas on undocumented migration appear to be the more significant obstacle to transformation of South African policies on migration.

### **Textbox iii: Veiled threats of violence against undocumented migrants**

'In Durban the situation has reached the point of no return. Foreigners might even lose their lives to residents whose tolerance has been stretched to the limit' (Source: *Sowetan Sunday World*, 12 May 2002)

'These people must know that most of the citizens of this country are not as philanthropic as our government, and that one day there shall come a time when they have to pay for their hide-and-seek Mickey Mouse game that they are currently playing.' (Source: *The Star*, 31 December 1998)

### ***The governance of undocumented migration***

In this context of wildly distorted images of the phenomenon, the governance of undocumented migration has lacked direction and stuttered to the point of collapse. In the late 1990s there was a widespread political consensus that a new approach to immigration was needed; one that rid South Africa of the vestiges of the old regime contained in the 1991 Aliens Control Act. Consequently, the DHA introduced a new legislative framework on immigration and refugees. The 1995 Draft Protocol on the Free Movement of Persons suggested a regional shift to an EU type form of migration governance. In the 1997 Green Paper on International Migration a broadly representative team put forward the case that instead of focusing on controlling 'illegals', the government should seek to 'manage' migration flows in ways that served the national interest.<sup>131</sup>

These moves were quickly countered by the DHA Ministry which, under the terms of the then Government of National Unity, was the responsibility of Dr. Mangosuthu Buthelezi and the Inkatha Freedom Party. The first White Paper on Immigration returned the focus to a control

<sup>130</sup> This paradox was noted by former Director General Mr. W Masetla in Parliamentary Monitoring Group, *Minutes of the Portfolio Committee on Home Affairs*. For an instance of public protest see: Dumisani Zondi, "Unemployed blame foreigners", *The Natal Witness*, 26 May, 1999.

<sup>131</sup> Draft Green Paper on International Migration (GG 18033 of 30 May 1997).

agenda, and set out to renew commitments to various components of the former legislation.<sup>132</sup> Of particular concern were a bundle of ‘community enforcement’ measures that placed the onus on South African citizens to report the presence of foreigners in workplaces, schools and hotels. Buthelezi, and a small coterie of DHA officials and advisors, sought to push this new strategy through consultative and parliamentary processes without the support of their whole Department, the public, or the Parliamentary majority. The ANC was slow to develop a coherent position on this issue. There were elements within the ANC interested in producing an entirely different approach to immigration issues, particularly those with personal experience of living in exile during Apartheid.<sup>133</sup> However, these voices were either never heard, or lacked the channels to provide different inputs to the policy process. As a result, for the duration of the GNU, the ANC merely played a stalling role, attacking and sabotaging the legislation, without developing any clear alternatives.



Figure 2: Cartoon depicting Buthelezi’s ‘community enforcement’ approach’. Source: *The Star*, 21 February 2000.

The more significant issue revealed by the legislative process was the fact that no single Government agency was in charge of migration. This was a legacy of the Apartheid era, when responsibilities for enforcement were juggled between the various departments with responsibility for enforcing influx control. A confused mandate was ideally suited to a regime run by secret security agencies and networks, but proved crippling in the post-Apartheid era. The

<sup>132</sup> White Paper on International Migration (GG 19920 of 31 March 1999).

<sup>133</sup> Interview with *Willem Vorster*, Assistant Director of Investigations, Department of Home Affairs, 2006.

Ministries of Justice, Security and Safety, and Defence were each given new responsibilities to manage immigration under the draft legislation. However, none of these agencies were, adequately consulted on these new tasks, or willing to divert their resources accordingly. More importantly, with the possible exception of the army, none were prepared to relinquish their existing powers of immigration enforcement to a proposed new immigration agency. The outcome of this struggle is that reforms in enforcement practices have not, as Buthelezi and his advisors proposed, led to a shift in the government's strategy on undocumented migration, from border and street level to workplace policing. Instead, we have seen the creation of an additional layer of enforcement on top of the existing structures.<sup>134</sup> The newly inaugurated National Immigration Branch (2005) is the final outcome of this additive process.

The DHA's capacity to regulate undocumented migration gradually deteriorated during the eight year struggle to pass the new legislation. There was a break-down in communication between, on the one hand, the policy-making elite that were driving the legislative process, and on the other, the departmental officials in charge of immigration enforcement. The drafting team did not incorporate a thorough understanding of existing departmental strengths and weaknesses into their strategic framework or policy-making approach. In return, senior officials never attempted to 'pilot' the proposed new strategy, or make other organizational changes to assist implementation.<sup>135</sup> The result was that migration governance stagnated, and in some cases deteriorated. In the words of one official "in many of the places the function stagnated, it didn't die, it was just never done properly, because of this ongoing dispute of quite a few years."<sup>136</sup>

These problems were compounded by confusion between immigration duties and other forms of governance. Since the transition the Chief Directorate for Migration (ports of entry, permits, refugees, enforcement and deportations) has been juggled with DHA responsibilities for Civic Affairs (births, deaths, marriages, voter registration and ID documents). To complicate issues, for a short period (1995-97) the Migration Directorate was also responsible for government printing works and publication control (censorship/information management). The main result of these linkages is that budgetary and human resources have been drawn away from immigration policing to distribute ID documents to people in rural areas, conduct mass ID

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<sup>134</sup> Cabinet moved to stymie some of the more extreme developments of this sort, by refusing Buthelezi his ambition of creating a new immigration police force. Parliamentary Monitoring Group, *Minutes of the Portfolio Committee on Home Affairs*.

<sup>135</sup> For a rare example of an official noting an intention to employ this approach see the comments of a Western Cape immigration official in Peter Wilhelm, "Fortress SA bites some of the hands that feed it", *Financial Mail*, 10 April, 1998.

<sup>136</sup> Interview with Assistant Director of Investigations, Department of Home Affairs, Willem Vorster.

campaigns in the lead up to elections and to deal with heightened flows through ports during special events.<sup>137</sup>

Human resources have not simply been diverted from immigration enforcement. According to almost all senior officials, DHA employees have lacked the professional competence to understand their task, or fulfill their basic duties. A combination of old constraints from the Apartheid era, and poor management during the transition period has ensured that the DHA has never met its human resource needs. The Department was historically the 'employer of last resort' within the South African government, rarely attracting or maintaining the highest quality civil service recruits.<sup>138</sup> Immigration officers resisted incorporation into broader departmental decision-making and strategy ever since the Aliens Control Bureau was transplanted into Home Affairs during the late 1970s. This infighting helped generate an institutional culture characterized by poor discipline, and low morale.<sup>139</sup>

Due to the resistance of the Department of Public Administration, until recently the DHA was only allowed to demand that its entry-level officers have passed standard ten at school.<sup>140</sup> Since, the Department has minimal internal training mechanisms. The enormous sums spent by the Department upgrading its surveillance IT have been largely wasted. Large numbers of immigration officials are unable to use this technology to conduct routine status/identification checks.<sup>141</sup> These problems have been exacerbated by the mismanagement and politicization of departmental 'transformation'. The promotion of a new generation of directors and workers took place through forced redundancies of senior staff, with little consideration as to how the Department could draw on the experience of senior employees.<sup>142</sup> Problems of *esprit de corps*, incompetence and inexperience reached crisis proportions at the turn of the millennium, and have yet to be addressed by the ANC regime.

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<sup>137</sup> Interview with *Chairman of the Standing Committee for Refugee Affairs, Department of Home Affairs*, Claude Schrevasande, Interview with *Assistant Director of Investigations, Department of Home Affairs*, Willem Vorster. cf. the official position stated by former Director General Billy Masetla (but apparently stemming from interdepartmental meetings on the issue) that problems lay in the total number of immigration officers Parliamentary Monitoring Group, *Minutes of the Portfolio Committee on Home Affairs*.

<sup>138</sup> Interview with Former Special Advisor to the Minister of Home Affairs, Mario Ambrosini.

<sup>139</sup> Interview with, Attie Tredoux, Interview with *Assistant Director of Investigations, Department of Home Affairs*, Willem Vorster.

<sup>140</sup> Interview with *Chairman of the Standing Committee for Refugee Affairs, Department of Home Affairs*, Claude Schrevasande, Interview with *Assistant Director of Investigations, Department of Home Affairs*, Willem Vorster.

<sup>141</sup> "We've got one of the best systems in the world. And if you use it properly it is incredible what you can do with it. But they do not know that. Most of them don't have access to it. They have never bothered to get the access because they have never been trained." Interview with *Assistant Director of Investigations, Department of Home Affairs*, Willem Vorster.

<sup>142</sup> Interview with *Chairman of the Standing Committee for Refugee Affairs, Department of Home Affairs*, Claude Schrevasande, Interview with *Assistant Director of Investigations, Department of Home Affairs*, Willem Vorster. The claim that these human resource issues stem from the Department's small budget is countered by the fact that positions in Pretoria upper level management and in the regional rank-and-file have been routinely left unfilled.



Even if the Department had the best equipped civil servants in South Africa, it would still lack an adequate chain of command. The DHA does not possess the oversight mechanisms to regulate the performance of enforcement duties. In part this problem stems from the transition. The DHA has been struggling to create a unified and centrally managed organization out of the disparate and spatially segmented Apartheid bureaucracy.<sup>143</sup> As a result, local DHA branches appear to decide relatively independently how they will enforce immigration law. The officials themselves function with a relatively loose understanding of their mandate, which may vary significantly from the principles espoused in departmental policy documents.<sup>144</sup> In some cases this loose enforcement structure results in a peculiar state of affairs where the upper level management relies on the judiciary to perform its oversight functions, checking and sanctioning the practices of the junior staff.<sup>145</sup> Lest these chain of command problems be misleadingly attributed solely to the limited competence of the DHA junior ranks, it is important to note that the policy-making elites have also not been equipped to perform oversight functions, or implement strategic change. They are particularly lacking in the realm of information management. The Department appears to have lost large portions of its archive<sup>146</sup> and/or to lack the means to readily access its own documents.<sup>147</sup> For example, whereas in the mid-nineties the Department could readily produce figures citing numbers of workplaces visited and employers convicted of immigration offences, and could clearly delineate between its own arrests of undocumented migrants and made by other enforcement agencies,<sup>148</sup> at present baseline national figures on total numbers of deportations appear to be their primary statistical measure of policy performance.<sup>149</sup> Thus, officials have few means, apart from direct instruction, to ensure that their protégés learn from past successes and mistakes in the enforcement field.

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<sup>143</sup> The process of incorporating the former homelands agencies began in 1993-4: 1993/94, Annual report of the Department of Home Affairs.

<sup>144</sup> Interview with *Assistant Director of Investigations, Department of Home Affairs*, Willem Vorster.

<sup>145</sup> Interview with *Chairman of the Standing Committee for Refugee Affairs, Department of Home Affairs*, Claude Schrevasande.

<sup>146</sup> Interview with *Ibid.*, , Interview with *Former Deputy Director General for Migration, Printing Works & Publication Control, Department of Home Affairs*, Ivan Lambinon.

<sup>147</sup> Interview with Chief Director of the Inspectorate, Department of Home Affairs, Ntlakana, Gcinumzi.

<sup>148</sup> See, for example, the figures cited in the appendix of Anthony Minnaar and Mike Hough, 1996. *Causes, extent and impact of clandestine migration in selected Southern African countries with specific reference to South Africa*, Pretoria, Human Sciences Research Council: Pages.

<sup>149</sup> Interview with, Attie Tredoux. For example, Buthelezi stated that the impact of his department's enforcement measures were revealed in the increase in deportation during the period from 1994 to 1998, cited in Malcolm Ray, "SA to clamp down on illegal aliens", *The Sowetan*, 26 March, 1999.

Another problem noted with these figures is that there is no record of how many times a particular person has been deported in one year – these may be the same person being deported on multiple occasions. Jonny Steinberg, "Few arrested aliens involved in crime", *Business Day*, 18 June, 1998, Interview with, Attie Tredoux.

### ***Enforcement in practice***

The incompetence and confusion of the DHA has not resulted in inaction on the undocumented migration front. South Africa regularly arrests and deports very large numbers of undocumented migrants. The government has reported 'repatriating' over one hundred and fifty thousand people each year during the period under review (see Table A). Hence, even if incapable of stemming a growing 'tide' of migration, the government does, at the very least, marshal considerable resources to limit unauthorized access to its territory. Given the relative incompetence of the DHA, how do we account for this strong capacity to deport unwanted peoples?

Various South African governing bodies have, for reasons strongly linked to the mythical public perceptions outlined earlier, deemed illegal migration to be a problem, and set about autonomously enforcing immigration laws. For example, metropolitan governments have sporadically seen migration policing as inter-linked with their methods of addressing council by-laws.<sup>150</sup> Police anti-crime strategies have been more prominent and extensive. During the period under review SAPS, while never formally adopting a policy on illegal migration, intermittently identified linkages between undocumented migrants and crime, noted the act of policing the illegal movement of persons as a major line function of the SAPS, and described the enforcement of immigration laws as a potentially useful method of dealing with certain categories of criminals.<sup>151</sup> In pursuit of this independent agenda, they sought to beef up border policing operations in conjunction with SANDF.<sup>152</sup> They also conducted large-scale operational policing in areas of high crime and density of migrant populations which have led to large numbers of 'illegal foreigner' apprehensions.

Operation Crackdown was the most famous of these operations. In 2002 police, army, metropolitan and DHA agencies conducted coordinated sweeps of 'crime hot-spots', arresting over 50 000 people for contravening the Immigration Act. SAPS officials<sup>153</sup> and the former Deputy Minister Lindiwe Sisulu<sup>154</sup> strenuously denied that migrants were being targeted by these operations. According to their accounts, arrests of undocumented migrants were an unintended consequence of crime-busting operations. Government spokespersons struck back at NGO

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<sup>150</sup> Vicky Somniso, "Council, police raid squatters", *Sowetan*, 4 July, 2000, Sphiwe Mboyane, "Police beefed up to target criminals", *City Press*, 18 August, 2002.

<sup>151</sup> See for example: 1996/97, Annual report of the South African Police Service.

<sup>152</sup> Zandra Hechter, "Ambush in a thunder storm", *Diverse Publikasies*, 30 June, 1999, "North West stage cross-border blitz", *The Citizen*, 7 August, 2000.

<sup>153</sup> Kim Helfrich and Julian Rademeyer, "Police Strike in Sunnyside", *Pretoria News*, 23 March, 2000, Interview with A.H. Lamoer, Divisional Chief of Operational Response Services, South African Police Service, 2006.

<sup>154</sup> Parliamentary Monitoring Group, *Minutes of the Portfolio Committee on Home Affairs*.

critics, including the South African Human Rights Commission, for “creating the impression of being sympathetic towards illegal immigrants”.<sup>155</sup> However, senior DHA officials have, at least in hindsight, suggested quite the opposite: that these Operations were specifically designed to rid particular areas of undocumented migrants:

Interviewer: As I understand, Operation Crackdown is not a new type of police operation ..it has taken place before and it was primarily oriented at crime hotspots. But in the process undocumented persons were arrested and this involved Home Affairs.

I. : What was the consultative process between police and Home Affairs in the lead up to these operations and how was Home Affairs involved in these processes?

Ivan Lambinon: Always. It was when the operations went ... it was always the planning session between police and Home Affairs. And the statement that you made of how it had nothing to do with illegals, it was crime busting in the process is not true.<sup>156</sup>

[New Interview]

...so they didn't consult the department, they've done it on their own, in the final analysis the department was blamed for being hard and rash against those people and so on, and it was the police did those things. You see these police units acted on their own, and started to become you can say, Aliens Control mechanisms outside the scope of the department.<sup>157</sup>

The choice of target areas (Hillbrow, Johannesburg/ Sunnyside, Pretoria) and operational strategy (roadblocks, searches of residential buildings etc) combined with fact that the relevant agencies continued with this approach despite the clear evidence that undocumented migrants were outnumbering arrests of other ‘criminals’, tends to support Lambinon’s interpretation of events.<sup>158</sup>

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<sup>155</sup> "Guarding the guardians", *Business Day*, 31 March, 2000, Southern African Migration Project, 2001, *Migration News - March 2000*.

<sup>156</sup> Interview with Ivan Lambinon, Former Deputy Director General for Migration, Printing Works & Publication Control, Department of Home Affairs, 2006.

<sup>157</sup> Interview with *Attie Tredoux*, Former Chief Legal Officer, Department of Home Affairs, 2006.

<sup>158</sup> Statistics provided by the South African Police Service.

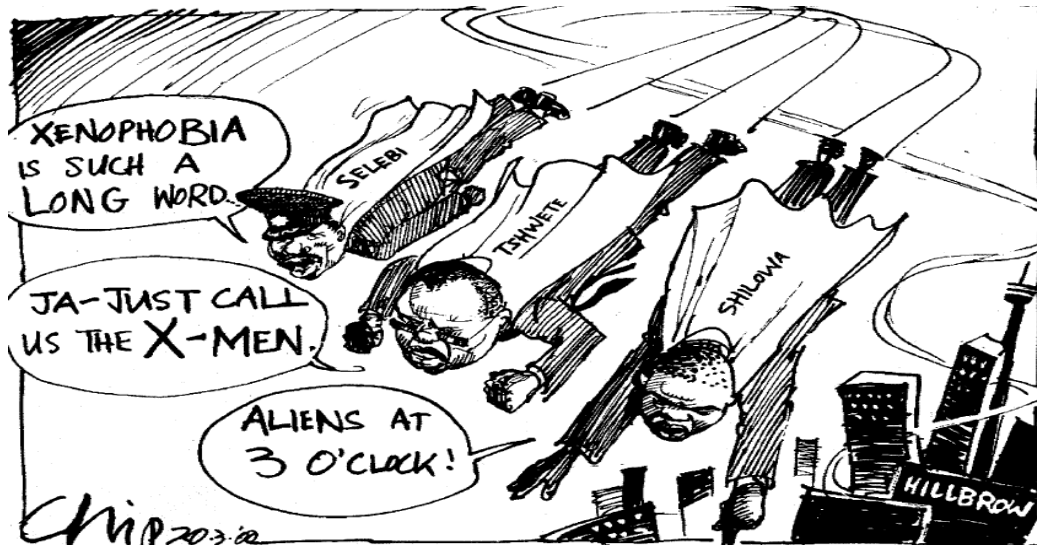


Figure 3: Cartoon questioning senior SAPS and Safety and Security officials' motives during Operation Crackdown.  
Source: *Cape Argus*, 20 March 2000

While large operations tend to receive more public attention, it is likely that beat policing is responsible for a large portion of arrests of undocumented migrants. It is more difficult to ascertain why ordinary police officers spend so much of their time looking for illegals. SAPS spokesperson, Mark Reynolds ventures to explain why:

Special operations conducted by the aliens investigations unit do not account for most arrests of illegal immigrants. Most are picked up in the normal course of operations. They are the easiest arrests to make.<sup>159</sup>

Arresting undocumented migrants does not require paperwork, and usually does not require an officer to put themselves at significant risk. At the same time, these arrests are a very useful method of boosting their personal performance record. Indeed, a researcher who has conducted in depth participant observation of migrant policing in Johannesburg suggests that officers from the outer-suburbs would commonly make trips downtown on the last Friday of the month to 'make up their quota'.<sup>160</sup>

To summarize, the governance of undocumented migration has been characterized by political stasis and the deterioration of the DHA's capacity to implement a coherent enforcement approach. In this environment the SAPS has tended to 'take the reins', pursuing undocumented

<sup>159</sup> Jonny Steinberg, "Few arrested aliens involved in crime", *Business Day*, 18 June, 1998.

<sup>160</sup> Interview with *Anthony Altbecker*, Senior Researcher, Institute for Security Studies, 2006.

migrants for a variety of non-transparent reasons. South Africa has continued to deport large numbers of migrants, but has lacked any clear rationale for continuing this approach and, given the prominence of a variety of anti-immigration myths, lacked the discursive space to conceptualize alternative regulatory strategies. The final section will review the variety of problematic enforcement practices that have proliferated in this environment.

### **Emergent risks**

#### *Aliens harmed*

The alienation experienced by undocumented migrants is the most obvious by-product of the government's crackdown strategies. The condition of illegality pushes migrants into a criminalized and lawless underground where they suffer a variety of forms of unconscionable treatment. They expose themselves to the risks of the elements and exploitation by smugglers and government officials in passage across the border. Many experience difficulties procuring adequate shelter, and risk their lives in overcrowded, dilapidated and dangerous squats.<sup>161</sup> Those that find their way to work in South Africa usually face a variety of forms of exploitation, regularly working in conditions and at rates that are far below domestic labor standards.<sup>162</sup> Lacking recourse to police protection, many are victimized by local crime syndicates. On the streets of Johannesburg, undocumented migrants have found themselves, somewhat perversely, trapped, with little potential or funds to return home and a variety of debts or responsibilities to local gangsters.<sup>163</sup> Some become targets of violent attacks by local vigilante groups, ostensibly attempting to preserve South African jobs and entitlements.<sup>164</sup>

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<sup>161</sup> Centre on Housing Rights and Evictions, 2005, *Any room for the poor? Forced evictions in Johannesburg, South Africa*.

<sup>162</sup> Human Rights Watch, 2006, *Unprotected Migrants: Zimbabweans in South Africa's Limpopo Province*.

<sup>163</sup> Morten Lyng Madsen, 2004. "Living for Home: Policing Immorality among Undocumented Migrants in Johannesburg", *African Studies*, 63(2): 173-192.

<sup>164</sup> Boyd Webb, 1998, "Train from hell to Irene station: Smouldering bodies after assault by job-hunters", *Pretoria News*, 4 September, Louis Oelofse and Gill Gifford, 2001, "Police save two illegal aliens from mob", *Pretoria News*, 22 August.





Figure 4: A man attempts to cross the border from Mozambique to South Africa<sup>165</sup>

While many undocumented migrants are required, due to the nature of their informal work (petty trading, car guarding etc.) to work the streets, they must also constantly hide from, and negotiate their rights to stay with local police agents. There is considerable evidence to suggest that migrants are forced to pay their way with the police, often under threat of physical violence. An incident in 2000 where members of the police dog unit let loose their charges on detained migrants in ‘training routines’ is one of the more extreme examples of this trend. An equally disturbing finding of ongoing research in Johannesburg suggests that undocumented migrants are raped by police officers, or requested to provide sexual favors in order to avoid arrest.<sup>166</sup> While the SAHRC reports improvements in the living conditions at the infamous Lindela detention centre over the last five years, migrants are still objects of official extortion and exploitation at this centre.<sup>167</sup>

#### *The Spread of Institutional Breakdown*

Attempts to control undocumented migration have impacted upon South Africa’s broader immigration regime. Since many migrants are assumed to be frauds and/or potential criminals, officials tend to informally ‘raise the bar’ for those seeking to migrate legally. Some of these requirements, such as the universal need for Yellow Fever clearance (regardless of nationality or country of origin) simply raise the costs and annoyance factor for applicants, or

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<sup>165</sup> Lyndith van der Westhuizen, 2005, *Illegal Migration in South Africa during the first ten years of democracy*, Cape Town, Immigration Advisory Board.

<sup>166</sup> Gayatri Singh (ongoing), *Migration and vulnerability to HIV infection: research on foreign and internal migrants in urban Johannesburg*

<sup>167</sup> Minutes of Local Government Working Group Meeting, 18 October 2006



ensure that only wealthy and determined individuals gain their permit. When, as is often the case, these regulations are not thoroughly thought through, they can spread Home Affairs' institutional malaise to other organizations. For example, since the DHA unilaterally decided that all applications for student and work permits that involved processing of qualifications would have to be cleared by the South African Qualifications Authority, this organization's resources have been stretched to the point of collapse.<sup>168</sup>

The construction of legal barriers appears to be accompanied by a growing contempt for foreign migrants. DHA offices for processing immigration permits across the country tend to be Kafkaesque affairs; decrepit, disorderly buildings which require applicants to endure dehumanizing conditions while awaiting processing in interminable and unclearly differentiated queues. These conditions are perhaps most problematic at the Rosettenville Refugee Reception Office where asylum seekers are required to return to renew their permits, in some cases, on a monthly basis. Asylum seekers, who have been banned from lining up prior to opening hours, loiter through the suburb in the early morning and then wait long hours in poor conditions to have their permits renewed.

### *Corruption*

The obsessive control orientation within South Africa's immigration system is acknowledged as a problem at the highest level.<sup>169</sup> An issue that is rarely noted is the fact that officials at lower levels have also begun to lose faith in, or to fail to see the practicality of the regulatory structure. This creates a variety of openings for corruption and criminality within both the DHA and the police. Officials engaged in corrupt practices are usually, at least in the first instance, not entirely lacking in respect for morality or due process. Instead, they tend to rationalize unofficial fee-taking and rule bending in those areas where they feel they have good reason to doubt the merits and/or ethics of proscribed procedures and laws. Migrant illegality in South Africa is precisely this sort of realm, where officials commonly have little personal attachment to the variety of procedural obstacles preventing migrants from obtaining residence and working rights, and tend to view corrupt practices as mere facilitation, assisting individuals to negotiate an unduly complex bureaucratic maze. Corruption is an endemic feature of border crossing, regardless of whether one possesses documents or not. Research on the Mozambique, Lesotho and Zimbabwe borders suggest that under-capacity, poor institutional incentive

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<sup>168</sup> Submission of Member of Immigration Advisory Board to DHA public consultation before UN High Level Dialogue on Migration, Pretoria

<sup>169</sup> Interview with Piet Colyn, Former Director General, Department of Home Affairs, 2006, Interview with Mario Ambrosini, Former Special Advisor to the Minister of Home Affairs, 2006.

structures, and migrants' legal vulnerability combine to create a situation highly susceptible to corruption and extra legality.<sup>170</sup> In the last few years, networks of petty corruption have been transformed into, or provided fertile ground for the growth of, corrupt institutional cultures and criminal organization. SAPS officials systematically exploit undocumented migrants as readily available and easily exploitable sources of cash.<sup>171</sup> Moves by the DHA to set up an internal inspectorate suggest that the problem within their department, particularly with regard to document fraud, is more deeply rooted. The general acceptance amongst the ANC elite, that the Department cannot be trusted to handle corruption on its own, has led to the establishment and strengthening of an internal inspectorate, recent appointments of former National Intelligence Agency officials to senior DHA posts, the appointment of committees of ministers and Directors General to oversee departmental decisions, and the outsourcing of internal investigative functions to the police.<sup>172</sup>

#### *Persecution of South Africans/refugees*

Institutional problems and corruption feed back into practical enforcement issues. The general acceptance that fraud of official documents is widespread results in police reliance on their (often racially informed) intuition to decide who is an 'illegal'. A variety of groups with certified rights to work and live in South Africa have been caught up in the deportation process. The most famous case has been that of police accusing individuals with South African documents of being illegal Mozambicans on the basis of their style of inoculation marks.<sup>173</sup> Asylum seekers who wait long periods, often with easily forged 'interview slips' before acquiring the Section 22 permit that guarantees their rights to stay in South Africa, pending an administrative decision on their status, are also falsely arrested. Securing asylum seekers' release from custody tends to occupy much of the agenda of refugee support networks and organizations. A somewhat more alarming byproduct of the general disregard for migrants' documents has been the victimization of South African citizens. Due in part to the nation's abhorrence of Apartheid era pass laws, South Africans are under no obligation to carry their identification with them. Yet, even if one is carrying the right documents, you can become a

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<sup>170</sup> David B. Coplan, 2001. "A river runs through it: the meaning of the Lesotho-Free State border", *African Affairs*, 100: 81-116, Loren B. Landau, Kaajal Ramjathan-Keogh, Tara Polzer, Emma Ramokhele, Gayatri Singh and Abeda Bhamjee, 2005, *Crossing Borders, Accessing Rights, and Detention: Asylum and Refugee Protection in South Africa*, Johannesburg, Forced Migration Studies Programme with Lawyers for Human Rights and The Wits University Law Clinic.

<sup>171</sup> Human Rights Watch, 1998, *Abuse of Undocumented Migrants, Asylum-Seekers, and Refugees in South Africa*, Interview with Anthony Altbecker, Senior Researcher, Institute for Security Studies, 2006.

<sup>172</sup> Interview with Gcinumzi Ntlakana, Chief Director of the Inspectorate, Department of Home Affairs, 2006, Interview with Zane Cleophas, Chief Director, Border Control Operational Coordinating Committee, Department of Home Affairs, 2006.

<sup>173</sup> Human Rights Watch, 1998, *Abuse of Undocumented Migrants, Asylum-Seekers, and Refugees in South Africa*.

target of immigration policing, and end up in Lindela, simply for speaking with a different accent, living in the wrong neighborhood, associating with immigrants or, more disturbingly, having the wrong skin color.

**Textbox v: Troubling arrest practices**

'IS YOUR Xhosa good enough to keep you out of jail? Clearly for Mxolisi Nkala it wasn't. He was detained by police near his home in Yeoville on Sunday on suspicion that he was an illegal alien, even though he has an ID document. Not having any form of identification on him, police asked Nkala if he could speak Xhosa. Not being fluent and having a Zimbabwean accent, he was then bundled into a police van. But Nkala is Xhosa and was born in the Transkei. The reason he has a Zimbabwean accent is that he was in exile from 1975 to 1989. (Source: *Cape Times*, 25 September 2005)

**Conclusion**

Undocumented migration is commonly seen as a risk for South Africa. This assessment is usually informed by a variety of beliefs regarding the threat of large numbers of relatively poor migrants from neighbouring countries swamping the country and looting its resources and opportunities. Given the paucity of reliable information available on undocumented migrants and their livelihood strategies, it is difficult to interrogate these ideas through scholarly research. Indeed, a variety of myths about migrant opportunism, numbers and criminality appear to endure regardless of the welter of evidence to the contrary. This is a dangerous discursive context for policy-making in South Africa, where institutional and enforcement structures function independently, and in the case of the DHA appear incapable of introducing new policies or implementing their existing mandate. Government enforcement of immigration laws appears to carry on under its own steam, driven by the loosely conceived ideas of often corrupt police officials. If one accepts that democracy and the rule of law are the cornerstones of development and progress in a post-Apartheid South Africa, the mounting evidence of official criminality, institutional breakdown and disregard for individual rights would appear to be the most worrying risk associated with the phenomenon of undocumented migration.

**Table A**

Figures on the repatriation/deportation of undocumented migrants (Source: Department of Home Affairs Annual Reports)

<b>Repatriations/removals</b>	<b>Mozambique</b>	<b>Zimbabwe</b>	<b>Lesotho</b>	<b>Other</b>	<b>Total</b>
1994	71279	12931	4073	2409	90692
1995	131689	17549	4087	3759	157084
1996	157425	14651	3344	5293	180713
1997	146285	21673	4077	4316	176351
1998	141506	28548	4900	6932	181286
1999	123961	42769	6003	11128	183861
2000	84738	45922	5871	9044	145575
2001	94404	47697	5977		156123
2002	83695	38118	5278		151653
2003	82067	55753	7447		164294

## **CHAPTER 4**

### **DECENTRALIZATION, MIGRATION, AND DEVELOPMENT IN SOUTH AFRICA'S PRIMARY CITIES**

By Loren B. Landau with contributions from Gayatri Singh Forced Migration Studies  
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**Chapter question:**

*This chapter explores local government responsibilities for addressing migration, the localised effects of migration, and the challenges of developing effective local responses. It argues that South Africa's inability to develop effective, contextualised policies on migration is having significant development impacts.*

#### **Introduction: The Case for Sub-National Analysis and Policy Formation**

Studies of migration and development often focus on aggregated trends and national policy frameworks. Although some accounts include non-state actors—particularly those associated with financial transfers, business formation, and service provision—rarely do they adequately consider the social, sub-national, and occasionally subterranean processes associated with human mobility. This is an oversight that renders invisible critical aspects of migration dynamics and their connection to social, economic, and political development. Without a robust and contextualized understanding of population dynamics, official and private actors lose their ability to achieve desired policy outcomes. Important risks, challenges, and opportunities also go unrecognized. In environments where migration dynamics dramatically vary among and even within cities, the need to disaggregate migration data becomes even more critical.

This chapter has two primary, interrelated, objectives. The first is to complement the more macro and historical perspectives of the preceding chapters by contributing finer grained detail dimensions to our understanding of South Africa's migration dynamics. Secondly, by revealing critical, sub-national and social issues associated with migration in South and Southern Africa—and the links between localised practice and national outcomes—it highlights the

importance for continued empirical research and the need for analyses that draw connections among regional trends, national policy priorities, and local practices and experiences.

This chapter begins by exploring local government's role in responding to migration; some of the challenges associated with developing such a response; and the political hazards associated with current approaches. The discussion includes national trends, but pays particular attention to the country's two primary cities: Cape Town and Johannesburg. Doing so highlights both similarities and critical differences in the political calculus informing migration management. The chapter also includes a brief discussion of one of the most acute challenges associated with migration – developing appropriate responses to the HIV/AIDS pandemic. Here we attempt not only destabilize widely accepted relationships between mobility and the spread of HIV, but also illustrate the importance of critical, socially embedded information and inter-governmental collaboration in responding to mobile populations. This is especially essential in Southern Africa where populations continue to oscillate between urban and rural areas or among urban centres. The challenge is only heightened by people who are neither from South Africa nor likely to stay in the country over the long-term. After establishing the necessity for localized understanding of migration dynamics, we turn our attention to non and semi-official responses to migration in the form of violence, discrimination, and economic exclusion. Although corruption and violence are on the national policy agenda, their dynamics and developmental impacts come into clearest relief when viewed up close. Whereas South Africa has taken conscious steps to institutionalise a human rights culture and the rule of law, these sharply contrast with many social and semi-official responses. In these responses we see the privatisation of violence and the spreading economies of corruption that are such unfortunate attributes of countries across the African continent.

## **Methods**

This chapter draws on an ecumenical set of data in illustrating the sub-national trends, social concerns, and responses to them. Much of the original information included here has been generated by migration-related research conducted by the University of the Witwatersrand between 2002 and 2006. This includes new survey research coupled with participant observation in national, local, and regional migration-related discussions and formal and informal interviews with migrants, service providers, advocates, and local government representatives in Johannesburg and Cape Town. This chapter draws on new survey data, participant observation, and interviews with migrants, host populations, researchers, and officials in Johannesburg, Cape Town, and the Department of Home Affairs.



The 2006 migration survey is the second iteration of a survey first conducted in Johannesburg in 2003. It stems from a collaborative project among Wits University (Johannesburg), Tufts University (Boston), the French Institute of South Africa and partners in Maputo, Lubumbashi, and Nairobi where the survey is also being conducted.<sup>174</sup> The 2006 Johannesburg sample includes 847 respondents interviewed in seven central Johannesburg neighbourhoods that have become primary destinations for domestic migrants and migrants from across the African continent (Berea; Bertrams, Bezuidenhout Valley, Fordsburg, Mayfair, Rosettenville, and Yeoville). Of these, 29.9% (253) are from the Democratic Republic of Congo (DRC); 24% (203) from Mozambique; 22% (186) from Somali; and 22.4% from South Africa (190).<sup>175</sup> The remaining 1.8% is from other countries mistakenly included in the sample. The sample was 59.7% male, generally reflecting official estimates of the inner-city's demographic composition.<sup>176</sup> These data are by no means representative of South Africa's 'migrant stock', but they nevertheless provide critical illustrations of trends and challenges, especially for those agencies and individuals charged with city management and urban regeneration. They also illustrate the value of comparative work on experiences of migration for highlighting similarities and differences among South Africa's international and domestic migrants and its slightly more sedentary population groups. Unless indicated otherwise, the tables on migration in Johannesburg included in this chapter are drawn from this data.

### **Local Government Responsibilities and Responses<sup>177</sup>**

Migration in and out of South Africa's primary cities is neither a temporary outcome of the transition to democracy, nor a fading legacy of the apartheid era migrant labour system. Population movements—some predictable, some spontaneous; some voluntary, some forced—are now perennial features of South Africa and South African Cities.<sup>178</sup> With the New Economic

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<sup>174</sup> Our partners include, the Observatory for Urban Change at the University of Lubumbashi in the DRC, the Population Studies Centre at Eduardo Mondlane University in Mozambique, and the Institute for Development Studies at the University of Nairobi in Kenya.

<sup>175</sup> As we targeted particularly population groups, these percentages are not representative of the overall demographics of the neighbourhoods in which we conducted our research.

<sup>176</sup> South African Cities Network. 2006. *State of the Cities Report 2006*. Johannesburg: South African Cities Network.

<sup>177</sup> The introductory paragraphs of this section draw heavily from Götz, G., 2004, 'The role of local government towards forced migrants', In. Landau, LB (Ed), *Forced migrants in the new Johannesburg: towards a local government response*. Johannesburg: Forced Migration Studies Programme and Götz, G and Landau, L., 2004, 'Introduction,' In. Landau, LB (Ed), *Forced migrants in the new Johannesburg: towards a local government response*. Johannesburg: Forced Migration Studies Programme.

<sup>178</sup> South African Cities Network, 2004, *State of the cities report 2004*. Johannesburg: South African Cities Network, p. 36; Balbo, M. and Marconi, G., 2005, 'Governing International Migration in the City of the South'. *Global Migration Perspectives #38*. Geneva: Global Commission for International Migration; Provincial Government of the Western Cape, 2002, *Migration Study in the Western Cape*. Compiled by Simon. B. Bekker. Cape Town: Provincial Government of the Western Cape; Dorrington, R., 2005., 'Projection of the Population of

Partnership for African Development (NEPAD) and other forms of regional economic and political integration, these population dynamics are likely to intensify and transform in the coming years.<sup>179</sup> In some instances, the number of people coming to cities is likely to grow leading to densification of population in certain neighbourhoods, new movements within the city, and the expansion of cities' geographic and environmental footprints. Elsewhere, the numbers of residents may not be growing, but the population's composition may be changing, bringing new ethnic and national groups into contact while shifting gender balances and age breakdowns. In other cities and provinces, the rate of in-migration is likely to slow or reverse as economic activity becomes concentrated in the country's primary urban centres. Indeed, in many cities across South Africa, there is gross out-migration and only two provinces—Gauteng and the Western Cape—have positive rates of domestic migration (see Appendix). Importantly, not all ethno-racial groups move with equal frequency. As long as each of South Africa's primary racial groups continues to be associated with varying levels of economic status, fertility, and mortality, predicting the impacts of migration requires careful attention to not just how many people are moving, but to who those people are. Such attention is also critical to understanding the politics surrounding migration. As we discuss later, those Government officials who are most engaged with issues of urbanisation are not only concerned about a growing population—although this worries them—but about who makes up that population: their education and skills levels; their ethnicity and cultural characteristics; and their nationality.

There are differences across the republic, but in almost all instances, the populations of South Africa's primary cities are becoming increasingly diverse and dynamic due to the arrival of non-nationals from Europe and Africa along with significant numbers of Black South Africans from the peri-urban townships and former homelands (Bantustans). This does not mean all neighbourhoods are changing—formerly Black, Coloured, or Indian townships continue to be dominated by South Africans of those same groups and many of Cape Town and Johannesburg's wealthy white suburbs remain economically prohibitive to all but the elite members of the country's Black, Coloured, Indian, and non-citizen residents. White working class white neighbourhoods, however, have been radically transformed by human mobility. Nowhere is this more evident than in Johannesburg where previously white residential areas close to the central business district are now almost completely occupied by black South Africans and non-citizens. In some cases, non-citizens make up the majority of particular neighbourhoods. In many

the City of Cape Town 2001-2021. Report prepared for the City of Cape Town. Cape Town: Centre for Actuarial Research, University of Cape Town.

<sup>179</sup> Kihato, Caroline, 2003, 'NEPAD, the City, and the Immigrant,' Development Update. Vol. 5(1): 267-286.

instances, the out-migration of the cities' white population—often to high security cluster homes or fenced suburbs—has further exaggerated the socio-spatial segregation generated by apartheid-era policies. In almost all instances, the in migration of new populations is bringing together religious, ethnic, and national groups in ways that are proving both productive and destructive.<sup>180</sup>

Some local government officials have seen this increasing diversity as a positive sign of their cities' emergence as trading and cultural centres and as a broad endorsement of South Africa's regional status. To further promote such regional and global integration, city planners in Johannesburg, Cape Town, and Durban have begun outlining strategies for recruiting and incorporating highly skilled migrants and refugees into urban socio-economic networks.<sup>181</sup> However, it is also evident that many of the cities' leaders and citizens feel overwhelmed – if not threatened – by migration, especially the movement of people south from the rest of the continent. These tensions are reflected in Johannesburg's Executive Mayor's 2004 'State of the City Speech' in which he argued that, "While migrancy contributes to the rich tapestry of the cosmopolitan city, it also places a severe strain on employment levels, housing, and public services." Proclamations from South Africa's former Minister of Home Affairs and other politicians, coupled with media reporting on drug syndicates, prostitution, and human trafficking, all feed—and in turn feed off—popular perceptions that migrants are bad for South Africa's society and economy because they 'steal South African jobs', 'bring crime', 'speed up the spread of AIDS' and create or contribute to a range of other social and economic ills (see earlier chapters for more details). In other places, the out-migration of the cities' skilled and affluent residents is raising the spectre of economic decline and an ever-expanding underclass.<sup>182</sup> It is no coincidence that many leaders fear that urbanisation, international migration, and out-migration are raising the spectre of further economic and political fragmentation and urban degeneration.<sup>183</sup> As we discuss in the subsequent pages, ineffective responses to migration increase the likelihood of such outcomes

However much local government officials and members of their constituencies may long for the days of influx control or simply wish to ignore issues of human mobility metropolitan

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<sup>180</sup> See A. Simone, 2004, *For the city yet to come: changing African life in four cities*. Durham: Duke University Press.

<sup>181</sup> In 2005, Cape Town conducted a skills audit of its refugee population so as to better develop policies to capitalise on their presence in the city. Johannesburg has yet to follow suit but has recently officially recognised the potential contributions migrants make to the city (Reuters 2006). Durban was among the first municipalities to register street traders regardless of national or legal status.

<sup>182</sup> South African Cities Network, 2006.

<sup>183</sup> See Beal, J, Crankshaw, O, and Parnell, S., 2002, *Uniting a divided city: governance and social exclusion in Johannesburg*. London: Earthscan.

municipalities (Metros) do not have a ‘choice’ in deciding whether or not to respond to growing communities of domestic and international migrants. Moreover, while many leaders in all spheres of government continue to see migration policy as a purely national competency located largely with the Department of Home Affairs (DHA), there are both ethical and legislative reasons why local government should be concerned. For one, there is a Constitutional commitment to protect the lives and improve the rights of all South African residents. Consequently there is a clear logical inconsistency in arguing that government should improve the lives of city residents while implicitly promoting exclusion of particular subgroups based on nationality. As it is not in their power to rid the cities metros of migrants, governments are left with the negative bi-products of a fragmented population that can not universally access safe accommodation, jobs, or social services. These effects, consequences that touch all urban residents, include heightened incidents of crime, corruption, poverty, social tensions, and greater risks of communicable disease

Rather than replacing existing divisions with shared rules of economic and social engagement, discrimination against non-citizens threatens further fragmentation and social marginalization in ways that undermine efforts, ‘to achieve a shared vision, amongst all sectors of our society, for the achievement of our goal of improving the quality of life for all citizens’.<sup>184</sup>

There are also legal reasons for addressing the needs of at least some sectors of cities’ non-citizens population. When it comes to refugees, for example, the Refugees Act (Act 130 of 1998) explicitly recognises that refugees should enjoy “full legal protection, which includes the rights set out in Chapter 2 of the Constitution” (s27(b)). To the extent that local government is responsible for ensuring the basic human rights or socio-economic rights spelled out in the Constitution, they also have duties to foreigners who are legally in the country. More broadly, Metros must be ‘developmental’, and developmental objectives are difficult to achieve amidst fragmented communities. According to the Local Government White Paper of 1998, municipalities must “work with groups in the community to find sustainable ways to meet their social, economic, and material needs and improve the quality of their lives”. This means thinking beyond the narrow confines of a set of delinked service sectors. The White Paper explicitly recognises that South African municipalities, like counterparts in other parts of the world, are responsible for managing space occupied by people: the challenge was no longer only how to provide a set of services, but how to transform and manage settlements that are amongst the most distorted, diverse, and dynamic in the world. And this means, “working with citizens *and groups* within the community to find sustainable ways to meet their social, economic and material needs and improve the quality of their lives” (emphasis added).

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<sup>184</sup> Gauteng Provincial Government, 2005, *A Growth and development strategy (GDS) for the Gauteng Province*. <http://www.gpg.gov.za/docs/misc/gds> Accessed 4 August 2005, p.3.

This imperative has been addressed in a variety of ways with the objective of overcoming fragmentation in pursuit of equity, accountability, wealth, and security. For those who have recognised that people born outside of South Africa are a permanent feature of the cities, this increasingly means initiatives that counter exclusion based on national origins. Many of these efforts echo Gauteng Province's desire to provide, "social and economic infrastructure and services that will build sustainable communities and contribute to halving poverty".<sup>185</sup> The means outlined to achieve this object include, *inter alia*, building relationships and partnerships between *all* sectors of society and strengthening co-operative and intergovernmental relations in a manner that reduces competition and reinforces combined efforts towards our national goal of creating a better life for all people.

International migrants are not explicitly mentioned as one of these groups in the Gauteng Development Strategy, but they—and domestic migrants—are included in Johannesburg's Human Development Strategy and are mentioned in Cape Town and Durban planning documents. These documents, all produced in the last two to three years, represent a dramatic shift from past practice when local and provincial authorities typically reacted to the presence of foreign migrants by implicitly denying their presence, excluding them from developmental plans, or allowing discrimination throughout the government bureaucracy and law enforcement mechanisms.<sup>186</sup>

Most of South Africa's major Metros now accept that new arrivals are part of their populations. (Elsewhere there is the slow recognition that urban populations are being transformed by out-migration; a dynamic whose effects have yet to be fully explored.) Part of the shift in policy comes from the slow recognition among *some* officials in local government that without apartheid-style measures to control movements—measures that for reasons of intention and incapacity never achieved 100% effectiveness—cities can do little to alter regional migration dynamics.<sup>187</sup> In the words of one Johannesburg city councillor, "as much as we might not want them here, we can not simply wish these people away."<sup>188</sup> We uncovered similar perspectives

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<sup>185</sup> Gauteng 2005: 16.

<sup>186</sup> See S. Vawda, 1999, 'Foreign Migrants, Governance and Local Development Strategies: A Case Study of International African Migrants in Durban' presented at 4th International Congress of Ales Hrdlicka World Anthropology at the Turn of the Centuries 31 August - 4 September, Prague

<sup>187</sup> See Kok, P. and Collinson, M., 2006, Migration and Urbanisation in South Africa. Report No: 03-04-02 (2006); Johannesburg Strategic Development Strategy 2006)

<sup>188</sup> Johannesburg metropolitan government has slowly begun to consider migrants as a vulnerable group although it is unclear whether efforts to include migrants in local decision-making is a priority. (Personal Communication, 13 July 2005).

among planners and planning documents in Cape Town and elsewhere. This recognition does not, however, come without considerable trepidation. In both Cape Town and Johannesburg, internal and domestic migrants continue to be seen largely as a drain on public resources rather than as either resources or, more neutrally, as simply the people government is dedicated to serve.<sup>189</sup> There are still those, however, that evidently long for a return for greater restrictions on human mobility. Indeed, Bekker's 2002 report for the Western Cape Provincial Government suggesting that Xhosas from the Eastern Cape may be flooding Cape Town's predominantly Coloured and White city centre—shifting the demographics and draining resources—appears to have generated strong anti-migrant sentiments among Cape Town officials.<sup>190</sup> These may be in the minority, but even officials wishing to more proactively absorb new residents—who are often poor and vulnerable—face considerable challenges in determining how to do so.

### ***The Responsibilities of Local Government***

Local Government is Constitutionally mandated to create inclusive cities for all residents. International and domestic migration raises important challenges in meeting this mandate. These obstacles are heightened by denial, the lack of policy tools, and a poor understanding of urban populations' composition, aspirations, and dynamics.

## **Challenges of Developing Effective Local Government Responses to Migration**

### ***Defining inclusion***

The fact that some senior officials have recognised the imperative to address migration in building inclusive, safe, and prosperous cities does not necessarily mean that the Metros have the information or tools to do this effectively. Perhaps the most fundamental challenge to local governments charged with creating inclusive cities is the elusive *meaning of inclusion* for South Africa's highly diverse and fragmented urban communities.<sup>191</sup> Without a clear understanding of how communities should look, it is difficult to develop policies towards a particular end. Under apartheid's grand vision, Black, Indian, and Coloured populations were largely prohibited from residing in the country's city centres. These centres, along with well-serviced suburbs, were reserved for Whites, while others were relegated to poor, densely populated townships on the urban periphery. South Africa was also surrounded by countries—many suffering as the

<sup>189</sup> See Provincial Government of Western Cape 2002.

<sup>190</sup> Bekker writes that, "For the African population, the key migration streams originate from southern Transkei and the Eastern Cape cities and farms, and flow into Cape Town and the Districts in the east and south of the province. . . . These streams are powerful and fast, and probably represent the largest and most rapid demographic flow in South Africa. Going by the survey sample, just under three quarters of the present adult African population of the Western Cape would have been born in the Eastern Cape" (Government of the Western Cape 2002:10).

<sup>191</sup> See Tomlinson, R. Beauregard, R., Bremner, L and Mangcu, X., 2003, The postapartheid struggle for an integrated Johannesburg. In Tomlinson, R. Beauregard, RA, Bremner, L & Xolela Mangcu (Eds), *Emerging Johannesburg: perspectives on the postapartheid city*. New York: Routledge



apartheid government attempted to suppress communism and the African National Congress (ANC)— that were denied access to South Africa’s relative prosperity. With the end of apartheid era pass-laws and the country’s full reintegration into regional politics and trade, these previously ‘forbidden’ cities have become the destination—if not the terminus—for peoples from throughout South Africa and the African continent.

As noted elsewhere, these inward movements have been accompanied by the flight of affluent residents from the inner cities. As a result of these two way movements, the population of Cape Town, Durban, and especially Johannesburg is a new population. In many parts of the cities it is difficult to speak of an indigenous community or dominant culture. This is most visible in central Johannesburg, an area almost completely comprised of new arrivals (See Table 1). In this context, it is difficult to develop a clear understanding of what cities currently look like, how groups interact, and what policies might achieve desired ends. Rarely have public debates been held about these concerns. Those that do occur typically couch exclusion in class/economic terms and avoid more contentious discussions around multiculturalism and values. Most often, planning objectives are imported from European, North American, and (to some extent) Latin American models without full consideration of their appropriateness within South Africa’s unique historical and social context.<sup>192</sup>

One of the most critical factors that must be considered is the nature of population movements within and into South Africa. And these must be disaggregated as they affect each of the provinces (and each municipality) in sometimes quite different ways. For example, between the last two national censuses in 1996 and 2001, Gauteng Province’s foreign-born population increased from 4.8% of the total population to 5.4%, representing a jump from 66,205 to 102,326 people. These are conservative estimates that also fail to capture the dramatic changes in those specific neighbourhoods that have become primary immigrant destinations. A 2002 survey (n=1,100) found, for example, that close to 25% of inner city Johannesburg residents were foreign born. More recent work estimates that the population of certain previously White suburbs’ are now primarily foreign born. As Table 4.1 suggests, foreigners are by no means the only ones moving to the cities. Leggett’s (2003) study found that 68% of inner-city Johannesburg residents reported moving to their present household in the last five years.<sup>193</sup> In the Wits University survey, almost 60% of the total South African population in the inner-city first moved

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<sup>192</sup> See T. Winkler, 2006, ‘Kwere Kwere journeys into strangeness: Reimagining inner-city regeneration in Hillbrow, Johannesburg’. PhD Thesis, University of British Columbia, Vancouver.

<sup>193</sup> T. Leggett, 2003, ‘Rainbow Tenement: Crime and Policing in Inner Johannesburg.’ Pretoria: Institute for Security Studies.

to Johannesburg within the last decade. It is not surprising, therefore, that Statistics South Africa found that between 1996 and 2001, close to 300,000 people came to Johannesburg from elsewhere in the country; a figure far overshadowing the number of immigrants. Such levels of urbanization are not, however, uniform. The South African Cities Network reports that, “[o]f the 53 district and metropolitan municipalities, 19 experienced a net in-migration of people, while 34 district or metropolitan municipalities experienced a net out-migration.”<sup>194</sup> (See Tables 4.1 and 4.2.)

For those cities experiencing rapid urbanization, multi-culturalism is a fact, but without the guarantees that interactions will be peaceful, productive, or characterised by mutual respect. In many instances, the opposite has been true (see the discussion of xenophobia and conflict below). The atomisation and fragmentation of South African cities—new patterns layered on old—stands in sharp contrast with the vision of a self-identified urban population invested in cities’ futures. As the statistics included in this chapter’s final paragraphs suggest (See Tables 9 – 13), South African cities that are receiving migrants are now characterised by signs of social fragmentation and mutual mistrust.

Negotiating a common basis of belonging is made all the more difficult by the nature of the cities’ new populations. Many who come to the city do not expect to stay there for long. According to Statistics South Africa, “the temporary nature of rural-to-urban migration in South Africa may add insight into the persistence of overcrowding and poor living conditions in urban townships. Migrants may employ a calculated strategy to maximise the benefits to their household of origin, rather than for their own benefit or the benefit of residential units in the urban setting” (Johannesburg Development Strategy 2006: 28). These patterns of uncertainty and onward movement are evident in new data from the recently conducted Wits University Johannesburg survey (See Table 3). Critically, journeys home or onwards often remain practically elusive for reasons of money, safety, or social status. This leaves large segments of Johannesburg’s population—citizens and foreign—effectively marooned in the city, but not wishing to take root or invest in it.

We also see evidence of this extra-local orientation in the levels of remittances being sent out of the city to both rural communities and other countries. Although the amount of remittances typically declines the longer people remain in a host community, the high level of those sending suggests a strong social commitment to communities other than those in which they live. Half

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<sup>194</sup> South African Cities Network, 2006: 2.17

(49.8%) of the Mozambicans sampled in Johannesburg (n=203) were sending money or other resources to Mozambique. A similar percentage of Somalis were sending money back 'home' (50.5%; n=186). Although a lower percentage, almost a third of Congolese (32.4%; n=253) report sending money back to the DRC. Importantly, almost half of South Africans surveyed (47.9%; n=190) were also sending money outside of Johannesburg.

The connections people maintain are not only with their countries and communities of origin. A significant number of people receive money from elsewhere in the country or the world, particularly Europe and North America. For example, 14.3% of respondents from the Democratic Republic of Congo in the Johannesburg survey report receiving money from outside the African continent. Such patterns of exchange are not surprising given the number of international migrants who have family elsewhere (see Table 4).

### *The Challenge of Mutual Engagement*

Efforts to build unified communities require fora in which groups can interact, develop shared understanding and respect, and plan for their collective future. People's orientation towards sites other than those in which they live greatly hinders such efforts, making it almost impossible to incorporate migrants into participatory planning processes. While individuals may find themselves categorised by others (including the police) as belonging to a specific ethnic or national group, few migrants politically self-identify as a member of a clearly delimited social category. Many consciously straddle various sub-groups—occasionally passing as South Africans—depending on the opportunities available. Not surprisingly, few mobilise politically along national, ethnic, or even religious lines. There were historical moments in South Africa where international migrants collectively organised over a sustained period to influence local or even national government.<sup>196</sup> However, in Cape Town, Durban, and Johannesburg, advocacy organizations have struggled to mobilise even legally recognised refugees to claim their legally defined rights to services. There are instances in which such groups have participated in public meetings with officials, but people typically do so as individuals with immediate, personal grievances. When migrants do organise, it is usually to meet immediate needs—particularly the repatriation of corpses—or to affect political change in their countries of origin.

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<sup>195</sup> See T. R. Smith, 2003, The Making of the South African (1998) Refugees Act. *FMSP Working Paper #5*. Available online at <http://migration.wits.ac.za/tsmithwp.pdf>.

<sup>196</sup> See Amisi, B. and Ballard, R. 2005. *In the absence of citizenship: Congolese refugee struggle and organisation in South Africa*. Forced Migration Working Paper #16 (April 2005). <http://migration.wits.ac.za/AmisiBallardwp.pdf> Accessed 1 May 2005.

The avenues and incentives for domestic migrants to participate in the *polis* are more obvious—voting, public hearings, etc.—but even here many migrants remain invested in their communities of origin and see few reasons for local participation.<sup>197</sup> When viewed from the objective of building inclusive cities, this sense of isolation and transience is deeply problematic as it may limit immigrants’ interest in investing in the cities in which they live. People preparing for onward journeys will not dedicate themselves to acquiring fixed assets and may maximise immediate profits at the expense of long-term planning. For these and other reasons, cities are struggling to find ways to engage with migrant populations: to evaluate their needs and enlist their support for collective endeavours.

### *Lack of Knowledge*

A further – but not unrelated – challenge of responding to migration comes from the little local governments know about the people living in their cities. Whereas national governments have the relative luxury of developing generalised policy frameworks, it is local governments and service providers who must channel resources to those in need, and translate broad objectives (NEPAD, ASGISA, etc.) into contextualised and socially embedded initiatives. Doing this effectively requires a thorough knowledge of the urban population’s constitution, aspirations, and needs. However, due to the lack of capacity within local government and other official bodies, in almost no instances are city governments able to draw on a nuanced and dynamic understanding of their respective constituencies. This is especially true with regards to the urban poor and even more so with those who are geographically mobile.

Recent efforts to map ‘poverty pockets’ and review both national and localised migration data represent some of the first concerted efforts to understand the dynamics of South Africa’s urban systems.<sup>198</sup> However, many of these studies are based on incomplete census data—particularly inaccurate regarding foreign-born populations—and are often purely descriptive. (For more on the discussion of methods and figures please refer to Appendix). While the Department of Provincial and Local Government now recognises that there is a need for improving cross-border and multi-nodal planning—including a greater consideration of population mobility—planners are effectively unable to understand the “functional economic geography of the city and its region [and] how the different components relate to each other” (SACN 2-7 2006).

In such environments, local planners continue to be influenced by stereotypes and

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<sup>197</sup> This must be seen in the context of declining political activity among all South African residents ; a trend that is especially evident among the countries previously disadvantaged groups.

<sup>198</sup> See Kok, P. and Collinson, M., 2006, Migration and Urbanisation in South Africa. Report No: 03-04-02 (2006). Pretoria: Statistics South Africa; Dorrington 2006; Western Cape 2002.

confused or incomplete readings of data. Throughout the country, this is often manifested as confusion between refugees, asylum seekers, immigrants, and illegal or undocumented migrants—each of which can make different claims on state services and has varying degrees of costs or benefits to the areas in which they live. More broadly, there continues to be an acute lack of clarity over the numbers at both a national and local level.<sup>199</sup> Occasionally, this means projections that migration is going to slow or stop – a prediction made about internal migration to Johannesburg in the late 1990s (Johannesburg 2006). More often, even official estimates predict numbers far in excess of those ultimately realised. The tension between Bekker’s (2002) discussion of migrant floods and Dorrington’s (2006) far more nuanced reading of migration trends in the Western Cape is illustrative of these numeric contestations. In most cases, however, such empirically informed estimates do nothing to inform the thinking—and pronouncements—of planners who often feel overwhelmed by the perceived numbers of foreigners and domestic migrants coming to their cities.<sup>200</sup> At a meeting convened by the South African Cities Network in 2005, a planner from a city that was experiencing an aggregate population loss hinted at the need to reinstate influx controls to stop the floods of people coming to the city from the rural hinterlands. As discussed in some detail below, these perceptions are often shared by the citizenry who feel city and national leaders are not doing enough to control undesirables’ movements into the cities.

The inability to effectively understand and predict urban populations’ composition and dynamics poses significant risks to local governments’ ability to meet their obligations and developmental objectives. Perhaps most obviously, the invisibility of large segments of the urban population can result in much greater demand for services than predicted, reducing service quality and outstripping budgetary allocations. In many instances, these are hidden costs—to public and private infrastructure, water, and other services that are not accessed individually. The degradation of building stock due to extremely high-population densities—a consequence of new migrants minimizing costs while maximizing centrality—also has long-term cost implications for cities that collect taxes on the bases of building values. This in turn fosters fragmentation and the breakdown of relationships between new migrant populations and more established—but frequently absent landlords.<sup>201</sup>

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<sup>199</sup> J. Crush and V. Williams, 2001, *Making up the numbers: Measuring 'illegal immigration' to South Africa*, Migration Policy Brief No. 3. Cape Town: Southern Africa Migration Project. See Annex for more on migrant numbers in South Africa.

<sup>200</sup> See discussion of methods and policy framing in this and other chapters.

<sup>201</sup> See Centre on Housing Rights and Evictions. 2005. 'Any Room for the Poor? Forced Evictions in Johannesburg, South Africa' ([http://www.cohre.org/view\\_page.php?page\\_id=120#i235](http://www.cohre.org/view_page.php?page_id=120#i235))

Higher populations do not, however, necessarily result in higher costs to local government in receiving areas. Because many of South Africa's internal migrants are young men, they may remain relatively healthy, autonomous, and productive in urban areas – and hence levy few costs. Moreover, while they may not invest in property, much of their consumption—of food and consumer goods—is in urban areas. In such instances, sending communities may lose the benefits of their labour while being saddled with the costs of educating their children and providing for them in their old age. Many of these costs are paid centrally or via the provinces, but others are the responsibility of local government. As discussed later in the chapter, the influence of migration on costs on local government and provincial budgets becomes especially evident in light of the HIV/AIDS pandemic.

While both sending and receiving communities are affected by the significant costs and benefits associated with migration, these calculations have rarely figured into the distribution of national resources by the South African Treasury. Since the promulgation of the new constitution in 1996, the Treasury has distributed money to the Provinces (and subsequently to the Metros) based almost exclusively on population estimates. Such practices are problematic for at least two reasons. First, as noted in the appendix, the population estimates often significantly misrepresent where people actually live. Someone may own a house and vote in a rural community, for example, but live elsewhere for eleven months of the year.<sup>202</sup> Secondly, as noted above, peoples' presence in a particular locality is not necessarily a good predictor of their costs to local or provincial government. In late September 2006, the South African Fiscal Commission convened a seminar to try to come to grips with these issues in order to better advise the treasury on resource distribution. However, it appears that they lack both the information and the political influence to significantly alter the resource allocation calculus.

#### *Lack of Intergovernmental Coordination*

Under the 1996 South African Constitutions, government is divided into three spheres (local, provincial, and national), each with considerable autonomy and competencies. Departments dedicated to particular services and functions—health, housing, education, etc.—are often replicated at two or more levels. To address multi-sectoral issues including finance and security, President Mbeki has organised 'clusters' involving multiple departments at in multiple

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<sup>202</sup> Department of Housing. 2006. 'Investigation into Urbanisation Trends in South Africa and the Implications for Housing'. Presentation made to the National Finance Commission (Midrand, 29 September 2006).



spheres. As of yet, there is no regular 'migration' cluster. Rather, there is a group of loosely affiliated departments ostensibly led by the national Department of Home Affairs. To date, this has been ineffective at developing coordinated responses. This lack of coordination among government departments further exaggerates the partial and often ill-informed responses to human mobility.

In discussions with planners in both Johannesburg and Cape Town, they repeatedly expressed frustration regarding their efforts to foster collaboration within local government departments and, more importantly, between local government and South Africa's other two governmental 'spheres' (Provincial and National). However, effectively responding to human mobility is not something that any single governmental body or sphere can address on its own. It requires co-ordination and planning that transcends the boundaries of metropolitan areas and encompasses a wider area connected by commuter flows, economic linkages and shared facilities. Most obviously, this means drawing on surrounding municipalities. Given the breadth of migration, however, concerns must also be addressed at the provincial, national, and even regional levels. Despite the evident desirability of such a coordinated response, the City of Cape Town bluntly admits that:

There has been a fragmented public sector response . . . There has been duplication, competition and lack of alignment within city government and between city and province. National government's reluctance to engage in the planning of the country's major metropolitan centres has further detracted from intergovernmental cooperation in Cape Town.<sup>203</sup>

The paucity of collaboration is visible in a variety of potentially critical areas. Perhaps most obviously, the Department of Home Affairs (DHA) has been either reluctant or unable to share population data with city planners. These not only include the number of foreigners legally entering the country, but registered moves, deaths, and births. In this instance, the most probable cause was lack of capacity within the DHA, although there is often a sense of proprietary rights to data that prevent the free sharing of information. However, lack of capacity can not explain the Department's reluctance to inform local government officials when they plan to open new refugee reception offices, change regulations, or engage in other activities that directly affect the functions of local government and other service providers. Battles between the Department and local councillors and businessmen over the location and activities of the refugee reception office in southern Johannesburg highlight how acrimonious the relationships between the two have

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<sup>203</sup> City of Cape Town. 2006. 'A proposed agenda for action: an intergovernmental approach to the development challenges of Cape Town'. Initial Report of the Intergovernmental integrated Development team for the Cape Town Functional Region. 28 February 2006: 8.

become.<sup>204</sup> The Department of Social Development has shown more willingness to engage local government, but they are the exception, not the rule.

Local Government is further challenged by the inability of the DHA to fulfil its responsibilities for issuing documentation to both South Africans and, especially, non-nationals. While identity papers can not prevent discrimination or ensure social inclusion, they can be invaluable in building prosperous and unified communities as they assist in finding work, accessing social services, and preventing arbitrary arrest, detention, and deportation. Without them, something as innocuous as petty-trade to walking in the street becomes illegal in the eyes of the state, and most commonly the police. Two key factors work against non-nationals acquiring the documents needed to help regularise their stay in South Africa. The first is job seekers' inability to apply for employment rights in the country. Instead, those coming to the country without an employment offer or study permit can only claim short-term tourist or study visas. Alternatively, they enter through irregular border crossings or apply for asylum. Indeed, tens of thousands of people, many from peaceful countries, have used the latter strategy to at least partially legalise their stay. The August 2005 endorsement of the SADC protocol for 'The Facilitation of Movement of Persons may eventually ease entry for foreign nationals; although these benefits will only affect the small number of people who have passports. For more on the general legal frameworks, see the preceding chapter by Aurelia Wa Kabwe Segatti.

The second obstacle is more subterranean: administrative irregularity and corruption. One of the most corrupt departments during the Apartheid period, administrative incompetence and irregularities flourished under Minister Buthelezi.<sup>205</sup> To overturn years of entrenched corruption and improve services, Minister Mapisa-Nqakula launched a 'turnaround strategy'. There has, however, been little noticeable change in the levels of petty corruption that affect non-nationals. Even would-be refugees must often pay unofficial 'fees' simply to file an asylum claim.<sup>206</sup> For

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<sup>204</sup> Over the last two years, the Rosettenville reception office has been the subject of much political and media attention. Initial frustrations were expressed by business owners in the shopping mall where it is located about refugees using toilets and loitering in front of their shops. At some point during 2005, the facility was closed for health reasons. However, following a court order it was reopened in January 2006 with new regulations that mean new asylum applicants are now only being accepted on Saturday mornings. The result has been extraordinarily long lines, sometimes of hundreds or even two or three thousand people, snaking around the building. Unsurprisingly, business owners have again begun complaining and have launched action against the DHA through local elected officials.

<sup>205</sup> When opening the National Counter-Corruption Workshop of the Department of Home Affairs in 2005, a representative for the Minister openly admitted, "On the corruption cards, our Department scores very high..." (Department of Home Affairs 2005). See also Adepoju (2003) for a discussion of the corruption surrounding the pass law system managed by the DHA.

<sup>206</sup> Segale, T., 2004, *Forced migrants and social exclusion in Johannesburg*. In Landau, LB (Ed), *Forced migrants in the new Johannesburg: towards a local government response*. Johannesburg: Forced Migration Studies Programme.

many, the first of these payments goes to private security guards hired to keep order and regulate access to the DHA facilities. Inside the offices, applicants have had to pay ‘translators’ (even when they speak English) or offer fees to file their asylum claim, a process that is meant to be free. Those unable to cover the costs typically drop their claims and remain in the country without documents. Apart from their illegality and threats to human dignity, these practices have generated economies within the DHA involving ‘corruption strategists’ and front-line staff who jockey for the most profitable posts.<sup>207</sup> For those wishing other forms of documents, however, they are also on sale. A nationally broadcast television documentary recently demonstrated how easy (and inexpensive) it is to purchase identity documents from almost any Home Affairs office countrywide.<sup>208</sup> There have been efforts to counter corruption within the department, but these offices remain woefully understaffed and it is not uncommon for people to wait hours simply to get an ‘appointment slip’ that allows them to return six months later. In the meantime, they must go without legally mandated documentation. Even so, the possibility of getting some more of document—an appoint slip or asylum seekers permits—has drawn tens of thousands of economic migrants into the asylum system. This has only generated further delays and raised the monetary value of a legitimate identity document.

As a result of these delays and inefficiencies, a recent national study found that only 11 percent of those granted asylum have been issued a ‘refugee identity document’.<sup>209</sup> Those granted permanent residency status have also been subject to delays of months or years. Over the last two years there have been improvements—most newly recognised refugees now receive their documents within a month—but problems persist. The country is now slowly introducing a ‘smart-card’ that should immediately be recognised by employers and service providers. At the time of writing, however, technical delays were preventing the widespread implementation of this system and it is unclear whether it will ever provide the intended benefits. Without documentation or a population register, local governments know little about who is in their communities. Moreover, local officials do not know how to treat people suspected of being non-nationals: are they to arrest them or provide them services and assistance?

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<sup>207</sup> A senior internal investigator within the DHA recounted these networks to me in great detail during an informal meeting on 30 June 2005. I have respected his wish to remain anonymous. See also G. Chesang, 2005, *The Law Does Not Matter: Corruption and the Politics of Refugee Protection in Post-1994 South Africa*. Paper presented to the 9th Conference of the International Association of Forced Migration, Sao Paulo Brazil (9 - 11 January 2005).

<sup>208</sup> Special Assignment, 2006, ‘The Quest to Buy Citizenship’ Broadcast on SABC 3, 17 October 2006.

<sup>209</sup> Belvedere, F., 2003, *National refugee baseline survey: final report*. Johannesburg: Community Agency for Social Enquiry (CASE), Japan International Cooperation, and United Nations High Commissioner for Refugees., 6)

### ***Challenges of Responding***

In addition to a lack of information about population dynamics, Local Governments are impeded in developing effective responses by lack of coordination—and competition—among government entities and poor performance on the part of the Department of Home Affairs, the Department that issues visas and identity documents to foreigners and South Africans. The problems of information, coordination, and institutional capacity become most visible at the intersection between HIV/AIDS and human mobility.

#### *Disjunctures and Challenges in Practice: Addressing HIV/AIDS and Human Mobility*<sup>210</sup>

The intersection between HIV/AIDS and human mobility practically illustrates many of the challenges discussed above: the lack of information, the lack of coordination, and the challenges of developing effective institutional responses for reaching populations on the move. It also highlights the pressing need to understand the cultural and social values associated with both moving and disease, factors not typically included in more macro or economic models. Perhaps most obviously, it demonstrates that HIV/AIDS can only be addressed through contextualised, local action and that the effects of HIV/AIDS are likely to be felt unequally across the country due to migration. However, if not addressed in the short term, there will be significant, long-term economic and political consequences that will be felt nationally and throughout the region.

The first step in developing an effective response is understanding the nature of the disease. On one hand, there is an obvious connection between any infectious disease—including HIV/AIDS—and human mobility. Since the early part of the 20th century, migration has been held responsible for facilitating the spread of infectious diseases in South Africa.<sup>211</sup> More recently, mobility has been publicly linked to the breakout of the Sudden Acute Respiratory Syndrome (SARS) and, particularly, the spread of the HIV virus. There is evidence to support some of these claims—a higher vulnerability of migrants to HIV infection, for example.<sup>212</sup> However, responses to HIV/AIDS are often founded on a facile understanding of the relationship between mobility

<sup>210</sup> This section draws heavily from the research conducted by Gayatri Singh.

<sup>211</sup> Packard R., 1989, *White Plague, Black Labour: Tuberculosis and the Political Economy of Health and Disease in South Africa*. University of California Press, Berkeley.

<sup>212</sup> See Abdool Karim, Q., Abdool Karim, S., Singh, B. Short, R. and Ngxongo, S., 1992, 'Seroprevalence of HIV infection in Rural South Africa.' *AIDS* 6(12): 1,535-9.; Lurie, M., Williams, B., Zuma, K., Mkaya-Mwamburi, D., Garnett, G. P., Sweat, M. D., Gittelsohn, J. and Abdool Karim, S. S., 2003, "Who infects whom? HIV Concordance and Discordance Among Migrant and Non-migrant Couples in South Africa." *AIDS*, Vol. 17: 2245-2252; Williams, B, Gouws, E, Lurie, M, Crush, J., 2002, 'Spaces Of Vulnerability: Migration and HIV/AIDS In South Africa'. *Migration Policy Series* No. 24 South African Migration Project.; Decosas, J.F., Kane, J.K., Anarfi, K.D., Sodji, K.D. and Wagner, H.U., 1995, Migration and AIDS. In: *The Lancet*. Vol. 346, Issue 8978: 826-828., Decosas J., and Adrien., A. 1997. 'Migration and AIDS'. *AIDS* Vol. 11 (Suppl. A) S77-S84, Pison, G., Le Guenno, B., Lagards, E., Enel, C. and Seck, C., 1993, 'Seasonal migration: a risk factor for HIV infection in rural Senegal.' In: *Journal of Acquired Immune Deficiency Syndromes*, Vol. 6 (2): 196-200; Brockerhoff, M., and Biddlecom, A., 1999, 'Migration, Sexual Behaviour and the Risk of HIV in Kenya' *International Migration Review* 33: 833-56.

and the disease. One reason for this is that much of the research on Southern Africa's HIV/AIDS epidemic has neglected important socio-economic, legal, and cultural dynamics of migration that may be contributing to the spread of the virus. As Decosas and Adrien (1997) point out, the association between migration and HIV is more likely to be a result of "the conditions and structure of the migration process than the actual dissemination of the virus along the corridors of migration" as currently assumed. We also have only begun to realise that HIV itself is a cause of migration as people move to access better health care or, as the macabre phrase suggests, "return home to die". The need to explain these processes is now acute. Only by conceptually shifting the focus from the physical act of movement and its association with HIV can we begin to understand the dynamics that are responsible for the spread of this disease.

A more careful look at infection rates begins to draw out some of the critical and often localised vectors associated with the disease. The only population based HIV prevalence survey in South Africa found that when differentiated with regard to locality types, the highest prevalence was found in those living in urban informal settlements (21.3% HIV prevalence), followed by formal urban areas (12.1%), 'tribal' areas (8.7%) and farms (7.9%).<sup>213</sup> The contributing factors for the higher rates of prevalence in informal settlements in urban areas were postulated to be the transient nature of life in these settlements due to high labour migration, mobility and repeated relocation. At the same time, the focus on the migrant population in 'receiving' urban areas has led to the neglect of HIV transmission potential at the rural or the 'sending' end, especially with respect to the rural partners of migrant men. A cross-sectional behavioural and prevalence survey undertaken with 168 migrant and non migrant couples in Richards Bay and Carletonville found that in nearly one-third of the HIV discordant migrant couples (where one partner is HIV+ and the other is not), the female partner living in the rural home was the infected partner.<sup>214</sup> This directly challenges the bases of many of the HIV/AIDS intervention strategies which have focused on men living in township hostels, on the mines, or in agricultural areas. It is also becoming evident that the risks of HIV infection faced by migrant women are likely to be different. However, these are yet poorly understood.

As Southern Africa's HIV/AIDS epidemic reaches its 'mature' stage, there is a greater need to understand the social and political economy of mobility that creates complex and interconnected circumstances leading to migrants' heightened vulnerability to HIV infection.

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<sup>213</sup> Nelson Mandela/Human Sciences Research Council, 2002, *South African National HIV Prevalence, Behavioural Risks and Mass Media Household Survey 2002*. Cape Town, Human Sciences Research Council Publishers.

<sup>214</sup> Lurie, *et al*, 2003.

Some of these have been identified (especially for the southern African region) as poverty and marginalisation; high rates of sexually transmitted disease and other opportunistic infection; differing strains of HIV; the presence or absence of male circumcision;<sup>215</sup> higher partner-change rates; and increasing contact with higher risk sex partners, such as commercial sex workers or clients.<sup>216</sup>

In addition to fostering a better epidemiology of HIV/AIDS—a challenge given the country's poor statistical infrastructure and other weakness within the Department of Health—there is a pressing need to engage with the institutional challenges of addressing the needs of migrant population both domestic and international. In terms of prevention, migrants tend to be left out of interventions due to their settlement patterns which often find them in informal settlements or in rural areas (mining/agriculture) that are difficult to access or do not have health facilities. Migrants, especially international migrants, may also bring with them their own understanding of the disease that leads them to refuse testing and treatment options oriented at a South African population. The language of prevention campaigns can also become a hindrance, not only for international migrants but for rural migrants who have moved to English or Afrikaans speaking communities. In some instances, access to HIV related services such as Voluntary Counselling and Testing (VCT) have been hindered—as have access to all health services—by xenophobia, discrimination, and ignorance.

There are also acute institutional challenges to anti retro viral (ARV) treatment that require a level of coordination that is beyond the South African (and Southern African) health system. These relate not only to a lack of understanding of migrant rights, but also to the difficulties involved in properly administering medication to mobile populations. A recent study commissioned by the South African Cities Network in five major South African cities revealed that in four out of the five metro municipalities, heads of HIV/AIDS units did not know that refugees were legally allowed to access ARVs.<sup>217</sup> In the same study, a majority of doctors and nurses interviewed were not aware of the refugees' rights to access these drugs.<sup>218</sup> The challenge of providing ARVs to refugees and asylum seekers is further compounded by a lack of adherence counselling available in their native languages. A more worrisome, but less well understood aspect

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<sup>215</sup> Williams, *et al*, 2002.

<sup>216</sup> White, R.G., 2003, 'What can we make of an association between human immunodeficiency virus prevalence and population mobility?' *International Journal of Epidemiology*. 32:753–754.

<sup>217</sup> Singh, G., 2005, *Patterns of Migration, Settlement and Dynamics of HIV/AIDS in South Africa*. Prepared for the South African Cities Network [http://www.sacities.co.za/2006/jan/hiv\\_aids\\_research\\_series3.pdf](http://www.sacities.co.za/2006/jan/hiv_aids_research_series3.pdf). Last accessed on 20<sup>th</sup> April, 2006.

<sup>218</sup> See also, Pursell, R., 2005, *Access to health care among Somali forced migrants in Johannesburg*. MA thesis, University of the Witwatersrand.



of this ARV provision to refugee and asylum seeker populations is the question of continued therapy in the event of their repatriation or deportation to the home country where ARVs may not be accessible. Adherence is a crucial aspect of ARV treatment, the failure of which could contribute to the spread of multi-drug resistant strains. Moreover, since only refugees (and not asylum seekers) are entitled to drugs, delays in refugee status determination mean that many 'legal' immigrants wait years before they can access services. Excluding these populations from AIDS related service provision only sets back the strategies employed to manage the epidemic. Problems of adherence are also critical with domestic migrants. A lack of fixed addresses for these populations even in the short to medium term makes it difficult to administer ARVs. Our own research found, for example, that health service providers report adherence to treatment to be most challenging with highly mobile populations.<sup>219</sup>

The social and institutional response to HIV/AIDS not only highlights how the disease intersects with fundamental social dynamics, but also the need to develop highly contextualised responses that consider both global trends and local variables. For example, urban health planning is usually based on stable population estimates and does not frequently account for increased burden of migration on service provision. Unless cities develop institutional strategies in collaboration with other governmental bodies throughout the country and the region, efforts to address HIV/AIDS are unlikely to be effective. Similarly, rural communities may experience institutional, social, and even environmental costs as migrants return 'home'. In such instances, the return of an ailing relative may demand other household members forgo income generating activities or farming in order to ensure their care. This presents a double burden with additional resources needed for dying family members while the families are less able to generate those resources. In some parts of rural South Africa, the traditional funeral feast has accelerated deforestation as families harvest already scarce fuelwood resources in the former homelands in order to cook for community members.<sup>220</sup> Improved collection and dissemination of epidemiological data can help address these challenges, but without a nuanced understanding of the social aspects of the disease and its relation to human mobility, such strategies may be far less effective.

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<sup>219</sup> Singh, G., 2005, *Patterns of Migration, Settlement and Dynamics of HIV/AIDS in South Africa*. Prepared for the South African Cities Network [http://www.sacities.co.za/2006/jan/hiv\\_aids\\_research\\_series3.pdf](http://www.sacities.co.za/2006/jan/hiv_aids_research_series3.pdf). Last accessed on 20<sup>th</sup> April, 2006.

<sup>220</sup> Twine, W, 2005, 'Changing socio-economic factors influence vegetation change in the communal rangelands of the South African Lowveld.' *African Journal of Range and Forage Science*. Vol. 22: 93-99.

*Exclusions and Fragmentation: Responses to Migration*

The challenges outlined above, together with widespread xenophobia and ignorance over migrants' rights, are promoting fragmentation and unhealthy competition in the South African cities that have become primary migration destinations and points of transit. This is evident in a range of areas critical to sustainable urban livelihoods including (but not limited to), access to social services, markets, and financial services; and interactions with the police and other regulatory bodies. The consequences—discussed in more detail below—include economic losses, threats to security and health, low degrees of social capital, and less liveable cities. Rather than ensuring that all city residents participate in planning processes and have access to markets, accommodation, and critical social services, discriminatory practices are creating an underclass comprised of non-citizens from throughout the continent and domestic migrants who may be similarly excluded. 'For the most part, refugees and migrants are a silent group, never engaging with the authorities or drawing attention to themselves for fear of incurring official sanction or social wrath'.<sup>221</sup> The following paragraphs outline the sources and parameters of this exclusion.

***Fragmentation and Conflict as Consequence of Poor Local Response***

The consequences of ineffective and inappropriate responses to migration include economic losses, threats to security and health, low degrees of social capital, and less liveable cities. Rather than ensuring that all city residents participate in planning processes and have access to markets, accommodation, and critical social services, discriminatory practices are creating an underclass comprised of non-citizens from throughout the continent and domestic migrants who may be similarly excluded.

*Markets and Financial Services*

Ready access to informal and formal markets for exchanging goods and services is critical to successful urban economies. Unfortunately, non-nationals are often systematically excluded from employment and income generating opportunities through both formal and informal mechanisms. Many foreign citizens without the right to work—but with the skills and a willingness to do so—accept positions where they are paid below the minimum wage or work in inhumane conditions. Even those with rights to work report being turned away by employers who do not recognise their papers or their professional qualifications. Without money to have their qualifications recognised by the South African Qualifications Agency (SAQA), they have little choice but to seek other ways to generate income.

Patterns of exclusion are also evident in private sector industries where poor foreigners are typically unable to access even the most rudimentary banking services. Although current

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<sup>221</sup> Beal *et al*, 2002: 125

banking legislation technically prevents anyone except permanent residents and citizens from opening bank accounts, this policy may be waived on a discretionary level.<sup>222</sup> Under pressure from lobbying groups, some banks have now begun extending services to refugees, but are still unwilling to open accounts for other African immigrants who do not have the requisite thirteen-digit identity number or foreign passport. New anti-money laundering measures have also made it necessary to have proof of residential address in South Africa in order to get or maintain an account, something that *de facto*, excludes many domestic and international migrants. Absurdly high bank charges exclude even more. Elsewhere in the world, banks have recognised the profits to be made from providing foreigners access to financial services; not only because they typically save at a higher rate than more secure local populations, but also because they frequently transfer money to and from other countries. At present, only wire-transfer services and informal moneychangers are collecting the considerable profits from such transactions.

### *Social Services*

A cocktail of inadequate documentation, ignorance, and outright discrimination, prevents many non-nationals who are legally in South Africa from accessing critical social services. Those in the country without documents face even greater obstacles. Section 5(1) of the South African Schools Act 84 of 1996, for example, declares that, ‘a public school must admit learners and serve their educational requirements without unfairly discriminating in any way.’ Moreover, Article 27(g) of the Refugees Act (130 of 1998) states that: ‘Refugees as well as refugee children are entitled to the same basic health services and basic primary education which the inhabitants of the republic receive from time to time’.<sup>223</sup> Despite these provisions, asylum seekers and refugees—to say nothing of other foreigners—face significant obstacles in accessing the educational services to which they are entitled. The *de facto* requirement that migrants pay school fees is the most obvious barrier to education and contradicts a prohibition on refusing admission to public schools based on parents’ inability to pay.<sup>224</sup> Costs for transportation, books, and uniforms further exclude the often semi-destitute non-nationals who find their way to South Africa’s cities. A 2000 study on the Somali refugee community in Johannesburg, for example, found that 70 percent of Somali refugee children of school-going age were not in school.<sup>225</sup>

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<sup>222</sup> See Jacobsen, K. and Bailey, S., 2004, Micro-credit and banking for refugees in Johannesburg. In. Landau, LB (Ed), *Forced migrants in the new Johannesburg: towards a local government response*. Johannesburg: Forced Migration Studies Programme.

<sup>223</sup> Cited in Stone, L. and S. Winterstein, 2003, A right or a privilege? Access to basic education for refugee and asylum seeker children in South Africa. Pretoria: National Consortium of Refugee Affairs.

<sup>224</sup> Department of Education, 1998, Admission policy for ordinary public schools (October 1998). Pretoria: Department of Education.

<sup>225</sup> Peberdy, S & Majodina, Z., 2000, Just a roof over my head?: housing and the Somali refugee community in Johannesburg, *Urban Forum*, 11(2): 273-88.

Although few data exist on other groups, the Somalis are not unique and those without refugee papers face even greater problems.

A similar pattern of exclusion is reflected in access to health service. Section 27(1) of The Constitution states that everyone has the right to health care services, including reproductive health care. This clause is followed by Section 27(2) binding the state to make reasonable measures towards realising these rights. Under law, refugees are entitled to have access to the same basic health care as South African citizens, although other migrants are required to pay additional fees.<sup>226</sup> Section 27(3) of the South African Constitution clearly states, however, that no one—regardless of nationality, documentation, or residency status—may be refused emergency medical treatment.

The inability or unwillingness of many hospital staff members to distinguish between different classes of migrants (coupled with xenophobia) often means that migrants, including refugees, are denied access to basic and emergency health services or are charged inappropriate fees. Non-nationals may not only be refused services outright, but foreigners report being made to wait longer than South Africans before being seen and are subject to other forms of discrimination. While waiting, one refugee overheard nurses talking about ‘foreigners taking government money and having too many babies,’ and another reports a hospital staff member describing the hospital as ‘infested’ with foreigners. There are also accounts indicating that non-nationals are often denied full courses of prescribed medicines.<sup>227</sup>

Failure to overcome these obstacles can have dire consequences. A 2003 national study of refugees and asylum seekers found that 17 percent of refugees and asylum seekers had been denied emergency medical care, often because of improper documentation or ignorance on the part of the admitting nurses.<sup>228</sup> If one could calculate this as a percentage of those who had sought such care, the figure would be much higher. In one particularly dramatic incident reported in Johannesburg, an expecting Somali woman was refused service on the grounds that (a) delivery, unless problematic, did not constitute an emergency and (b) she could not pay the additional fee levied on foreigners (which as a refugee she was not required to pay). As a result, she ultimately delivered the child on the pavement outside the hospital, only to have it die a few

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<sup>226</sup> Section 27 (g) of the Refugees Act 130 of 1998 (see also s 27 (b)). For more on refugee access to health care, see Pursell 2005.

<sup>227</sup> See Nkosi, N., 2004, Influences of xenophobia on accessing health care for refugees and asylum seekers in Johannesburg. MA thesis, University of the Witwatersrand; also Pursell 2005.

<sup>228</sup> Belvedere, 2003.

weeks later. This is an extreme example, but speaks to broader patterns of exclusion from effective protection. Given their tenuous status in the country, often aggravated by a lack of proper identification and their relative ignorance of their rights, many foreigners simply accept these violations. Indeed, only 1 percent of refugees who were refused health services lodged a complaint and 24 percent report doing nothing, largely because they did not know what to do.<sup>229</sup>

#### *Investigations, Detention, and Arrests*

In addition to issues of border control and policing raised in Vigneswaran's chapter, there is a need to understand how police officers are exploiting poor oversight, xenophobic discourses, and immigrants' vulnerabilities to supplement their income and address what many (incorrectly) assume to be the root cause of crime. Non-South Africans living or working in Johannesburg, for example, report having been stopped by the police far more frequently than South Africans, despite having generally lived in the city for shorter periods (See Table 5)

Although legally mandated to respect non-nationals' rights, police often refuse to recognise work permits or refugee identity cards. Some respondents even report having their identity papers confiscated or destroyed in order to justify an arrest. Furthermore, there are numerous assertions that police elicit bribes from apprehended persons (documented and undocumented) in exchange for freedom.<sup>230</sup> In 2005, a national investigative television programme broadcast footage of such bribes and an interview with a woman who was still bleeding from wounds she received as a result of not paying them.

Beyond xenophobia, there are structural reasons why the police often target foreigners. Denied access to almost all formal banking service, poor immigrants must either stash cash in their residences or carry it on their bodies.<sup>231</sup> Combined with their tenuous legal status, (often) poor documentation, and tendency to trade on the street (hawking or informal business), some police officers have come to see foreigners as 'mobile-ATMs'.<sup>232</sup> In the words of one Eritrean living in South Africa, 'as foreign students we are not required to pay taxes to the government. But when we walk down these streets, we pay.' A study conducted in late 2000 indicates that the frustrations outlined above reflect systematic patterns of bias where asylum seekers are arrested and detained for failure to carry identity documents; on the basis of a particular physical appearance; for the inability to speak any of the main national languages; or simply for fitting an

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<sup>229</sup> Belvedere, 2003.

<sup>230</sup> See Palmary, *et al.*, 2003:113.

<sup>231</sup> Jacobsen & Bailey 2004.

<sup>232</sup> Private Communication: 7 May 2004.

undocumented migrant profile.<sup>233</sup> Statements by senior police officials admit that this is a common practice, but the burden of proof nevertheless remains with non-nationals to establish their legal status in the country or buy their way into freedom.

There are additional deviations from the law oriented at regulating or extracting resources from non-nationals.' The 2002 Immigration Act, for example, effectively authorises the DHA to conduct searches, arrests, and deportations outside of constitutional or other legal limitations.<sup>234</sup> Without muscle of their own, immigration officers rely on the South African Police Services (SAPS) and, occasionally, the National Defence Forces (SANDF), to make arrests. More importantly, SAPS has exploited this law to legalise what would otherwise be illegal raids on buildings inhabited by suspected criminals and, potentially, illegal immigrants. Often conducted at night and away from oversight, police officers force entry, demand identity documents, and arrest both non-nationals and South Africans without respect for normal legal provisions. As unpalatable as these operations may seem, Yakoob Makda, the Director of Johannesburg's 'Region Eight' (i.e., the inner city) proudly (and without irony) reported their anti-crime *cum* anti-immigrant achievements to a public meeting called to help combat social exclusion.<sup>235</sup>

#### *Vigilantism, Violence, and (Non)policing*

Even casual conversations with South Africans will eventually reveal tropes linking foreigners to the proliferation of drug and weapons syndicates, prostitution, smuggling rings, and confidence scams. Such perceptions are particularly pronounced in those areas with significant non-national populations: In the Wits–Tufts survey conducted in Johannesburg in 2003, more than three-quarters of South African respondents in Johannesburg who thought that crime had increased identified immigrants as one of the primary reasons. Others indirectly condemn foreigners by blaming them for unemployment and declining moral values. These attitudes have given rise to a range of informal and extra-legal responses concentrated in those areas with significant migrant (and particularly immigrant) populations. Johannesburg's inner-city is the quintessential example, but the Cape Flats and even smaller immigrant-affected communities have also become sites of violence and vigilantism.<sup>236</sup>

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<sup>233</sup> Algotsson, Emma, 2000, Lindela: At the Crossroads for Detention and Repatriation. Johannesburg: South African Human Rights Commission.

<sup>234</sup> See Section 3 (Powers of *Department*) in the Immigration Act (2002).

<sup>235</sup> This statement was made during a workshop organised by 'Poverty and Exclusion in the Inner City' workshop convened by the Johannesburg Development Agency (JDA) (14 May 2003).

<sup>236</sup> See Palmay, *et al*, 2003.



Although the government's reluctance to release statistics makes it difficult to draw conclusions about the rate or cause of crime, available data illustrate the coincidence of insecurity and foreigners. Between 1996 and 2000, the period when the non-national population in Johannesburg's inner city first grew rapidly, robberies with firearms nearly doubled and the number of assaults with intent to cause grievous bodily harm also sharply increased (Leggett 2003:17). In the Wits University survey, 74.5% of inner city Johannesburg's South African population (n=192) felt that crime had increased in the last decade. Crime in Cape Town and elsewhere in the country has never matched Johannesburg's extraordinary standards, but the sense of losing control is relatively pervasive. It is not the place here to explore the causes of South Africa's growing urban insecurity. Few, however, doubt its links to the ineffective transformation of the post-apartheid police and the arrival of thousands of unemployed, black South Africans and immigrants in white areas that were once relatively prosperous.<sup>237</sup> Statistics, however, suggest that international migration is one of the least significant of these factors.<sup>238</sup>

The perceived threats posed by migrants—to values, to jobs, and to security—are taken as justification for remarkable responses by both police and citizens. Despite the deportation by state agents of more than a hundred thousand people a year, many South Africans are ill-content to leave the regulation of migration and, particularly, immigration in State hands.<sup>239</sup> Soon after South Africa's first democratic election, Alexandra Township north of the city centre organised a campaign entitled 'Operation Buyelekhaya' (Operation Go Back Home) in an effort to rid the township of all foreigners. Nor are these efforts limited to Johannesburg. In 2002, Du Noon Township outside Cape Town also passed a resolution expelling all foreigners and prohibiting them from returning.<sup>240</sup>

Tensions and isolated incidents of anti-foreigner violence have continued throughout the country. In August 2006, however, various frustrations against Somalis—one of South Africa's most visible and least integrated immigrant populations—were manifested in the murders of somewhere around 30 Somali shopkeepers in the townships in and around Cape Town. Most of these murders took place during the day, usually in victims' shops. In some instances, the assaults

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<sup>237</sup> See M. Shaw, 2002, *Crime and Policing in Post-Apartheid South Africa: Transforming Under Fire*. Bloomington: Indiana University Press; Landau, LB 2005. Urbanization, nativism and the rule of law in South Africa's 'forbidden' cities. *Third World Quarterly*, 26(7): 1115-34.

<sup>238</sup> Harris, B., 2001, *A foreign experience: violence, crime, and xenophobia during South Africa's transition*. Johannesburg: Centre for the Studies of Violence and Reconciliation.

<sup>239</sup> Crush, J and Williams, V., 2003, *Criminal tendencies: immigrants and illegality in South Africa*. Migration Policy Brief No. 10, Cape Town: Southern Africa Migration Project.

<sup>240</sup> Palmary, et al, 112; V. Southwell, 2002, *Protecting human rights: recent cases – Du Noon expulsion of foreign nationals*, Johannesburg: South African Human Rights Commission. [http://www.sahrc.org.za/protecting\\_human\\_rights\\_vol3no1.htm](http://www.sahrc.org.za/protecting_human_rights_vol3no1.htm) (Accessed 1 October 2004.)

involved the theft of goods, guns, or cash. In many others, little or nothing was taken. There has been much speculation about these murders but it is, of course, impossible to identify their true cause. There are undoubtedly various reasons why individual Somali businessmen have been targeted but news reports, migrant advocates, and City of Cape Town officials all indicate that the murders are linked to economic competition between the Somali shop keepers and South African born shopkeepers of South Asian origin. In response to the continued killings without arrest or visible intervention, the South African Somali Association has charged the Police with direct involvement in the killings either as providing the fire power or turning a blind-eye to the murders. Although a senior Police Official did deny that xenophobia was behind the attacks and suggested there would be no 'special' investigation, the South African Police vehemently denies any involvement.<sup>241</sup> They have, however, also been unable to report any successful arrests.

It is unclear what the long-term consequences of these murders will be. In some instances, we have seen a kind of solidarity between Somalis and the local population who benefit from the inexpensive goods sold in the shops with the Indian shopkeepers and gangsters—the the presumed perpetrators—held up as an external enemy. More often, the murders reveal the deep unease that South Africans have with foreigners living—and thriving (if modestly)—in their midst. And it is not only those in the immediate areas that have been drawn into these discussions: there are ripple effects of fear and animosity (and occasionally outrage) that have spread across all communities where Somalis live and among those who may have little or no contact with Somalis. An extended quotation from one (black) Johannesburg resident interviewed in early September 2006 illustrates many of these anxieties:

These Somalis are very arrogant people. They provoke people by saying that we South Africans are lazy and nothing comes out of them. South Africans do not know how to make money, how to look after wives because we beat them and have no time for them. There are also incidents where Somali business men have taken some women of local South African people ... the approach for the Somalis to come and just settle in our midst is a wrong one. Somalis should remain in their country. They shouldn't come here to multiply and increase our population and business and in future, we shall suffer. And yet we cannot go to Somalia. The more they come to South Africa to do business, the more the locals will continue killing them. They should also communicate with the people and should stop abusing us and thinking that we are stupid and have no brains. They should stop taking us for granted. If they stop thinking that they are cleverer than local South Africans, then the killings will stop.

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<sup>241</sup> van der Fort, Fouzia, 2006, Mourners Told Killings of Somalis 'Ethnic Cleansing' *Cape Argus*, (08 September, 2006); Interview with Kemal Omar.

In this and many other interviews conducted for this report, there was a palpable sense that Somalis and other immigrant populations could expect more of the same if they continued to come to South Africa and live amongst South Africans. In this quotation we also see the implicit recognition that, due to a legacy of Bantu-education, violence, and discrimination, many poor South Africans feel they are ill-equipped to compete with people from the rest of Africa. This augers poorly for building unity – or tolerance – within South Africa’s urban centres.

### ***Consequences for Urban Governance and Development***

If not addressed, the trends and challenges outlined above may negatively affect cities’ ability to achieve their developmental goals. If one accepts the premise that common, accountable institutions and fluid interactions among all groups are prerequisites for equitable and sustained growth, any source of social fragmentation becomes a threat. In this regard, difficulty accessing housing, markets, financial, and social services together with consistent targeting from criminals and the police are immediately problematic. The remainder of this chapter outlines a number of the current and potential consequences of marginalising non-nationals and other migrants.

*Economic exclusion:* South Africa has a substantial skills gap that the government hopes to fill by spending millions of Rands on skills training.<sup>242</sup> However, few employers (including the government) capitalise on the economic potential of those already in their cities or who are likely to come in the near future, including international migrants. Big business has now organised to facilitate the in-migration of highly skilled migrants. Such efforts do not, however, extend to people already in the country. While South Africa faces an acute nursing shortage, for example, there are certified refugee nurses in South Africa who can not find work. Instead of positively exploiting the presence of foreigners who are often well-educated and experienced, current policy criminalises migrants and drives processes of informalisation and illegality. In efforts to protect the rights and livelihoods of citizens, immigration policy has *de facto* promoted the illegal hiring of non-nationals in ways that continue to undermine the unions and suppress the wages paid to all workers. Moreover, by encouraging non-nationals (and those who hire them) to work in the informal sector or shadow economy, the government deprives itself of an important source of revenue and helps create networks of corruption and illegality that will be difficult to eradicate.

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<sup>242</sup> Department of Labour, 2005, National skills development strategy 1 April 2005 – 31 March 2010. Pretoria: Department of Labour.

Migrants' inability to access secure banking also has manifold consequences that extend beyond those excluded from service. Perhaps most obviously, lack of access to financial services (particularly credit) discourages migrants from investing in the cities in which they live.<sup>243</sup> (Although those included in our Johannesburg survey are still more likely to hire people to work for them—often South Africans—that South African citizens.)<sup>244</sup> Such obstacles can only aggravate infrastructural decay, limit job creation, and prevent a kind of 'rooting' through investment that can help stabilise communities and promote long-term planning. Given the migrants' general entrepreneurialism, their exclusion from business will have disproportionate effects. Keeping migrants and those they hire from moving into the formal economy also denies the government a source of direct revenues (from taxes and licensing fees) and means that much of the business that takes place is, to a greater or lesser degree, illegal. This, in turn, weakens the law's (and the state's) legitimacy and regulatory power.

*Access to social services:* Education and health care are central to any population's economic and physical health.<sup>245</sup> In transforming urban settings, education serves a dual role. The first is to provide children and youth with the technical and analytical training they need to compete and contribute to a specialised, skills-based economy. Obstacles to any group acquiring those skills will, consequently, project existing inequalities into future generations and limit the country's ability to adapt to new economic opportunities. Education serves a second, but no less critical role: forging communities from strangers. Through the sustained interactions within the classroom, diverse groups learn common sets of rules, how to exercise civil rights, and mutual respect. Exclusion from education, therefore, can create a subset of the population without the knowledge or skills to interact productively within the city. Given the extraordinary degree to which South African cities are fragmented and transient, this role is especially critical.

While the inability to access to education may have delayed effects, denying migrants access to health services has both immediate and long-term consequences. In the short term, it puts them at physical risk and endangers the welfare of those who depend on them. Where the denial of services contravenes published legislation, it also exposes public institutions to potentially costly legal action. Furthermore, denying basic health services raises the spectre of public health crises. While medical staff may discriminate between citizens and non-nationals, infectious agents are far less discerning. As long as migrants and South Africans continue to share

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<sup>243</sup> See Leggett 2003; Jacobsen & Bailey 2004; Simone 2004, p.10.

<sup>244</sup> See N. Hunter & C. Skinner, 2003, *Foreigners Working on the Streets of Durban: Local Government Policy Challenges*. *Urban Forum*, 14(4).

<sup>245</sup> See K. Annan, 1999, Foreword. In *UNICEF-Education: The state of the world's children*. New York: UNICEF.

urban space—often living in close proximity—those unable to access treatment become a danger to all those around them. A work force already weakened by the scourge of HIV/AIDS, is in no position to accept such an additional threat.

*Crime and Insecurity:* In South Africa, widespread immigration and urbanization have coincided with state effort to monopolise the legitimate use of force. During the apartheid era, vigilante groups—in various political, quasi-political, and criminal formations—blossomed while an overblown police force employed all means at their disposal to enforce the government's repressive policies.<sup>246</sup> The South African government sought to abolish these practices with the 1996 National Crime Prevention Strategy.<sup>247</sup> However, informal responses and arbitrary policing have inadvertently produced exactly what it hoped to abolish with corruption and vigilantism threatening to undermine the form of sovereignty South Africa is actively working to effect. Moreover, these new practices and logics are developing their own dynamics and momentum that not only limit leaders' ability to retain the power of law; citizens and non-nationals alike now face threats to the legal protections the law ostensibly guarantees.<sup>248</sup> However, if the police can not be trusted, they have little choice but to develop alternative mechanisms to ensure their safety.

Although many South Africans support the police's strategy of targeting foreigners on assumptions that they are behind most of the country's criminal activity, such actions are largely ineffective in establishing order or security. For one, there is no evidence showing foreigners are disproportionately prone to criminal activity.<sup>249</sup> An obsession with them consequently distracts police from where they are needed.<sup>250</sup> Moreover, the general ineffectiveness of such policing strategies is leading citizens to accept criminal activity as part of their social landscape. Many South Africans we have interviewed, for example, no longer classify mugging as crime unless it involves the use of a firearm. In this context, people are seeking alternative means to manage crime. In cases, this includes turning to groups like *Mapogo a Mathamaga*, a national investigation and 'goods recovery' company that works largely outside the law, but regularly draw on police

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<sup>246</sup> See Cawthra, G., 1993, *Policing South Africa: The SAP and the Transition from Apartheid*. Cape Town: David Phillips.

<sup>247</sup> Jensen, S., 2001, 'The Battlefield and the Prize: ANC's Bid to Reform the South African State', in *States of Imagination: Ethnographic Explorations of the Postcolonial State*, eds. T.B. Hansen and F. Stepputat. Durham: Duke University Press. 97-122, citation 110.

<sup>248</sup> L.B. Landau, 2005, 'Immigration and the State of Exception: Security and Sovereignty in Refugee-Affected Africa.' *Millennium Journal of International Studies*. Vol. 34(2): 325-348.

<sup>249</sup> Harris, 2001.

<sup>250</sup> Palmay, I., 2002, *Refugees, safety and xenophobia in South African cities: the role of local government*. Johannesburg: Centre for the Study of Violence and Reconciliation.

information and backup.<sup>251</sup> These linkages ‘delegalise’ the criminal justice system, robbing the state of one of its most primitive functions and placing all of urbanites at risk.

The arrest of people trading on the street—whether South African or foreign—or conducting other small business also affects the livelihoods of those arrested and their dependents. Cities must promote entry into trading markets rather than close this avenue to those who have few other options, a category of people well represented in inner-city Johannesburg. For migrants who lack the documentation or capital to find work in the formal sector—despite many having skills to make contributions in this area—regularly targeting this subset of the population for by-law infractions only drives trade further underground and increases the likelihood that they will turn to irregular, illegal, or dangerous economic activities. It also places migrants disproportionately at risk, as illustrated by new data from Johannesburg (see Table 6).

As Kemal Omar, manager of Intergovernmental relations for the City of Cape Town reports:

The kind of tension and violence that exists is the result of intolerance, but also government and civil society not creating conducive conditions for different peoples to live together. This has its roots in our history and particularly because of that history, we have to be very sensitive about these difference. We need to work in a way that brings communities together.

The kind of corruption and informal vigilantism seen against migrants in Cape Town, Johannesburg, and elsewhere across the country also presents a fundamental challenge to South Africa’s legitimacy and risk institutionalizing patterns of violence and corruption in essential state agencies and departments. The emergence of privatised and corrupt systems of state-sanctioned violence stands against one of the post-apartheid state’s primary (Weberian) objectives: the standardisation of coercion within a rights-based system of laws and accountability. Already in Johannesburg, we are seeing a police force that is not generally trusted by the population it is mandated to protect. That migrant groups who have been in Johannesburg for many years (Mozambicans and Somalis in this case) are all the more sceptical suggests that in the case of Johannesburg, familiarity breeds distrust if not contempt (see Table 7)

*Accountability and Planning:* South Africa’s economic and political success hinges on accountable institutions that foster a set of overlapping goals among city residents. Discrimination based on national or community origins, like other arbitrary forms of exclusion, undermines this objective

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<sup>251</sup> Interview with Cecil van Schalwyk, Director of Midrand office of *Mapogo a Mathamaga*, 25 July 2003.



in two primary ways. First, for reasons discussed above, people who do not feel welcome in South Africa's urban society are less likely to respect the rules and institutions dedicated to governing it. This may become visible in efforts to dodge taxes, avoid census takers, or subvert regulatory agencies they feel are more likely to prey on than promote their interests. When not given the rights to work or documents needed to secure housing, it may also result in building hijackings, criminal activity, or other anti-social behaviours. Those who feel excluded are also unlikely to participate in participatory planning exercises (e.g., the integrated develop planning process (IDP)). Such self-exclusion makes government policies all the less likely to address city residents' priorities and needs and may, in time, harm public institutions' efficacy and legitimacy.<sup>252</sup>

There are also broader issues at stake regarding the relationships among residents and both local and national government. As a senior strategist for the City of Johannesburg notes, "The legitimacy of the South African government is founded on overturning past patterns of discrimination and exclusion. We have a proactive responsibility to absorb the poor and promote social mobility". For him, and a few others at elite levels of local government, refugees, immigrants, and migrants are simply another category of the vulnerable and poor. Indeed, it is just such a position taken by Johannesburg's Human Development Strategy. The ability of Johannesburg to implement such a programme is, in the words of the same official, critical to the "integrity of the city". As the Mayor of Johannesburg recently stated, "It's an issue that you can't ignore."<sup>253</sup> A Cape Town official similarly admits that:

...it is impossible to be in Cape Town and not be in contact with a migrant. And that has demanded a response from a local government perspective. We are at the hub of people's interactions and we are forced to confront the issue. It is not something we have a choice about, ultimately we are going to have to address the issue.

However, continued anti-foreigner sentiments and scapegoating risk challenging cities' ability to establish accountable, socially embedded institutions. In the words of one immigrant now living in Johannesburg,

...Rumours are continuously spread by everyone that foreigners are responsible for whatever is wrong. It is like, "Thank you, foreigners, that you are here, now we can blame you for everything. South Africans do not look at their own – they just ignore their own problems and pretend that foreigners cause all their problems."<sup>254</sup>

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<sup>252</sup> See Winkler 2006

<sup>253</sup> Reuters, 2006, 'Johannesburg Mayor Plans Migrant-Friendly Drive'. *Reuters AlertNet* (22 August 2006) <http://www.alertnet.org/thenews/newsdesk/L23422828.htm>.

<sup>254</sup> Quotation from Beal, Crankshaw, & Parnell 2002: 124.

Although such attitudes are not universal, the presence of a convenient scapegoat prevents South Africans from holding their public institutions responsible for their shortcomings and failed promises. Although there have only been few instances in which local politicians have overtly manipulated an immigrant or migrant presence for electoral gain, there is a spectre of the kind of public political scapegoating seen in Europe and elsewhere. At present, politicians seem to fear employing 'hate speech' among a population who is still scarred by Apartheid era racism. However, an interview with a senior Johannesburg planner suggests that as the pain of past racism and discrimination fades, there may be new space in South African politics for anti-immigrant electioneering. In Cape Town, Omar similarly argues that politicians are afraid to openly admit that they fear migration—in this instance of blacks from the Eastern Cape—there is a 'whisper campaign' attempting to mobilise forces against such movements that could threaten the political leadership of the Independent Democrats and the Democratic Alliance. Already, the fact that South Africans are willing to accept that foreigners and domestic migrants are responsible for South African children not finding places in school, for continued insecurity, and unemployment, is distracting them from the fundamental structural and institutional issues behind these pressing social concerns. Removing migrants from South Africa's cities will not solve these acute social challenges but as long as such expulsion remains a preferred solution, real progress is unlikely to be made.

*Social Fragmentation:* Overcoming racialised fragmentation and avoiding new forms of exclusion means bringing together people from all sectors of the urban environment in ways that promote investments in a shared future. This was never going to be an easy task in South Africa's heterogeneous cities. This is already visible in migrants' widespread sense of permanent dislocation fostered by the violence, abuse, and discrimination they experience in new residential communities. Rather than striving to integrate, foreigners instead cling to their outsider status, make conscious efforts to avoid close personal relationships with South Africans, spend their time in South Africa planning their move elsewhere.<sup>255</sup> Indeed, the vast majority of both citizens and non-citizens felt it was important for migrants' to retain their distinct during their stay in the country. (See Table 8).

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<sup>255</sup> Amisi and Ballard, 2005; J.M.Mang'ana. 2004. The effects of migration on human rights consciousness among Congolese refugees in Johannesburg. MA thesis, University of the Witwatersrand; TK Araia. 2005. *Routes, motivations, and duration: explaining Eritrean forced migrants' journeys to Johannesburg*. MA thesis, University of the Witwatersrand.

As noted in this chapter's opening paragraphs, building inclusive cities is both a desired outcome of local government and an immense challenge. If social capital and mutual trust—if not respect—is critical to building inclusive and prosperous communities, South African cities are severely wanting. The case of the Somali killings discussed above provides obvious and brutal evidence of this. A brief overview of new data from Johannesburg also speak to widespread distrust and fragmentation among inner city residents. While those living in more affluent areas are less likely to express such strong mutual mistrust, the tables presented here paint a picture of continued fragmentation fostered by mistrust and low levels of social capital. As suggested by events in Cape Town, the data suggest that despite being in South Africa longer than most other international migrants, Somalis remain firmly socially distinct from those around them. Importantly, foreigners are almost equally mistrusted—and sometimes more feared—by other migrants, including people from their own country of origin (see Tables 11 and 12).

### **Conclusions: Localising Migration Policy and Analysis**

While citizenship and asylum laws must remain national, there is a heightened need for increased attention to sub-national actors as they continue to assert their influence—through commission and omission—on the country's immigration and asylum regime. Cities and Provinces need to recognise that they can, and indeed should be encouraged, to actively advocate for an immigration regime that helps foster inclusion and service delivery for all residents. This must, moreover, be done in collaboration with national, provincial, and neighbouring local government official. These must be accompanied by broader discussions about the meaning of inclusion.

Involving local government in these discussions is critical for a number of reasons. Not only is it charged with being developmental, but it is empowered to make decisions that affect their communities.<sup>256</sup> In the United States and in other decentralised countries, local governments have begun issuing their own forms of documentation to all residents.<sup>257</sup> Although this may not be viable in the South African context that remains politically centralised, local and provincial government may nevertheless develop programmes to foster inclusion by countering ignorance among police, civil servants, landlords, and employers. This may include facilitating access to primary care clinics, life saving medical care, and legal services without regard to nationality or immigration status. Countering exclusion based on individuals' community of origin will not

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<sup>256</sup> Götz 2004.

<sup>257</sup> Rojas, Aurelio, 2005, 'Driver's License Ballot Drive Fails: The Measure Sought to Deny State Benefits to Illegal Immigrants,' *Sacramento Bee*, (19 February 2005).

ensure secure and sustainable livelihoods, accountable institutions, and unified communities. It can, however, make achieving these objectives a possibility.

There is also a need for further, localized research undertaken within a broader comparative framework. As this chapter demonstrates, violence against foreigners is widespread, but is motivated and understood within specific, highly localized contexts. While it is useful to develop aggregated trends, responses and attitudes may be shaped by the particular racial, economic, and political history of a single neighbourhood. For local government, differences within the cities they are responsible for governing may be as important as those among cities. If nothing else, there is a need to evaluate and critically analyse immigration and migration at the level of the city as the effects will be vastly different for those experiencing in-migration of foreigners versus those that are primarily destinations for South African citizens. Those who are net population losers will need to employ yet different calculations to understand the challenges they face. As indicated in this chapter and elsewhere in this report, developing the kind of context specific understandings called for above will require heightening capacity for statistical, institutional, and social analyses. While this is critical at the national level, all spheres of government should be encouraged to collaborate and develop the capacity for data collection and analysis at all levels. Lastly, mechanisms should be created to ensure that these analyses—when they eventually become available—are fed into decision making processes. Doing otherwise will ensure policy failure and may help realize many planners' current fears about the effects of human mobility on prosperity and security.

## Figures and Tables

**Table 1**  
Time in South Africa or Johannesburg<sup>258</sup>

	Citizens	Non-Citizens
Less than 1 year	5.2	13.0
1-2 Years	3.6	12.8
2-3 years	8.9	10.6
3-4 years	6.3	10.6
4-5 years	3.6	8.4
5-6 years	5.2	8.1
6-7 years	7.3	5.8
7-8 years	3.6	5.6
8-9 years	2.6	3.1
9-10 years	7.8	4.8
Greater than 10	43.8	13.9
n	192	640

**Table 2**  
Migration Figures for Selected Municipalities 2001-2006

Municipality	In-Migration as Percentage of Total population 2006
Metsweding (Gauteng)	10.13
Overberg	8.18
Tshwane (Pretoria)	7.15
West Coast	6.71
Exhurbhuleni (Johannesburg Suburb)	5.88
West Rand (Johannesburg Suburb)	5.82
Eden	5.48
Johannesburg	4.38
Cape Town	4.38
eThekwini (Durban)	0.92
Nelson Mandela	0.63

Source: Data produced by Statistics South Africa. Table reproduced from SACN 2006 p. 2.18<sup>259</sup>

<sup>258</sup> Citizens were asked how long they had been in Johannesburg. Foreigners were asked how long they had been in the Republic of South Africa. As most foreigners come quickly to Johannesburg, this also provides a good indication of how long they have been in the city.

<sup>259</sup> The municipalities represented in these tables were selected by the South African Cities Network, the organisation that originally published these data, to illustrate national trends. They are not necessarily representative of all South African cities.

**Figure 1**  
Out Migration Figures for Selected Municipalities 2001-2006

Municipality	In-Migration as Percentage of Total population 2006
Chris Hani (Eastern Cape)	8.51
Ukhaklamba (Eastern Cape)	7.80
Umzinyathi (KZN)	5.74
Oliver Tambo (Eastern Cape)	5.71
Amatole (Eastern Cape)	4.89
Zululand	2.77

Source: Data produced by Statistics South Africa. Table reproduced from SACN 2006 p. 2.18

**Table 3**  
Expectation of Johannesburg Respondents  
Place of Residence for in Two Years by Country of Birth.

	DRC	Mozambique	Somalia	South Africa
Where I am now	36.4	51.7	54.8	46.3
In another part of South Africa	7.5	7.9	12.9	31.1
In my community of origin	12.3	20.2	6.5	3.7
In another part of my home country	0.4	0.0	1.6	0.0
In a third country	29.2	4.4	11.3	3.2
Other	0.8	0.0	0.0	2.1
DK/RA	13.4	15.8	12.9	13.7
n	253	203	186	190

**Table 4**  
Percentage of Johannesburg Respondents with  
Member of Household in Community of Origin in a Third Country<sup>260</sup>

	DRC	Mozambique	Somali
Yes	71.1	23.2	58.6
No	27.3	74.4	40.9
DK/Not Asked	1.6	2.5	0.5
n	253	203	186

<sup>260</sup> In this case, a third country is defined as one that is neither the respondents country of birth nor country of current residence.



**Table 5**  
Percentage of Johannesburg Respondents  
Stopped by Police or Military after Entering South Africa

	DRC	Mozambique	Somali	South Africa
Yes	70.0	57.1	71.0	33.7
No	29.2	41.9	29.0	65.3
DK/RA/Not Asked	0.8	1.0	0.0	1.1
n	253	203	186	190

**Table 6**  
Percentage of Johannesburg Respondents Indicating  
They Were Victim of Crime in Johannesburg

	DRC	Mozambique	Somali	South Africa
Yes	62.8	62.1	72.6	41.1
No	36.4	36.5	26.9	57.4
DK/RA	0.8	1.6	0.5	1.6
n	253	203	186	190

**Table 7**  
Percentage of Johannesburg Respondents  
Saying One Can Generally Trust the South Africa Police

	DRC	Mozambique	Somali	South Africa
Yes	45.5	17.2	15.1	43.2
No	38.7	62.1	81.7	47.4
No Opinion/DK/RA	15.9	20.7	3.2	9.5
n	253	203	186	190

**Table 8**  
Percentage of Johannesburg Respondents Who  
Believe it is Better to Maintain Customs or Not Maintain Customs in South Africa

	<i>National</i>	Non National
It is better for society if immigrants maintain their custom	67.7	77.3
It is better for society if immigrants do not maintain their	27.1	16.7
DK/RA/Other	5.2	5.9
n	192	640

**Table 9**  
Percentage of Johannesburg Respondents Saying  
It Would be Good, Bad, or Would not Matter if Non-Nationals left South Africa

	DRC	Somali	Mozambique	South Africa
Good Thing	6.3	18.3	10.8	45.3
Bad Thing	66.4	53.8	63.5	33.2
Would not Matter	16.6	16.7	14.3	12.6
No Opinion/DK/RA	0.8	11.3	11.3	6.3
n	253	186	203	190

**Table 10**  
Percentage of Johannesburg Respondents Indicating  
They have No, Some, or Many South Africa Friends

	DRC	Somali	Mozambique	South Africa
None	37.9	67.2	21.2	20.0
Some	45.5	25.3	47.3	26.8
Many	15.4	7.0	30.5	51.1
DK/RA	1.2	0.5	1.0	2.1
n	253	186	203	190

**Table 11**  
Percentage of Johannesburg Respondents Indicating  
They Can Generally Trust Foreigners Living in South Africa

	DRC	Somali	Mozambique	South Africa
Yes	36.4	39.8	2.5	21.6
No	45.1	57.5	75.9	62.6
No Opinion/DK/RA	18.6	2.6	21.7	15.8
n	253	186	203	190

**Table 12**  
Percentage of Johannesburg Respondents Indicating  
They Can Generally Trust People from their Country of Origin Living in South Africa

	DRC	Somali	Mozambique	South Africa
Yes	51.8	51.1	10.8	77.9
No	32.8	47.3	65.0	16.3
No Opinion/DK/RA	14.4	1.5	24.1	5.8
n	253	186	203	190

**Table 13**  
Percentage of Johannesburg Respondents Indicating  
They Can Generally Trust South Africans

	DRC	Somalia	Mozambique	South Africa
Agree	38.3	11.3	3.9	71.6
Disagree	46.2	85.5	75.4	20.0
No Opinion	12.3	2.2	14.3	6.8
No Opinion/DK/RA	3.2	1.0	6.4	1.6
n	253	186	203	190

## **ANNEXES**

1. How many are they? Methodological issues in Understanding Migration in South Africa
2. Recent Statistical Profiles of Migration in South Africa
3. A Chronology of South African Immigration Legislation and Policy in Perspective
4. Abbreviated Bibliography and Webliography
5. List of Acronyms and Abbreviations

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## **Annex 1. How many are they?** Methodological issues in Understanding Migration in South Africa

South African discussions around migration policy during 1990s and early twenty-first century have struggled over the evidence needed to make sound decisions. Associated with these concerns are issues of how data were collected—questions asked, methodology—and broader concerns connections between scientific enquiry and policy-making in the new democratic context. Migration, more than many other fields of public policy-making, is generally subject to a large discrepancy between actual knowledge and policy options. This gap is fundamentally tied to two factors: (1) the difficulty in accurately measuring migration given the number of variables and contexts, and (2) its association with weighty and highly politicized issues surrounding nation-building, citizenship and belonging. In a country like South Africa, these two dimensions are exacerbated by the country's geographic position, relative lack of capacity regarding border-control and generally immigration services, current complex nation-building redefinition and paradoxically, a historical legacy of absolute control on populations' movements.<sup>261</sup>

Two specific questions have dominated the South African migration debate: how many foreigners are in the country and how many of these are illegal? There are also complementary debates in the media and policy arenas over the number of South Africans who actually leave the country to go live and work elsewhere. Behind each of these questions lie specific political and methodological challenges. These are considered in greater depth below:

### **1/ How many foreigners?**

While migration flows have undeniably increased over the last decade, overall figures must be kept in perspective. The most recent South African census (2001) indicates that there were 345,161 non South Africans in the country. This is clearly an underestimate and others have put the total number of foreigners between 500,000 and 850,000. Although foreigners make up majority in particular Johannesburg neighbourhoods, most of South Africa—and even most of Johannesburg—remains relatively unaffected. Out of a population estimated around 47 million in 2006, far less than 5% are foreign born. These are certainly many more than ten years ago, but the percentage remains low by comparison with other 'global' cities and regional powers. In Toronto, Canada, for example, over 40% of the total population is born outside Canada. Even in France, the proportion of the population directly born outside the country is stable at around 6 to 7% but the proportion of the population of foreign origin over the last century is up to 25%.

### **2/ How many undocumented immigrants?**

Between 1986 and 1994, the South African police considered both homeland citizens and non-South Africa foreigners without travel authorization as "illegal aliens" if they wandered into White South Africa. Before the repeal of influx control legislation in 1986, any African found outside a homeland without authorisation to travel or live there was also considered an illegal alien. After the reincorporation of homelands into South Africa with the 1993 *Interim Constitution* and the 1995 *Citizenship Act*, only international foreigners can now be considered as illegal aliens. Under South African law, three categories of people can therefore be considered as illegal aliens:

- Lawful entrants who overstay the duration of their permit;
- Unlawful entrants and stayers (this includes people who entered without any documentation and people who entered using fraudulent documentation);

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<sup>261</sup> For more on these connections, see L.B. Landau, 2006, 'Myth and Rationality in Southern African Responses to Migration, Displacement, and Humanitarianism', p. 220-244 in Catherine Cross, Derik Gelderblom, Niel Roux, and Jonathan Mafukidze (Eds.), *Views on Migration in Sub-Saharan Africa: Proceedings of an International African Migration Alliance Workshop*. Pretoria: Human Sciences Research Council Press.

- A large part of ex-Mozambican refugees who might have obtained either refugee status or been amnestied but who, for various reasons, have not applied and remain without documentation.

At least three methods of calculation can help estimate the number of undocumented migrants in South Africa: One is by attempting to survey migrants living in South Africa; The second is by calculating the number of people who overstay their visas without authorisation; and the third is based on the number of people arrested and repatriated by South African police and immigration services. All of these methods have significant limitations: Surveying migrants is almost impossible given their desire to stay invisible. Measuring “stay-overs”, as they are called by immigration services, might have left the country clandestinely (particularly for neighbouring populations). In 1995 for instance, the Department of Home Affairs indicated that 708 927 such cases had been detected in the department’s computer system. As for figures provided by the police and immigration services, these can only be considered as trends that are as likely to measure police activity areas as migration flows. Repatriation figures are also inaccurate, having gone from 44 225 in 1988 to a peak of 180 000 in 1996. While they have remained in that range since, there is no reason to believe this reflects the number of people in the country.

Official estimates are also frequently problematic. Until 1994, the police would provide government departments with estimates of the total number of undocumented migrants in the country that were around 2 million people. In 1995, the South African police came with the figure of 8 million, a figure that was immediately published although it was questioned by the press. Were these figures true, foreigners would have comprised close 20% of the South African population or one in five people. As improbable as such figures were, a number of reputable international relations and security research institutes offered similarly implausible estimates. These included a restitution of the 8 million (Greg Mills, South African Institute of International Affairs) with others suggesting somewhere around 2 to 3 million (Jakkie Cilliers, Institute for Defence Policy). The 3 million figure surfaced again with then Director of Admission at the Department of Home Affairs, George Orr, citing three million people in 1995.

Although it is impossible to trace the origins of the varying and almost undoubtedly inflated figures, many seem to draw their lineage from a survey undertaken by the Centre for Socio-Political Analysis of the Human Sciences Research Council between December 1994 and June 1995. This survey, using interviews done with a sample group representative of the South African population, asked people how many foreigners they knew in their immediate surroundings. By extrapolating these figures, the HSRC calculated the total number of foreigners in South Africa. It then subtracted the number of legal immigrants in order to generate a figure intended to reflect the number of undocumented migrants in the country. Using this technique, they arrived at 8.2 million undocumented migrants in December 1994 and 9.5 just six months later (June 1995). However, subsequent duplications of the survey inexplicably included the disappearance of hundreds of thousands of undocumented migrants. In their published findings, the survey concluded that “there may be up to 9 million illegal immigrants here. The most accurate estimate may therefore be 5 to 6 million”. Other researchers from the HSRC the same year concluded that undocumented migrants could well be up to 12 million, later bringing that number to 5 million. Notwithstanding the obvious methodological shortcomings of this method, the problem is that these inflated figures nevertheless confirmed popular suspicions and quickly filled a gap in official speeches. Over time, they became disconnected from the HSRC who later withdrew their estimates as methodologically flawed, and gained autonomy as a form of social fact.



The power of these figures can not be overstated as they figured directly into political rhetorical and policy formation. In 1997, for example, the Inkatha Minister of Home Affairs introduced his migration policy plans in Parliament as such:

With an illegal alien population estimated between 2.5 and 5 million, it is obvious that the socio-economic resources of the country, which are under severe strain as it is, are further being burdened by the presence of illegal aliens. The cost implication becomes even clearer when one makes a calculation suggesting that if every illegal costs our infrastructure, say R1 000 per annum, then multiplied with whatever number you wish, it becomes obvious that the cost becomes billions of Rands per year.

As late as 2002, Billy Masethla, the then ANC Director-General of the Department, declared to the Parliamentary Commission on Home Affairs that:

[...] from a study conducted by the Human Sciences Research Council in conjunction with the University of Pretoria, (*sic*) estimated that in 1996, two years after the new dispensation and the opening up of the country to the world in 1994, there were between 2.4 and 4.1 million illegal aliens in the RSA at the time. Now, 8 years later, one can safely say the minimum is at least above the estimate of 4.1 million, and probably substantially higher. This being the case it means that 10% or more of the population are illegal aliens. This equals most of the quoted unemployment figures.

More recently, work by the Southern African Migration Project and other organizations in the region have generated far more modest estimates. The total number of foreigners—legal and illegal—is now estimated at between 1-3 million, although the numbers may be rising due to the ongoing Zimbabwean crisis. These more reasoned estimates have not, however, fed in the same way into public or political discourse.

It is also important to recognize that there are similar problems in estimating the number of South Africans moving into the city. As discussed in more details in Chapter Three, researchers have frequently predicted massive and unstoppable flows of people from former homeland areas into the cities. Malthusian pronouncements about the negative effects of urbanization have subsequently appeared in provincial and municipal speeches and policies, especially within the two provinces most affected by urbanizations: Gauteng and the Western Cape. Demographers and economists such as Rob Dorrington (University of Cape Town) and Charles Simkins (University of the Witwatersrand) warn against policy makers anxious and inflated claims. As Dorrington notes, there are demographic limits on the number of people who can move and parts of the Eastern Cape – a major source area for Cape Town – are now almost depleted of those groups most likely to move. Simkins argues that there is almost no way to accurately know how many people have moved because of fundamental flaws in South Africa's official statistics: the lack of an accurate population register during Apartheid, poor sampling in the initial (1996) census; and different (and ineffective) techniques for measuring migration.

### 3/ Measuring emigration:

Numeric challenges also plague discussions over emigration data. Aggravating a controversy essentially hinging on the degree of patriotism emigrants had towards South Africa, the questioning of the actual annual numbers of emigrants also hides more serious concerns about government's ability to plan the skills deficit.

The main difficulty for the South African Government is in measuring the volume and nature of departures. Different recent studies have shown an important gap between recorded departures and legal settlements of South Africans in the five first countries of immigration. Blankley for instance notes that figures provided by *Statistics South Africa* (relying in fact on Home Affairs data) of people recorded as having left the country since 1994, represent less than half the number of South African immigrants legally recorded in host countries (mainly the United Kingdom, Australia, New Zealand and the United States). The immigration policies of countries such as the UK or Canada have attracted many qualified South Africans, particularly those skilled in the medical professions. In 2003-2004, South Africa acknowledged a deficit of 57 574 nurses, 200 of them leaving the country every month.

In this context, the absence of administrative measures to record departures contained in the new Immigration Act of 2002 and its Regulations is hampering the endeavour of the Department of Home Affairs to measure the phenomenon. Since 2004, no figures are available for South African citizens' whereabouts. (For more on the challenges of skilled emigration, please see Chapter One in this report).

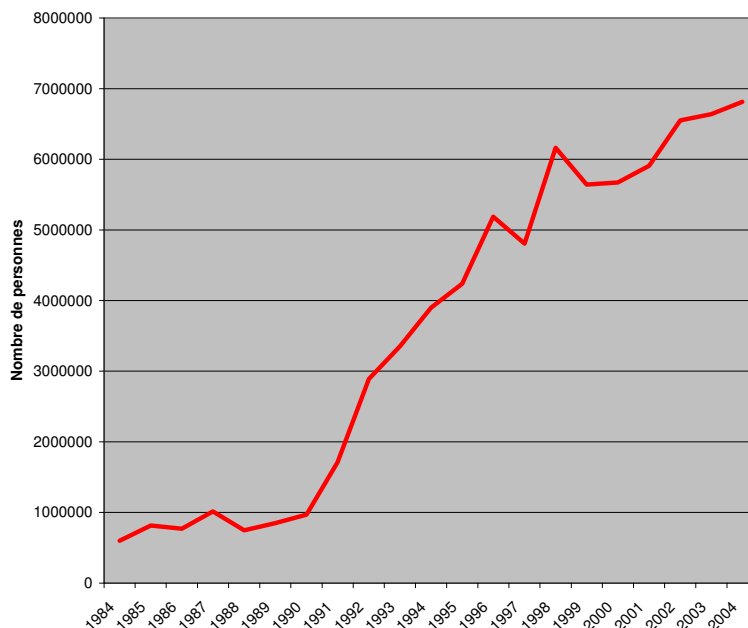
## Annex 2. Update of statistical data on migration in SA

### A. A comparison of legal and undocumented immigrants and emigrants 1980 – 2000.

Year	Legal permanent immigrants	Legal emigrants	Official estimates of undocumented immigrants
1980	29 365	11 363	n.a.
1981	41 542	8 791	n.a.
1982	45 784	6 832	n.a.
1983	30 483	8 247	n.a.
1985	28 793	8 550	n.a.
1986	17 284	11 401	n.a.
1987	6 994	13 711	n.a.
1988	7 953	11 174	n.a.
1989	10 400	7 767	1,2 M (South Africa Yearbook)
1990	11 270	4 911	n.a.
1991	14 499	4 722	2 M (SAY)
1992	12 379	4 256	2,5 M (SAY)
1993	8 686	4 289	245 000 (DHA) / 3 M (SAY)
1994	9 824	8 070	2,4 to 5,1 M (HSRC) / 2 M (Min. Buthelezi)
1995	6 398	10 235	8,5 M (SAP)
1996	5 064	8 725	2-3 M (SAIRR 1995-96)
1997	5 407	9 708	2 à 8 M (DHA)
1998	4 371	9 031	2 to 4,1 M (HSRC)
1999	3 669	8 402	2 to 4,1 M (HSRC)
2000	3 053	11 309	2,5 to 4,1 M (GCIS)
2001	4 832	12 260	2,5 to 4,1 M (SAY)
2002	6 545	10 890	2,5 to 4,1 M (SAY)
2003	10 578	16 165	2,5 to 4,1 M (SAY)
2004	10 714	NA	2,5 to 4,1 M (SAY)
2005	NA	NA	2,5 to 4,1 M (SAY)

Source: Department of Home Affairs, Annual Reports, 1980-2004; South Africa Yearbook (SAY), Government Information and Communication Service, 1989-2005; Government Information and Communication Service (GCIS), 2000; Department of Home Affairs (DHA), 1993, 1997; South African Institute of Race Relations (SAIRR), 1995, 1996; Human Sciences Research Council (HSRC), 1994, 1998, 1999.

**B. Numbers of temporary residents (work, study, business, holiday, contract, border traffic, transit, unspecified) between 1990 and 2005:**



Source: Statistics South Africa, 1984-2004.

**C. Repatriation figures 1994-2004**

Repatriations/removals	Mozambique	Zimbabwe	Lesotho	Other	Total
1994	71 279	12 931	4 073	2 409	90 692
1995	131 689	17 549	4 087	3 759	157 084
1996	157 425	14 651	3 344	5 293	180 713
1997	146 285	21 673	4 077	4 316	176 351
1998	141 506	28 548	4 900	6 932	181 286
1999	123 961	42 769	6 003	11 128	183 861
2000	84 738	45 922	5 871	9 044	145 575
2001	94 404	47 697	5 977		156 123
2002	83 695	38 118	5 278		151 653
2003	82 067	55 753	7 447		164 294
2004	NA	NA	NA	NA	141 722 (bet. Jan. and Oct.)

Source: Department of Home Affairs, Annual Reports, 1994-2004.

NB: Since 2004, repatriation figures are no longer available from the Department of Home Affairs.

## D. Available Statistics on Refugees and Asylum Seekers

Note: All figures here are based on statistics provided by the South African Department of Home Affairs (DHA). They should be considered estimates.

### Cumulative Numbers of Numbers of Refugees and Asylum Seekers

	2001	2002	2003	2004	2005
Refugees	18 605	23 344	26 558	27 683	29 714
Asylum Seekers	4 860	52 451	84 085	115 224	140 095
Total	23 465	75 795	110 643	142 907	169 809

### Cumulative Numbers of Asylum Seekers and Refugees by Source Country

Country	Recognized	Pending
Angola	5 764	6 315
Burundi	2 183	3 754
Congo Brazzaville	1 160	3 865
Congo Kinshasa	10 609	19 098
Rwanda	1 276	725
Somalia	7 548	11 548
Sudan	173	121
Tanzania	135	4 981
Zimbabwe	114	15 978
Ethiopia	78	8 356
Uganda	55	3 106
<b>Global total including all other countries with numbers below 50 persons</b>	<b>29 714</b>	<b>140 095</b>
		<b>Note: Global total includes the following countries:</b>  Nigeria 9 700, Pakistan 9 800 Kenya 10 300 Bangladesh 6 200 India 6 200 Malawi 3 000

**Annex 3. South African immigration legislation and policy in perspective – A  
Chronology**

Year	Immigration legislation in South Africa	Major South African political events		World immigration legislation and policy developments
1986	Amendment to the 1984 Act deleting the term « European » from section 4(3)(b) that made it compulsory for all immigrants to be able to « assimilate» with the European population of the Union.	1986	Repeal of “ <i>pass laws</i> “. State of emergency. Labour agreement with Swaziland.	1986: <i>Immigration Reform and Control Act</i> (United States). Amnesty for 3 million undocumented immigrants, first employers’ condemnation.
		1988	South Africa begins withdrawal from Angola and cooperates with Namibia’s independence process.	
		1989	De Klerk becomes President. Eugene Louw, Minister of Interior. P.J. Colyn, Director-General.	
		1990	Liberation of Nelson Mandela.	
1991	<i>Aliens Control Act</i> . The Act encompasses all previous legislation regarding the admission and residence of immigrants. This Act does not contain any real novelty and largely relies on previous legislation.	1991-1993	Negotiation and adoption of the Interim Constitution.	1990: <i>Immigration Act of 1990</i> (United States). Increases the maximum annual ceiling for immigrants to 700 000 a year. <i>Five Year Plan</i> (Canada). Proposal to increase immigration (250 000 in 1992) and plan it over the long term. <i>Dublin Agreements</i> (Europe). They define a common asylum policy.
		1992	L.A. Pienaar, Minister of Home Affairs following the death of E. Louw.	
		1993	D.P.A. Schutte replaces L.A. Pienaar as Minister of Home Affairs.	
1994	An Interdepartmental Commission on Internal Migration is appointed.	1994	<u>April</u> : First democratic multiracial elections. Mandela becomes president.	1991: Quebec manages its immigrants’ selection in autonomy (Canada).
1995	<i>Aliens Control Amendment Act</i> . Amnesties for <i>SADC</i> nationals.		Mangosothu Buthelezi, leader of the Inkatha Freedom Party, is appointed Minister of Home Affairs, Penuel Maduna ( <i>ANC</i> ) Deputy-Minister.	
1996	<u>Novembre</u> : A task team in charge of elaborating a <i>Green Paper on International Migration</i> is	1996	Lindiwe Sisulu ( <i>ANC</i> ) is appointed Deputy-Minister	1994: Announcement of future restrictions and of the end of family reunification (Canada).

<p><b>1997</b></p>	<p>appointed by Government.</p> <p><u>Mai</u>: Publication of Draft <i>Green Paper</i> open to public comments. The <i>Green Paper</i> recommends separate legislation and policy for immigration and refugees. Public comments to be submitted until August.</p> <p><u>June</u>: SAMP Conference « After amnesty : the future of foreign migrants in South Africa »</p> <p><u>September</u>: Public Conference on the <i>Green Paper</i> jointly organised by SAMP, the Parliamentary Portfolio Committee on Home Affairs and the Department of Home Affairs.</p> <p><u>November</u>: South Africa joins the IOM which opens a branch in Pretoria.</p>		<p>following Penuell Maduna.</p>	<p><b>1995</b>: Implementation of the <i>Schengen Agreement</i> in European Union members that have ratified the <i>Maastricht Treaty</i>.</p> <p><b>1996</b>: <i>Illegal Immigration Reform and Immigrant Responsibility Act</i> (United States). Recession leads the government to vote restrictions and facilitate the repatriation of undocumented migrants.</p> <p><b>1997 – 2002</b>: Successive Congresses come back to more liberal immigration policies facilitating asylum and family reunification (United States).</p>
<p><b>1998</b></p>	<p><u>March</u>: Cabinet appoints a Task Force composed of Home Affairs functionaries and NGO representatives to draft a White Paper on Refugees.</p> <p><u>18 June</u>: Publication of the <i>White Paper on Refugees</i> open to public comments. The revised <i>White Paper</i> is submitted to Cabinet at the same time as a <i>Draft Bill</i> which is voted in November.</p> <p><u>August</u>: The Minister of Home Affairs appoints a Task Team to draft a <i>White Paper on International Migration</i>.</p>			<p><b>1998</b>: <i>Memorandum of Agreement</i> (United States – Canada). Agreement on asylum application.</p>
<p><b>1999</b></p>	<p><u>March</u>: Publication of the <i>White Paper on International Migration</i> as modified by Cabinet open to</p>	<p><b>1999</b></p>	<p><u>April</u>: General elections. Thabo Mbeki becomes President. Buthelezi is re-appointed as Minister of</p>	<p><b>1999</b>: Tampere Summit (Europe). Defines the need for a common migration policy.</p>



<p><b>2000</b></p>	<p>public comments until November 1999.  <u>November</u>: The Parliamentary Commission applies to be authorised to conduct public hearings on the <i>White Paper</i>.          Authorisation granted. The Minister of Home Affairs appoints a task team in charge with drafting a Bill.</p> <p><u>Feb.</u>: Aubrey Mokoena (ANC MP) is appointed Chair of the Parliamentary Commission of Home Affairs following Desmond Lockey (ANC MP).  <u>15 Feb.</u>: Publication of <i>Draft Bill</i> open to public comments for six weeks.  <u>April</u>: New application of Parliamentary Committee to conduct public hearings on the <i>White Paper</i>. Public hearings take place between May and August 2000.  <u>6-7 July</u>: Conference organised by the Minister of Home Affairs on comments received for the <i>Draft Bill</i>.  <u>15 Aug.</u>: The B46 version of the Draft Bill is sent to Cabinet that sends it back to the DHA with amendments.  <u>11 October</u>: The Parliamentary Committee publishes a report on the <i>White Paper</i>. Conflict bet. the DHA and the Committee.  <u>November</u>: Political parties' responses to the report. Penultimate report of the Parliamentary Committee on the <i>WPIM</i>.</p>	<p><b>2000</b></p>	<p>Home Affairs, Lindiwe Sisulu remains Deputy-Minister.  <u>December</u> : Billy Masetlha is appointed Director – General following Khulu Mbatha.</p> <p>New bar code identification system (Home Affairs National Identification System - HANIS). Local elections.</p> <p><u>01/04/2000</u>: Implementation of <i>1998 Refugees Act</i>.</p>	<p><b>1999-2002</b>: Increase in arrivals of refugees and undocumented migrants by boats (Australia). Agreements with China and the UNHCR.</p> <p><b>2000</b>: Creation of the European Funds for Refugees.</p>
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<p><b>2001</b></p>	<p>B46 Version of the Draft Bill is amended.  <u>June</u>: The Revised Bill is approved by Cabinet. Programmed in Parliament for October 2001.</p> <p><u>October</u>: The B79 version of the Bill is introduced in Parliament. The Parliamentary Committee begins starts working on it.</p>	<p><b>2001</b></p>	<p>Charles Nqakula appointed Deputy-Minister for Home Affairs following Lindiwe Sisulu.</p>	<p><b>2001</b>: October – Official launch of the New Economic Partnership for Africa’s Development that adopts the reversal of the brain drain as one of its priorities  <b>11 Sept. 2001 – 2006</b>: Hardening of American laws on immigration and vote of numerous anti-terrorist laws and measures.          Multiplication of legal battles between NGOs and the Bush Government on foreigners’ constitutional rights.</p>
<p><b>2002</b></p>	<p><u>March</u>: Crisis within the Parliamentary Commission. Opposition parties ask for Aubrey Mokoena’s dismissal.  <u>1st May</u>: Mpho Scott (ANC) replaces Aubrey Mokoena as Chair of the Parliamentary Commission. Numerous amendments are adopted (23).  <u>9 May</u>: The “B” version is adopted by the Parliamentary Commission. But the ANC announces its intention to completely redraft the bill.  <u>10-14 May</u>: Nagociations bet. IFP and ANC on the new Bill.  <u>15 May</u>: New Bill presented to Parliamentary Commission. Vote the same evening.  <u>17 May</u>: The <i>Immigration Bill</i> is introduced in Parliament. Voted.  <u>31 May</u>: The <i>Immigration Bill</i> officially becomes the <i>Immigration Act N°13 of 2002</i>.  <u>November</u> : The <i>Immigration Act (Regulations)</i> are published. They are immediately subject to legal action with the Constitutional Court.</p>	<p><b>2002</b></p>	<p><u>6 May</u>: Nosiviwe Mapisa-Nqakula, appointed Deputy-Minister following Charles Nqakula.</p>	<p><b>2002</b>: 10 April - Publication of a green paper on a common policy framework for undocumented migrants’ repatriation (Europe).           Beginning of Australian extra-territorial policy for asylum seekers.</p>

<p><b>2003</b></p>	<p><u>February</u>: The regulations are taken to the Constitutional Court.  <u>April</u>: Implementation of the <i>Immigration Act</i> and of its Regulations.  <u>May</u>: The Immigration Advisory Board is established.  <u>June</u>: The Constitutional Court approves the Regulations.</p>	<p><b>2003</b></p>	<p>N.Mapisa-Nqakula is elected Chair of the ANC Women's League.</p>	<p><b>2003</b>: Feb. - Adoption by the Ministers' Council of the European Union of a text on rights to family reunification, the first regulation on legal immigration since it is part of European Competence. 19- 20 June: European Council in Thessalonic: the convergence of asylum and immigration policies is re-activated.</p>
<p><b>2004</b></p>	<p><u>October</u>: Publication of the <i>Immigration Amendment Act</i> N°19 of 2004 and of its Regulations.</p>	<p><b>2004</b></p>	<p>29 April 2004: Thabo Mbeki is re-elected President. Nosiviwe Mapisa-Nqakula is appointed Minister of Home Affairs following Mangosuthu Buthelezi. Inkatha leaves Government. Malusi Gigaba, ex-President of the ANC Youth League, is appointed Deputy-Minister.</p>	<p><b>2005</b>: October – Adoption of the SADC Protocol on the Facilitation of Movements of Persons.   <b>2006</b>: April-May - (United States) Millions of undocumented immigrants and their supporters take to the streets of big American cities in protest against laws criminalizing undocumented immigrants.</p>

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<http://www.migrationpolicy.org>: Migration Policy Institute.

<http://www.dha.gov.za>: Department of Home Affairs

<http://www.lwr.org.za>: Lawyers for Human Rights

## **Annex 5. List of acronyms and abbreviations**

<b>AIDS</b>	Acquired Immune Deficiency Syndrome
<b>ANC</b>	African National Congress
<b>ANCWL</b>	ANC Women's League
<b>ANCYL</b>	ANC Youth League
<b>ARV</b>	Antiretrovirals
<b>ASGISA</b>	Accelerated and Shared Growth Initiative-South Africa
<b>AU</b>	African Union
<b>BEE</b>	Black Economic Empowerment
<b>BSA</b>	Business South Africa
<b>CDE</b>	Centre for Development and Enterprise
<b>COSATU</b>	Congress of South African Trade Unions
<b>CPS</b>	Centre for Policy Studies
<b>DA</b>	Democratic Alliance
<b>DG</b>	Director-General
<b>DHA</b>	Department of Home Affairs
<b>DP</b>	Democratic Party
<b>DRC</b>	Democratic Republic of Congo
<b>FEDUSA</b>	Federation of Unions of South Africa
<b>GCIS</b>	Government Communication and Information System
<b>GEAR</b>	Growth, Employment and Redistribution
<b>GNU</b>	Government of National Unity
<b>HANIS</b>	Home Affairs National Identification System
<b>HIV</b>	Human Immuno-Deficiency Virus
<b>HRW</b>	Human Rights Watch
<b>HSRC</b>	Human Sciences Research Council
<b>IDASA</b>	Institute for Democracy in South Africa
<b>IDP</b>	Institute for Defence Policy
<b>IFAS</b>	Institut Français d'Afrique du Sud
<b>IFP</b>	Inkatha Freedom Party
<b>JIPSA</b>	Joint Initiative for Priority Skills Acquisition
<b>LHR</b>	Lawyers for Human Rights
<b>NEC</b>	National Executive Council
<b>NEDLAC</b>	National Economic Development and Labour Council
<b>NEPAD</b>	New Partnership for Africa's Development
<b>NGO</b>	Non Governmental Organization
<b>OAU</b>	Organisation of African Unity
<b>OECD</b>	Organisation for Economic Cooperation Development
<b>RDP</b>	Reconstruction and Development Programme
<b>SACP</b>	South African Communist Party
<b>SADC</b>	Southern African Development Community
<b>SAIRR</b>	South African Institute of Race Relations
<b>SAMP</b>	Southern African Migration Project
<b>SANDF</b>	South African National Defence Force
<b>SAPS</b>	South African Police Services
<b>STATSSA</b>	Statistics South Africa
<b>UDM</b>	United Democratic Movement



**UNHCR** United Nations High Commissioner for Refugees  
**WHO** World Health Organisation  
**WTO** World Trade Organisation