XENOPHOBIA IN SOUTH AFRICA AND PROBLEMS RELATED TO IT

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XENOPHOBIA IN SOUTH AFRICA AND PROBLEMS RELATING TO IT

Abstract

As a result of long-standing patterns of labour migration, conflict and economic hardship in neighbouring countries, and South Africa's peace and prosperity, the country has become a primary destination and transit point for migrants from throughout the region. These numbers are only likely to increase in coming years. For South Africa to achieve its promises of human rights, tolerance, and prosperity, it must develop norms, laws, and practices that can capitalise on the contributions of foreigners to the country; promote the country's reputation abroad; and protect the rights, security, and livelihoods of all of South Africa's residents. Achieving democratic, rights-based migration policy in South Africa is extraordinarily difficult however, because **South Africa is a highly xenophobic society, which out of fear of foreigners, does not naturally value the human rights of non-nationals**.

Although attitudes towards non-nationals—especially black foreigners—vary across South Africa's socio-economic and ethnic spectrum, there is strong evidence that non-nationals living and/or working in South Africa face discrimination at the hands citizens, government officials, the police, and private organizations contracted to manage their detention and deportation. Reasons for this vary and include, *inter alia*, fear of economic competition, a beliefs that foreigners are inherently criminal and a drain on public resources. Foreigners have also been made the scapegoat used to justify the shortcomings of elected leaders. This results in non-nationals facing disproportionate difficulties in accessing employment, accommodation, banking services, and health care. It has also legitimised extortion, corruption, and the arbitrary arrest and detention of suspected non-nationals (including children and dark skinned South Africans). Foreigners are also disproportionately the victim of crime.

South Africa has made commitments to all who live in the country, regardless of citizenship, nationality, or country of birth. Current legal practice and legislation now under consideration threaten its ability to deliver on these promises. As the country considers plans for institutional and policy reform, there are, therefore, strong reasons for including the rights of foreigners among the country's priorities. These include South Africa's ability to:

- promote economic development and fill its skills gap;
- ensure the health of non-nationals and citizens;
- achieve administrative justice and protect the physical security and human rights of non-nationals and citizens;
- promote regional integration and prosperity.

The promotion of NEPAD and similar regional projects will increase the numbers of non-nationals living in South Africa and the number of South Africans living outside the country. Such mobility will require a harmonisation of immigration procedures and efforts to facilitate people's cross-border movements. While political leaders trumpet the movements of capital, information, culture and highly skilled migrants, little is said about the other forms of movement that will necessarily take place Coming to grips with these challenges will require new ways of thinking about public policy. This will be felt most immediately amongst those responsible for urban and immigration management, but will almost certainly call for greater collaboration among local, provincial, and national spheres of government. As these deliberations take place, there will be a need to move beyond long-standing stereotypes. There must also be an effort to transform government priorities: to move beyond a mindset that privileges control to one that can ensure that South Africa will, indeed, belong to all who live in it.

XENOPHOBIA IN SOUTH AFRICA AND PROBLEMS RELATING TO IT

*The Challenge for South Africa is to formulate policy that takes advantage
of the positive aspects of globalization, including the unprecedented
movement of people with skills, expertise, resources, entrepreneurship and
capital, which will support the country's efforts at reconstruction,
development and nation-building.*

Republic of South Africa, White Paper on International Migration, 1999:6.

Introduction

For South Africa to achieve its promises of human rights, tolerance, and prosperity, it must develop
norms, laws, and practices that can capitalise on the contributions of foreigners to the country;
promote the country's reputation abroad; and protect the rights, security, and livelihoods of all of
South Africa's residents. Achieving democratic, rights-based migration policy in South Africa is
extraordinarily difficult however, because **South Africa is a highly xenophobic society, which out
of fear of foreigners, does not naturally value the human rights of non-nationals** (Dodson
2002:1). Understanding the experiences of non-nationals living in South Africa—and the challenges
and contributions their presences promises—is the first step towards overcoming xenophobia and
developing and effective and just immigration management system. This document is intended as an
early step in this process.

South Africa's current socio-political realities are conditioned by hundreds of years of
migration from Africa, Europe, and Asia. South Africa's internal politics have also been the source of
out migrations, starting with the *Mfecane*, and extending through colonialism, segregation, and, the
Apartheid period, when tens of thousands of South Africans left—many to neighbouring countries—
to seek freedom, opportunities, or a base to organise for change within South Africa. The Group
Areas Act also resulted in the internal displacement of millions of people, forcing them to live in
artificially created communities designed to serve apartheid's dysfunctional socio-political agenda.
Since the early 1990s, South Africa has also exported hundreds of thousands of its skilled workers.[1]

Although people continue to leave South Africa, the country has again become a primary
destination and transit point for migrants from throughout the region. As its positions itself as the
regional centre of cultural, economic, political, exchange, the numbers of non-nationals living in the
country—however temporarily—will increase, building on long-standing patterns of labour migration
to the country's mines, factories, and agricultural plantations.[2] The growing demand for skilled
labour and entrepreneurs will only heighten the country's reliance on people born and educated
outside the country's borders. This document provides an overview of migration trends, the

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[1] Between 1989 and 1997 about 233 000 South Africans emigrated to the UK, USA, Canada, Australia and New
Zealand (Crush *et al*. 2001:1).
[2] By the 1980s foreign mine workers made up at least 80% of the mine labour force (see Harries 1994; Crush,
Jeeves, and Yudelman 1992).

experiences of non-nationals in South Africa, and discusses possible explanations for anti-foreigner discrimination.

South Africa has made commitments to all who live in the country, regardless of citizenship, nationality, or country of birth. As it considers plans for institutional reform and policy, there are strong reasons for including the rights of foreigners among the country's priorities.

- **South Africa is a country built through migration;**

- **Regional integration will increase the number of non-nationals in South Africa;**

- **While committed to tolerance and universal human rights, few South African citizens and politicians see foreigners as entitled to these rights;**

- **Denial of foreigners' rights affects South Africa's international reputation, economic prospects, and ability to deliver on its promise of freedom.**

Xenophobia in South Africa

Literally an irrational fear of outsiders, xenophobia manifests itself in various forms and its roots are equally varied. For present purposes, we are adapting an expansive definition of the concept to include all forms of discriminatory attitudes towards non-nationals, whatever their source or rationality. We are primarily concerned with the attitudes of black South Africans towards Africans from elsewhere on the continent. This focus is justified for two reasons. First, although Crush (2000) finds that white South Africans hold stronger, anti-immigrant views than other groups, few whites regularly interact with large numbers of non-nationals or are in a position to make official policy towards them. Secondly, South Africans' negative attitudes towards non-nationals are largely oriented towards other Africans, although there are increasing reports of discrimination towards new arrivals from the Indian sub-continent. That said, even within the black population there is considerable diversity of experiences, sentiments, and responses regarding non-nationals. Overall, however, attitudes are generally negative, if not overtly hostile. The remainder of this section provides an overview of these feelings and offers preliminary explanations for them. Because xenophobia expresses itself differently, and for different reasons, among various subgroups of the South African population (and, indeed, among non-nationals), identifying specific causes will require additional comparative analysis and investigation.

The scope and nature of xenophobia among South Africans

As indicated above, xenophobia can only be understood within specific economic, cultural, and political contexts. Even within South Africa, anti-foreigner attitudes are by no means universal. Non-nationals from Botswana, for example, receive generally positive treatment from residents of North-West Province (Reitzes and Simkins 1998). Similarly, some former Mozambican refugees living among Shangaan speakers in Limpopo Province are now largely integrated into local communities due to long-standing cultural links and a local government that has actively considered the interests of the former refugees (Polzer 2004). Even among these communities, however, tensions continue to exist between 'indigenous' South Africans and people born in Mozambique or of recent Mozambican origins (Golooba-Mutebi 2004). Moreover, many of those embracing former Mozambican refugees still express considerable hostility to the presence of Zimbabweans in and around their communities.

Although there are examples of hospitality, tolerance, and South Africans defending non-nationals' rights, there is strong evidence that South Africans' are generally uncomfortable with the presence of black non-nationals in the country. Based on a national survey of South Africans, Crush (2000: 103) argues:

> Intolerance is extremely pervasive and growing in intensity and seriousness.
> Abuse of migrants and refugees has intensified and there is little support for
> the idea of migrant rights. Only one group of South Africans, a small
> minority with regular personal contact with non-citizens is significantly
> more tolerant.

This is reflected in various statistics, produced at both national and local levels:

- 25% of South Africans nationally favour a total ban on immigration and migration, considerably more than in other countries in the region (Crush 2000);

- 20% of South Africans feel that everyone from neighbouring countries living in South Africa (legally or not) should be sent home (*op cit*).

- In a 1998 survey, SAMP found that 87% of South Africans felt that the country was letting in too many foreigners (*op cit*);

- In a Wits university survey, 64.8% thought it would be a positive thing if most of the African refugees and immigrants left the country. By contrast, few see ridding the country of its white population as a priority.[3]

Although one must carefully disaggregate the forms and expressions of xenophobia, there are four broad reasons that are commonly offered as explanations. Each of these explains some amount of xenophobia among particular groups.

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[3] In the Wits University study, under 5% of South African respondents thought it would be a 'good' or 'very good' thing if most whites were to leave South Africa. Indeed, three quarters (74.8%) thought it would be 'bad' or 'very bad' if they left (Landau and Jacobsen 2004).

1.   Foreigners as a threat to economic security

One of the most common explanations for xenophobia—both locally and globally—is the sense that non-nationals are a threat to citizens' access to employment, grants, and social services. As Mattes, *et al,* (2002:1-3) note:

>   Immigration is not viewed as a public policy tool that could benefit South Africa. Immigrants and migrants (even the most highly skilled) are more often stereotyped as a threat to the economic and social interests of South Africans… [There] is the misguided assumption that national development and skills in-migration are incompatible.

Such sentiments are clearly reflected in public and political discourse, especially under the former Minister of Home Affairs. In his first speech to parliament following his appointment as the Minster of Home Affairs, Mangosuthu Buthelezi proclaimed that:

>   If we as South Africans are going to compete for scarce resources with millions of aliens who are pouring into South Africa, then we can bid goodbye to our Reconstruction and Development Programme (in Human Rights Watch 1998: 20).

He went on to argue that:

>   The employment of illegal immigrants is unpatriotic because it deprives South Africans of jobs and that the rising level of immigrants has awesome implications for the RDP as they will be absorbing unacceptable proportions of housing subsidies and adding to the difficulties we will be experiencing in health care (in Reitz 1994:8).

Such sentiments are also reflected at the local level. In his 'State of the City 2004' address, for example, Johannesburg's Executive Mayor reflected widespread sentiment in arguing that:

>   In keeping with the international trend of growing migration, our city has become a magnet for people from other provinces, the African continent and indeed the four corners of the world. While migrancy contributes to the rich tapestry of the cosmopolitan city, it also places a severe strain on employment levels, housing and public services.

In a country in which over 40% of the population is unemployed, it is perhaps inevitable that there will be resentment against any group that has the potential to either fill jobs or push down the price of labour for those who are working. That many non-nationals are, in fact, better trained, more experienced, and willing to work for lower wages than the South Africans with whom they complete, provides some empirical justification for such sentiments (see below).

Although mine and agricultural labour imported through formal guest worker schemes have disempowered South African workers and unions, new immigration patterns are likely to be increasing job opportunities for South Africans. Wits University research in inner-city Johannesburg, for example, found that non-South Africans were far more likely to have hired someone to work for

them in the past year than the South Africans amongst whom they lived. While just 20% of South Africans report having paid someone to do work for them, 34% of migrants surveyed had. Even more significantly, more than two-thirds (67%) of those hired by migrants were South Africans. Hunter and Skinner's (2003) work in Durban also identifies a positive economic impact from immigration and the city government has adopted policies that allow non-nationals to apply for street-trading permits. Internationally, there is evidence that immigration provides a net-benefit to national economies, although some groups are likely to face negative consequences (cf. Simon 1995; Smith 1997).

There is also little evidence behind claims that non-nationals represent a significant drain on the state's financial resources. Summarising work done in South Africa and elsewhere, Meintjies argues (1998:20) that:

> Immigrants are, in fact, net contributors, not parasites. Immigrants are, on average, healthier, more energetic and better educated than people in the host population. Consequently, they draw comparatively less on social welfare and other social services. Many pay tax and, through their entrepreneurship, make a positive injection into local economic development.

This is not to deny that the presence of additional people—whatever their origins—places additional burdens on public services. However, given the relatively small number of immigrants compared to South Africans using these services—and their ability to contribute economically—it makes little sense to single them out as a primary cost to government. That so many international migrants are excluded from social services further limits their financial impact on public finances (see below).

2.   Foreigners as a threat to physical security

Many South Africans' disquiet with non-nationals is based on an assumed link between the presence of foreigners and threats to their property and physical security. Nationally, 48% of South Africans feel that foreigners are a criminal threat (Crush and Williams 2003). In Johannesburg, the country's 'crime capital,' Legget (2003:52) reports that 63% of inner-city Johannesburg residents mentioned 'foreigners' as the group committing most of the crime in their area. Similarly, among 70% of Johannesburg residents who thought crime had increased in recent years, almost three-quarters identified immigrants as a primary reason (Landau and Jacobsen 2004:45).

As with links between foreigners and South Africans' economic woes, political discourse regularly reflects assumptions of non-nationals' inherent criminality. In 1997, then Defence Minister, Joe Modise, remarked (cited in Human Rights Watch 1998: 124):

> [A]s for crime, the army is helping the police get rid of crime and violence in the country. However, what can we do? We have one million illegal immigrants in our country who commit crimes and who are mistaken by some people for South African citizens. That is the real problem.

Similarly, Johannesburg's Executive Mayor was quoted earlier this year (2004) as decrying the presence of "30 Nigerians on every street corner" committing crime and undermining the city's safety and security.

Although one can not deny that non-nationals contribute to South Africa's serious security problems, empirical data suggest that foreigners are a disproportionately small threat. National police statistics published in 1998, for example, show no areas in which non-nationals contributed more than 2% of the numbers of arrests (in Harris 2001:34). Even in Hillbrow, Johannesburg—an area with one of the highest densities of non-nationals (app. 25%; see Appendix One)—foreigners make up just 7% of those arrested (Louw 2003). Moreover, many of the non-nationals who are arrested are charged with immigration related offences that are illegal, but do not threaten the security of South Africans.

3.   Racism, isolation, and nationalism

South Africa's long history of racial politics and stratification has had an important, if difficult to quantify, effect on how citizens perceive non-nationals. AS mentioned earlier, anti-foreigner antagonism is particularly intense amongst white respondents, a finding Crush (2000:109) links to long-standing racism. This is important, but there are few whites who are in positions of political power. It is the country's black population that is more likely to engage with non-nationals on the street, in the work place, and in the country's public administration (e.g., government offices, schools, hospitals). Although South Africa's black population is, on aggregate, more tolerant of black non-nationals than other groups, Crush found the majority were still strongly anti-immigrant (*op cit*).

Together with the specific reasons already cited (threats to physical and economic security) and a common belief that foreigners brought HIV/AIDS to South Africa, widespread discrimination is also likely to be a result of a mindset rooted in apartheid era racial categorization, political fragmentation, and isolation. Some argue that as an long-time oppressed minority, black South Africans are now demonstrating their new found political (if not economic) power by discriminating against a still lesser category of people (i.e., non-nationals). This is plausible, but difficult to demonstrate empirically.

In searching for historical roots to discrimination, it is perhaps more important to recognise that Apartheid's social engineering entrenched a system in which:

- Every person, South African or foreign, was assigned an inflexible ethnic or racial label and identity.

- Groups were socially isolated and assigned exclusive rights to a geographically bounded territory with only limited, and highly regulated, access to other areas.

Although black South African justifiably protested the pass law system, it appears to have had an almost indelible effect on people's understanding of how society should be organized. Under such a

schema, individual's rights are linked not to their humanity, but to their territorial origins or homeland. As immigration threatens to undermine South Africans' exclusive rights to the territory south of the Limpopo, it is therefore not surprising to see the emergence of discourses and language exerting exclusive claims to the country's physical space.

4.   Foreigners as a political scapegoat

As many of the country's political leaders proclaim a new era of regional integration, tolerance, and cosmopolitanism, the country's acting Human Rights Commissioner, Bertrand Ramcharan (2004), expressed deep concerns about an emerging reality dominated by newer, more subtle forms of racial discrimination and xenophobia:

> Refugees, asylum seekers, migrant workers, undocumented immigrants, and other so-called 'non-citizens' are being stigmatised and vilified for seeking a better life. They are made scapegoats for all kinds of social ills, subjected to harassment and abuses by political parties, the media, and society at large.

Although it is impossible to adequately discuss the motivations for scapegoating foreigners—and South African politicians are by no means unique in building political capital at the expense of foreigners—there are at least two specific motivations worth noting.

The South African Constitution not only commits the government to protecting the country's residents' civil and political rights, but to guarantee an impressive array of social and economic services. In some instances, these commitments have led to unsustainable levels of spending (Johannesburg's financial crisis in the mid-late 1990s is in part a consequence of this). In almost all cases, providing such services has raised challenges to the public administration's managerial and financial resources. This has, unsurprisingly, resulted in problems of service delivery (e.g., the anti-retroviral roll out) and public frustrations. Claims that the government is spending millions in assisting foreigners—or that foreigners are otherwise burdening the government—provide a ready excuse for such shortcomings.

More fundamentally, if in less tangible ways, targeting foreigners can contribute to the nation-building project. Facing long standing and sometimes violent ethnic and political divides, the post-Apartheid government is committed to build unity from South Africa's tremendous diversity. As elsewhere in the world, identifying a shared, foreign threat can serve such a unifying role. That border control, immigration, and deportation are easy and highly visible symbols of state sovereignty further legitimizes these efforts while demonstrating the power of the post-Apartheid state (cf. Arendt 1958; De Genova 2002).

- **Attitudes towards foreigners vary, but anti-foreigner sentiments are widespread throughout South African society;**

- **There are many explanations for anti-foreigner attitudes rooted in individual psychology and economic conditions as well as South Africans' historical and political context;**

- **Foreigners are often blamed for economic problems when they are likely to be making a net contribution;**

- **Non-nationals are disproportionately the victims, not the perpetrators of crime;**

- **Foreigners are used a political scapegoat, distracting attention from the government's faults and failings.**

The Promise of Freedom & Legislation Relating to the Rights & Responsibilities of Non-nationals

The kind of anti-foreigner attitudes outlined in the previous section contrast sharply to the country's stated political ideals and, in many cases, with its legislation. Just outside Johannesburg International Airport arrival terminal, a giant sign welcomes visitors to South Africa and proudly proclaims that despite the country's 44 million people and 11 languages, there is not a single word for stranger. Such sentiment denotes a deeper commitment, on the part of the government, to pan-Africanism and the promotion of universal rights. These principles were most poetically and publicly pronounced when, on 8 May 1996, then Deputy President Mbeki delivered his famous *I am an African* speech. In his presentation, he paid tribute to his ancestors—South Africa's indigenous peoples, along with migrants from Asia, Europe, and the rest of Africa—and thanked them for, "teaching me that we could both be at home and be foreign" and that, "freedom was a necessary condition for . . . human existence." Indeed, to ensure that no one in the country would again be excluded based on race, religion, class, or background, the Constitution's preamble explicitly promises that, "South Africa belongs to all who live in it," with no explicit reference to place of birth or citizenship status.

South Africa's rhetoric of inclusive cosmopolitanism again surfaces in the New Partnership for African Development (NEPAD) and efforts to reformulate the Organization of African Unity (OAU) into the African Union (AU). Support for these initiatives at once extends the country's commitment to universal prosperity, rights, and the rule of law across Africa while situating South Africa at the heart of continental networks of ideas, trade, and travel. Sub-nationally, many cities' long-term development agendas also reflect a desire to build an inclusive, *international*, cosmopolitanism. Cape Town positioning itself as a major centre for European, American, and African tourism and Johannesburg's ambitions to become a "world class, African city" by 2030 are both illustrative in this regard.

Realising political objectives—however mammoth or mundane—requires an appropriate set of laws, practices, and institutions. South Africa's legislative framework and legal practice does not yet position the country to achieve its efforts to build a society founded on tolerance, universal rights, and the rule of law. The remainder of this section reviews key points of legislation delineating South Africa's position on, and legal responsibilities to, non-nationals. Definitions of the different legal categories of migrants and their relative rights are also provided.

<u>International Legislation, Conventions, and Agreements</u>

South Africa has signed or ratified several International Conventions relating to the rights and non-nationals. These instruments bind the South African State to act in accordance with these universally accepted norms and are directed at all persons within its territorial boundaries, including all citizens and non-citizens, documented and undocumented persons.

The following table lists relevant international instruments to which South Africa has either become a party or has signed, but not yet ratified.

South Africa's International Legal Commitments Related to the Status of Non-Nationals

- **Protocol relating to the Status of Refugees;**

- **Convention on the Status of Refugees (United Nations 1951);**

- **Organisation of African United (now African Union) Protocol dealing with to Refugees (1969);**

- **International Covenant on Civil and Political Rights (ICCPR);**

- **Optional Protocol to the ICCPR;**

- **International Covenant on Economic, Social, and Cultural Rights;***

- **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);**

    - **Optional Protocol to CEDAW;**

- **Convention on the Rights of the Child (CRC);**

    - **Optional Protocol to the CRC on the Involvement of Children in Armed Conflict;***

- **International Convention on the Elimination of All forms of Racial Discrimination;**

- **Rome Statute of the International Criminal Court;**

- **Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment.**

* indicates that South Africa is a signatory but has yet to formally ratify. States that have ratified or acceded to a convention are party to the treaty and are bound to observe its provisions. States which have signed, but not yet ratified, have expressed their intention to become a party at some future date; meanwhile they are obliged to refrain from acts which would defeat the object and purpose of the treaty.

As an illustration of the importance of these instruments, The South African Human Rights Commission (1997) argues that under the ICCPR, even undocumented migrants (i.e., not refugees, asylum seekers, or legal migrants) have rights against arbitrary arrest or detention (s5); the right to be treated with humanity and with respect (s9); the right to equality before the courts and tribunals (s10); the right to be recognised everywhere as a person before the law (s14); and the right against arbitrary deportation (s16). As the experience of non-nationals demonstrates (see below), these rights are often violated.

World Conference Against Racism: the Durban Declaration and Plan of Action

In addition to formal legal obligations, South Africa has committed to uphold the Declaration adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR) held in Durban in 2001. The Conference recognised the urgent need to translate the objectives of the Durban Declaration into a practical and workable plan. Key provisions of the Programme of Action are summarised in the table below:

Key Provisions from the WCAR Programme of Action

- **Urges states in their national efforts and in cooperation with other States, regional and international organisations and financial institutions, to promote the use of public and private investment in consultation with the affected communities in order to eradicate poverty, particularly in those areas in which victims of racism, racial discrimination, xenophobia and related intolerance predominantly live;**

- **Urges all States to take all necessary and appropriate measures to end enslavement and contemporary forms of slavery-like practises;**

- **Motivates for the establishment of and reinforcement of independent specialised** national human rights institutions.

Recognizing the commitments made in the WCAR, the South African Human Rights Commission (SAHRC) has dedicated itself to elaborating a national programme of action to ensure the implementation of the Durban Declaration and Programme of Action. The following points of the Declaration are especially relevant to vulnerable migrants and the eradication of xenophobia:

Paragraph53 of WCAR Declaration

We underline the urgency of addressing the root causes of displacement and of finding durable solutions for refugees and displaces persons, in particular voluntary return in safety and dignity to the countries of origin, as well as resettlement in third countries and local integration, when and where appropriate and feasible;

Paragraph 54 of WCAR Declaration

We affirm our commitment to respect and implement humanitarian obligations relating to the protection of refugees, asylum-seekers, returnees and internally displaced persons, and note in this regard the importance of international solidarity, burden sharing and international cooperation to share responsibility for the protection of refugees, reaffirming that the 1951 Convention relating to the Status of Refugees and its 1967 Protocol remain the foundation of the international refugee regime and recognizing the importance of their full application by States parties;

Paragraph 70 of WCAR Declaration

We note with concern the large number of children and young people, particularly girls, among victims of racism, racial discrimination, xenophobia and related intolerance and stress the need to incorporate special measures, in accordance with the principles of the best interests of the child and respect for their views, in programmes to combat racism, racial discrimination, xenophobia and related intolerance, in order to give priority attention to the rights and the situation of children and young people who are victims of these practices;

National Legislation

In addition to non-binding international instruments, there is also a considerable body of domestic law relating explicitly and implicitly to the status of non-nationals in the country. The following outlines relevant legislation on immigration and asylum processes, but also covers issues in which non-nationals frequently lack adequate protection. It is important to recognize that unless otherwise specified in law, non-nationals are subject to all legal restrictions and protections otherwise afforded South African citizens.

Immigration Act

In March 2003, the South African Department of Home Affairs promulgated a new Immigration Act that places additional restrictions on the movements of non-nationals into South Africa. While there is a need to recognise and capitalise upon existing migration flows, current legislative efforts are attempting to reassert the *ethos* of control that informed the past (even Apartheid era) legislation. As a consequence, voluntary migrants (those who come by choice) no longer have the means to legalise their stay in the country after their initial study, tourist, or work permits expire. This law builds on principles enshrined in the earlier Aliens Control Act (enacted soon after the end of apartheid era) that was similarly designed to prevent low-waged labour from neighbouring countries from entering and working in South Africa.

Provisions Related to Detention and Deportation with the 2002 Immigration Act

- **Section 32(1): Any illegal foreigner shall depart, unless authorised by the Department to remain in the Republic pending his or her application for status**

- **Section 32(2): Any illegal foreigner shall be deported**

This focus on immigration control rather than management means that the new Act effectively criminalises undocumented migrants and affords generous provisions for arrest, detention, and deportation of persons based only on the *suspicion* that they are illegal immigrants. It also offers little guidance in addressing the growing numbers of undocumented migrants coming into the country in search of employment. A recent (2004) move towards a reciprocal Bilateral Agreement with Mozambique to scrap entry visas for nationals of both countries is a step towards addressing this issue, but will need to be expanded if South Africa is to develop an effective means of migration management and avoid criminalising hundreds of thousands of non-nationals simply for living in and potentially contributing to the country. As the system currently stands, thousands of non-nationals attempt to regularise their stay in South Africa through spurious asylum claims. This extends delays and deligitimises the process of granting asylum and refugee status (see below)

Current legal debates suggest a rethinking of these issues—the Department of Home Affairs is currently considering amendments to the Immigration Act and Regulations and has proposed an Immigration Amendment Bill—but in ways that may not be effective. The Preamble to the Immigration Amendment Bill, for example, states that "The Role of the Republic in the continent and region is recognised"; and continues in the following section, that "the entry and departure of all persons at ports of entry are efficiently facilitated, administered and managed." These are laudable (and neutral) provisions. Suggestions that "push factors of illegal immigration may be addressed in cooperation with other Departments and the foreign states concerned," also suggest the Department has recognized the intersection between domestic legislation and foreign relations.

Section 24 of the Amendment Bill, which proposes a provision for an asylum transit permit that may be issued to a person at a port of entry, is more problematic. This permit would be valid for 14 days and, on its expiration, the permit holder would become an illegal foreigner and deported. This provision allows for the deportation of an asylum seeker even if they are unable to gain access to one of the country's five Refugee Reception Offices within the allotted period either because of transportation problems or, more typically, because of these offices' limited capacities (see below). This practice stands in violation of prohibitions against *refoulement* enshrined in domestic law and the 1951 UN Refugee Convention. It also points to larger problems with the way in which South Africa has managed its asylum seekers and refugees.

<u>The South African Asylum System and the Refugees Act No. 130 of 1998</u>

According to the 1998 Refugees Act, a refugee is someone who:

(a) Owing to a well-founded fear of being persecuted by reason of his or her race, tribe, religion, nationality, political opinion or membership of a particular social group, is outside the country of his or her nationality and is unable or unwilling to avail himself or herself of the protection of that country, or, not having a nationality and being outside the country of his or her former habitual residence is unable or, owing to such fear, unwilling to return to it; or

(b) Owing to external aggression, occupation, foreign domination or events seriously disturbing or disrupting public order in either a part or the whole of his or her country of origin or nationality, is compelled to leave his or her place of habitual residence in order to seek refuge elsewhere: or

(c) Is a dependant of a person contemplated in paragraph (a) or (b).

South Africa is unique in the region in having thus far encouraged refugees and asylum seekers to self-settle rather than confining them to camps or specialised settlements. Similarly, asylum seekers are not subject to mandatory detention, as in countries like Australia and the United Kingdom. Due to the presence of refugee reception offices—which both refugees and asylum seekers must regularly visit—most have settled in and around South Africa's five major cities: Johannesburg, Pretoria, Durban, Port Elizabeth, and Cape Town.

Pursuant to law and regulations in effect in early 2002, asylum seekers are issued temporary permits by the Department of Home Affairs (DHA) when their applications are filed (Section 22 permits). Asylum applicants may be detained if their permits are withdrawn due to a 'manifestly unfounded,' fraudulent, or abusive application; contravening a condition of the permit; re-entry after the application is rejected; lapse of permit when leaving the country without the consent of the Minister of Home Affairs or ineligibility due to an exclusion or cessation clause. Failure to appear for scheduled appointments may also constitute grounds for withdrawal and potential detention.[4]

In terms of the Refugees Act No. 130 of 1998, refugees are entitled to the same rights as citizens except for the right to vote: The South African Constitution and Bill of Rights applies equally to all persons who are inside the country's borders. Refugees and asylum seekers are not given any special privileges or assistance from the government. The United Nations High Commissioner for Refugees (UNHCR) funds certain NGO's to provide legal and social assistance to refugees. Refugees are entitled to access to primary education and basic health services granted to citizens. Asylum seekers, however, have limited access to state services and may only access emergency medical treatment unless they are able to pay additional fees (their rights to services are the same as other non-nationals). In turn refugees and asylum seekers are obliged to abide by the laws of the Republic.[5]

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[4] Refugees Act Section 23, 22(5) (1998); Regulations §§8, 9 (2000).
[5] Section 34 of the Refugees Act (1998).

The Right to Work and Study

Until recently, asylum seekers were not allowed to work or study until they were granted refugee status. Such restrictions presented significant problems considering the long duration of status determination and the lack of financial assistance. In such instances, almost any act conducted to ensure applicants' survival—working or studying—was criminalised. The 2003 case of *Watchenuka v. Minister of Home Affairs* challenged these provisions.[6] In the judgement, the court held that the Standing Committee for Refugee Affairs and not the Minister of Home Affairs was responsible to determine the conditions relating to study or work under which an asylum seeker permit may be issued. The judge also noted that:

> Human dignity has no nationality. It is inherent in all people—citizens and non-citizens alike—simply because they are human. And while that person happens to be in this country- for whatever reason- it must be respected, and is protected, by Section 10 of the Bill of Rights.

In April 2004, the Standing Committee on Refugee Affairs took the decision to remove the prohibition against work and study for asylum seekers as a result of lobbying efforts by civil society. Asylum seekers are now entitled to seek employment and engage in study for the duration of their asylum seeker status. To date, the new provisions are being applied in all refugee reception offices except Rosettenville (Johannesburg), where asylum seeker permits are still being issued with the prohibition against work and study.

Detention of Children

Section 28 of the South African Constitution states that children should not be detained except as a last resort. If deemed necessary, a child should be detained for the shortest appropriate time and should be detained separated from adults; treated in a manner which takes into account that child's age; and have access to legal representation. A child's best interests are of paramount importance in every matter concerning the child.

In a precedent-setting judgment delivered on 15 September 2004 in *The Centre for Child Law v. the Minister of Home Affairs*, Judge Annemarie de Vos of the Pretoria High Court ruled in response to an urgent application brought by the Centre for Child Law and Isabelle Ellis, the *curator ad litem* for 13 unaccompanied foreign children detained at Lindela[7]

The importance of the judgement is that:

1. It removes any existing doubt regarding the need for unaccompanied foreign children to be dealt with under the provisions of the Child Care Act.

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[6] *Watchenuka and Another v. Minister of Home Affairs* 2003 (1) SA 619 (C)
[7] See *Legalbrief Today*, "Pretoria High Court Order Protection and Care for Unaccompanied Foreign Children". Issue No. 1175 (15 September) 2004.(http://www.legalbrief.co.za/article.php?story=20040914114503703)

2. Judge de Vos indicated that in her view unaccompanied foreign children should have legal representatives assigned to them by the state in terms of section 28 (1)(h) of the Constitution. She ordered that the Krugersdorp Commissioner for Child Welfare must assign legal representatives for the children if it appears that substantial injustice would otherwise result.

3. The judge found that there is a positive duty on government departments to liaise with one another to formulate and implement practical arrangements regarding unaccompanied foreign children found in South Africa.

Regarding the children who have recently been brought to Lindela the judge said their detention is unlawful and invalid and must cease immediately.

Categories of migrants

By way of reviewing the legal provisions outlined above, the remainder of this section summarises the critical legal and conceptual distinctions within the non-national population. In practice it is, however, difficult to identify which category best describes a particular individual.

Temporary migrants (work permits, tourism, and contract labour)

Through temporary entry and work permits, non-nationals are able to enter and legally stay in South Africa for finite periods of time. People fitting this category are often motivated to come to South Africa for economic reasons—to find/take up employment; start a business; or attend a professional meeting. Others are in the country simply for tourism or, increasingly, for shopping.

Undocumented migrants

Often termed, 'illegal migrants,' there are thousands of people in South Africa without proper documentation (a trait shared with millions of South Africans). The exact number of people in this category is constantly changing and, for obvious reasons, is impossible to quantify accurately. In 1995, the Human Sciences Research Council's (HSRC) estimated the number to be between 2.5 million and 4 million *illegal* immigrants in South Africa. After being challenged on methodological grounds, they retracted these numbers. More recent estimates put the numbers between 200,000-400,000 (Crush and Williams 2001).[8] It is important to recognise that many of the people who are currently 'undocumented' entered the country legally and have simply outstayed their visas. Others have been unable to access Home Affairs Offices or to effectively navigate the process of applying for required documents (see below).

Refugees

Refugees are a relatively new phenomenon in South Africa in both a legal and empirical sense. Until the early 1990s, South Africa was a net producer of exiles and refugees and,

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[8] Reflecting the contested nature of immigrant numbers, Steven Friedman (Centre for Policy Studies) noted that, "Officials, Politicians, and the policy regularly trot out 'figures' on immigrants to justify action against them. But the numbers owe more to immigration than to calculation. We are told that we have up to eight million illegal immigrants. But, since illegals spend much of their time evading those who do the counting, how do we know? Interviews with those who produce the estimates show that they are, at best, guessing. Much the same can be said of the claims that illegals cost the country millions of Rands a year. The estimators rarely say how they arrive at these figures" (*Sunday Times*, 22 October 1995).

except for the hundreds of thousands of Mozambicans who fled into South Africa during that country's civil war, received relatively few asylum seekers or refugees. Even the Mozambicans were not afforded refugee status but were confined to homeland areas bordering Mozambique under the Group Areas Act, (Rodgers. 2001; Johnston 2000). It was only in mid-1990s that South Africa began signing legislation and conventions (see below) creating the 'refugee' as a legal category. Although South Africans commonly refer to all (poor) foreigners as refugees, the legal definition is quite narrow and specific.

Asylum seekers

Importantly, an individual is not considered a refugee until they have been recognised as such by South Africa's Department of Home Affairs.[9] Once granted refugee status/asylum, refugees are entitled to a set of rights and subject to a set of regulations, for the duration of their refugee status. Until such time as an individual's application for refugee status is accepted or rejected, they are considered an asylum seeker. The Refugees Act indicates that this process is intended to take six months. Due to significant delays, however, many people wait much longer for a decision on their case. In a recent national survey, 27% of asylum applicants who had applied before April 2000 were still waiting for their status to be determined by Home Affairs. Over half of these applicants have waited for more than four years (Belvedere, *et al*, 2003: 7). In the meantime, they are afforded a set of rights, although one that is less extensive to those granted to legally recognised refugees.

The total number of asylum applications received from 1994-2003 is 152,414. Of these, 26,624 have been granted refugee status while 39,578 have been rejected. The remainder are still awaiting adjudication. The extended delays in processing claims despite the relatively small number of applicants—Tanzania currently hosts almost half a million legally recognized refugees—suggest a need to reconsider the application process and the administrative mechanisms in place to support it. The long delays have also created opportunities for abuse. Because people can effectively legalise their stay in the country for years by applying for asylum, many non-nationals simply apply even though they have few expectations of ever being granted asylum. While they are legally entitled to file such applications, their abuse of the system has been seen as delegitimising the asylum process.

Immigrants (Permanent Residents)

Unlike migrants whose legal status allows them to remain in the country for finite periods, immigrants are those who "enter another country in order to make one's permanent life and home there" (White Paper on International Migration 1999:52). Immigrants fall into two broad categories: naturalised citizens and permanent residents. The former have sworn allegiance to South Africa and become citizens, although they may retain citizenship in their country of origin. Permanent residents have all of the rights of citizens except for the right to vote. This status may, however, be revoked if the individual resides outside South Africa for an extended period.

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[9] In other countries (e.g., Kenya), the United Nations High Commissioner for Refugees is responsible for determining refugee status.

- **South Africa is ethically and politically committed to cosmopolitanism and tolerance;**

- **South Africa's laws provide basic, universal protections to all non-nationals;**

- **Non-nationals fall into a complex set of legal categories— temporary migrants, undocumented migrants, asylum seekers, refugees, and immigrants—each with their own specific rights and obligations.**

- **South Africa's laws are ineffective at managing the country's immigration flows;**

- **The lack of a mechanism for regularising immigration status has led to abuse and delegitimising the asylum application process.**

The Nature of Immigration into South Africa

Post-Apartheid changes in South Africa's political economy and foreign relations are creating new dimensions to long-standing labour migration cycles. There are multiple reasons why non-nationals leave home and make their way to South Africa: Conflict, poverty, violence, and persecution (political, religious, gender-based) are all reasons for leaving home, while South Africa's progressive Constitution, its commitment to tolerance, and its wealth are all primary pull factors. Importantly, many of those coming to South Africa do not intend to establish permanent residence in the country and few have spent time in refugee camps elsewhere on the continent. Rather, reflecting long-standing patterns of circular or temporary labour migration, many only to come to South Africa to earn enough money to meet their needs (or those of their families) in their country of origin. Consequently, we continue to see large patterns of seasonal migration (many return home around Christmas) and the remittances of goods or funds back to countries of origin. For others, South Africa is seen merely as a stepping-stone en route to another country in Europe, North America, or Australia.

The 2001 census indicated that there were 345,161 registered non-South African Africans in the country, a significant increase from five years before. Recognizing that this is, according to StatsSA's own admission, an undercount, other estimates put the number of foreign migrants (legal and illegal) at somewhere between 500,000-850,000 (Crush and Williams 2001). As an illustration of heightening regional integration, 320,178 of the officially registered non-nationals were from Southern African Development Community (SADC) countries. Almost all of the remainder, 24,983, were from other African countries.

Reflecting patterns elsewhere in the world, cities are the primary destination for most international migrants, with Gauteng being the centre of international migration (see Appendix One)

with impressive increase in its foreign born population: from 4.8% in 1996 to 5.4% in 2001. In Johannesburg, that number is 6.7% (Peberdy *et al* 2004:3), representing a rise from 65,205 to 102,326 people between 1996 and 2001.

These are all conservative estimates that fail to capture the more dramatic changes in those neighbourhoods that have become migrants' primary destinations According to a recent survey (n=1,100), nearly 25% of inner city Johannesburg residents identify themselves as foreign born (Leggett 2003). Failing economies and violence in neighbouring countries, coupled with South Africa's efforts to encourage retail tourism and investment, will only increase the number of people entering South Africa in years ahead. As elsewhere in the continent (and the world), patterns of immigration will most directly affect the country's primary urban centres (Kihato 2004).

As the centre of South Africa's regional trading and cultural networks, population movements are now one of Johannesburg's most prominent demographic characteristics, although Cape Town, Durban, Pretoria, and Port Elizabeth have also been significantly affected by immigration (South African Cities Alliance 2004). Importantly, in all cases international migrants comprise only a small percentage of the people moving into the cities (*op cit*). The growth of the cities' populations—and the social, economic, and political challenges of such expansion—are due almost entirely to the urbanization of South African citizens.

Demography and Background

The demographic profile of non-nationals living in South Africa is considerably different from the South Africans amongst whom they live. Most, for example are relatively young. Belvedere, *et al's*, 2003 study of refugees and asylum seekers (the most detailed national data we have on non-nationals in South Africa) the average age of the sample was 31, with applicants from Rwanda, DRC and Somalia tending to be slightly older. Nationally, almost half of refugees and asylum seekers were married or living with a partner (45%) (Belvedere, *et al,* 2003), although Johannesburg has a higher concentration of singles (Jacobsen and Landau 2004). There are also far more men entering the country than women: the Wits University survey in inner city Johannesburg found that almost 71%of non-nationals were male compared to 47% of South Africans (*op cit*).

Although many fear that the country is being inundated with non-nationals ill-equipped to compete in an urban, professional economy; immigrants tend to be literate, usually conversant in multiple international languages, relatively highly educated, and overwhelmingly from urban origins. In a national survey, two thirds of refugees and asylum seekers indicated that they were fluent in English, and many spoke another international language (usually French or Portuguese) (Belvedere, *et al*, 2003:4). Not surprisingly, those who had been in the country longest were most likely to be speak English or another South African language.

Importantly, immigrants tend to be relatively well educated with approximately two thirds of refugees and asylum seekers having completed Matric (or equivalent) or a higher level of education.

Of these, almost one third had completed at least some tertiary education (Belvedere, *et al*, 2003:5). The Wits Johannesburg study indicates that non-nationals are, on average, better educated than the South Africans amongst whom they live. Other data from the Wits survey suggest that they come primarily from middle-class, urban families (95% reported being from towns or cities) and almost all were working before coming to South Africa; many as business owners or in other professional positions.

- **South Africa's prosperity and freedom is generating new patterns of migration in and out of the country;**

- **The number of immigrants is far fewer than many imagine;**

- **New forms of Immigration are centred on cities, where they complements larger patterns of domestic urbanization;**

- **Immigrants tend to have more education, professional experience, and skills than the South Africans with whom they live;**

- **Most migrants are young men, although overtime the age of non-nationals will likely rise as will the percentage of women.**

Experiences of Non-nationals in South Africa

Despite a commitment to universal rights and the promises of cosmopolitanism embedded in law and policy pronouncements, refugees, asylum seekers, and other (primarily black) immigrants tend to feel unprotected and unwelcome in South Africa. Although such responses are in part due to failed unrealistic or unrealised expectations, there is strong evidence that non-nationals living in the country suffer from systematic discrimination, social exclusion, and political alienation. The following paragraphs outline a general overview of their experiences and challenges. The subsequent section summarises existing evidence of discrimination at the hand of government officials and agents.

<u>Employment and livelihoods</u>

Although immigrants are generally better educated than the South Africans they live amongst—and many have specialised training and entrepreneurial experience—they still face difficulties in finding employment. The fact that unemployment is high nationally (estimated at between 40 and 45%) explains much of the difficulty immigrants face. In the Wits survey, for example, almost equal numbers of non-nationals and South Africans (39.2% and 41.9% respectively) reported being unemployed, although a national survey revealed that only 24% of asylum seekers and refugees were

unemployed (Belvedere, *et al*, 2003: 134). Even so, it is worth recognizing particular obstacles immigrants—especially poor immigrants—face in finding work.

- *Lack of identity documents*. As discussed in more detail below, even those in the country legally are often unable to secure usable or recognised identity documents. Without such documents, or a 13 digit identity number, many employers in the formal sector will refuse employment. Moreover, without proper papers, non-nationals are subject to employer abuse and effectively unable to lodge complaints with official bodies.

- *Ignorance*. Many employers simply do not recognise non-national identity papers or are unwilling to hire non-nationals out of the belief that they do not have rights to work in South Africa. The fact that the Section 22 (asylum seeker) permit can be easily forged and/or damaged (it is a single piece of paper, often with hand written amendments) only further justifies such sentiments.

- *Lack of bank accounts*. Many formal employers require a bank account into which they will pay weekly or monthly wages. Because non-nationals, especially those without permanent residency or long-term contracts, are typically unable to access banking services, they are effectively denied opportunities for employment.

- *Qualifications*. As noted earlier, many of the non-nationals living in South Africa are highly educated and skilled. Because documents and qualifications from their home countries are not readily recognised in South Africa—or because those documents were destroyed or left due to war—many are working far below their qualifications or are unable to find suitable employment. The need for non-nationals to undertake additional training in South Africa to have their qualifications recognised levies additional expenses and serves as a further hurdle to employment.

- *Discrimination.* There are many instances in which South African employers and organizations have sought to systematically exclude foreigners from given professions or from working in particular areas. On October 23, 1997, for example, approximately 500 street-traders marched through Johannesburg's streets chanting slogans demanding a boycott on foreigners' goods and the deportation of foreigners (Palmary, *et al,* 2002: 112). There is currently ongoing litigation challenging the Security Industry Regulation Authority's (SIRA) refusal to register foreign security personnel. SIRA has sought to make South African citizenship a criterion for registration and employment in the field.

It is also important to recognise that while many South Africans can rely on extensive family networks to support them in times of financial hardship; such resources are not typically available to recently arrived immigrants. Over time, however, these networks are likely to develop and provide a kind of informal safety net for migrants, as they do for South Africans.

Accommodation

The majority of non-nationals stay in places for which they pay rent. Belvedere*, et al*, (2003) suggest that about two fifths of asylum seekers and refugees rent a room in a house or flat, or a back room or a cottage. Just over one third of applicants rent a room, but share it with other individuals. About 30% pay between R250 and R500 per month for rent. Importantly, because of immigrants' vulnerabilities, their lack of contracts, and their need for flexibility, many immigrants pay more for accommodation

than South Africans. In the Wits University survey in Johannesburg, for example, 59% of non-South Africans paid more than R800/month for accommodation compared to 37% of South Africans (Sadie and Borger 2004). Due to their lower earnings, accommodation often represents a far greater proportion of expenditures for immigrants' than South Africans.

It should also be recognised that because of immigrants' limited funds and the need to accommodate non-working relatives, overcrowding is a significant problem. In Belvedere, *et al's* (2003) study, respondents typically stayed in places with three rooms (excluding kitchen and bathroom), but with seven people, meaning that two or three people were sharing each room. It is not uncommon for non-nationals to have close to ten people sharing a room, often requiring that they sleep in shifts and make use of bathrooms or hallways. The partitioning of flats and houses into smaller units has potentially negative effects on the health, security, and economic productivity of the residents. It also has the potential to degrade the country's built environment.

Financial services

Patterns of exclusion are also evident in private sector industries where one would expect to see the profit motive trump discriminatory tendencies. However, foreigners—even those with rights to live in the country—are often limited in their ability to access even the most rudimentary banking services including bank accounts and credit (Jacobsen and Bailey 2004). Although current banking legislation technically prevents anyone except permanent residents and citizens from opening bank accounts, this policy may be waived on a discretionary level as often done with people in the country on temporary contracts (Bhamjee and Klaaren 2004). Under pressure from lobbying groups, some banks have now begun extending services to refugees, but are still unwilling to open accounts for most other African immigrants who are unlikely to have the requisite thirteen digit ID number, foreign passport, or a formal employment contract.

Whatever the specific reasons, migrants' inability to access secure banking has manifold consequences extending beyond those excluded from service. Perhaps most obviously, a lack of access to financial services (particularly credit), limits the ability of migrants to invest in the city; contributing further to infrastructural decay and a fragmented community (cf. Legget 2003; Jacobsen and Bailey 2004). Lack of investment also means migrants are less likely to start formal businesses or create South African jobs (although they still create jobs faster than South Africans).[10] Keeping migrants and those they hire from moving into in the informal economy also denies the government a source of direct revenues (from taxes and licensing fees) and means that much of the business that

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[10] In the Wits survey, only 20% of South Africans reported having paid someone to do work for them in the past year. Despite the various obstacles the face, 34% of the migrants in the sample report that they had. Even more significantly, 67% of the people hired by the forced migrants were South Africans. It is also worth drawing attention to a recent study of street vendors in Durban illustrates this by showing that South African traders favour non-nationals' involvement because it brings new products and new business into the market (Hunter and Skinner 2001).

takes place is, to a greater or lesser degree, illegal, weakening the law's (and the state's) legitimacy and regulatory power.

<u>Physical security</u>

Criminals, along with the police (see below), have learned to exploit foreigners' vulnerabilities. As a result, foreign nationals are far less likely to feel secure on the streets, even during the day. In Johannesburg, 81% felt unsafe compared to 38% of South Africans (Leggett 2003:54). Crush and Williams (2003) present similar figures at the national level. These fears, moreover, appear to be justified. The Wits University survey in Johannesburg, for example, found that 72% of migrants reported that they or someone they lived with had been a victim of crime in the country, compared with 56% of South Africans. Given that many non-nationals have been in the country for only a short period, this difference is particularly remarkable. For reasons discussed in more detail below, this insecurity is not only at the hands of petty crooks, but is a result both of direct targeting by the police and an apparent unwillingness on the part of South Africa's security services to provide non-nationals with adequate protection.

- **Non-nationals in the country report feeling excluded and discriminated against;**

- **Non-nationals face particular difficulties in accessing employment, accommodation, and banking services;**

- **Tenuous legal status opens non-nationals to abuse at the hands of employers, landlords, money lenders, and criminals;**

- **Foreigners pay more for rent and are robbed more frequently than South Africans;**

Evidence of Discrimination at the Hands of Government Officials and Agents

Widespread anti-foreigner sentiments amongst the public are reflected in the attitudes and practices of government officials and agents. Although South Africans share some of the difficulties facing non-nationals in accessing services, there is considerable evidence that non-citizens must overcome distinct forms of discrimination, exploitation, and exclusion.

<u>Home Affairs and access to identity documents</u>

While no form of documentation can guarantee popular acceptance, by assisting the holder in finding work and avoiding threats of arbitrary arrest and deportation, identity papers can promote social integration by engendering providing a sense of belonging and commitment to space and community.

They also provide migrants the chance to contribute to their physical and social environment by living securely and exercising their skills. Conversely, immigrants' inability to obtain proper documentation limits their contributions and means that almost any act—gardening, domestic work, driving a taxi, or even walking in the street—is considered illegal in the state's eyes. They are, consequently, subject to harassment, arrest, and deportation. Improper documentation also—as discussed in following paragraphs—opens opportunities for exploitation, corruption, and criminality.

The first interaction many migrants have is with the country's Department of Home Affairs, the government department responsible for assigning identity documents to all people (citizens and foreigners) and determining migrants' immigration status. Considered one of the most corrupt departments under the Apartheid regime, administrative irregularities flourished between 1994 and 2004 under Home Affairs Minister Mangosuthu Buthelezi. While South Africans regularly (and justifiably) express frustration or outrage with the department, the immigrant-related activities taking place under its auspices go beyond mere administrative incompetence with spin-off practices that provide fertile ground for networks of corruption and extortion.

Asylum seekers and refugees' efforts to attain legal status and identity documents illustrates the trends outlined in the previous paragraph. Over the past years, it has become increasingly evident that unless asylum seekers—who have rights to be in South Africa under international and national law—are willing to pay bribes or other unofficial 'fees,' they may be denied the right to even file an asylum claim (Segale 2004). In a recent national survey, 29% of respondents had been asked to pay for submitting an application for refugee status (Belvedere, *et al*, 2003: 115). In Johannesburg (the former Braamfontein Office), this number climbed to 49% (*op cit*: 116).

Many of these problems are rooted in extra-jurisdictional or even illegal actions on the part of Home Affairs officials. At the arbitrary discretion of the former Minister of Home Affairs, for example, the Department has at times refused to accept any asylum claim from Zimbabweans or other nationals determined to be *persona non grata*. Those waiting outside Refugee Reception Centres (run by Home Affairs) are, moreover, subject to the whims of private security guards hired to keep order and control access to the building. Asylum seekers must not only pay these guards to access the building, but there are consistent reports of the guards using *sjamboks* or even whips to keep people in line (Segale 2004). The inappropriate use of force by those working for a government committed to democratic ideals is troubling, and without regularised legal status in the country, those subject to such tactics are unlikely to lodge formal complaints. Although corruption and administrative irregularities are a national issue (cf. de la Hunt 2002), problems have been heightened in Johannesburg by the mobility of the refugee reception office, which has moved twice in the last year.

Extortion and exploitation follows asylum seekers past the guards and into the offices themselves where applicants are often required to pay—interpreters, or clerks—to file their claims, despite regulations that these services that should be rendered without charge. "Out of desperation, asylum/refugee applicants are often forced to fork out 'fees' ranging from R300 to R1,000 depending

on the specific service in question and the country they come from" (Segale 2004). People having travelled considerable distances (and who may be unemployed) are often unable to pay these fees. The consequence is that they simply fail to make a claim—and remain in the country illegally—or are forced to pay 'in-kind'. For women asylum applicants, such payments can require considerable sacrifices.

Once a claim is filed, asylum seekers are subject to further trials while their cases are considered. Under the 1998 Refugees Act, the minimum period of adjudication is currently six months. Until recently, the initial six-month waiting period was coupled with a prohibition on working and studying (see above). While work prohibitions were typically been lifted after six months, the process itself often takes much longer. In the Wits survey of non-nationals in Johannesburg, more than one third of respondents reported waiting at least eighteen months for a decision on their applications. During this time, migrants have a right to be in South Africa, but are excluded from social benefits and are unlikely to make long-term commitments to business, people, or the space they inhabit. More importantly, the only identity documents they carry are a single piece of paper—the Section 22 permit—often with hand-written amendments. Few employers or government agents, including the police, recognise this document and those attempting to use it face added difficulty in finding employment and are subject to increased risk of exploitation, extortion, arrest, and deportation.

Even a successful asylum claim does not end migrants' difficulties with Home Affairs. A recent national study shows that only 11% of those granted asylum had been issued 'refugee identity documents' (Belvedere, *et al*, 2003:6). This process is improving for new applicants—most receive their documents within a month of a positive decision—but problems persist. There was a recent case in Port Elizabeth where dozens of people were left without valid documents because the Home Affairs office did not procure the colour ink cartridge necessary to print the identity photos. Country-wide there are thousands of legally recognised refugees, like the ones in Port Elizabeth, who may be refused employment or access to social services—and may be subject to arrest and deportation— because of Home Affairs' delays in issuing proper documentation. For those who are not eligible, or do not wish to apply for asylum, the difficulties with home affairs departments and accessing documents are often much worse.

Education

United Nations Secretary General, Koffi Annan (1994:4) writes that, "Education is a human right with immense power to transform. On its foundation rest the cornerstones of freedom, democracy and sustainable human development." This international principle is enshrined domestically in Section 5(1) of the South African Schools Act 84 of 1996 which declares that "a public school must admit learners and serve their educational requirements without unfairly discriminating in any way."

Importantly, this provision does not distinguish between citizens and immigrants. 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." Despite these provisions, asylum seekers and refugees face significant obstacles in accessing the educational services to which they are entitled (Stone and Winterstein 2003). It is safe to assume that immigrants—especially those without documents—face similar or more acute challenges.

The *de facto* requirement that migrants pay school fees is the most obvious barrier to education (see Bhamjee & Klaaren 2004) and contradicts a prohibition on refusing admission to public schools based on parents' inability to pay (see Department of Education's Admission Policy for Ordinary Public Schools (October 1998)). Those without the right or opportunity to work often have difficulty making these payments, denying their children right to education. Costs for transportation, books, and uniforms further exclude migrants. A study on the Somali refugee community in Johannesburg, for example, suggests that 70% the Somali refugee children of school-going age are not going to school (Peberdy and Majodina 2000). There are reasons to believe that this pattern appears in other national communities. Anecdotal reports also suggest that many migrant children are denied access to school because of outright discrimination, often justified on the basis of their age (they may be older that the mean for their grade) or language.

Health Care

While inability to access to education may have delayed effects, denying migrants access to health services, particularly emergency care, has both immediate and long-term consequences. 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 s 27(2) binding the state to make reasonable measures towards realising these rights (Bhamjee & Klaaren 2004). 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 an additional fee of R1800.[11] 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 health services or that they are all charged the fees meant for foreigners.[12] Non-nationals may not only be refused services outright, but foreigners—even those paying the additional fees—are frequently made to wait longer than South Africans before being seen

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[11] Section 27 (g) of the Refugees Act 130 of 1998 (see also s 27 (b)).
[12] In terms of s 27(g) of the Refugees Act, refugees have a legal right not to be charged health care rates applicable to foreigners.

and are subject to other forms of discrimination from health care workers. While waiting, one refugee overheard nurses talking about "foreigners taking government money and having too many babies" (Pursell 2004). One researcher reports a hospital staff member describing her hospital as "infested" with foreigners (*op cit*). Others suggest that immigrants are often denied full courses of prescribed medicines (Nkosi 2004).

Failure to overcome these obstacles often has dire consequences. A recent national study of refugees and asylum seekers found that 17% of all respondents were denied emergency medical care, often because of improper documentation or ignorance on the part of the admitting nurses (Belvedere, *et al*, 2003). If one could calculate this as a percentage of those that actually sought such care, the figure would be much higher. In one particularly dramatic incident, a pregnant 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 weeks later. This is an extreme, but not exceptional example. 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% of refugees who were refused basic health services lodged a complaint and 24% report doing nothing, largely because they did not know what to do. Only 41% reported trying another facility after being refused service, although it is not clear if all of these were successful in accessing health care (Belvedere, *et al*, 2003; Pursell 2004).

Police

There is considerable evidence that non-nationals are particular targets for police harassment and corruption. Part of this is rooted in the competing pressures on police: to both protect the rights of non-nationals and to control their access to the country's cities. There are other reasons, however, behind the ways in which the police have treated foreigners. By targeting non-nationals, 'the usual suspects' (refugees, asylum seekers, and other immigrant groups unlikely to have proper identification documents), they are able to meet periodic arrest targets (Private Communication; 7 May 2004). Non-South Africans living or working in Johannesburg consequently report having been stopped by the police far more frequently than South Africans (71% versus 47% in the Wits University survey) despite having generally lived in the city for a shorter period. Although under instruction to respect the rights of non-nationals, police often refuse to recognise work permits or refugee identity cards. Some respondents even report having their identity papers confiscated or destroyed in order justify an arrest (cf. SAHRC 1999). Furthermore, there have been numerous assertions that police elicit bribes from apprehended persons (documented and undocumented) in exchange for freedom. A Sierra Leonean man, quoted in Palmary, *et al*, (2003: 113) recounts his experience:

> The police asked me for my refugee paper, which had not yet expired. They
> say, 'f-k you' and the just tear the paper and seize my money and cell-phone
> . . . So then, what they do is take me to the police station. I was shouting . . .
> [and] one of them just removed something like a little shocker. He was
> shocking me . . . say that I was to shut up and if I wasn't shut up, he was
> going to shock me until I die.

The South African Human Rights Commission (1999:3-4) suggests that this is not an isolated incident:

> In the majority of cases there were no reasonable grounds for an
> apprehending officer to suspect that a person was a non-national. A
> significant number of persons interviewed had identification documents
> which were either destroyed or ignored or which they were prevented from
> fetching from home. Apprehended persons were often not told or did not
> understand the reason for their arrest. Extortion and bribery are practices
> extremely widespread among apprehending officers.

Indeed, targeting foreigners is also a relatively easy, and socially acceptable, means of supplementing officers' admittedly meagre income. Denied access to almost all formal banking service, poor immigrants must either stash cash in their residences or carry it on their bodies (Jacobsen and Bailey 2004). 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' (Private Communication: 7 May 2004). In the words of one Eritrean living in Johannesburg, "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 asylum seekers are reportedly arrested and detained for failure to carry identity documents, on the basis of a particular physical appearance, for inability to speak any of the main national languages or for fitting an undocumented migrant 'profile' (Algotsson 2000). In practice, the burden of proof is on asylum seekers to establish their legal status in the country. There have been allegations that neither the police nor the DHA affords arrestees the opportunity to retrieve identification documents or to make free phone calls to contact friends or family. Asylum seekers, refugees and South African citizens may, consequently, be detained for days while their right to remain in the country is confirmed. Informal accounts suggest that little has changed in the years following Algotsson's report.

There are additional deviations from the law oriented at regulating or extracting resources from non-nationals.' The 2002 Immigration Act, for example, effectively authorizes Department of Home Affairs agents to conduct searches, arrests, and deportations without reference to other constitutional or legal protections.[13] Without muscle of their own, immigration agents 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

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[13] See Section 3 (Powers of *Department)* in the Immigration Act (2002).

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.

In September 2003, a joint operation launched by the City of Johannesburg and the Department of Home Affairs deployed helicopters and almost 1,000 private security officers in a thinly disguised effort to rid the city of unwanted foreigners in the name of crime prevention and urban renewal. After sealing a Hillbrow apartment block, officials managed to confiscate four illegal firearms—modest by Johannesburg standards—and arrest 198 illegal immigrants. As unpalatable as these operations may seem, Yakoob Makda, the Director of Johannesburg's 'Region Eight' (i.e., the inner city) proudly reported their anti-crime cum anti-immigrant achievements to a public meeting called to help combat social exclusion. This is not the only effort to rid the city of foreigners. Soon after South Africa's first democratic election, Alexandra Township north of the city centre organised a campaign entitled 'Operation Buyelekhaya', or Operation Go Back Home in an effort to rid the township of all foreigners (Palmary, *et al*, 2003: 112). 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 (Southwell 2002).

Lindela and Deportation

In their discussion of immigrants and illegality in South Africa, Crush and Williams (2003) quote a 2002 statement from Mangosuthu Buthelezi, the former Minister of Home Affairs in which he argued that:

> Approximately 90% of foreign persons who are in RSA with fraudulent documents, i.e., either citizenship or migration documents, are involved in other crimes as well…it is quicker to charge these criminals for their false documentation and then to deport them than to pursue the long route in respect of the other crimes that are committed.

Those arrested for immigration offences—or otherwise determined to be *persona non grata*—enter a privatized realm of law enforcement existing largely outside of government regulation and public observation. Escape from this world requires an outside advocate prepared to offer time, energy, and money to pay the requisite bribes. Migrants report that each of Johannesburg's police stations has its own price and can draw out a rate schedule for what one must pay to be released from them. This, of course, depends on someone knowing that you have been taken. Many simply disappear.

Those who have not bought their way out of police custody are remanded to Lindela Repatriation Centre in Krugersdorp, 30 km from Johannesburg. It is owned and administered by the Dyambu Trust, an organization set up by members of the ANC women's league in 1996. Although privately owned, it is under the administered authority of and is funded by the Department of Home Affairs. When it was started, the facility could hold between 1200 and 1800 people awaiting

repatriation. Capacity has since been expanded to hold many more. According to the Joint Budget Committee, the cost of running the centre is R52 million annually.

Lindela serves as the coordination centre for detention and deportation of undocumented and illegal immigrants from throughout South Africa. Whereas those arrested in Gauteng are taken relatively quickly to Lindela, people arrested in Cape Town, Durban and other centres are frequently detained for long periods at prisons in those cities before being sent to Lindela. Reports of sexual abuse, violence, and bribery within Lindela are common while extortion is a normal part of journeys to and from the centre. There is also evidence that Lindela's operators unduly extend inmates stay, even when proper documents have been produced by friends or relatives, in order to maximise the R 50/night they receive from the government for every person they house. There are reports that detainees must even pay to be deported; which they do simply to escape Lindela.[14] This disregard for law is evidenced by a 1998 Human Rights Watch report finding that 20% of those held in Lindela were in fact South Africans. Police deny the numbers remain that high, but admit that South Africans are regularly detained within the facility (Louw 2003).

Under the Refugees Act, a judge of the High Court must review any detention over 30 days.[15] However, this provision is rarely followed in practice, despite a court order obtained by the Law Clinic of the University of the Witwatersrand and the South African Human Rights Commission in November 1999, challenging the Department's repeated failure to provide such review to detainees at the Lindela Detention Centre and statistics (October 2004) demonstrating that the average period of detention is 46 days. Some people have been detained for more than 120 days.[16] Lawyers for Human Rights (LHR) found that from February 2001- January 2002, 1,674 people were unlawfully detained in excess of 30 days without judicial consent. In the aforementioned case, the court required that Lindela officials report the names of detainees to the SAHRC each month for compliance monitoring, but Lindela and the DHA has failed to provide such reports.

It is also worth referring to the "apathy" towards the rights of children found in *The Centre for Child Law v. The Minister of Home Affairs (15 September 2004).* In her judgment, Judge Annemarie de Vos noted that South Africa has recently celebrated the tenth anniversary of the first democratic elections but that the lofty ideals set out in our constitution and government policy become "hypocritical nonsense" if they are not translated into action by the people who have been appointed and paid by the government to make them a reality.

Those who serve out their term in Lindela—including some with legal status to remain in the country and the occasional South African—are loaded onto trains that make weekly trips from

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[14] "When people want to go home, they don't let you be deported until you pay them money. Home Affairs wants you to pay 100 to 400 Rands, whatever you've got. Otherwise, you just stay here [in detention]. They let people go without ID, just give them some money" (Human Rights Watch 1998:59).

[15] Refugees Act Section 29(1) (1998).

[16] See *The South African Human Rights Commission and Forty Others v. Minister of Home Affairs and Dyambu (Pty) Ltd.*, case no. 28367/99, Witwatersrand High Court (South Africa).

Johannesburg to the border with Zimbabwe or Mozambique. Those claiming more distant origins are returned, albeit less frequently, by airplane. Despite its expense and the fact that many of the deportations take place without mandatory hearings, deportations show no sign of abating. In 1988, 44,225 people were deported. By 1993, that number had climbed to 96,515 (Maharaj 2004). The Department of Home Affairs' Annual Report for 2003 indicates that 151,653 non-citizens were 'removed' during 2002. In the first nine-months of 2003, 41,207 Zimbabweans alone were repatriated (17,000 were deported in all of 2001) (Innocenti 2004). When these deportations are of legally recognised refugees, such acts violate the internationally recognised principle of *non-refoulement*—entrenched in the 1951 UN Refugee Convention—where a person may not be returned to a place where their life would be in danger or they would be at risk of persecution.

Although South Africa retains a sovereign right to deport undocumented migrants [termed "illegal foreigners" in the Act] from its territory, deportation has had little effect in discouraging immigration. Similarly, while extra-legal patterns of policing, detention, and deportation authorised by the state are widely popular (at least among those South Africans who are not arrested) they are generally ineffective at establishing order or security. Indeed, targeting immigrants has distracted police and officials from other, more fundamental sources of crime (cf. Palmary 2002; Leggett 2003; Landau and Jacobsen 2004). Moreover, the inability to ensure security has lead citizens to simply accept criminal activity or seek alternative means to manage crime. This means increased reliance on private security firms, but also vigilantism and gang violence.

- **Non-nationals experience structural and intentional discrimination in their efforts to obtain identity documents and access social services including education and health;**

- **The immigration system—border posts, refugees refugee offices, the police, Lindela, and deportation—provide opportunities for corruption, extra-legal violence; and exploitation;**

- **Non-nationals' tenuous legal status opens opportunities for abuse and exploitation at the hands of employers, landlords, money lenders, and criminals;**

- **Foreigners pay more for rent and are robbed more frequently than South Africans;**

- **The violence and corruption which foreigners experience is giving rise to shadow economies that affect service delivery for and the security of South Africans.**

Xenophobia as a Threat to South Africa's Foreign Relations and Promise of Freedom

As noted in the conclusion to the previous section, the implications of xenophobia and anti-foreigner discrimination extend beyond the protection of non-national's rights. Without providing concrete suggestions for addressing discrimination, this concluding section schematically highlights some of the critical ways in which continued discrimination is likely to undermine South Africa's ability to fulfil its national domestic and international ambitions.

Economic development and the skills gap

Although Buthelezi famously pronounced that addressing the interests of non-nationals threatened South Africa's economic reconstruction, there is an increasing recognition that South Africa does not have the skills it needs to fulfil its developmental objectives. The departure of tens of thousands of its skilled labour force have only accentuated the skills gap created through the systematic denial of education and managerial positions to black South Africans during the Apartheid era. While there is widespread recognition that South Africa must recruit highly-skilled labour (e.g., *Joburg 2030,* NEPAD), few recognise the economic potential of those already in the country.

As a consequence of systematic and social discrimination, the resources and skills of the country's refugees, asylum seekers, and other immigrants are not being used to their maximum potential. People who are not provided the legal or socially defined right to work do not contribute to building the country. Similarly, those who are denied access to banking services are unlikely to invest. They will instead continue to work in small or informal business and invest their earning elsewhere. Conversely, facilitating the entry of immigrants into the formal economy and access to formal financial services will both provide added protection and allow the government to tax and regulate their activities.

Public Health

The right of access to medical services is a powerful indicator of a country's inclusionary ethos and South Africa is rightfully proud of its progressive legislation. Providing health care for migrants is also a critical public health concern. In addition to the potential for trauma or other psychological illnesses faced by refugees and asylum seekers, people who have travelled for extended periods or are living in poor conditions are at increased risk for diarrhoea, malnutrition, or malaria. While these concerns can be easily addressed with proper attention, denial of health care can lead to the spread of infection and disease to migrants and communities in which they live. Apart from being a violation of human rights and dignity, illness potentially limits the contributions of all of South Africa's residents.

Ability to ensure its citizens' physical security and rights

Although popular, the kind of policing strategies levelled against non-nationals threatens the security and rights of South African citizens. As Palmary (2004) notes, targeting foreigners for petty offences may boost the police's popularity and profitable, but may leave the true sources of crime untouched. Similarly, the corruption surrounding Lindela and the deportation process does little to assert South Africa's territorial integrity or protect the country from those who wish to commit criminal acts. Rather, it simply leads to rights abuses and networks of corruption. A 1998 Human Rights Watch report that 20% of those held in Lindela were South Africans dramatically illustrates the potential consequences, as does the regular arrest of 'dark skinned' South Africans on immigration-related charges. Moreover, once established, those benefiting from corruption or irregular policing (e.g., Beat cops, Lindela officials, and Home Affairs officers) will resist reform and may ultimately spread their influence into yet unaffected institutions and spaces. The recent scandal around non-nationals illegal marriages to South Africans is illustrative in this regard.

Ability to promote an environment of tolerance

The South African Human Rights Commission has observed (1999:4) that:

> If a society's respect for the basic humanity of its people can best be measured by its treatment of the most vulnerable in its midst, then the treatment of suspected illegal immigrants . . . offers a disturbing testament to the great distance South Africa must still travel to build a national culture of human rights.

Continued scapegoating and negative portrayals of non-nationals, coupled with active discrimination, undermine the country's efforts to overcome its legacy of discrimination and intolerance. It also undermines the country's ability to overcome apartheid's spatial legacy. By creating immigrant ghettoes or 'no go zones'—a result of both conscious exclusion from public housing and social exclusion—South Africa is likely to simply entrench the physical separation of people who might otherwise converge in South Africa's previously forbidden cities. Similarly, the ruling party values the stability it has achieved. Allowing corruption, administrative irregularity, and discrimination to eat away at the underside of South Africa's public administration may ultimately foster conflict and threaten that stability.

Regional promotion of rights, democracy, and prosperity

Migration into South Africa's major cities is neither a temporary outcome of the transition to democracy, or a fading legacy of the migrant labour system of the old mining economy. Population movements—some predictable, some spontaneous—have already become a ` feature of the country's social and political landscape. While many South Africans support deportation or closing borders, such options are not tenable even in countries protected from their neighbours by mountains, rivers,

and oceans, which South Africa is not (cf. Cornelius 2001). Moreover, as a liberal democratic country fostering the New Economic Partnership for African Development (NEPAD), the Southern African Development Community (SADC), and the African Union (AU), South Africa is in a poor position to close its borders (cf. Gibney 1999; Ruhs and Chang 2004).

Discrimination against foreigners within South Africa is also hurting South Africa's regional reputation and political authority. Foreigners in the country—most of whom retain links with families and communities in their countries of origin—already have only limited respect for the current government (many still laud Mandela), the public administration (particularly the Department of Home Affairs), or South Africans generally. Ironically, many non-nationals levy the same accusations against South Africans that South Africans do against them (e.g., ignorance, violent, disrespectful, aggressive, and generally without moral virtues). This is having regional effects. Already in 1999, an article in the *Mail and Guardian* article celebrating the adoption of the African Charter on Human Rights and Peoples Rights, suggested that South Africa is regarded by its neighbours as rapacious, imperialist, and xenophobic (in Maharaj 2004:7). Although few regional leaders can afford to publicly criticise their wealthier and more powerful neighbour, such sentiments are commonly reflected in private conversations and in the treatment of South Africans. If South Africa wishes to promote an African Renaissance principled on human rights, tolerance, and prosperity, the current reception foreigners receive on its own borders is likely to stand as a significant challenge.

The need for new thinking and new research

Accepting that migration and economic integration are linked, the promotion of NEPAD and similar regional projects will likely increase the numbers of non-nationals living in South Africa (and the number of South Africans living outside the country). This will require a harmonisation of immigration procedures, and easing the movement of people across borders. Yet, while political leaders trumpet the movements of capital, information, culture and highly skilled migrants, little is said about the other forms of movement that will necessarily take place—however unpredictable these flows may be (cf. Sassen 1998; Kihato 2004). Coming to grips with these challenges will require new ways of thinking about public policy. This will be felt most immediately amongst those responsible for urban and immigration management, but will almost certainly call for greater collaboration among local, provincial, and national spheres of government. As these deliberations take place, there will be a need to move beyond long-standing stereotypes, but consider and, if necessary, commission new research and analysis on immigration related issues. There must also be a conscious shift, an effort to break from past governmental logics of control and regulation intended to assure that South Africa will, indeed, belong to all who live in it.

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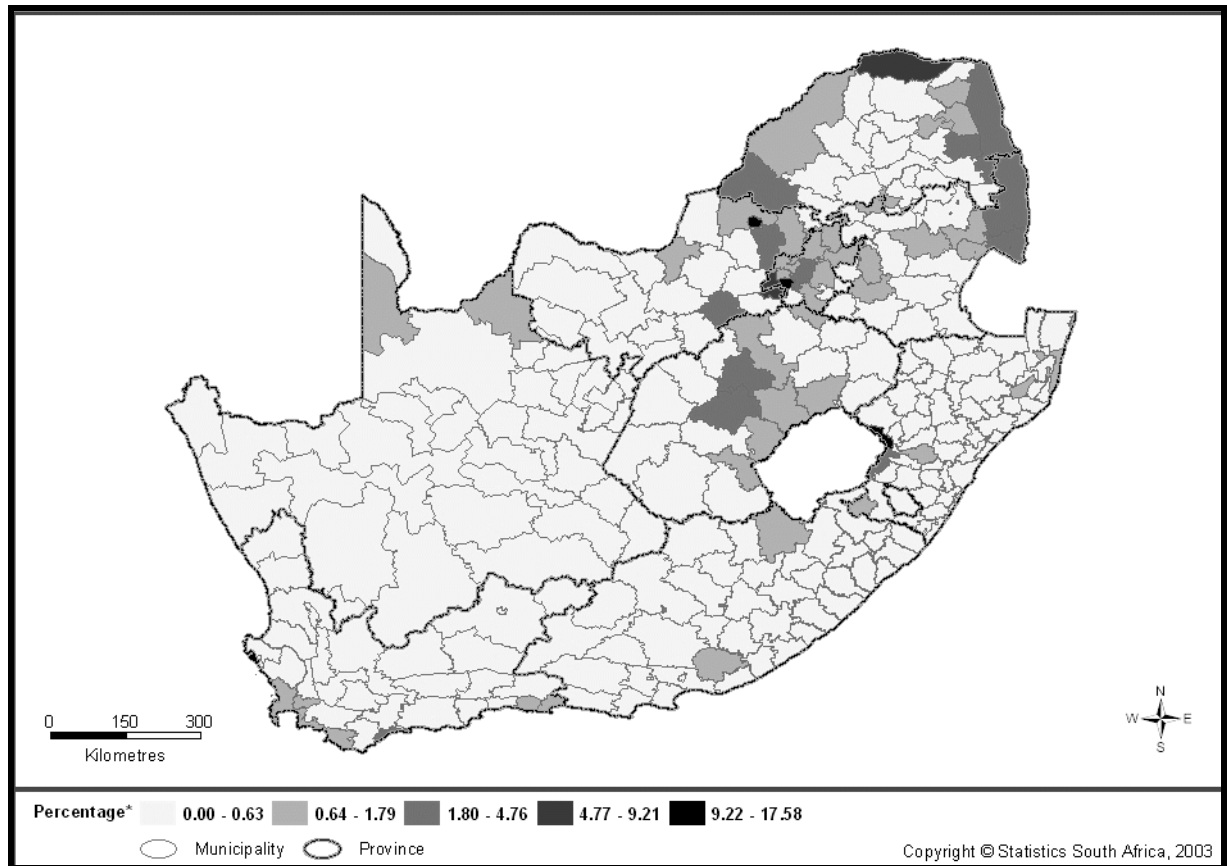
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APPENDIX ONE

PERCENTAGE OF NON-SOUTH AFRICAN CITIZENS BY DISTRICT, 2001

Source: Statistics South Africa (http://www.statssa.gov.za/census2001/digiAtlas/index.html)