



**UNIVERSITY OF KWAZULU -NATAL,**  
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**THE IMPACT OF GOVERNMENT MIGRATION POLICIES  
ON FOREIGNERS KNOWN AS “AMAKWEREKWERE”  
IN SOUTH AFRICA.**

**BY  
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**Submitted in partial fulfillment of the requirements for the completion  
of study for a Masters Degree in Social Policy.**

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## DECLARATION

I, Wilondja Muzumbukilwa, hereby declare that the work submitted is entirely my own unless so indicated in the text and that no part of this work has been submitted for a degree purpose at any other University.

Signature .....

Date .....

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## **ABSTRACT**

The actual research focuses on foreign migrants dwelling in the Point area of Durban. This work is aiming at determining whether migration policies negatively impact on foreigners in South Africa; assessing the positive contribution made by foreigners on both the formal and the informal economy of South Africa; and recommending progressive policy and corrective measures of resolving foreign influx in South Africa. The qualitative approach adopted in this study facilitates the examination of the respondents' experiences as migrants in the Point Area. The findings of this study show that fear of foreigners has reached a new level in South Africa and with the transition to democracy; South Africa has become a destination for a number of documented and undocumented immigrants and migrants who, looking for a better life, have found instead, a country in which xenophobia is rife. As a democratic country, South Africa finds its self facing a dilemma: on one hand it promotes democracy, human rights and African integration, on the other; it faces an increase in xenophobia. Within this context, this study evaluates the extent to which the ANC government's im/migration policy and the implementation thereof contribute to xenophobia. Migration systems theory is used to develop a theoretical framework for the analysis. This study also discusses the context of immigration in South Africa on three angles; the international, the regional and the national angle.

## LIST OF ABBREVIATIONS

ACA	:	Aliens Control Act.
ANC	:	African National Congress.
DHA	:	Department of Home Affairs.
DRC	:	Democratic Republic of Congo.
FGD	:	Focus Group Discussion.
FNB	:	First National Bank.
GEAR	:	Growth, Economy and Reconstruction.
HRC	:	Human Right Commission.
HRW	:	Human Right Watch
ILO	:	International Labor Organisation.
LHR:		Lawyers for Human Right.
NCRA	:	National Consortium on Refugee Affairs.
NP	:	National Party
OAU	:	Organization of African Unity.
PAC	:	Pan African Congress.
RDP:		Reconstruction and Development Programme.
SADEC	:	Southern African Development and Economic Community.
SADC		South African Development Community
SIRA	:	Security Industry Regulatory Authority.
SALC	:	Southern African Migration Commission.
SMME	:	Small Medium and Micro-Enterprise.
SAMP	:	Southern African Migration Project.
SANDEF	:	South African Defense Force.
SAPS	:	South African Police Services.
SWANLA	:	South West Africa Native Labor Association.
TEBA	:	The Temporal Employment Bureau of Africa.
UN	:	United Nations.
USSR	:	Union of Soviet Socialist Republics.
WENELA	:	Witwatersrand Native Labor Association
WWII	:	World War Two

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**CHAPTER ONE.**  
**INTRODUCTION.**

**1.1. Introduction**

Globalization has seen a rise in the movement of people. This phenomenon is on the rise, despite the increasing anxiety, and xenophobia which in the more affluent receiving countries has become commonplace due to cultural differences and social boundaries that have existed at most times and in most places and have therefore led to increased tension and hostility which is now on the top agenda of most governments' world wide.

Most often, whether in Europe or Africa, international migrants experience similar problems usually hatred based on 'fear'; particularly, fear of economic competition and fear for an increase in crimes and for loss of identity. In South Africa for example, the fear of foreigners has reached a new level (Crush, 2000). With the transition to democracy South Africa became a destination for a number of documented and undocumented immigrants and migrants. Looking for a 'better life' these foreigners have found instead, a country in which xenophobia is rife. South Africa finds itself facing a dilemma: on one hand it promotes democracy, human rights and African integration, on the other; it faces an increase in xenophobia.

Population movement in question here involves not only the ordinary workers but also professionals and highly skilled persons. Some of these are refugees, while others are cross-border traders. While some are legal, a growing number are undocumented 'illegal' immigrants made up of border-jumpers and over-stayers.

Earlier literature on migration in South Africa (1970s and 1980s) focused on its nature and impact, in the 1990s the focus shifted towards a concern with immigration, especially from other African countries, neighboring and afar. Given the instability and conflict on the African continent in the 1990s, this preoccupation has not been misplaced but has, to some extent, come at the expense of research on other patterns of migration. Migration

has therefore been an integral part of labour markets and livelihoods across much of the African continent for at least the last century ([www.sarpn.org.za/documents](http://www.sarpn.org.za/documents)).

This paper reports on the findings of a research conducted on migration and Government policies in South Africa. The research covers existing literature and discussions with Government department officials (Departments of Home Affairs and Labour) across the Durban Central offices, and was conducted through interviews in early January 2007.

For the purposes of this study, various causes and origins of international migration in attempting to link them to the present situation in South Africa and the classification of migration according to different theories are put in light. Migration genesis and flow to South Africa before, during and after both World War One and Two are thereafter interrogated. Within the above context, this study evaluates the extent to which the ANC government's im/migration policy and the implementation thereof contribute to xenophobia, by means of an analysis of data collected from the field. Migration systems theory was used to develop a theoretical framework for analysis.

The context of immigration in South Africa is therefore discussed on three angles; the international, the regional and the national angle. The causes and manifestations of xenophobia in the media, in the language of government officials and in society itself are then examined.

The study utilized a qualitative methodology. Data was collected through an unstructured interview, followed by a questionnaire for a more representative sample. Durban, Point Road area particularly was the main focus of the study. However the questionnaire was administered in all study areas through face-to-face interviews.

## **1.2. Background and outline of research topic**

Long before colonization slavery was at the core of economic development of European nations. The abolishment of slavery gave rise to the new work order using the umbrella word 'foreign worker'. For example, the American economy as it is today is built around

12 million foreign workers, of which 6 million are Mexicans and the other 6 million are from the rest of the world.

At the beginning of the twenty-first century, the total number of persons living outside their countries of origin worldwide was estimated by the United Nations at 175 million including 120 million migrant workers and their families by ILO estimates. It is estimated that 20 million African men and women are migrant workers and that by 2015 one in ten Africans will live and work outside their country of origin. While migration is bound to grow, it promises to offer development opportunities for both countries of origin and destination as well as for individual migrant workers. In spite of development opportunities associated with the 'push' and 'pull' factors of migration, ill conceived or inadequate policies have posed a threat to the course (Martin et al, 2006).

Migration practitioners argue for the harmonization of migration policies. Such trend in thinking is informed by the effects of apartheid government oppressive policies which expanded beyond its borders to maintain power and control within the SADC region. The Witwatersrand Native Labor Association (usually called WENELA) and The Employment Bureau of Africa (TEBA) came to the researchers' mind. These agencies were used to recruit migrant workers from SADC countries and exposed them to appalling working conditions reserved only for black people.

When the British eventually conquered all the independent communities in South Africa by crushing the Boer Republics in 1901, they gained the free run of the country's mineral resources especially the gold deposits of the Transvaal. The British however soon realized that they had gained a poisoned chalice, as victory over the Boers did not give them access to the vast cheap labour they required to exploit the gold deposits with. To quickly recoup the massive investment they had made in fighting the Boers before the next eruption, the British imported labourers from China but they knew this was only a short-term solution as both white and black South Africans would soon oppose these importations. The long-term solution was to mobilize rural Africans in South Africa and in the rest of Southern Africa to supply labour for the mines, agriculture and transport

infrastructure development. Faced with this challenge the British established the South African Native Affairs Commission in 1903, which for nearly two years criss-crossed Southern Africa investigating potential threats to their new colony from Africans as well as opportunities for labour supplies. WENELA was born out of this vision (WENELA, 1996).

The movement of people from South Africa to countries such as Zimbabwe could be traced back to the Mfecane and the Difeqane wars. The effects of the exodus of Zulus to Zimbabwe are reflected in the language spoken at KwaBulwayo. With the arrival of the White settlers, South Africa traditionally became a country of (white) immigration where racist and xenophobic practices became prominent. The post 1994 era marked the zenith of a new approach to migration as articulated aptly in Geyevu (2001) unpublished thesis. Noted in government policy approach was the reluctance to immediately adopt a new immigration policy. Such was evident when the government inherited the Aliens Control Act (ACA) of 1991 which was repealed in 2002 by a new Immigration Act which was later amended in 2004.

The fundamental principle of the ACA was to control and prevent migration as opposed to facilitating it. As a result, migrants and their employers both became increasingly frustrated at the inability to gain legal access to South Africa to work. Evident from the Immigration Act of 2002 is the willingness to reverse the situation and to actively facilitate temporary im-migration at the upper end of the labour market. This is a key feature of South Africa's immigration legislation and practice. For example, the discriminatory and exploitative 'two gates policy', which differentiated between black migrants and white immigrants during the apartheid era, effectively remains legislated in contemporary immigration policy. Beyond the legislation, racism impacts on xenophobic practices, with black African foreigners bearing the brunt of xenophobic discrimination, both at the hands of the public and at an institutional level. In certain cases, South African citizens have also fallen victim of xenophobia because they are perceived in racist terms as 'too dark to be South African'(Kollapen, 1999).

As consequence, xenophobic sentiment is ‘growing alarmingly’ in the country where African migrants are most vulnerable to crime and xenophobia in townships and areas such as Cape Town, Stellenbosch, Mossel Bay, Pletternberg Bay, Swellendam, Port Elizabeth, and everywhere throughout the country. This is largely due to unpopularity created by social isolation. Besides these frequent attacks and armed robberies, foreigners have also been murdered. Lately, the evidence of xenophobia can be seen in high-profile violent assaults on immigrants by bands of citizens (in which a number of refugees and others have lost their lives) (Kollapen, 1999).

Recent news headlines were “**Somalis slain in horrendous killing**”. Since July 2006, 32 Somalis have been killed in Western Cape informal settlements and many more others had been injured in violent attacks (IOL, October 02 2006). Other media reports also estimate that over 30 Somalis have been attacked and killed in South Africa in this year alone. The Department of Home Affairs therefore attributes these recent attacks to xenophobia, saying that the ‘hatred of the non-nationals’ within the country was a driving force, but also added that business competition was a major source of discontent among many South Africans (Mail & Guardian 03/10/2006). This illustrates and expresses government concern as well as how the voice of the foreigners such as Somalis has not gone unnoticed in South Africa.

### **1.3 Reasons for choosing topic**

Since the demise of apartheid, policy has been used as government tool of worsening the economic and social conditions of immigrants in South Africa. The immigration policy is changing day – to – day and seems to have a negative impact on foreigners living in South Africa. For example in the private security industry the eventual passing of the Private Security Industry Regulation Act at the end of January 2002 led to the false expectation that this industry would become better regulated and controlled. Particularly with the requirement that all service providers would have to be registered by 1 December 2002 with the newly established Security Industry Regulatory Authority (SIRA). Contained in the Act is that only citizens and permanent residents of the country are eligible for application according to this regulation. Immigrants including refugees

were therefore prohibited from any application of registration or of employment as well, which makes it difficult for them to find employment in security industry as well as in car guarding sectors. The number of foreign employees in these sectors has since dropped dramatically as a result of the newly established SIRA. As consequence, there is an increase in old and retired whites in sectors such as car guarding. The question that should be asked is what impact does it have on livelihoods of foreigners?

South Africa's public culture has become increasingly xenophobic, and politicians often make unsubstantiated and inflammatory statements that the 'deluge' of migrants is responsible for the current crime wave, rising unemployment, or even the spread of diseases. As the unfounded perception that migrants are responsible for a variety of social ills grows, migrants have increasingly become the target of abuse at the hands of South African citizens, as well as members of the police, the army, and the Department of Home Affairs. Refugees and asylum-seekers with distinctive features from far-away countries are especially targeted for abuse (Human Rights Watch, 1998, p.4).

Evidence of discrimination is seen at the hands of government officials and agents where anti-foreigner sentiments amongst the public are reflected in the attitudes and practices of government officials and agents. For instance, Home Affairs and access to identity documents 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 a sense of belonging and commitment to space and community (Human Rights Watch, 1998).

**The study objectives are to:**

- (i) assess the livelihoods of foreigners in the Point area of Durban
- (ii) evaluate the strength and weaknesses of the current migration policy
- (iii) to explore and provide insight into the experience of foreign migrants

**The main underlying aims of the study are to:**

- (i) determine whether migration policies negatively impact on foreigners in South Africa;
- (ii) assess the positive contribution made by foreigners on both the formal and informal economy of South Africa; and
- (iii) recommend progressive policy and corrective measures of resolving foreign influx in South Africa.

#### **1.4. Broad problems and issues to be investigated**

Migration is one of the major development and management challenges confronting the SADC region in the 21st century. As in many other areas, greater regional cooperation is an important step in confronting the challenges and exploiting the opportunities of migration. With adequate knowledge and appropriate management of these flows, migration can contribute to greater economic growth and social development in Southern Africa. National and regional immigration policy must be based on the best possible information and analysis. From 1996 to 1999, the primary focus was on cross-border migration to South Africa. From 2000, the focus was becoming much more regional in character. Since South Africa's democratic transition in April 1994, the new ANC-led Government has confronted challenges brought on by its new role in the international system. After decades of raising barriers to the outside world and being shunned in various official and informal ways, the country is (re) joining multilateral organizations and (re) establishing diplomatic ties ( Minnaar, 2002).

Another consequence of South Africa's burnished reputation is the 'influx' of foreigners. The media and certain vocal politicians are up- in- arms about 'illegal immigrants', who are blamed for a range of scourges, from crime to unemployment. While international relations theorists trumpet 'new security issues', South Africa experiences them on a daily basis. Migration is one of these concerns. Migration is and will continue to be a reality globally and in Sub-Saharan Africa. Harmonization of migration policies could lead to significant advantages in terms of global integration and will have many direct benefits for Southern African states, such as promoting tourism, providing for better and more

efficient migration management, enhancing security, developing a common understanding of the rights of migrants and attracting investments (Slobodan, 2001).

This harmonisation is a key issue in the region with the ratification of the SADC Protocol on the Facilitation of the Movement of Persons in 2005, signed by seven Member States. Vincent Williams of Southern African Migration Project suggested that the provisions of the Protocol would place significant obligations on States in terms of policy, legislative review and amendments, logistical capacity, and national and international cooperation, although developments along these lines were already taking place in the region.

In the midst of pragmatic policy concerns, the government also confronts a meta-political quandary. Does South Africa 'owe' anything to other countries in the region, which suffered from overt military aggression, destabilization, economic coercion, and more subtle political costs for supporting the anti-apartheid movement? And if so, should migrants - including refugees – be allowed freely into the country? Who should get employment? Who deserves entitlement claims, including education and health care, in the face of budgetary constraints? Contemporary debates over these questions highlight overarching issues of political community and identity (Klotz, 1997).

Looking at the ways in which the South African state seeks to regulate population flows enables the exploration of the extent to which international norms and organisations influence both policy-making and processes of identity formation. Comparing current policy-in-formation with the 1920s, furthermore, offers perspective on whether these 'new issues' actually represent unprecedented global normative commitments. Evidence from the history of migration puts doubt on the recent stress on globalisation as something unique, or more forceful, in the post-Cold War era. International pressures have always been, and will continue to be crucial factors in South Africa's migration policy.

To explore these broad issues raised by looking at migration from the perspective of international relations theory, immigration policy in South Africa during the twentieth

century was interrogated. Three themes were explored: the way in which immigrants are defined as threats, the role of international norms, and the range of non-state actors involved in public debate and the policy-making process.

### 1.5 Key questions to be asked

- ✚ Do South African migration policies work in favor of the foreigners in South Africa?
- ✚ Is there a proper platform where problems encountered by foreigners are addressed?
- ✚ Are the current migration policies impeding on the participation of foreigners in the South African economy?

### 1.6. Study Area

The Point area is an interesting part of Durban. It is located in the Durban South-East and extended up to the waterfront as from the Brick Hill Road. At one stage it must have been very fashionable indeed, but then - well, cities are living things and they grow and change - it went downhill. Before 1990s, the Point represented an important genesis in the development of the City and Port of Durban. It also represented the arrival gateway for many early travelers by providing a safe refuge off the ocean. The Point became the first greeting of many "*discoveries*" and indeed a place for early colonialists, who in time would bring indentured labor from India arriving also at the Point. This resulted in an increase in trade with the first railroad within Durban emanating from it, the beginning of a bustling harbour took place as more trade occurred.



Fig1<sup>1</sup> Durban detail Map.

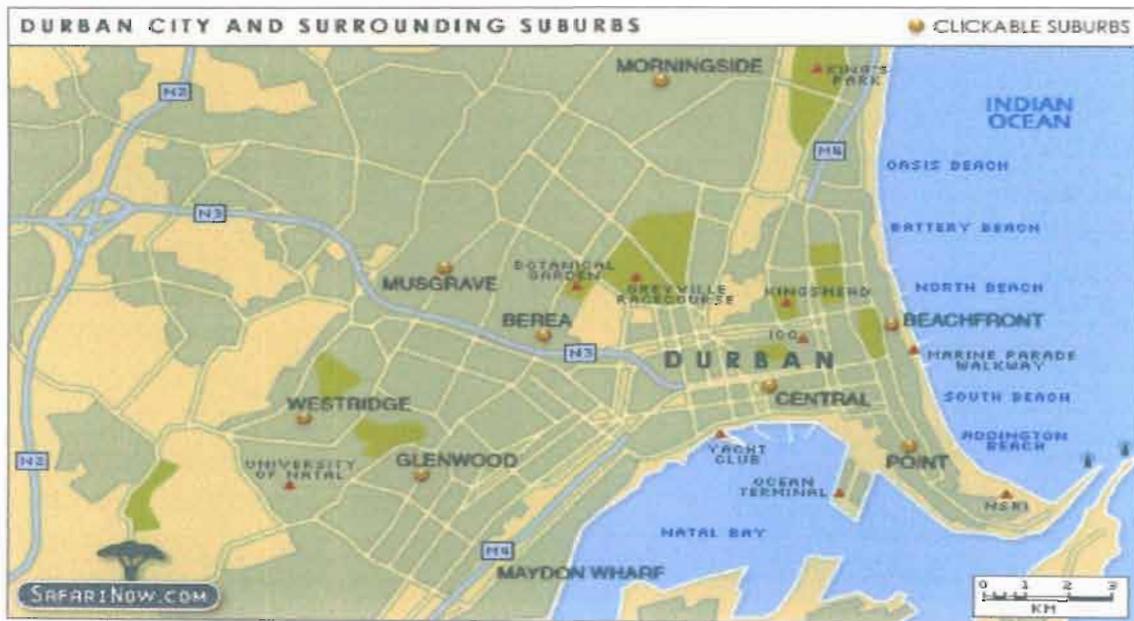


Fig2<sup>2</sup> Durban City and Surrounding Suburbs.

<sup>1</sup> [http://www.sa-venues.com/maps/kwazulunatal\\_durban.htm](http://www.sa-venues.com/maps/kwazulunatal_durban.htm)

<sup>2</sup> [www.Safarinow.com/destinations/durban/map.aspx](http://www.Safarinow.com/destinations/durban/map.aspx)

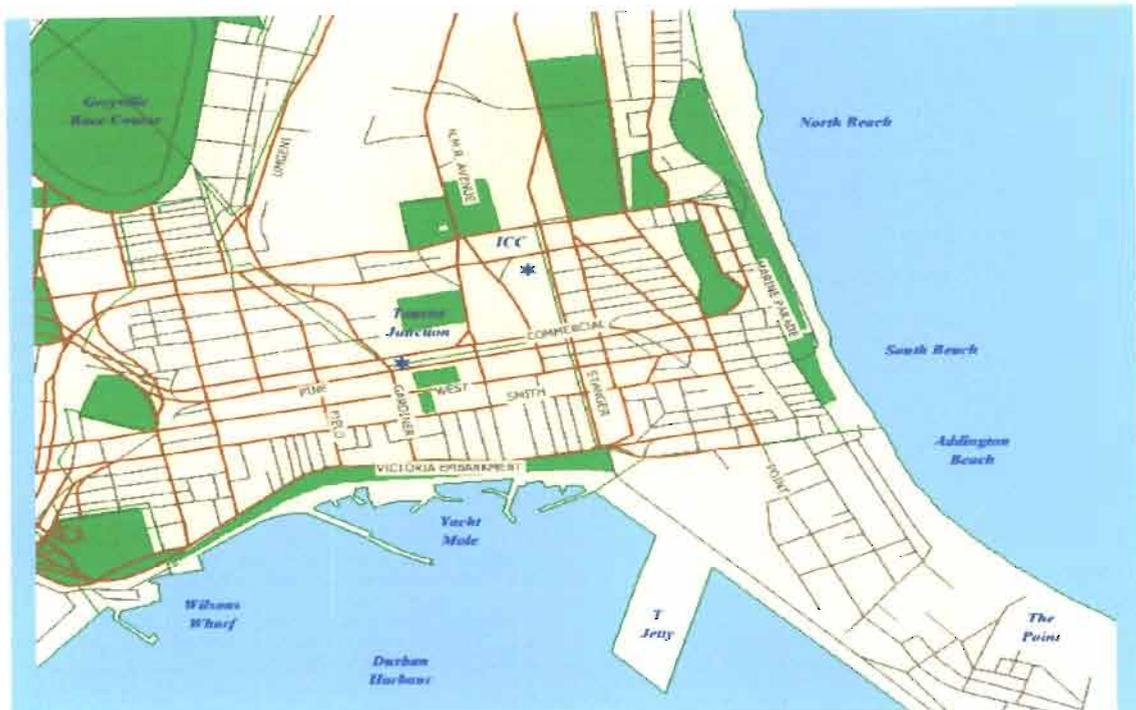


Fig3<sup>3</sup>. Static Map of Durban and surrounding areas.

Sadly, none of urban renewal initiatives materialised at any great scale. The need for the return of the Point to Durban, and its people, remained however firmly on the developmental agenda for Durban for years to come. Situated on a prime development site just off Point Road near the Durban harbour is a collection beautiful architecture and gigantic buildings subtly changed into dilapidated, apocalypse-like buildings that sheltered a people, forgotten. Among these, the Ark – Royal, Rock World, and many more constitute until recently a safe haven for homeless and desperate people including most of those involved in illegal businesses and crime.

<sup>3</sup> [http://www.kzn.org.za/maps/dbn\\_cbd.gif](http://www.kzn.org.za/maps/dbn_cbd.gif)



Picture1<sup>4</sup>. By John Stewart during Operation West-action pact officers on the beat doing what they do best.

The Point Road, commonly known as “the red light district” which was once a parlour for only prostitutes. Now, it is home to just about anyone who is homeless. Scanning the streets, one can see that West African nationals, particularly Nigerian nationals, had taken over this area and are involved in drug trafficking such cocaine, heroin, narcotics...

### 1. 7. Principal theories upon which the research project was constructed

International migration is emerging as a basic structural feature in nearly all industrialized countries and is a testament to the strength and coherence of “underlying forces” not understood or well known based on existing competing theories .An explication of existing theories, strengths and weaknesses, and how they might fit together. International relations theory therefore attempts to provide a conceptual model upon which international relations can be analyzed. Each theory is reductive and essentialist to different degrees, relying on different sets of assumptions respectively. As Ole Holsti describes them, international relations theories act as a pair of coloured sunglasses, allowing the wearer to see only the salient events relevant to the theory. An adherent of realism may completely disregard an event that a constructivist might pounce upon as crucial, and vice versa (Microsoft® Encarta® Encyclopedia Standard 2005).

<sup>4</sup> A:SAPS Journal vol3 issue01.htm

Neoclassical economics (macro): argue that migration is caused by the supply and demand of labor and the resulting wage differentiation based on a country's economic condition while Neoclassical economics (micro): argue that individual actors migrate after making cost-benefit analyses, for them migration is a form of investment in human capital.

Dual labor market theory states that international migration stems from intrinsic labor demands of modern industrial countries, not from rational choice decisions; pull factors, not push factors; stems from "four fundamental characteristics of advanced industrial societies/economies: (1) structural inflation: informal social expectations and formal institutional mechanisms ensure that wages correspond to hierarchies of prestige and status (2) motivational problems: few "natives" want jobs with low pay that give neither financial or status rewards, employers will get migrants who just want income (3) Economic dualism: a bifurcation of the labor force occurs because of how capitalists like to use permanent labor and reserve labor as the economy fluctuates (or the seasons); workers who are "capital intensive" are more costly to obtain, train, and lose resulting in a primary labor market emerges with specific advantages and characteristics (4) the demography of labor supply(Massey et al.,1998).

Network theory: influence of: chain migration, obligations inherent in network ties, risk attenuation; conceptualized as a self-sustaining diffusion process.

Institutional theory discusses the role of private institutions and voluntary organizations that step in to assist migration process; these institutions become known by migrants and constitute another form of social capital as they become institutionalized

Cumulative causation: each act of migration alters the social context within which subsequent decisions are made.

The three above, as well as the world systems theory, combine to produce a stable (but not fixed) structure of migration flows over space and time but that vary across countries This research was therefore constructed around the migration systems theory to explore how different schools of thought have embraced this approach and how it is applied in real situation in South Africa.

Migration systems theory is rooted around the work of Kritz et al. (1992) who argued that “any consideration of the causes or impacts of international migration from a sending or receiving country perspective fails to convey the dynamics associated with the evaluation of the flow, from its origins, through the shift from its composition and volume as it matures” (Kritz et al.1992).

This theory focuses on a core receiving region (a few countries) receiving immigrants from a few specific sending countries. It also focuses on both macro and micro level factors: attempts to integrate some of the previous macro and micro level theories. Key issue is identification and examination of stable migration flows between places of origin and destinations to explain initiation and perpetuation of migration. An ‘International migration system’ consist of a particular set of core receiving regions in countries of destination and a set of core sending regions in countries of origin. It also takes account of individual and household level decision making processes.

The significance of this theory to this work is that it facilitates a better understanding of migration- related issues in various circumstances and how these can be taken into consideration in the process of policy-making. The application of this theory in the present study was to show the synergy of migration strategies and techniques employed by the government to reduce foreign influx as well as to address current negative impacts.

This overview of South Africa's immigration policies raises a number of bigger theoretical questions. It recognises population pressures as part of the processes of 'social construction' at the heart of a more sociological and less economic approach to world politics. An analysis of migration sheds light on the agency side of these processes, in part by highlighting the role of actors, which are not formally organised (that is, foreigners themselves). As 'agents', foreigners respond to opportunities and constraints created by international social structures, create pressures on states, and subvert state authority. These are just a sampling of the types of activities by which non-state actors construct and reconstruct state identities and interests (Bretell and Holifield, 2000).

This institutional approach also adds to the study of migration, particularly highlighting the need to understand international normative structures. Like many areas in international relations, migration analyses tend to be dominated by implicit, if not explicit realist assumptions. Alternatively, other disciplinary approaches tend to emphasise on economic dimensions, such as changes in global production patterns and competitiveness (especially for understanding labour flows). To the extent that any of these approaches take a more social or cultural perspective, they tend to be micro-level studies of migrants' decision-making processes or local community relations. International relations theory has much to add to these analyses, including explicit attention to state theory of absolute time in which the number of states from the first moment in time up to the current moment in time can be counted (Bretell and Holifield, 2000).

### **1.8. Research methodology and methods**

This study is designed to use the following methodology: Qualitative Method. The approach entails the activity of collecting and analyzing data, developing and modifying theory, elaborating or refocusing the research question, and identifying and dealing with validity threats are usually going on more or less simultaneously, each influencing all of the others<sup>5</sup>. These respondents were selected through the method of **purposive or judgmental sampling** where the sample was based on the ground of existing knowledge of the population. These formed the total population and therefore consisted of fourteen foreigners residing within the jurisdiction of eThekweni Municipality.

A sample of 14 legal immigrants from 7 African Countries, 3 Officials from Department of Home Affairs and 3 Officials from Department of Labour were selected due to constraints of finance, time and other resources. In dealing with migration, the study of a total population is always difficult. Most empirical studies have limitations in the form of coverage, and the research under consideration is no exception. It only focused on a sample of foreigners from **Democratic Republic of Congo, Ghana, Mozambique,**

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<sup>5</sup> See Bickman, 1997 on qualitative research.

**Nigeria, Senegal, Somalia, and Zimbabwe.** Approximate reports show that these foreigners are in higher concentration in South Africa compared to those from other corners of African continent. For example, in 2004, a total of 142907 refugees and asylum seekers were registered where the majority was from Zimbabwe, DRC, and Somalia with 5789, 4622 and 3893 respectively. These figures ignore the many more refused asylum but feared to return home or those who either out of ignorance or frustration with the government's asylum determination process, have simply not applied and therefore decided to leave illegally in the country.

The nature and characteristics of the population has resulted in difficulties of having accurate statistics as well as headcounts. An arbitrary means of selecting a sample size seems to be the only alternative. The data collection also focused on analysis of the Department of Home Affairs and labor policy trends. Unstructured interviews, questionnaire administration and focus group discussions (FGDs) with the respondents revolved around the central question of this thesis.

The literature search involved reviewing all readily available materials including relevant trade publications, newspapers, magazines, annual reports on migration policies and any other published and unpublished materials related to the topic under investigation as well as police statistics on foreigners committing crime.

### **1.8.1. Data collection techniques**

Various strategies were to be used to collect data:

The other data collecting method was through a **questionnaire** (see **Appendix 1**) in the Point area of Durban where foreigners are in a large concentration. Questionnaires were given to the interviewees to write responses. In an event they were unable to write, the researcher filled the responses for them in their presence. Themes covered by the questionnaire relate to foreigners' livelihoods, personal life events and the future expectations. Furthermore **Unstructured Interviews** with **2 Focus groups** drawn from the foreigners were undertaken since **unstructured interviews tend to work best in focus groups**. Berg and Smith (1991:61) explain that unstructured interviews do not

utilize schedules of questions. Unstructured interviews are often used during the course of research to gain additional information on the issue in hand. There is nothing good like being able to tape record what people have to say about relating certain circumstances and their experiences. It records their stories in their own languages and words to the last detail of what they have to talk about. However, not everyone likes to be tape recorded, especially if they are not confident about what might happen to them later. An attempt was made to voice record the interviewee's responses using a tape record while writing down the interview content but whenever the interviewees do not agree to have their voice recorded, only interviews consisting of writing down the interview content was useful.

**Unstructured interviews** were also held with three immigration officers from the Department of Home Affairs as well as one from the Department of Labour. These officials were interviewed on one to one basis. Information gathered from each Departmental Official was recorded and cross-examined against other officials. Each session was allocated thirty minutes.

### **1.9. Structure of dissertation**

**Chapter One** introduces the study. The motivation for conducting the study, the scope of the study, aims and objectives are highlighted. Thereafter the research problem is presented as well as the methodology to be used. **Chapter two** deals with the literature review. **Chapter Three** deals with the understanding of migration policies increasingly; it also deals with migration policies at the international, regional as well as national level. **Chapter Four** focuses on the research result. Data collected on the field via questionnaire are compiled. **Chapter Five** is the analysis of the result. This includes people's views of migration policies and implications that these policies have on them. **Chapter Six** is the conclusion and recommendations.

## CHAPTER TWO

### HISTORICAL BACKGROUND

#### **2.1. Origins and causes of Cross-Border Migration in Southern Africa**

In order to fully understand the current migration causes as well as its origins in South Africa, the migration term has to be defined beforehand. This will render much easier the understanding of migration in its historical perspective. The question that emerges here and that needs to be answered is how different scholars have defined migration?

Of course, it can be argued that distinct definitions of migration have been provided by different scholars, but among these we will only consider those supplied by geographers as well as historians. On one hand, geographers have defined migration as the permanent or semi-permanent change in the residence of an individual person or group of people. On the other, historians have described it as the movement of people, especially of whole groups, from one place, region, or country to another, particularly with the intention of making permanent settlement in a new location (Microsoft Encarta Encyclopedia Standard, 2005).

To highlight these latter definitions, we tend to say that a group of people may migrate in response to the lure of a more favorable region or because of some adverse condition or combination of conditions in the home environment. Most historians believe that non-nomadic peoples are disinclined to leave the places to which they are accustomed, and that most historic and prehistoric migrations were stimulated by a deterioration of home conditions<sup>1</sup>. Records of the events preceding most major migrations support this belief. On the issue of structure and agency, historians tend to focus more on individual migrants as agents. They are less concerned with explaining how social structures influence and constraint behavior (Brettel and Hollified, 2000).

In South African land, most migration specialists believe that the specific stimuli for migration are either natural or social causes. Among the natural causes are changes in

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<sup>1</sup> See Microsoft Encarta Encyclopedia Standard 2005.

climate, stimulating a search for warmer or colder lands; volcanic eruptions or floods (case of countries like the Democratic Republic of Congo, Uganda and Rwanda)<sup>2</sup> that render sizeable areas uninhabitable; and periodic fluctuations in rainfall. Social causes, however, are generally considered to have prompted many more migrations than natural causes. Examples of such social causes are an inadequate food supply caused by population increase; defeat in war, as in the forced migration of Germans from those parts of Germany absorbed by Poland after the end of World War II in 1945; a desire for material gain, as in the 13<sup>th</sup>-century invasion of the wealthy cities of western Asia by Turkish peoples; and the search for religious or political freedom, as in the migrations of the Huguenots<sup>3</sup>, Jews, Puritans, the Society of Friends or Quakers, and other groups to North America.

**Theories of migration are discussed in Migration** (geography), which stipulates that migration can be permanent or semi-permanent change in the residence of an individual person or group of people. These theories also state that Migration can occur within countries (internal migration), and between countries (external or international migration), and on almost any spatial scale, from very local to intercontinental. Migrants who intend to leave a country permanently are known as **emigrants**; on entry to another country they become **immigrants**. People can also migrate with the intention of eventually returning to their former home; timescales can vary from years, to seasonally, to even shorter periods. According to United Nations (UN) estimates at least 100 million people were known to be living outside their countries of birth or citizenship in the 1980s. The figure for the 1990s was thought to be much higher, not least because of the migration caused by the collapse of the former Soviet Union and the break-up of former Yugoslavia. Such figures give an idea of the world scale of migration, although they do not include illegal international migrants or internal migrants. The UN World Migration

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2 Virunga in the east of the Democratic Republic of the Congo (formerly Zaire). Ruwenzori in Uganda and Volcanoes National Park in Rwanda. Some volcanoes are still active, notably the Nyamulagira (3,056 m/10,024 ft), which was last active in 1994-1995, and the Nyiragongo (3,470 m/11,384 ft), which erupted in 1977 and in 2002.

3 French Protestants.

Report 2000 contains valuable information on major trends in migration, both globally and in individual countries (Microsoft Encarta Encyclopedia Standard, 2005).

Geographers, as well as demographers and economists study migration, because, together with birth and death rates, it is a fundamental determinant of the size and structure of an area's population. Moreover, as migration represents a spatial redistribution of people, it is likely to have important consequences for the use and development of land and other resources, for living conditions, for the availability of jobs, and, possibly, for political, social, and economic stability. "**General theories**" emphasise tendencies of people to move from densely to sparsely populated areas, or from low -to high – income areas, or link migrations to fluctuations in the business cycle. These approaches are often known as push – pull theories, because they perceive the causes of migration to lie in the combination of 'push factors', impending people to leave their areas of origin, and 'pull factor, attracting them to certain receiving countries (Castles and Miller, 1998).

In this light, it is important to note that the classification of migrants is not always clear-cut because definitions can vary. For example, the UN defines a **permanent migrant** as someone who has removed from a previous residence for a year, while in former West Germany people classified as temporary migrants included Turkish Gastarbeitern (guest workers) who had lived in the country for more than seven years. Because of this, migrants are often divided into two categories: those whose movement is in some sense **forced**, or **involuntary migrants**, and those who move more or less of their own free will, or **voluntary migrants**. Voluntary migration is usually used synonymously with terms like economic migration. This is contrasted to forced or involuntary caused by natural and human-made disasters, such as drought, floods, earthquakes, and contamination by radiation or chemicals; war; religious, ethnic, and political persecution; environmental problems, such as soil degradation and deforestation; and slavery and forced labor and resettlement (Brettell and Hollified, 2000).

The world's 22.3 million refugees and internally displaced people (1999, UN High Commissioner for Refugees estimate) are all involuntary migrants. So too were the

100,000 people permanently moved after the Chernobyl nuclear accident in Ukraine in 1986, and the estimated 15 million to 20 million Africans who were victims of the Atlantic slave trade to the Americas between the 15th and the 19th centuries. Voluntary migrants move in an effort to improve their lives in some way, such as to get a better or more secure job, to avoid taxation, to improve their access to social amenities such as schools or hospitals, to live in a better climate, or to escape the problems and stresses of urban life. The most common type of voluntary migration in developing world such as Southern Africa is the movement of workers. South Africa for example has been a major importer of unskilled workers for its coal and gold mines. Foreign workers for example originated mostly in neighbouring countries-Botswana, Lesotho, Malawi and Mozambique- and were subject to strict control related to length of stay, type of work and place of residence (Sidique, 2001). Also, the movement of Turkish Gastarbeitern to Germany, the growing trend in highly industrialized countries of middle-class movement from cities to rural areas, and the shift in the United States' population towards the "sunbelt" areas of the American south and west since the late 1970s are other examples of voluntary migration. Another, seasonal, example is the movement each winter of thousands of retired British people, taking advantage of cheap hotel rates, to southern Spain. Along the spectrum between involuntary and voluntary migration are the many people whose movement is a response to poverty and to lack of access to resources or employment opportunities.

Paralleling the classification of migrants, geographers also tend to divide the factors that lead people to migrate, especially the **economic ones**, into two main categories: **push factors and pull factors**. **Push factors** are those which encourage people to look for new areas in which to live. They are most often associated with the desire to escape poverty, expressed in lack of job opportunities or in scarcity of resources as a result of unequal social distribution, environmental degradation, and population pressures. Examples include the emigration, temporarily or permanently, of people from rural Irelands over the past 200 years, or, more recently, the migration of people from Bangladesh to the states of Assam, Tripura, and West Bengal in north-eastern India. **Pull factors** are those that exert an attraction to a new location, and include most of the reasons for voluntary

migration. Examples include the annual migration of Mexicans to California attracted by seasonal job opportunities, or the movement of people to new towns, such as Milton Keynes in England, where living conditions, as well as job opportunities, are thought to be better. Historically the chance to start again in a new country has been a **pull factor**, notably in emigration to the United States and Canada. In the period since World War II a number of industrialized countries facing labour shortages have attempted to enhance pull factors to encourage immigration. The migration in the 1950s and 1960s of people from the Caribbean to Britain, and of Britons to Australia, are examples of such official interventions. In South Africa, this is referred to the period since 1867 with the discovery of diamonds along the eastern frontier of Cape Province. With the rapid expansion of mining industry, the demand for labour was insatiable. Wages for the skilled workers were necessarily high in order to attract experienced miners from overseas due to the poor representation of high skilled labour among black Africans (Bohning, 1981: p10).

In reality most migrations represent a combination of both **push and pull factors**. The rural-urban migration pattern that characterizes much of the economically developing world such as South Africa and which is reflected in the growth of shanty settlements on the outskirts of major cities, such as São Paulo in Brazil, is probably the prime example of this. The decline in the quality of rural life is matched by perceptions that the city offers the chance of prosperity.

The first attempt to develop a model that would explain the causes and scale of migrations (push and pull factors) was made in 1885 by the British geographer E. G. Ravenstein. From an analysis of British census data, he put forward a number of “laws” (that he believed held true for the majority of population movements. Ravenstein’s laws include: most migrants move only a short distance, and usually in small steps; the flow of migrants decreases with distance<sup>4</sup>; the direction of movement is most likely to be from rural to industrial areas; migration<sup>5</sup> increases in frequency and distance with the

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4 The relationship between migration and distance: the distance between sending and receiving areas, the greater the number of migrants.

development of industry; and, the longer the distance traveled, the more likely the migration will end in urban areas (Microsoft Encarta Encyclopedia Standard, 2005). Ravenstein also concluded that the major **causes of migration are economic**, and that most migrants are adults, with different migration patterns between women and men. Women are more migratory than men within countries, but men are more likely to become international migrants. Later workers have confirmed most of his “laws”, and have also sought more generalized explanations. The gravity model, associated mainly with the American geographers W. G. Reilly and G. K. Zipf, expresses the potential for migration as a function of distance. The volume of migration between two settlements is calculated by multiplying their populations together and dividing the product by the distance between the settlements, or, alternatively, by the distance squared. The weakness of the gravity model is that distance is only one of the variables influencing migration. Attempts to develop a purely mathematical model have since been refined. More recent models have included the influence of alternative destinations between the area of origin and the intended final destination. These intervening opportunities, as they are called, were first suggested by the American sociologist Samuel Stouffer in 1940. He considered that the scale of migration over a given distance was directly proportional to the number of opportunities at the planned destination, but inversely proportional to the number of opportunities on the way. Multivariate analysis models have attempted to look at the role of relative income and unemployment levels in the places of out-migration and in-migration (Microsoft Encarta Encyclopedia Standard, 2005).

The problem with all these models is that they take into account, at best, only a few of the variables leading to migration, and that they regard migration as a **wholly economic response**. Because of this, the most recent studies of migration tend to utilize **systems theory**<sup>6</sup>, treating migration as a response to constantly changing relationships between

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5 Migration by stages where it is suggested that movements of people produce “currents of migration” which flow in the direction of areas of commerce and industry, and which attract migrants. Further, during the course of this movement, whilst those near towns and areas of industrial activities flock into such areas, their places are in turn taken by those from areas further at a distance.

6 International migration stems from the penetration of capitalist economic relations into peripheral countries where non-market or pre-market social and economic structures prevail. Led by direct foreign investment and fomented by the creation of export-processing zones, the emerging market economy displaces people from traditional livelihoods and creates mobile population prone to migrate.

economic, social, cultural, political, and technological factors (Massey et al, 1998). Often two subsystems are discerned: the **urban subsystem**, which includes factors such as the organization of employment and official attitudes towards immigrants; and the **rural subsystem**, which includes family structures and inheritance laws, and the structure of landholding. As movement occurs, adjustments in both subsystems take place and the flow of information between the two becomes important. **Systems approaches** are considered important because they emphasize the variety and interrelationship of factors (Microsoft Encarta Encyclopedia Standard, 2005).

In relation to the above mentioned theories, these laws can be seen relevant to the current migration situation in South Africa. With respect to the aspect of '**migration and distance**', this can be expressed with the highest concentration of migrants from South African neighboring countries. Empirical evidence of this is shown by the data collected from the Department of Home Affairs (Durban office) indicating that by 31<sup>st</sup> October 2006, a total of 33118 applications have been received where 4162 are from Zimbabwe.

## **2.2. Population flows to South Africa**

Immigration in Africa is not something modern and new. It pre-dates colonialism and has its genesis in particular modes of domestic subsistence. These include, pastoralism<sup>7</sup> or hunting and gathering, commercial trade routes, which intersect with modern state boundaries and seasonal ecologically driven migrations that are increasingly becoming more permanent, environmental degradation, and the legacy of slavery which has geared African social economies to center almost explicitly on moving bodies around have also contributed to the movement of people across Africa and beyond. These legacies combined interact with the new obligations for migration, which result largely to political, social and economic failures of post-colonial states. Colonialism and white settlement led to the establishment of migrant labour systems for plantations and mines (Castles and Miller, 1998).

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<sup>7</sup> Term used to describe an economy based predominantly on the herding of animals such as cattle, goats, sheep, and camels. Pastoral societies are mainly found in central and south-west Asia (such as the Basseri of southern Iran), East Africa (such as the Maasai and the Karimojong), and as far north as the Arctic Circle, where the Saami herd reindeer.

As Bernstein and Weiner (1999:211) pointed out “refugees are a world-wide phenomenon, but Africa has the largest number of refugees and internally displaced persons”, four conditions or dynamics of immigration are identified in this region. These are economic, demographic, political and cultural conditions. Deteriorating economic conditions in many of African countries force skilled and unskilled labour to migrate. Immigration offers people in these countries relief from the changing demographic patterns that intensify unemployment, political instability dramatised in conflicts and wars and the prevalence of certain cultural practice, which are becoming increasingly unpopular with the youth. Up until the 1980s refugees and migrants were from countries involved in liberation struggles. Stahl (1996) argued: “while the cases of mass movement of refugees (victims of wars and civil disturbances), expellees (immigrants in irregular situation) and pilgrims are special examples, there are instances of group migrations among international migrants”. Now refugee flows and migration are caused by conflicts, economic adversities, drought and famine (Akokpari, 1998:214).

Crush (2000) argues that South Africa is not an ‘**immigration country**’ in the conventional sense; however the majority of its white populations are either immigrants or the descendants of immigrants who arrived in the late nineteenth and early twentieth centuries. Believing that immigration was the key to their survival, these populations, for many years aggressively pursued racist, xenophobic and highly selective immigration policies. Prior to the late 1980s all immigrants had to be white, with belief and a way of life similar to that of the ruling party.

This conception was reflected when the Union of South Africa was first formed in 1910 with President P.W. Botha and his government approving the principle of cooperation in the joining together of all different European peoples into one South African nation and encouraging them to make South Africa their permanent home. During this time while European immigration was actively encouraged, Asiatic immigration was prohibited (Kruger, 1969:77).

The first Indians brought to South Africa were indentured labourers in Natal. In 1907 Indian immigration had increased to such an extent that the Transvaal Parliament passed legislation restricting Indian immigration. This provided for an education test and compulsory finger print registration on Indian immigrants trying to enter the country. By 1911 the Indian population alarmed a racist and xenophobic white government and white businessmen saw the new traders as a threat. After the Union was formed, Parliament passed the first countywide Immigration Act prohibiting the entry of Indians into the Union altogether. This demonstrated the fear among the South African government and civil society of foreigners and their different lifestyle, culture and religion (Davenport, 1977:181).

During the late 1920s, with trouble brewing in Europe and Adolph Hitler and Germany illustrating their intended destruction, Jewish immigrants began to enter the Union. A sudden wave of Jewish immigration in 1937 resulted in the passing of an Aliens Bill by Parliament. While Jews were not specifically referred to in the Act, the intention was clearly to exclude as many Jewish immigrants from the country as possible (Kruger, 1969:180). Just as the government viewed Indian immigrants as a threat in South Africa, Jewish immigrants became the new threat. Their religious beliefs and culture was viewed as different and not in line with the South African life style.

Shortly after the Second World War the government had severely increased its powers to exclude whole categories of people while at the same time extending its domestic powers over non-South Africans. Immigration legislation before the apartheid was driven by a combination of **racial anxiety**, **white nationalism** and **anti-Semitism**<sup>8</sup>. The Minister, his officials and the police were given wide powers of arrest and deportation. There were no democratic or constitutional checks and balances and the courts were to a large extent kept out of the process.

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<sup>8</sup> See Wilson et Al, 1970: p4 "Economic Issues in Immigration".  
See also Castle and Miller, 1998: p63.

During this period however immigration and immigrants were defined as a white issue. By definition immigrants were white and the government distinguished between desirable and non-desirable in formulating its policies. These were generally Anglo-Saxons and Protestants by heritage. The government identified whites from countries such as Britain, Holland or Germany, who held similar ideals and beliefs, as desirable immigrants. Undesirable immigrations include people from Eastern Europe and Jews, who were perceived as a threat to the South African culture and way of life (Cape Times, 25 June 1997). Being a white issue there was also no immigration policy for Africans from outside the country. Africans were migrants and they returned home when they were no longer of use to South African employers.

South Africa was however, seen as a pariah state in both the regional and international community. This limited the number of immigrants wanting to settle in the country. It forestalled non-white immigration both by creating an inhospitable environment for Africans and by refusing to grant any legal basis for their movement other than as temporary mine workers. Sanctions also kept South Africa artificially protected from general international changes. While the international community was developing international refugee conventions, such as the establishment of the United Nations Commissioner for Refugees and the Organization of African Unity's Convention of refugee status, and the concept of human rights, South Africa isolated itself (Klotz, 2000:18-20).

The careful monitoring and control of the movement of people, especially blacks, both within and across established state borders by the apartheid government limited movement (Croucher, 1998:23). The apartheid government did this by enacting laws such as the Population Registration Act and the Bantu Homelands Act in which black Africans had to become a citizen of the homeland relating to their race. All black Africans were categorised according to their various tribal antecedents and forced to accept citizenship of the appropriate designated "homelands", where they could exercise political rights. Movement between these homelands and into other parts of South Africa was restricted and a pass system was put into place. This meant that citizens of homelands had to carry

passes to identify themselves (The Aboriginal Studies Association, 2000, Internet Source).

Up until the early 1990s, South Africa's apartheid system was responsible for the creation of several thousands refugees. In 1961, the Black Nationalist movements were banned by the apartheid regime within South Africa. This sent thousands of black South Africa's into exile in neighboring countries (Akokpari, 1998:214).

While this racist immigration policy saw the majority of immigrants being Caucasians, it did not however mean that foreign blacks did not enter the country. The majority of black foreigners entering South Africa before the 1990s, were poor, unskilled and some mainly from Southern African countries, most notably Mozambique, Swaziland, Zimbabwe and Lesotho. While a number of black foreigners entered as legal immigrants, hundreds of thousands came as contract workers. This was due to the fact that various industries, most notably the mining industry, were dependent on vast quantities of black. In June 1986 there were 378 125 registered foreign workers from neighboring states employed in South Africa (Haffajee, 1998:28).

During the apartheid years, hostility towards these Southern African foreigners seemed to have been limited. Foreigners that were not contract workers generally integrated into the local communities, either living in townships, squatter areas or domestic quarters in suburbs. A large number of these foreigners had local partners and most could speak at least one of the indigenous languages. Their dress codes and lifestyles were very similar to the locals, making them practically indistinguishable from the local population. Even though there were illegal immigrants, limited numbers meant that, at the time they were not perceived as a major threat by the indigenous working class. Along with this the indigenous working class had greater problems, the apartheid regime, that was viewed as the key feature preventing the realisation of a decent quality of life, employment or upward mobility and their attention was focused on eliminating it (Crush, 2000:103).

Today however, with the demise of apartheid and the establishment of a democratic state, South Africa faces the same dilemmas related to the politics and policies of immigration, as other immigrant receiving countries such as the United States and Western Europe. Whether it be the demands of resettling refugees, the increased burden on the state welfare system, the tension between locals and foreigners over jobs and scarce economic resources or a growing xenophobia<sup>9</sup> which is both a cause and a consequence of the former challenges (Boeri et al, 2002:105).

### 2.2.1. Migration before the 20th Century

The era of modern migrations that began with the opening up of the Western hemisphere was continued under the impetus of the Industrial Revolution. Millions of western, and then eastern, Europeans, seeking political or religious freedom or economic opportunity, settled in North and South America, Africa, Australia, New Zealand, and other parts of the globe. As many as 20 million Africans were forcibly carried to the Americas in the slave trade and sold into bondage. Millions of Chinese settled in South East Asia and moved overseas to work in the Philippine Islands, Hawaii, and the Americas. A large colony of Hindus was established in southern Africa, and many people from Arab lands migrated to North and South America (Boeri et al, 2002:105).

The migrations from Europe were principally voluntary, in the sense that the emigrants could have stayed in their respective original homelands if they had accepted certain religions, creeds, political allegiances, or economic privations. The involuntary migrations were primarily those of the Africans captured for slave labour; slave shipments were finally halted only during the second half of the 19th century. At about the same time, however, a large-scale, more or less forced migration, known as the **mfecane**<sup>10</sup>, took place from southern Africa to the central and eastern parts of the

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9 Racism and xenophobia can be related to economic concerns about the development of society, the labour market, and the welfare state. Migrants can be considered to be a threat to the native population in that their presence could increase unemployment and depress wages.

10 Period of upheaval in southern Africa in the early decades of the 19th century, characterized by widespread warfare between chiefdoms centered on what is now eastern South Africa, and the subsequent mass migrations of numerous other chiefdoms. The term mfecane comes from a Nguni word that means "the crushing". It is also known as difaqane, the Southern Sotho equivalent. The mfecane reshaped the

continent, spurred by the expansionist force of the Zulus. Finally, a great many of the Chinese, Indian, and other Asian migrations, as well as some of the migrations of eastern and southern Europeans, were not strictly definable as either free or unfree. The individual migrants signed agreements to travel in consignments of **contract labour**; and, although ultimately many of these labourers settled permanently and with equal rights in the lands to which they went, the terms of their original contracts often severely limited their freedom and, in effect, left them little better than slaves for long periods of time. Breytenbach (2002) argues that the first attempt to recruit migrant workers was subsequently launched by the Witwatersrand Chamber of Mines in 1896. He goes on in saying that the post-war shortage of African labour had become worse and as a result, the Chamber of Mines subsequently decided to concentrate on more effective means of recruiting more African labour. The previous Native Labour Supply Association (established in 1896) was therefore replaced by the Witwatersrand Native Labour Association (WENELA) in 1902 and later saved as the Chamber's central recruiting agency.

### **2.2.2. Migration after World War I**

The peak of modern migration was reached in the 50 years preceding World War I. After 1920, however, many nations, and particularly those that had been receiving the bulk of the immigrants, placed restrictions on immigration. Tightening of passport and visa requirements cut voluntary migration to much smaller proportions during the 1920s and South Africa was atypical example "One alternative to illegal immigration is temporary immigration of low-skilled workers, as occurred under the Bracero Programme" (Boeri et al, 2002).

With the growth, during and after the 1920s, of totalitarian states, powerful dictators were able to order the deportation of large masses of the population from their homes to other, usually distant, parts of the national domain. During the enforced collectivization of agriculture in the Union of Soviet Socialist Republics (USSR) in the 1930s, for example,

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political and cultural map of southern Africa, as new kingdoms and chiefdoms were formed while others were engulfed or shattered.

millions of peasants, denounced by the government as enemies of the state, were sent by the Gulag to “corrective” labour camps in Siberia and other remote regions or were resettled far from their homelands. Later, the ranks of these unwilling migrants were swelled by other Soviet citizens condemned to forced labour for real or alleged political opposition to the regime.

Another upsurge in the movement of peoples took place **during World War II** and its aftermath. Following the partition of Poland by Germany and the USSR in 1939, hundreds of thousands of Poles were forcibly removed from their homes by the Soviet government and were sent to Siberia. The Soviets followed a similar policy in 1940, after they annexed the Baltic States—Estonia, Latvia, and Lithuania—and in 1941 and 1943, when they dissolved the German Volga and Kalmykia autonomous republics. With the dissolution of these German autonomous republics, 600,000 people were condemned to forced labour beyond the Ural Mountains and Arctic Circle. After the war, approximately 1 million Tatars, adjudged politically unreliable by the state, were moved from the Crimea to labour camps and exile colonies.

The German regime of Adolph Hitler, besides exterminating in its concentration camps 6 million Jews and other people from all over occupied Europe, deported 2 to 3 million more. Many were pressed into slave labour in Germany; others, mainly Poles, were dispossessed and forced to migrate from the parts of their country that Germany had annexed. Replacing them were “racial” or “ethnic” Germans who were moved from eastern and south-eastern Europe. At the end of the war a reverse movement occurred as some 2 to 3 million Germans were repatriated from Poland and many Polish nationals moved west after an expansion of Soviet boundaries in the west. To the south another 2 to 3 million German-speaking Czechs who had become German citizens were moved from the Sudetenland to Germany. Some Germans and East Europeans also migrated to other parts of the world (Microsoft Encarta Encyclopedia Standard, 2005).

### 2.2.3. Migration since World War II

The partition in 1947 of the Indian subcontinent into two independent states, one Hindu (**India**) and one Muslim (Pakistan), resulted in large-scale population transfers. Some 6.6 million Muslims entered Pakistan from Indian Territory, and an estimated 5.4 million Hindus and Sikhs migrated to India. The establishment of the state of Israel in 1948 resulted in the migration of hundreds of thousands of Jews to that state and the displacement of about 720,000 indigenous Palestinians into neighboring countries. Another major migration of Jews to Israel began in 1989, when Soviet emigration restrictions were eased, and increased after the break-up of the communist state. In 1991 virtually all the Jews in Ethiopia were airlifted to Israel. Elsewhere in Africa millions of people moved away from their native regions and nations, fleeing famine and civil war. In an upheaval reminiscent of the India-Pakistan partition, the violence that accompanied the break-up of Yugoslavia into separate, ethnically based states in the early 1990s forced millions to leave their homes.

Elsewhere in Europe during the second half of the 20th century the trend of migration has been a relatively peaceful movement from east to west and from south to north. Millions of people have left Eastern Europe, at first to escape repressive Communist governments and later to flee the chaos and poverty that came after those governments fell. From the south—from Mediterranean countries such as Turkey and from former African colonies such as Senegal—migrants have come in search of economic opportunity. Many have found they are not welcome. In Germany and France there have been protests, sometimes violent, against immigrants (Microsoft Encarta Encyclopedia Standard, 2005).

In North America the international movement has been mainly from south to north as millions of migrants from Cuba and other Caribbean islands, from Mexico, and from elsewhere in Latin America have settled in the United States, mostly in California, Florida, and Texas. Africa migrations are most directed to the Southern African region, especially to South Africa.

Australia has received almost 5.9 million migrants since the end of World War II. The dismantling in 1973 of the White Australia Policy, which effectively excluded non-Europeans, saw a rise in the number of migrants from Asian countries accepted into the country. In recent years, the number of people arriving in Australia illegally has risen markedly and has been the subject of community concern. In September 2001, the Australian federal parliament passed new legislation designed to deter illegal arrivals. The laws included excising several offshore Australian territories from the migration zone to limit the ability of people who arrive unlawfully by boat to make a valid visa application, and the introduction of harsher punishments to combat “people smuggling” (Boeri et al, 2002).

### **2.3. Internal Migration**

The Industrial Revolution also gave rise to an important kind of migration within nations. The most significant example of this migration pattern was the great movement of people from rural and agricultural areas to urban centers. This movement came to the industrial countries in the 1800s, then, exploded in the economically developing countries in the 20th century. Migration within nations also involves shifting centers of industry (Microsoft Encarta Encyclopedia Standard, 2005).

In Southern Africa, surveys have been conducted nationally in countries such as Botswana, Lesotho, Mozambique, Namibia and Zimbabwe to actually get an understanding of current causes as well as sources of labor migration that actually affect South Africa. The current generation of adults in each of these countries and precisely in South Africa has been interviewed by several research groups as well as individual researchers concerning the migration work history of their families. Although there are differences between countries, many adults have parents or grandparents who have worked in South Africa in the past. In every case, nearly a quarter or more people have grandparents who had worked in South Africa and who are now confused with South Africans. Researches have shown that about a quarter of the people in Namibia and Zimbabwe have parents who had worked in South Africa. So did 41% of Batswana, 54% of Mozambicans and 83% of Basotho according to the Southern African Migration

Project (SAMP). This data provides no detailed employment information but simply confirms that labour migration for employment in other countries is nothing new within SADC regions (WENELA 1996).

Previous researches on migration have shown that cross-border migration for employment within SADC regions was prevalent long before the drawing of colonial boundaries, dating back at least 150 years. The numbers of people legally crossing borders throughout the Southern African region has exploded in the last decade. In South Africa, for example, the annual number of visitors from other SADC countries has increased from around 1 million in the early 1990s to over 10 million at the present time. Border posts throughout the region have experienced similar increases in the volume of human traffic. The pressure on limited border control resources has been enormous with long delays and inefficiency experienced at many border posts. Corruption has become endemic at many posts as travelers seek to jump queues and gain unlawful entry. In addition, the region has experienced a major influx of Africans from other parts of the country as well as significant growth in tourism arrivals from overseas. Intra-regional tourism has also grown to significant levels.

History shows that countries of Southern Africa have been sending and receiving migrants since the mid-nineteenth century when labour migrants came to work on the Kimberley diamond mines in South Africa, including from modern-day Lesotho, Mozambique and Zimbabwe. The discovery of gold on the Witwatersrand changed the entire pattern of labour migration in the sub-continent. Initially most migrants came independently. Male labour migration to the mines (South Africa, Zambia, and Zimbabwe) and commercial farms and plantations (South Africa, Zimbabwe, Swaziland) is the most enduring form of legal cross-border labour migration within the region (Crush et al. 1992 and Crush 1995). Mine migration was the most highly regulated, through systems of recruitment under a single agency, the Temporal Employment Bureau of Africa (TEBA).

By 1970, there were over 260,000 male labour migrants on the South African mines. Migrants came from as far north as Tanzania. Other mining centers in Zambia, Zimbabwe, Namibia and Tanzania also became magnets for labour migrants from other countries. The other major employer of migrants in South Africa, Zimbabwe, Namibia, Swaziland, Mauritius and Tanzania were commercial farms and plantations. Migrants also worked in the colonial period in urban centers in construction, domestic service and industry.

It is then brought to light that the South African mining industry recruited migrants from almost every corner of the region. After independence, most governments reassessed the question of labour migration to other countries. Some, such as Tanzania, Malawi and Zambia tried to prevent it. Tanzania and Zambia withdrew their workers from the South African mines after independence. Malawi withdrew all its workers in 1972. This has led to a renegotiated agreement in the late 1970s that saw about 20% return to the mines. Employment remained at this level until 1987, when the Malawian government withdrew the workers after a dispute with the apartheid government over HIV testing. In the 1980s, the supplier states formed the Southern African Labour Commission (SALC) in an effort to form a common policy on labour migration to South Africa. The SALC was unsuccessful in its efforts to develop a policy of phased withdrawal, primarily because countries such as Lesotho and Mozambique were unable to dispense with contract labour migration.

Mining was not the only sector perceived as source of migration that employed labour migrants. Commercial farms, factories, domestic service, transportation and construction also hired migrants (although the exact numbers are unknown). The numbers peaked at around 600,000 just as the Nationalist Government came to power. They dropped significantly thereafter. Colonial census data for other countries does provide sectoral employment data. For example, Zimbabwean data from 1911-1951 shows a dramatic increase over the 40-year period in the number of male labour migrants from neighboring countries (from 48,000 in 1911 to nearly 250,000 in 1951). It also shows that in 1956, there were as many as 286,633 male and 15,180 female labour migrants in Zimbabwe

from Zambia, Malawi and Mozambique. The men worked mainly on farms, in mining and construction. Most of the women worked on farms (WENELA 1996)..

The main employers of labour migrants in most SADC countries were the mines and farms, often because locals refused to work in these sectors. The contract labour system developed on the South African mines was therefore exported to other countries of the region, including Botswana, Namibia, Swaziland, Zambia, and Zimbabwe. In Zimbabwe, the mines recruited workers for the gold, coal and asbestos mines from Mozambique, Malawi and Zambia. In 1935 for example; 150,000 labor migrants left Malawi where 75,000 went to work in Zimbabwe, 27,000 in South Africa, 7,000 in Tanzania and 4,000 in Zambia. After WWII, the government established an agency to recruit for the mines until 1976. The peak year was 16,000 in 1965. The Malawi government banned formal recruiting of Malawians in 1974(WENELA 1996).

In colonial Namibia, the contract labour system was used to recruit migrants from the northern parts of the country, as well as outside the country. Before 1943, labour was recruited for Namibian mines and farms from Ovamboland, South Africa, Lesotho, Angola and Botswana. The total on the diamond mines in 1925 was 7,000 (3,000 from South Africa, 2,000 from Ovamboland, 1,350 from Botswana and 250 from Lesotho).

In 1943, a recruiting organization South West Africa Native Labour Association (SWANLA) was established to recruit for mines and farms. At first it recruited mainly for the farms. By the mid-1950s, it recruited 25,000 migrants per year (about two-thirds or the diamond mines).

In colonial Zambia, labour migrants left the country to work on mines in Katanga, Zimbabwe, Tanzania and South Africa until the 1960s. In 1930, more than 50,000 worked on mines outside the country. The copper mines of Zambia also used migrant workers from outside Zambia, including Zimbabwe and Malawi. The mines were often short of workers and turned away from the migrant labour system in the 1930s, encouraging miners to settle with their families in Copper belt towns. In colonial Swaziland, labour migrants from Malawi and Mozambique worked on the Havelock

asbestos mines from the 1930s. Migrants from Mozambique were also hired by the country's sugar companies to work on the Low veldt Sugar Estates (WENELA 1996).

Informal movement of people across borders also has a long history in Southern Africa. By definition, informal labour migration is extremely difficult to measure. No records were kept by employers or governments. There are thus no reliable numbers other than census data which does not distinguish legal from undocumented migrants.

#### **2.4. Conclusion**

This chapter provides a consideration of various causes and origins of international migration in attempt to link them to the present situation in South Africa. Classification of migration according to different theories of migration is put in light. Migration genesis and flow to South Africa before, during and after both world war one and two are expressed. It is crucial to note that the degree of present human migration flow to South Africa is a root cause of misunderstanding and conflicts. It is thus perceived that decisions about international human migration will be on the top agenda of most governments' word wide.

**CHAPTER THREE**  
**KEY POLICY AND MIGRATION TRENDS IN**  
**POST- APARTHEID**

**3.1. Introduction**

Having emerged from the international isolation of the apartheid era, South Africa has become a leading international actor. Its principal foreign policy objective is to develop good relations with all countries, especially its neighbors in the Southern African Development Community and the other members of the African Union. South Africa has played a key role in seeking an end to various conflicts and political crises on the African continent, including in Burundi, the Democratic Republic of Congo, the Comoros, Ivory Cost, Zimbabwe and other African states. In August 1998, South Africa assumed the Chair of the Non-Aligned Movement, which it relinquished in July 2002.

Migration policy in South Africa is set in recent debates against broader historical realities that have shaped patterns of population movement on the continent since the end of the nineteenth century. During the course of the last century, most forms of population movement were the result of disjointed regional economic development which can be traced to two epochal events at the end of the nineteenth century: the creation of the modern African state system and the discovery of mineral wealth in Southern Africa. Although regulation of migrant labour was a fundamental feature of the colonial period, it was only after 1950, when independent states began to define specific migration priorities that states began to restrict significantly the flow of transnational labour. From this point notions such as internally displaced person, refugee and illegal immigrant become increasingly appropriate to the study of migration (Slobodan, 2001).

Particular attention is therefore given to current debate on the definition of refugee which forms part of a broader international debate. A number of South African writers have argued that, given the structural imbalances contained in the regional economy, the term ‘**refugee**’ should be redefined to include economic migrants. This position is not shared by the South African Government, and an analysis of current policy and legislation

demonstrates a growing tendency to restrict the influx of undocumented migrants. This is due, in part, to the recent political transition and the institutional compromises that it produced as well as the growth of negative sentiment towards illegal immigrants at both mass and elite levels.

Within the SADC and South Africa itself, sharp differences of opinion have emerged on the complex issue of migration to South Africa. These differences reflect divergent political and economic priorities, variable assessments of the history and impact of labour migration, and differing visions of future regional development. Inside South Africa there is a slowly growing awareness of the inextricable economic and political ties which bind the country to the region; and of the need to work cooperatively towards mutual stability. This sensitivity is often compromised by what other SADC countries perceive to be a domineering 'big brother' approach to intra-regional relations (Slobodan, 2001).

A summation of recent trends in South African migration policy of the post apartheid era and an identification of several current policy and legislation will therefore be the subject of concern in this chapter.

### **3.2. Immigration/Migration Policies**

Since 1994, South Africa has literally 'changed' its statutory laws. It now has a government which is representative of the majority of its populations and one of the most modern constitutions in the world, which guarantees a wide range of fundamental human rights principles to all people. In light of these new dispensations, Lawyer for Human Right (LHR) remains faithful to its central purpose to promote and protect fundamental human rights, but it recognises that now there exist new challenges of 'Making Rights Real'.

In light of these constitutional principles and fundamental values, LHR has identified the rights of foreigners to be of critical importance in these new dispensations, believing that the genuine test of a country's commitment to human rights is its ability to protect the most vulnerable. These include refugees and asylum seekers as well as migrant workers

and undocumented migrants. LHR has been very active in policy debates on migration, through written submissions to policy papers, participation on the Refugees White Paper Task Team and as a member of the National Consortium on Refugee Affairs (NCRA). While LHR appreciates the value and importance of engaging in dialogue with government (for example through policy Task Teams and NCRA), it always reserves the right to critique both the process and product of policy development.

In harmony with this development or transformation, the South African government has passed numerous legislations (in the area of migration policy) with the view to ensuring that the 'Rule of Law' respects also human rights. In the area of cross-border migration, this has included amendments to the Aliens Control Act (1995), the Draft Green Paper on International Migration (May 1997), followed by the Draft Refugees White Paper, leading to the Refugees Act (1998) and finally the White Paper on International Migration<sup>1</sup>, released on 31 March 1999.

### **3.2.1. Aliens Control Amendment Act, No. 76 of 1995.**

In 1995 the new government amended the Aliens Control Act of 1991 by means of which South Africa deals with the admission, control and expulsion of foreigners. According to the department of home affairs, this amendment acts "underscores the government's policy to inter alia prevent foreigners who do not qualify to immigrate or to work in South Africa from entering the country under false pretences, or to take up employment (Bernstein and Weiner, 1999).

To amend the Aliens Control Act, 1991, so as to insert or amend certain definitions; to further provide for delegations by the Minister; to further regulate the issuing of provisional permits; to further regulate passports and visas; to further regulate the duties of immigration officers at ports; to further regulate agreements between the Minister and ship-owners relating to compliance with certain provisions of the Act; to regulate anew the appointment, composition and duties of the Immigrants Selection Board; to substitute

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1. White Paper on International Migration, Pretoria, Government Gazette No. 19920, April 1999

the system of permits for permanent residence with a new system of immigration permits and to make new provision for the granting of such permits; to provide for categories of temporary residence permits and to further regulate the issuing of such permits; to further regulate the granting of exemptions; to further regulate the invalidity and cancellation of permits; to repeal the provisions with regard to the issuing of permits to leave the Republic; to further regulate an immigration officer's powers with regard to prohibited persons; to further regulate the entering of premises; to repeal the restriction of the jurisdiction of courts of law; to further regulate the detention of persons; to further regulate the Minister's power to make regulations; to further regulate offences, penalties and evidence; and to provide for matters connected therewith<sup>2</sup>.

It is stated in Section 536 of the Alien Control Act that control of labor migration in terms of this Act is enforced via a system of immigration, work and work-seekers' permits. Amendments to the Act in 1995, arising out of deliberations of a government interdepartmental committee on the problem of illegal entry to the country, seek to tighten controls over entry and to broaden the scope of sanctions on offenders.

Within the above context, this study evaluates the extent to which the ANC government immigration policy and the implementation thereof contribute to xenophobia. For example in terms of the Section 537 of the Aliens Control Act<sup>3</sup>, applications for immigration permits or work permits may only be granted if there are not sufficient numbers of South Africans for the specific occupation for which the application is made. In determining whether there are vacancies in particular occupations, the Department of Home Affairs liaises with the Department of Labour and with professional agencies. Immigration permits may be granted immediately or after the applicant has worked in the country for a number of years. This is left to the discretion of regional committees of the Immigration Board. After a period of five years a permanent resident may apply for South African Citizenship in terms of the South African Citizenship Act No 88 of 1995<sup>4</sup>.

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<sup>2</sup> The Aliens Control Amendment Act, No.76 of 1995.

<sup>3</sup> The Aliens Control Amendment Act, No.76 of 1995.

<sup>4</sup> See section 537 of the Aliens Control Act.

Work permits are therefore, in terms of this act, usually granted for an initial period of six months only, renewable on application. The granting of permission for further periods of stay will depend on whether there is still a shortage of South Africans qualified to fill the position. Applications for work permits and work seekers' permits are considered by the Director General of Home Affairs. In order to tighten up control of people entering the country, the 1995 amendments provide that all applications for work permits, work seekers' permits and study permits will in future have to be made from outside the country, thus preventing people from changing their status while in the country. Persons granted permanent residence or work permits are permitted to bring their families with them<sup>5</sup>.

Strong anecdotal evidence suggests that applications for work permits from skilled workers and potential investors are dealt with in an unsystematic and haphazard manner. It is widely held that the South African labour market is characterised by a shortage of skilled workers and professionals. Skills shortages are manifest, in part, in unusually large occupational wage differentials. Under these circumstances, there are few grounds for a restrictive approach to applications for work permits from skilled foreign workers. Indeed, the Commission recommends that greater effort be made to attract skilled labour from some of the larger developing countries. The premium for attracting skills from these countries will be considerably lower than that attached to an equivalently skilled worker from industrialised countries. In this respect, the Commission is particularly concerned at the role played by local professional associations in the evaluation of an application for work status in this country. It appears that these organisations adopt a highly protectionist stance to the entry of foreigners into their ranks<sup>6</sup>.

Apart from tightening controls through stricter entry requirements, the amendments and regulations also broaden sanctions on offenders. Inter alia, they provide for:

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<sup>5</sup> See section 537 of the Aliens Control Act.

<sup>6</sup> See section 538 of the Aliens Control Act.

- ✚ utilising the deposits and assets obtained by people while illegally in the country to cover the costs of repatriation and for claiming repatriation costs directly from the undocumented person;
- ✚ penalising the carriers of persons illegally in the country;
- ✚ extending provisions which render an employer employing a person illegally liable for costs regarding detention and repatriation; and
- ✚ broadening sanctions to encompass persons aiding and abetting people illegally in the country<sup>7</sup>.

While the main purpose of the amendments is to tighten control over entry to South Africa, they also aim to bring the Act into line with the requirements of the Constitution. This is reflected in amendments to provisions relating to search and entry of private premises, in providing for review where certain categories of person are declared prohibited, and in limiting detention to an initial period of 48 hours. Despite these amendments, aspects of the Act leave much to be desired from a human rights perspective, and certain provisions may still offend the Constitution. A discussion of these issues is beyond the scope of this thesis, but should nevertheless be noted. Of relevance are certain requirements of International Labour Organisation instruments on migrant labour relating to the accrual of more permanent rights to work and residence, especially after a worker has been in the host country for more than five years<sup>8</sup>.

### **3.2.2. Draft Green Paper on International Migration (May 1997)**

In this report<sup>9</sup>, three streams of people crossing borders to South Africa are identified. This includes firstly immigrants, individuals who would like to settle in South Africa permanently; secondly refugees, people who flee persecution in their own country and seek asylum here; and thirdly migrants, many of whom are not authorised to be visible in this country.

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<sup>7</sup> Minnar A. and Hough M.(1996).Who goes there? Perspectives on clandestine migration and illegal aliens in South Africa, Pretoria: HSRC

<sup>8</sup> See section 540 of the Aliens Control Act.

<sup>9</sup> Government Gazette No.18033, 30 May 1997.

This paper also recommends that the management of a point-based immigration system, the development of a plan for temporary SADC migrant access to South Africa's labour market and for rights-based enforcement should reside within the Department of Home Affairs. There is a further belief that this department should undertake a transformation process, such that it has the proper staffing levels, expertise and professionalism to deliver citizenship, migration, refugee and immigration services to the public.

Chapter two of the Green Paper on International Migration, dealing with immigration/migration policy provides us with the outline of a new regulatory system by recommending expanded legal access for SADC citizens to the South African labour market in well-regulated areas. In this regards, the followings are put forward in justification for the change:

*“South Africa is faced with the challenge of transforming a racially-motivated immigration/ migration system into a non-racial and rational policy response to the objective needs of this country. Such a response must be rights-regarding, consistent with the Constitution, and sensitive to the regional and global context in which we seek to promote economic growth and domestic development.*

*To put it more practically, instead of letting whites in and keeping blacks out as candidates for naturalisation, as was apartheid's want, we should admit individuals who have desirable skills, expertise, resources and entrepreneurial will, if they add value, and if our own people cannot now or in the future fill the need in whichever areas or niches of life economic development will undoubtedly create.*

*It is thus not only the goals and objectives of immigration that must change, but also the management of the system. Instead of administrative discretion vested in the Ministry and the Immigration Board, it is argued in this paper that instead for a South African-specific point system, where the quality of potential immigrants is enumerated at missions abroad against a system of preferences, particularly economic and occupational ones, developed*

*at home. This requires in turn a well-developed labour market information system and improved mission capacity.*

*A well-developed point system should make explanation for negative outcomes unnecessary, as the reasons for decisions would be self-evident. If an explanation is nevertheless required, it would be a relatively straightforward matter to provide one. A simple system of review should also be considered. The overall effectiveness of the system, where immigration performance is measured against immigration goals, should be reviewed annually by parliament” (<http://www.info.gov.za>).*

This argument is made in a regional context where South Africa is the dominant economic power, where we are a partner in a regional grouping of states in the form of the SADC, and where we have benefited historically from the labour of peoples whom we today consider foreigners from Africa (McDonald, 2000).

#### **Some Points of History**

The history of immigration and migration patterns to South Africa has been well documented. Some features of this history have a direct bearing on future policy and are thus worth summarised here. First, particularly during the apartheid era, South Africa sourced its immigrants from those populations of European descent that were regarded as assimilable by the white population. People from other parts of Africa, who were black, were treated as migrants with no opportunity of legal permanent settlement. Generally speaking, then, whites who fitted a certain profile were welcomed as people who could be naturalised, blacks were not (McDonald, 2000).

Second, non-South African black African participation in the South African economy, which goes back to the 19th century, was largely restricted to the mines and farms, and regulated by inter-governmental agreements. Those involved were workers largely from Lesotho, Mozambique, Malawi and Zimbabwe; they typically were young men who were not allowed to bring their families with them; and despite the length of service they cumulatively laboured, they could never become naturalised citizens. Of course, many

Africans moved into South Africa outside this system and were absorbed into our local population.

Third, South Africa provided no legal access for refugees from Africa. During the late 1970s and 1980s, when Zimbabwe and then Mozambique and Angola became independent, South Africa deliberately destabilised and abetted war in the region, contributing thereby to refugee populations for which it made no legal provision. Refugees nevertheless came, and for one particular occasion, provision was made for them, particularly in the former homelands of the Eastern Transvaal, by the issuance of exemptions under the prevailing immigration regime (McDonald, 2000).

Fourth, the National Party (NP) government and administration removed the racial provisions of immigration law in 1986, and a consolidated law, the Aliens Control Act, was enacted in 1991. The legislation retained a high level of ministerial discretion, a lack of accountability for administrative decisions taken and little due process provisions for those who failed to satisfy administrative officials of their legal status. The first democratic parliament enacted the Aliens Control Amendment Act of 1995, which purged the law of some of its more unacceptable features, but many clauses of the Act (and the way in which they are implemented) would probably not withstand a test of constitutionality.

#### ✚ **Modernizing Entry I: Immigration in general**

The mobility of capital, technology and skilled people in the 1990s poses both opportunities and challenges for nation-states, not least in the area of immigration. Capital and skills are increasingly mobile and any state wishing to seriously compete on global markets can no longer rely on isolationist immigration policies. Instead, a dynamic industrial economy needs to compete on the global market for skills as it does for investment and technology (McDonald, 2000).

Immigration levels in South Africa are far below those of other countries such as Australia, Canada and the United States of America using immigration as a tool of

economic growth and development. At a global scale, there are potential immigrants in many countries who would be a positive economic asset for South Africa. A number of countries have recently developed proactive policies to attract highly skilled immigrants, including many South Africans. All these countries of immigration have experienced diversification of immigrant flows in terms of origin. Such diversification is the direct result of change in immigration laws of those countries that occurred in 1965 in the US and in the 1970s in Australia and Canada (Bernstein and Weiner, 1999, 230).

South Africa's declining immigration rate would be less of a concern where it is not for the simultaneously high emigration rate. The country has experienced a serious drain of locally trained skills and experience for several decades. Official statistics show that emigration is highest in education (34% of recorded emigrants), engineering (29%), accountancy (24%), and medical and dental professions (13%). The current drain of locally-trained skills and the aggressive recruiting of South Africans by other industrial countries must be viewed with great concern.

It could be argued that such emigration rates might be welcomed as opening up new opportunities for disadvantaged South Africans. This view is too short-term and could result in a decline in economic productivity and the delivery and quality of services. High-level skills' training of people from historically disadvantaged population groups is essential but replacement rates will understandably be slow in key areas. The economic loss to the country is potentially significant if this brain-drain continues to be unchecked since forbidding people from emigrating would be politically and constitutionally impossible.

The shaping of migration policy in many developing countries is politically sensitive. These countries use immigration policy as a mechanism for attracting independent migrants in entrepreneurial and business categories. Such immigrants are said to have a positive impact on economic growth through their innovativeness, entrepreneurial skills and capital. They can also be encouraged to invest in local job creation as a condition of immigration. Business immigrants also bring new economic linkages and contacts via

their countries of origin. Current South African legislation does allow for business immigration, but the conditions were tightened in 1996 and the programme has been little used.

In a global economy, it must be recognised that old-style immigration is increasingly complemented by the temporary movement of highly-skilled personnel. Some (particularly professionals) are freelance but most work for international concerns completing contracts, initiating projects or developing branch plants in other countries. The numbers of such '**skilled transients**' are growing rapidly and local and foreign concerns in South Africa are increasingly wishing to avail themselves of their services. Project-tied skills importation is increasingly important internationally. Private companies in South Africa may wish to bring in temporary skills from elsewhere on a group or individual basis to fill particular shortages and needs or to train South Africans. The Department of Health's programmes are one example in this regard. South Africa has no uniform or standardised policy or mechanisms for short-term project-tied import of groups of workers with particular skills (Klotz, 1997).

Current business immigration policy excludes immigrants in the Small, Medium and Micro-Enterprise (SMME) and informal sectors. The high threshold investment of R1,5 million excludes a whole category of small business people with dynamic entrepreneurial skills and international contracts. Most non-South African SMME entrepreneurs have come into the country on temporary permits or as refugees. Their insecurity of tenure inhibits operation of a successful business. Research suggested that foreign-owned SMMEs were making an increasingly important contribution to the economy. A 1996 Southern African Migration Project (SAMP) survey of Gauteng showed that foreign-owned SMMEs create an average of 4.1 jobs in a number of different sectors.

It is therefore suggested that aggressive local skills training (brain-train) and brain-gain strategies must be pursued in tandem in the short to medium term. Brain-gain strategies involve individual and group recruiting in key sectors; and promoting links with skilled nationals and former nationals abroad to encourage permanent or temporary return. The

talents of distinguished and highly skilled South Africans world-wide could be harnessed to the development needs of their home country, with which many first generation emigrants retain strong personal and professional ties. Institutional mechanisms including joint posts, periodic return visits and short-term training assignments should be encouraged (Siddique, 2001).

#### **Modernizing Entry II: The Southern African Development Community**

As long as economic growth is polarized in Southern Africa and there is limited job creation elsewhere in the region, we can expect abnormal movements of economic migrants to continue. The trade imbalance between South Africa and the region is a major cause for concern since it creates jobs here and destroys them elsewhere. The result is increased movement of people to find work here. South Africa can and should actively assist in the economic development of the region. Ultimately this is the only way to stabilise the movement of people to South Africa in search of economic opportunity no longer available at home.

The SADC Council of Ministers considered the Draft Protocol on the Free Movement of Persons prepared by the SADC Secretariat. The Protocol is based on the EU model and proposes that member states move towards the free movement of all citizens in a series of inflexible stages. Because of the enormous economic disparities between member states, the threat to national sovereignty and the uncertain consequences of the Protocol, a number of states including South Africa do not support it in its current form. Instead, the South African government proposes a separate streamlined channel of entry for SADC citizens at border and airport points (Bemstein and Weiner, 1999).

#### **3.2.3. The Draft White Paper for Refugee Affairs (Notice 1122 of 1998)**

The refugee policy of the Government of South Africa is premised upon two sets of inter-related threshold considerations. On the one hand the policy is constructed so as to reflect but also to enable the fulfillment of the international and constitutional obligations and on the other it touches on a number of other directly and indirectly related state and national interests and priorities. The most important of these priorities concern the migration control objectives, law and order, concerns over gun-running, drug trafficking and

racketeering, money laundering and international crime syndicates, and cartels, various other aspects of national and state security, social and economic interests, as well as bilateral, regional and international relations. All these enable us to shape the policy in a carefully and properly balanced manner towards the protection of the refugee imperatives.

The main policy positions of the government are to effect in legal and practical terms the following distinctions:

- 🚩 The granting of asylum to refugees and their protection in South African territory is a matter fundamentally of securing human rights protection. The Government will provide asylum and refugee protection to those persons who have lost this in their countries of origin, and have fled into, or are forced to remain in South Africa for reasons or circumstances which are recognized in international refugee and human rights law as giving rise to the need for international protection.
- 🚩 The government does not consider the refugee protection regime to be an alternative way to obtain permanent immigration into South Africa. It does not consider refugee protection to be the door for those who wish to enter South Africa by the expectation for opportunities for a better life or a brighter future. It does not agree that it is appropriate to consider as refugees, persons fleeing their countries of origin solely for reasons of poverty or other social, economic or environmental hardships.

The basic but fundamental philosophy in the government's approach to refugee policy is unambiguous. As far as refugees are concerned, the government recognizes that its responsibilities and obligations, and the quality and quantity of the measures which it is called upon to deliver pursuant to these obligations are set out in an essentially mandatory manner in international legal and human rights standards. The government has assumed these obligations both through its accession to the relevant international refugee and human rights instruments and by incorporating a number of basic principles and standards in the Constitution of the country.

The government is entitled to treat and decide upon other aspirations to migrate into, remain or reside in South Africa, on the basis of legal, political or other criteria, which it may establish domestically with wide room for discretion. Given these conceptual and categorical differences, the government's protection regime will be established on the basis that while a close and effective relationship will be maintained between the two, refugee matters on the one hand, and migration matters on the other hand will be governed by different legal and decision making principles and criteria, and under different legislative and institutional arrangements.

Recent research show that the attitude of police and immigration officials in South Africa seems to have become increasingly intolerant over the years since the overthrow of apartheid in 1994. Xenophobia and the perception that foreigners are criminals, has created a situation where the police go around actively seeking out foreigners for police brutality. Most of male foreign respondents reported that they had a bad experience with the police or immigration officers. Mushagalusha from the Democratic Republic of Congo who experienced police brutality argued that: "there is no difference between the ordinary man on the street and the police .They are all behaving the same."

#### **The case of Mushagalusha Ombeni**

These are the words of Mushagalusha Ombeni, a refugee from the Democratic Republic of Congo who lives in South Africa for more than seven years: "*Mr. Ombeni was a victim of assault, intimidation, racism and xenophobia in South Africa, he said, In the early February 2002, I was running a hair cut business (barber shop) in one of the Durban South townships. I was staying in town at that time. I used to take a train or taxi to the area of business every morning, seven days a week. The business was going very well to the extent that foreign and local competitors in the area were filled of jealousy. The latter were connected to the police officers of the area who were so closely as well as friendly to them. A plot against my business and I was therefore organized. A certain morning, these competitors who run two of the area air cut business around me came and tried to remove my shelter. While arguing, their friends 'police officers' suddenly appeared on the spot. Without asking a question, they started*

*to beat me and after tried to put me in their van but they failed. Few minutes later, two other police vans and two ventures full of police officers appeared on the scene. They started beating me as if I was a criminal. They suddenly pushed and locked me in one of the police vans up to the area police station.*

*Once in the police station yard, I couldn't be given an opportunity to drop off the van. I was once again assaulted by these police officers. They used what ever instrument that was available to hit me and I was bleeding as shown in pictures bellow (Picture2, 3 &4). When they realized that I was bleeding a lot, they shut the van's back door and went to drop me at the Durban Transport bus station of the area so that I could be taken to town where I was staying. I called my brothers who took me to town where I was pictured before I proceeded to the nearest police station to open the case. I went to the nearby police station to open an assault case but I was told to go back to the station where the incident happened. I asked the officer who was helping me: "how can I tell the accused to open a case against themselves or their colleagues?" but the response was "we can not help you in this instance, go wherever you feel like they can be able to handle your matter", the police officer responded.*

*On my way back home, I met with a Kenyan nation who had live in South Africa for thirteen years. He asked me about the situation. After explanation, he decided to see me off to the Daily Sun here in Durban to see if I could be helped but they required me a case number which I did not have. We then proceeded to the Durban Central Police Station where a case was opened before I was taken by a meter taxi to the King Edward VIII hospital where I was treated until late 23h00. The following day I went to the Durban Central Police Station to require the case number so to ensure that the matter was a subject to investigation but instead they referred me also to the police station where the incident happened.*

*After a week I came back for the same cause but instead of the case number I was given a peace of paper hand written 'Wentworth'. I asked the officer to explain to me its meaning but he told me to go to the police station concerned and speak to the*

*investigator whom was not even known by them. Failing to be issued with a case number after several days, I decided to launch a complaint with Lawyers for Human Rights and the Independent Complaints Directorate here in Durban.*

*Consecutive letters were addressed by the Acting Regional Director of the above mentioned department to the station Commissioner of Durban Central Police Station as well as to the station Commissioner of the police where the case was held demanding them to furnish the case number and the investigator's name. Despite these letters, the case number could not be revealed and the investigation was delayed until a delegation of Human Right lawyers from Pretoria came down to Durban and took me to the concerned police station where I was then issued with a real case number and the investigators name( that six months later). Three months after the issue of the case number, I was called for identification parade but since that day no further progress could be seen or furnished until one year passed by and the case was nullified as the accused were government officials”.*

Such story may give the impression that racism is under the color of law enforcement. Police target black people whom they perceive to be foreigners for harassment and discrimination in South Africa. This is therefore in contradiction with part 4 of the draft white paper for refugee affairs which recognizes that Refugees shall be afforded basic security rights, including protection from the abuse of state power, such as wrongful arrest and detention, and protection against physical attack. This practice has become prevalent that it has become the subject of a number of studies by various human rights bodies.



Picture2<sup>10</sup>. Source Fieldwork conducted on 28<sup>th</sup> of December 2006.



Picture3<sup>11</sup>. Source Fieldwork conducted on 28<sup>th</sup> of December 2006.

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<sup>10</sup> Mushagalusha Ombeni Pictured at the Durban Human Right office on the day of the incident.

<sup>11</sup> Mushagalusha Ombeni's bleeding leg Pictured at the Durban Human Right office on the day of the incident.



Picture4<sup>12</sup>. Source Fieldwork conducted on 28<sup>th</sup> of December 2006.

Lawyers for Human Right are much more preoccupied with the fact that the White Paper on International Migration falls seriously short of the proper standards of human rights protection afforded by non-South Africans in this country and that additional thought ought to be given to its viability in discussion with various government and non-governmental role-players<sup>13</sup>.

Lawyers for Human Right also support the criteria in the determination of who may be given access to South Africa, with or without a visa, and agrees with the government that this will reduce administrative discretion. Indeed, the discretion of individual officials ought to be reduced as much as possible, with clear administrative accountability for decisions taken.

The term "undesirable" persons is an unwelcome inclusion in the White Paper, explicitly ignoring (or rejecting) the Draft Green Paper's recommendation that terminology more

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<sup>12</sup>. Mushagalusha Ombeni Pictured in Durban just a day after the incident.

<sup>13</sup>. LHR first published its concerns regarding the White Paper in 'Refugees and the 'Community': A preliminary review of the White Paper on International Migration', Botshabelo, April / June 1999, vol2, no 2, LHR .

humanely and realistically reflect the reasons why people are entering South Africa, and doing away with "old-style" definitions. The White Paper confusingly refers throughout the document to persons who are deemed to be "undesirable", without adequately defining what sort of persons would fit into this category. It also provides that the re-named "Immigration Service" be provided with "flexibility" in order to make "motivated exceptions" to the Immigration Review Board, which is dangerously vague and undermines the White Paper's earlier attempts to curb discretion.

With these concerns in mind, LHR still recognises the value in a collective approach in view of the multiple government departments involved in the implementation of South Africa's immigration policy. However, it strongly urges the South Africa government to reconsider the Draft Green Paper's proposals for a more objective approach to immigration and migration that responds to the realities of migration, rather than one motivated purely by "national interests" and out-dated notions of "absolute sovereignty" in maintaining borders.

### **Interfacing with Refugee Act**

While the Refugees Act<sup>14</sup> is still under discussion with regard to its ultimate implementation, it is clear that this migration policy which is being proposed also has relevance for refugees. Careful thought must be given to the particular impact that this policy will have on refugees and persons seeking political asylum, and the "interfacing" of both policies.

The Refugees Act provides for long-term, durable solutions for refugees who are likely to result in permanent residence (and eventually naturalisation) for those who have been resident in South Africa as refugees for 5 years or more. The White Paper merely acknowledges that the "resettlement" of refugees ought to be ensured. This ought to more appropriately be referred to as integration. Furthermore, simply drawing a distinction between refugees and other migrants is not an answer to challenging xenophobia, the manifestations of which do not readily distinguish between legal.

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<sup>14</sup>. Act No. 130 of 1998.

### 3.2.4. White Paper on International Migration (March 31, 1999)

#### The principles of a new immigration policy for South Africa

Administrative as well policy emphasis is shifted from border control to community and workplace inspection with the participation of communities and the cooperation of other branches and spheres of government. Procedures related to the issuance of permits are simplified to shift resources towards enforcement.

An Immigration Service [I.S.] was established with monitoring and investigative capacity at community level. An Immigration Review Board was also established with certain functions. *Inter alia*, such an I.S. should:

- conduct inspections in schools, workplaces and service providers to ensure compliance with temporary permits;
- detect, track and act against temporary permit violators and other illegal aliens; and
- interface with the proposed immigration courts and border control patrol

In terms of this paper, temporary residence permits will be provided for staying longer than three months as follows:

- Student permit on the basis of documentation issued by places of learning which will remain responsible for keeping the I.S. informed by means of routine reports;
- Work permit on the basis of the need of the employers and upon certification that all labour conditions, including collective agreements, are complied with and that either a prescribed payment is made into a national training fund or special training for citizens, as prescribed, is provided;
- Exceptional skill or extraordinary qualifications permit issued upon a discretionary assessment by the I.S. upon documentation provided by the applicant
- Diplomatic corps and foreign authority permit issued on the basis of documentation of the Department of Foreign Affairs;

- ✚ Exchange person permit issued on the basis of documentation of the organ of the State responsible for the exchange programme, which will also monitor the compliance of such persons and inform the I.S.;
- ✚ Treaty person permit related to international treaty obligations issued on the basis of documentation of the Department of Foreign Affairs or the organ of the State responsible for the implementation of the treaty, which will monitor the compliance of such persons and inform the I.S.;
- ✚ Investor and self employed person permit issued on the basis of certification by an accountant that the prescribed sum invested in the country is part of the business' book value;
- ✚ Crewperson permit issued on the basis of documentation provided by the owner of the vessel who will remain responsible for the crewpersons' compliance. This permit may be issued upon acceptance of restriction of the portion of the territory in which the alien may move;
- ✚ Relative's permit issued to people within the third step of kinship of a citizen or the second step of kinship of a permanent resident on the basis of financial assurance provided by the citizen or the resident concerned; and
- ✚ Medical treatment permit to be issued for long-term treatment on the basis of documentation issued by the relevant medical institution who shall routinely report to the I.S. about its long-term foreign patients.

### Policy framework

The preliminary question of the existing relevant policy framework relating to migration within the broader set of policies adopted by the Government of National Unity (GNU) was addressed by the Task Team. It has been noted in the Green Paper that the policy framework provided for the Government of National Unity by the Reconstruction and Development Programme (RDP) does not give precise guidance on how formulation of migration policies should be done.

Indirect guidance could be found in other policy frameworks developed by the GNU, such as its macro-economic plan and the GEAR strategy developed to implement it.

However, the input of this policy instrument on the specific issue of migration is not unmistakable. For instance, one could argue that the objectives of GEAR could be best achieved by the maximum possible limitation on the entry of any migrant other than tourists and business persons, so as to reduce the number of people to whom government needs to supply services and for whom the economy needs to provide. Conversely, one could also argue that the GEAR strategy calls for a policy of relaxation of border controls so as to induce as many people as possible to relocate to South Africa who have the skills or the capacity of making a contribution towards the country's economic growth. For example, before 1994 South Africa experienced migrants who were coming to work seasonally and go back to their countries of origin but nowadays we have people who are settled for some times. They are business minded and contribute much to the South African economic growth as well as in poverty reduction. However, there are some firm elements associated with the macroeconomic policy which have a bearing on migration policy<sup>15</sup>: South Africa should

- attract foreign investments, especially as fixed capital investments or employment producing enterprises;
- assist the tourist industry, in respect of which South Africa has a competitive world advantage;
- facilitate international trade and commerce;
- recognize the informal sector and allow some controlled cross border movement of traders who benefit it; and
- attract foreign skills and entrepreneurial energies.

Moreover, in their respective policy-making exercises some of the other Government's departments have received the benefits of the guidance of policies entrenched in the Constitution. However, in respect of migration, the Constitution does not spell out any precise duty or mandatory policies but operates as an outer limit on how government may pursue its chosen policy. For instance, the Constitution would not have a bearing on the policy decisions of how many temporary or permanent aliens are to be allowed into the

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<sup>15</sup>. Sections 1.1.2. and 1.2.2 of the Green Paper refer to broader policy parameters which this White Paper tries to translate into their immediate bearing on migration.

country and the criteria for their selection or qualifications, but it prescribes that once such aliens, however chosen, are in South Africa they must receive certain protections of the law.

Furthermore, whilst one acknowledges that the transformation of South Africa from apartheid to democracy is the event with the greatest significance on any process of policy formulation conducted in the past years, the Task Team could not determine the import or impact of this event on the shaping of the new migration policies. In abstract, the migration policies of the old South Africa could work for the new one once the existing legislation fully complies with the Constitution and the administrative practices developed under it do not unfairly discriminate against certain aliens on the basis of origin, ethnicity or religion.

Population control policy also affects migration policy. Countries with an insufficient population basis, such as Canada, New Zealand and USA, have adjusted their respective immigration to attract additional permanent residents, while those with excessive population will discourage additional permanent settlement. In its policies, the Department of Welfare has acknowledged that the present population and its projected growth at the present growth rate are such that one can consider that the South African population cannot be supported by the country's available resources. The Department of Welfare has stopped short of developing a population control policy. Immigration is already a cause of population growth, and one should assume that South African migration policy should reflect the notion that further population growth though migration is not desirable.

Finally, insufficient guidance could be found for the formulation of migration policies from any other of the government's major policies, such as those striving for the transformation of the state, affirmative action, the redressing of present social and economic imbalances and past social injustices or the so-called black empowerment initiatives.

In the absence of a pre existing framework for policy formulation, the Task Team had to face the challenge of determining its own framework:

### **New policy**

A simple way of determining the favorable framework for a new policy in South Africa is to assess how and why the existing one is regarded as erroneous, flawed, inadequate or insufficient. Therefore, the Task Team asked itself why the present policies and legislation should be changed and whether the required changes merely require minor amendments to the present legislative or administrative framework or, instead, call for their complete reformulation. This stage of problem identification was assisted by public hearings.

The most immediate and somehow simpler level of policy formulation relates to ensuring that the Aliens Control Act [ACA], as amended, complies with the Constitution and the supervening legislative changes. In order to do so, one of the most relevant questions relates to the applicability of the Constitution to people who are neither residents nor citizens of South Africa.

### **Constitutional review**

A first reading of the Constitution could suggest that the Bill of Rights gives clear guidance, for at times its provisions apply to 'any person' and other times to "citizens" only<sup>16</sup>. However, upon further analytical scrutiny, it is clear that one cannot categorically state that all constitutional provisions relating to 'any person' apply equally and to the same extent to aliens illegally in the country as they do to residents and citizens

However, this White Paper recognizes that there is no constitutional basis to exclude completely the application of the Bill of Rights because of the status of a person while in South Africa, including illegal immigrants. In fact, even though the Bill of Rights contains a limitation clause, it has been long established in comparative constitutional jurisprudence -to which the limitation clause makes reference- that the limitation clause

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16. See Section 1.3 of the Green Paper for more general policy considerations on the matter.

may not be invoked to prevent a class of people, however identified, from enjoying the total use and benefits of a given constitutional right. The limitation clause may not limit the exercise of a given right by certain people identified on the basis of criteria contemplated by the equality clause, but can only limit it on the basis of the circumstances, time, manner and place in which the right finds itself to be exercised. Therefore, in the absence of a justifying circumstantial and factual reason, one could not limit the constitutional rights of, for instance, homosexuals, Muslims, or people of French or other African countries' origin.

In many constitutional states the rights of aliens are limited. However, the constitutions of such states often do not entrench the rights of aliens but only of their own citizens, especially with reference to the so-called second generation rights, such as the right to health care, the right to education, the right to legal assistance, the right to housing, the right to food and water, the right to social security, and possibly the right to fair labour relations. In many established democracies, such as the United States, aliens are mainly entitled to first generation human rights, usually regarded as 'procedural due processes'.

In South Africa we will need to determine the extent to which the circumstances of being an alien, either a legal or illegal one, may authorise government to provide them with a lesser degree of constitutional protection. However, even if there is uncertainty on the extent, there is agreement that alien age is one of the circumstances which triggers the application of the limitation clause as a matter of fact which enables government to legitimately deal with aliens on a different footing than it would with its own citizens.

In any case, constitutional protection applies only to aliens in the country and does not preclude the absolute right of government to choose who should be allowed into the country. In terms of section 21(3) only citizens have the "right to enter, to remain in and reside anywhere in the Republic". As a sovereign State the Republic has a wide, but not absolute, right to exclude entries of aliens on policy grounds. As far as the rights of aliens are concerned, Government could legitimately choose to prohibit or severely regulate the entry of aliens on the basis of categorisations which Government could not use when

dealing with its own citizens. It could, for instance, decide to prohibit entry into the country of anyone who is poor or anyone who is of a certain origin or age or even religion, up to the point where such actions are not found to violate the rights of religion or association of its own citizens.

Aliens in the country do not have a constitutional right to remain in the country and the Government is not under any constitutional obligation to issue entry visas or permanent residence permits to anyone who is in or outside the Republic, unless its failure to do so may be deemed to delay the exercise of constitutional rights of citizens, for instance if Government chose not to allow into the country preachers of a certain religion practiced by its citizens. Moreover, once in the country, aliens do not seem to be entitled to the protection set forth in section 22 of the Constitution encompassing ‘the right to choose their trade, occupation or profession freely’. Therefore, the regulation of aliens in the country could legitimately impair their opportunity to work or to develop economic activities in the Republic, provided that their right to administrative justice is respected, i.e., there is no obligation on the side of Government to issue and perhaps renew work permits, but, once issued, work permits could not be withdrawn at will<sup>17</sup>. It follows that, since aliens outside the country have no right or legitimate expectation in respect of their entry, the constitutional protections set forth in section 33 of the Constitution, such as the right to receive a written justification, could be inapplicable. Aliens in the country have the right to leave the Republic (Section 21.2).

There are provisions in the Aliens Control Act which seem to conflict with the notion that aliens in the country are entitled to the full protection of those sections of the Constitution providing for first generation human rights. For instance, the statutory requirement that a resident may be forced to pursue his occupation only in a certain province may violate his right to freedom of movement.

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<sup>17</sup> . In addition to those referred to in the text, the other constitutional rights which apply to citizens only are the political rights (Section 19), the right to citizenship (Section 20) and the right to a passport (section21.4).

This White Paper acknowledges that its scope is limited only to considering the parameters under which Government may regulate the entry and permanence of aliens within the country. In fact, the Constitution has rendered the emigration of citizens from the country on a permanent or temporary basis a matter of right. In this respect, the constitutionality of the presently used "departure forms" could be questioned if one believes that the privacy clause precludes Government from obtaining information in respect of constitutionally protected activities<sup>18</sup>.

In other respects, the ACA does not reflect intervening legislation. For instance:

- 📌 the reference to the Regional Services Council and Joint Services Board must be updated to refer to Chapter 7 of the Constitution and the Municipal Structures Act of 1998, and
- 📌 the power of the Minister to issue warrants and the power to arrest without a warrant infringes constitutional protection and conflicts with other legislation<sup>19</sup>.

### **Formulation of a new Policy**

During the public hearings the most often voiced complaint was about the incapacity of Government to regulate the influx of illegal immigrants. The pressing demand from public inputs was for creating a system which can effectively deter and prevent people from illegally immigrating into South Africa. These comments have confirmed the policy viewpoint adopted in the Green Paper that policy and legislative instruments in the field of migration should aim at providing the government with the necessary tools to retain control over who may enter the country and the conditions and length of their stay<sup>20</sup>. Therefore this White Paper has accepted the following as one of its main policy parameters: the migration system should enable Government to retain control on who may enter the country and the conditions and length of his or her stay.

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<sup>18</sup> . However, after the repeal of section 37 of the ACA, section 35 seems to pass the test of constitutionality as it merely regulates the exercise of the right

<sup>19</sup> See section 10(5) and 44 of the ACA.

<sup>20</sup> See sections 2.2 of the Green Paper.

The Green Paper classified the reasons causing illegal immigration under the labels of 'pull factors' and 'push factors', the former being the reasons that attract people into South Africa and the latter being the reasons that force or induce them to leave their country of origin.

In order to prevent illegal immigration, in theory Government could work on the followings:

- 👉 reducing 'pull' factors
- 👉 reducing 'push' factors and/or
- 👉 securing its land and sea borders in such an effective manner, and/or take other internal policing actions, so that, in spite of the strength of 'pull or 'push' factors, illegal aliens could be prevented from entering the country, or, if in the country, could effectively be removed.

The Green Paper also suggested that the solution to the problem of illegal immigration must rely on all the foregoing techniques and that policy emphasis should also be placed on dealing with the root causes of migration, thus diminishing the reasons for some people leaving their countries of origins. However, given the fact that most illegal immigrants are coming from the rest of the African continent, it would be naive to structure an immigration system for South Africa that relies on the possibility of remedying the 'push' factors at work in the rest of the continent.

Persistent economic disparity, poverty and political and social turmoil are likely to continue to force or induce people to migrate from the rest of the continent towards South Africa. If and when such circumstances change, one may reconsider the existing immigration system, but for as long as they persist, the South African immigration system should take account of them. The suggestion set out in the Green Paper that migration issues should be tabled in international (bilateral and multilateral) discussions should be accepted and the route of international cooperation on migration matters should be pursued as far as possible, but in the short and medium terms one should not count on its outcome to solve present-day problems. Therefore, this White Paper has accepted the following additional main policy parameter: under present circumstances it is not

possible for South Africa to deal with the 'push' factors acting in the rest of the continent nor build a migration system predicated on the improvements of these factors.

Concerning the suggestion of improved deportation procedures as part of the solution to the problem of illegal immigration, this White Paper has taken cognisance of the present reality. According to the HSRC (Human Science Research Council), in 1997 there were an estimated three to five million illegal immigrants in South Africa. Presently, the Department is deporting about 160,000 aliens per year. If, for argument's sake, the Department were to succeed in the impossible task of sealing off the borders so that no-one were to enter illegally, at the present rate it would take between twenty five to thirty years to repatriate the estimated number of existing illegal aliens, provided that such number does not increase through normal population growth. It follows that a long-term successful migration policy must include efforts to encourage voluntary repatriation of illegal aliens because they no longer find South Africa attractive. It also follows that given the 'pull' and 'push' factors and the difficulty of securing the borders policy emphasis on deportation will not significantly improve the situation. Furthermore, deportation is the end of a process which first requires law enforcement, monitoring, investigations, detention and adjudication, all of which should receive priority policy attention in order to allow deportation to play its important role in the migration system.

This White Paper has accepted the hard fact of the matter: an immigration system for South Africa cannot rely heavily on effective border control. Once it is painfully accepted that the country cannot succeed in preventing people from crossing its borders and may not rely only on deporting them, many important policy conclusions follow. Under the present circumstances people will continue to take enormous risks and endure personal anguish to enter South Africa illegally because of the attraction of the 'pull' factors. Therefore, policy emphasis should be given to reducing the "pull" factors which make South Africa attractive to them.

The White Paper is aware of the Government's commitment to preserve, if not to promote, the informal sector. However, this White Paper recognises that a migration

system must address the perception or the reality, that vast job opportunities are made available to foreigners at worse workplace conditions than those at which such jobs are available for South African nationals.

This White Paper also suggests that the labour demand for workers whose conditions of employment do not comply with the prevailing conditions be satisfied through a legal and regulated system rather than ignored and fulfilled through illegal means. It is recommended that the negotiation among social partners could provide for quotas of workers who could be sponsored by employers who are responsible for them and under specific programmes in respect of which general conditions of employment do not apply and are regulated by special conditions agreed upon by the social partners in Nedlac. These agreements could be conducted on a sector by sector basis or on the basis of an additional national bargaining council established for this purpose under the Labour Relations Act or an amendment thereto.

The shifting of policy emphasis onto effective enforcement and implementation offers the opportunity of building a migration system starting from the tail end of service delivery, tracing it back to a statement of general policy. This White Paper has focused on a bottom-up approach highlighting what is required at community level in respect of migration policies and has projected it into a general formulation of a national policy. Analysing community needs, this White Paper has identified the following priorities:

- ensuring that illegal aliens do not take available job opportunities away from community members and do not compete with them for scarce public services;
- ensuring that illegal aliens do not become public charges or become involved in criminal activities;
- ensuring that education is provided at community level to avoid any form of xenophobia by making communities understand the tragedy of illegal immigration while cooperating with law enforcement authorities;
- ensuring the resettlement of refugees and ensuring that they are not confused with illegal immigrants;

- ✚ ensuring that communities, industries or businesses who need to acquire the skills or contribution of foreign workers can do so without administrative delays or problems; and
- ✚ ensuring a community based production of data and information necessary to determine the need for and quotas of foreign labour.

This white paper provides us with definitions as well as meanings of migration related concepts and issues such as the term 'alien', 'bilateral agreement', 'border pass'...

### 3.2.5 The Immigration Act 10 June 2004

The Immigration Act 13 of 2002 ('the Act') came into operation on 12 March 2003 and repeals inter alia the Aliens Control Act 96 of 1991. In terms of the repealed Aliens Control Act, the only restriction on an alien from acquiring immovable property in the Republic of South Africa was if such alien was illegally in the Republic (see section 32).

To summarise, the following aliens could purchase immovable property and have such property registered in their names:

- ✚ Aliens having a residence permit which would restrict the acquisition of immovable property to the area for which the permit was issued.
- ✚ Aliens entering or traveling through the Republic legally.
- ✚ Aliens outside the borders of the Republic.

The Immigration Act does not refer to 'alien', but defines 'foreigner' and 'illegal foreigner'. Section 42 of the Act read with section 49 (6) have similar provisions to section 32 of the Aliens Control Act. The Immigration Act also provides that any person, who aids, assists or enables an illegal foreigner or foreigner with the selling or making available of immovable property shall be guilty of an offence.

It is clear from the wording of section 42 and 49(6), that there rests no duty on the registrar of deeds to police the provisions of the Act. Conveyancers and/or estate agents will, however, have to ensure that a transaction entered into by a foreigner does not contravene the provisions of the Act.

### 3.3. Trends Relating To Migration in South Africa.

#### 3.3.1. Migration Trends Since 1994

The most important change in the post- apartheid period has been a substantial increase in the size of the migrant population from African countries further north. These are countries such as the Democratic Republic of Congo (DRC), Ghana, Mozambique, Nigeria, Senegal, Somalia and Zimbabwe. Kadima & Kalombo (1995) estimated that in mid-1995 there were about 23,000 Congolese living in the Johannesburg area.<sup>21</sup> There were no reliable figures for Nigerian immigrants, but between 1 January 1994 and April 1997, a total of 2,862 Nigerians had applied for political asylum (Morris, 1998).<sup>22</sup>

Noteworthy is that after February 1990; there was a shift in migration dynamics. An important shift is that the number of documented, undocumented and naturalized immigrations increased substantially (Chimere-Dan, 1996).<sup>23</sup> Already by mid 1990, the number of documented migrants was estimated to be between 1.5 and 8 million (Mail and Guardian, 1995).<sup>24</sup> No census of undocumented migrants has taken place in South Africa, so it is not really possible to arrive at a definite figure of the total. According to Crush, the current estimates are probably grossly exaggerated.<sup>25</sup>

#### 3.3.2. Xenophobia Since 1994

The rise in the number of migrants to South Africa has therefore been accompanied by an increase in acts of xenophobia against non-South Africans, particularly those from other African countries. Oyewole (2000) argued that the problem of xenophobia in South Africa threatens the lives of foreign African nationals. "This is damaging to South Africa's international reputation and undermines the whole concept of an African

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<sup>21</sup> Kadima, D. & Kalombo, G. 1995. 'The Motivation for Emigrations and Problems of Integration of the Zairean Community in South Africa'. Johannesburg: Unpublished Paper. p.5.

<sup>22</sup> Morris, A. 1998. 'Our Fellow Africans Make Our Lives Hell'. The Lives of Congolese and Nigerians Living in Johannesburg'. *Ethnic and Racial Studies* 21 (6) p. 1118.

<sup>23</sup> Chimere-Dan, O. 1996. 'Migrants from Other African Countries in South Africa'. *South African Labour Bulletin* 20 (1).

<sup>24</sup> Mail and Guardian, 23 June 1995

<sup>25</sup> Crush, J. 1997. 'Exaggerated Figures are Creating a Xenophobic Atmosphere'. *Business Day*, 30 June.

renaissance”<sup>26</sup>. Ngobeni (1998) reported how local hawkers despise the foreign hawkers, ‘they do not want foreigners on the streets of Johannesburg, Cape Town and Durban. The hawkers were spotted carrying placards and shouting in Zulu: “Phansi nga makwerekwere” (“down with foreigners”). Foreign workers repeatedly suffer as targets of violent protests, beatings and other forms of intimidation by local competitors and ordinary criminals (see the case of Mushagalusha Ombeni). Local traders had organised unruly marches during which foreign competitors were physically assaulted and ransacked.<sup>27</sup>

In response to these protests, the government has adopted a deportation system that would lead to the reduction in the number of migrants, where over a million undocumented migrants were deported to neighboring states like Mozambique, Zimbabwe, and Lesotho. But this system has been widely criticized by human rights groups, including the South African Human Rights Commission. The gist of the critique is that the methods of arrest and removal are no different from those deployed to control black South Africans during the apartheid era. Evidence to back up this claim has emerged during the current trial of several South African policemen for setting attack dogs on defenseless Mozambican migrants. Similarly, a holding center known as Lindela, through which many migrants pass prior to deportation, has also been the focus of major human rights investigations and complaints.

In late 2002, a new Immigration Act was signed into law, after nearly eight years of negotiations. Its implementation is stymied by court challenges to the constitutionality of accompanying regulations. The reform process has moved slowly for several reasons:

First, there has been widespread popular panic among all South Africans at the prospect of significant illegal immigration in the post-apartheid era. As both cause and consequence, South Africans are generally extremely intolerant of foreigners in the country. Indeed, research by the South African Human Rights Commission and the

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<sup>26</sup> Oyewole, D. 2000. ‘Foreign Africans Accustomed to SA Xenophobia’. The Sunday Independent, 12 November.

<sup>27</sup> Ngobeni, E.W. 1998. ‘Go Home Foreigners’. Mail and Guardian, 14 September.

Southern African Migration Project (SAMP) has found extremely high levels of xenophobic sentiments at all levels of South African society. Second, the government's framing of immigration policy reform primarily as an issue of control and exclusion, rather than management and opportunity, has hampered its efforts to move beyond the framework inherited from the apartheid era. Finally, progress on immigration reform has been slowed by a bitter partisan row between the minister of home affairs and the ruling A.N.C.

### **3.3.3. Dimensions of unauthorised migration to South Africa**

The rise of undocumented or 'illegal' migrants to South Africa since 1994 is often considered as a new and significant 'problem'. Media reports have appeared with aquatic metaphors suggesting that South Africa is being 'flooded' by an unstoppable "tide" of "illegal aliens." The depth, strength, origins and impact of this new migration movement have become the subject of heated contestation involving Government, politicians, research agencies and individual experts. Estimates range as high as twelve million. Yet as the Labour Market Commission and the Green Paper on International Migration argue, the basic evidence underpinning estimates is thin, and claims about an explosive immigration ([www.info.gov.za](http://www.info.gov.za)).

These numerous problems related to foreign migrations have created a feeling among the majority of South Africans that migration has moved beyond a social problem and becomes a crisis. The actual scarcity in employment opportunities and the escalating crime rate in South Africa, which has led to a present perception that foreigners are taking jobs away from South Africans and are as well responsible for the crime wave, can be considered as the source of the problem.

Chiara Carter and Ferial Haffajee argue that South Africa has become a world in one country in more ways than tourism pundits could ever have predicted. The boundaries of state are becoming less important as waves of migrants seek a better life. Complex trade networks, energetic enterprise and entrepreneurial dreams are the stock-in-trade for the millions of migrant traders and labourers who throng South African city

streets (Mail & Guardian 11/09/1998). Mozambicans tend to be car hijackers; Nigerians control the cocaine trade (Photograph 5, 6, 7, 9 & 12) and they are running their illegal business while police are patrolling the area<sup>28</sup>; and Zimbabweans are generally involved in armed bank robberies and cash-in-transit heists, fraud and drug-related offences; and nobody can fashion a piece of kente cloth like a Ghanaian tailors sitting in the shade of Durban street.



Photograph 5<sup>29</sup> Source Fieldwork conducted on December, 12, 2006.



Photograph 6<sup>30</sup> . Source Fieldwork conducted on December, 12, 2006.

<sup>28</sup> .See Photograph 10

<sup>29</sup> A Nigerian national in patrol on the point business area in the early night of December, 12, 2006.



Photograph7<sup>31</sup>. Source Fieldwork conducted on December, 12, 2006.



Photograph8<sup>32</sup>. Source Fieldwork conducted on December, 12, 2006.

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<sup>30</sup> Photograph 6 is a Nigerian in the Point Road Durban selling Cocaine to a white man in the early night of December, 12, 2006.

<sup>31</sup> Photograph 7 is a Nigerian national doing business on the Point Road Durban in the early night of December, 12, 2006.

<sup>32</sup> Photograph 8 is the same Nigerian after business on the Point Road Durban in the early night of December, 12, 2006.



Photograph 9. Source Fieldwork conducted on December, 12, 2006.



Photograph10<sup>33</sup>. Source Fieldwork conducted on December, 12, 2006.

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33 Police vans patrolling the Point Road Durban while Nigerians are in illegal business in the early night of December, 12, 2006.



Photograph11<sup>34</sup>. Source Fieldwork conducted on December, 12, 2006.



Photograph12<sup>35</sup>. Source Fieldwork conducted on December, 12, 2006.

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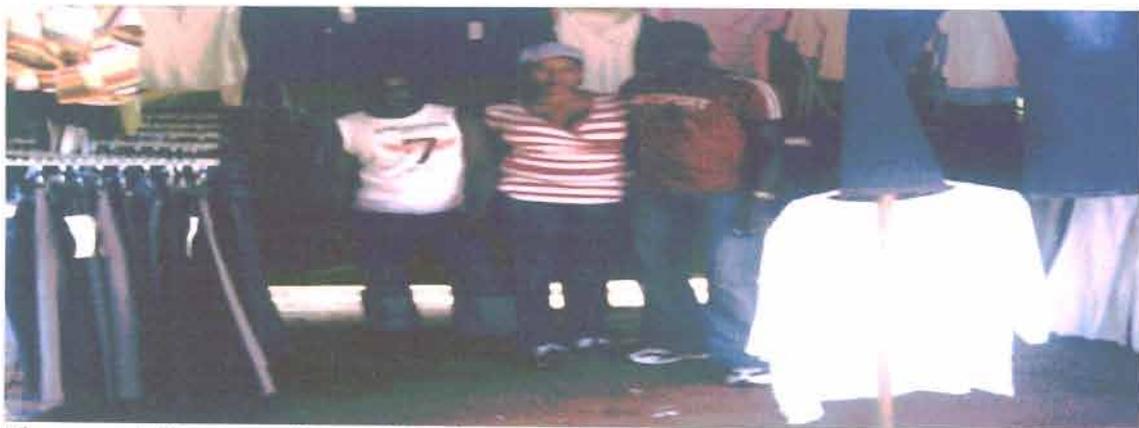
<sup>34</sup> Nigerians cars parked awaiting business through telephones in the early night of December, 12, 2006.

<sup>35</sup> A Nigerian in business on the Point Road Durban in the early night of December, 12, 2006

Much of the hysteria about illegal immigrants flooding the country to flee their own poor living conditions, taking jobs and resources from South Africans, is nothing more than exaggeration and myth. It is fuelled by grinding joblessness and the legacies of this country.

Many immigrants are better educated than South Africans, with greater savvy and training in the world of business. Zimbabweans, for example, are taught craft-making and marketing at school – that’s why they dominate South African markets. Immigrants have therefore expanded trade networks to provide jobs for South Africans - they feed wholesale industries and contribute handsomely to the gross domestic product. According to Vincent Williams of the South African Migration Project in Cape Town, immigration is by no means a chaotic and disorganised process. From their home countries migrants identify new markets. They plan their trips, bring their own money and immediately find their brethren ([www.queensu.ca/samp/migrationdocuments.html](http://www.queensu.ca/samp/migrationdocuments.html)).

Beach front, a tourist attraction in the city of Durban, has local handicraft stalls jostling alongside trestles piled with crafts produced elsewhere in Africa and sold mostly by Zimbabweans and West African traders. These traders employ compatriots or locals to assist in business<sup>36</sup>. They use their earnings to purchase local goods which they then sell on the way home, while stocking up on goods to trade.



Photograph 13. are two Senegal immigrants and their local worker in clothing business on Wednesday December 13, 2006.

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<sup>36</sup> See Photograph 13, 14 & 15.



Photograph14 are Senegal people in business on Wednesday December 13, 2006 in the afternoon.



Photograph15 is a Senegal national at work on Wednesday, December 13, 2006 in the afternoon.

The migrants who came from Southern African Development Community (SADC) countries and other African states are mostly active in retail and service industries selling curios, ethnic clothes, food and music, as well as running car-repair ( see Photograph 16, 17 & 18) and panel beating shops, restaurants, nightclubs, cafes and import-export (mostly Mozambican and Zimbabweans).



Photograph16 are Zimbabweans working as mechanics in Cars for Africa on Wednesday, December 13, 2006.



Photograph17 are Zimbabweans at work on Wednesday December 13, 2006.



Photograph 18 is a Zimbabwean in his working area on Wednesday December 13, 2006.

Those who come from further a field than the SADC countries often have links with international trade networks stretching from West Africa to Canada, the United States and Europe. They are also better educated and have more start-up capital than SADC migrants, who mostly begin their businesses with money earned while employed within South Africa.

Not all migrant traders work and live in the city centre. Some, particularly Mozambicans and Zimbabweans, sell fresh produce or work as mechanics in surrounding townships as well in Car for Africa (see Photograph 16, 17 & 18), where they rent garages from township residents or live in shacks or else in their particular work places.

But these migrants are not just self-employed traders. Many sell the only thing they possess - their labour. For example, Congolese refugees make their way of living into

jobs in the security industry, often as night watchmen or casual security guards; car guarding or barber shops known as ‘Siyagunda’<sup>37</sup>.



Photograph 19 is Congolese in a hair cut Business on Wednesday December 13, 2006.

Immigrants such as Mozambicans can easily blend with local populations, given a common Shangaan identity. They are also hawkers selling diverse products around the city centre and surroundings. They are also trailer-pushers and are therefore vulnerable to exploitation and xenophobia.

Despite the occasional bout of xenophobic rhetoric, official government policy has moved toward a more liberal, managerial approach to migration. This is bolstered by government moves toward pan-Africanism, a desire to see South Africa in a leadership role continentally, an increasingly dominant liberal discourse on human rights, educational campaigns to address xenophobia and attention to business interests that favor liberal immigration policies (Mail & Guardian 12 April 2006).

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<sup>37</sup>. See Photograph 19.

#### **3.3.4. Treatment of foreign migrants within South Africa**

A key policy issue is the degree to which foreign migrants within South Africa are discriminated against in terms of every aspect of life including wages and working conditions, and access to social services and basic human rights. The evidence on this issue is primarily anecdotal, but is sufficient to cause some concern. The research findings of several individuals and organisations involved in this area will eventually provide much greater insight. Policy research needs to focus not only on the actual working conditions and treatment of non-South Africans but on the impact of foreigners on the South African labour market. There is a widespread misconception in South Africa that foreign migrants take but do not create employment. This contention is not based on any substantial research. In policy terms, there is a debate on whether employer sanctions or employment standards legislation are the optimal means of countering exploitation of non-South African migrants.

In order to create a framework of analysis for evaluating the formulation and implementation of South Africa's migration policy, it is important to understand the concept public policy. Policy is a statement of intent. Briefly a policy lays out the basic principles to be pursued in attaining specific goals. Ranney (1968) defines policy as a declaration and implementation of intent. Hanekom (1987) states that the policymaking is the activity preceding the publication of a goal, while a policy statement is the making known, the formal articulation, the declaration of intent or the publication of the goal to be pursued.

Policy is thus indicative of a goal, a specific purpose, and a programme of action that has been decided upon. Therefore public policy is a formally articulated goal that the legislator intends pursuing with society or with a societal group, amongst others. Anderson (2000:4) argues "public policy is a relatively stable, purposive course of action followed by an actor or set of actors in dealing with a problem or matter of concern". The focus in this definition is on what is actually done instead of what is only proposed or intended. It also differentiates a policy from a decision, which, is a specific choice among alternatives and links policy to a purposeful and goal-orientated action rather than just a

random behavior. However, action is only taken if there is a demand from society and without a demand there will be no need to make a policy (Anderson, 2000). Therefore, it is said that various phases can be identified between the different stages in the process of making public policy, from thinking to action. Traditionally, models embracing processes about the values of society is interpreted through policy (De Coning, 2000:3). Hogwood and Gunn (1984:19-23) identify the following elements in the use of the term public policy: Firstly, policy has to be distinguished from decision and administration. When doing this it is important to note that policy involves behavior as well as intentions and inaction as well as action. Policies also have outcomes that may or may not have been foreseen. While policy refers to a purposive course of actions, this does not rule out the possibility that purposes may be defined retrospectively.

Policy arises from a process over time, which may involve both intra-and interorganisational relationships. Most public policy involves public agencies but not exclusively. Hogwood and Gunn, (1984:19-23) also argue that public policy is subjectively defined by an observer and is usually perceived as a series of patterns of related decisions to which circumstances and personal, group and organizational influences have contributed to (Hogwood and Gunn, 1984: 23-24).

### **3.4. Summary**

This chapter involves an analysis of public policy, the South African immigration policy. Therefore, it is shown that it is so important to understand the meaning of policy analysis which is defined by Dunn (1981:35) as “an applied social science discipline, which in return uses multiple methods of inquiry and argument to produce and transform policy relevant information that may be utilised in political setting to resolve policy problems”. More precisely Anderson (1994:22) states that policy analysis involves a description of the content of public policy, the environmental effect on the content of the public policy, an analysis of the impact of political processes on public policy, the consequences of public policies for the political system and a n evaluation of the expected and unexpected consequences of the public policy on the society. Trends related to migration have been

discussed including the occupation as well as treatment of foreign migrants in South Africa.

## CHAPTER FOUR RESEARCH FINDINGS

### **4.1. Executive Summary**

This chapter looks closely at migrants' experiences (personal life and events) around the point area of Durban in order to understand how these experiences could have influenced their choices and life chances. It also examines the involvement of foreigners with police and other related government officials during South Africa's period of transition. It holds firmly with the legal, political and social implications of foreigners in a changing social order. In so doing, this chapter examines a plethora of complex issues, including:

- ↓ Foreign experience of crime and violence in a context of increasing xenophobia and
- ↓ Post-apartheid discourses about immigrants and refugees. Last section of this chapter explores the so-called migrants' experiences and encounters on a daily basis with the law enforcement officials, and assesses how these impacted on their livelihoods as well as their future expectations.

The major findings of this research stem from interviews and focus groups discussions conducted with 14 foreign respondents as well as 4 government officials (3 from Home Affairs Department and 1 from Labor Department) due to the fact that interview was conducted with the team leader of the labor department (Durban office) who stated that there was no need to conduct interviews with other officials as long as she was able to respond to all researcher's questions. These findings are supplemented and informed by an extensive literature review and secondary-data analysis.

### **4.2. Characteristics of Respondents**

#### **4.2.1. Origins of immigrants and gender**

A total of 14 respondents from 7 African countries were randomly selected and interviewed for the purpose of collecting the needed and required information for the completion of this thesis. Due to the nature of the research, interviews were conducted with 2 respondents from each of the 7 African countries (2 respondents from The

Democratic Republic of Congo (DRC), 2 from Ghana, 2 from Mozambique, 2 from Nigeria, 2 from Senegal, 2 from Somalia and other 2 respondents from Zimbabwe).

Table 1: Gender distribution

Gender	Frequency	Percentage
Male	13	93
Female	1	7
<b>Total</b>	<b>14</b>	<b>100</b>

In South Africa, foreigners are mainly projected as a homogeneous group<sup>1</sup>. The results are not representative in terms of gender. Most respondents were male; this is a reflection of the gender distribution of foreigners in South Africa. Besides the fact that women are not easy to find, they are also difficult to speak to, and their experiences of daily life in South Africa, are less harsh. That was the reason why most women were not part of the study since they were not willing to be interviewed.

It is stated that a large number of immigrants actually comes from the neighboring country Zimbabwe<sup>2</sup> which is at the moment among top agenda countries of the African continent. In this regards, an estimated total number of 4162 Zimbabwe national applications have been received at the Durban Refugee Centre by the 31<sup>st</sup> October 2006<sup>3</sup>.

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<sup>1</sup>H. Shindondola, A. Dlamini, L. Sikakane & M. Esquivel (RAU), (2001/25) 'Supressed Voices': Preliminary Findings on Non-Citizen's Problems with Social Services in South Africa.

<sup>2</sup> Interview with C. Grandin from Permanent Residence office on Tuesday 16 January 2006 at the Department of Home Affairs Umngeni Road / Durban.

<sup>3</sup> Home Affairs Department / Durban Refugee Centre.

#### 4.2.2. Age group of respondents

Table 2: Age distribution of respondents

Age	Frequency	Percentage
17 – 26	6	43
27 – 36	7	50
37 – 46	1	7
47-56	–	–
+57	–	–
<b>Total</b>	<b>14</b>	<b>100</b>

As per table 2, the majority of the respondents (50%) are between 27 and 36 of age, 43% in the 17-26 age group, and 7% in the 37-46 age group. It is important to indicate that none of these respondents was above 47 of age. This is an indication that the majority of immigrants (93%) who come to South Africa are in their youth ages (working age). This might bring us to the conclusion that the majority of foreigners are here for economic reason.

#### 4.2.3. Post-Apartheid Dwelling duration

Table 3: Frequency distribution showing the length of stay of respondents.

Duration in Years	Frequency	Percentage
0 – 2	2	14
2 – 4	5	36
4 – 6	4	29
6 – 10	2	14
+ 10	1	7
<b>Total</b>	<b>14</b>	<b>100</b>

It was so important to set up the longevity of the migrants interviewed in South Africa. As shown in table 1, the majority of immigrants (36%) have been in South Africa between two and four years. This is followed by 29% of those who have been here between four and six years, and 14% of those who have been here between six and ten years and 7% of them have been here for more than ten years.

#### **4.2.4. Occupation**

Out of the 14 respondents interviewed, 85% were self employed and the minority 15% is working in the private sectors such as car guarding and Security Industries. In line with the findings, it is crucial to note that the perception that ‘foreigners take away our jobs’ seems to be unfounded and lacks substance.

It was also revealed that the majority of migrants (especially those who are self-employed) are making between R400 and R600 per week. They were making more money due to the fact that they were not paying tax nor registering their businesses. For many of them, for example “... *business was going very well to the extent that foreign and local competitors in the area were filled of jealousy...*”<sup>4</sup> This has made them to be victim of xenophobia in hands of black locals (the most xenophobic than all other races).

For many, this has given them an opportunity to expand their business and for others a door is opened for them to go abroad to countries such as Australia, Canada, England, United States of America and to other overseas countries.

#### **4.2.5. Documentation**

Several attempts were made to identify if these respondents had legal documentation. The majority responded that they were legal in this country. Most of these respondents entered the country using visitor’s permits and others illegally first and thereafter managed to present themselves to the Department of Home Affairs for asylum

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<sup>4</sup> See Mushagalusa Ombeni’s case in the third chapter.

application. These some times marry South African women after the expiration of their papers and they are automatically given South African identities<sup>5</sup>.

### **4.3. Moving to South Africa**

#### **4.3.1. Background and violence expression**

Reasons behind foreigners' move to South Africa can be often separated into two categories, namely, push factors and pull factors. The push factors denote the motivations for leaving home, for moving away from the country of origin. The pull factors explain the choice to move to South Africa in particular, out of a number of possible destinations (Castles et al, 1998:20). The division between the push and pull factors is artificial and, as illustrated in the following section , often these factors work as different sides of the same coin. However, it is important to consider them separately because both reveal different dimensions of foreignness in South Africa. The push factors provide a context and background to foreigners 'here' that is in South Africa. The pull factors explore the perceptions and attractions of South Africa from there, that is, from the international perspective. In combination, the push and pull factors offer insight into the causes of immigration into South Africa (Papastergiadis, 2000).

#### **Push factors**

##### **↳ Home violence and conflict as primary cause of human migration**

Political conflict, persecution and war are seen to be common reasons for many respondents leaving their home countries. Indeed, they appear to be the primary push factors for respondents from a range of nations, The Democratic Republic of Congo (DRC), Ghana, Mozambique, Nigeria, Senegal, Somalia and Zimbabwe. Consider the following justifications for leaving:

***“Due to the political situation in my country, I decided to flee Zimbabwe to South Africa”*** (Zimbabwean man)

A man from the democratic Republic of Congo added ***“I came to South Africa because there is war in my country.”***

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<sup>5</sup> Interview with DHA official.

While the form of conflict varies in these statements, it is important to recognise that violence pervades the backgrounds of many foreigners in South Africa. It is a common prompt for leaving. The direct link between violence and the decision to leave is clearly illustrated in the case of a young DRC man, living with his younger brother:

*“What happened to my parents ... Some thing that I will never forget? During the war, the whole of my family including my brothers and sisters was killed while my young brother and I were at the boarding school. When we came back home, neighbors were just narrating us the story. Then we decided to leave the area and came to seek refugee in South Africa”.*

Another female refugee explains how she was forced to sleep with her own father before he was killed in front of her eyes. *“They broke the door, put every one together and force my father to sleep with me in front of my mum as well as my brothers. They then killed him together with my two brothers. It was then that I decided to come to South Africa”.*

Violence does not only push many people to migrate, it also defines the process. Thus, violence is central and so crucial to how respondents always understand themselves leaving their homes, getting to, and living in, the host nation. Papastergiadis (2000) stated that by 1997 the number of refugees was standing at 31 million .These calculations did not include the 24 million people displaced by violence and persecutions<sup>6</sup>... For example, the word 'refugee' is frequently used by respondents to describe their status in South Africa, regardless of their legal standing in the country, that is, regardless of whether they are categorised as refugees, or asylum-seekers, or migrants, or illegal immigrants in terms of the legislation. 'Refugee' conveys the notion of having to flee conflict and it brings with it a certain identity for respondents, namely, that of being persecuted and forced to leave. It is thus important to recognise that home conflict is so crucial to the ways in which respondents define themselves.

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6 Papastergiadis N. (2000), *The Turbulence of Migration*, Cambridge, Policy Press.

While war is interpreted as the main migration cause, it is also seen as preventing people from returning home. Respondents commonly portray violence as the central obstacle to returning. In the process, they present themselves as not willing to be in South Africa, as much as having to be in the country. “*Home is always best*” said one of the respondents from The Democratic Republic of Congo. “*Because of violence, I have got no choice in this situation*”. This is further illustrated in the following interview extracts:

*“South Africans always ask me; ‘why are you here?’ ‘What are you here for? You have to go back to your country. ‘We don’t need you here’. I used to tell them; I can not go back home because there is a war”* (Congolese man says).

***I: You said you have no problem in South Africa as you are earning better than home.***

***R: Not that bad but compared to Somalia, Somalia is better if had it not been for the war*** (Somali man,).

*Refugees run away from their country due to army conflict. You can't take them back to where they got war .... When you do that, it seems that you want to kill them* (A man from The Democratic Republic of Congo). “*In my country we have got war but not crime*” he added.

The sense of being forced to leave and the impossibility of going home because of conflict are important themes because they counter a common perception amongst South Africans that foreigners 'flock' to the country out of desire and want. Instead, it seems that many foreigners would not be in South Africa without violence in their home nation.

#### **⚡ Violence alongside other reasons of migration**

In other contexts, conflict may merely co-exist with various push-factors, as one of many reasons to leave. For example, a Somali man locates his motives for leaving between violence and hunger.

He said: “*I decided to come to South Africa because we have problems in Somali, our country is in civil war and hunger is reaching the roof. We can not plough; our livestock does not have pastures. Life is so chaotic*” (Somali man).

In this case, out-migration is motivated by 'other problems' which include, but are not restricted to, civil war. Although this is a complex example, and the relationship between hunger and war needs to be expressed in full.

#### ↓ Economic reasons as primary cause of migration

Depending on the political situation within the home nation, as well as on personal motives, violence may not feature at all as a push factor. Zimbabweans, for example, explain that economic difficulties and unemployment in the home nation are key reasons for leaving.<sup>7</sup> Consider the following focus group interchange between Zimbabwean men.

***I: Why did you choose to come to South Africa?***

***R1: Seeking for a job.***

***I: Why did you come?***

***R2: Life is much easier here than home. I wouldn't have come here if there were employment opportunities at home.***

In this extract, unemployment in Zimbabwe is presented as the sole reason for leaving. There is no mention of political conflict or violence. The narrative here takes on a different form to explanations which rotate around conflict and political prejudice. Economic push factors in isolation do not seem to pervade identity to the degree that political violence factors do. For the Zimbabwean respondents, unemployment is not about who they are in their home nation, unlike those who are involved in ethnic or religious or political conflict at home, for example as Congolese. It is also not about who they have become in South Africa, in contrast to those who define themselves as 'refugees' or 'citizens of South Africa'. Rather, they have left to find work, and that is all. This point is exhibited in a focus group discussion about traveling to South Africa:

***R: We always travel home for holidays though we're here for a number of years.***

***I: You still have your families living there?***

***R: We just came to work here. We still have families to support back home.***

***I: How often do you go home?***

***R: Twice a year and this applies for most of us.***

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<sup>7</sup>Focus group discussions were conducted on the 15<sup>th</sup> January 2007 around the point area.

In this interchange, the respondents from both Mozambique and Zimbabwe explain that they are able to return to home on a regular basis. They still have strong family ties and houses in and they move between the two countries frequently. There is a degree of flexibility and fluidity about their stay in South Africa, unlike refugees who cannot return to their home nations at all due to conflict.

Although these respondents can and do go home with regularity, they always leave again. Their reason for leaving - unemployment - is presented as compulsory: *“wouldn’t have come here if there were employment opportunities at home”*. This push factor is portrayed in much the same way as violent conflict is, that is, as something which forces people to leave. There is no scope for choice in the matter. As with refugees who flee their home countries, Mozambican and Zimbabwean respondents see themselves in South Africa because they cannot be at home, rather than because they want to be in the country. There is a sense that if home conditions change, they will return permanently<sup>8</sup>.

It is interesting to note that commentators who motivate against the presence of certain foreigners in South Africa draw on the same economic argument to make their point. For example, a spokesperson for the Unemployed Masses of South Africa (UMSA), comments:

*I mean part of the problem [for 'people who come here because of the poor economies of their country'] is Robert Mugabe [pause]. If Robert Mugabe [pause] followed sensible economic principles and policies, the, the people that enter South Africa from Zimbabwe [pause] would be reduced in number<sup>9</sup>.*

Similarly, a representative for Admissions and Aliens Control in the Department of Home Affairs suggests that,

*The root causes of 'illegal migration' are what need to be addressed, and that is the discrepancy between the economies of our neighbors, especially Mozambique, and ourselves ... Mozambique has improved dramatically since 1994. And I think maybe*

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<sup>8</sup> .“Home is always best” said one respondent from Zimbabwe.

<sup>9</sup> . Spokesperson, UMSA

*that also has an influence on the numbers [of illegal entrants, which are lower now, then they were then]. Now we have Mozambique improving but Zimbabwe is going down hill. Um, so the solution is far away, but that is the solution*<sup>10</sup>.

It is so important to note that economic instability, violence and war are the most important reasons for many foreigners leaving their home countries. For them, however, the decision to leave cannot be reduced to a singular factor and it is crucial to note that out-migration is a complex and difficult process that needs a proper management as well as understanding. It is also significant that many respondents do not choose to leave, as much as they feel forced to go and that they are not in South Africa because they want to be. This is also relevant to those who leave for both economic and political reasons. Once in South Africa, push factors, particularly those of violence and political conflict, continue to exert a strong influence on respondents, shaping identities and contributing to how they understand themselves in this country.

Series of reasons are seen as push factors that motivate people to leave their home countries, these do not necessarily explain why foreigners come to South Africa in particular. They do not describe the 'pull' factors specific to this country. These must be considered alongside the push factors to enrich the understanding of foreigners in South Africa, as well as to account for those who are not pushed as much as pulled into coming to this country.

### **Pull factors**

#### **✦ External /international image of South Africa**

Many respondents explained that South Africa's specific images attracted them to the country. Consider these comments:

*"I came to South Africa because I was told that it's the only country that welcomes and recognises refugees and the later are given proper documentations"* (Ghanaian man said).

*"New democratic South Africa was known to be well organized, safe and secured".*

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<sup>10</sup> . DHA representative

*(Congoese man added)*

***“I was told that South Africa is a good place!”*** *(Somali man added).*

A particular image of South Africa emerges from these extracts. This is an image that is developed outside of the country, independently of the respondents' experiences, prior to their arrival in South Africa. In this sense, it can be labeled as an external or international image. It is an image that correlates closely with the country's political transition during the early 1990s. The promise of democracy and equality for all, including refugees, is a strong component of this image. More generally, this external, international perception of South Africa captures the ideals of newness, optimism about the future, tolerance, freedom, peace, and opportunity; ideals that are represented in the new South African' discourse within the country. Consider these comments about South Africa made by an official of the **Department of Home Affairs/ Durban refugee reception office**:

***I: Why do you think people come here in the first place?***

***R: There is money here and freedom for everyone. I think it's a free country where democracy is found and well- practiced. They all love South Africa because they know that when they're here they've got rights, more especially the constitutional rights or whatever is protected. Although they come here for economic reasons, they know that with our legislation and the agreements signed between south Africa and the international community, the department does not have right to deny them asylum application up until the standing committee decide whether they qualified to be granted with a refugee status<sup>11</sup>.***

This respondent notes that the economic lure of South Africa represents an important pull factor and is therefore considered as the main cause of illegal entry by many foreigners in South Africa.

#### **↓ Representations of illegality**

The issue of legality and entry forms a cornerstone of the immigration debate, as well as xenophobic discourse. Illegal entry is a hotly contested notion and it is represented as problematic by a number of key players. For the Department of Home Affairs, illegal entry is a problem for logistical reasons:

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<sup>11</sup> . Interview with an official of the Department of Home Affairs/ Durban refugee reception office.

*“We are faced with a biggest challenge of preventing the illegal entry in South Africa. Our most complicated situation is the length of our borders, something like 3000, just on 4000 kilometers of border. And some of it very ill defined and it's very difficult to control that piece. So to actually physically stop people from entering is not always a simple task. Reduction can be possible but we will never stop it”.*<sup>12</sup>

Here, the physical difficulty of patrolling the border to control and legalise access is the central problem with illegal entry. Illegal entrants themselves are framed as problematic in South Africa for two separate reasons,

*“Having a look at these illegal aliens we actually find that these are two separate problems for South Africa and her people. One of them being the large number of illegal aliens from the specific country, such Mozambique and Zimbabwe. And the other being, what nonsense that country would get up to. For example Nigerians whose number of illegal aliens in South Africa is very far below the Mozambicans are causing more problems from a criminal point of view than compared to the Mozambicans. So they're a problem, not only because of their numbers but also because of their illegal activities in the country”* (DHA official).

From this comment, it appears that the Department of Home Affairs separates illegal entry from criminal activity and this is done along national lines. For example, illegal Nigerians are problematic for Home Affairs because of their activities in South Africa, while illegal Mozambicans are problematic because of their large numbers. Clearly, the division of nationalities in this way contributes to negative stereotypical representations of certain foreigners and, ultimately, they cannot escape the conflation of crime with illegal entry. However, that the respondent separates the numbers of illegal entrants from criminal activity is important. Provided they do not 'get up to nonsense' in South Africa, illegal entrants are problematic because of their numbers (which increases the logistical pressures at the border) and that is all.

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12 ( Interview with the DHA official, )

While the Department of Home Affairs problematises the issue of illegal entry (divorced from criminal activity) in terms of volume and logistical difficulty, other commentators do not make as clear a distinction between illegal entry and crime. A spokesperson for the Unemployed Masses of South Africa (UMSA), for example, has located illegal entry as a criminal offence by saying:

*“We do not want illegal immigrants in this country. They're committing a crime by being in the country illegally .... If a person enters the country illegally, they are violating the Aliens Control Act. That's a law .... So they've committed a crime”* (UMSA spokesperson).

In accordance with the literature, the conflation of illegal immigrants with crime constantly pervades xenophobic and anti-migrant rhetoric. Perhaps this is because the category of illegal migrants is the most direct and 'acceptable' level through which to make hostile statements, based, as it is, on a legislative foundation. This makes it easier to shroud xenophobic commentary in legal jargon. Also, illegal entry is not just interpreted as a literal transgression. Rather, it is used to symbolise a threat or danger to the nation. Consider the following depiction of illegal immigrants:

It is important to note that following several demonstrations around the country, many foreigners lost their lives, for example, 3 foreigners were killed on a train carrying UMSA supporters to Johannesburg.<sup>13</sup> While UMSA involvement was not directly established in this incident, the point still holds that hostile, inflammatory accusations against foreigners, whether disguised as a legal argument or not, result in a climate that is conducive to vigilante violence of this nature.

An official from the Department of labour substantiated the issue of legality and foreign exclusion in South Africa by raising the following issues:

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<sup>13</sup> An UMSA spokesperson explained that 'we investigated the matter and we found that there was no UMSA involvement in the deaths of those people .... We believe that there are certain elements that are hyping up this issue, trying to place South Africans in a negative light for whatever nefarious purposes that they might have by saying and implying that UMSA is against foreigners. We are not against foreigners. But we are certainly against illegal immigrants'

*“As far as economic exclusion of foreigners by government policies is concerned, it is commonly known that South Africa is faced with a substantial skills gap that the government is willing to fill by spending millions of Rands on skills training. However, few employers (including the government) capitalise on the economic potential of those already in their cities or who are likely to come in the near future including international migrants”.*

*I: While South Africa faces an acute nursing shortage for example, there are certified refugee nurses in South Africa who can not find work because of the current policy that criminalises migrants and drives processes of informalisation and illegality. Why can't South Africa just exploit the presence of these foreigners who are often well-educated and experienced?*

*R: The Republic of South Africa can accommodate only a certain number of im/migrants. There are valid reasons for this. In the first instance South Africa has a vast reserve of unskilled and semi-skilled workers who are entitled to employment opportunities and to an economically viable lifestyle for themselves and their families. For this reason no one in the unskilled and semi-skilled categories can normally be accepted as immigrant worker in South Africa. In addition, employment opportunities are, as a result of the prevailing economic climate in South Africa, extremely limited and there is at present no special drive or project to attract foreign workers to South Africa. Even as far as the so-called scarce employment categories are concerned the position has worsened to the extent where professionally and technically qualified persons are being laid off and are finding it extremely difficult to secure alternative employment. It is for this reason currently a prerequisite that foreigners wishing to take up employment in South Africa, be in possession of firm and acceptable offers of employment commensurate with their training, qualifications and experience before an application for a work permit can be considered. Employers wishing to introduce foreign workers to South Africa must obtain the permission of the Department of Home Affairs and be able to satisfy the Department that they were unable to obtain the required personnel locally. There are certain main criteria or aspects that need to be taken into consideration with regards to foreign recruitments such as the involvement*

*of the Department of Labour, private employment bureau, or agencies and the relevant trade union or industrial council with regard to filling the vacancies. On that ground, the Department of Labour is liaising with the Department of Home Affairs on issues of labour shortages so that they should be co-ordinated in a systematic way. This allows for a better co-ordination between the two Departments in assessing the labour needs of the country (Labour Department Official).*

*I: How does your department assess the impact of non-nationals on the national labour market?*

*R: The Department of Labour is undertaking surveys of occupational vacancies in the country to allow the Department of Home Affairs to better able to administer its migration policy. For example, in terms of Section 537 of the Aliens Control Act, applications for immigration permits or work permits may only be granted if there are not sufficient numbers of South Africans for the specific occupation for which the application is made. In determining whether there are vacancies in particular occupations, the Department of Home Affairs liaises with the Department of Labour and with professional agencies. Immigration permits may be granted immediately or after the applicant has worked in the country for a number of years. This is left to the discretion of regional committees of the Immigration Board. After a period of five years a permanent resident may apply for South African Citizenship in terms of the South African Citizenship Act No 88 of 1995. Also in terms of Section 539 of the Alien Control Act, Strong anecdotal evidence suggests that applications for work permits from skilled workers and potential investors are dealt with in an unsystematic and haphazard manner. It is widely held that the South African labour market is characterised by a shortage of skilled workers and professionals. Skills shortages are manifest, in part, in unusually large occupational wage differentials. Under these circumstances, there are few grounds for a restrictive approach to applications for work permits from skilled foreign workers. Indeed, the Commission recommends that greater effort be made to attract skilled labour from some of the larger developing countries. The premium for attracting skills from these countries will be considerably lower than that attached to an equivalently skilled worker from an industrialised*

country. In this respect, the Commission is particularly concerned at the role played by local professional associations in the evaluation of an application for work status in this country. It appears that these organisations adopt a highly protectionist stance to the entry of foreigners into their ranks (Labour Department Official).

**I: What action does your department take about any act of discrimination against foreign nationals in South African work places?**

***R: The law in South Africa is one and it is applicable without discrimination for every one irrespective of colour, gender or nationality. Any action of discrimination against any employee irrespective of colour, gender or nationality should be reported to the labour department and corrective actions and measures will be taken. That is why, when Minister Membathisi Mdladlana, the Minister of Labour was speaking at the opening of a new labour centre in Ficksburg during his Free State Imbizo in 2002, he warned that the illegal employment of migrant workers was problematic and that those engaging in such activities are to be perceived as criminals who are promoting xenophobic tendencies in the community. The Minister also urged employers to treat migrant workers in a humane manner. Further more, the Department of Labour requested alignment with the following Conventions: Convention No. 19 concerning Equity of Treatment for national and foreign workers, as regards women's compensation for accidents. Convention No. 97 concerning migration for employment. Convention No.143 concerning Migration in abusive conditions and the promotion of opportunity and treatment of migrant workers (Labor Department Official).***

Although employment is implicit in the economic push factors described by foreign respondents in the preceding section, most do not make overt reference to this as a pull factor, unlike their South African counterparts who commonly suggest that foreigners 'come to steal our jobs'. In addition to economic opportunity, the respondent suggests, South Africa's image is one of rights, freedom and democracy.

Similarly, such an image is actively promoted abroad by the government. This has not escaped the attention of foreigners living in South Africa, who suggest that South Africa deliberately cultivates a reputation for liberal refugee legislation and a welcoming climate

in order to build international trade and diplomatic ties and to promote investment in the country in order to reduce the level of unemployment:

*R: South Africans are claiming that we are taking their jobs, they don't want us in their country, they restrict us employments, they only want us to come here just to draw the international attention that they are more than well coming and happy with foreigners' presence. They welcome us so that the international community would say that South Africa is doing great job '[let's sponsor them]'. They will use certain foreigners just as recommendations and references but they would discriminate the majority and begin to butcher, kill and murder them like cows in an "abattoir" or slaughterhouse<sup>14</sup>.*

The positive international image of South Africa works as a strong pull factor in its own right. However, this image is also developed and generated in relation to alternative destinations. In this sense, it is a relative factor, weighed up against external images and personal experiences of other countries. The following respondents, for example, explain how they chose South Africa through a process of evaluation and elimination:

*I: Why did you only chose South Africa while there are more neighboring countries were you could find freedom?*

*R1: I could remain in other African countries. Though South Africa is far from Somalia, but compared to other African countries, here it is like "a paradise on earth" unlike countries such as Kenya, Malawi, Mozambique, Tanzania,...where you can't even move a step ahead due to police and immigration harassment who will ask for documents and money. These will even arrest you and take all of your goods including transport money.<sup>15</sup>*

*R2: Honnestly speaking, I left my country because of the Army conflict. I came here to seek protection and safety. Hopefully I might get a job. Generally speaking I want to build a future in South Africa. I couldn't go to Burundi, Rwanda and Uganda because*

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<sup>14</sup> . Interview with a Somalia respondent.

<sup>15</sup> Somali man, added

*it is there where aggressors are coming from and further more employment opportunities are limited in these countries*<sup>16</sup>.

*R3: When I arrived in Kenya, it was not easy for me to survive, there was no job and the UNHCR no longer accepted refugees there. Life became very expensive in a sense that I could even spend 2 days without eating. So some guys told me that in South Africa you are offered opportunity to run some small businesses after being given a starting fund*<sup>17</sup>.

Negative pull factors are expressed through the process of elimination and weighing the above opinions that reveal much about alternative destinations. Places such as Burundi, Kenya, and 'other African countries' are portrayed in negative terms. They are represented as hostile, unsafe and unwelcoming. There is a strong fear of 'police and immigration harassment', restricted freedom and exposure to 'aggressors'. In other words, a fear of human rights abuses. There is also concern about material conditions and opportunities, particularly in relation to employment opportunity and food security. In this way, South Africa is chosen on negative grounds compared to other African countries. At the same time, these reasons also reveal positive expectations behind the decision to come to South Africa. Before reaching South Africa, respondents expected human rights protection, employment, and employment/educational opportunities. They expected to be welcomed and to make a bright future in the country.

#### ↓ Favor reverse

Expectations of welcome point to a related pull factor in South Africa, namely, 'Favor reverse'. This pull factor rests on the particular relationships that were developed between various African countries and South African exiles during the apartheid era. Certain respondents suggest that their countries, and often they themselves, played a significant role in hosting political activists during the 1970s and 1980s. Foreigners from Nigeria comment: *"for many years, South Africans were welcomed in our country they were given all the support needed for their Survival. We have made 'sacrifices' to assist*

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<sup>16</sup> Congolese respondent

<sup>17</sup> Somalia man.

*South Africans in the fight against apartheid. Thabo Mbeki himself lived in Nigeria before he flew to England. Why then he must not allow us in his country? We welcomed South Africans when they were in trouble in their country, now as our country is inflicted with many problems, why must they turn their backs against us?"*

The historical involvement of other countries with the anti-apartheid movement, particularly the African National Congress (ANC) and the Pan African Congress (PAC), is touted as a reason to seek similar protection and support in post-apartheid South Africa. For many African foreigners, the expectation before reaching South Africa was that the government and ordinary citizens would 'reverse the favor', now that they are in a position to do so.

Respondents from Mozambique and Zimbabwe do not point directly to the historical role that their countries played, or the consequences that they faced in support against the apartheid government. Unlike those from central Africa, there is no clear sense of paying back. Rather, pull factors are expressed in terms of material opportunities and historical networks. At an indirect level, reference is made to South Africa's responsibilities in the region. Consider the following comment by a Zimbabwean respondent about recent crisis<sup>18</sup> in Zimbabwe and the possibility of new refugees coming to South Africa:

*"As far as I am concerned, it is wise that people from Zimbabwe seek help from within first before they come to South Africa. It does not mean that they should always run to South Africa for help because of what Zimbabwe did for them during the apartheid... Then it is other countries' responsibility to assist Zimbabwe government with aid like food, or blankets and whatever is needed. In short they may assist in the growth of our economy. I think this could solve the problem because this does not have any thing to do with South Africa .They should not flock to South Africa because South Africa is the cause"* (Zimbabwean man).

Through this statement, the speaker strongly suggests that the country is responsible for non-natural disasters, such as unemployment, in the region. Because unemployment is a

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<sup>18</sup> We are actually receiving more people from Zimbabwe and we are expecting to receive more in the coming days due to the current situation in this country ( DHA official)

primary push factor for many Zimbabweans, the allocation of regional responsibility for this to South Africa is of central importance. It is also suggested that there are certain 'rules' for moving across the border, 'rules' that confer responsibility on South Africa: for this particular respondent, migration is justified because South Africa is seen to have caused unemployment.

#### ↳ History and networks

The regional history of cross-border migration is seen as a pull factor for many respondents from Southern Africa. Mozambicans and Zimbabweans for example, express their culture of coming to South Africa for work which is continuously attracting them to this country. *“Many Zimbabweans have been crossing the border for years”* say a respondent from Zimbabwe. While the initial pull factor is usually employment, local networks of family, friends and trade have also developed through this process. These have become pull factors in their own right. A Mozambican citizen explains that:

*“I always travel to Mozambique twice a month. I run a mechanic workshop around town and some times I use to buy cars and go to sell in Mozambique. I have one brother in South Africa who works as a general construction worker. We both have been here for eighteen years and have South African IDs. Our retired parents are still living in Maputo. We always put money together and I bring home for family support”<sup>19</sup>.*

Networks of people and trade suggest that many Southern Africans move into the country on a temporary but regular basis. This is an important point because it contests the common perception among South Africans that foreigners come to stay permanently and take their jobs. Certain reasons for coming, such as visits and temporary works, also undercut the general image of foreigners exploiting the economy.

African foreigners who originate beyond Southern Africa do not have as solid a weight of history to pull them to South Africa. In contrast to their Southern African counter-parts, none of the other African respondents interviewed arrived prior to 1990, and most only

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<sup>19</sup> Mozambican man says.

came post-1994. However, history is slowly being produced as networks are solidified and roots established in South Africa. A Congolese man who arrived in September 1999, for example, explains:

*“My sister was already in Durban and waiting to receive us”* (Ghanaian man). *“She sent me money to pay for my transport to South Africa. She promised me studies”*.

Similarly, a Somalia man who has lived in South Africa since 2001 tells how her Somalia brother came to join him here in 2003, and a Congolese man explains that:

*“I came to South Africa since 2004 because I had a friend living in South Africa who came to visit his family home in 2006 and proposed me to join him”*.

#### ✦ Unwilling reasons

Given the range of foreigners who come to South Africa, it is impossible to document a complete set of pull factors. Rather, a number of factors, many of which intertwine, are involved. These factors may be arbitrary and a matter of chance or unwillingness, as the following extracts reveal:

*“I did not prefer to come to South Africa ... I took a cargo sheep which was going to Australia. After several days on board I saw a beautiful city lightning at night and I thought I was in Australia. I went out as asked someone outside: where I am? You are in Durban, He replied. I asked him again: Is Durban in Australia? He just laughs and replied: South Africa. I just held my head”<sup>20</sup>*.

These respondents indicate that unwilling reasons, individual choices, and chance, have all contributed to their being in South Africa.

The pull factors shed light on the specific attractions and incentives of South Africa, or, more accurately, they shed light on the ways in which South Africa is perceived externally. The expectations that many foreigners have prior to reaching the country take on significance when matched against the actual experiences of entering and living in South Africa. Similarly, the reasons that foreigners leave their home nations, that is, the push factors, also offer a watermark for measuring and assessing the South African

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<sup>20</sup> Congolese man.

experience. Having established the broad causes of migration to South Africa, the following section focuses on the journey and border crossing into the country.

#### **4.4. Foreigners' experience in South Africa**

##### **4.4.1. Journey**

Respondents continually volunteer information about their journey to South Africa. This is not a primary focus of the research and yet people discuss their experiences of South Africa (which is the primary focus) in a way that is continuous with the journey to the country. This suggests that the foreign encounter with South Africa cannot be neatly separated from experiences en route. As such, this shows that someone becomes a foreigner as he leaves his country of origin crossing a border, not just when they arrive in South Africa.

Depending on the reasons for leaving and the resources that people have, the journey to South Africa can be a long, difficult and costly process. Often, those who do not fly directly into South Africa face great distances, unreliable transport, and dangerous, sometimes violent, physical conditions:

*“Certain people lost their lives along the way, going through all the bad channels, going through the bushes. I know some people who were eaten by wild animals”. How did you discover? “I found passports lying down next to human bones in Tanzania” (Congolese man).*

*“I came by plane from Somalia to Djibouti and then by train to Ethiopia. And from Ethiopia, I came by bus up to Zimbabwe. From Zimbabwe, we went by train to Zambia and to Mozambique and finally we jumped through the fence to South Africa, this with the assistance of some people that I paid money to” (Somalia man).*

*“I passed through Mozambique. I took a bus; also I did walk for a long distance through Mozambique” (Congolese man).*

Language barriers also have been encountered by foreigners on their way to South Africa, local hostility as well as corruption en route also characterized their journey. The

following narrative is a typical example of the sub-continental journey because it captures a number of different obstacles that the average traveler encounters. Owing to reporting constraints, this is a synthesised version of the original account. However, care has been taken to retain the meaning and wording offered by the respondent:

*“While in Maputo, I met with other foreigners trying to go over the border. We tried to get a bus to South Africa but it was not possible without visas. So, we paid a man US\$50 dollars to take us to South Africa. He told us to wait in his minibus while he went for lunch. But he didn't come back. Then another man came and said that the car did not belong to him. He asked us 30 US dollars each so that he can take us to the border. When we reached the border, we paid two other men US\$200 dollars to help us across. But, we still had to pay the border guards another US\$100 dollars to get through. Clothes from our bags were sold out. We were so shocked and ...” (Somalia man).*

As is illustrated above, respondents speak of having to pay for their passage - legally and illegally - at a number of points. Payment usually takes the form of US dollars and the journey is expensive. It is so exciting to note that respondents locate bribery, theft and hostile human interaction largely within the Southern African region, particularly, on the South African borders. Indeed, a central feature of the journey in this region is clandestine coercion and exploitation.

#### **4.4.2. Entry**

Entry into South Africa is an important focal point of this research for two related reasons. Firstly, entry represents the initial point of physical contact between foreigners and South Africa as a nation. Geographically speaking, the border is the first site of interchange between citizens and non-citizens.<sup>21</sup> In this regard, entry constitutes the ways in which foreigners enter the country and the treatment they receive at the borders, that is, the direct interface between foreigners and South Africans. This interface introduces the potential for violence, corruption and illegality and is discussed as practices of movement below. Secondly, entry entails symbolic contact with foreigners, a form of contact that is

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<sup>21</sup> The country's peripheral land and sea borders reflect a literal example of this, while the airports represent the first geographical 'touchdown' for foreigners

encapsulated by immigration legislation, political will and public opinion.<sup>22</sup> 'The border' represents a significant symbol of immigration and control. It serves as a platform for the promotion of political interests and agendas, particularly in relation to illegal migration. Indeed, it is difficult to separate undocumented migration from 'the border' and entry in general.

#### ⚡ A word of caution

It is significant to note that any causal link between illegal entry and crime is firmly rejected by undocumented foreigners themselves:

*“If I don’t have proper document, it does not mean that I am a criminal. People differ. It is wrong just to see a person and starts to have a negative perception by generalizing. I never commit a crime in South Africa. Since I came here, I work as a security guard just to afford my expenses. Why then should I commit crime? I am scared of being arrested”*(Congolese man).

It is also important to recognise that not all foreigners in South Africa are undocumented and that the research focus on illegal entrants is not intended to suggest that all foreigners enter the country illegally; many enter via official border posts with proper documentation. Also, this focus must not imply that all illegal entrants remain undocumented and illegal once they are in South Africa. Rather, a number of respondents who arrived in South Africa as undocumented entrants have attempted to legalise themselves once in the country. For example, asylum-seekers usually go directly to the Department of Home Affairs to declare their status.

*R1: I arrived in Durban on a ship from Somalia. I went to the home affairs department where I was sleeping outside for three weeks before being attended to* (Somalia man).

*R2: I was staying with my brother on my arrival in South Africa. It was not a big issue on my first day at the DHA just because my brother gave me R200 to buy a first position on the queue from a Tanzanian* (Ghana man).

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<sup>22</sup> The symbolic level interacts in a circular manner with the physical level, to inform the practices of movement, which influence the representations of foreigners here.

Because the category of illegal migrants is contentious and most frequently utilised to promulgate xenophobia in South Africa, it is important to explore the actual practices and experiences of undocumented border movement.

### **Entry movement**

Two ways are used by travelers to enter South Africa:

\*Unofficially, through clandestine crossing places, and

\*Officially, through formal border posts.

In terms of immigration legislation, unofficial entry into the country is illegal and it grants “undocumented status” on the entrant. Entry through a recognised border post may be legal or illegal as well.

Respondents who enter without documentation or through unofficial points – illegal entrants – are usually aware that they are entering illegally. For example, a refugee from the Democratic Republic of Congo confesses that,

*Ten of us came through the Manguzi border, between South Africa and Mozambique. On the Mozambican side there is one guy who told us that he going to show us how we going to jump ... We didn't have passport but we decided to force ourselves over (Congolese man).*

A Zimbabwean respondent also tells of crossing unofficially into South Africa, aware that they are transgressing the law. For example, a man tells of being smuggled through the border on a train:

*“I used a train to come to South Africa. I had no tickets and used the Mafikeng route. There were security officers there at the station. And that's the only way we could get through. It was so difficult. We were fortunate enough because the security officer we liaised with understood us. We told him that we were from Zimbabwe and he made means for us to go through”* (Zimbabwean man).

And others tell of jumping over the fence, or walking through unfenced crossings at various places, because the official border posts are 'very small' in relation to the physical distance that spans the two countries, a fact of which the Department of Home Affairs is well aware.

South African authorities themselves play a large part in the process of illegal entry. Officials are also central to human rights violations and illegal actions on the border, such as excessive use of force and denying individuals the right to apply for asylum in South Africa. However, this does not mean that all authorities are corrupt, violent or xenophobic. There are cases where the authorities attempt to eliminate illegal entry, without self-gain or excessive force. Consider the following extracts:

*“We have been walking from midnight to early in the morning when one venture came over and the driver asked us nicely 'Where are you going guys? Durban, we replied. Okay! We are also going to Durban, come in! They said. We jumped in not realizing that they were policemen ...We only realised when we found the doors of the police station opened, waiting for us”* (Congolese man).

***I: How was your journey to Durban?***

***R: We went to the border and the police checked us and put us in jail. After that, they took us to Durban.***

***I: How long did you take in jail?***

***R: Approximately a month.***

***I: Did they beat you?***

***R: No. we only went through an interview. After that we were sent to Home Affairs (Congolese man).***

Here, illegal entrants are detected and apprehended by the authorities. Whilst attempting to eliminate illegal entry, however, the authorities do not always comply with the law. In the second extract, for example, the respondent is detained for a two week period prior to being sent to the Department of Home Affairs.<sup>23</sup> Even when there is no self-gain involved in border authorities' actions, it appears that the legislation is not always applied in a lawful manner. Training to bring border staff actions into line with South African and

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<sup>23</sup> 'Section 55 of the Aliens Control Act prescribes that a section 7 examination must take place within 48 hours of the person's arrest and detention. A section 7 examination is to determine whether someone is in the country unlawfully. Only an immigration officer can order the continuing detention of someone at a section 7 enquiry. Some view the section 7 enquiry as a sufficient safeguard, others not. The matter is dealt with on page xxxvi of the Human Rights Commission Report, 'Illegal?'. If someone is held longer than 48 hours without being brought before a court or an immigration officer then it is possible to bring the common law 'action ad exhibendo de homine' i.e. an application that the person be brought to court and their detention be justified

international law and protect the rights of refugees and immigrants is therefore strongly recommended to diminish future incidents of this nature.

It is interesting that many respondents speak openly about the clandestine nature of their entry into South Africa. Perhaps this is because illegal entry is presented as continuous with the journey to the country and is justified in close accord to the push and pull factors of leaving. Within their own narratives, individuals are able to justify their illegal entry. Similarly, many do not perceive illegal entry to be a major transgression. For example, those who are fleeing war and persecution regularly justify and accept illegal entry as part of the process of being a refugee. As one respondent explains,

*“I passed through the border when the Namibians immigration official as well as police men were still sleeping because they were drunk. How can they ask for a visa from a person who came from the war?”* (DRC man).

Indeed, the pragmatics of being forced to leave the home country do not always allow for visa or passport applications. In this way, to speak of 'illegal entry' is a misnomer because a lack of documentation is often a central feature of being a refugee.

This section has focused on undocumented, illegal entry. This is because undocumented entrants are particularly stigmatised and scapegoated within xenophobic discourse; as a category they bear the brunt of South African hostility. Similarly, the process of illegal entry, by virtue of its clandestine nature, creates the possibility for undetected human rights abuses and exploitation. It also exaggerates the scope for abuse that exists within the legal realm. Illegal entrants are more vulnerable to exploitation within the border areas, than their legal counterparts are. This is because they are in a particularly tenuous and vulnerable position, where recourse to the law is restricted by the fear of being caught as undocumented.

#### **4.4.3. Violence and Abuse: law enforcement**

Contemporary legislation regarding foreigners is underpinned by racism and prejudice. This chauvinism is not restricted to the administration of legal documents and definitions of who can and who cannot live, work or study in the country. Prejudice and

discrimination also operate through the enforcement of the law and the policing practices that it entails. The potential for abuse spans the entire criminal justice and asylum systems, ranging from the police to the deportation process. The enforcement of the law generates a range of institutional points at which violence might occur. This section considers institutional abuse of foreigners in terms of the police, the army, the Department of Home Affairs and Lindela, which is a private detention facility for those awaiting repatriation.

#### ↓ **The South African Police Service (SAPS)**

If any immigration officer or police officer suspects on reasonable grounds that a person is an alien he may require such person to produce to him proof that he is entitled to be in the Republic, and if such person fails to satisfy such officer that he is so entitled, such officer may take him into custody without a warrant and if such officer deems it necessary detain such person in a manner and at a place determined by the Director-General, and such person shall as soon as possible be dealt with under section 7.<sup>24</sup>

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<sup>24</sup> HRC, 1999a, p.xx,



Police stormed a house in Berea that is believed to be occupied by illegal immigrants.

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Photograph<sup>25</sup>. Cops searching a house that is believed to be occupied by illegal immigrants.

The law thus allows for the apprehension of suspected undocumented foreigners. If a foreigner cannot 'satisfy' the officer of his/her legal status, then the officer may apprehend him/her. In this way, the law gives strong powers of apprehension to police officers. These powers rest on subjective terms such as 'reasonable grounds' and 'satisfy such officer'. Consequently, there is scope for abuse within the law. For example, a personal vendetta or extortion-scheme may lie behind the 'reasonable grounds' on which a person is apprehended<sup>26</sup>.

Alongside the legal potential for abuse, it seems that arresting officers do not always work within the confines of the law. Previous researchers show that there was a substantial failure of enforcing officers to comply with even [the law's] minimal requirements'. For example, it is not a legal condition that individuals carry proof of

<sup>25</sup> Daily Sun Wednesday July 5, 2006

<sup>26</sup> HRC, 1999a.

identification and the 'official policy adopted by the SAPS is that individuals should be accompanied to retrieve their ID if an officer suspects that they are illegally in the country but they allege they do have valid documents' (HRC, 1999a, p.xxi). However, in practice, it appears that apprehending officers seldom do this. Suspects are rarely given the opportunity to collect any valid documents that they might have. Rather, they are apprehended immediately (HRW, 1998; HRC, 1999a). This practice has been criticised as a new form of apartheid because it effectively forces foreigners to carry documented proof of their legal status, in much the same way as black South Africans were obliged to carry pass books to prove their status during the apartheid era (HRW, 1998; Peberdy, 1999a).

Even if suspects are able to identify themselves, this is no guarantee that they will not be arrested. Reports are showing that foreigners' documents are regularly destroyed by enforcing officers. For example a Ghanaian respondent claims:

*“My documents were destroyed by the police three months ago and I was jailed for two weeks accused of being illegal in the country and released on Home Affairs intervention. For the first instance I was never given a chance to tell the police or Home Affairs about my documents”.*<sup>27</sup>

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<sup>27</sup> Chanaan respondent

# Give back my papers!

By **MATSEKO RAMOTEKOA**  
**A NIGERIAN** handed in his papers to Welkom Home Affairs office.

But he hasn't got them back, and now he fears that he won't become a South African citizen.

John Omoragie told *Daily Sun* that he came here as a legal immigrant eight years ago.

Two months ago he was taken to Home Affairs, where officials accused him of being an illegal alien. Omoragie told the *Sun* that he was jailed for six days at Welkom Police Station. He was released when his South African wife

showed their marriage certificate. But Home Affairs confiscated the certificate!

Omoragie says he went back to Home Affairs for his marriage certificate and his immigration papers but an official demanded money for them!

"I told him I had no money and walked out," said Omoragie.

Patrick Phala is in charge of the Welkom Home Affairs office. He told the *Sun* that nobody had informed him about the situation. He said he would personally investigate the matter. "I will see that I get to the bottom of this," said Phala.



**John Omoragie from Nigeria.**

*Photo by Modise Tau*

Photograph 21<sup>28</sup>. Nigerian claims his papers.

The way police apprehend suspected illegal immigrants is unsatisfactory, because even if you have an Identity Document they just tear it up, they don't want to listen to any explanation. The destruction of documents is often linked to corruption and extortion. If suspects refuse to pay a set amount, they are usually detained and any documents they have are destroyed. For example a Nigerian pictured in Photograph 21 is complaining

<sup>28</sup>Daily Sun Friday September 22, 2006

about a Home Affairs official confiscating his marriage certificate and demanded money. But at the same time, undocumented foreigners may be able to secure their freedom by paying for it. This issue has been discussed between Home Affairs officials and members of the SAPS in Durban last year<sup>29</sup>.

*“I was arrested by two black officers and taken to nearby police station. Upon arrival they told me that if I gave them money they would release me. I phoned my sister who brought me my papers and I was released one day after because my sister refused to pay the amount that they were asking”* (Senegalese man).

The abusive role of the police is not restricted to corruption, intimidation and destruction of documents. Similarly, various newspaper articles report incidents of violence at the hands of the SAPS. The following incidents appear to be typical representations of police brutality:

*“...once in the police station yard, I couldn't be given an opportunity to drop off the van. I was once again assaulted by these police officers. They used what ever instrument that was available to hit me and I was bleeding...”*<sup>30</sup>

The reasons for physical violence are varied. They include extortion and bribery but also incorporate more general, abstract reasons such as xenophobia and hostility towards foreigners, a sense of patriotism, and abuse of power (Morris, 1998). It is also important to recognise that social stereotypes feed into police actions. For example, Morris (1998) explains that:

Xenophobia and the perception that most Nigerians are involved in drug-dealing has led to the police actively seeking out Nigerians ... Almost all of the Nigerian interviewees had a tale of police brutality, corruption or intimidation ... There were constant accusations that the police plant drugs when their search of an apartment is unsuccessful ... . Almost all of the Nigerian interviewees mentioned their fear of being kidnapped [for ransom money] by the police ...

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<sup>29</sup> Interview with a DHA official.

<sup>30</sup> See Mushagalusha Ombeni case in chapter three.

#### ‡ The South African National Defense Force (SANDF)

The SANDF plays a similar role to the police regarding the tracing and arresting of foreigners. Indeed, many police operations are supported by the army and the two institutions work closely together. The SANDF regularly assists the police with activities throughout the interior of the country.

Cooper (1999) suggests that South African border patrols and controls have been increasingly strengthened during the 1990s. Despite a brief diversion of financial support away from the borders in 1994, she explains that there has been a large focus on controlling immigration at the (legal and illegal) entry points to the country. Peberdy (1999a) notes that:

*As with the SAPS, it appears that the SANDF has also been involved in a range of human rights violations and abuses during the apprehension-detention process (HRW, 1998; HRC, 1999a). Reports cite corruption, extortion and the destruction of documents, as well as physical violence and brutality (HRW, 1998; HRC, 1999a).*

*The soldiers destroyed my ID document a week before. They looked at my inoculation mark and told me my ID was false and ripped it up. They said I couldn't be a South African with a mark (HRW, 1998:50).*

*They stopped the van and took us out to cross-question us. They were wearing camouflage uniforms. We insisted that they had taken our money, and then they beat us badly. When we were on the ground, they jumped on us with their heavy boots. My ribs were very sore (HRW, 1998:62).*

#### ‡ The Department of Home Affairs (DHA)

The Department of Home Affairs is responsible for: aliens control and admissions, and refugee / asylum affairs (Schraevesande and immigration –act-regulations-briefing, 1999 ). Generally, work in both of these areas entails granting legal status to foreigners (temporary, permanent or refugee status), processing and renewing permits, and repatriating or deporting 'prohibited persons'. The DHA decides the status of particular

foreigners in the country. As such, the department yields much power over individual lives. For example, a decision might mean the difference between life and death for someone seeking asylum here; if asylum status is refused, the applicant could be sent back to death, torture or imprisonment in the home country. While the legal system of checks and balances, appeals and repeals, is intended to prevent such a scenario, it seems that the system is open to abuse by corrupt individuals (Cooper, 1999; Duncan, 1998; and Crush, 1998).

Corruption and fraud are common features. Foreigners who are legally entitled to be in South Africa report having to pay 'extra' for the processing of their documents and to secure their status. For example, a Nigerian respondent said: ***“I was told to pay an amount of R800 for a refugee status at the Durban Home Affairs office”***. Similarly, those who are not legitimately entitled to documentation are often able to buy legal status from corrupt officials. This may result in the purchase of forged passports and ID books or, more commonly, the purchase of bona fide South African documents that are illegally granted to the buyers.

While the anti-corruption unit has made a number of recent arrests and the department is committed to eradicating corruption, a number of officials have been victim of arrest last year at the DHA/ Durban refugee reception Centre. It is therefore important to recognise that corruption and the manufacture of fraudulent documentation are significant problems facing the DHA.

The work of the department is not restricted to status determination and issuing documents. Officials are also mandated to trace and apprehend undocumented foreigners (HRW, 1998). In this regard, the department works closely with the police and the defence force to find and detain suspects. HRW (1998) reports that officials from Home Affairs department perpetrate similar abuses to those of the SAPS and the SANDF during the apprehension-detention process. These include using arbitrary and racist identification measures, taking bribes, and physically assaulting detainees (HRW, 1998).

Once suspects have been apprehended by the DHA, the police, or the army, the department is responsible for processing and repatriating undocumented migrants (HRW, 1998). This processing stage offers another opportunity for corruption. Foreigners who are able to pay corrupt officials are often released at this stage, or their repatriation is 'speeded up' so that they do not spend unnecessary time in detention (HRW, 1998). In contrast, foreigners who are unable to pay officials may be detained for long periods, while awaiting repatriation.

*“I was arrested with other foreigners on my way to stanger; we were taken to the police station before being taken to Lindela where I spent two months. After realizing that I was legal in the country, I was released. Two weeks later, I went to the DHA to ask for repatriation but until now I’ve never received any response”<sup>31</sup>.*

By law, the processing period between apprehension and repatriation (i.e. the detention period) cannot exceed 30 days without judicial approval; that is, without the case being reviewed by a judge of the High Court (HRW, 1998). In practice, however, it appears that many foreigners are detained unlawfully beyond the 30-day limit. Unlawful detention is an infringement of the right to liberty and is therefore a violation of the South African Constitution (Rens, cited in Keeton, 1999). In this regard, the Department of Home Affairs has been criticised for violating the human rights of foreigners. The Human Rights Commission consequently applied for a legal motion to require 'Home Affairs and Lindela, run by private security company Dyambu, to put in place the right procedures and capacity to prevent illegal detentions' (Sowetan, November 12, 1999:2).

#### **4.4.4. Documentation and institutional exploitation of foreigners**

Documentation represents one visible area in which foreigners both exploit and are exploited in South Africa. This persists even beyond the borders, into South Africa. The difficulties that entrants face continue to play out in their daily experiences of South African life. The 'entry experience' consequently offers a useful template for exploring daily challenges within the country. For example, corruption and exploitation remain central to 'legalising' status in this country. Consider the following comments:

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<sup>31</sup> A Ghanaan respondent

*“My application for a refugee status was rejected after undergoing an interview, then a friend of mine from Nigeria told me that he can be able to help me on condition that I pay an amount of R800. Two days after my payment, a refugee status was issued to me”* (Nigerian man).

*“My friend was rejected at the Home affairs department but was charged R200 for the permit and he had to pay R100 each three months when he wants to renew it. The rate differs according to your nationality. Ghanaian, Senegalese, and Nigerians- they have different rates each to pay. At the maximum, there are some nationalities that pay up to R1, 000. No free service”* (Somalia man).

As these extracts reveal, 'without money, there is no service' for many seeking to attain and maintain legal status in South Africa. Money and corruption are central to this process, which, at the borders, is captured by an economy of movement (based on getting to a destination). Within the nation, this process is captured by an economy of stillness (based on staying in the country). It is important to recognise the role that foreigners themselves play in the system of corruption. This role is not exclusively that of 'victim'. Rather, corruption is a double-edged sword in that it 'benefits' those who can afford to pay, whilst simultaneously exploiting those, such as bona fide refugees, who should not have to pay. For example, a Mozambican admits to purchasing a South African identity document:

*R: I went to the Home Affairs Department to apply for a work permit. I applied for a South African ID document and I paid R1, 500.*

*I: Was that the man from Home Affairs you paid R500 to?*

*R: Yes. (Mozambican man)*

Regardless of whether foreigners themselves are complicit in the system of corruption, the centrality of money to documentation and legal status suggests that they are vulnerable to economic exploitation.

*I went to the police station to report that I had been kidnapped and stabbed. They asked me: where is your ID. I produced a refugee permit. "What is this? They asked but I just kept quiet. They threw it away. Then they told me to disappear before they arrest me (Congolese man).*

As this extract suggests, it is not just the process of getting and maintaining legal status that is open to exploitation. It is also the process of checking status that is subject to corruption and abuse. The above example suggests that it is often more the guise of checking status rather than any actual concern with status per se that creates a space for abuse. In this regard, the Department of Home Affairs is not the only institutional site through which exploitation occurs. Respondents indicate that corruption, harassment and brutality take place at the hands of the police, the army and Lindela officials too. More generally, these practices are also reported at the hands of the South African public. Two broad levels at which the assessment of these practices can be expressed: namely, economic exploitation of foreigners and xenophobia. These will be discussed below. While treated as separate entities, it is important to recognise that they are closely inter related because they have at their mutual root the vulnerability of foreigners within South Africa.

#### **4.4.5. Economic exploitation, crime and violence in South Africa**

Financial and material gain underpins and motivates certain criminal actions towards foreigners. In this regard, Kollapen (1999) suggests separating the experience of 'ordinary' crime/violence from the experience of crime/violence as a result of foreignness. In this division, the former is not directly related to nationality, while the latter is. Respondents acknowledge that certain incidents are not contingent on their nationality but are rather fortuitous indications of ordinary crime. This is reflected in the following extracts:

*R: Four young guys carrying knives, tried to rob me of the phone on my way back from work. I managed to kick them because I was also carrying a knife. Instead, I took both a knife and a phone from them.*

***I: Why do you think that this happened to you?***

***R: I think they do these things because, not for me, is for everybody, not for foreigners only*** (Congolese respondent).

These respondents see themselves as victims who could as easily have been South African. For other situations, the division between ordinary crime and crime-based-on-foreignness is not as clear cut. As a Senegalese puts it:

***“The area in which we stay seems to be the most dangerous in the city of Durban. It worse when those thieves, robbers, gangsters, pickpockets, etc, realise that you're a foreigner (not speaking Zulu), that exacerbates the situation”*** (Senegalese man).

For this respondent, there is an overlap between being a foreigner on the one hand, and vulnerability to ordinary crime/violence on the other. He suggests that foreigners are located in dangerous places and this enhances their vulnerability to 'ordinary' crime and violence.

Along with dangerous living circumstances, foreigners often find themselves in dangerous jobs. For example, various male respondents report that they work in the security industry because they are unable to pursue other occupations. As security guards, they face concentrated 'ordinary' crime.

***“My relative, a qualified electrical engineer from DRC could not get work in his field in South Africa. So he worked as a security guard in Mobeni. In 1999, he was assaulted and left unconscious in the train on his way back home and died of serious injuries the day after”.***

The socio-political climate, which is hostile towards many foreigners, facilitates economic abuses. Respondents also report that they are either unable to open bank accounts or face general banking difficulties (by virtue of their foreign status).<sup>32</sup> This

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<sup>32</sup> This requires more exploration and clarification from South African banks as it is unclear whether this is an official banking policy or if it is a result of informal discrimination. Also, it is important to establish which foreigners are able to make use of banking facilities.

similarly encourages exploitation because foreigners are known to carry their money, in the absence of bank accounts.

*“I am selling clothes on the street; I make almost R200 daily but I cannot keep it in the bank. I went at one of the First National Bank (FNB) to open a bank account but the required me to bring a green ID. That's why we get robbed everyday because criminal know that most of foreigners keep money with them” (Congolese man).*

*“I was working as a general worker in Westville Construction Company. I was paid R25 daily but when I got injured at work, I got dismissed without any payment”<sup>33</sup>* (Zimbabwean respondent).

In many situations, it is consequently difficult to separate the foreignness of a victim from their experience of ordinary crime. Indeed, foreigners are often targeted for ordinary crime due to their tenuous position in society.

#### **4.4.6. Xenophobia as a cause of hostility and violence**

Many of the criminal and violent actions meted out to foreigners in South Africa relate to financial exploitation. However, not all hostility and violence is underpinned by material gain. Certain incidents are motivated directly by the foreignness and/or nationality of individuals. These incidents can be labeled 'xenophobic'.

It is important to highlight a subtle distinction behind the form of xenophobia, that is, to separate 'foreignness' from 'nationality' as the underlying impetus. In the former, hostility is motivated by a general sense that the individual is not-South African. It is not their specific nationality as much as their foreignness, or non- (South African) nationality, that prescribes xenophobia. This translates into statements and actions that are justified in broad, general terms (HRW, 1998).

Variations of this 'general xenophobia' include comments and actions directed at refugees, illegal, and 'makwerekwere'.

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<sup>33</sup> When conducting interview with the team leader of Durban office labour department, this issue was of concern. She said “there is one law for , this issue must be brought forward”

*“I am married to a South African Woman; she came with her two kids whom I support for every need including studies. One day she came to my shop and found me talking to an African customer and she therefore started swearing at me in public calling ‘Amakwerekwere’, derogatory word that she always use when she is angry”* (Senegalese man).

The level of xenophobia perpetuates myths and generalisations about specific nationalities. It operates in a context of asymmetrical media reporting and public sentiment about 'Nigerians', 'Zimbabweans' and other particular national groupings. To say that Mozambicans 'can stink' and that Nigerians are 'violent' and 'disobedient' contributes to this hostile climate. This, in turn, directs xenophobic actions towards specific nationalities.

Violence and murder are not the only expressions of xenophobia. As the Roll Back Xenophobia Campaign (1998) recognises: 'there is more to xenophobia than killings and attacks in the streets of South Africa. Extortion and abuse at the hands of some sections of police and civil servants, and discrimination in areas of education, health care and labour markets are but examples of institutions and segments of society where xenophobia manifests itself' (Roll Back Xenophobia Campaign.1998).

For many respondents, including those who have experienced xenophobic violence in South Africa, it is the ongoing, daily encounters with institutional discrimination, verbal abuse, and public hostility that predominates their negative perceptions of South Africa. It is thus important to acknowledge xenophobia as part of a whole system. This system permeates each tiny aspect of daily life for foreigners in South Africa and it operates because of their vulnerable social position.

One central, daily practice that many foreigners face within this system of xenophobia is that of public hostility. Respondents confront constant harassment and insults from ordinary South Africans. '**Makwerekwere, go home**' is a familiar refrain from a range of social players, such as shoppers, pedestrians, passengers, taxi drivers and their conductors, neighbors, and work-colleagues.

For many foreigners, language, accent and appearance play an important role in signaling their foreignness and triggering public conflict. This is illustrated in the following statement:

We once went to a hospital, but, as we can speak Zulu, the nurse who was attending us, just decided to leave us like that because of our accent, though we were speaking Zulu (Zimbabwean man).

Another common daily practice that foreigners encounter is that of secondary victimisation at the hands of the authorities. 'Secondary victimisation', as a term here, refers to the ways in which foreigners are further marginalised and actively victimised by the authorities when they go to report a primary incident of victimisation. This is illustrated in the following incident:

*“...I went to the nearby police station to open an assault case but I was told to go back to the station where the incident happened. I asked the officer who was helping me: “how can I tell the accused to open a case against themselves or their colleagues?” but the response was “we can not help you in this instance, go wherever you feel like they can be able to handle your matter”, the police officer responded<sup>34</sup> ...”*

Many foreigners attempt initially to follow legal channels when they are victimised. However, the hostility and secondary victimisation that they frequently encounter with the authorities are significant deterrents to their future actions. This contains the potential for vigilante actions and violence from foreigners who feel that there is no legal recourse available to them.

#### ✚ **Xenophobia between foreigners**

Many respondents draw on stereotypes about other foreigners in South Africa. For example, consider the following comments about Nigerians:

*“With Nigerians, they are well known all over the world that they are drug dealers”.*  
(Mozambican man)

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<sup>34</sup> See the case of Mushagalusha Ombeni in chapter three

*“If a Nigerian is selling drugs, it does not mean that all foreigners are selling drugs or all Nigerians sell drugs. If he marries a South African girl for his own purposes ... it does not mean that Congolese would do so”* (Zimbabwe man).

Similarly, consider the following generalisations about Zimbabweans:

*R: Most Zimbabweans are involved in crime. They will come with their car, find a Nigerian walking alone in the street. They'll just stop and take all your goods.*

R: Most Zimbabweans and Mozambicans that are around are the one who always call foreigners “Makwerekwere” and “Magrigamba” ... They just fluent in Zulu and say you are a kwerekwere (Nigerian men).

#### **4.5. Conclusion**

Respondents in this study were reluctant to disclose information regarding certain issues such as their home-town associations, activity or business involved in, problems encountered with the law, personal treatment as well as employment denial since they felt not being comfortable.

This extract however, reflects a multi-layered process of stereotyping about Nigerian perceptions of Zimbabwean actions towards Nigerians. It is based on negative generalisations about Zimbabweans who are presented as violent criminals. It also comments on perceptions of belonging and foreignness within South Africa. For these Nigerian respondents, Zimbabweans, and not South Africans, have made them feel foreign. They are 'the force that started calling Nigerians kwerekwere'. Here, foreignness is defined through language - Zimbabweans are able to speak Zulu while Nigerians are not and this gives them a sense of belonging (in the eyes of the Nigerians). It is beyond the scope of this study to fully unravel the complexities of identity, language and degrees of foreignness. However, extracts such as these serve as reminders that foreigners themselves are actively involved in these discourses about their own foreignness, which they too produce and reinforce.

## CHAPTER FIVE

### RESULT ANALYSIS

#### **5.1. Introduction**

After the collection of data, it is always important that this is analysed. This is expressed in Marshall (1998:65) who states that, once the data has been collected and summarized, the researcher needs to make of the data by beginning the process of analyzing the data. This includes sorting through data to identify patterns and establishing relationships in the research. Essentially, during data analysis and interpretation the researcher draw conclusions about the research objectives based on evidence collected. At this stage suggestion and recommendations need to be made. Suggestions may for example, be made for further research and the possible application of the result to other fields. Recommendations can also be made for the development or attraction of relevant programmes and policies.

#### **5.2. Unstructured Interviews, Questionnaire Administration and Focus Group Discussion**

Informed by the available literature, media articles and key informant meetings, a comprehensive list of questions was developed for interviews. Before conducting the actual fieldwork, these schedules were vetted by the University high degree Research Committee for their content, relevance and ethics. Consequently, organisational support and advice was solidly structured into the research process.

Interview questions were carefully ordered according to two broad research dimensions:

- chronology, and
- sites for potential violence and xenophobia

In the chronology dimension, the questions were arranged according to time and history in South Africa. The questions 'began at the beginning' by establishing the respondents' origin and motives for coming to South Africa, that is, background prior to entering the

country. Then, the respondents were asked about entering South Africa, journeying to their current location, and living and working in the country across time (their livelihoods). The sequential arrangement of the questions was intended to structure the interviews in a logical order and to allow for a narrative to develop.

Functioning alongside the chronological dimension, the questions were also designed to explore certain areas, or sites, at which the potential for violence as well as xenophobia exists, including:

- entry into South Africa (through official and unofficial border crossings);
- travel within the country;
- dwelling-place;
- work-place;
- authorities, including the SAPS, SANDF, Department of Home Affairs...

At each such site, respondents were asked about their experiences and coping strategies. These sites were tracked across the chronological account offered by the respondents and were mapped as variables within the narrative of the foreign journey to, and experience within, South Africa.

Along with providing a useful way to structure the actual interview and focus group discussions, the dimensions of chronology and sites for possible violence and xenophobia have also been utilised to structure the analysis of this thesis. There are two reasons for this. Firstly, much of the information gathered through the interviews and focus groups adheres to these dimensions and is thus conducive to this analytical format. Secondly, as the literature review reveals, the various sites for possible violence and foreigners' experiences over time, play an important role in understanding the forms of violence involving foreigners in contemporary South Africa. Consequently, the data is to be analysed within a structure that encapsulates both dimensions.

### 5.2.1. Respondents

The bulk of the interview and 2 focus group fieldworks were conducted over a three-month period (October 2006- January 2007).

Based on findings from the literature review, foreign respondents were chosen according to their experiences of violence or crime in South Africa, the countries from which they came, and their legal status in South Africa. These criteria were included for the following reasons:

- ✿ The literature reveals that xenophobia is practiced asymmetrically in South Africa, with African foreigners representing the primary victims/targets of xenophobic violence. Thus, all of the respondents were black Africans from across the continent.
- ✿ In order to investigate how violence and poverty in home countries impacts on exile in South Africa. Hence, countries that are currently reflected by the nationalities of political asylum seekers and refugees in South Africa were deliberately targeted.
- ✿ In order to explore the connections between legal status (undocumented, asylum seeker, refugee) and the reception of foreigners (by South Africans and foreigners alike) in South Africa.

Interviews were conducted in English but most interviews and all of the focus groups were conducted in the first language of the respondents, through a translator, who also assisted in the facilitation of the process. This was a deliberate strategy in order to make the research process as accessible as possible to respondents as well as to capture the nuances of their stories (which are best expressed in a home language). The interviews and focus groups were transcribed by the researcher.

It is important to note that confidentiality was guaranteed to the respondents, except in cases where individuals were speaking in their official capacity as representatives of certain organisations. In these situations, the principles of informed consent were strictly applied. In the analysis below, respondents are coded according to nationality.

Nationalities are included because they indicate important variables throughout this analysis and, in order to protect the confidentiality of the respondents, they will not be elaborated on in this thesis.

As shown in the previous chapter, only 7% of the respondents interviewed have been in South Africa for more than ten years. When asked about their intention of staying in South Africa, they responded that they were not willing to stay in this country and their main aim is to go abroad. This is a clear indication that foreigners only spend a certain time working very hard and once they manage to save a certain amount of money allowing them to sponsor their journey, they automatically fly to over seas which seems to be their dreams “their final destination” . This may be interpreted from the figures of 80% of total respondents who indicated their unwillingness to stay on a permanent basis and 20% who showed their willingness to do so. This is in parallel with Geyevu’s work that showed that the main reasons given for unwillingness of foreigners to stay permanently in South Africa were the desire to move (Geyevu, 2001). It is important to further note that the majority(70%) of those not willing to stay permanently in South Africa is rather intending to go abroad while 30% of them is willing to return back home. This contrasts Geyevu’s work showing that the majority is intending to go back to their country of origin rather than moving abroad. From this experience, it is clearly shown that the number of foreigners living longer in South Africa is so limited compared to those that have spent only few years in South Africa( Table 4.1). This can bring the researcher to the conclusion that the longer a foreigner lives in South Africa, the better chance he has to move either abroad or home.

### **5. 3. The Context of Im / Migration in South Africa**

The context of policies has been identified as an important variable in the evaluation of policy implementation. This does not only refer to the national context, but also the regional and international. Ten years after the end of apartheid South Africa finds itself in the grips of xenophobia. Within the last twelve years the country has moved away from a history of isolation and oppression to one in which human rights, peace and stability predominate. Unlike many neighboring countries in Africa and the SADC region that are

plagued by tensions, poverty and non-democratic rule; South Africa has emerged into a world with increasing pressures of globalisation and interdependence, particularly in the movement of capital, technology, information and population. This is among the factors that pull a number of foreigners to South Africa as stated in chapter four. Mokoena (1999:5) stated that since 1990 and more specifically since 1994, South Africa has experienced an increase in tourist traffic, refugee flows, heightened business immigration interests and an increase in immigration both legal and illegal.

The new South Africa, now echo's the concerns and views of countries worldwide, which justifies the draconian control and enforcement of strict immigration laws, in terms of the threat posed to citizens by 'waves and floods of people from an impoverished Africa'. Restrictionism, control and deterrence in the international and regional management of migrants, immigrants and refugees have become a trend. States have taken it upon themselves to protect and enhance the self-interest of its citizens and to shape and sustain a national identity through a continued but distorted definition of 'otherness'.

It is important that immigration and migration are understood within the larger framework of human rights and the forces of globalisation. The effects of the combination of the latter forces are particularly prominent, as South Africa opens up to the world after decades of isolation.

Despite documents stipulating that people have the right to move freely within the borders of their own country and the various international conventions on civil and political rights, the effects of globalisation within South Africa's internal and regional context may have much more impact in the long run (Mokoena, 1999:5).

This research shows that the majority of respondents (90%) expressed their disagreement about their negative perception on the faces of local citizens while 10% of the respondents are giving right reason to be blamed for number of illegal occupations. This is in contrast with the discourse that have led to the conclusion of foreigners being blamed for the high level of unemployment, crime, lack of housing and many other social

ills experienced by locals. Nigerians are therefore blamed for the high crime rate, Mozambicans accused of being car thieves and educated Zimbabweans are blamed for stealing jobs.

All the respondents expressed their concern about being more discriminated by their African brothers than any other population (races) in South Africa. This is shown through the fact that local South Africans find foreigners, especially black foreigners, a threat to their way of live, their new opportunities and the scares resources they fought for during apartheid. Matloff reinforces this argument by stating that the apartheid's isolation and the increasing frustration with the slow pace of South Africa's post apartheid transformation leaves South Africans blaming foreigners for their problems. He also added that "There is a growing tide of xenophobia among South African who believe that their situation will improve if all illegal aliens are deported" (Matloff, 1995:7).

### **5.3.1. The international context**

International issues including globalisation, human rights and the increase in population movements, all have a major influence on the creation and implementation of South Africa's immigration policy. The increase in conflicts, economic and political instability and poverty across the globe has resulted in a large number of displaced people. Migration and immigration must be understood within the larger framework of human rights and the forces of globalisation. The effects of the combination of these forces are particularly salient, as South Africa opens up to the world after decades of isolation.

As human beings these people have rights, and as a democratic country South Africa has pledged to up hold these rights. In terms of the Universal Declaration of Human Rights and migrants are afforded the protections as pledged by the member states. This pledge includes the promotion of universal respect for and observance of human rights and fundamental freedoms. Under international law, according to Article 2 of The International Covenant on Economic, Social and Cultural Rights and Article 13 of The International Covenant on Civil and Political Rights, once a state has admitted aliens (documented immigrants) into its territory, it must treat them according to internationally determined standards. But research findings shows that South Africa is only putting ' a

face masque' ( ironic service provision) just to draw the attention of the international community that the South African government always cater for foreigners who live in South Africa.

International human rights law gives many rights to lawful aliens. Some of the most important of these include; the right to residence, freedom of movement and economic and social rights. Illegal aliens however are not lawfully in the territories of the states other than their own. By law, they can be removed once they are found to be illegal. However, because they are human beings, they are nevertheless entitled to some basic rights. These include dignity, freedom and security of the person and life (Majodina, 2002: 69).

Despite documents stipulating that people have the rights to move freely within the borders of their own country, and the various international conventions on civil and political rights, there is tension between these issues. While there are human rights conventions and international norms preventing the state from undertaking coercive measures, such as enforced repatriation to deal with illegal immigrants, there are problems. One of these problems is the fact that international law is ambiguous on the question of transborder migration. It is acknowledged that human rights are essential however; the various international legal provisions regarding immigration and migration do not take away the power of the state to regulate its borders. States are free to decide who should enter and in what numbers. Therefore, South Africa has to reconcile with the increase in population movement and the trend to restrict and control these population movements (Klotz, 2000:17).

As mentioned in chapter four, South Africa's Immigration Act is, to an extent rooted in past immigration legislation which reflected the ideology and prejudice of apartheid. With the end of apartheid and South Africa entering into the international community as a democratic country, it is expected to uphold principles of democracy, such as human rights. However, in some cases the treatment of foreigners in South Africa has been a gross violation of human rights. Not only do ordinary citizens in the street abuse

foreigners, but also by government officials, who verbally attack them in statements and speeches and civil servants, who deny them basic services (such as health care).

### **5.3.2. The regional context**

As indicated in chapter four (table 4.2), it is important to imply that none of these respondents was above 47 of age. This is an indication that the majority of immigrants (93%) who come to South Africa are in their youth ages (working age). This might bring us to the conclusion that the majority of foreigners are here for economic reason.

The majority of respondents (93%), being in their working ages might give to the researcher the impression that most of foreigners are here as economic migrants. It is indicated those from Southern African region seem to be more economic migrants than those from the other corners of the African continent and are therefore intending to remain in South Africa for permanent basis. That is why you have found most of them indistinct with South African citizens. This has led South Africa to a/n migration/immigration dilemmas. The later is reflected in the regional context too. For instance, for centuries people have been moving across borders especially within the SADC context. Migration to South Africa from neighboring countries goes back to the discovery of minerals in the last century, which resulted in people from neighboring countries coming to work in the mining industry. While a number of these movers, migrant workers especially, have obtained citizenship many others have not. With the end of apartheid these workers and their families were given equal opportunities to resource in South Africa. Today this sector continues to employ many people from South Africa's neighboring states. The economic situation and the high rates of unemployment in these states have resulted in a great dependence on this form of employment, in the entire sub-region (Majodina, 2002:70).

The debates show that 75% of those respondents willing to stay permanently in South Africa are from Southern African region and the 15% from West Africa. This once again shows the dominance of economic motive as the main force behind the movement of respondents to South Africa.

This research shows that 22% of those interviewed entered the country using temporary residence permits while 71% and 7% entered the country illegally and using work permits respectively. This is a clear demonstration that the Immigration Act in South Africa deals with migration by making provision for a number of temporary residence permits to be issued to suitable foreigners. However, it does not take the country's historical reality into account and priority is placed on providing permits to investors, entrepreneurs and people who promote trade and are seen as bringing new knowledge, skills and expertise. None of the permits deals specifically with the position of migrant workers and traders. This approach fails to take both South Africa's historical reality and regional obligations into consideration.

Furthermore, it encourages both illegal migration and negates the reality of the existence of many migrant workers already active in the country. A more effective approach to migration policy would be to adopt a humane management orientated approach to migration, which recognises both our moral and historical ties to the region. This approach would also help to reduce xenophobia. As it is at present a number of South Africans see migrant workers as a threat to their jobs and they are afraid they will settle in the country, becoming even more competition for scarce resources. All this has contributed to the growing xenophobic sentiment in the country.

It has been noted that the new government's response to this increase in immigration has been as fierce as its predecessors. Along with the new influx of population, South Africa finds itself at the forefront of African initiatives such as the African Renaissance and NEPAD, its membership of SADC and the AU. While South Africa has not committed itself to the free movement of people and harmonisation of immigration policy within the SADC region, its membership of SADC brings certain responsibilities and obligations.

The sheer geographical proximity of the SADC region has resulted in the reality that these countries will continue to provide the largest proportion of people migrating to South Africa (Harris, 2002:169-182). Reitzes, 1997 shows that Regional integration and

African co-operation are essential to the success of these initiatives and organisations. While this is so, and South Africa has pledged its cooperation to these initiatives, the government's response to the increase in immigration has been far from welcoming. The new Act does little to advance greater regional integration and cooperation. Migration is an important mechanism in regional development and this in turn will reduce the "push" factors that lead people to migrate to South Africa from poorer countries. South Africa's commitment to regional development is also inconsistent with Pretoria's position on immigration. If illegal immigrants and refugees are seen as a threat, it undermines any larger program to develop the Southern Africa region as a whole in a way that will provide stability, peace and economic growth (Reitzes, 1997:3).

### **53.3. The national context**

While local South Africans view foreigners as a threat to their opportunities and freedoms, foreigners see South Africa as the land of opportunities and freedom.

The democratisation of the policy-making process in South Africa opens the process to be influenced by the public. It has been argued that this, ironically, has resulted in the persistence of apartheid style immigration policy. Four dimensions of the process can be identified; international pressures, mass-based societal influences, parliamentary decisions and regional dynamics.

It appears that much of the public and most of Parliament support strict immigration restrictions. For instance the Department of Home Affairs is adopting a more restrictive policy especially when it comes to employment of a foreigner in South Africa. Before a company or any other organization (public or private) employs a foreign labour, a strong evidence and proof should be provided as to convince the department that sufficient advertisement was made and none of South Africans has the potential to occupy the position.<sup>1</sup> This is reflected in the policy outcomes (Klotz, 2000:19).

Restrictive immigration policy often leads to violent xenophobic acts against immigrants;

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<sup>1</sup> Interview with a DHA official from permanent residence office.

this includes the narrow interpretations of government's obligations to protect immigrants, the reliance by all categories of foreigners an often clandestine means of entry, the criminalisation of so-called illegal immigrants, the stigmatisation of refugees as spurious asylum seekers and the scapegoat of migrants and refugees as criminals and the cause of unemployment.

Many black communities are so frustrated with their poverty, homelessness and unemployment. As the South African media have represented foreigners in a negative and stereotypical manner, in which they are regularly connected with crime, poverty, unemployment and large-scale costs, more locals believe foreigners are the problem and getting ride of them is the solution. Tensions are therefore running high between foreigners and locals. With this negative sentiment and the years of isolation South Africa has become a hostile and xenophobic country were we find that most of foreigners, particularly Somalis are more vulnerable to crime and xenophobia<sup>2</sup>. Reactions to this issue by government have been diverse and inconsistent. Many government officials and the Department of Home Affairs have adopted the attitude of keep them out and send them home (Reitzes, 1997:2). With these attitudes and views of immigration, a policy has been made and is to be implemented in such a climate.

With the re-entry of South Africa into the international system, South Africa finds itself in a substantially altered international system. A system where increased capital, population and information flows intensify cultural interactions and the expanding cope of global governance all create new challenges to national autonomy. South Africa finds itself struggling to become economically competitive, it is in growing demand to contribute to regional peacekeeping efforts and it finds itself the locus for people seeking jobs or fleeing regional conflicts (Klotz, 2000:20).

The pressures resulting from this sudden reincorporation into the global economic competition, especially the increased expectations of citizens after the 1994 democratic transition, has created strains on the state. It confronts challenges both to its ability to

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<sup>2</sup> Daily News Tuesday August 8, 2006 p5.

satisfy domestic demands (for jobs, new houses, and protection from international economic competition) and its legitimacy as a decision-making institution (a new constitution, regional and African integration and demands for greater provincial autonomy). At the moment as South Africa strives for leadership in the world and region, the persistence of xenophobia limits the extent of any transformation away from a siege mentality. The demise of apartheid as an ideology has meant the elimination of race as a legitimising discourse for the state. Yet other dimensions of inherited worldviews may not be discarded quickly. South Africa's politicians and population maintain a perception and vocabulary that are remnants of an earlier era. Not only does the legislation reflect much of the apartheid's total strategy discourse, but also the mindset of the South Africa society (Klotz, 2000:20).

South Africa's Immigration Act does not take into account its new role on the international stage. It is not sensitive to the context of the present international, regional and national realities. By not adapting to its new role, especially in terms of integration in the region and the promotion of human rights as far as foreigners are concerned, xenophobic sentiment is 'allowed' to continue.

Despite South Africa's regime change to democracy the government has still resisted migration and immigration. As pointed out previously, this is ironic since the basis of the new state, informed by a struggle against previous human rights violations, reverts to similar state centered politics, informed by the apartheid period. This resistance to immigration and migration is seen in the policies the state has developed since 1994 regarding the issue, the new Immigration Act being no exception. These policies and the depiction of foreigners as a threat have led to increasing xenophobia and resentment against immigrants and migrants at all levels.

In the new democratic South Africa, as well as in the changed regional and world order, the previous Aliens Control Act and the new Immigration Act are problematic on several grounds. Firstly, South Africa has committed itself to supporting human rights. Secondly, the new dynamics in the post-Cold War era have tended to challenge the sanctity of the

state and have pushed new global issues to the fore, such as globalisation, integration and increased cooperation. Lastly, South Africa is committed to regional integration and development, which poses as a dilemma since the Immigration Act places such emphasis on keeping people out.

The state therefore faces a series of dilemmas. These include how to regulate legal immigration, provide for the integration of legitimate settlers, the adoption of policies to deal with illegal immigrants, the understanding and preparation for ethnic factors that effect social change and their consequences for the development of the nation-state which all contribute to the problem of xenophobia.

#### **5.4. Public Policy Defined**

In order to create a framework of analysis for evaluating the implementation of South Africa's immigration policy, it is important to understand the concept public policy. Policy is a statement of intent. Briefly a policy lays out the basic principles to be pursued in attaining specific goals. Ranney (1968:7) defines policy as a declaration and implementation of intent. Hanekom (1987:7) states the policymaking is the activity preceding the publication of a goal, while a policy statement is the making known, the formal articulation, the declaration of intent or the publication of the goal to be pursued. Policy is thus indicative of a goal, a specific purpose, and a programme of action that has been decided upon. Therefore public policy is a formally articulated goal that the legislator intends pursuing with society or with a societal group, amongst others. Anderson (2000:4) argues "public policy is a relatively stable, purposive course of action followed by an actor or set of actors in dealing with a problem or matter of concern". The focus in this definition is on what is actually done instead of what is only proposed or intended. It also differentiates a policy from a decision, which, is a specific choice among alternatives and links policy to a purposeful and goal-orientated action rather than just a random behaviour. However, action is only taken if there is a demand from society and without a demand there will be no need to make a policy (Anderson, 2000:4). Therefore, it is said that the values of society is interpreted through policy (De Coning, 2000:3). Hogwood and Gunn (1984:19-23) identify the following elements in the use of the term

public policy: Firstly, policy has to be distinguished from decision and administration. When doing this it is important to note that policy involves behavior as well as intentions and inaction as well as action. Policies also have outcomes that may or may not have been foreseen. While policy refers to a purposive course of actions, this does not rule out the possibility that purposes may be defined retrospectively.

Policy arises from a process over time, which may involve both intra-and inter organisational relationships. Most public policy involves public agencies but not exclusively. Hogwood and Gunn, (1984:19-23) also argue that public policy is subjectively defined by an observer and is usually perceived as a series of patterns of related decisions to which circumstances and personal, group and organizational influences have contributed to (Hogwood and Gunn, 1984: 23-24).

It is therefore important to understand the meaning of policy analysis. Policy analysis is defined by Dunn (1981:35) as “an applied social science discipline, which uses multiple methods of inquiry and argument to produce and transform policy relevant information that may be utilised in political setting to resolve policy problems”. More precisely Anderson (1994:22) states that policy analysis involves a description of the content of public policy, the environmental effect on the content of the public policy, an analysis of the impact of political processes on public policy, the consequences of policies for the political system and an evaluation of the expected and unexpected consequences of the public policy on the society.

Various phases can be identified between the different stages in the process of making public policy, from thinking to action. Traditionally, models embraced processes about how issues get on the agenda, followed by initiation or “deciding to decide”, the information are then assembled followed by more precise formulation. After this comes the application and implementation of the policy. Finally, there may be feedback and evaluation ending in decisions about policy maintenance, succession or termination.

Anderson (2000:30-39) has identified seven stages of policy making. The first stage is the

identification of the problem and placing this problem on the agenda. Following this is the formulation of a policy, where options and choices are created. The next stage is choosing the best alternatives from the options formed. The fourth stage is the implementation stage, in which the policy is administrated. The policy is then evaluated and finally it is either terminated or continued.

This study mainly focuses on the implementation stage of government policies, of which an analysis of the policy forms part of the discussion (see chapter three for a detailed discussion). This is followed by an analysis of the implementation of South Africa's immigration policy in chapter five.

## **5.5. CONCLUSION**

The fear of foreigners has reached a new level in South Africa. With the transition to democracy South Africa became a destination for a number of documented and undocumented immigrants and migrants. Looking for a better life these foreigners have found instead, a country in which xenophobia is rife. South Africa finds its self facing a dilemma: on one hand it promotes democracy, human rights and African integration, on the other; it faces an increase in xenophobia.

Within the above context, this study evaluates the extent to which the ANC government's im/migration policy and the implementation thereof contribute to xenophobia, by means of an analysis of data collected from the field. In doing this policy migration system theory is used to develop a theoretical framework for analysis.

The context of immigration in south Africa is therefore discussed on three angles; the international, the regional and the national angle. This chapter also pointed to the concept xenophobia in South Africa. The causes and manifestations of xenophobia in the media, in the language of government officials and in society itself are then examined.

## CHAPTER SIX CONCLUSION AND RECOMMENDATIONS

### **6.1. Conclusion**

By making use of qualitative research the researcher provided for a continuous process of evaluation. This chapter will further be used to summarize the most important aspects of each chapter completed. As stated in chapter one; the goals of this research was to explore and provide insight into the experience of foreign migrants, to assess the livelihoods of foreigners in the Point area of Durban, and evaluate the strength and weaknesses of the current migration policy.

**The Second Chapter** also provides a consideration of various causes and origins of international migration in attempt to link them to the present situation in South Africa. In so doing, migration is classified according to different theories<sup>1</sup>. Migration genesis and flow to South Africa before, during and after both world war one and two are expressed. **Chapter Three** involves an analysis of public policy and the South African immigration policy. It is also shown in this chapter that it is so important to understand the meaning of policy analysis which is defined by Dunn (1981:35) as “an applied social science discipline, which in return uses multiple methods of inquiry and argument to produce and transform policy relevant information that may be utilised in political setting to resolve policy problems”. Trends related to migration/immigration are lastly discussed including the occupation as well as treatment of foreign migrants in South Africa.

**Chapter Four** looks closely at migrants' experiences (personal life and events) around the point area of Durban in order to understand how these experiences could have influenced their choices and life chances. It also examines the involvement of foreigners

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<sup>1</sup> As is clear from the findings of this thesis that an important reason for migration is that of employment and trade. This introduces a broad sub-category of migrant, namely the 'economic migrant'. This category includes any 'person who travels across borders for an express economic purpose such as employment or trading or self-employment' (White Paper, 1999, p. 52). A range of legal tools for controlling and monitoring economic migrants has been proposed in the 1999 White Paper. These include: temporary work permits; setting worker quotas for certain sectors; entry concessions for mining and farming industries; taxes on employers, and preferential admission to those with 'desirable' skills and qualifications.

with police and other related government officials during South Africa's period of transition. It holds firmly with the legal, political and social implications of foreigners in a changing social order. In so doing, this chapter examines a fullness of complex issues, including:

- ↓ Foreign experience of crime and violence in a context of increasing xenophobia and
- ↓ Post-apartheid discourses about immigrants and refugees.

Last section of this chapter explores the so-called migrants' experiences and encounters on a daily basis with the law enforcement officials, and assesses how these impacted on their livelihoods as well as their future expectations. The **Fifth Chapter** of this thesis shows that the fear of foreigners has reached a new level in South Africa and with the transition to democracy South Africa became a destination for a number of documented and undocumented immigrants and migrants. Looking for a better life these foreigners have found instead, a country in which xenophobia is rife. South Africa finds its self facing a dilemma: on one hand it promotes democracy, human rights and African integration, on the other; it faces an increase in xenophobia.

Within the above context, this study evaluates the extent to which the ANC government's im/migration policy and the implementation thereof contribute to xenophobia, by means of an analysis of data collected from the field. In doing this policy migration system theory is used to develop a theoretical framework for analysis. The context of immigration in South Africa is therefore discussed on three angles; the international, the regional and the national angle. The concept xenophobia in South Africa is pointed out, the causes and manifestations of xenophobia in the media, in the language of government officials and in society itself are then examined.

While abuse affects both South African and foreign workers, the foreign status of migrant workers renders them extra-vulnerable to exploitation and xenophobia. Farmers as well as private companies exploit the insecurity that comes with being undocumented and foreign. This exploitation takes on various forms, including lower wages, restricted

movement, physical control and even slavery. Immigration legislation<sup>2</sup> provides for the prosecution and fining of those who employ undocumented migrants<sup>3</sup>. In terms of these provision police and Home Affairs officials are able to repatriate undocumented workers on a regular basis, without prosecuting the employers, points to collusion between the various stakeholders involved.

Foreign workers do not just suffer from human rights violations at the hands of farmers and immigration authorities. Their exploited foreignness also results in conflict with local South African workers as well as public actions against foreigners that have emerged largely in relation to the perception that foreigners threaten jobs and commit crimes in South Africa. As a consequence of this perception, public marches and protests against foreigners have taken place regularly since 1994. The informal sector, in particular, has seen a number of protests and conflicts between South Africans and non-South Africans<sup>4</sup>.

Based on the findings presented and analysed, conclusions were reached about the services and treatments being offered to foreigner in South Africa. Based on the conclusions reached and the literature review, recommendations need to be made that may be applied not only to South Africa, but also to other countries that are experiencing the influx of foreigners.

Findings of this thesis suggest two broad areas through which to understand the 'foreign experience' of violence in contemporary South Africa, namely: The vulnerability of foreigners to violence at the hands of local South Africans through

- ↓ xenophobia and economic exploitation, and
- ↓ The violence of exile.

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<sup>2</sup> HRW, 1998; White Paper on International Migration, 1999

<sup>3</sup> Interview with Home Affairs and labour department officials who stated that if an employer employs an illegal in South Africa, he is fined and it's his responsibility to pay for the repatriation cost of that individual.

<sup>4</sup> .See chapter three: the case of Mushagalusha Ombeni.

## **6.2. Recommendations**

A more flexible migration policy has been suggested. The main goal of the policy in this area would be allowing to-and-fro migration between SADC countries. South Africa has changed dramatically since the end of the apartheid. As a magnet to people from other neighboring countries and as a democratic country, it needs to develop policies that go beyond the narrow confines of South Africa's borders.

### **↳ Recommendations to the Government of South Africa**

There is a need for the South African government to carry out nation wide educational campaigns to raise awareness about the plight of foreigners, especially black foreigners in South Africa, to ensure the full enforcement of the SADC protocol and the UN conventions. Government should assess the needs of foreigners in South Africa, in order to be able to serve them properly and in accordance with the international standard in order to avoid any abusive, discriminative or xenophobic action against foreigners; they can achieve that by: conducting surveys, talking informally with foreigners, organising and attending professional conferences that focus on migration, including international policy-making bodies, and consulting with other governing bodies regarding policy arrangements.

A series of questions that will help to determine the role foreigners play in South Africa need to be administered. The questions should address the following: Whether foreigners fit in with the goals and missions of South African institutions and organisations, what type of assistance they should be awarded in order to conform to the international standards and avoid human rights violation, and Whether or not these migrants should actively be recruited by organizations in South Africa.

## **6.3. Further Research**

It seems as if there is not much research done on migration policy in general and in South Africa in particular. Whatever research has been done appears to concentrate mostly on general migration. It is clear that not much focused research has been done on xenophobia. There is a need for further research on xenophobia towards foreigners at a

national level, a fuller investigation into the relationship between xenophobia and racism in South Africa, the impact of xenophobia on the South African economy and the relationship between the 'culture of violence' and xenophobia in South Africa.

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Appendix 1

QUESTIONNAIRE

1. \_\_\_\_\_

2. Gender

- a. Male
- b. Female.

3. Age scale

- a. 17 – 26 years
- b. 27 – 36 years Country where you are from
- c. 37 – 46 years
- d. 47 – 56 years
- e. + 57 Years

4. How long have you been in this area of Durban?

- 1. 0 – 2 years
- 2. 2 - 4 years
- 3. 4 – 6 years
- 4. 6 – 10 years
- 5. + 10 years

5. Why did you choose South Africa?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. Do you have a legal documentation allowing you to stay in this area?

- a. Yes
- b. No

6.1. If yes, which one?

\_\_\_\_\_

6.2. How was it issued to you?

\_\_\_\_\_

6.3 Where was it issued? \_\_\_\_\_

6.4. Who issued it? \_\_\_\_\_

6.5. How have you been treated by the government official in charge before the collection? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. Do you belong to any home-town association?

- a. Yes
- b. No

7.1. Do you think that these associations are beneficial? If not, why?

8. Are you employed?

- a. Yes
- b. No

8.1 If yes, what is your occupation?

- a. Self employed
- b. Private Sector
- c. Public Sector.

8.2. If no, why do you think you are not employed?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. Which activity or business are you involved in for survival?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9.1 For how long have you been in this business?

- a. Less than a year.
- b. 1 – 4 years.
- c. 5 – 9 years.
- d. 10 – 15 years.
- e. Over 15 years.

10. Is your Business registered?

- a. Yes.
- b. No.

10.1. Give appropriate reason

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11. What is your estimated weekly income?

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12. Do you pay Tax?

a. Yes.

b. No.

12.1 If yes, how much approximately?

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12.2. If no, why

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13. How did you acquire the capital to start your business?

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14. Have you encountered any difficulties with the South African law?

a. Yes

b. No.

14.1. If yes, explain

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15. Do you feel that your personality as well as your business is threatened by surrounding locals?

a. Yes

b. No.

15.1. If yes, please explain why and how?

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16. Have been denied employment in South Africa?

- a. Yes.
- b. No.

17. If so, why do you think this happened?

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18. Have you ever experienced xenophobia?

- a. Yes
- b. No

18.1 If so, could you give examples of this?

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18.2. What form does it take?

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19. What kind of population do you think has discriminated against you the most?

- a. Black
- b. Colored
- c. Indian.
- d. White.

20. Do you intend to return back home?

- c. Yes.
- d. No

20.1. If no. For how long do you wish to stay here?

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29 MARCH 2007

MR. W MUZUMBUKILWA (205525431)  
SOCIOLOGY (SOCIAL POLICY)

Dear Mr. Muzumbukilwa

**ETHICAL CLEARANCE APPROVAL NUMBER: HSS/0126/07M**

I wish to confirm that ethical clearance has been granted for the following project:

“The impact of government migration policies on “Foreigners” known as “amaKwerekwere” in South Africa”

Yours faithfully

  
.....  
MS. PHUMELELE XIMBA  
RESEARCH OFFICE

cc. Post-Graduate Studies  
cc. Supervisor (Dr. E Cebekhulu)