The rights of others: Foreign nationals and xenophobic violence

NCHR workshop on advancing Socio Economic Rights: Session 7- Group 2

In this activity participants will engage in a critical review of the issues, assess past interventions to counter prejudice and xenophobic violence and identify what could be done differently to address this complex problem.

AIMS

- To bring together human rights practitioners and social activists to critically review the interventions made to tackle prejudice against African foreign nationals and counter xenophobic violence.
- To examine what might be done differently to more effectively protect the rights of migrants, refugees and asylum seekers.
- To examine the opportunities for a joint programme between human rights organisations in South Africa and the region to foreground issues facing migrants and asylum seekers.

1. The facilitator provides a brief introduction to the two scenarios under review (Learning from Joe Slovo and The rights of others – foreign nationals and xenophobic violence in South Africa).
2. Participants break into self selected working groups to analyse the scenario of their choice.
3. Once in the group participants select a facilitator and rapporteur who will note and report on the discussion.
4. Participants familiarise themselves with the discussion documents, deliberate on the key questions and identify lessons for improved practice.
5. Participants report back on their deliberations to the plenary.

ACTIVITY OUTLINE
KEY QUESTIONS

1. What can we learn from previous programmes and campaigns to combat xenophobia?
2. Given the impacts of recession on the poor and marginalised and increasing contestation for resources there is a risk of recurring outbreaks of xenophobic violence. What are the most practical and effective measures to prevent this?
3. What more can be done to mainstream measures to protect non citizens in South Africa?
4. What are the opportunities for a regional programme to inform migrants of their rights and address widespread South African prejudice?

RESOURCES

The rights of others: Ongoing xenophobic violence and foreign nationals in South Africa
Xenophobia timeline
Fact sheet: Population movement in and to South Africa: Forced Migration Studies Programme, Wits
The rights of others – Ongoing xenophobic violence and foreign nationals in South Africa

About this theme
Implicitly much of the focus in this workshop so far has been on how to secure and advance the socio economic rights of South African citizens. However the rise of undocumented migrancy since 1990; the social and economic tensions and violent responses associated with it, which peaked in the widespread xenophobic violence in 2008; highlights the duty we have to defend and protect the rights of others.

This discussion document¹ examines how the socio economic rights of South Africans articulate with the rights of others - foreign nationals in South Africa, undocumented migrants and asylum seekers. It provides some insights into the history of undocumented migrancy in South Africa. It establishes a basis for participants to discuss the history of xenophobic violence and discrimination against foreign nationals in South Africa and to review the effectiveness of the social and political responses since the countrywide outbreak of xenophobic violence in May 2008 which displaced an estimated 100 000 people and left 62 people dead. This violence also resulted in scores of women being raped and 670 people being injured.

Participants will identify and assess the possibilities of developing a coherent national and regional response to counter discrimination and violence, and protect vulnerable people. Participants will reflect on how our respective organisations can better integrate the rights of undocumented migrants – men, women and children into our programmes. We will also examine the potential that this issue has for a joint programme involving human rights organisations across the region.

Background and context
Undocumented migrants fall into a variety of different categories including:

- waged-workers;
- circular and seasonal workers;
- migrants who are self-employed;
- refugees;

¹ This discussion document has been prepared by Rick de Satgé with comment from Tara Polzer to provide background for a discussion at the NCHR workshop on Advancing Socio Economic Rights in South Africa and the Region 31st August- 2nd September, Villa Via, Gordon’s Bay. Cape Town.
• asylum seekers and the children of those migrants.
  (International Federation for Human Rights, 2008)

The changing face of migrant labour

The recruitment of migrant labour into South Africa has a very long history. Initially migrant labour was strictly controlled. The Witwatersrand Native Labour Association (WENELA) was created and given exclusive rights to recruit labour from the region. WENELA established recruitment stations in present-day Namibia, Botswana, Zimbabwe, Zambia, Malawi, Lesotho, Swaziland and Mozambique. (Kanyenze, 2004)

With the demise of the apartheid state these coercive and highly regulated arrangements were abandoned and undocumented migrancy is reported to have increased markedly since 1990. Political liberalization in South Africa, coupled with the deteriorating economic situation in many neighbouring countries, boosted the flow of labour migrants to South Africa.

The table below highlights the rapid increase in the deportation of undocumented migrants and people who had overstayed the period allowed on their permits during the 1990s.

<table>
<thead>
<tr>
<th>Year</th>
<th>Deportations of undocumented migrants and overstayers</th>
</tr>
</thead>
<tbody>
<tr>
<td>1988</td>
<td>44,000</td>
</tr>
<tr>
<td>1990</td>
<td>53,404</td>
</tr>
<tr>
<td>1995</td>
<td>156,313</td>
</tr>
<tr>
<td>1996</td>
<td>180,700</td>
</tr>
<tr>
<td>1997</td>
<td>176,000</td>
</tr>
</tbody>
</table>

In the late 1990’s of those deported 82% were from Mozambique, 11% from Zimbabwe, almost 4% from Lesotho, 1% each from Swaziland, Malawi, and other SADC countries. The overwhelming majority of deportees (99.7%) were from the SADC region, with only 0.1% and 0.2% from other African and other global locations respectively. (Kanyenze, 2004: 10)

Since c. 2004/5 the vast majority of people deported have been Zimbabwean. In 2007/8, over 312 733 people were deported. However it should be noted that deportation statistics are not reliable measures of levels of migration, or which countries people migrate from, since they depend on the changing legal frameworks and the capacities of enforcement agencies rather than on actual migration volumes or patterns.²

Xenophobic violence - 1998

By 1998 South Africa considered undocumented migrancy to be a ‘new and significant problem’ (ILO / SAMAT, 1998:14). This gave rise to the perception that South Africa was now ‘flooded’ with ‘illegal aliens’ which in turn gave rise to xenophobic sentiments and acts of violence.

² Polzer pers comm..
In September 1998, three non-South Africans were killed on a train travelling from Pretoria to Johannesburg. These killings were allegedly the work of South Africans blaming foreigners for the country’s high levels of unemployment. This gave rise to the Roll Back Xenophobia Campaign.

**The roll back xenophobia campaign**


The co-ordinator of the programme noted that xenophobia in South Africa manifests itself in a number of ways, ranging from derogatory name-calling to harassment and physical attacks. African foreigners in particular are blamed for South Africa’s persistent social and economic problems: the high crime rate; the spread of HIV/AIDS; and the lack of jobs.

In October 1998 the Braamfontein Statement was released by the SAHRC which stated that, “The mere fact of being an alien or being without legal status does not mean that one is fair game to all manner of exploitation or violence or to criminal, arbitrary or inhuman treatment. Foreigners in our midst are entitled to the support and defence of our law and constitution.” (SAHRC, 1998)

The South African Human Rights Commission, assisted by a steering group drawn from the departments of Home Affairs, Justice and provincial Safety and Security, was mandated to monitor the implementation of various proposals to tackle xenophobia in South Africa.

The campaign in 1999 involved the production of literature and materials such as booklets, pamphlets, posters and a magazine. Radio series were produced for commercial and community stations; seminars have been hosted on refugee rights, migration and xenophobia; inputs were made into local television dramas and educational programmes (Parsely, 2002)

**Policy and legislation**

In 1999 the Department of Home affairs released a new immigration policy in the form of a White Paper on International Migration and accompanying legislation. Human rights groups criticized both as a recipe for increased xenophobia. The new legislation stalled in Parliament and Cabinet for the next three years.

**Perceptions and realities revisited**

According to the Southern African Migration Project (SAMP) survey in 2005, “South Africans believe that 25% of the population is foreign. The figure is probably closer to 3-5% with around 500,000 undocumented migrants for a population of 47 millions”.

A large majority of migrants coming to South Africa, including undocumented ones, come for economic reasons, in search of work and income (including trading). Their main sectors of
employment are: farming, mining, domestic work, construction, private security, mechanics and small trade; few are also hired in the educational and medical sectors.

A 2003 study by Save the Children noted a visible increase in Zimbabwean children entering South Africa unaccompanied, as a result of economic crisis and drought. Human Rights groups have expressed concern that undocumented children are treated like adults by law enforcing personnel, in contravention of the South African Constitution and Child Care Act. (Lawyers for Human Rights, the Refugees Children Project, and the Centre for Child Law in FIDH (2008))

Smaller numbers of people come to South Africa in search of asylum. In 2007 there were only about 35,000 refugees and about 80,000 asylum seekers. However, the number of asylum seekers is increasing because

- migrants now come from more diverse countries (DRC, Chad, Burundi, etc.);
- of the increase in applications from Zimbabweans;
- some economic migrants use the system as a means to stay legally in South Africa.

**Gender dimensions of xenophobia**

South African law provides for a wide protection of the human rights of asylum seekers and undocumented migrants. However it is widely acknowledged that they are “amongst the most exposed to human rights violations and have the least legal protection and support to defend their rights”. In particular women suffer from a “double jeopardy” where the combination of their gender and nationality increases their vulnerability to violence and sexual abuse. (Sigsworth, Ngwane, & Pino, 2008). FIDH (2008) confirms that migrant women are much more exposed to rape and domestic violence, and highlight the lack of an effective State policy to prevent and combat such violence.

**Institutional harassment and unfair discrimination**

The FIDH report also highlights the institutionalised harassment of foreign nationals from SADC countries and elsewhere in Africa.

“Police control and harassment is a common experience among foreign migrants. ID control are frequent and may come with police officers asking for bribes or sexual favours, extorting money or goods, inflicting verbal or physical abuse. Migrants run the risk of being arbitrarily arrested and detained, including for longer periods than authorised by law...Xenophobia within the police is not limited to feelings or attitudes but also translates into extortion, abuse and physical violence”.

(International Federation for Human Rights, 2008: 5)
Xenophobic violence 2008
A report (Misago, Landau, & Monson, 2009) by the Wits Forced Migration Studies Programme commissioned by the International Organisation for Migration (IOM) characterised the May 2008 wave of xenophobic violence as follows:

What started as but another isolated anti-foreigner attack in Alexandra on 11 May, quickly spread to other townships and informal settlements across the country. After two weeks, and the deployment of the army, the melee had subsided. In its wake, 62 people were reported dead; at least 670 wounded; dozens raped; more than 100 000 displaced; and millions of Rand worth of property looted, destroyed or appropriated by local residents (Misago et al., 2009: 1)

The report notes the systematic and organised nature of the violence.

“...in almost all cases where violence occurred, it was organised and led by local groups and individuals in an effort to claim or consolidate the authority and power needed to further their political and economic interests. It therefore finds that most violence against non-nationals and other ‘outsiders’ which occurred in May 2008 is rooted in the micro-politics of the country’s townships and informal settlements”. (Misago et al., 2009: 2)

Contributory factors
The IOM report highlights a web of factors underpinning the spread of violence including:

Institutionalised practices that exclude foreigners from political participation and justice. Often premised on limited knowledge of and respect for the country’s laws and policies, these practices continue to criminalise and villanise foreign nationals and other ‘outsiders’;

A lack of trusted, prompt and effective conflict resolution mechanisms that leads to vigilantism and mob justice;

Political vacuums or competition in community leadership that encourages the emergence of unofficial, illegitimate and often violent forms of local leadership that enhance their authority and power by reinforcing communities’ resentment towards what is perceived as ‘non-compliant’ foreign nationals;

A culture of impunity with regard to public violence in general and xenophobic violence in particular that encourages the ill-intentioned to attack non-nationals and other outsiders for personal and/or political gain.(Misago et al., 2009: 3)

The report highlights the lack of a concerted government and civil society effort to counter the violence and address the systemic factors which give rise to it. It expressed concern about the lack of systematic effort to hold accountable those responsible for the violence.

The report raises concerns about how quickly these events have faded from the public consciousness and warns of the serious consequences that flow from such neglect.

Although initially condemned by actors across the political spectrum, the violence has rapidly faded from public debate. This is a mistake. What happened in May 2008 – involving the murders of both
South Africans and foreign nationals – reflects deep tensions and dysfunctions in contemporary South African society and politics. If not addressed, the fractures and incentives that led to the 2008 killings could have grave consequences in the months and years ahead. The casualties will not only be South Africa’s poor and dispossessed residents, but also the country’s moral authority and ability to achieve the unity, stability and reputation for which it strives. (Misago et al., 2009: 7)

**Recommendations on combating violence and discrimination**

In its 2008 report FIDH urged the South African authorities to:

- ratify the two major international human rights instruments it has not yet adhered to: the International Covenant on Economic, Social and Cultural Rights and the International Convention on the rights of migrant workers and members of their families;
- ratify the SADC Protocol on the Facilitation of Movement of Persons, signed in 2005;
- respect the solution on migration adopted by the African Commission on Human and Peoples’ rights at its 42nd Ordinary Session held in Brazzaville, Congo, from 14-28 November 2007;
- ensure that, in the hierarchy of law, provisions of the Bill of Rights and labour law protecting migrants rights are not subordinated to immigration law;
- ensure respect for due process and migrants’ rights and dignity throughout arrest, detention and deportation.
- improve conditions of detention at Lindela repatriation centre and in other detention facilities,
- promptly carry out independent investigation of all allegations of ill-treatments of non-citizens;
- develop inspections of workplaces and reinforce sanctions against employers who contravene labour standards and publicise the sanctions;
- develop information materials and set up information desks (e.g. at the main border posts, in refugee reception offices, city councils, etc.) for migrants to know about their rights and available remedies;
- develop research and mechanisms to better know and understand the various types of migration and their impact on South African economy and society in order to have the elements for designing and implementing a coherent and relevant migration policy;
- provide widespread training on migrants’ rights and against xenophobia to police services, immigration services, public health and education services and local administrations and to publicly and explicitly condemn and sanction xenophobic behaviours and incidents committed both by public servants and the communities.

In this regard, FIDH calls upon the Human Rights Commission and concerned civil society organisations to reactivate and scale up the anti-xenophobia campaign;
- maintain constant dialogue with neighbouring countries and develop an integrated SADC (Southern African Development Community) vision in order to better manage migration flows at regional level.

The IOM report made nine recommendations on the need for:
• developing interventions to promote accountability and counter a culture of impunity;
• promoting positive reforms to build inclusive local governance structures;
• opening up more channels for legal migration;
• supporting government to address xenophobic and discriminatory practices in public institutions;
• promoting a human rights culture among the people of South Africa;
• conducting ongoing, systematic inquiries into anti-immigrant and anti-outsider violence and the political economy of township life;
• Government to work together with International Organisations (e.g., IOM, UNHCR, OCHA) and civil society to develop early conflict and disaster warning and management systems;
• Sensitising and capacitating media to undertake responsible reporting on migrants and migration issues.

South African government responses
As the crisis deepened in May 2008 Government was severely criticised for its slow and unco-ordinated response.

Zonke Majodina, deputy chairperson of the South African Human Rights Commission (SAHRC), a constitutionally mandated body, observed that "Government is not charting a course of action. Political leaders have made very few statements, and have not come up with a co-ordinated response."

The Institute for Security Studies has observed that Government appeared uncertain about which Department should take the lead in managing the State response to the violence: Safety and Security, Local and Provincial Government or Home Affairs? This confusion delayed critical decisions on the status of the displaced people and the declaration of disaster in particular geographical areas.

The Centre for the Study of Violence and Reconciliation (CSVR) stated that “Governments’ response has been slow, uncoordinated, and done without sufficient consultation. This has often resulted in mistakes being made which could have easily been averted”.

The Consortium for Refugees and Migrants in South Africa (CoRMSA) has in its most recent report expressed concern that despite the arrest of many perpetrators in the days immediately following the attacks, only a small number have been successfully convicted. It asks "If the state effects such a low level of retribution, does it mean that this kind of discrimination is acceptable in South Africa?" (Consortium for Refugees and Migrants in South Africa, 2009)

However CoRMSA highlights the intention of government to review migration policy and expresses support for the new migration management regime in relation to Zimbabweans, announced by the South African government in April 2009, which includes a moratorium on deportations, a 90-day free visa for Zimbabweans entering South Africa, and a 12-month special dispensation permit for undocumented Zimbabweans already in the country.
Conclusion
Loren Landau has summarised the different perspectives emerging after the 2008 violent outbreaks. He counterposes two broad perspectives which exist concurrently:

- a renewed, if circumscribed, commitment to cosmopolitan nationalism by elements of South Africa’s middle class and government elite and an undertaking to respect the rights of all living in the country.
- the far more prevalent perspective that killing foreigners may not be right, but that South Africa must be for South Africans.

He observes that eradicating xenophobic prejudice is a two way street and cautions that:

* Removed from debates over who belongs sit the migrants themselves. Rejecting aspirations of or claims to membership, they will further distance themselves from the citizenry while claiming rights be in South Africa but not part of it. (Landau, 2008)

In an attempt to break this impasse the CSVR has challenged all the actors – South African citizens, CSOs, foreign migrants and government to actively question what we as individuals and institutions are doing to reduce xenophobia and to address the underlying issues which feed discrimination and prejudice.

This demands a fresh approach to counter a culture of impunity which serves to ‘normalise’ and even reward the use violence in our society.

Xenophobia timeline
The time line attached in Appendix 1 was prepared by the South Africa Migration Project (Hill & Lefko-Everett, 2008). It highlights the deep roots of South African prejudice against foreign nationals and the ongoing nature of xenophobic violence.

References


XENOPHOBIA TIMELINE

1994

- The Inkatha Freedom Party (IFP) threatens to take „physical action“ if the government fails to respond to the perceived crisis of undocumented migrants in South Africa.
- IFP leader and Minister of Home Affairs Mangosuthu Buthelezi says in his first speech to parliament: “If we as South Africans are going to compete for scarce resources with millions of aliens who are pouring into South Africa, then we can bid goodbye to our Reconstruction and Development Programme.”
- Violence erupts in a squatter camp in Hout Bay when Namibians are physically attacked by South African migrants who claim that the migrants are “stealing their jobs” in the fishing industry.
- Protestors in Alexandra Township march to the local police station with demands that include “Zimbabweans, Malawians and Mozambicans go home.”
- Gangs of South Africans try to evict Mozambicans, Zimbabweans and Malawians from Alexandra Township, blaming them for increased crime, sexual attacks and unemployment. The violent campaign, lasting several weeks, is known as “Buyelekhaya” (Go back home). One victim, Kenneth Ngwenya, had arrived in South Africa from Zimbabwe some thirty years previously.

1995

- A report by the Southern African Bishops’ Conference concludes: “There is no doubt that there is a very high level of xenophobia in our country ... One of the main problems is that a variety of people have been lumped together under the title of ‘illegal immigrants’, and the whole situation of demonising immigrants is feering the xenophobia phenomenon.”
- A report by the HSRC, based on flawed methodology, claims there are 5-8 million “illegal aliens” in South Africa. The number is taken as a fact by politicians and the media. The study is not withdrawn by the HSRC until 2001. The falsified numbers continue to be cited to this day.
- South Africa offers permanent residence to long-serving migrant miners from neighbouring countries. 51,000 miners from Mozambique, Lesotho, Botswana and Swaziland are granted permanent residence.

1996

- Violent conflict between local and foreign migrants breaks out in Mizamoyethu (“Our Own Endeavours”), Cape Town. A one thousand strong crowd tries to drive foreign nationals out of the settlement. Two immigrants...
and two South Africans are killed. A peace accord is brokered by the ANC mayor, Dickie Meyer.

- Local hawkers attack foreign traders in Germiston. One of the leaders of the foreign hawkers, Mr. Patrick Acho, is shot to death. Somali refugees are forced to stop hawking in Kempton Park after being threatened, and in some cases attacked, by local hawkers. On complaining to the police they are reportedly told “this is not your country, go back to your own country.”

- At the urging of the Parliamentary Portfolio Committee on Home Affairs, Minister Buthelezi appoints an independent Green Paper Task Team chaired by Prof Wilmot James of Idasa.

- South Africa offers permanent residency to SADC nationals who have been living “illegally” in South Africa for more than five years. Over 200,000 apply and approximately 124,000 receive permanent residence.

- Residents of Alexandra demonstrate at the Department of Home Affairs in an attempt to disrupt the issuing of identity-documents to immigrants who they claim steal their jobs.

1997

- Defence Minister Joe Modise links the issue of undocumented migration to increased crime in a newspaper interview.

- In a speech to parliament, Home Affairs Minister Buthelezi claims “illegal aliens” cost South African taxpayers “billions of Rand” each year.

- Local hawkers in central Johannesburg attack their foreign counterparts for two consecutive days, scattering and looting their belongings and beating the foreign traders with knobkerries. A flyer announcing the protest states “We want to clean the foreigners from our pavement.” The chairperson of the Inner Johannesburg Hawkers Committee is quoted as saying: “We are prepared to push them out of the city, come what may. My group is not prepared to let our government inherit a garbage city because of these leeches.”

- Five hundred South African hawkers march in Johannesburg chanting “chase the makwerekwere out,” and “down with the foreigner, up with South Africans.”

- A privatized deportation holding centre is established to process deportees. Called Lindela (“wait”/”placing of waiting”), the centre is initially operated by the Dymbu Trust, a venture set up by a group of top ANC Women’s League figures.

- A Southern African Migration Project (SAMP) survey of migrants in Lesotho, Mozambique and Zimbabwe shows that very few wish to settle permanently in South Africa. A related study of migrant entrepreneurs in Johannesburg finds that they create an average of three jobs per business.

- A Draft Green Paper on International Migration is produced by an independent task team. It calls for a rights-based approach to immigration. Minister Buthelezi and his senior white officials are unhappy with the report and appoint separate task teams to draft refugee and immigration white papers under Departmental control.

- In December, the Cape Town refugee Forum claims that 20 immigrants have been killed in the city as a result of xenophobia that year.

1998
South Africa introduces its first refugee protection legislation. Problems of implementation bedevil the Act for many years leading to major backlogs of refugee claimants.

Three non-South Africans are killed on a train travelling between Pretoria and Johannesburg in what is described as a xenophobic attack.

Two foreign nationals are “necklaced” (burnt alive) in Ivory Park, near Midrand.

In December the Roll Back Xenophobia Campaign is launched by a partnership of the South African Human Rights Commission (SAHRC), the National Consortium on Refugee Affairs and the United Nations High Commissioner for Refugees (UNHCR).

The Department of Home Affairs reports that the majority of deportations are of Mozambicans (141,506) followed by Zimbabweans (28,548).

A report by Human Rights Watch documents extensive abuse of migrants by employers and the police. The report is heavily criticized by the Deputy Minister of Home Affairs.

Six white police set attack dogs on three Mozambican migrants and insult them with racist and xenophobic abuse. The incident is captured on video and aired to public outrage in 2000. The perpetrators are later tried, found guilty and imprisoned.

SAHRC issues Braamfontein Statement on Xenophobia.

1999

South Africa offers permanent residence to Mozambican refugees who have been in the country for 10-15 years. Approximately 90,000 applicants are successful. This brings the number of Mozambicans legally in South Africa to well over 200,000.

A report by the SAHRC notes that xenophobia underpins police action against foreigners. People are apprehended for being “too dark” or “walking like a black foreigner.” Police also regularly destroy documents of black non-South Africans.

SAMP releases a survey of South African attitudes to immigrants and immigration which shows that most South Africans share the same “stereotypical image of Southern Africans.”

The Department of Home affairs releases a White Paper on International Migration and accompanying legislation calling for a new immigration policy. Human rights groups criticize both as a recipe for increased xenophobia. The new legislation stalls in Parliament and Cabinet for three years.

Six foreign nationals accused of criminal activity are kidnapped by a mob in Ivory Park. Two are killed by “necklacing,” three of the others are seriously injured and one manages to escape.

Reports surface that undocumented Mozambican migrants being repatriated to Mozambique are regularly robbed, beaten and sometimes thrown from moving trains on the journey home.

2000

Sudanese refugee James Diop is seriously injured after being thrown from a train in Pretoria by a group of armed men. Kenyan Roy Ndeti and his room mate are shot in their home. Both incidents are described as xenophobic attacks.
In Operation Crackdown, a joint police and army anti-crime sweep, over 7,000 people are arrested on suspicion of being “illegal aliens.” In contrast, only 14 people are arrested for serious crimes.

A SAHRC report on the Lindela deportation centre lists a series of abuses at the facility, including assault and the systematic denial of basic rights. The report notes that 20 percent of detainees claimed South African citizenship or that they were in the country legally.

A SAMP report on media attitudes to migrants finds evidence of xenophobic reporting by the press.

Two Mozambican farm workers are assaulted at a farm by a group called Mapogo-a-Mathaga after being accused of stealing by their employer. One of the men dies as a result of the attack.

COSATU issues statement condemning xenophobia.

According to the 2001 census, out of South Africa’s population of 45 million, just under one million foreign nationals are legally resident in the country. However, the Department of Home Affairs repeats its earlier discredited claims that there are more than seven million undocumented migrants.

Three Somalis are attacked by a dog pursuing a burglar. When the policemen are asked to control their dog one responds with: “Don’t tell me what to do you f---ing foreigners.” Witnesses speak of the policemen claiming that they were checking to see if the dog could still bite.

The chairperson of SAHRC accuses the Department of Home Affairs of being “rabidly xenophobic.”

SAMP releases a second report on South African attitudes to migrants. The report warns that xenophobic attitudes could turn violent.

Wits academics, Klaaren and Ramji, release report highly critical of xenophobia and abuse of migrants by the police force.

SAMP argues that the number of undocumented migrants in South Africa is grossly exaggerated. The Head of Statistics South Africa, mark Orkin, agrees and withdraws an earlier HSRC study.

South African residents of the Zandspruit settlement near Johannesburg force hundreds of Zimbabwean residents from the area and burn dozens of homes after a Zimbabwean is accused of killing a local woman.

Violent clashes break out in Milnerton between Angolans and South Africans who accuse the migrants of taking their jobs and women. Three Angolans and one South African, accused of killing one of the migrants, are killed.

Writing in ANC Today, President Mbeki criticizes South Africans for their attitudes to other Africans.

The SAHRC winds up its Roll Back Xenophobia Campaign due to lack of funding.

Parliament passes a new Immigration Act. As a result of criticism of earlier drafts by human rights organizations, the Act promises to combat xenophobia but does not say how.

A Nigerian man is beaten to death by three South African policemen.
A National Refugee Baseline Survey carried out by CASE finds that “Almost two thirds of applicants (63%) perceived South Africans in a negative light. In one third of the cases, applicants indicated that South Africans do not like foreigners, that they are xenophobic, and that they often refer to applicants as “amakwerekwere” (a hate name for foreigners). In addition, 28% of applicants indicated that South Africans are particularly hostile and aggressive, often due to being ignorant about the plight of refugees.”

* A survey carried out in Johannesburg and Hillbrow finds that two thirds of respondents believe that foreigners are responsible for crime. 40 percent of foreigners surveyed have the same opinion.

Protests erupt at Lindela over claims of beatings and inmate deaths coinciding with hearings into xenophobia by SAHRC and parliament’s portfolio committee on foreign affairs.

Violence breaks out between Xhosa and Shangaan speaking peoples in informal settlements near Rustenburg. Two are killed, four are injured and 52 families are displaced when their shacks are burned down.

A fifteen year old South African boy is picked up by police who attempt to repatriate him to Mozambique, claiming that he is too dark to be South African.

A Somali shop owner is shot dead in broad daylight in his own shop on Christmas Day. Nothing is stolen and xenophobia is thought to be the motive.

Three Somali refugees are stabbed to death outside their shop. The attacks are thought to be motivated by xenophobia and resentment of their successful businesses.

A Human Rights Watch report documents the harassment, mistreatment and extortion of asylum-seekers and refugees by law enforcement agencies, the arrest, detention and threat of deportation of refugees and asylum-seekers as “illegal foreigners”, and the unlawful detention and threats of deportation at Lindela Repatriation Centre.

146 people are arrested for malicious damage to property and theft following attacks on twelve foreign-owned businesses in Viljoenskroon.

Zimbabwean and Somali refugees are beaten in Bothaville, in the Free State. The attacks occur after a community protest against the local municipality, and are accompanied by looting.

Somali shop owners in a township outside Knysna are chased out of the area and at least 30 `spaza shops´ (tuck shops) are damaged. Tensions start when an 18-year old South African is shot by a Somali shopkeeper. After police arrest four robbery suspects and a shop owner, a crowd goes to all the Somali-owned shops in the area and destroys them.

Violent riots erupt in Choba between foreigners and local residents, who claim that the migrant steal their jobs. Two are killed, including a Zimbabwean man who is burned to death.

Two Zimbabweans are killed in violent clashes between South Africans and foreigners in the informal settlement of Olievenhoutbosch.
o Violence erupts against foreigners in Plettenberg Bay. Local residents claim that the migrants are stealing their jobs. At least one man is killed.

o Attacks occur against Somalis in the Cape Flats. During a period of just over a month, somewhere between 20 and 30 people are killed in townships surrounding Cape Town. Shops are robbed and looted. At least one Somali woman is shot, execution style, at a taxi rank.

o Somali-owned businesses in the informal settlement of Diepsloot, outside Johannesburg, are repeatedly torched.

o A gang vandalises more than 20 tuck-shops and fruit stalls owned by Mozambicans in Zamdela. 10 Mozambicans are injured when they are pelted with stones in the same attack.

o Somali refugees in Masiphumelele are attacked and shops looted and torched. Dozens are forced into hiding.

o The Baltimore Sun publishes an article called “Rising Tide of Xenophobia” about the particularly violent form of xenophobia that exists in South Africa.

2007

o UNHCR notes its concern over the increase in the number of xenophobic attacks on Somalis. The Somali community claims 400 people have been killed in the past decade.

o Anti-Somali riots are held in Port Elizabeth. Reuters reports that about 40 Somalis have been killed in Western Cape in a six month period.

o In Motherwell, over one-hundred Somali-owned shops are looted in a 24 hour period. A day later, more than four hundred Somalis leave the township in fear, most without any of their belongings.

o Mobs of youths destroy and loot shops belonging to Bangladeshis, Pakistanis, Somali and Ethiopian shop-owners in Ipelegeng near Schweizer-Reneke.

o More than 20 people are arrested after shops belonging to Somalis and other foreign nationals are torched during anti-government protests in Khutshong Township, southwest of Johannesburg.

o Shops owned and staffed by non-nationals are attacked and looted in Delmas. 40 non-nationals flee and are temporarily accommodated at mosques and with friends.

o A pub in Port Elizabeth bans Nigerians.

o Two Somali men are burnt alive in their shop in Mossel Bay the night after another Somali man is killed by armed gangs in Cape Town.

2008

January:

o Jeffrey’s Bay: A crowd of residents attack Somali-owned shops and many Somali nationals seek shelter at the police station.

o Soshanguve: Four foreign nationals break into a spaza shop owned by a local trader. Residents apprehend the suspects and burn one to death. Residents call for foreigners to leave. Shacks are burnt and shops belonging to non-nationals looted. Many non-nationals flee the area.

o A community forum in Albert Park indicates that they want all foreign nationals living in the area to leave.

February:
Itireleng: At a community meeting residents are encouraged to chase foreign nationals out of the area. Violent clashes take place. Shacks and shops are burnt and other looted.

Valhalla Park: Residents forcefully evict at least five Somali shop owners from the area.

March
- Choba: 2 Zimbabweans are beaten to death by residents.
- Attridgeville: At least 7 lives are lost in a series of attacks over a week. The deceased include Zimbabwean, Pakistani and Somali nationals as well as a South African who was mistaken for a foreign national. Approximately 150 shacks and shops are burnt down, destroyed or vandalized. Approximately 500 people seek refuge elsewhere.
- Diepsloot: 3 Zimbabweans are killed and shacks destroyed.
- Human rights organisations condemn a spate of xenophobic attacks around Pretoria that leave at least four people dead and hundreds homeless.
- Worcester: A large group of Zwelethemba informal settlement residents destroy foreign-run shops and leave a large number of foreign nationals homeless.

April
- Diepsloot: 30 shacks belonging to Zimbabweans are destroyed following a community meeting.
- Mamelodi: Fifteen shacks and spaza shops are burnt down. One girl is burnt to death in her shack.

11 May
- Alexandra: The most recent spate of xenophobic attacks begin when an angry mob takes to the streets in Alexandra Township, targeting foreigners who they say are not welcome in the country. Two are killed.

12 May
- Alexandra: A man is shot dead as violence continues.

13 May
- Alexandra: Foreigners take refuge at police stations and elsewhere to prevent further violent assaults on themselves and their property.

14 May
- Alexandra: Relative calm returns on Wednesday night following violence clashes between residents and the police. Heavy police presence in the township is maintained.
- Diepsloot: A mob throws stones at police and loots spaza shops. One man is injured.

15 May
- Cleveland: 5 people are killed and 50 injured in xenophobic attacks.

17 May
- Violence spreads to Thokoza and Thembisa
18 May
  o Alexandra: Another foreigner is shot.

19 May
  o The *death toll rises* to 22 with many more *injured* and over 200 arrested.

20 May
  o Boksburg: 1 person is *killed* and 2 critically *injured* in attacks.
  o Johannesburg: 2 refugees taking refuge in a police station are seriously injured when they are *stabbed* on their way from the station to the shops.

21 May
  o Violence spreads from Gauteng to Mpumalanga and KwaZulu-Natal. President Mbeki approves military involvement in the situation as the *death toll climbs* to 42.

23 May
  o Violence spreads to Cape Town. Somalis and Zimbabweans are *attacked* by mobs and their shops *vandalised and looted*. Somali-owned shops are *looted* in Knysna.
  o Mozambican officials claim that 10,000 of their nationals have *left* South Africa and returned home since the attacks began.

24 May
  o Thousands of people take part in an anti-xenophobia march organised by churches and labour unions in Johannesburg.
  o President Mbeki is criticised for his lack of action on the crisis.

25 May
  o Mbeki condemns the attacks in a televised address, calling them an “absolute disgrace”.
  o Baberton: Jacob Zuma speaks out against the attack in an address to thousands of people.

26 May
  o Safety and Security Minister Charles Nqakula claims that the xenophobic attacks are under control. He adds that 1,384 arrests have been made.
  o The *death toll stands at 56* with 342 foreign-owned shops *looted* and 213 burned down. Tens of thousands more have been *displaced*.

28 May
  o The government denies having made a decision to establish refugee camps to house those displaced by the violence. A representative from the Department of Home Affairs admits that “temporary shelters” will be constructed.
  o Police intervene when Somali nationals at a camp for displaced persons near Pretoria attack other foreigners trying to enter the camp.

2 June
  o Hundreds of migrants, mostly Somalis, march to the South African parliament in a demonstration against xenophobia.
3 June
  o Foreigners living in camps set up for those displaced by the violence call for the involvement of the United Nations because they claim that the South African government has failed them.
  o Mbeki denies that the government was warned of the possibility of xenophobic attacks by the National Intelligence Agency over a year ago.

4 June
  o The government expresses its commitment to reintegrating those affected by the xenophobic violence back into their communities.

5 June
  o Senior prosecutors are appointed to oversee the prosecution of people arrested for involvement in the xenophobic attacks. Over 140 cases have been brought to court.

7 June
  o Somalis in Port Elizabeth are attacked after the alleged shooting, by a Somali, of a local resident. Somali shop owners move their merchandise and police guard their shops.
  o The premier of the Eastern Cape and other local politicians gather to officially apologise to the foreign community for the xenophobic violence of recent weeks.

14 June
  o Brazzaville: a Mozambican man is stoned and burned to death.

19 June
  o An Ethiopian man is shot dead in Masiphumelele two days after returning home after the May attacks.

27 June
  o Local residents in Ramaphosa warn that they are not happy about “foreigners” returning to their community.

3 July
  o A Day of Remembrance is held as a tribute to the victims of May’s xenophobic violence.
  o President Mbeki notes that the violent attacks in May were not the result of xenophobia but rather of “naked criminal activity.”
Briefing Note

Population Movement in and to South Africa

This briefing note is intended as a quick reference guide regarding South Africa’s migration management policies and a selection of key challenges facing the country with regard to population movement. The note discusses internal migration and urbanisation as well as cross border movements into South Africa.

Legal and Policy Framework

- **Basic rights**: The Constitution, especially Chapter 2 (the Bill of Rights), grants all people in South Africa basic rights. This includes citizens and both documented and undocumented non-citizens. Among others, these basic rights include rights to life, dignity, equality before the law, administrative justice, basic education, basic health care, and labour rights. Importantly, South Africa has not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

- **Internal migration**: The movement of residents within the country is not restricted and residents are not required to officially register their place of residence when they move.

- **Asylum**: The most relevant legislation is the 1998 Refugees Act. Under the Act, South Africa has a policy of self-settlement and self-sufficiency for asylum seekers and refugees, including the right to work and the right to access public health care and education services. The rights of refugees are also outlined in a 1951 United Nations Convention and the African Union’s Convention on Refugees.¹

- **Immigration**: The 2002 Immigration Act (amended in 2004) regulates immigration by enabling permits for skilled migrants, students, tourists and other categories of permanent and temporary migrants. It also regulates the arrest and deportation of undocumented migrants. It provides no permits for job seekers.

- **Emigration**: There is no legal limitation on emigration from South Africa. That many South Africans are highly skilled or hold dual citizenship further enables resettlement elsewhere.

- **Regional migration management**: The 2007 SADC Protocol on the Facilitating of Movement of Persons foresees the progressive facilitation of movement in the SADC region through the introduction of free visas (already implemented) and rights for citizens of the region to work and establish themselves. Beyond this protocol, there is little regional legislation on the movement of people apart from international refugee and asylum conventions.

South Africa’s constitutional guarantee of basic rights and the legal framework governing asylum are among the most progressive in the world. However, challenges in implementing mechanisms to protect rights and ensure the provision of basic services contribute to the vulnerability of many internal and cross-border migrants. The immigration regime, which is separate from the asylum system, while not

exceptional globally, is not well adapted to national and regional needs and realities. It does not provide adequate access to documented migration in ways which address South Africa’s skills and labour needs, while the policing of undocumented migration is currently ineffective and often leads to rights abuses.

Local authorities have also struggled to protect the full bouquet of rights available to domestic migrants. These are due largely to institutional challenges associated with planning, record keeping, budgeting, and forms of social or political discrimination.

**Numbers and Migration Patterns**

*Internal migration* represents by far the largest volumes of population movement and therefore poses the greatest challenges regarding government planning and service provision. Impacts depend on the location in the country. Gauteng experiences the greatest internal inflow while the Eastern Cape has the greatest outflow. Between 2001 and 2007, while 74% of population growth in Gauteng was due to natural growth, 23% was due to internal migration, and only 3% due to cross-border migration. Current official data (census, etc.) does not reliably capture internal migration.

There are no reliable statistics regarding *cross border migration* and many commonly quoted estimates (e.g. regarding undocumented migrants or Zimbabweans) are not based on solid evidence. There are some relatively firm numbers in certain administrative categories (e.g. recognized refugees, asylum seekers, persons with work permits, deportees, etc.) but these are poor indications of the total population. Given these caveats, the following numbers are based on the Department of Home Affairs’ most recently released administrative statistics (2008) and on FMSP’s estimated projections based on national census data:

- **Recognized refugees:** cumulative since 1994: 43,850 (at end 2008);
- **Recognized asylum seekers:** cumulative in-process applications: 276,000 (at end 2008);
- **Economic migrants issued with individual work permits (not including corporate permits):** 32,344 in 2007/8;
- **People deported:** approx. 312,733 in 2007/8. Estimates are of over 370,000 in 2008/9.
- **Total foreign population (including documented and undocumented):** Based on extrapolations from census data, a likely estimate of the overall foreign population is between 1.6 and 2 million. Most commonly quoted estimates, which are often higher, are not based on empirical evidence or national studies.
- **Zimbabweans:** Zimbabweans currently make up by far the largest group of migrants in the country. A likely estimate is between 1 and 1.5 million Zimbabweans in South Africa in 2009, including both recent arrivals and those who have lived in South Africa for extended periods. Zimbabwean migration is diverse with variations by motivation for leaving Zimbabwe (persecution and economic collapse); legal status (documented and undocumented); skills levels; social welfare needs; length of stay in the country; and location of residence in South Africa. There is no evidence that Zimbabwean migration to South Africa is continuing to accelerate. We can also not expect a mass, permanent return to Zimbabwe within the next two to five years.
Key Challenges

There are several challenges currently affecting South Africa’s ability to benefit from human mobility:

1. **Planning for population movement at provincial and local government level**
   While migration management is currently considered a national competency, internal and cross-border migration impact on provincial and municipal functions, especially planning for service delivery. Infrastructure planning should take into account actual migration patterns, especially rural-urban migration and movements into small towns. Investment in rural development is unlikely to reduce migration to urban areas.

2. **Ensuring access to basic rights and services for all**
   South Africa’s progressive Constitutional guarantees of basic and socio-economic rights are limited in their implementation toward cross-border migrants. This is due to a lack of knowledge among service providers, discrimination and corruption. Access to basic rights is also undermined in areas of high internal migration such as urban informal settlements because of inefficient service planning and corruption. Public goods such as basic health care, basic education and protection under the law only lead to collective development if accessible to all.

3. **Preventing xenophobic violence and supporting social cohesion**
   Disaffection with unaccountable local governance structures and frustration with government service provision has led to increased popular violence. This violence often takes the linked forms of service delivery protests and attacks on foreigners, both significantly disrupting local and national institutions and economies. Inclusive and transparent service provision can help build safer communities and more responsive and accountable public institutions.

4. **Managing Zimbabwean migration**
   Zimbabwean migration will remain the region’s greatest challenge for many years. South Africa cannot prevent exposure to Zimbabwean migration, only manage its impacts. To be effective, pragmatic policies such as the special dispensation permit for Zimbabweans require implementation assistance from a range of government departments, communication campaigns to ensure public support, coherence between legal and humanitarian interventions, and integration with medium- and long-term regional migration management strategies.

5. **Enabling migrant contributions to local and national economy**
   The South African economy is dependent on cross-border migration to address some of its skills shortages and sectoral labour needs. Regional migration is also a critical component of regional integration and economic growth. The challenge is to attract foreign labour while preventing further entrenchment of informal and exploitative labour conditions and ‘race to the bottom’ labour competition with undocumented and unregulated foreign workers. Contributions to local economies and employment creation by migrant entrepreneurs can be enabled through support in accessing the banking system and inclusion in local economic development strategies.

6. **Effectively implementing the asylum system**
   While South Africa’s asylum system is progressive in principle, severe administrative hurdles continue to limit access and protection for asylum seekers and refugees. Asylum system inefficiencies and gaps in the immigration framework also make the asylum system attractive for economic migrants seeking documentation, while hindering access for bona fide asylum seekers.
7. The Migration of Children
Significant numbers of unaccompanied children are crossing South Africa’s borders to live, study and work. There are reports that children have been illegally adopted by families other than their own in ways that are akin to labour exploitation or slavery. Others have suffered police harassment. In almost all instances, children—accompanied and otherwise—struggle to access health care, education, and other social services even though international law and South Africa’s domestic legislation prohibit discrimination against children on the basis of nationality or documentation status.

8. Border security, smuggling, and trafficking
South Africa is under domestic and international pressure to address human trafficking across its international borders. To that end, the NPA and others have proposed new legislation and expanded regulatory authority. Despite these pressures, there is little evidence that South Africa is a significant destination or transit point for international human trafficking. What little may exist can be addressed through existing legislation. The greatest threat to human security comes from the cross-border smuggling of people, which also threatens the integrity of governmental border control mechanisms.

9. Increasing sub-regional convergence and coordination
Regional migration policies are inherently linked with regional economic integration processes. Existing bilateral and inter-state regional forums lack effective policy consultation with labour organisations and the private sectors at regional level.

10. Developing efficient interdepartmental data gathering and policy cohesion tools and capacity-building mechanisms
There are significant inconsistencies in migration-related policy-making between different government departments. This stems partly from a lack of centralised, reliable and available data and inconsistent data gathering methods across departments.

For further information see http://migration.org.za or contact us on 011 717 4696, info@migration.org.za
FMSP, University of the Witwatersrand, PO Box 76, WITS 2050, South Africa