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The changing discourses on immigration policy in the aftermath  
of 1994 elections (post-apartheid era) in South Africa

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## Introduction

Since coming to power in 1994, the governance established by the African National Congress (here and after ANC) has had to deal with numerous challenges, and one of these is related to the implementation of an immigration policy regime that suits the transformative and developmental needs of the nation. It is in line with these needs that the political discourse on immigration has been over the past years increasingly focused on curbing irregular migration (unwanted migration) and importing skills to remedy shortage (quality migration). To what extent is this focus different from that of the apartheid regime? How has this echoed in the public perception of issues around immigration? These are the two overall questions this paper seeks to address. It does so by looking into the evolving forms of responses from the state apparatus and groups in the civil society to migration (regular and irregular) of foreigners and way in which they have been collectively driven, locally and nationally, in association with the immigration policy regime in South Africa. The paper also provides a critical assessment of the extent to which these responses are inclusive, selective, discriminatory, human rights protecting and supported by the political sphere. The responses are assessed in terms of trends in detention and deportation, public and international perceptions, political and social tolerance at grassroots level. The paper draws on various sources of information of which existing empirical and public records form a considerable part. Author's research outputs have also been used to supplement the insights from the records.

Issues around migration from outside have had a long standing in the building of South Africa as a nation. Not only migration provided during apartheid means of recruiting cheap labour from neighbouring countries, it also served to fuel the political and public debates around the formation of citizenship in South Africa (Klarreen, 2008, Belvedere, 2008, Neocosmos, 2006, Segatti and Landau, 2008). From a settlement policy perspective, immigration has constant connotations with such residential categories as: visitor, permanent resident, temporary resident, citizen, and non-citizen to name but a few. At the grassroots level, however, migration is merely associated with the term *makoerekoere* used derogatorily in South Africa (and also in Lesotho, see Akopori, 2005) to refer to foreigners. In the post-apartheid South Africa, as was in apartheid era, migration is very central to the various entitlements to public goods and services through citizenship. A noticeable fact is the way in which

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entitlement has got entangled in xenophobic attitudes directed to African foreigners. Lesser expressed in the past, its virulence has gradually reached a level that one would qualify tense. However, the tension arising from the politics of entitlement goes beyond the 1994 elections. Neocosmos (2006) strongly argues that:

Xenophobia in South Africa is a direct effect of particular kind of politics, a particular kind of state which was forged in opposition to the manner in which the apartheid state interpellated its subjects. In the post-apartheid state, politicians and state institutions have their parts in the making of a culture of xenophobia, and this has filtered down to the whole of society.

This statement echoes as well in Belvedere (2008) who problematised the state as a key player in reproducing xenophobia. To Belvedere, xenophobia is the effect of the ongoing and contradictory process of state formation in contemporary post-apartheid South Africa. In this process, two ideologies are at work: on the one hand, the affirmation by the South African 'state' of its existence and sovereign character, and on the hand the definition of a national identity for itself both in relation to 'inside' others (including civil society groups) and those perceived to be 'outside' others (including undocumented migrants and refugees). Klarreen (2008) too concurs that permanent residence, which finds its starting point in 1986 with the abolition of Influx Control Act of 1986, is arguably the paradigmatic migration status for South Africa. What the above views suggest is the centrality of migration in the attribution of the resident status in the formation of South Africa as a state.

Though prolonging these views, the central argument to the present paper is conceptually different from the previous arguments around xenophobia and citizenship. While the argument around the state institutions fuelling xenophobia and entitlement may have some validity, such a relationship is difficult to establish in a clear cut manner. The legal framework governing the conditions of entry into the country for migrant workers and refugees under the 2002 Immigration Act is quite comprehensive and regulating as far immigration policy is concerned (Polzer, 2008; Sagatti and Landau, 2008). Some analysts consider the South African's law instrumented in the 1998 Refugees Act) is one of the most progressive globally (see, for example, Polzer, 1998). An interesting direction would rather be to look into the continuity and discontinuity of the discourses around the management of migration of foreigners. What has emerged over the post-apartheid South Africa is a strong focus

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on irregular migration in the political discourse. Immigration is automatically equated with irregular migration and policy to curb it. This is the reason why the paper gives prominence to this form of migration as a way of understanding the influence of political discourses over the perception of immigration in the public sphere.

To put the paper in a geopolitical context, one must note that South Africa is the destination of an increasing immigration from different parts of the world. Concurrently to this movement of populations, the country is experiencing a massive emigration of its skilled labour to such developed countries as the United Kingdom, Australia, New Zealand and the United States. Within the new global structures of production, South Africa is regarded as an emerging economy along with Brazil, India or Malaysia. While the resulting effects of losses and gains from these migratory processes remain under assessed, the least one can say is that the country has a real potential for attracting massive foreign direct investments because of its social and economical infrastructural endowments. This is however constrained by the diminishing stock of skills in various sectors. To render this potential effective, the country requires a competitive labour market, and for that qualified workers are needed to address the chronic shortage of skills. Immigration is regarded as one of the channels through which these skills can be mobilised. Whilst provisions are in place to facilitate the migration of skilled persons through various permits, alarmist views are constantly expressed that a large proportion of the migration fluxes to the country is of illegal nature. Using the categorisation proposed by the Global Commission of International Migration (GCIM, 2005), this type of migration includes migrants who enter or remain in the country without authorisation, those who are smuggled or trafficked across the border, unsuccessful asylum seekers who fail to observe a deportation order and people who circumvent immigration controls through the arrangement of bogus marriages. The growth of this type migration is facilitated by a variety of networks that profit from irregular or from migrants with no legal status. To curb this illegal migration, the policy in place emphasizes a set of measures that include, among others, regulated and restricted work opportunities, detention and deportation, border control policing, crack down on migrants' enclaves in black townships and informal settlements, official documents surveillance, apprehension of migrant smugglers and human traffickers, and greater control over the free movement of populations in the southern Africa region. These measures have echoed in the

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public in different ways. Within the civil society, for instance, actions of informal regulation manifest themselves in various ways including acceptance, support, intolerance, xenophobia and collective violence against immigrants. It has also been observed active involvement of civil society groups in regard to the protection of illegal migrants, and this has tended to clash with the immigration policy regime in place.

The major sections of the paper are structured around three major orientations. The first orientation briefly presents a retrospective account on the immigration policy in the apartheid period to highlight the extent to which the then policy in place was strongly pro-immigration of foreign labour within the southern Africa region. This political reliance on foreign workers was largely driven by, on the one hand, the exploitative relations South Africa had with its neighbours and, on the other hand, the statutory exclusion of RSA from the world community of legitimate states. This political attitude toward immigration to some extent reduced the tensions in the respective labour markets of the supplying countries. The second orientation of the paper extends this appraisal of political economy of African foreign labour by locating the discussion in the post-apartheid period and looking at the challenges associated with immigration. The post-apartheid era can be dated from the 1994 elections, a turning point in the history of South Africa which coincided with the advent of the black majority in the command of the state affairs. This part of the paper shows how, somewhat unexpectedly in the context of less exploitative relations and lifting of sanctions, the imperative of social reconstruction and with it that of universalism in service delivery have induced a shift in the discourse on immigration, making it markedly exclusionary and selective, since the country has had concurrently to deal with increased immigration flows (refugees, irregular and regular) and shortage of skills. This has had some social repercussions reflected in the negative public perception of immigration, especially that of African origin. The prevailing climate of xenophobia and other forms of social intolerance toward African foreigners, accompanying the immigration discourses, finds its roots in the social representations brought, locally, about by the new dispensation of the post-apartheid regime and, internationally, by the redefinition of the strategic positioning of South Africa in the context of globalization. The third and last orientation of the paper draws some concluding remarks on this shift in the political discourse on the possibility of

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reconciling the imperative of nation-state reconstruction with that of establishing a more inclusive and integrative immigration policy regime.

### **Some historical considerations on the political manipulation of immigration in the Apartheid era (up to 1994)**

As indicated earlier, migration has been an intrinsic component of the developmental process of Southern Africa, importantly marked by the history of labour migration in the region since the 19<sup>th</sup> century. Peripheral countries to South Africa such as Lesotho, Mozambique, Swaziland, Botswana and Malawi served as labour reserves for the mining industry. This was so because colonialism capitalism, with its uneven development, facilitated the establishment of economic nodes acting as the key locus of capital accumulation in South Africa and Zimbabwe. Cheap migrant labour was drawn from these reserves to the South African mining industry (gold, diamonds and other minerals). This labour extraction was facilitated by various mechanisms, one of these being land alienation and taxation in the sub-region.

Historically labour migration dominated the movements of population in Southern Africa, and the flows were in majority made of unskilled or semi-skilled male workers recruited mainly by the South African mines. The effects of this labour migration, documented in various studies, include among others the increased dependence of the peripheral states on external sources of revenue and the burden of bringing up in future this migrant labour- social reproduction-being shifted to the feminised peasant sector (Sachikonya, 1998). Up to 1994, year of the official ending of the Apartheid regime, much of labour force found employment in the South African mines. Migration was part of the political instruments used by the apartheid regime to contain and circumvent the movement of resistance among black South Africans that could have affected the mining industry, considered as the lungs of the capitalist and segregationist economy onto which the regime was established. The peripheral states therefore served as labour reserves for the large mining and farming estates in South Africa. In this regard, the South African labour market offered in some way a “safety valve” by giving the governments of the migrants supplying states a breathing space in which to mount development efforts designed to offer alternative employment opportunities to their citizens at home (Stahl 1982).

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Taking a retrospective assessment from the supplying states' side, there is little dispute that the determinants of the changing patterns of demand for workers in South Africa were associated with the changes in the South African legislation introduced since the mid 1960s through the Bantu Laws Amendment Act No76 of 1963 that facilitated labour migration from some countries while at the same prohibited population movements from others. The Act institutionalised the recruitment of foreign migrants through labour bureaus such as the Employment Bureau of South Africa (TEBA) established in the so-called peripheral labour reserves. Working in South Africa was only permitted in specified industries, essentially mining and agriculture. Consequently, under the Act, conditions to enter South Africa were made more stringent and restraining for other forms of migration as the handling of travel documents (passport) was conferred to the authorities in the country of citizenship.

On the South Africa side, the same legislation made it mandatory for employers hiring foreign Africans from Swaziland, Botswana and Lesotho to undertake their repatriation upon expiration of contract. Altogether, these restrictive measures on the recruitment of foreign workers considerably reduced the flows of migrants from the peripheral labour reserves. Much of the other forms of migration took place clandestinely in the years that follow the internalisation policy, as it became difficult to get proper documentation. The structural conditions within the South African labour market imposed further constraints on the migration of foreigners from neighbouring countries. Viewed from the domestic labour market side, the legislation was aimed at addressing two related issues 1) the supplementary” nature of foreign African labour, and (2) the growing unemployment among black South Africans. The cyclical nature of the unemployment in South Africa was compounded by its institutional and structural dimension embedded, respectively, in the apartheid system of labour relations and the mineral-based economy. Restriction imposed through an already racist-based legislation on agricultural holdings to “homeland” areas did not open up employment opportunities in the agricultural sector to thousands of black South Africans. Poor investments in small farm holdings certainly pushed black South Africans to search for jobs in the off-farm wage employment sector. Most of them migrated from homeland in search of employment in the mining sector with little chance to get hired. Adding on that structural feature of unemployment was the

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absence of any policy aimed at favouring the formation of the many types of skills needed in the modern industry.

The 1961 Act was thereafter reinforced by the apartheid internalisation policy in 1974 that gave some preference to the domestic black labour force in the mines. The employment of foreign Africans was subjected to the approval of the labour office department in South Africa once it has ascertained that no South African workers were available for that job. The policy found its rationale into the declining capacity of the economy to create and even maintain the existing jobs due to the long lasting recession of that time (Knight, 1976). The exclusionary policy regime of apartheid era created the conditions of massive and deeply rooted poverty among the population of blacks living in the underdeveloped homelands (experiencing at the same time a rapid increase in size to natural increase). In principles, the intention of that policy of internalisation is still reflected in the post-apartheid recruitment policy of foreigners.

In the 1980s, and parallel to the internalisation of manpower, the mining industry of South Africa started to experience an other downturn in its performance due to fall in price and demand for gold, depletion of existing gold resources in certain areas and increased mechanisation in coal mining. The downturn resulted in massive loss of mining jobs and the effective collapse of once prosperous mining urban centres. The Kwazulu-Natal, major zone of destination for most foreign African migrants from the Southern African Region, was the most affected by the closure of coal mines. Nel et al (2003) report that the effects of closure were relatively profound in terms of job loss as a decline of 84% was recorded. Between 1981 and 1983, the number of working coal mines in Kwazulu-Natal declined from 44 to 21. In the years that followed, there were only 5 operating mines left in that region, and the major one was at the same time in the process of suspending its operations.

The combination of the above mentioned factors has determined the demand and supply side of labour for black South Africans. In the late 1980s, the composition of migration flows to South African mines began to experience profound structural changes, reflecting in the decrease in the number of foreign workers as a percentage of the total labour force in the country. Some figures from Chipenta (2000) indicate a decline of about 54000 foreign migrants in the South African mines within the period

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1984-1994. Translated in absolute figures, this suggests a decline from 183000 foreign migrants in 1984 to 147000 in 1994. There was therefore a substantial shortfall in the total labour component within that period. On the side of the supplying states, the declining job opportunities for migrant miners have had serious effects of which loss of valuable revenue from remittances, rising unemployment rates, livelihoods fragmentation accruing from aggravated rural poverty, dwindling of households income resulting in intra-household tension and conflicts, intensified rural-urban migration which in turn exacerbates the urbanisation problems in the labour reserves. The net result of this interplay of factors has been a rise of competition for the scarce new job opportunities on mines, concurrently growing with a declining demand for African labour in this country. As the ANC was coming to power in 1994, there was no proclaimed policy intention to rely on African foreign labour from the periphery.

### **The post-apartheid political economy of foreign labour recruitment**

The previous section has highlighted the extent to which during Apartheid, the demand for African labour was governed by the institutional and structural indictments in the labour market of South Africa. The ANC government has not as such departed from the intention embedded into the internalisation policy above mentioned. Rather the political discourses on immigration and its impacts become entrenched in the enforcement of selective measures in order to ensure migration of quality. The reasons why, despite high expectations for betterment in the new dispensation, the post-1994 governance regime has brought about decline in the demand of foreign labour are multiple. First, this has coincided with a political agenda giving prominence to the transformation of the domestic labour market geared to facilitate access to job opportunities for the majority of South Africans who mostly were excluded during the apartheid regime, and trapped in chronic unemployment. Under the new dispensation, the mining sector is regarded in the public discourse as a major sector for job creation to reduce unemployment. Contrary to the apartheid regime that relied at varying degree on the (uneducated) foreign labour to protect this sector against black activists engaged in the struggle for political and civic rights, the ANC government has tended to move away from this reliance by pursuing a policy giving priority to migration of quality. This has been very visible in the enforcement of the restrictive measures on foreign labour recruitment put in place under the

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internalisation policy of 1974. Some of these measures are encapsulated in the so-called affirmative action promoted by the ANC government in its transformative agenda through the so named Black Economic Empowerment (BEE). As part of the transformation affecting the social and economic institutions, the mining sector has experienced increased intakes of black South Africans. This has been largely the result of the pressure exerted by the trade unions on the ANC government to get rid of the recruitment of foreign labour on mines. It has therefore become difficult for Africans from the peripheral countries to find work in the mines due to increased competition with local job seekers. Thus, since the early 1990s, organised regional recruitment to the mines and other sectors has drastically reduced, inducing a shift from a controlled and relatively homogenous flow to a diverse and unmanaged flow of migrants (Polzer, 2008). This shift of flow has not only changed the range of roles foreign migrants play in South Africa, but also generated a new kind of political discourse on immigration. To fully apprehend the government's focus on immigration of quality, it is important to look at the challenges associated with the composition migration inflows in the country.

#### **Political challenges associated with diversified migratory patterns**

Migration imposes challenges of different magnitude to the government of South Africa in the context of post-apartheid dispensation and that of globalisation. These challenges emanate from the fact that the country is a major destination of migrants, displaced populations and refugees from all over the world, mostly from the Africa continent. The decline of contract labour migration to South African mines has been counteracted by the increases in the influxes of other types of migration including undocumented migration. Whereas the formal gates of migration to the mines have experienced closure, floodgates of undocumented migrants are making use of underground channels to enter South Africa as they strive either for illicit money making activities or for mere daily survival under conditions of abject poverty in most countries of the region and elsewhere. This type of migration has fuelled an anti-migration attitude among the officials and civil society. The International Labour Office (1997) estimated that 34027 Mozambicans were employed as informal labour in South Africa's commercial farm and services sector. Since 2000, the economic chaos prevailing in Zimbabwe has drained thousands of economic migrants

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(approximately 40000) of which undocumented migrants are dominant. Most of these Zimbabwean migrants are employed on South Africa's commercial farming in the Limpopo province. Others have found their way in the services and construction sectors in the major cities of South Africa, especially Johannesburg. Undocumented African migrants also hailed from Swaziland, Lesotho, Malawi and Botswana and the rest of Africa. Being undocumented, these migrants work under inhuman conditions and their rights are usually violated. This has been the case for Zimbabweans working on farming estates. In effect, it is a common practice among farm owners to call the police at the expiration of contract as a way of not paying seasonal employees' wages. The situation of foreign workers is further worsened by the rising tide of xenophobia in the country after the 1994 political changes. In some sections of the South African population, African foreigners are perceived as threat for scarce jobs as they substitute to or compete with local job seekers by accepting low wages. Curbing the competition for jobs associated with undocumented migration poses a major political challenge to the government.

Within the global system of movements of people, South Africa is a country of destination for the bulk of migrants coming to the country. But South Africa is also a country of transit for some migrants though in a smaller number. A component of the migration stream to the country is made of skilled and professional labour. Although restrained by the legislative in place, this skilled migration (of quality) is on the increase as most of these migrants find it difficult to enter the Western Countries. In the current policy, provision is made to facilitate this migration through the quotas or special skills work permit programme. South Africa, as a receiving country, gains a lot from the migration of skilled persons, and this may also compensate for the loss caused by the brain drain of its domestic professionals (mostly whites) to such countries as UK, USA and Australia. Skilled immigrants are drained from all over the world, with a substantial representation of citizens from other parts of Africa. This migration is to a large extent regulated within a somewhat biased immigration policy. This is so because the policy gives a prominent place to law enforcement rather than to facilitation of migration (Polzer, 2008). Besides, the policy seems not to be in harmony with the SADC recommendations in regard to the formulation of a migration policy at the regional level. Skilled labour migration is basically driven by market forces, so it may not add a lot of value to balanced and mutually interdependent

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development let alone deep integration in Southern Africa. There is need to frame the policy along the lines of a yet to come SADC protocol on free movement of people with a view to turning it into a regulatory mechanism for all forms of migration. Such a protocol must not be only an opening up of countries' borders to facilitate labour moves under the conditions of an unharmonised regional labour market of persistent unbalanced performance of national economies. The government is somewhat reluctant to push forward the agenda on the free movement of SADC nationals. Some analysts of the regional integration question, including those from such a think tank as the Human Science Research Council, have raised concern around the perceived "invasion by other Africans" if such free movement of populations is given a way ahead.

A more recent migratory component is made of displaced populations and refugees (including asylum seekers). South Africa is not immune against the human consequences of conflicts affecting many countries across the continent. These conflicts have generated massive flows of displaced people in search of security for their lives. The displacement of persons is a phenomenon linked to political instability and armed conflict in affected countries. The social problems associated with displacement pose a grave challenge for social transformation after the demise of apartheid. By all standards, the country has some of the highest proportions of displaced persons within the SADC region. Most of these displaced persons once in the country, seek for the refugee status. Since the late 1990s, asylum seekers have come in numbers from such countries as Democratic Republic of Congo (DRC), Somalia, Burundi, Rwanda, Ethiopia, to name but a few. Most of these asylum seekers transit in at least a country in Southern Africa. For example Malawi is reckoned as a transit place for Somalis and Ethiopians on their way to South Africa, regarded by many as a land of opportunities. With the continued violent wars in DRC and Somalia, South Africa plays host to an increasing population of refugees from these areas. Adding to these, the Mozambicans are predominantly represented as some of them decided not to go back to their home country after the political settlement in 1992. Following the cessation of hostility in that country, it was anticipated that a least 250000 refugees would volunteer for repatriation under the auspices of the United Nations High Commission for refugees (UNCHR), but less than 70000 did so (ILO/SAMAT, 1998) as they took advantage of the Amnesty

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granted in 1995. It must be noted that this was the only instance since 1994 foreigners were granted option for permanent residence in the territory. This option was taken up by thousands of Mozambicans with refugee status or irregular migrants.

Cutting across these three categories of migration is that of irregular migration which is very pervasive in South Africa. Not only the number of irregular migrants present in South Africa is a matter of statistical uncertainty and controversies, it is also a source of political contestation and social debates. Around the end of the 1990s, an estimated figure came from the Human Science Research Council (HSRC) putting the number between 2.5 and 4 million, with an upper limit of 12 million. This turned out to be an unrealistic figure. Other estimates have at times suggested a lower figure of 500,000. A recent report issued in 2008 has put the figure at 5 million illegal entries. The real figure of persons in this status is difficult to estimate due to the obscure nature of irregular migration. No public effort as such has been undertaken to clarify this uncertainty or at the least to reduce it. This has contributed to shedding confusion over the size of a “shadowed” population of aliens publicly perceived as an incubator milieu for criminal activities. As irregular migration has gained a prominent place in the public concern, it is important to examine its driving forces. The following section intends to serve this purpose.

### **Some driving forces of irregular migration**

Globally, it has been documented that irregular migration is driven by a multifaceted and complex set of factors ranging from macro and micro-level institutions to poverty-related variables (GCIM, 2005). This applies as well to the context of South Africa. Some of the pull factors attracting migrants are associated with the position (historical and contemporary) of SA in the SADC region and the continent. As previously indicated, the country used to be the main outlet for foreign labour migration on mines from the neighbouring countries (Lesotho, Mozambique, Swaziland and Botswana). Up to the 1970s, clandestine migration from specific countries as far as East Africa was somewhat allowed under certain institutional arrangements to meet the demand of labour in the South African mines and other key sectors of the economy. Clandestine Mozambican migrants for example were given a chance to work once in the country. Arrangements of this type possibly nurtured a

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tradition of clandestine migration in those countries, a situation exacerbated by the uneven development in the Southern Africa region.

Studies conducted by Legget (2002) and the Southern Africa Migration Project (Crush and Williams, 2001) established the importance of shared information on job opportunities between established migrants in the host society and potential migrants. Networks permit the consolidation of co-ethnic enterprises that provide informal employment to recent migrants. Some of these migrants come from areas afflicted by social unrest. The pervasive climate of violent conflicts and chronic poverty across the continent has, over the recent years, emerged as a push factor drifting away migrants from their own countries. The situation in Zimbabwe is a strong case showing influxes of economic migrants flopping in South Africa as they come in numbers to seek for better living conditions. The borders, extremely porous with the neighbours, attract most of the blames in the public discourse when it comes to this irregular migration. The label of economic migrant is the one widely used in the official discourse. While this label may apply to some of these Zimbabweans, others are genuine asylum seekers running away from persecutions and death threats at home. It must be admitted that jumping the border may represent the option by choice to enter the country for the bulk of migrants. South Africa has one of the most discouraging legislation in terms of facilitating documentation to enter the country as legal migrant. The legislation in place is very selective, restraining and even exclusive to various categories of potential migrants, especially for those from the sub-Saharan Africa. The procedures around the granting of visa to enter the country are time consuming, bureaucratic and involve a great deal of logistical and financial hassles. Even when a job has been secured, getting all the paper works in order may be at time more difficult than migrating to a western counter. For example, the fee for a visa for single entry is relatively high (R430 and R540 in 2002 and 2005 respectively) as is that of a general work permit (R1520). Candidates to employment are faced with all types of obstacles to mobility. Getting a work permit is indisputably one of the most restraining measures propelling migrants to enter South Africa illegally. The requirements are so cumbersome that many of those entering South Africa to seek work would not qualify for a work permit once in the country. Besides securing an offer of employment, the general rule is that a work permit must be first obtained in the country where the application has been lodged. It is believed that the high fee

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makes clandestine entry appealing to those candidates to migration that cannot afford it.

As part of the 2002 immigration Act, supplementary measures were introduced to tighten visa restrictions. These have proven to be of little effect in preventing irregular migration as syndicates provide cheaper ways of facilitating clandestine entry in the country. In addition to the fee, irregular migration finds roots in the extension of kinship across the borders and more recently in the rise of cross border trading. Because of the proximity, a citizen of Swaziland for example may find it necessary to pay daily visit to relatives on the opposite side of the border in Mpumalanga (KZN) without being obliged to possess a visa. Sometimes the visit may extend to a longer period. When this happens the sojourn of the involved person falls in the category of illegal. The divide imposed by inconsistent borders upon communities with cultural affinities is a facilitating factor of irregular migration within the SADC. Some borderline areas in South Africa have experienced a large concentration of irregular migrants whom traditions (including the language) are quite similar with the indigenous population. The recognition of this cultural proximity has not however prompted the government to rethink its border control policing to stem stemming irregular migration. As most of these cross-border migrants are involved in short visits, such a type of migration should be treated differently due to its fluidity and anchorage in the cultural and ethnic ambient system. Far from incorporating this concern, the governmental approach to managing this migration has rather perpetuated that of apartheid which viewed labour as a mere priced commodity for the mining industry. A progressive initiative was however undertaken in 2005 with government of South Africa and that of Mozambique signed an agreement to abolish visas for their citizens visiting each other's country for less than 30 days.

Yet many restrictions are still in place, and in the face of these barriers, documents are sometimes forged or tampered with the facilitation of organised criminals. In the official discourse, the link between irregularity in migration and international criminal activities is frequently emphasised. This is in recognition of South Africa as a strategic location in the global economy. From a geopolitics perspective, the country provides space to some underground activities involving both locally and internationally based drug and human traffickers. Recent records suggest a steady rise

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in smuggling criminals, economic migrants and prostitutes, as well as human trafficking (South African Law Reform Commission, 2004). This has fuelled a public perception of irregular migration that brings criminals or persons with criminal intent, in the country. Some of these syndicates are transnational in nature whilst others operate in the country and collude with the immigration officials. Most of the irregular immigrants make their way to the country through fraudulent channels. The detection, once they are in the country, is difficult as they tend to live in the hiding. In any township in South Africa, one can find such locations regarded as “no-man-go areas” that can provide to some of these migrants ideal places for hiding.

Fraudulent entry is partly facilitated by corrupt officials in the immigration department. Although the perception of involvement in crime may be to a certain degree correct, it remains fundamentally untrue taking recognition of the fact that the majority of irregular migrants are engaged in non-criminal activities. They are mostly present either in formal or informal employment. South Africa, due to its history of apartheid, is known as a violent society. The blame placed on migrants is unsupported by the data at hand, and their involvement in organised crime is not statistically established. Yet, because they tend to be associated with unknowns, irregular migrants do fuel the public view that they represent a security threat. A study conducted by the Institute of Security Studies established that there was no link between prostitution and human trafficking in the cities of South Africa. The same institute also found that violence is not related to the presence of foreigners in the country. Yet the debate that has entered the public domain is that of the presumed association between urban criminal activities and foreigners.

On a different note, the bureaucracy in the management of the Department of Home Affairs is also regarded as a major factor in increasing the number of irregular migrants. According to some investigations, the corruption is widespread in the Department of Home Affairs (Gilder, 2003), which has been depicted by some of its senior officials as a prime target of organised crime syndicates and other types of criminals. The dysfunctional Department of Home Affairs attracts strong criticisms from the public, pressuring the government to clean up and re-organise the service delivery. Governmental efforts deployed in that direction seem to pay off. Some changes are noticeable in the department especially in terms of processing the

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applications within a reasonable time. The scrutinising of the authenticity of documents has also improved. Yet service delivery in that department needs further improvements in the management of applications submitted by foreigners to regularise their residential status. Inefficiency has left sometimes foreigners with no choice but to leave as their right to stay in the country lapsed due to considerable delay in the processing of their residence permit. Some are pushed in the grey area of irregularity. Syndicates take advantage of the inefficiency affecting the department of home affairs by offering fraudulent documents. It is common for these syndicates to use formal organisations in the civil society, such as NGOs assisting persons in irregular status, to obtain documents. Migrants from China, Pakistan and Nigeria have been found in possession of fraudulent documents including South African passports (Department of Home Affairs, 2001-2004). Because the status of irregular migrants excludes from services and rights entitlement, legalising their presence becomes the only way of getting access to these services through fraudulent citizenship (late registration of births, fake marriage with South Africans). These tactics are made possible through the collusion of corrupt officials with the syndicates and other criminals. Sparse official records indicate that citizens who are frequently involved in marriage scams are mainly from Pakistani, India, Egypt and Nigeria. The tactic of “marriage scam” or “bogus marriage” involving sometimes amounts of cash as low as R1500 is used to seek permanent residence. On the receiving end, South African women have also been found actively involved in these arranged marriages. A perception that prevails within the public is that only foreigners can perpetrate fraud in order to get away from the compliance with the law.

Considering all the drivers of irregular migration, the 2002 immigration Act has been more on law enforcement than on the facilitation of immigration.

### **Government’s focus on irregular migration and intervention**

Since 1994, it is not exaggerate to say that the political discourse has mainly shifted its attention on irregular migration, and most of steps in formulating and implementing the immigration policy enacted in 2002 are indirectly or directly intended to deal with it (Polzer, 2008). A retrospective appraisal of past measures suggests that the government of South Africa has not as such demonstrated innovative approaches to either promoting the so-called migration of quality or stemming irregular migration. Before the end of apartheid regime, migration of all forms was

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somewhat closely monitored. The apartheid regime imposed a monitoring with a purpose of controlling subversive intruders from neighbouring countries. Labour migrants were recruited from agents operating in the country of origin under arrangements established with the mining companies. During the transition period, the Aliens Control Act, No.96 of 1991 was intended to act along that line. Under the new dispensation, in spite of some amendments in the Act in 1995, tighten control of immigration was introduced as publicly praised by the then Minister of Home Affairs (Minister Buthelezi, 1996). Tightening border control is however a matter of political concern within the countries of the sub-region as it contravenes the regional integration process. South Africa is the only country in the SADC strongly opposed to the free movement of persons in spite of incessant calls for such mobility coming from some civic organisations. It is politically believed that, if granted, free movement of persons may open up the country to the necessity of giving legal recognition to irregular migrants. This stance has been echoed in the civil society by some think tanks, one of these being the HSRC, recommending that government should exert caution in promoting a general agreement on free movement of persons. Table 1 below provides a summary of measures taken by the government in order to control irregular migration (for a comprehensive set of measures see Segatti and Landau, 2008).

Despite the uncertainty around the previously mentioned number on irregular migrants proposed by the HSRC, it remains the most frequently quoted figure in official documents and the media. The alarmist discourse around the number of irregular migrants has been the foundation of an interventionist approach heavily focusing on deportation in order to curb irregular migration. The trends show a steady increase in the numbers of deportation since the early 1990s (see tables 2 and 3). Some short-period migrants may be easily detected by the controlling mechanisms in place such as the national movement Control System. Others are not easily detectable because they are out of the system and this happens for several reasons, one of these being related to underground employment. Irregular migrants get detected when their employing organisations report about the presence in order to get away from paying wages they are entitled to. Members in the community where those migrants live also report to the police if they want to get rid of particular individuals and, in the process, appropriate their assets. Occasionally, some migrants get arrested on criminal charges

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when involved in unlawful activities. Figures from repatriation, although questionable, have some reliability and these are the trends displayed in table1. Looking at the data, it visibly emerges that three countries have the largest numbers of deportees. Out of these countries, Zimbabwe shows a very stable increase over the period 1994-2004. The number of deportees in 2002 indicates a substantial drop. Interestingly, the trends for Mozambique show a steady decline with a peak in 1999. Mozambicans remain however at the top when compared to other countries. Over that period, deportation increased in intensity as a result of stringent control emanating from the 1995 amendments to the Aliens Control Act, 96 of 1991. One of the aspects emphasised in these amendments is the government's harsh attitude towards irregular migrants, while giving indication on increased irregular immigration following the inception of democracy in South Africa, which held premises of employment to impoverished populace. Between 1990 and 1997, the South African authorities deported a considerable number of citizens from the SADC and these accounted for 99.7% of the total of deportees. It is likely that the trend has remained in place over the subsequent years while only 0.1% is accounted for by countries outside the SADC. Statistics show some deportations to countries outside the African continent. Countries of concern include Pakistan, India, China, United Kingdom, Bangladesh, Turkey and Thailand. Surprisingly there have been some deportations of irregular migrants to affluent countries such as the United States of America, Canada and Switzerland. These deportees are relatively young (26 years on average) and males are proportionally dominant.

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Table 1: Selected policy measures implemented to regulate irregular migration

Date/period	Legal framework instruments	Aims
1995	Aliens Control Act 1991 (amended) - employer sanctions - deportation	Detection of irregular migrants
	Amnesty offered to mine workers from 1989 and to illegal SADC nationals who had been in the country since 1 July 1991	Prevention of the employment of irregular migrants
	Detection of fraudulent use of documents, surveillance of smuggling routes, monitoring of national borders to unauthorised migration.	Granting of permanent residence
2000 to now	Operation crackdown led by the police in areas with high concentration of black foreigners	To eradicate crime in areas predominantly inhabited by African Immigrants
	Increased obstruction of irregular migration (criminalisation of human trafficking, legal disregard of fraudulent marriages, instituting of fines and penalties, disseminating information to missions abroad, training of immigration officials to identify fraudulent passports, visa stamps and permits.	To fight against irregular migration
	Reinforcement of deportation (despite the heavy costs associated with this practice)	

Source: compiled from Waller (2006).

Table 2: Deportations of SADC citizens from South Africa, 1990-96

Country	1990	1991	1992	1993	1994	1995	1996
Angola	-	1	4	1	18	39	69
Botswana	596	604	458	105	48	11	7
Lesotho	3832	4440	6235	3090	4073	4087	33344
Malawi	78	177157	-	250	398	1154	1920
Mozambique	42330	47074	61210	80926	71279	131689	157425
Namibia	-	-	337	219	88	84	-
Swaziland	1225	1828	2283	789	981	837	1589
Tanzania	6	15	47	52	241	836	998
Zambia	1	1	11	1	16	23	20
Zimbabwe	5363	7174	12033	10861	12931	17549	14651
Totals	53431	238294	82618	96294	90073	156309	210023

Source: Southern Africa Regional Institute for Policy Studies (2000).

Table 3: Main countries of deportees 1994-2004

Year	Mozambique	Zimbabwe	Lesotho
1994	71279	12931	4073
1995	131689	17549	4087
1996	157425	14651	3344
1997	146285	21673	4077
1998	141506	28548	4900
1999	123961	42769	6003
2000	84738	45922	5871
2001	94404	47697	5977
2002	83695	38118	5278
2003	82067	55753	7447

Source: Department of Home Affairs (quoted in Segatti et al (2008).

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The practice of deporting irregular migrant is not really effective. Most deportees return to South Africa using various illegal channels and re-enter the country within a short time after deportation. This phenomenon is known as “the revolving door syndrome” and presents a major challenge to effective management of irregular migration. It requires some technologically advanced methods such as finger printing to address the problem of recidivism. The “revolving door syndrome” has been found to being intentionally used by some irregular migrants as a means of getting free transport to their home country at particular dates of the year. For example, it has been reported that irregular migrants will present themselves to immigration officers for arrest and deportation around Christmas festive season, a time for visiting relatives in the home country. To counter act this ill-intentioned practice, the Department of Housing tends to avoid deporting detainees over the Christmas period (SAPA, 2005).

Some activists in the human rights community also claim that deportation is ineffective. A civic organisation, Lawyers for Human Rights, concurs that the system of detention and deportation is futile as it encourages irregular immigration into the country. This view has been frequently reported on various media platforms. It is important to note that recently South Africa, through the Department of Safety and Security, has introduced the deployment of a new satellite system working in conjunction with helicopters and fixed-wing aircraft to beef up security on its notoriously porous borders. This deployment, announced in the parliament this year 2008, also informed that the images gathered would be fed to the appropriate stations from where the arrests would be affected. The introduction of this technology came to the public following the 2007 tough report from the Auditor General that more than 5 million illegal entries were recorded in the country. The report blamed the change in authority over the control of porous borders. The police was given responsibility to control the border, a task previously assigned to the South African National Defence. In the government discourse, there seems to be a direct association between the irregular migration, border jumping and public intolerance of foreigners. This comes out from the words of the Minister himself in his presentation to the parliament (August, 2008):

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Cross border migration and internal migration have become a serious problem. The recent attacks on foreigners in South Africa had brought the issue of cross border migration to the fore in a dramatic way. Cross-border migration and internal migration have become a serious problem for law enforcement. Both cross border and internal migrants establish themselves in informal settlements. Most of them have no jobs and live in squalor, while others are drawn into crime to make a living. The informal settlements have grown to almost 3000 in number, with the bulk in Gauteng (Minister's speech to parliament as reported by Hartley, 2008).

While these words find resonance in the public perception, they also indicate little recognition of the legal status some of these cross-border migrants had at the time they entered the country. Yet this is the official view that cross border migrants are in illegal situation even if they are coming from countries of the same economic community like the Southern African Customs Union. For instance, some migrants who entered the country as contract mine workers were granted through the 1995 Amnesty Act permanent resident status. Border policing has failed to produce effective deterring of irregular migration. Besides the porosity of borders, policing is a matter of concern due to some abuses in human rights by the police. Bearing in mind the so called unwritten rules with policing within the SAPS (South African Police Services), it does not surprise any observer that when incidents occurred, they do not get appropriate response from the Ministry. The mediatised story of a Mozambican being bitten by dogs unleashed by two white police officers raised several criticisms on this measure. It also illustrates some of the vicious incidents that can go unreported. The general perception is that some of the policy measures tend to be framed with little connections to a more comprehensive framework of intervention being in place. Some doubts have been raised around the effectiveness of deportation. Besides the issues around the detection of those in situation of irregularity and that of the "the revolving door" previously evoked, the questions of its running are as well matters of public concern. The experience of developed countries with the practice of deportation suggests limited effectiveness in reducing irregular migration. Besides, the institution in charge of ensuring deportation, situated in Lindela (somewhere in the Limpopo province) is costly to run. In 2001 for example the SA government disbursed R32 million to the hospitality company Bosasa which is operating the Lindela Repatriation Centre. Costs are also incurred in sending back the detainees to their home countries around the world. Some locations are very expensive as not only the fare of the detainee is paid for but as well that of the immigration officials travelling with him or her. Also the health conditions in the detaining centres are

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deplorable. Some of these detainees die of diseases contracted while waiting for deportation (The Chronicles, 2007).

Most migrants from the Southern Africa region are housed in the black townships. Because they are seen as irregular migrants, the threat of being arrested and deported is present on daily basis. Easily identifiable by the local communities because of their physical appearances and linguistic accents, they lack social protection. Some human rights activists and religious bodies, mostly working with the council of churches, Islamic congregation or the Human rights commission, have criticised the government of being very quick to use deportation as a way of dealing with irregular migration. It is a policy response which has been enforced in the aftermath of the post-apartheid elections. Within the SADC countries the patterns in the deportation of their citizens from South Africa between 1990 and 1996 show the dominance of Zimbabwe and Mozambique (see tables 2 and 3 above). Some other actions are in operation (intended and unintended) to curb undocumented migration flows (see table 1). Such actions include brutality of law enforcement agencies (the police being one of them), xenophobic upsurges, erection of electric fences along the borders or mounting heavy police and military presences along the borders. Some analysts have argued that these actions address the symptoms of irregular migration not the root cause of uneven development in the region. Globalisation is likely to exacerbate the migration-induced effects of the unbalanced development pattern in the region.

Looking at the effectiveness of all the measures implemented so far, there seems to be no doubt that they have contributed to fighting against irregular immigration. This said, the recognition of some failure is however present in the various official reports. In many instances, it has been argued that the implemented measures have had limited impact in curbing irregular migration due to the combined effect of many factors of various nature (bureaucratic, human rights-based, criminal, capacity etc) to name but a few. Besides ineffective deportation, failure has been also particularly noticeable in the surveillance of employment of irregular migrants. The close monitoring of underground employment is notoriously ineffective. Up to now, very few employers have been charged by employing irregular migrants. This practice is widespread in the farming sector that provides jobs to seasonal workers from the near border countries, especially to Zimbabweans in the Limpopo province. A similar practice is observed in

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some service-based companies that fraudulently employ foreign students with no work permit. Information gathered casually from foreign students indicates that some of them find jobs in privately run institutions in the training sector. Wages vary from institution to institution but the common feature is that most of these students are not registered as tax payers and do not hold work permit. In situations where employers have been caught, the prescribed sanctions were not strictly enforced. The practice of claiming refugee status or asylum seekers is also well entrenched within the community of students. Numerous cases have been reported of students from such countries as Ivory Coast, Cameroon, Rwanda, Uganda or Zimbabwe- which are not apparently in situation of civil war- applying for refugee status in South Africa. The term actually used to refer to this type of status is “Gondo Visa”, a derivative of the Lingala term “Magondo” (gratis) used by refugees from DRC. Foreign students represent a human reservoir of “irregular migrants” as there is no guarantee for all of them to find employment in the formal sector of the economy.

Considering all the deficiencies in the official system of managing immigration, some angered South African citizens have had to resort to uncivil ways of expressing intolerance toward migrants. This is the most manifest in the situation of intolerance toward groups of co-ethnic migrants like those from Somalia examined later.

### **Social intolerance and expression of xenophobia at the community level**

Analysts have frequently argued that social reactions to immigration, especially irregular migration of foreign African nationals, have been shaped by the political discourses on immigration (see, for example, Neocosmos, 2006). Inasmuch as the political discourses are to a large extent tarnished by uncertainty, speculation and subjective considerations on the real magnitude of this phenomenon, the public’s perceptions on irregular migration remain driven by non-empirically based considerations (spontaneous events, unrelated evidence, concerns over invasion by unknown intruders, media news). The state sponsored media have been somewhat at the fore front of negative perceptions about migration of foreign African nationals through the reporting of information of speculative nature. The media are quicker in reporting isolated crime-related news involving foreigner than informing on their positive contributions to the economy of South Africa. Negative reporting has tended to fuel xenophobia within South African Society (Waller, 2006). This feeds back as

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well the official discourse with regards to immigration. Using a cross country comparison to rank national attitudes to immigration around the world, a study concluded that South Africa has “the highest level of opposition to immigration recorded in the world” (Mattes, cited in Belvedere 2008). In the post-apartheid dispensation, the popular manifestation of xenophobia, accompanied by violent and deadly attacks on immigrants from the rest of Africa is a phenomenon that has become so common. But some analysts have argued that the rise in xenophobia is not exclusively caused by sensational media reporting xenophobia amongst of the population (see for example Crush, 2001). Other causes are found in negative stereotyping of foreigners (reflected in the use of *amakwerekwere*, a derogatory term used at the grassroots level), their would be propensity to get involved in criminal activities, their tendency to displace jobs “deserved” to locals, to “poach” local women and to bring in diseases. The negative stereotyping does not make distinction of migration status (whether legal or illegal). Nor did it differentiate the type of contribution –positive or negative-arising from immigrants. Waller (2006) argued that “the average South African could not probably differentiate between the various categories of foreigners”. As a consequence of this persistent high level of xenophobia, the social integration of foreigners is hindered because of constrained interaction between locals and them. Belvedere (2008) also contends that xenophobia finds root in the lack of popular understanding about the different types of black foreigners coming into the country.

This ignorance is compounded by the scanty reliable information about their socio-economic impact and the positive contributions that they could make to the growth of South Africa’s economy. From some survey results, it emerges that the majority of South Africans consider that irregular migration is “bad” for them and exhort government to curb it, enforce repatriation and penalise heavily employers that hire irregular migrants. Grievances have been growing across various social groups, including the most educated ones and the youth, that African immigrants have no place in South Africa. The overall dynamics is that of growing social intolerance toward immigrants, particularly the residents in the townships across South Africa. It does not come as a surprise that frequently black foreigners are victims of xenophobic attacks orchestrated by some organised actors among the communities living in the townships. Long before the eruption of xenophobic violence of May 2008, during

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which 62 migrants were killed, there were many similar cases of black foreigners being killed in xenophobia-related assaults. Cases include three Senegalese nationals thrown out of a moving train in 1998, attack amongst black foreigners in the township of Alexandra in 1994 and Johannesburg throughout 1997, the use of presumably undocumented Mozambicans as live bait for police dog training exercises in 2000, use of arson of homes to perpetrate violent attacks against Zimbabweans in the township of Zand sprint in 2001 to name but a few. In 1997, 30 asylum seekers were killed throughout South Africa. This provides indications of way in which the government's focus on irregular immigration echoes socially at the community level. Frequently there have been similar events to xenophobic attacks in May 2008 of which pictures of a burning person (a Mozambican) were mediated around the world. Some foreigners, victims of these attacks have alleged the involvement of community-based organisations in the initiation of violent attacks against them. Allegations have been also made that the police has sometimes supported attacks led by mobs to pull the migrants out of the townships and loot their properties and other assets. The concentration of immigrants, legal or irregular in some locations within the townships, increase their visibility and make them easy pray for impoverished South Africans looking for escape goats to blame for their social deprivation. At the grassroots level, the access to basic services is generally associated with the right to entitlement for citizens and foreigners as seen as competitors in the welfare system. This has found echo in the discourse of some local politicians that purposefully use it to attract the voters. The perception is high amongst South African citizens that foreigners (with legal or irregular status) are benefiting from social delivery whilst most of them are not entitled to it. Tension around service delivery in townships is alleged to have triggered the recent eruption of xenophobia-related violence perpetuated by township-based mobs across the country.

Allegations that some immigrants may undeservedly benefit from public services are sometimes justified, but this happen when corrupt practices are used. What tend to be obscured is that other migrants may be entitled to services because they have been granted permanent residence or citizenship. The South African constitution provides the same rights to citizens and permanent residents. As stated earlier, the public does not make any distinction between, say, African migrant with a status of permanent resident from that has not it. Thus ignorance prevails amongst the public as to what

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category of foreigners is entitled to social services. The same attitude is observed in regard to the issue around unemployment. In some sections of the population, the belief is strong that the presence of immigrants and refugees increases unemployment among South Africans. This view also comes out as a major trigger in the manifestation of violent attacks against foreigners. Recurrent allegations, frequently mediated, that foreigners resort to fraudulent tactics in order to benefit from social services delivery have exacerbated this misperception. According to Oucho and Crush (2001), the public has no other sources of information documenting the positive contribution of foreigners to the national economy through different ways (skills, experience, job creation, cultural diversity). At times, senior officials and executives (including the Minister of Home Affairs) have in many occasions called on government service departments to “request the identity documents or passports of all foreigners requesting services and in this way ensure that they (irregular migrants) do not gain access to services in short supply to the people of South Africa” (Douglas, 1997). This view calls therefore for a denial of rights to irregular migrants, exposing them to some undignified or less favourable living conditions. This could be one of the reasons why some of them resort to fraudulent methods in order to gain access to social services. Unscrupulous employers, in conjunction with human traffickers, have taken advantage of the vacuum created by the denial of rights to irregular immigrants to offer employment under inferior conditions, thus benefitting from unfair competition.

On the front of human rights, the SAHRC together with the Lawyers for Human Rights, a civil society organisation, have endeavoured themselves to this task of providing some protection of the rights of irregular migrants. This however occurs when they are detained in the Lindela Detention Centre. The monitoring of detainees and the management of the centre have however become matters of concern. According to the reports produced by the SAHRC, the record keeping of Bosasa, a private company managing the centre, is of poor quality. For example, the numbers of detainees as communicated to the department of Home Affairs are supposedly incorrect and prone to over enumeration in order to increase the payments received from the state. Some religious communities are quite well involved in the provision of support to irregular immigrants and refugees. In Johannesburg, for example, the Baptist Church provides humanitarian support ranging from shelter to food to a

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considerable number of irregular immigrants, mainly from Zimbabwe, as a result of border jumping. These charities organisations are overwhelmed by continuous influxes of border jumpers from neighbouring countries, especially from Zimbabwe. Cross border traffickers are very active along the borders South Africa shares with, on the one hand, Mozambique, and, on the other hand, with Zimbabwe (known as Belt bridge). As reported in a local paper *Chronicle* (September 2007), Zimbabwe cross border transport operators are frequently arrested by the South African police. Records show that in 2007, for example, 13 traffickers were arrested as they were carrying several jumpers, among them 13 unaccompanied children. The illegal migrants were smuggled into Zimbabwe through Beitbridge Border Post. The operation was undertaken by the police as part of the actions aimed at dealing with the increase in cases of human trafficking through the border post. According to the police, the transporters operate as syndicates involved in illegally transporting people without passports for fees, which are three times more than the actual fees. The traffickers, also locally named as *Omalayitsha*, actually pick up their “clients” at several points along the crocodile infested Limpopo River. The crossing of the river is sometimes complicated by the flooding, and the fear of drowning or being attacked by crocodiles motivates border jumpers to resort to the services of *Omalayitsha*. Others, however, are smuggled into the neighbouring countries after having bribed the police and immigration officers at the border post, border jumpers are made to pay between R800 and R1000 per trip, while by conventional transport means it costs around R300. When arrested the traffickers pay fines amounting to R1500 each while their passengers are automatically deported. Some of the smuggled passengers are said to be individuals recently deported from South Africa. Smuggling has become a lucrative survival strategy for many people in the areas along the borders, and traffickers’ touts operate in the vicinity of the International Organisation Migration support Centre in Beitbridge in the hope to get “clients” despite the presence of a police. *Omalayitsha* often dump their “clients” in some isolated places when attempting to run away from the police. When this happens, the dumped passengers are most of the time arrested and deported. Very few among the smuggled persons make alternative arrangements to reach Johannesburg, their dreamed after place of destination.

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### **A case study of contested immigration in the context of rising xenophobia: The Somali traders in Bellville, Cape Town**

The following observations were gathered by this author in the area of Bellville, one of the constituencies of Cape Town. The issues reported in this section may apply to any other settings where Somalis are found in numbers. They serve to convey insights into the inappropriate political responsiveness to xenophobia directed to these displaced persons in urban settings. The community of Somalian immigrants in South Africa constitutes a case of contested local integration in the South African society. The use of the label “immigrant” may not be appropriate for them as they all claim to be refugees or asylum seekers. Their migration is relatively recent in the post apartheid South Africa. The community has experienced rapid growth which has stemmed resentment towards them from locals and (even) other immigrants due to friction over trading. Cape Town, as most of the other major or secondary urban centres across South Africa, hosts a large community of Somalis. The exact number of Somalis in Bellville alone is unknown but according to one of the community representatives, the estimated figure is about 5000 to 6000 Somalis (as of February 2008). At this date, this estimation is indisputably below the real figure, as new applicants for refugee status are daily recorded in the Bellville department. The community is not homogenous as it comprises various clans from different parts of Somalia. Some of the community members originated from areas which are not affected by civil war and conflicts. Somaliland is one of them. But once in South Africa, they all claim to come from a conflict-prone area in order to enjoy the status of refugee granted under the Refugees Act of 1998. The South African policy on refugees excludes the establishment of UN or state-assisted camps for displaced persons. Thus, Somalis are self-settled refugees and heavily rely on religious and clan-based networks to find accommodation and secure livelihoods in the urban setting. In the city, each clan has a representative and this extends to the national level. Although they do not own houses in the city, Somalis tend to exhibit expansionist behaviours towards space occupancy for business creation. In the Central Business District (CBD) of Bellville, shops owned by these refugees have expanded in what is now known as “Little Somalia” area. The area which was experiencing low occupancy rate before the Somalis moved in has now become one of the most buoyant and crowded place in the CBD. The establishment of “Little Somalia” has displaced the residential habits of locals (mainly white and coloured people) who used to live in the area because of the cheap rental accommodation. Most of them have been pushed out of the area, as Somalis make offers

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to pay high rent to house owners. The mushrooming of trading activities has given rise to the renovation and repair of several buildings converted into commercial premises. Through the development of business, Somalis have taken symbolic possession of the CBD in various ways, and two of these being the establishment of a mosque and the naming of shops in reference to their place of origin. As argued by Akcapar (2006) in her study on Iranian Shiites in Turkey, religion plays a very important part in the formation of personal and social identity among immigrants, refugees, and asylum seekers during the integration process. The mosque serves as a rallying point for collective identity and a resource for social capital.

To describe the rapid change affecting the CBD, one representative of a local NGO dealing with street people said: “almost all the business premises in the area have been taken over by Somalis. They will simply arrive and claim the space as their own. I’ve had to chase them off our property on numerous occasions”. The size of the business community has considerably grown up due to induced migration (family members from Somalia), creating additional demand for space to trade. One community leader interviewed during fieldwork informed: “we come to South Africa because there are opportunities here. It is a civil society that allows us education, trade and travel”.

The expansionist behaviour of Somalis in the Bellville CBD has resulted in, among other things, social tension and violence between them and other refugees (mainly from the Democratic Republic of Congo). They frequently attack each other with knives as they begrudge each other space to trade. But Somalian traders have had also tension with the city police, which has increasingly become intolerant towards their growing presence in the CBD. There have been frequent incidents involving Somalis and police staff reported in the local press (see, for example, Tygertalk, 14 February 2008). The concentration of conflict is not only confined to the Bellville CBD where Somalis trade, but it is at the greatest level in the townships where many of them live under the permanent threat of being killed by locals. As one Somalian refugee put it: “Somalis are easy prey in the townships” where some areas, not accessible to the police, are sites of pervasive violent crime and xenophobic attitude towards “non-south African” citizens from other parts of Africa. For example, some months ago before the eruption of xenophobic attacks against foreigners in May 2008, residents in the township of Motherwell in the Eastern Cape systematically looted more than a hundred Somali businesses in the area, Goods were

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taken from shops owned by Somalis and their property destroyed. It was reported that 400 Somalis fled the township without their belongings to seek refuge in a mainly coloured township (Mail & Guardian, 2-8 May 2007). In township, the Somalis do not live in enclave. They are dispersed within the community. What could have been a pattern of effective local integration has frequently turned out in life threatening situation. The growing presence of these traders from outside is the source of animosity, rivalry and resentment amongst the local business men who also own shops in those impoverished areas. Allegations are occasionally made by Somalis that South African shop owners orchestrate attacks to forcefully removed Somalis from the township. Some of these allegations may find some justification in the local politics. Taking again the township of Motherwell as an illustration, it was observed that prior to the looting mentioned above South African shop owners collectively issued a call for the removal of all Somali shops. This call came in support of the harassment from the police on Somalis suspected to be in possession of illicit drugs and illegal weapons. From a broader perspective, violent attack against Somalian refugees in the townships is one of the tactics used to keep enterprising Somalis out of the area. The view expressed by a resident in the township in the days that follow the attack summarise perfectly the views of many township dwellers:

The approach of the Somalis to come and just settle in our midst is wrong. Somalis should remain in their country. They should not come here to multiply and increase our population and in future, we shall suffer. The more they to South Africa to do business, the more the locals will continue killing them. But may be if they stop thinking they are cleverer than local South Africans, the killing will stop.

These words amply resonate in the intention expressed collectively by a professional organisation-NAFCOC (National African Federated Chamber of Commerce and Industry)-calling for Somali purge in Khalyetsha, one of the densely populated townships in Cape Town (reported in the *Mail & Guardian*, September 5 to 11, 2008). The organisation-made of South African businessmen- sent letters in September 2008 to 200 Somali traders warning them to close their shops or face physical violence. As the representative of NAFCOC puts it:

The Somalis fight civil wars in their own countries and they come here (South Africa) and take away our livelihood. Maybe we should start a civil war so that they will leave our communities. These Somali traders are Arab and they're in our country illegally. Why can't they be kept in refugees camps?

The reasons behind the letters are related to the Somali traders' business practices (low prices, long opening hours, co-ethnic support, well organised supply networks,

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etc). According to NAFCOOC's members, these practices are disadvantaging the local traders. Put in the words of the NAFCOOC's secretary (same source as above):

We [local traders] can't even do business with these people because today he calls himself Abdul and tomorrow he is Mohammed. During the day, Shoprite [a network of supermarket stores] takes our business and during the night, it's the foreigners. Somali traders are Arabs and Muslims and those countries have lots of money. Our own country and democracy, which we paid so dearly for, does nothing to help us.

The city authority negatively and lawfully reacted to this resentment among local traders toward Somali traders. But this expression of intolerance towards African migrants is well entrenched in the communities, and it will take a while for it to vanish. A sound policy for an effective integration of African foreigners is more than ever needed.

### **As a way of conclusion**

The foregoing discussion on the changing discourses on the immigration policy in post-apartheid South Africa points to some similarities and differences. In reference to the Apartheid, the discourse was constructed around the political concern of recruiting foreign labour, not necessarily skilled, to meet the demands of the mining industries. Foreign workers, mainly poor rural dwellers from the Southern African region, were given incentives to move in South Africa and work on mines and farming estates. The recruitment of foreign Africans was regulated in consideration of some situations of tension both in the domestic labour markets and political spheres. The Alien control act of 1961 and the policy of internalisation of 1974 served as institutional framework for regulating and controlling the movements of African foreign workers admitted in the country. There were however irregular migration but not much as it is in the present days. The terrifying apartheid regime indirectly deters migration to the country, but it showed flexibility in regard to labour on mines and farming estates.

In the post apartheid South Africa, foreign workers are no longer in high demand on the mines as the country has to tackle its own growing unemployment. In this context, the political discourse is increasingly focused on curbing irregular migration and facilitating (not attracting) skilled foreign professionals. The migration discourse has become strongly selective, discriminatory and biased toward skills. Concurrently, to some candidates to move, irregular migration has emerged as the most viable option

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for moving into this country regarded by many Africans and other nationalities as a land of money-making of opportunities. The doors to enter Europe are nearly closed to this migration from the south, thus South Africa emerges as a viable destination for the thousands of candidates to migration.

The deportation of detected irregular migrants has considerably increased in numbers as the country faces influxes of migrants of all types (including forced migrants) from within and outside Southern Africa. The measures aimed at curbing irregular migration are not really effective. This type of migration adds on the effects those resulting from legal and forced migration. Echoing the government alarmist discourse on immigration, the perception has been growing within the South African nationals that there are too many foreigners of African origin in the country. This perception has at times found expression in xenophobic attacks against foreign expatriates from other African countries.

To what extent are state institutions fuelling the culture of xenophobia in South Africa? This is a question that requires further research. What has been established in this paper is the political shift toward a greater focus on irregular migration while there is some continuity in the restrictive, discriminatory and selective measures of the apartheid ages. It is certain that the country has become more hospitable to migrants, but a large fraction is made of a handful of migrants with the skills needed by the modern economy. A looming question is how to accommodate those migrants in irregular situation, but who may happen to have the skills needed by the informal (second economy) and formal sectors? The answer to this should be central to the challenges and questions policy makers must address in managing migration in the post-apartheid South Africa.

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