

# CROSSINGS

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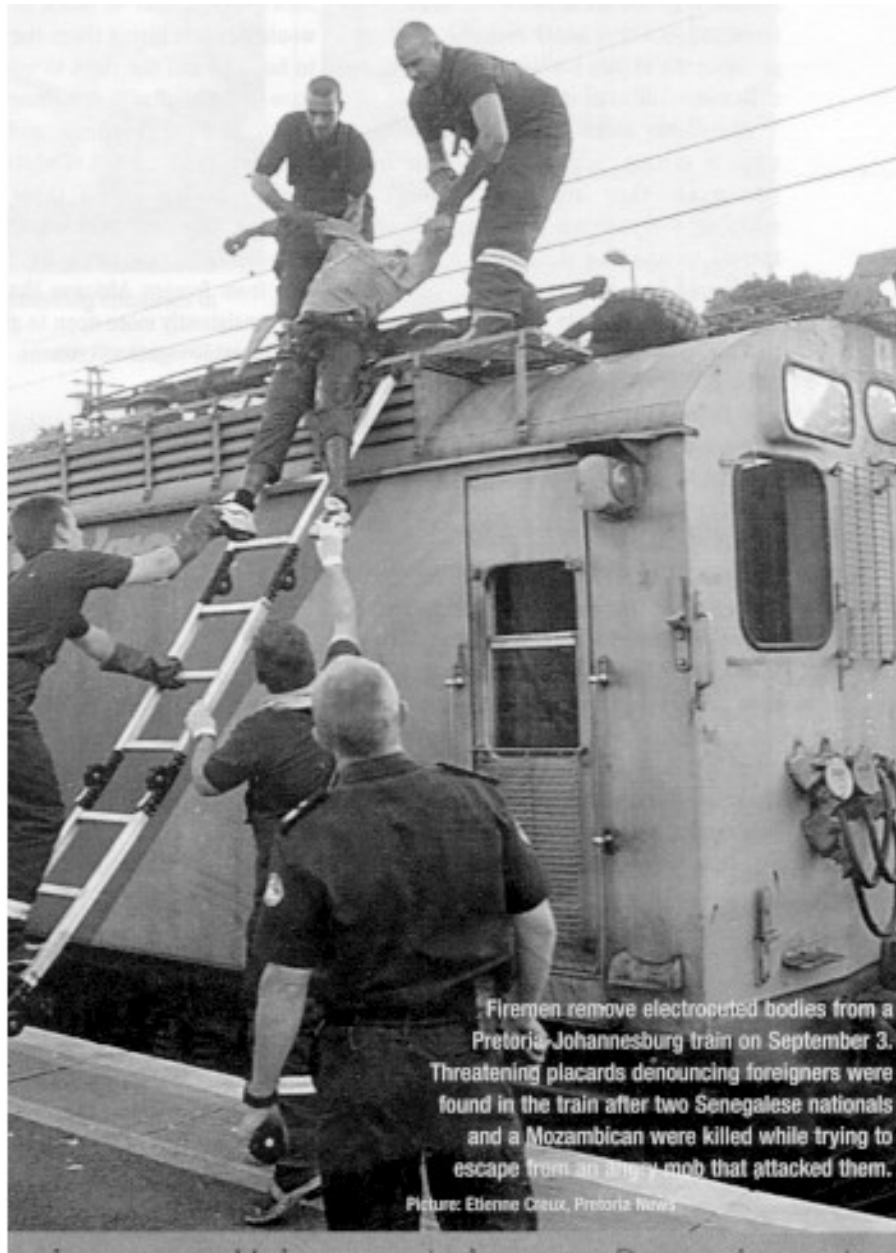
## **XENOPHOBIA: HOSTILITY 'GROWING ALARMINGLY'**

**Jonathan Crush and Robert Mattes**

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*South Africans are generally more hostile towards immigration than citizens of most other countries, a recent survey has found*

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"Just because I'm not xenophobic doesn't mean I don't hate foreigners." This variation on a tasteless old joke accurately sums up the spirit of the recent debate on xenophobia in South Africa. Placard-waving, physical attacks on foreign street traders (including many who are legally trading in the country) and the shocking deaths of two Senegalese and one Mozambican citizen on a local train have focused public attention on a troubling question: are South Africans xenophobic? Are they intolerant of foreign citizens simply because they are foreign and of different race, language and culture to themselves?

There is a general consensus that xenophobia is not only widespread but growing alarmingly. A recent nationally-representative survey of 3,500 South Africans by the Southern African Migration Project (SAMP) provides the first in-depth analysis of the attitudes of South Africans towards foreigners, migrants and immigrants.

The survey confirms, first, that there is in South Africa a pervasive suspicion of immigration and

immigrants irrespective of the respondents' race, income, age and education.

South Africans are generally more hostile towards immigration than citizens of virtually every other country for which comparable data are available.

An astonishing one quarter of all South Africans, for example, want a total prohibition on all forms of immigration to South Africa (up from 16% in 1995). In most other countries the comparable figure is less than 10%.

More amazing, given the impracticality and unconstitutionality of the idea, as many as 21% of South Africans would like to see all non-citizens (including those legally in the country) sent back to their own countries. More optimistically, of course, 75% of South Africans do not oppose some form of immigration to the country.

The survey then asked South Africans to rate their impressions of people living in the country from other parts of the world. The resulting attitudinal profile shows unequivocally that most South Africans hold unfavourable views of all foreign nationals, irrespective of where they come from, with a marginally less negative view of people from Europe and North America.

Why are South Africans so negative towards immigrants and foreign nationals living in the country? One answer is that they believe that immigrants have a negative impact on their country and lives. The survey shows that this belief is very widespread. Some 60% do not feel that immigrants strengthen South African society and the economy. And 61% feel that immigrants put additional strains on South Africa resources.

The point to emphasize is that for everyone, white or black, this negativism is not grounded in any real assessment or understanding of the impact of immigration. The truth is that no one can know if the overall impact is positive or negative because no one has done comprehensive national research on the socio-economic impacts of immigration. Other SAMP research does suggest that the impact may be far more positive than most South Africans seem to think.

The survey also attempted to understand what it is that South Africans fear from immigrants. Only 24% said "nothing". As many as 48% mentioned crime, 32% cited threats to jobs and the economy, and 29% mentioned diseases.

In contrast, only 3% mentioned competition for housing and 1% cultural or linguistic differences. The survey shows a widespread stereotyping of non-citizens in mainly negative terms. The question is, where do the fears and stereotypes emanate from?

One possible answer is the personal experience of ordinary people. However, 69% of black and 74% of white South Africans say that they have hardly any or no contact at all with migrants from neighbouring countries. The implication is that the negative attitudes and stereotypes about immigrants are not the result of direct personal experience, but a broader anti-immigrant language or discourse that portrays all outsiders as problems and a threat by definition.

## **Traces of racism**

Does this widespread opposition to immigrants and foreign citizens mean that South Africans are xenophobic? Certainly the survey revealed distinct traces of racism in the attitudes of whites to foreigners, something much harder to find among black respondents. The evidence seems to suggest that most people's views are rooted in (mis)perceived threats to the economy, crime and health.

Black South Africans are more generous than whites in the rights they would accord to other Africans already living in South Africa. About half of black South Africans would support giving them the same access to housing and the right to vote. Some 66% have no problem with providing access to the same medical services and education. However, less than 30% of whites would support extending any of these benefits to Africans. The irony here is that black South Africans, who supposedly have far more to fear from foreign Africans than do whites, are consistently more open to giving foreigners the same rights as citizens.

## **Evidence to the contrary**

One of the conclusions of the SAMP survey is that negative views of immigrants and immigration will continue to be strongly held until there is more evidence to the contrary. It is therefore imperative that this evidence is collected and then disseminated, otherwise inaccurate stereotypes will generate ugly behaviours. The media has carried numerous reports of a range of abuse of foreign nationals and refugees at the hands of South African citizens. No one knows how widespread these incidents are but there is a disturbing level of violent activity aimed at non-citizens. What is the potential for more incidences of this kind?

More than 30% of South Africans reported that they would be "likely" or "very likely" to take part in actions designed to prevent people from neighbouring countries from moving into their area, operating a local business, becoming a co-worker or attending school with their children. This group included people from all races and income groups, both genders and all educational levels.

While most South Africans would certainly refrain from such activity, the fact that a third would consider doing so suggests that there is a vast pool of latent hostility which could well translate into violence.

The draft Green Paper on International Migration suggests that South Africa should have a more open immigration policy based on skills and area of origin (with a preference for the SADC region). Do South Africans who are prepared to see the benefits of immigration see all immigrants the same way or do they make distinctions between, for example, people from different countries or with different skill levels?

As many as 61% would favour an immigrant selection policy based on the skills that a potential immigrant offers. Interestingly, such a policy is favoured more by black than white South Africans (by a 20% margin). The former would appear to be more sensitive to the needs of the South African economy when it comes to immigration.

## **Europe and North America**

In terms of place of origin, 30% of South Africans would support preferences for immigrants from Europe and North America, 27% for people from SADC, and 22% from the rest of Africa. Black South Africans do not particularly care where immigrants come from, as long as they bring needed skills. Surprisingly though, black South Africans show greater preference than do whites for immigrants from Europe and North America (34% versus 24%).

South African whites are not only more negative about immigrants but they are also more discriminating, in the worst sense of the word. They show marked favour for Europe over Africa as a source of immigrants. All South Africans show a slight preference for African immigrants from neighbouring countries than from elsewhere on the continent. Very few whites support preference for African immigrants wherever they are from.

Correlation analysis of the survey data shows, finally, that all South Africans share a dislike of most foreigners, but the reasons differ. For whites, racism and xenophobia (as defined above) are associated with their opposition to immigration. Some black South Africans hold similar views but dislike of foreigners seem to be related more to perceived threats to livelihoods and the economy.

It is striking that even in so-called immigration countries, large segments of the population oppose the immigration policies of their government. Immigrants are far more often seen as a threat than a benefit. But few countries match the strength of South Africans' negative sentiments. Ironically, as South Africa emerged from international isolation and experienced the benefits of this process, its citizens have become more hostile and intolerant of others coming to the country.

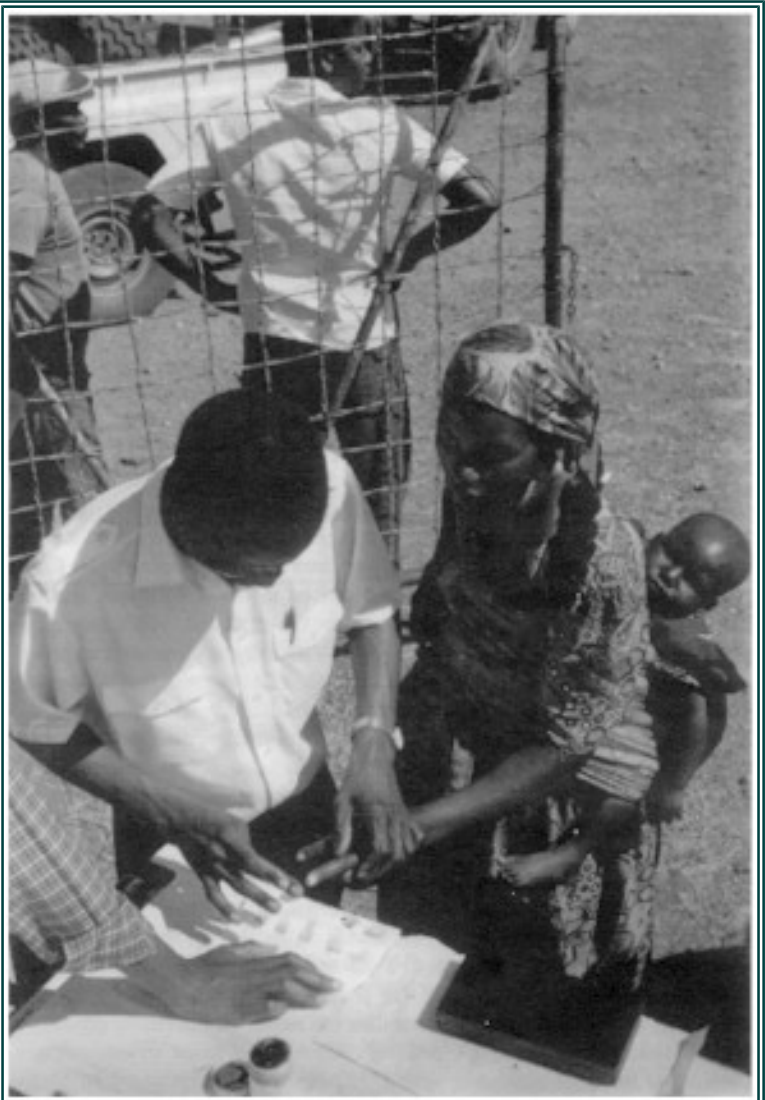
### **Public Education**

South Africans in general are not xenophobic, but there certainly are xenophobic South Africans. Since so many of these negative attitudes are lodged in stereotypes and misperceptions, rather than personal experience or a realistic appraisal of the impact of immigration, government clearly faces a major task of research and public education.

To give effect to a more rational and economically beneficial immigration and migration policy, the general public will need convincing. Accurate information, political leadership and transformed media attitudes are all essential in allaying the fears that are otherwise in danger of spilling over into further unseemly acts of xenophobia.

# TOWARDS FREE MOVEMENT IN REGION

*VINCENT WILLIAMS takes a look at a draft protocol that aims to remove all obstacles to the free movement of persons within SADC.*



The Southern African Development Community is considering a policy that ultimately aims to remove all border controls between SADC member states. In terms of the Draft Protocol on the Facilitation of Movement of Persons in the SADC, citizens of any SADC member state will be allowed to enter the territory of another member state without the requirement of a visa.

Within the Southern African Development Community (SADC) it has been accepted that regional cross-border migration cannot be adequately managed and regulated on the basis of the domestic legislation of individual member states. Therefore, countries in the region need to co-operate to develop appropriate policies, legislation and mechanisms to govern a regional migration regime.

Key to the development of such a regional regime is the Draft Protocol on the Facilitation of Movement of Persons in the Southern African Development Community. This protocol sets out as its long-term objective the removal of all obstacles to the free movement of persons within the SADC and proposes a

phased-in approach over a period of three to 20 years. The first three phases, which may be implemented concurrently, consist of:

- **Visa free entry:** It is envisaged that citizens of any SADC member state will be allowed to enter the territory of another member state without the requirement of a visa. However, such visits will be for a period of three months only and visitors will need to have valid travel documents and comply with any other requirements specified in the legislation of the country into which they wish to enter.

There is no reference in the protocol as to what the purpose of these visits may be and whether persons entering in this way are allowed to take up short-term employment.

- **Residence:** In terms of this second phase, citizens of SADC member states may enter and take up residence in another member state for a period of three years to conduct business, practice a profession, study and for medical reasons, among other things. These temporary permits are renewable on application.
- **Establishment:** The third phase corresponds to what is commonly known as permanent residence and amounts to persons establishing themselves and their dependents in another member state. Subject to a further decision by the SADC Council of Ministers and Summit, the fourth phase involves the removal of all border controls between SADC member states, and the shifting of these controls to the borders between member states and non-member states (third states).

The protocol has two additional interesting sets of provisions. The first is with regard to guidelines for the removal of persons from the territory of a member state. Essentially, if these provisions are accepted, no member state shall be allowed to remove any citizen of another member state from its territory without due process, and only according to strict procedures and regard for their rights. Specifically, the protocol prohibits the removal of groups of people, based purely on their country of origin or family relations, and argues that the merits of each case must be assessed.

The second set of provisions specifies that persons who have been granted residence or establishment rights in a member state shall enjoy the same rights as the citizens of that member state; but this is qualified by the addition of the words to the extent that it is possible. It is somewhat unclear exactly what the implications of this set of provisions are, but it can be assumed that the granting of such rights will be subject to the constitution of each member state.

As an implementation mechanism, the protocol proposes the establishment of a Committee of Ministers on the Facilitation of Movement of Persons, composed of the ministers responsible for immigration in each member state. This committee will have as its key functions the monitoring of the implementation of the protocol and assisting member states with implementation through research, information-provision and training.

The vision that underpins the protocol is initially that of a regional economic community (SADC), and eventually an African Economic Community with the free movement of persons throughout the continent.



However, there are several questions that are not adequately addressed by the protocol.

One would expect such a protocol to make some provisions in terms of labour migration. However, other than a reference stating that the provisions of the protocol shall not prohibit any member state from issuing employment permits, the protocol is silent in this regard.

It is also very clear that the domestic legislation of each member state supercedes the provisions of the protocol. How then does one ensure compliance, particularly given that the protocol contains no enforcement mechanism?

It can be argued that the protocol also calls for member states to review and where necessary, amend their existing legislation and that this process of harmonization will lead to compliance. However, what prevents member states from harmonizing their legislation using a minimalist approach? In other words, to only make amendments which do not fundamentally change their domestic legislation?

The protocol was one of the items on the agenda at the most recent summit of the SADC member states (September 1998). Reports from the summit indicate, however, that some member states are still cynical about the immediate adoption of this protocol, saying it could lead to disorderly immigration and migration in the region.

They argue that all member states need to have the necessary resources, technology and mechanisms in place to manage the implementation of the protocol and for this reason, the protocol was not adopted, contrary to expectations.

With regard to the first phase of implementation (visa-free entry), member states were encouraged to utilize the provisions of the Protocol on Tourism, which also provides for visa-free entry between member states. The future of the Draft Protocol on the Facilitation of Movement of Persons in SADC remains uncertain.

## WHO LISTENS TO FOREIGNERS?

Jonathan Crush

There is a sentiment in South Africa that the country is in serious danger of having foreign models of immigration foisted upon it. Such a feeling is just below the surface of some of the responses to the government's Draft Green Paper on International Migration written by an independent task team.

Forgotten in this anti-foreigner sentiment is the Green Paper's homegrown attempts to build a new

immigration policy based on a sound body of research into the realities (rather than the myths) of cross-border migration in Southern Africa. Ignored is the proposed use of immigration as a vehicle for furthering the South African government's stated economic policies. Overlooked is the call for all policy to be consistent with South Africa's own democratic Constitution and international commitments.

The issue comes into particularly clear focus in two recent policy initiatives to deal with unauthorized migration to South Africa: amnesties and employer sanctions. Both of these policy initiatives, one proactive, the other punitive, are tried (but not trusted) international policy responses to a similar set of challenges.

In 1996-7, the South African government generously offered permanent residence to 150,000 miners and long-term unlawful residents of South Africa from the SADC. Over the last year, SAMP has made a serious study on the planning and implementation of this "immigration amnesty". One lesson is that if the international experience with amnesty had been seriously taken to heart, the whole process would have been very differently conceived and implemented -- and would possibly be a lot more effective.

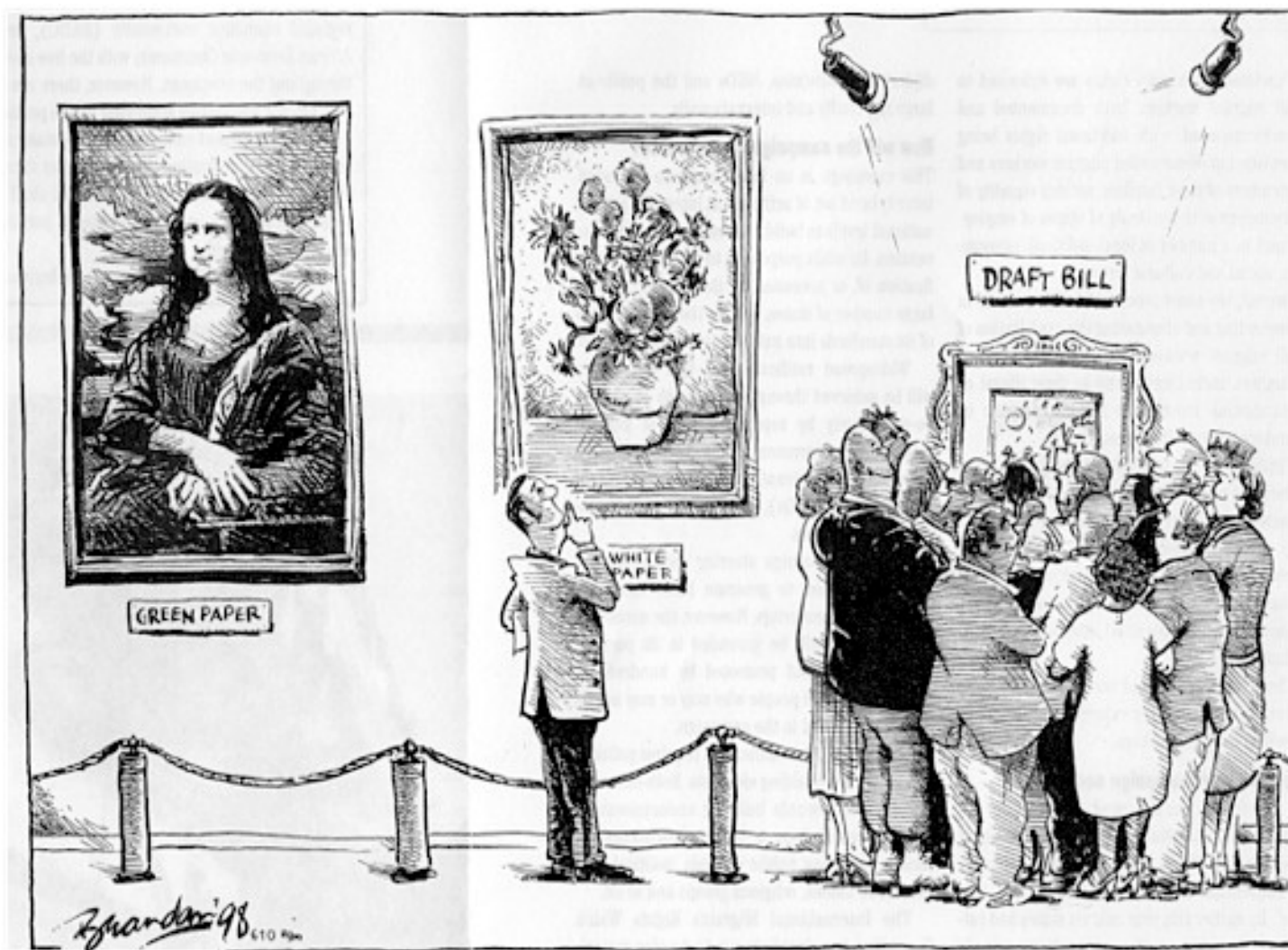
The high-publicity prosecution of a Somerset West builder by the Department of Home Affairs in the Cape High Court earlier this year for employing Mozambicans on the Waterfront signals a new get-tough application of "employer sanctions" legislation that dates from the apartheid era. Before the government dusts off this legislation and fully embraces what has been called "the mantra of employer sanctions", it would do well to examine the international experience with such sanctions.

Here the evidence suggests that, for a multiplicity of reasons, employer sanctions exercise little effect on the volume of unauthorized migration to a country. As a control measure, they are invariably a failure. Perhaps South Africa can succeed where the US, France or Japan has failed, but it seems unlikely. Where prosecuting employers might be more effective is in raising labour standards, but that requires a different (more European, less American) conception of the role and purpose of employer sanctions.

South Africans, like anyone else, have a perfect right to resist the wholesale importation of inappropriate "alien" models. However, to focus attention on the origin of such proposals detracts from the contents thereof, and the danger is that the lessons from those models and experiences are thrown out as well. South Africa has an exceptional history but it is not unique. To reject the sobering lessons of international precedent, on principle, is to consign one-self to repeating the same costly mistakes.

# SA HAS AN OPPORTUNITY TO LEAD THE REFUGEE FIELD

*The Green Paper's refugee chapter strikes an acceptable balance between legitimate state concerns and genuine protection needs of refugees and, thus, provides a better basis for progressive policy formulation than the latest draft bill on refugees, argues MICHAEL BARUTCISKI*



The changes currently under way in South Africa include a fundamental revision of its immigration policy. The refugee component of the country's approach to international migration has been the object of extensive debate as the government attempts to adopt a new policy that can effectively deal with the forced migrants who arrive on South African territory.

The government's initiatives are partially motivated by the desire to address the illegal immigration

concerns expressed by its constituency without transgressing the international conventions regarding the treatment of migrants who flee persecution. Given South Africa's influence and position in the region, the refugee policy that will emerge is likely to impact heavily on its neighbours.

South Africa has only recently acknowledged formal obligations under international refugee law even though it has received many refugees over the last few decades. After signing a Basic Agreement with the UNHCR it became a party to the OAU Convention in 1995 and the Geneva Convention in 1996. However, there is no legislation implementing the country's international obligations towards refugees and, as a result, their treatment is presently regulated by administrative procedures that allow considerable discretion and abuse. The translation of South Africa's obligations under international refugee law into domestic legislation is a major step forward.

The government has been involved in several initiatives intended to give South Africa its first refugee law: a 1997 Green Paper on international migration included a chapter devoted to refugee policy. More recently, there has been White Paper on refugees with an annexed draft bill.

The confusion created by various other proposals should be underlined. Earlier versions of a draft refugee bill emanated from the Department of Home Affairs prior to the Green Paper. That bill was fundamentally at odds with the Green Paper's refugee chapter.

Although the White Paper includes a considerable amount of the human rights-based language found in the Green Paper, it has not followed up on many of the substantive proposals. The draft bill attached to the White Paper essentially originates from internal drafting attempts that emphasize a bureaucratic approach to refugee protection. Unlike the Green Paper, it does not fully comply with international law.

### **Refugee definition**

First, it should be acknowledged that the refugee definition elaborated in the draft bill is relatively generous in that it includes the key provisions of the Geneva Convention and the OAU Convention. As promoted in the Green Paper and White Paper, the definition seeks to provide protection for any person genuinely at risk of serious human rights violations in the country of origin or compelled to leave because of external aggression or events seriously disturbing public order. The Green Paper's important suggestion that other categories of individuals protected under international human rights law should be assimilated as "refugees" for the purposes of basic protection is not followed up in the White Paper or draft bill.

Secondly, the form of refugee status embraced by the draft bill includes some problematic aspects from the point of view of legal obligations. According to international law, forced migrants who fit the refugee definition do not lose that status simply because they are removed from the host state. Satisfying the refugee definition and being removed from a host country are two distinct issues. Under some circumstances, a refugee can be legitimately and legally removed for reasons of national security. Yet it would be incorrect and unfair to declare that person as no longer meeting the criteria for refugee status.

### **Refugee determination procedures**

The government proposes to establish individualized refugee status determination procedures that are fair and efficient. International experience indicates that a successful system depends largely on the creation of an administrative body that can provide reasonable guarantees of independence from the executive or political branches of government. Contrary to the aspirations of the Green Paper and White Paper, the draft bill contains limited guarantees of this nature. This is a fundamental flaw for any system that wants decision-making to be perceived as credible.

The one-step investigatory procedure set up by the draft bill includes hearings with legal representation that are conducted by "Refugee Status Determination Officers" appointed to terms of office that are entirely dependent on the discretion of the Director-General of Home Affairs. The nomination of officers for very short terms may amount to employment conditions that ensure they will not be able to disagree with the immigration authorities.

Decisions on refugee status are open to a single opportunity for appeal involving a Standing Committee for Refugee Affairs (in cases of manifestly unfounded, abusive or fraudulent applications) or a Refugee Appeal Board (in cases where refugee status is recognized or the application is deemed to be unfounded). The fact that the Minister of Home Affairs retains significant discretion regarding the salaries of the standing committee and appeal board members is potentially problematic.

Several other provisions relating to the refugee status determination procedure appear conceptually or practically problematic. For example, the confusion concerning the recognition of refugee status and the granting of asylum that was found in the earlier draft bill is reintroduced in the new draft bill annexed to the White Paper. International law clearly distinguishes between refugee status and asylum. Governments that recognize refugee status are not necessarily obliged to grant asylum: they are simply prohibited from sending refugees across dangerous borders.

It is unfortunate that applications for refugee status and asylum are confounded or even that Refugee Status Determination Officers are given the authority to recognize refugee status *and* grant asylum. The latter capacity should be left to the executive branch of government, which is legally entitled to engage in burden sharing agreements with other governments that could provide for asylum to be offered on another territory. These nuances which were included in the Green Paper have regrettably not been translated into the draft bill.

Most importantly, the draft bill includes a series of imprecisely defined functions and roles for the various decision-makers. Although the role of Refugee Receiving Officers in conducting preliminary interviews and preparing case files is briefly described in the White Paper, it is not mentioned in the draft bill, which simply has these officials receiving applications and providing claimants with permits to temporarily sojourn until decisions are made on their claims.

The standing committee's role of "monitoring" decisions by Refugee Status Determination Officers is equally unclear in that any concrete actions that should result from this activity are not specified.

Although the standing committee may conduct a full review of initial decisions on manifestly unfounded claims, it is not actually required to hold a new hearing. This may represent a breach of due process

standards in that the standing committee can render new decisions granting or refusing refugee status based on evidence presented. In any case, experiences with similar administrative structures indicate that the White Paper's expectation of an overall accelerated procedure, which should be completed in three months, represents some wishful thinking.

It is hard to imagine that the overall status determination procedure can be completed within six months. Prolonged delays and backlogs have the ability to undermine public confidence and it is preferable to be realistic about administrative expediency that must respect basic standards of human dignity.

### **Rights of refugees and asylum-seekers**

Although all of the recent government initiatives embrace similar refugee definitions, they are profoundly different in terms of the rights they grant to those individuals. Socio-economic entitlements are crucial. Whereas the Green Paper explicitly proposes that the full rights accorded to refugees under international law be granted, the White Paper's lack of clarity on this issue is reflected in the draft bill, which remains imprecise regarding socio-economic rights. In order to conform to international law, South Africa's refugee legislation should clearly include the socio-economic guarantees enumerated in the Geneva Convention.

The draft bill's approach regarding the duration of refuge offered to needy foreigners is less generous and coherent than the propositions included in the Green Paper. The draft bill does not offer permanent resident status to those who have been recognized as refugees, but rather allows them to apply directly for naturalization five years after the date of recognition. There is no explicit guarantee that naturalization will be granted.

The White Paper presents the same proposal regarding the possibility of applying for naturalization after five years of asylum, but is more precise in that the application is to be considered as if it were presented by a permanent resident. According to South African law, such an application would normally be accepted and the department's discretion is limited. This qualification on naturalization has conspicuously not been retained in the draft bill.

In both the White Paper and its annexed draft bill, it is unclear why refugees do not obtain any residency rights prior to obtaining citizenship. Residency can indirectly result from international legal obligations to refugees, while the granting of citizenship remains a discretionary act. The Green Paper is more coherent in that it guarantees permanent residence after five years of asylum, but leaves citizenship to the discretion of the host government.

### **The "temporary protection" debate**

While international and some local activists have concentrated their criticisms on the Green Paper's endorsement of "temporary protection", strikingly restrictive versions of the draft bill have been quietly pushed forward by the Department of Home Affairs and they have drawn limited criticism from the NGO community.

Notwithstanding its labeling as a system of temporary protection, a closer look at the Green Paper's refugee chapter reveals that it is actually the same system found in the Geneva Convention (and the OAU Convention) with an emphasis on individualized determination procedures and usage of the refugee status cessation clauses. Since refugee status can cease under certain circumstances, the adjective "temporary" is used and emphasized so that the government does not fear it is necessarily assuming permanent obligations if it allows refugees on its territory.

According to the earlier Green Paper, it is possible that the refugee will be permanently protected by the host state in the sense that he or she will have the right to obtain permanent residence after five years of asylum: "[r]efugees should benefit from a firm guarantee to make permanent residence available at the end of the temporary protection period". This critical provision appears to have been misunderstood by many commentators who mistakenly believe the Green Paper is arguing for the removal of refugees after a five-year maximum temporary protection period.

In fact, to the extent that no country in the world has accepted a legal obligation to permanently integrate refugees, the adoption of the Green Paper's model of refugee status would be the closest example of a guaranteed permanent refugee status found in law.

The term "temporary protection" is appropriate in relation to refugee groups in Africa and refugees from Bosnia-Herzegovina who were not guaranteed rights that can facilitate or lead to durable residence. The Green Paper's refugee chapter clearly goes beyond these minimal protection measures and reserves a significant place for local integration as a durable solution. In fact, refugees obtain the corresponding rights found in both the Geneva and OAU Conventions.

The system envisaged in the Green Paper corresponds to a progressive vision of "full" refugee status. Its main divergence from the Geneva Convention is that it includes an explicit attempt to make repatriation a feasible solution.

Unfortunately, the confusion created by the term "temporary protection" has been the focus of international activists involved in the South Africa debate. These actors mistakenly believe the Green Paper is encouraging the government to incorporate legislation that would formalize the problematic type of protection system reserved for refugees from Bosnia-Herzegovina in the European Union. Consequently, the progressive Green Paper has been criticized by refugee advocates who would like to see a more liberal policy toward refugees.

These activists advocate an approach that no government is willing to consider and that exceeds actual legal obligations: immediate rights of permanent residence for all refugees. As NGOs argue among themselves over the application of "temporary protection", the Department of Home Affairs appears committed to the latest version of the draft bill, which clearly represents a less progressive vision of refugee protection and does not include any obligation to permanently integrate refugees. This may be an example of how substantive debates on policy can be diverted or distracted by international actors with agendas that are not necessarily related to local priorities.

## **Refugee camps**

Keeping refugees in camps is an option available in all recent government initiatives on refugee policy. The draft bill authorizes the Minister of Home Affairs to "designate areas, centres or places for the reception and accommodation of refugees or any specific category or group of refugees who entered the Republic on a large scale". The only limitation on the Minister's power is that he or she must consult with the UNHCR representative, the Premier of the concerned province, the Minister of Correctional Services, the Minister of Safety and Security, and the Minister of Defence. The draft bill makes it clear that these camps can only be applied in situations of "mass influx", although this term is not defined. Is the arrival of a group of 500 refugees considered a mass influx? 10,000?

There is ambiguity as to whether refugees can freely leave designated camps. While the Geneva Convention generally guarantees that refugees have the right to choose their place of residence and move freely, this provision is not reproduced in the draft bill.

The draft bill's emphasis on national security and detention suggest that actual administrative practice may deny refugees the internationally recognized right to freedom of movement. Likewise, the White Paper's suggestion that international legal standards for refugees do not necessarily have to be respected in situations of mass influx raises serious concerns.

Regardless of whether the government decides to include refugee camps as a central feature of its future refugee policy, freedom of movement must be respected. In other words, refugees must be given the choice to reside in designated areas or find alternative means of accommodation.

The many problematic provisions found in the draft refugee bill contrast with the more progressive Green Paper model. The latter acknowledges the value of refugee integration when repatriation is not possible and consequently includes unequivocal provisions relating to basic rights and residency.

The recent NGO criticism of the Green Paper and endorsement of previous versions of the draft bill indicates a misunderstanding of this recommendation.

In sum, the Green Paper's refugee chapter has always provided a better basis for progressive policy formulation than the latest draft bill. It strikes an acceptable balance between legitimate state concerns and genuine protection needs of refugees. South Africa should not lose this opportunity to lead the field in responding humanely to the needs of forced migrants.

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# LOOKING AFTER MIGRANTS' RIGHTS

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*South Africa is host to many migrants and is being urged by the UN to sign the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.*

The International Migrants Rights Watch Committee gives a step-by-step guide to the global campaign for the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

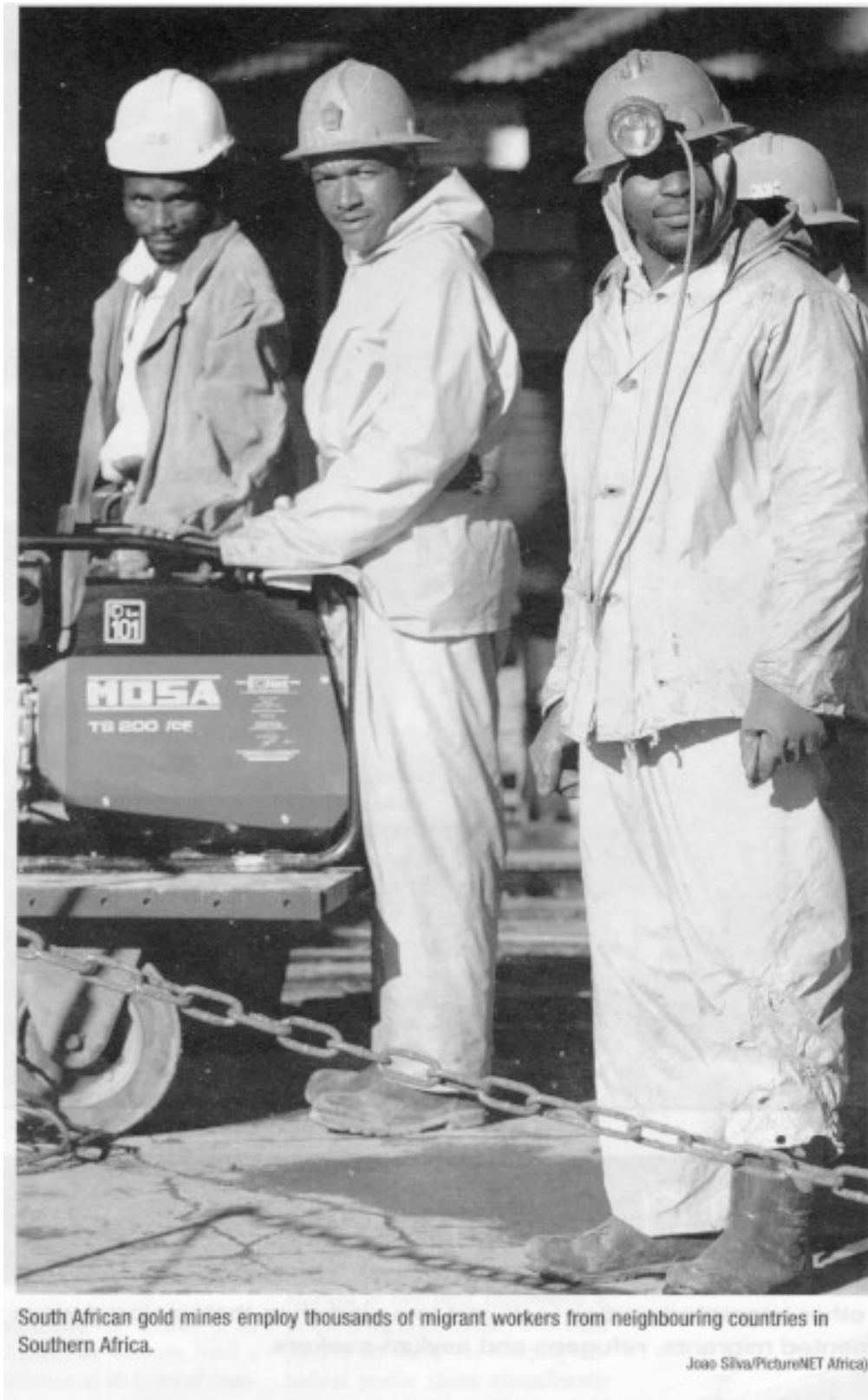
Around our globe today, millions of people are on the move -- living or trying to live in countries which are not their own. In some cases, this movement is voluntary. People move across borders for work, education or family reasons. In many more cases, the migration is forced, as people flee civil unrest and war or search for adequate agricultural land or employment simply for survival.

The displacement of people has become a dramatic sign of our troubled times. In the last few years, we have seen an alarming acceleration of forced displacement of people world-wide. In turn, governments and civil societies in many countries have become increasingly concerned about the movement of people within and across borders.

Most societies have traditions of hospitality for the stranger. Even during the Cold War era, the guiding principle for migration in many countries was to encourage and accept foreigners. However, today in national and international forums, the dominant response to displacement of people has deteriorated from acceptance and assistance to control and rejection.

The fundamental human rights of many migrants are violated or ignored. This occurs all too easily to many migrants, many of whom do not qualify for any of the categories that normally secure people legal protection, such as citizen, refugee, registered foreign worker, student and so on. Yet violation of their rights contributes to increasing social disintegration and declining respect for the rule of law.

There is more need than ever to promote the development and application of international standards, which elaborate a fundamental fact: migrants' rights are human rights.



South African gold mines employ thousands of migrant workers from neighbouring countries in Southern Africa.

Joao Silva/PictureNET Africa

### **Why is this convention needed?**

Migrant workers are a major category within the broader scope of human migration. They are a dynamic, permanent and global phenomenon in the contemporary world. Their number and scope have expanded since World War II. Women are as likely to go abroad as men. Workers are recruited in groups as well as individually. Family members often follow. More and more nation states are involved either in sending or

receiving migrants, and some countries are involved in both. Most migration remains within regions. For example, many Africans move to South Africa and many South Asians migrate to the newly industrialized countries of East Asia. Inter-regional migration is primarily from developing countries in the "third world" to industrialized countries in the West and Gulf States.

The phenomenon of migration has international political, economic and social effects as well as humanitarian considerations. The recruitment of migrant workers and their remittances to their homelands create a global interdependency for the receiving and sending countries that many states have yet to fully acknowledge. Many states of employment now recognize that migrant workers and their families are a permanent rather than a temporary part of their society. They accept that this requires new strategies and policies for peaceful national integration.

States that have viewed themselves as relatively homogeneous historically often find their own citizens opposing the permanent presence of migrants. This is especially so when the race and culture of migrants is perceived distinctly different and therefore a threat to the national character. Tensions between nationals and migrant communities are further exacerbated when the economy stagnates.

As non-nationals in states of transit and employment, migrants remain relatively defenseless, open to exploitation and often legally unprotected by national laws or civil rights codes. Hence the need for international protection and universal standards.

### **Why is the convention significant?**

The importance of this convention can be highlighted by seven points:

1. Migrant workers are viewed as more than labourers or economic entities. They are social entities with families and accordingly have rights, including that of family reunification.
2. Migrant workers and members of their families, being non-nationals residing in states of employment or in transit, are recognized to be an unprotected population. Their rights are often not addressed either by the national legislation of receiving states nor by their own states of origin. Therefore, it becomes the responsibility of the international community, through the United Nations, to provide measure of protection.
3. For the first time, an international definition of migrant worker, categories of migrant workers and members of their families are defined. The convention also establishes international standards of treatment through the elaboration of the particular human rights of migrant workers and members of their families.
4. Fundamental human rights are extended to all migrant workers, both documented and undocumented, with additional rights being provided to documented migrant workers and members of their families, notably equality of treatment with nationals of states of employment in a number of legal, political, economic, social and cultural areas.
5. Overall, the convention seeks to play a role in preventing and eliminating the exploitation of all migrant workers and members of their families, including an end to their illegal or clandestine movements and to irregular or undocumented situations.
6. Finally it seeks to establish minimum standards of protection for migrant workers and members of

their families that are universally acknowledged. It serves as a tool to encourage those states lacking national standards to bring their legislation in closer harmony with recognized international standards.

7. These standards would serve to uphold basic human rights of other vulnerable migrants as well as migrant workers.

### **Why is a global campaign necessary?**

The convention was approved on December 18, 1990 by the United Nations General Assembly. It stipulates that 20 UN member states must ratify the convention in order for it to "enter into force". By earlier this year only six states had ratified or acceded to the convention, namely Bosnia-Herzegovina, Cape Verde, Colombia, Egypt, Morocco, Philippines, Seychelles, Sri Lanka and Uganda.

The decision of the UN General Assembly to draft and adopt the convention is a strong statement of international consensus concerning the need for greater protection of the rights of migrants. Now, this consensus must be implemented through national ratification and legislation.

Governments need to be convinced that ratification of the convention is necessary - and popular. This will only be achieved by building awareness and exercising political persuasion about the convention with government officials, diplomats, politicians, NGOs and the public-at-large nationally and internationally.

### **How will the campaign be organized?**

This campaign is an intentional, co-ordinated, inter-related set of activities at international and national levels to build awareness about the convention. Its main purpose is to promote the ratification of, or accession to, the convention by a large number of states, and for the incorporation of its standards into national laws and practices.

Widespread ratification of this convention will be achieved through a campaign conducted co-operatively by representatives of governments, inter-governmental organizations (IGOs), national and international non-governmental organizations (NGOs), foundations and grass-roots organizations.

A formal campaign steering committee has been established to generate basic campaign strategies and materials. However, the success of the campaign will be grounded in its purpose being adopted and promoted by hundreds of organizations and people who may or many not be formally affiliated to the campaign.

Campaigning for ratification requires political and awareness-building elements. Both elements are directed towards building endorsement of the convention from a broad cross-section of society, including public officials, political parties, trade unions, religious groups and so on.

The International Migrants Rights Watch Committee has already begun to develop materials to promote the campaign. A handbook for promoting ratification is currently being prepared. In addition, handout brochures targeted at particular groups, such as trade unions and women, are being prepared to build

sector-specific awareness about the convention as well as support for ratification. These materials will be made available for reproduction by other campaign participants.

## **An initial outline of campaign concepts**

### *Outline for a global campaign*

**Theme:** Migrants' Rights are Human Rights

**Purpose:** To bring the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families into force as soon as possible.

### **Goals:**

- To build the awareness of governments and people world-wide about the existence and content of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- To secure ratification of, or accession to, the convention by the greatest possible number of states.
- To promote positive and informed public attitudes about upholding the rights and dignity of migrants.

## **Concept**

- Build inter-sectoral alliances and broad support networks to promote ratification and application of the convention. Key sectors include: religious bodies, trade unions, women's organizations, human rights' organizations, refugee-response groups, UN agencies, organizations addressing racism, legal organizations, migrant organizations, regional representations, donors.
- Promote the convention on the basis of upholding universal human rights and strengthening the rule of law in all countries.
- Link the actual conditions and issues of abuse of migrants' rights to the convention.
- Organize co-ordinated and inter-related sets of activities in all regions to promote awareness and national policy advocacy.
- Promote high visibility of migrants' rights issues and for the campaign in international and national media.

## **Strategic Actions**

### *International level*

Build a broad, multi-sectoral support base:

- Include human rights, trade union, migrant, law and civil rights, religious and other sectors.
- Seek explicit endorsement from international and inter-governmental bodies, supportive governments and government officials, and international NGOs to build breadth and depth of

support.

- Urge international entities to encourage their national affiliates or partners to participate in national campaigns.
- Promote and support the formation of broad, committed, multi-sectoral committees or coalitions for ratification at national level in countries in all regions.

### ***Organizational***

- Co-convene a campaign steering committee among leading international organizations in key sectors to give shape, impetus and support to the global campaign.
- Establish an honorary support committee of prominent individuals to promote and enhance the profile of the campaign.
- Identify and establish focal point(s) for campaign co-ordination and secretariat activity.
- Maintain inter-regional monitoring and reporting and information exchange among campaign constituency.
- Conduct ongoing priority setting and evaluation to ensure effective use of resources and to learn from experience and improve efforts.
- Seek financial and other contributions from governments, IGOs, NGOs and foundations for core campaign activities and materials.

### ***Materials and capacity building***

Prepare key basic documents and materials for use world-wide including items on:

- Background and content of the convention.
- "How to" guidelines for activities in awareness building, advocacy, forming national coalitions, etc.
- Tips for media, model press packs.
- Provide skills, training and exchange of experience among key organizers and promoters.

### **Advocacy**

- Promote visibility of issues and campaign efforts in international news and communications media and on the Internet.
- Give prominence to the campaign, the convention and migrants' rights issues in international forums, including the UN Commission on Human Rights, and relevant international conferences and events.
- Develop contracts and advocacy with officials of governments, diplomats and missions.

### ***Regional Level***

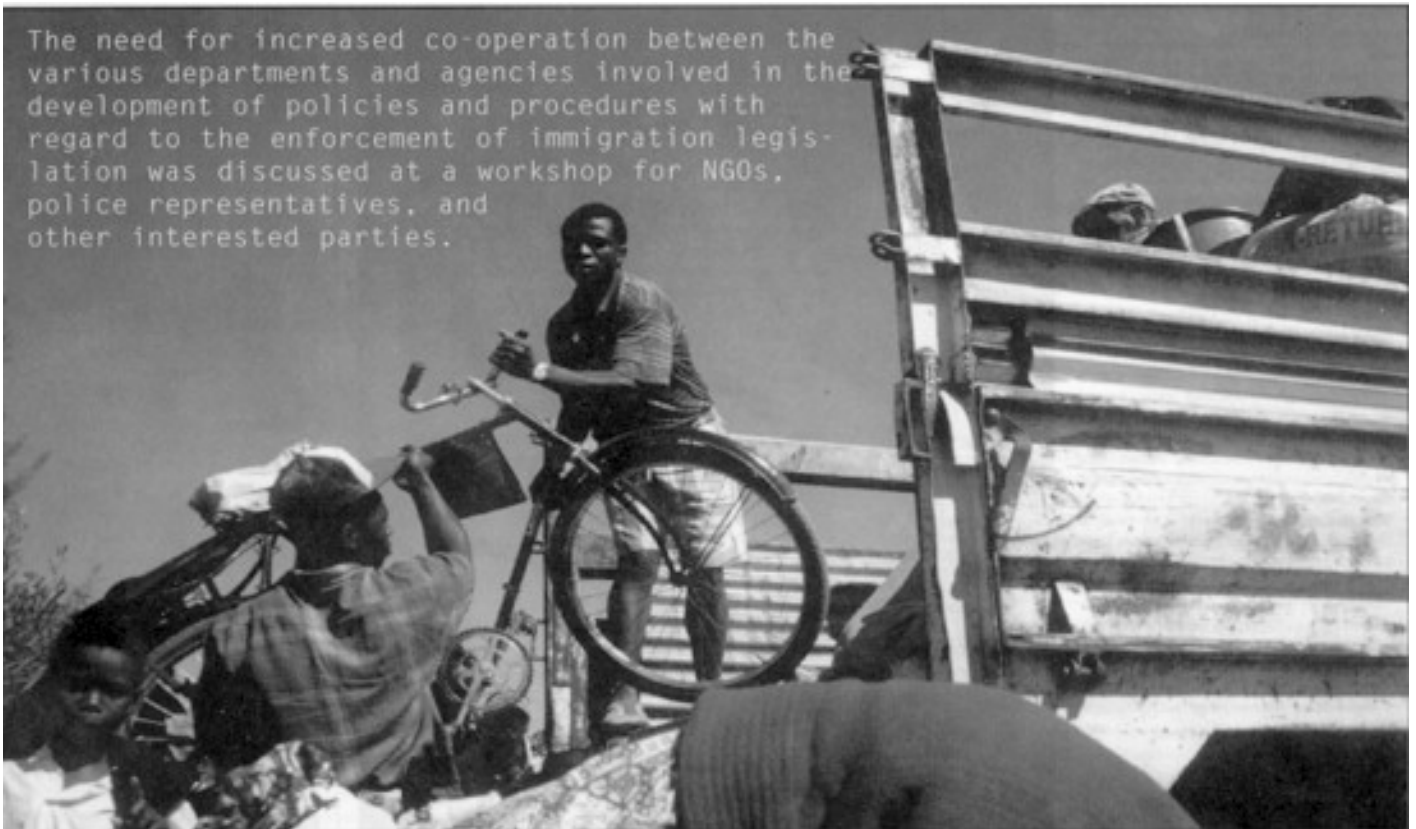
- Promote co-ordination, co-operation, information and resource sharing among national campaigns within each region.
- Organize and promote advocacy in regional forums, such as the Asia-Pacific Economic Council, Organization of American States and Organization for African Unity.

- Form a national rectification committee or coalition to implement a national campaign.
- Design a national ratification strategy including public education, print-radio-television media, building support in governmental agencies, lobbying of politicians.
- Identify and advocate with groups and individuals, including political parties, politicians and government employees, which/who are sympathetic to migrants' rights.
- Pursue discussions with political leaders and governmental officials to promote political support for the convention.
- Research and analyze attitudes of both government bodies and the public towards migrants' rights and the convention to serve as a basis for the national ratification strategy.
- Conduct seminars and other training programmes for migrants' associations and NGOs.
- Raise funds for national campaigning and international and regional networking.
- Create a presence of migrant issues in national media.

*Reproduced from Uprooted People, Refugee and Migration Service,  
World Council of Churches.*

## PROTECTING RIGHTS

The need for increased co-operation between the various departments and agencies involved in the development of policies and procedures with regard to the enforcement of immigration legislation was discussed at a workshop for NGOs, police representatives, and other interested parties.



*NGOs, police representatives and other interested parties took part in a workshop that explored ways of*

Following the publication of the Human Rights Watch report "Prohibited Persons - the abuse of undocumented migrants, refugees and asylum-seekers in South Africa," SAMP, in co-operation with Lawyers for Human Rights, the South African Human Rights Commission and the Refugee Research Project, hosted a workshop in July in Pretoria to identify possible solutions in terms of policy, legislation and practical implementation of the key issues raised in the report.

Representatives of the Department of Home Affairs, the Safety and Security Secretariat, South African Police Service, Border Police, Aliens Tracing Unit and Lindela (a holding centre for migrants awaiting deportation) were invited to the workshop. Before the workshop started, the representatives of the Department of Home Affairs registered their protest at the presence and participation of a member of the Lawyers for Human Rights delegation, whom they considered to be a "prohibited person". With the approval of the Director-General of the department, they withdrew.

The workshop proceeded with the remaining participants, who identified the key issues they felt needed to be addressed. These included:

- the arbitrary identification and arrest of foreigners;
- physical abuse;
- corruption and bribery; and
- the non-implementation of administrative and legal procedures that apply to foreign nationals.

Within each of these, the agencies and departments outlined the steps being taken or planned, and procedures available to prevent the occurrences of such practices. It was noted, however, that the Department of Home Affairs is ultimately responsible for the development of policies, procedures and guidelines in this regard, and that the agencies and departments represented implemented these on instruction from the department.

The following proposals emerged:

1. The need for increased co-operation between the various departments and agencies involved in the development of policies and procedures with regard to the enforcement of immigration legislation. This co-operation should take place at both departmental and ministerial levels.
2. The establishment of an independent ombudsperson at Lindela who will receive and act on complains from inmates – such a person could work under the auspices of the Human Rights Commission.
3. Co-operation between NGOs and, particularly, the Human Rights Unit of the SAPS in providing training for police officers.
4. Ensuring that when individuals are apprehended on suspicion of being in the country illegally, they are informed of all their rights and brought before an official of the Department of Home Affairs within the specified 48 hours to verify their status.
5. Making sure that people who have complaints against the police know of, and are granted access



to, the Independent Complaints Directorate.

6. The granting of access to police cells, Lindela and prisons to ensure that inmates have the opportunity to report incidents of abuse and corruption, and that the required standards are met.

The workshop represented an important breakthrough in encouraging constructive dialogue between enforcement agencies and NGOs involved in policy development and monitoring the implementation of immigration legislation