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LETTERS

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SPOT THE ALIEN

Vincent Williams



The White Paper on International Immigration calls on citizens to report suspected "illegal aliens". Given existing high levels of xenophobia and intolerance towards foreigners, there is a real danger that South Africans will take the law into their own hands – even regarding taking action against "illegal aliens" as their patriotic duty. If they suspect people of being in the country illegally, these suspicions, more often than not, will be based on assumptions around skin colour, language, accent, dress and manner of behaviour. In other words, these assumptions will be racially biased and reinforce ethnic stereotypes. Victims may well include South Africans as well as foreigners.

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The White Paper on International Migration, published by the Department of Home Affairs (DHA) at the end of March, proposes a system of immigration enforcement that relies on South African citizens, government departments and service providers for its success.

The White Paper's proposals are structured around four policy parameters which stipulate that:

1. the migration system should enable government to retain control over who may enter the country and the conditions and length of his or her stay;
2. under present circumstances it is not possible for South Africa to deal with the "push" factors (reasons why people leave their country of origin) acting in the rest of the continent nor build a migration system predicated on the improvements of these factors;
3. the migration system must not rely heavily for its success on actions taken to secure the country's land and sea borders from people willing to cross them illegally; and
4. the development of a migration system is closely interrelated with the management and regulation of labour dynamics and requires an interface with labour institutions

In this context, there are two key elements contained in the proposals of the White Paper. The first is the recognition that immigration policy and law must facilitate the movement of people into and out of the country, provided they are not prohibited from doing so for any reason. In this respect, the White Paper provides for more liberalized entry requirements for particular categories of people including students, traders, temporary foreign workers and people with exceptional skills.

Simplified

The administration involved in issuing such permits is greatly simplified, and the monitoring required to ensure that individuals do not contravene the conditions of their stay is passed on to the relevant institutions. For example, the White Paper proposes a system of corporate permits enabling employers to

negotiate for a set number of work permits which they allocate and administer, provided they also take responsibility for the compliance and eventual repatriation of their foreign workers. In the case of foreign students, educational institutions will be required to routinely report on the status of their foreign student complement to a proposed Immigration Services (IS) section within the DHA.

The second element, which to some extent contradicts the first, is the proposal that the enforcement of immigration law be shifted from border control to community level (i.e. internal enforcement). This means that enforcement will take the form of inspections in communities, workplaces, educational institutions and other places where migrants and immigrants may apply for services. Such an enforcement strategy relies heavily on the participation and co-operation of community organizations, employers and the other branches and spheres of government.

To achieve this level of enforcement, the White Paper proposes the establishment of an IS section, special Immigration Courts and an Immigration Review Board. The IS will have monitoring and investigative capacity and in terms of the proposal will:

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

The White Paper also proposes that the IS should have additional security with limited investigative and enforcement capacity, and that an interdepartmental government committee be established to co-ordinate law enforcement and community action.

The White Paper appears to try and strike a balance between the opposite extremes of the migration debate -- support for a liberal migration regime, on the one hand, and the call for stricter enforcement, on the other. Certainly, the proposals make a significant contribution to streamlining the process of entry, something that most stakeholders welcome. Of particular interest and significance, is the White Paper's assertion that immigrants and migrants, irrespective of their legal status, are entitled to certain rights and constitutional protection. "...[T]here is no constitutional basis to exclude *in toto* the application of the Bill of Rights because of the status of a person while in South Africa, including illegal immigrants." The extent of this protection, however, particularly with regard to "illegal" or undocumented foreigners, remains to be tested.

Contrary to the Green Paper on International Migration, which proposed that international migration be refocused as an issue of growth and development, the White Paper continues to be preoccupied with control and enforcement.

Particularly worrying is the proposal that the support of South African citizens, government departments and institutions be enlisted in the detection, apprehension and removal of "illegal aliens", and the specific suggestion that suspected "illegals" should be reported to the IS can have some grave consequences. In principle, this proposal does not pose much of a problem. However, in the context of high levels of xenophobia and intolerance towards foreigners, it is likely that the actions of South

Africans will not be limited to mere reporting. There is the danger of South Africans taking the law into their own hands, even considering it their patriotic duty to take action against "illegal aliens" (assuming they can distinguish between various categories of foreigners in the country).

Beyond the immediate potential problem of South Africans "taking action" against foreigners, the longer-term impact of this proposed enforcement strategy must also be considered. The first thing to consider here is that those involved in the implementation of this strategy will have to make assumptions about the person(s) they suspect of being in the country illegally. More often than not, these assumptions will be based on skin colour, language or accent, dress and manner of behaviour. In short, the assumptions will be racially biased and reinforce ethnic stereotypes and racial discrimination. The victims of this type of discrimination and consequent harassment and abuse will, however, not be limited to foreigners, but include South Africans as well.

Secondly, the White Paper proposes that local community organizations and particularly the local police should be involved in this level of enforcement. As matters stand, the relationship between the police and the communities they protect (including foreigners) is already fragile. By involving the police and even other government agencies in immigration enforcement, this is likely to fracture relationships between immigrants and migrants, citizens and the local police even further. Migrants are already vulnerable and they will probably not want to report incidents of violence or abuse against them to the very people who are sometimes responsible for it. This in turn will compromise the ability of the police to perform their function-- to serve and protect effectively.

The White Paper also calls for collaboration between the IS and labour institutions in rooting out undocumented workers. Again, this type of collaboration sounds fine in principle, but practically it can be used as a threat against migrants particularly in sectors such as agriculture and construction where they are more vulnerable. Anecdotal evidence suggests that there are already incidents in which unscrupulous employers use existing immigration law to inhibit foreign workers from speaking out against low wages and exploitative working conditions. Again, this will not be restricted to undocumented workers, but legal foreign workers will be caught in the dragnet as well.



Shifting enforcement powers to communities – ie through community inspections, at workplaces, educational institutions and other places – would only serve to hinder greater freedom of movement into, out of, and within the country.

While it is true that the extent to which enforcement is required, it will be more effective at community level (as opposed to border control), the proposals of the White Paper will effectively result in a "witch-hunt" directed against foreigners. In this regard, the proposed "inspections" at schools, workplaces and communities are nothing more than a polite euphemism for raids to be conducted in places where there may be a concentration of non-citizens (documented or undocumented).

Granted, some level of control and enforcement will always be necessary, but the orientation of the White Paper is based squarely on the assumption that we are "plagued" by an "illegal alien" problem and that, therefore, resources must be directed towards detecting, apprehending and deporting them. The White Paper seems to ignore the point first mooted in the Green Paper - implicit in the more liberal strategy contained in parts of the White Paper - that if one facilitates entry for certain categories of migrants, one reduces the reasons for and, consequently, the incidents of, undocumented migration.

Furthermore, research done by the Southern African Migration Project (SAMP) suggests that migration to South Africa is for the most part a highly regularized and orderly process, with most migrants entering at designated ports of entry and having the necessary documents and permits in their possession. This does not mean that there is no irregular or undocumented migration, but it certainly does not appear to be as widespread or overwhelming as conventional wisdom suggests.

This factor seems to have been lost in the proposals of the White Paper for stricter enforcement and control.

In essence, the mentality of control and expulsion remains a predominant feature of the White Paper and this can have very unfortunate consequences. It is apparent that the emphasis on detection, apprehension and removal will not do much more than drive undocumented migration even further underground. The White Paper recognizes that large-scale deportations do not contribute to solving the undocumented migration problem (the revolving-door migration phenomenon), yet this is precisely what it intends to do, this time with the help of South African citizens, government departments and service providers.

Absent from the White Paper is a system of penalties (other than deportation) that could effectively be imposed upon people and institutions violating immigration law. Thus, instead of control and enforcement as proposed in the White Paper, the goal should be to achieve a system of voluntary compliance with immigration law. In achieving voluntary compliance and thus establishing a manageable migration regime, the system of penalties to be imposed on those who violate immigration law cannot be designed by the South African immigration authorities alone. It must involve institutions likely to be involved in or affected by such violations. It must also involve the countries from which violators originate.

*Vincent Williams is Idasa project manager of the
Southern African Migration Project (SAMP).*

PROPOSALS NEED MORE PUBLIC DEBATE

The process of drafting migration policy and subsequent legislation in South Africa has been taken one step further. The recently published White Paper on International Migration sets out, in some detail, the policies, strategies, mechanisms and structures for a future migration system. It is not entirely clear whether the White Paper will form the basis of a new immigration act or whether it will result in modifications to the existing Aliens Control Act.

The timeframes attached to this process are also unclear. It will probably only be completed by the Minister of Home Affairs appointed after the election -- the implication being that the process may be delayed even further. What is certain is that migration legislation will change and that it will be implemented in due course.

South Africa is presented with a unique opportunity to design a migration regime from scratch. Even though the process may be a lengthy one, it is important to make sure that it is done

correctly. In other words, hastily putting together new policies and legislation, only to find that they do not work and need to be amended in a few years, would be counterproductive.

The White Paper, in its current form, raises many troubling questions and is likely to meet with opposition. Currently, there are no indications that there will be a further process of public consultation where individuals and institutions may comment on the White Paper. This is something to be concerned about. While public hearings were held prior to the drafting of the White Paper, they were not well attended and very little substantial input was received during this process.

These public hearings were based on the contents of the preceding Green Paper on International Migration that set out and proposing several principles. The White Paper is very specific about the mechanisms and strategies for implementing future migration policy and legislation, and these have not been subject to broader public debates. Thus, it cannot be claimed that the White Paper reflects the "will of the people".

Ideally, the person appointed as Minister of Home Affairs after the elections should use the current White Paper as a basis for broader public debate about future migration policy and legislation and, particularly, the strategies and mechanisms for implementation and enforcement. It must also be borne in mind, however, that migration is a controversial and sometimes emotional issue. Government must ensure that it does not develop policies and legislation based on anger and frustration. Migration legislation must be sound, effective and forward-looking. It must address the immediate problem of undocumented or illegal migration to South Africa. It must also facilitate regional growth and development in partnership with our neighbouring states, thereby reducing the pressures that cause people to search for better opportunities.

TREATING MIGRATION WITH SENSITIVITY AND UNDERSTANDING



Shun Chetty

From his position in the International Organization for Migration, Shun Chetty has a bird's eye view of the policy - and personal - issues facing migrants arriving in South Africa. He spoke to CLARENCE TSHITEREKE.

"Yes it is part of the mandate of the International Organization for Migration (IOM) to promote the rights of migrants, documented or undocumented; migrants still have basic human rights," says IOM Regional Representative Shun Chetty, quietly but forcefully, of his organization's role.

Chetty was in Centurion, a Pretoria suburb, co-hosting a 10-day International Migration Policy and Law Course Training Programme, for immigration officials in SADC member states, together with the United Nations Population Fund (UNDP) and United Nations Institute for Training and Research (UNITAR).

Chetty returned to South Africa in June 1998, after almost 20 years in exile, to take up his position in the Sub-Regional Office (SRO) for Southern Africa. While in exile, he worked predominantly for the United Nations High Commissioner for Refugees (UNHCR) in countries as diverse as Switzerland, the Sudan and the People's Republic of China.

In his role as Regional Representative, Chetty is primarily responsible for assisting governments "to convert migration from being a negative force, both in reality and in perception, to a positive one, with the understanding that basic human rights apply to all human beings". At the same time, he recognizes that some countries are faced with serious problems regarding undocumented migrants, and argues that these matters need to be approached with "sensitivity and understanding -- to address the real concerns of governments".

One of the IOM's successes is the Return of Qualified African Nationals (ROQAN) project, aimed at returning individuals with skills to their countries of origin, which will help reduce the current brain drain in those countries. Through ROQAN 500 Zimbabweans and 150 Zambians have already returned to their countries of origin. In South Africa, the IOM was actively involved in the repatriation and resettlement of Mozambican refugees who fled during the war.

The 58-year-old lawyer believes there is a significant number of people in South Africa who are "...largely undocumented and are living in extremely precarious conditions". To stem this tide of undocumented migration, his organization believes that "objective and precise information about the circumstances in the receiving country should be highlighted to people in their countries of origin, as has been done by other agencies in countries like Albania and Vietnam".

This is necessary as many people are under the impression the South Africa's economic conditions will allow them to find employment and live a better life. On the contrary, argues Chetty, "the situation is even worse for a large number of South Africans".

When asked to, Chetty diplomatically declines to comment on the recently released White Paper on International Migration. "I think it will be inappropriate for an intergovernmental body to comment before it is official government policy. However, we will make our necessary contribution to the government bilaterally on this issue." He commended South Africa's refugee legislation which, he says, "strikes a good balance between human rights and humanitarian concern for asylum seekers and refugees, on one hand, and national interest of South Africa, on the other".

With respect to future migration trends in southern Africa, Chetty talks about a "migration explosion", the breaking up of civil society as a result of human rights violations, population displacement and disparities in economic development in the region. He predicts that "there is going to be a continuation of movement of people both in Southern Africa and other parts of Africa and Asia as well". He is firm, however, that "legal, organized migration is healthy to society - it ensures an entrepreneurial spirit provided it is done in an orderly and humane manner".

In the spare time that he has, Chetty takes a keen and passionate interest in environmental, conservation and wildlife issues. In 1971 he initiated and participated in the first Wilderness Leadership School for black South Africans. In 1973 he was a member of the committee that drafted the constitution of the Fauna and Flora Society of Malawi. He is a member of various wildlife and environmental societies and has an extensive private library of texts and visuals on conservation, environmental and wild-life issues.

Chetty is married to Fazila Varachia, a medical doctor, and they live in Pretoria.

XENOPHOBIA AND RELATIVE DEPRIVATION



Photo: Cape Town Refugee Forum

It is a fairly commonly held perception that relative deprivation and the current wave of xenophobia in South Africa are linked. CLARENCE TSHITEREKE attempts to pin down the complex internal dynamics and the psychological dimensions of this link.

Assuming that the link between relative deprivation and xenophobia does exist, one could also assume that, like relative deprivation, xenophobia also has irretrievable roots in the apartheid past. Institutionalizing inequality among racial groups in every respect and skewing the bulk of the country's resources heavily in favour of the white minority, has clearly had long-term effects on the collective psyche and on people's perceptions.

American political scientist Ted Gurr draws a distinction between people's value expectations (ie getting the goods they believe they are entitled to) and their value capabilities (ie getting the goods they think they are capable of getting and keeping) which, in this context, include clean water, education, electricity, health services, welfare, jobs and housing.

Under a new political dispensation, former have-nots develop high expectations, both social and economic. They believe they deserve what they consider their due. This is reinforced by the promise presented by policies of "affirmative action" and "South Africans first" which suggests hope and relief for the destitute.

Xenophobia represents a deep fear and dislike of the unknown.

In the post-apartheid epoch, while people's expectations have been heightened, a realization that delivery is not immediate has meant that discontent and indignation are at their peak. People are more conscious of their deprivation than ever before. The future is now uncertain and optimism is accompanied by a sense of urgency in the redistribution of scarce resources. This is the ideal situation for a phenomenon like xenophobia to take root and flourish.

Xenophobia represents a deep fear and dislike of the unknown. This subjective fear and absolute dislike seems to have translated itself into intense tension and violence by South Africans towards immigrants.

Integrating and relative deprivation theory and xenophobia enables us to better understand the underlying causes and dynamics of what happens when foreigners interact with nationals, particularly when the latter considers foreigners to be a security threat. The interaction is often bitter; there are no recorded instances of South Africans welcoming uitlanders with cordial hospitality.

Once turned into a security threat, the migrant appears as 'the other' who has entered a harmonious world...

The relationship has often been malicious since the presence of foreigners has always spawned new squabbles about the impact of their presence - eg more mouths to feed. Once turned into a security threat, according to Belgian political scientist Jeff Huysmans, the migrant appears as the other who has entered a harmonious world and, just by having entered it, has disturbed that balance.

The nationals, who feel threatened by what they consider to be hordes of unwanted immigrants, may misrepresent them and consciously spread misperceptions of them. Glaring generalities and other propaganda techniques become vehicles to highlight the negative impact of immigrants on the country's economy and the social fabric. These among include statements such as "migrants take our jobs, bring disease, take our wives, take our houses, and deplete our health and welfare services".

Frustrated and disillusioned by deprivation, people often create a "frustration-scapegoat." According to political scientist Kalevi Holsti, revolutionary regimes faced with complex internal economic and social disorders and popular frustrations after the world economic depression of the 1930s frequently created an internal or external "spook" to account for the people's miseries.

The scapegoat approach is reflected in a recent statement by Home Affairs Minister Mangosuthu Buthelezi: "With unemployment running at above 34% and millions of illegals making a living in South Africa, it can be postulated that if all the illegal aliens were removed, the unemployment problem would

come to an end."

Ultimately, such views culminate in the politics of identity, between "us" and "them", which is laden with racial overtones. The subtext, argues Huysmans, is that immigrants are turned into a disease, a weed: something to be destroyed because it threatens our life and is an existential threat to our self-identity. This dialectic of inclusion and exclusion is one of trust and fear.

According to political scientist Donald Horowitz, involuntary migrants who often come from deprived backgrounds and poor countries are more receptive to working in jobs that nationals don't want. Despite the fact that the kinds of jobs they usually take are at the bottom of the job market, they still face accusations of stealing "our jobs".

As political scientist Machiel Karskens puts it, "to exclude the migrant is not just any act of distancing, it has a specific quality because it consists of double annihilation of the other in the following ways: firstly, it reduces and excludes the other to a 'no-I'. It unifies the migrant by denying him/her a basic characteristic possessed by the nationals. This means that the other lacks something, which is considered crucial for normal membership. Secondly, exclusion annihilates the other's worth". Consequently, they come to be referred to in derogatory terms such as *amakwerekwere*.

The underlying causes of xenophobia seem to be a range of problems that complicate transitions to democracy. Victims of unjust and unequal systems are justified in their expectations of being compensated for the anguish, misery and loss of what they consider to have been their fundamental human rights, which shapes the current structural violence of their lives.

Often when scarce resources are divided on the basis of nationality, non-nationals are more likely to make an assertion for that status in order to get a share. Their claims on the country's depleted resources further antagonize the already resentful nationals. In such a volatile scenario, the absence of protection subjects non-nationals to untold misery through abuse.

The anger caused by deprivation and perceived or real threats from immigrants as it relates to resources does not directly cause the nationals to commit violence, but it frustrates them. Political scientist Annette Seegers says, "frustration breeds anger, yet angry people do not always commit violence". They could turn their anger inwards and commit suicide. Alternatively, people release their anger on that "frustration-scape-goat", usually non-national minorities.

Political scientist Ronald Ridker argues that a person who sees no possibility of satisfying his or her aspirations in productive ways is more likely to express dissatisfaction in destructive ways than one who believes there are socially acceptable alternatives to his or her present position.

Revolutionary regimes faced with complex internal economic and social disorders frequently create an internal or external "spook" to account for the people's miseries...

Relative deprivation theory and other psychological explanations about the origins of human aggression

offer an explanation of the causal link between relative deprivation, xenophobia and collective violence.

When people's means of getting what they want are interfered with, the chances that they rebel are relatively high, especially when they have a scapegoat for their misery.

Adversarial attitudes towards foreigners are fuelled by negative coverage of cross-border migration issues in the South African media -- particularly as it relates to undocumented, "illegal" migration. In a situation where there is high visibility of perceived or real security threat and deprivation, these reports inevitably degenerate into stereotyping with a potential for destruction. Therefore, the possibility of physical violence cannot be ruled out, unless the penalty is excessively high and is stringently applied. However, if people's aggressive responses to deprivation are thwarted by fear of punishment, Gurr argues that this interference is itself a deprivation and further increases the possibility of aggression.

Existence of anti-aggression deterrence structures may increase people's value opportunities. Gurr calls this "repertory of alternative ways to attain value satisfaction". A complementary function would be that of displacement. A good example here is the formation of non-violent structures for expressing discontent such as the Malamulela Social Movement for the Unemployed and the Unemployed Masses of South Africa. The danger here lies in politicizing these movements.

In a study on the small enterprise economy of Johannesburg, a key finding is that immigrant entrepreneurs create jobs for South Africans and not the other way round.

There is a need to debunk the negative sentiments against immigrants. Currently, there is no evidence to prove that illegal immigrants really take jobs, housing and other resources. These accusations are therefore untested and without substance. We do not even know for certain how many undocumented migrants are in the country. The only credible impact of undocumented migrants on the country is reflected in the annual costs of deportations.

Southern African Migration Project (SAMP) studies disprove a range of myths about immigrants. In a study on the small enterprise economy of Johannesburg, a key finding is that immigrant entrepreneurs create jobs for South Africans and not the other way round. Out of the 70 small micro and medium entrepreneurs interviewed, a total of 227 job opportunities or an average of 3.33 jobs per business were created. Immigrants from SADC countries created 93 jobs, 37 of which went to South Africans, which made up 40% of the total. On the other hand, immigrants from non-SADC countries created 134 new jobs of which 67 went to South Africans, ie 50%.

Furthermore, of 2,900 people interviewed by SAMP in Lesotho, Mozambique, Namibia and Zimbabwe about their reasons for visiting South Africa, 13% of the 600 Namibians came to work or to look for work, comparative figures for Lesotho are 25%, Mozambique 68% and Zimbabwe 29%. With the exception of Mozambique, most people interviewed came to South Africa for non-work related purposes (eg shopping).

This supports the above argument that the current wave of xenophobia is a result of previous

deprivations. The problem is therefore a temporary one, and as more and more people are employed, housed, have bonds and access to credit, it will subside.

Clarence Tshitereke is project co-ordinator of SAMP.

ENFORCEMENT IN ACTION

An environmental consultant, whose work also involves monitoring policy and human movement and their effect on the environment, relates a case of abuse of the kind that many refugees and migrants suffer at the hands of officialdom. Cases like these make the need to bring the practices of state machinery in line with the human rights culture in the Constitution all the more urgent.

"G" is an Egyptian who has had permanent residence in South Africa for several years. He is married to a South African and has a young child. G was trained as a lawyer and is president of an Egypt-South Africa friendship organization, helping newly arrived Egyptians settle in Cape Town. For many years the family has lived in Scott Road, Observatory.

On 4 October 1998 at about 2:45a.m., G's home was surrounded by 30 police Task Force members and one representative of the Department of Home Affairs. The Task Force members apparently forced their way into the front and rear entrances of G's home, hog-tied him naked and physically and verbally assaulted him. According to G, neither the Task Force nor the Home Affairs officials identified themselves, and it was only after the initial assault that G was even asked any questions.

The Task Force members disclosed that they were searching for another Egyptian, "A", whom G had once met many years ago. The Task Force claimed they were working for Egyptian intelligence, although it was clear from their appearance and accent that they were South Africans.

G was apparently bundled into an unmarked white bakkie and forced to show the Task Force where he had met A. For two hours they searched the area where A allegedly lived, Pelican Park, and despite being constantly threatened and assaulted G was unable to find the house. The Task Force, according to G, then proceeded to a house where some of his friends lived, and assaulted them in a similar manner until they disclosed the whereabouts of A.

After A was found, at a nearby house, he was apparently suspended by his hands, injected with a substance in his tongue and taken away by the Task Force. The Home Affairs official even gave A's wife a receipt for her husband before they took him away! He has not been seen or heard of since.

G was eventually returned to his home at 5:30a.m. G said he and his family were threatened with their lives if they ever disclosed any details of the evening. His friends in Pelican Park were apparently also threatened, their homes were ransacked and several thousand rands were stolen. G's home itself was severely damaged.

The following day I contacted the Woodstock police. A Superintendent Stephanus Lotz of the Woodstock police was unable to provide any details of the operation, of which he himself was unclear. On 9 October his intelligence officer, a Captain Stanley Adams, after taking our statements, recommended we lay a complaint with the Independent Complaints Directorate (ICD) of the South African Police Services (SAPS) (which reports directly to the Safety and Security Ministry). Our statements were passed on by a national Intelligence Agency (NIA) contact to the Crime Intelligence Gathering (CIG) division, the SAPS' internal security unit.

A Superintendent Mzwandile Petrus, whom I met on 21 October, said he was directed by his CIG superiors to acknowledge that the Task Force had indeed been responsible for the operation. Petrus urged us to lay a complaint with ICD and assured us the SAPS would co-operate fully with any ICD investigation. The following day a complaint was laid with Thabo Leholo of the ICD. Only in March 1999 did a team of ICD investigators visit the scene. They again took statements although we had already made full disclosures to the directorate many months earlier.

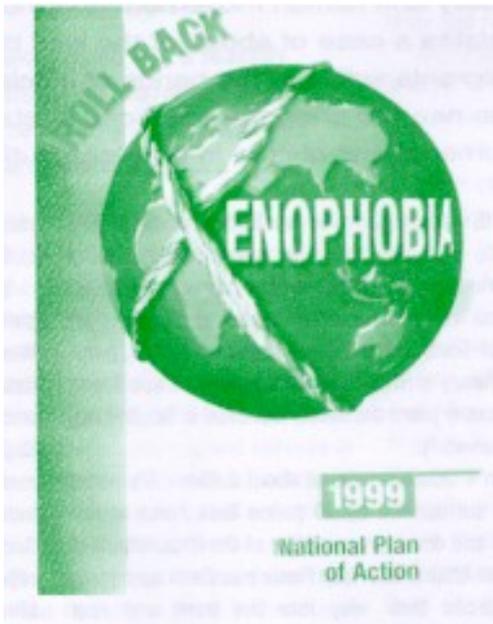
G has since arranged several times to meet the ICD team, at the latter's request, together with the Pelican Park victims who are understandably fearful for their lives, and who took time during working hours to meet the ICD. On every occasion the ICD has failed to turn up at the meetings, and has not phoned either. Our attempts to contact them have been unsuccessful.

Asked for comment on the Task Force's action, Superintendent Petrus said that other than directing the complainant to the "appropriate channels for addressing such problems", there was nothing more he could say on the matter.

- Ed: at the time of this issue going to press, the Independent Complaints Directorate had not commented on the manner in which it allegedly handled the writer's complaint on G's and the Pelican Park's "victims" behalf.

ROLL BACK XENOPHOBIA!

VINCENT WILLIAMS reports on the birth of a new campaign to stem the rising tide of xenophobia that is hampering the growth of a human rights culture in South Africa.



On 18 November last year, a workshop was held in Johannesburg bringing together various organizations to discuss the growing phenomenon of xenophobia in South Africa. It culminated in the drafting of a National Plan of Action for 1999 encouraging various sectors of society, including government, to get involved in activities to combat xenophobia. Extracts from this plan, called *Roll Back Xenophobia*, and jointly published by the South African Human Rights Commission, the National Consortium on Refugee Affairs and the United Nations Human Rights Commission, the National

Consortium on Refugee Affairs and the United Nations High Commission for Refugees, are reproduced in this article.

Xenophobia, defined as "a deep dislike of non-nationals by nationals", is a dangerous trend that must be condemned unequivocally. A culture of human rights in South Africa cannot be fostered when treatment of those who happen to be different from us is unforgiving, uncaring and sometimes even brutal with deadly consequences.

Foreign informal traders

Vigilante groups have vowed to clear foreign traders off the streets of Johannesburg, port Elizabeth and Cape Town. They inflame public opinion with the perception that foreign traders take away jobs from locals by unfairly competing for customers, space and markets. As part of ongoing hostile campaigns, mobs are raiding foreign traders, often causing bodily harm, vandalizing their stalls and stealing their goods.

Contrary to the inflammatory expressions of hostile groups, foreign traders contribute to the economic growth of the country and create new job opportunities for South Africans. They bring international trading networks, experience and entrepreneurial skills to the informal sector, and as such are laying the foundation for profitable cross-border and other trading activities.

In fighting xenophobia we must be sensitive to the many South Africans whose entire livelihood depends on informal trading. However, in informal trading they compete with non-South Africans who often

possess better entrepreneurial skills and capitalized businesses. Therefore supporting South Africans to compete in the informal sector is a possible way of rolling back xenophobia.

Migrant Workers

For decades migrant workers have contributed significantly to agricultural and industrial production of South Africa, among other sectors of the economy. However, for decades undocumented migrant workers have also been physically abused, their payments withdrawn and their undocumented status systematically exploited. As yet, the law and law enforcement officials have dealt insufficiently with these instances of human rights and labour rights violations. The campaign to put an end to abuse of migrant workers and integrating them into the broader social framework must include ensuring that basic human rights are met and exploitation stopped. Attention must be given to the rise of hostile sentiments within some employment sectors too. Although South Africa is facing a skilled labour shortage, migrant workers are increasingly seen as occupying jobs that should be occupied by the local populace. For the same reason migrants with legal permission to stay in South Africa are discriminated against in the workforce, or when seeking employment, because of their nationality. In 1999, specific activities need to be put in place to expand labour rights to all workers, and to foster better understanding of the contribution of migrant labour to South African society.

As a signatory to UN and OAU (Organization of African Unity) conventions on refugee protection, South Africa is obliged to provide protection to people who have well-founded fears of persecution due to race, ethnic origin, political and religious creed, and membership of any particular social groups.

Despite this, refugees and asylum seekers are among the first victims of the xenophobic wave in South Africa. As a resourceful community, they are often to be found in the streets eking out a living, pending a decision on their asylum application, or a possible return home in safety and dignity. Though entitled to work, their active lives and visibility make them easy targets for those citizens who harbour xenophobic sentiments. Without effective protection from police and other law enforcement officials xenophobia threatens their rights, livelihood and well-being. Moreover, it undermines the system of refugee protection and the process of local integration.

Police and civil servants

As enforcers of the law, police officials and civil servants are crucial in safeguarding the rights and safety of refugees, asylum seekers and migrants. Presently, the conduct of these government officials depends largely on individual feelings and opinions rather than professional, human rights-based conduct. Too many examples of corruption, physical abuse, arbitrary detention and human rights violations have been documented within the ranks of police officials and civil servants over many years. Professional codes of conduct must be developed to ensure the rights of refugees, asylum seekers, documented and undocumented migrants.

The arbitrary application of legislation and the means of bribing immigration officials to issuing permission to stay need to be addressed. Besides undermining basic human rights and refugee rights, such irregularities are partly responsible for widespread public opinion that foreigners are pouring into

South Africa. Corruption and the arbitrary application of legislation have to be brought to a halt if we wish to combat xenophobia.

Media

Less than 20% of the population has personal, face-to-face experience with refugees, asylum seekers or migrants. Yet, most South Africans have an opinion about these groups. The media's presentation of issues relating to refugees, asylum seekers and migrants significantly shapes public opinion about these groups. Hence, the media has a massive responsibility in providing factual coverage that does not perpetuate myths, encourage generalizations and spread misinformation. Unfortunately, accurate, truthful and factual coverage on refugees, asylum seekers and migrants is not the norm. There is a general tendency to lump together all foreigners into one big category.

Education

"Refugees", "asylum seekers", "labour migrants", "aliens", "undocumented migrants", "immigrants" -- various official terms are used to classify cross-border migrants according to different political regimes. Yet, in general conversation these groups are often lumped together as simply "migrants", "illegal immigrants" or *makwerekwere*.

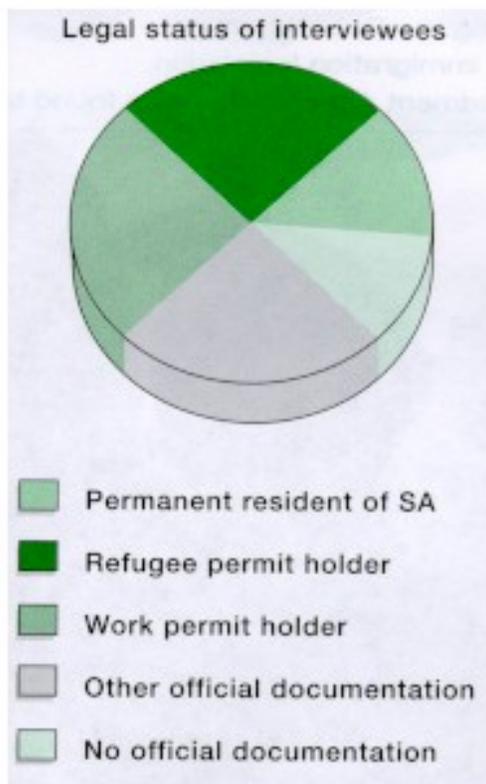
These broad generalizations do not lend themselves to properly understanding the different reasons, rights and plights associated with each group. Derogatory labels such as *amakwaerekwere* are humiliating, dehumanizing and encourage intolerance.

The typically negative associations and sweeping generalizations mean that the public is likely to be unaware of the useful skills and qualifications possessed by refugees, asylum seekers and migrants. A massive public education programme has to be implemented in order to foster tolerance and better understanding of the reasons for the presence of refugees, asylum seekers and migrants, and to creatively use the skills which they bring to South Africa.

- For more information about the *Roll Back Xenophobia* campaign, and possible participation in it, contact the South African Human Rights Commission at (011) 484 8300.

Vincent Williams is the South African Project Manager of SAMP.

STUDY REVEALS MORE ABOUT MIGRANTS THAN MOST



Inadequate research methods and a dearth of proper information often give academics, politicians and journalists the space to make sweeping generalizations about African migrants. But according to DAVID McDONALD, the data set of a recent SAMP study -- while not fully representative - goes a long way towards discrediting these broad sweeps.

One of the most contentious issues in the immigration debate in South Africa is the number of foreign nationals living in the country. Official figures on "legal" border crossings are readily available but it is not clear how many people are in the country "illegally". Estimates range from 500,000 to 12 million, but in truth there is no reliable research methodology for determining the actual number of non-citizens in South Africa. The dimensions are simply unknown, and perhaps unknowable.

This lack of information makes research on foreign nationals in South Africa difficult. Without a reliable estimate of the total number of foreigners, their country of origin, gender and other basic demographic variables, it is virtually impossible to develop a "representative" sample of the total migrant population. Case studies of small numbers of people can shed light on certain aspects of migrant life in South Africa, but one cannot assume that these case studies are representative of migrants as a whole.

These sampling problems are further complicated by the fact that many non-citizens simply do not want to be interviewed due to their uncertain legal status or a fear of being harassed or deported by the South African police -- fears that also apply to many who are in the country legally. Truly "random" sampling is therefore impossible since most foreign nationals are understandably reluctant to provide detailed information about their lives to a stranger.

Generalizations

Regrettably, these methodological challenges have not prevented journalists, politicians and some academics from making sweeping (and often very negative) generalizations about migrants of African origin. The popular press in South Africa overflows with stereotypes about migrants, based on little more than interviews with a handful of people, second-hand evidence and hearsay.

Even academic work on the subject tends to draw broad conclusions about migrant impacts on the basis of small and highly selective samples. The fact that a truly representative sample of migrants living in South Africa is impossible to achieve at present seems to be lost on most analysts.

This does not mean that generalizations about migrants in South Africa cannot or should not be made. Indeed it is very important at this point in the immigration policy-making process in South Africa to have defensible statements about the character of migrants and migration in the country as a whole. It is important for researchers to acknowledge these sampling constraints and develop strategies to deal with them. It may not be possible to have the "complete picture" of migration in South Africa, but it is essential to have more comprehensive, more rigorous and more transparent information that goes beyond the case study approach.

SAMP study

With this policy objective in mind, SAMP decided that the best approach was to interview a large number of migrants (both legal and undocumented) from as many different "migrant communities" in South Africa as possible. The project does not claim to have attained complete representivity with its research, but the interviews do provide the most comprehensive set of data on migrants in South Africa to date and helps to identify key immigration policy issues.

In total, 501 migrants from 28 African countries were interviewed as well as a broad cross-section of age, education, income, legal status and other basic demographics. The questions were designed to elicit information on people's experiences with, and attitudes towards, cross-border migration, and the responses provide a wealth of information on one of the most marginalized groups in South Africa today.

In terms of the findings, the research generally reinforces the conclusions of previous SAMP studies that the majority of migrants of African origin are in South Africa temporarily to work, visit friends/family or buy and sell goods, and are relatively well-educated, enterprising people. Most migrants prefer their home country to South Africa on a number of key variables and do not desire to settle in South Africa permanently.

The majority of migrants in our survey also had substantial responsibilities in their home country, which in most instances included the maintenance of a house and family. Although economic opportunities and certain social services were deemed to be better in South Africa than in the home country, most migrants would prefer to raise a family in their home country and find the overall quality of life to be better at home.

Most important, perhaps, is that the vast majority of the migrants interviewed (93%) were in the country legally, and despite significant difficulties in obtaining official documentation, most entered South Africa through designated customs points, using formal modes of transport (see Figure 1 for a breakdown of the legal status of the sample).

It was also clear that the migrants spoken to do take borders seriously and would support immigration management systems if they were fairly and humanely applied.

Rather disturbing, however, was the finding that 23% of the migrants interviewed had been assaulted while in the country and 42% had been robbed. This is well above the reported average of 23% of South Africans who have been victims of crime in the country, and supports the claim of migrant groups that, far from being the perpetrators of crime, migrants are in fact disproportionately the victims of crime. This victimization is made worse by inadequate redress in the law and protection by the police.

This is not to suggest that all migrants are victims of crime or that there is no clandestine migration or illegal behaviour by migrants themselves. However, the surveys do provide further evidence of the need to re-evaluate the popular stereotypes of migrants of African origin.

The policy implications of the research are numerous, with a few key points highlighted below:

- Migration from other African countries into South Africa appears to be a highly regularized and legalized process conducted by responsible people, and it is important that South Africa build on this process and not force migrants and migration into more clandestine modes of operation.
- New immigration legislation should address human rights abuses and make immigration policy more consistent with the Bill of Rights in the South African Constitution. Immigration and security authorities should also address human rights abuses at a more practical level with their staff through education and discipline.
- The bulk of the cross-border traffic in South Africa appears to be short-term, and it is important for immigration policy to be cognizant of the very different legislative and practical differences between long-term or permanent immigration and short-term, purpose driven migration.
- Migration into South Africa at present is a truly pan-African phenomenon and will become increasingly so. It is important for policy-makers to be sensitive to the regional differences in migration into the country and that they acknowledge the new role that South Africa has begun to play in the movement of peoples on the continent as a whole.
- Although the majority of migrants interviewed in this survey do not intend to stay in South Africa permanently, they do plan to stay for several months or several years, and they expect to have access to basic social and economic services. Access to housing, education, health care and other social and welfare services needs to be addressed as part of a larger basket of immigration rights and responsibilities. It is essential for these decisions to be based on reliable, empirical evidence about what is happening on the ground and on international policy experiences and treaty obligations.

(Full details of the research can be found in the recently released SAMP Migration Policy Series No. 13, entitled

, and can be ordered from the SAMP office in Cape Town).

David McDonald is a Queen's University (Canada) project manager of the Southern African Migration Project (SAMP).

RAMPHELE REFLECTS ON FOREIGN STUDENTS AND TRANSFORMATION

In a policy paper published by the Southern African Migration Project, UCT vice chancellor Mamphela Ramphele, reflects on the dilemma faced by foreign students and institutions of higher education in South Africa. CLARENCE TSHITEREKE highlights the key issues in Ramphele's report.

Benjamin Franklin said: "If a man empties his purse into his head, no one can take it from him." He contends that one's purse is a prerequisite for acquiring education. This is true, and undoubtedly reflects the system of education in South Africa which, as Dr. Mamphela Ramphele, vice chancellor of the University of Cape Town, points out, has been elitist and exclusionary.

Added to this is the growing number of foreign students who enter South Africa's higher education institutions each year.

In 1996, more than 13,000 international students were studying at South African universities and technikons. Students from the Southern African Development Community (SADC) region accounted for 50% of international students. In response to a question in Parliament by MP Leon Louw (FF), Minister of Education Sibusiso Bengu said there were 14,727 foreign students studying at South African universities in 1997. He added that no South African government contribution was made towards their fees, and that the national student financial aid scheme was also not available to such students.

The withdrawal of subsidies is seen as a deliberate attempt to make fees prohibitive and exclusionary ... another thinly disguised excuse to curb the influx of international students.

Ramphele, in her paper, argues that international students are an integral part of any internationally recognized institution and it is therefore crucial that institutions recognize the academic, cultural and

financial benefits to be gained from their presence. However, their "foreignness" can be a source of tension between a section of largely black South African and black students from neighbouring African countries. South African students who feel deprived invoke their citizenship in the face of competition from foreign students who compete for local resources in order to make ends meet.

With the world organizing into economic blocs, the issue of what constitutes a neighbouring country complicates the discourse on foreignness. For purposes of subsidies to international students, a diplomatic, economic and politically-oriented definition is used. Thus, South Africa's neighbouring countries are not only those with whom we share common borders, but all the SADC member states.

Recent policy makes international students uncertain of their continued student life. The repatriation arrangements that they are required to make in advance compound their anxiety and the spectre of deportation haunts them throughout their entire student life. In addition, Ramphele writes about the feeling that the Department of Home Affairs is pursuing a policy of discouragement through control and punitive measures designed to halt the influx of "illegal immigrants".

In addition to Home Affairs policies, the withdrawal of subsidies is seen as a deliberate attempt to make fees prohibitive and exclusionary and as another of South Africa's thinly disguised excuses to curb the influx of international students. Some actions by the Department of Home Affairs contradict some of the principles and ideals that individual institutions treasure and stand for. Regarding employment, for instance, international students can only be employed in areas that have a direct bearing on their studies. The new legislation makes sense as it seeks to make more opportunities available to South Africans. The downside of that, however, is that if international students are going to be excluded from certain forms of employment offered by the universities and technikons they are attending, it is discrimination on the basis of their nationalities.

Ramphele says the withdrawal of subsidies must be carried out with great sensitivity and a national policy needs to be formulated to guide the process and make it as painless as possible for all. On the other hand, those who support continued subsidies to SADC students argue that South Africa owes its neighbours an incalculable debt of gratitude for their contribution to the demise of apartheid. Many exiled South Africans were educated at the expense of these countries' taxpayers.

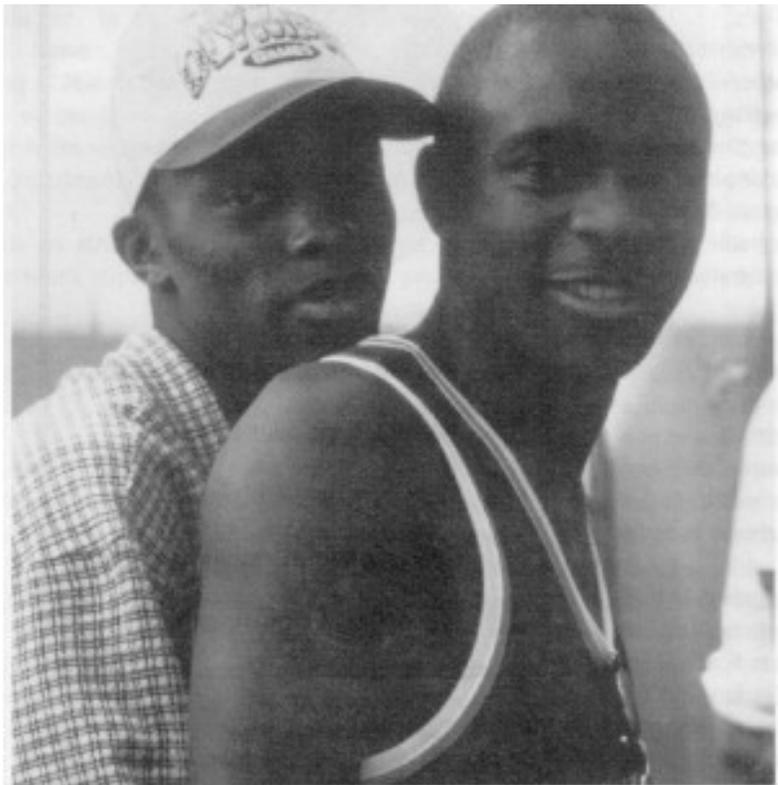
Central to Ramphele's argument are the following policy recommendations:

- The implications for education policy of South Africa's commitment to development in Southern Africa should be clearly defined;
- South Africa and other SADC member states need to forge an educational agreement by which South Africa would commit itself to paying subsidies for a fixed quota of students from the SADC region;
- Enrolling international students at tertiary institutions is a matter of principle and must continue. In addition to this, unnecessary punitive legislation, which looks like a policy of discouragement making international students feel unwelcome and victimized, must be revised;
- The withdrawal of state subsidies from international students should be tempered with knowledge of the hardships and problems some students may face as a result of such policy;

- Revision of fees and subsidy policy must be informed by all interest groups and by international trends and the position of long-distance education institutions and their foreign-based clients must be clarified;
- With hundreds of students not graduating this year as a result of outstanding fees, there is a danger that the removal of subsidies from international students is seen as a solution to the funding woes of universities and technikons. However, since massification of education is the real challenge, the government's actions must be clearly defined to reconcile the conflicting imperatives of redress and diminishing resources.

Translating these recommendations into actual policy would facilitate student life for international students. Finally, recognition of the academic, cultural and financial benefits to be gained from international students must be balanced by the demands imposed on them by the legitimate demands of citizens to address the devastating legacy of apartheid education.

SAME-SEX COUPLE RULING EXTENDS RIGHT TO LIVE AND WORK IN SA



In yet another court case involving the Department of Home Affairs and South Africa's immigration legislation, parts of the Aliens Control Amendment Act of 1995 were found to be unconstitutional by the Cape High Court.

THREE High Court Judges, Dennis Davis, Johan Conradie and Jolyon Knoll, in February ruled in favour of six lesbian and gay couples, granting them the same rights as married immigrant spouses to live and work in South Africa.

In terms of immigration law, people married to South African citizens are legally entitled to live and work in South Africa, but this provision, as interpreted by the Department of Home Affairs, did not apply to same-sex couples. The National Coalition for Gay and Lesbian Equality argued that the Constitution outlaws discrimination on the grounds of sexual orientation and since same-sex couples are not entitled to marry, this section of the Aliens Control Act was applied unfairly.

Same-sex couples, previously kept apart by immigration legislation and subject to harassment and deportation, are now able to live and work in South Africa. Photo: National Coalition for Gay and Lesbian Equality

sex couples are not entitled to marry, this section of the Aliens Control Act was applied unfairly.

Last December, Minister of Home Affairs Mangosuthu Buthelezi drafted regulations which he hoped would prevent further confrontation with same-sex couples about the constitutionality of this section of the Aliens Control Act. The exact contents of the regulation are unknown, but it is surmised that they would have taken the form of a concession to same-sex couples, entitling them to the same benefits as immigrant spouses married to South African citizens. However, the regulations proposed by Buthelezi were overruled by Cabinet and the matter was taken to court.

The judges ruled that the law did discriminate against same-sex couples and that it was unconstitutional. They argued that "...the law failed to satisfy the demand of the Constitution that diversity of identity should be respected and protected..." and that it "...perpetuated patterns of discriminatory stereotyping and prejudice...". The government was given notice that, if the Constitutional Court concurred with the judgment, it will have a year to change the law to bring it in line with the Constitution.

In the meantime, the court has ruled that same-sex couples qualify for the benefits granted to married couples under a section dealing with special circumstances. Thus, gay and lesbian couples, previously kept apart by immigration legislation and living under constant fear of harassment and deportation by Home Affairs, are now able to live and work in South Africa.

The case raises questions about couples married under religious rites not recognized by government as well as the position of heterosexual couples who have not married. Like same-sex couples prior to the Cape High Court judgment, they are not entitled to the benefits automatically granted to couples whose marriages are recognized.