

Southern African Migration Project

**Irregular Migration to South Africa
During the First Ten Years of Democracy**

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1.0 Defining Irregular Migration

- 1.1 In terms of the Immigration Act¹, an illegal migrant is a foreigner who is in South Africa in contravention of the Act. Accordingly, a foreigner who has entered South Africa without proper authorisation or by fraudulent means, or who remains in South Africa beyond the date imposed by his or her visa or permit, or who engages in activities beyond the scope of what is duly authorised by his or her permit, is an illegal migrant.
- 1.2.1 The Act gives the Department of Home Affairs the responsibility to detect, detain and deport illegal migrants.
- 1.3 In this policy brief, consistent with UN terminology, the term “irregular migration” is used in preference to “illegal migration.”

2.0 The Central Problem

- 2.1 Irregular migration poses a considerable problem for South Africa in migration management, population planning, infrastructure development, resource management, governance, social services, economic development and security. A government can only work with what it knows, with a reasonable margin of error. By its nature, irregular migration creates many unknowns. Where entry into South Africa is clandestine or fraudulent, no proper account can be kept of the migrant’s presence, movement, identity, nationality, health status or activities. Without the ability to measure the problem, the ability to address it remains elusive.
- 2.2 For years, figures on the number of irregular migrants present in South Africa have been bandied about and strongly contested. In a 1996 report, commissioned by the government, the Human Sciences Research Council (HSRC) estimated the number at between 2.5 and 4 million, but suggested it could be as high as 12 million. The HSRC used a sample survey method to estimate the number of irregular migrants in South Africa. Going from door to door across the country, surveyors asked how many non-citizens lived on the property. The sample figure was then extrapolated and the number of legally resident non-citizens, as determined by Statistics South Africa through the census, was subtracted. This manner of survey was repeated every six months in an attempt to track movement patterns of irregular migrants. Critics of the HSRC figures include Maxine Reitzes² and Jonathan Crush³, who suggest that it could be as low as 500 000. In 2002 the HSRC withdrew its estimate⁴. Nevertheless, the Department of Home Affairs quotes figures of between 2.5 and 5 million⁵ or up to 7 million⁶. The media, not being in a position to conduct independent research, moves freely between these numbers.
- 2.3 As the debate raged, the Minister of Home Affairs pleaded that less attention be given to how many irregular migrants were present, and more be focused on whether it is a problem and what it is costing South Africa⁷. As the Draft Green Paper on International Migration⁸ states: “Speculative assessments have also been made of the impact of unauthorised migration on our education, health-care and social welfare systems. We have looked carefully at all available figures and must declare that we have little faith in them. It would, of course, be very helpful if officials and planners

had accurate statistics, but even under the best circumstances these are difficult to collect as people have an interest in not declaring their presence.”

3.0 Measuring the Problem

- 3.1 The secrecy involved in irregular migration means that the only numbers that can be objectively known are of those migrants who somehow get caught up in the system. Visitors who overstay remain within the system to a certain extent; the national Movement Control System will indicate whether they remain or subsequently depart. Migrants who engage in activities not authorised by their permit, such as working while on a visitor’s permit, remain within the system to the extent that their presence and identity are known. The problem lies with those migrants who are outside the system entirely, whose entry is clandestine or fraudulent. In this case, their presence only emerges when they are reported by service providers (in terms of section 44 of the Immigration Act) or by community members, or upon arrest on criminal charges. The most reliable figures, however, are of those who are arrested and processed through a repatriation centre. The annual number of deportations may not give an indication of the total number of irregular migrants in South Africa, but they do offer valuable insight into whether the problem is increasing, where it is coming from and how it is developing. Measured against the total number of legal entries, it becomes possible to ascertain whether irregular migration is growing parallel with migration trends in general. Unprecedented changes in the numbers could suggest a change in South Africa’s approach and policies or a change in the relevant push factors.

COUNTRY	1994	1995	1996	1997	1998	1999
Mozambique	71 279	131 689	157 425	146 285	141 506	123 961
Zimbabwe	12 931	17 549	14 651	21 673	28 548	42 769
Lesotho	4 073	4 087	3 344	4 077	4 900	6 003
Other	2 409	3 759	5 293	4 316	6 332	11 128
TOTAL	90 692	157 084	180 713	176 351	181 286	183 861

COUNTRY	2000	2001	2002	2003	2004
Mozambique	84 738	94 404	83 695	82 067	81 619
Zimbabwe	45 922	47 697	38 118	55 753	72 112
Lesotho	5 871	5 977	5 278	7 447	7 468
Other	9 044	8 045	8 779	9 541	5 938
TOTAL	145 575	156 123	135 870	154 808	167 137

*Source: 1994 – 2000, Annual Reports, Department of Home Affairs
2001 – 2004, Department of Home Affairs: Head Office*

4.0 Trends and Demographics

- 4.1 The most striking feature of deportation statistics is their consistency in rankings and growth trends. Mozambicans continue to pose the greatest challenge — in 1996 they comprised 87% of all deportations – but they have decreased steadily to comprise only 48.8% in 2004. On the other hand, Zimbabweans — while remaining the second

greatest challenge — have steadily increased as a percentage of the total from 8% in 1996 to 43% by 2004.

- 4.2 The jump in deportations from 1994 to 1995 and again in 1996, reflects the “tighter controls” embodied in the 1995 amendments to the Aliens Control Act, 96 of 1991⁹. The amendments highlighted the government’s harsh attitude towards irregular migrants. However, it also gives an indication of increased irregular migration following the inception of democracy in South Africa, which held promises of employment.
- 4.3 After the initial increase, the number of Mozambican deportations began to decrease steadily towards 2004, with the exception of 2001. (The anomalous 2001 increase follows a 1999/2000 amnesty for Mozambicans.) However, the number of Zimbabwean deportations began to increase steadily, with the exception of 2002. The number of Lesotho deportations fluctuated unremarkably, until 2003 when there was a sudden increase by 2 169.
- 4.4 Interestingly, the usual trends became exaggerated in 1999, which may suggest that elections affect who wants to be in South Africa. In 1999, 11% fewer Mozambicans and 7.3% more Zimbabweans were deported, compared with the previous year (taken as a percentage of the total). The number of deportations from “Other” countries increased remarkably by 2 780. Moreover, the total number of deportations decreased dramatically after 1999.
- 4.5 The Southern African Migration Project (SAMP) reports¹⁰ that between 1990 and 1997 deportations of Southern African Development Community (SADC) citizens constituted 99.7% of total deportations. Those from other African countries constituted 0.1%, while the remaining 0.2% encompassed the rest of the world. This trend has clearly continued.
- 4.6 In the last four years, deportation statistics¹¹ for countries outside the African continent show significant deportations to Pakistan (1 325), India (808), China (480), United Kingdom (205), Bangladesh (201), Turkey (178) and Thailand (118). Although it may be unexpected, South Africa has seen some irregular migrants coming from affluent countries such as the United States of America, Canada and Switzerland.
- 4.7 Statistics on detainees at the Lindela Repatriation Centre¹², the main site of detention and deportation of irregular migrants, indicate that the average age of detainees is 25.8 years and proportionally more are male than female.
- 4.8 In recent years, the media has begun to report a trend whereby irregular migrants, once deported, return to South Africa within a short space of time¹³. This phenomenon has been termed the “revolving door syndrome”. In a November 2003 media briefing, the Director-General¹⁴ began to draw attention away from the number of deportations to focus on this phenomenon, which he called “one of the biggest challenges facing the Department”. While the reality of the revolving door syndrome is accepted, it is difficult to measure. The recent introduction of a fingerprinting system should begin to address this problem.

- 4.9 Nevertheless, it suggests that the deportation process does not have much preventative effect. If irregular migrants are not deterred by their experience of deportation, the process becomes like bailing water from a sinking ship. The way irregular migrants view deportation is telling. Indeed, the phenomenon of presenting themselves to immigration officers for arrest and deportation around the Christmas season — to get a free ride home — has caused the Department to halt deportations over this period¹⁵.
- 4.10 There is some doubt within the human rights community that deportation is effective at all. In 2002, while touring Lindela, the South African Human Rights Commissioner announced the system of detention and deportation futile, a view with which the Lawyers for Human Rights has concurred¹⁶. In December 2003, the Deputy Chairperson of the Commission suggested that the “detention and repatriation process encourages irregular immigration into the country. That is, there is a revolving door approach”¹⁷.

5.0 Reasons for “Irregular Migrant” Status

- 5.1 Perhaps the immediate question is why irregular migrants don’t enter the country through legal means. For many, the process of obtaining documentation poses logistical and financial problems, and it is not necessarily clear what would be required of them. In terms of cross-border trading, for instance, a woman selling tomatoes across the border does not have the money to go to the city and buy a visa¹⁸.
- 5.2 In the case of Mozambique, it became evident that tightening visa restrictions in 2002 did not effectively prevent irregular migration. The non-refundable high fee of R430 to lodge a visa application is likely to have discouraged migrants from applying for a visa at all, making clandestine entry more appealing. Consequently, in September 2004, South Africa and Mozambique agreed to abolish visas for their citizens visiting each other’s countries for less than 30 days¹⁹. This agreement was signed and came into force in April 2005.
- 5.3 Due to cross-border ethnic affinities and the absence of distinct barriers, irregular migration often becomes an extension of internal migration. To accomplish the daily business of trading, visiting relatives, attending school or doing shopping, people living along borders cross them frequently, without documentation. One solution is to institute a cross-border regime that facilitates movement within a prescribed area across a border. The Immigration Act makes provision for a cross-border permit for our immediate neighbours. However, the regulations do not prescribe how an application is made, nor do they contain an example of the permit itself.
- 5.4 For some migrants it may not be possible to meet the permit requirements. For instance, many of those entering South Africa to seek work would not qualify for a work permit. Documents are thus forged or tampered with. Fraudulent entry has been accomplished either by going undetected, or with the complicity of corrupt officials in South Africa. Shortly after his appointment as Director-General, Mr Barry Gilder confirmed at a 2003 media briefing that the Department suffers “widespread and endemic” corruption²⁰. He noted that it is a prime target of organised crime syndicates and other criminals who seek enabling documentation to establish themselves and engage in criminal activities. The record of arrests of Department officials on charges of corruption often indicates where the corrupting influence is coming from, and has significantly implicated Chinese, Pakistani and Nigerian migrants²¹.

- 5.5 The intention of securing services or rights to which they are not entitled within South Africa encourages fraud. A particular problem faced by the Department is fraudulent citizenship obtained through the late registration of births²². Another is the registering of fraudulent marriages between foreigners and South Africans. In both instances, corruption within the Department makes it possible for irregular migrants to “regularise” their presence through fraudulent means.
- 5.6 In 2004, the Department gave its focused attention to “marriage scams” and official media releases issued at this time implicate Pakistani, Indian and Egyptian nationals. In the same year, it became evident during the Immigration Advisory Board’s deliberations on exemption applications that Nigerian nationals were also using this avenue to seek permanent residence.
- 5.7 Looking at matters from a different perspective, it has been argued that the status of “irregular migrant” may at times result from lack of resources and inefficiency of the Department, causing late, incorrect or invalid delivery of citizenship or residence services²³.

6.0 The Attraction to South Africa

- 6.1 In many ways, South Africa’s history and its place in the regional labour market prepared the way for the present problem of irregular migration. Until the 1970s, South Africa had agreements with its neighbouring states of Rhodesia, Portuguese East Africa and Mozambique to allow clandestine migration. For years, bilateral agreements brought migrant labourers to work on South Africa’s mines. Moreover, South Africa’s regional economic and trade policies may not have been simply a pull factor attracting migrant workers. In 1997, the African National Congress gave some recognition to the argument that these policies acted as a push factor in the region, resulting in more unemployed migrants coming to South Africa to seek work²⁴.
- 6.2 Another historical precursor was the imposing of border lines without taking cognisance of traditional realities, resulting in communities being split and people losing their national identity. In the Northern Province, for example, there is now a trans-national ethnic consciousness. Being Shangaan, Mozambicans share a cultural similarity with the indigenous population. As a result, there is a large concentration of irregular Mozambican migrants in the former homeland of Gazankulu.
- 6.3 Communication networks conveying information on where to go, what to avoid and how to get work in South Africa are no longer restricted to border communities. The rapid spread of information and communication technology has made these details easily accessible common knowledge. A precedent is set by those who have already entered who let others know about the conditions for employment and the possibility of detection. A 2002 survey conducted by the Institute for Security Studies (ISS)²⁵ noted that prior to coming to South Africa, 70% of the irregular Nigerian migrants surveyed knew someone already living in Hillbrow, Johannesburg.
- 6.4 Information on job opportunities is vitally important to the irregular population, as the majority enter South Africa to seek employment. In 1997, SAMP conducted a

survey²⁶ among migrants from Mozambique, Zimbabwe and Lesotho, which revealed that the fundamental attraction in South Africa is employment. The report concludes: “On almost every front — with the important exception of job opportunities, costs of living and health care — the home country was perceived equal or better than South Africa... and even South Africa’s much-vaunted democratic reforms would appear to carry little weight.” Nevertheless, according to a survey conducted by the ISS²⁷ in 2003, it would appear that unemployment levels are more or less the same among locals and foreigners in South Africa.

- 6.5 Lower standards of living, higher unemployment rates, political rumblings, civil war and ecological deterioration in sub-Saharan countries are all factors which push migrants from their own countries. With the introduction of democracy after 1994 economic opportunities in South Africa increased, attracting migrants from this region²⁸. Some will abuse the asylum system to gain entry, as according to international convention no country may turn an asylum seeker away out of hand. However, South Africa does not recognise so-called “economic migrants” as potential refugees.
- 6.6 Addressing the pull factors without considering the push factors will compromise any real solution to irregular migration. Regional development has become a priority in government policy-making, taking into account what would be of mutual benefit. The Maputo Corridor project is one example. This approach is partially based on South Africa’s regional obligations forged during the fight for democracy. It should prove useful in combating irregular migration to the extent that it reduces the incentives for foreign nationals to leave their own countries.
- 6.7 It cannot be denied that the intention of some irregular migrants is to commit crime. During a 2002 Cabinet *lekgotla*, it was decided to hand over responsibility for border control from the South African National Defence Force to the South African Police Service (SAPS). The SAPS assumed the first phase of border control in September 2004, with the objective of controlling the entire border by March 2009. The focus of police units along the border is particularly on combating international and organised crime²⁹. Human smuggling of criminals, economic migrants and prostitutes, as well as human trafficking, are certainly problems for South Africa as a final destination and a springboard overseas³⁰.
- 6.8 Nevertheless, the majority of irregular migrants are engaged in agriculture, the hotel and restaurant industry, construction, the domestic industry and informal trading³¹. While in South Africa they do make some contribution to the economy and to the labour market; making purchases, paying VAT and even having income tax deducted from their salaries. The question that must be asked is whether the activities they are engaged in create a problem for South Africa. If it is possible to identify the main countries of origin of those engaged in activities detrimental to our country, policy decisions could cut straight to the heart of the problem rather than dancing on the periphery.

7.0 Problem Activities

- 7.1 The security threat posed by irregular migration is clear when considering that not only is it not known who is in the country, but also why they are here, what they are

doing or how to track them. These unknowns fuel the perception that irregular migrants are criminals or have criminal intent.

- 7.2 Yet as the then Director-General put it in 2002³²: “Ninety-five percent (of the Lindela detainees) were looking for a job. We’ve got to be sympathetic and we can’t criminalise these people.” At a 2003 public hearing, Senior Superintendent David Julembe from the Border Police Division of the SAPS confirmed that “the involvement of irregular foreigners in organised crime, statistically, is not proven”³³.
- 7.3 In its Draft White Paper³⁴, the Department of Correctional Services recognises irregular migration as one of its challenges. However reference is not made to irregular migrants being engaged in criminal activities, but rather to those awaiting deportation in police cells and correctional centres, which are already overcrowded. The Department notes the increase in irregular migrants over the past decade and the different needs in respect of detention standards. In Chapter 9 it states: “While there is a tendency for such people to want to escape deportation, there cannot be a presumption that they pose a threat to the safety of society or that there is a justifiable basis for their rights to be severely limited.”
- 7.4 Nevertheless, there is some evidence of irregular migrants being involved in crime. In 1999, the ISS³⁵ identified Indian and Pakistani groups as being involved in smuggling contraband goods, narcotics and irregular immigrants; Portuguese organised crime groups in truck-hijacking and smuggling illicitly obtained diamonds and gold; and Moroccan criminal groups in the Cape Town area in extortion rackets and narcotics dealing. The study further noted the long-time involvement of Chinese criminal groups in the ongoing smuggling of abalone to the East, illicit trading in rhino horn and ivory, the importation and distribution of drugs, money-laundering, tax evasion, the illegal trafficking of Chinese migrants into South Africa and trading in contraband goods. The most often quoted example is still that of Nigerian drug lords. The ISS study confirmed that Nigerian crime syndicates dominated the illicit trade in cocaine in South Africa, which was started by irregular migrants in the late 1980s. At a public hearing in December 2003, ISS researcher Ted Leggett noted that he had reviewed 350 non-cannabis drug docket in a five-month period in 2000 in Gauteng Province and 40% of those arrested for cocaine were Nigerian nationals³⁶.
- 7.5 Figures from the Department of Home Affairs³⁷ of foreigners who were convicted of crimes in South Africa between 1998 and 2004 range between 606 in 1999 and 1 586 in 2002. These are people for whom deportation warrants were issued. Substantial numbers from the African continent come from Mozambique (3 097), Lesotho (1 367) and Zimbabwe (1 353), trailed by Nigeria (223), Swaziland (204) and Tanzania (187). Outside the African continent, substantial numbers come from Pakistan (22), Bulgaria (20), the Republic of China (19), Taiwan (13), the United Kingdom (11) and India (10).
- 7.6 Irregular migrants are, however, also the targets of crime and none more so than the Nigerians. In fact, the 2002 ISS survey³⁸ discovered that foreign nationals in inner city Johannesburg are more often the victims of car theft, burglary, assault, murder and robbery than locals. Thirty percent of robbery victims in 2002 were local, compared with 77% of Nigerian nationals living in the survey area who suffered the same fate. Obviously, irregular migrants are less likely to report victimisation to the police. As Mr Leggett points out, it is not surprising that a few choose to strike first³⁹.

- 7.7 In his 2003 ISS survey⁴⁰, Leggett notes the conditions conducive to criminality among irregular migrants; there are few disincentives; they often live among fugitives from justice; they are prevented from earning a living legally; they cannot use banks; and are forced to protect whatever wealth they accumulate through their own strength. He suggests that the focus should be on criminal activities among irregular migrants and those arrested should be deported to be dealt with by their own countries rather than being incarcerated in South Africa. While this would go a long way towards alleviating the problem of overcrowding in prisons and detention centres, it would be necessary to enter bilateral agreements with countries of known offenders to ensure justice is served. Particularly among criminal offenders, the revolving door syndrome must be avoided at all costs. Co-operation among law enforcement bodies is essential for this to work. For instance, a Nigerian who has committed an offence abroad is jailed for three years on his or her return for bringing that country into disrepute.
- 7.8 It is hoped that knowing the consequences of crime and the attitude of South Africa to irregular migrants who commit crimes will discourage potential migrants with ill intent from leaving their home countries. Information in the media of foreign countries is thus important in shaping perceptions among potential irregular migrants. For instance, a recent report by the Xinhua News Agency in China stated that the South African government “claims that most violence and crimes are committed by irregular immigrants”⁴¹. Such a statement creates the perception among its readers that South Africa will be hard on any irregular immigrant it discovers as it blames irregular immigrants for the high levels of crime.

8.0 The Government’s Attitude and Approach

- 8.1 In 1994, the Aliens Control Act, No. 96 of 1991, was still in force. This Act was to remain the last vestige of apartheid-era legislation well into the period of democracy. However, in 1995 the then Minister of Home Affairs introduced amendments to the legislation, noting in Parliament that the primary purpose was to tighten control of migration⁴².
- 8.2 The effect on government policy of the 1996 HSRC report⁴³ is evident. The South African government had requested the HSRC to consider the Draft Protocol on the Free Movement of Persons within the Southern African Development Community, developed in March 1996 by the governments of the SADC. Within its five-year timeframe, the Draft Protocol envisaged the standardisation of visa-free entry within a year, followed later by freedom of employment and residence and then of establishment. In its report, the HSRC argued that lifting restrictions on movement would have the effect of regularising and legitimising millions of irregular migrants who would need to be “absorbed” by South Africa. This argument, as one among several in the report, caused the South African government to reject the Draft Protocol. The government then drafted its own protocol on the “facilitation of movement of persons” which commits states to co-operate in controlling irregular movements into and within the region. To whatever extent possible, the SADC Secretariat incorporated South Africa’s clauses into the original draft. However, South Africa could not accept the new draft and, in 1997, together with Namibia and Botswana, rejected the Protocol, leaving the SADC without a general migration agreement.

- 8.3 In accordance with the stricter Aliens Control Act, the Department sought ways to detect these presumed large numbers of irregular migrants. In an attempt to prevent the employment of irregular migrants, employer sanctions were imposed. In 1996, 69 009 employers were visited, yet only 23 were charged and sentenced for employing irregular migrants⁴⁴. In that year 180 713 irregular migrants were deported. The figures suggest either that few irregular migrants were discovered through this method, or that sanctions on employers were not strictly applied. The 1997 Green Paper expressed the belief that the Department did not have the staffing capacity to monitor and enforce employer sanctions. With the persistence of chronic understaffing, this may still not be a viable option.
- 8.4 In the early years of democracy, the South African government recognised the heritage of our past and offered amnesties to regularise certain irregular migrants. Following representations by the National Union of Mineworkers, in 1995 amnesty was offered to anyone who had worked on South Africa's mines from 1986. As a result, 50 000 foreigners were granted permanent residence. In 1996, irregular SADC nationals who had been in the country since 1 July 1991 and who met certain conditions were allowed to apply for exemption. A total of 125 000 exemptions were granted. In 1999/2000, a certain category of Mozambicans could again apply and 90 000 exemptions were granted⁴⁵.
- 8.5 From the outset of the process to transform migration legislation it was recognised that fortification and patrolling of South Africa's porous 7 000km border was not an option. The Draft Green Paper recommended that principles be established to guide the enforcement of migration control. It suggested that these principles should be rights-based and focus on irregular migrants, and should strengthen the capacity of the government to detect fraudulent use of documents, provide surveillance of smuggling routes and strategically monitor national borders where unauthorised migration was known to occur.
- 8.6 In March 2000, "Operation Crackdown" was launched as a three-year crime blitz in which police raided areas predominantly inhabited by black foreigners. Unfortunately, the blitz was characterised by systematic corruption and arrests based on physiognomy. The blitz came under criticism from the South African Human Rights Commission (SAHRC) but received strong support from the police commissioner, premiers and cabinet ministers. At ground level, the 2002 ISS survey found that only 36% of foreign nationals surveyed considered the crime blitz to be effective.
- 8.7 Using the obvious avenues available to it, the Department of Home Affairs has attempted to obstruct irregular migration. These include supporting the criminalisation of human trafficking, the legal disregard of fraudulent marriages, instituting fines and penalties, disseminating information to missions abroad and training its immigration officials to identify fraudulent passports, visa stamps and permits.
- 8.8 In its 2002 survey, the ISS rejects bureaucratic and technical control of irregular migration and recommends that solutions be focused on regional, national, provincial and local reconstruction, job creation and economic growth. The Draft Green Paper went some way towards this proposal in its recommendation that irregular migration should in part be dealt with by giving *bona fide* economic migrants from SADC countries, who have no intention of settling here permanently, increased opportunities for legal participation in our labour market.

- 8.9 Ultimately, deportation remains the single greatest focus in the fight against irregular migration. The questions surrounding its effectiveness are matched by questions of its cost⁴⁶. The Lindela Repatriation Centre is operated by a hospitality company known as Bosasa. In 2001 it cost the government about R32 million to run Lindela. Although most of the detainees are from neighbouring African countries, almost every country in the world has featured in the centre's computer system at some point. Repatriation to a country like China can cost up to R20 000, which includes the fare of an accompanying immigration official. It has been argued that most desperately poor South Africans will never see that degree of social spending.

9.0 Public Perceptions

- 9.1 The public's perception of irregular migration is formed by observations, anecdotal evidence, fear of the unknown and, to a large extent, media reporting. In the absence of facts, the media can only speculate. While excessive speculation may sell newspapers, it also fuels xenophobia. For instance, so-called "conservative" reports that South Africa hosts about a million Zimbabwean irregular migrants do not make sense. Census 2001⁴⁷ puts the population between the ages of 15 and 34 at 16 552 084. Given that the average age of irregular migrants is 25.8, basic maths suggests that 1 in 16 people in South Africa (in the relevant age group) is an irregular Zimbabwean migrant. As the distribution of irregular migrants is not homogenous across South Africa, places like Musina would indeed be visibly overrun.
- 9.2 In 1997, the ISS and the HSRC jointly conducted a survey⁴⁸ to determine public attitudes and arrived at some interesting results. Altogether 65% of respondents said that irregular migration is "bad" or "very bad" for the country, 80% favoured the government curbing irregular migration by strengthening border patrols, 65% agreed with enforced repatriation and 73% with penalising employers who hire irregular immigrants. While the overwhelming picture is of a society that rejects irregular migration, 21% of black respondents considered irregular migration a good thing, as did 32% of Northern Sotho speakers, 37% of respondents in the Northern Province and 22% of ANC supporters.
- 9.3 Nevertheless, the fact that *amakwerekwere* is a derogatory term within South Africa's communities suggests that at grassroots level there is little sympathy for foreigners — particularly irregular ones — who are perceived to be criminals, job stealers, women poachers and a health risk. The average South African could probably not differentiate between the various categories of foreigners. Regardless of facts, which are tenuous in this case, perceptions determine attitudes, taint interaction and hinder integration.
- 9.4 Xenophobia in South Africa has been a cause for concern for some time, with violence towards foreigners occurring in many communities. When three Senegalese nationals were thrown out of a moving train in 1997 the SAHRC was shaken into action. The following year, in partnership with the United Nations High Commissioner for Refugees and the National Consortium for Refugee Affairs, the SAHRC began the Roll Back Xenophobia campaign to change perceptions and attitudes at all levels of society.

- 9.5 Challenging assumptions about irregular migrants often exposes a different angle on problems. For instance there is a misperception that irregular migrants place a heavy burden on South Africa's social services. This idea can obscure the fact that unprecedented rural to urban migration among South Africa's own citizens is putting pressure on structures and services not designed for such a high volume of users.
- 9.6 Another assumption to be challenged is that the presence of foreigners, both legal and irregular, increases unemployment among South Africans. Research undertaken in inner city Johannesburg by Wits University's Forced Migration Studies Programme reveals that non-nationals are more likely to hire an employee than the nationals among whom they live. Most of these employees are themselves South African. International experience shows that immigration provides a net benefit to national economies by bringing new skills, experience, innovation and a good work ethic.

10.0 Human Rights Protection

- 10.1 At community level, xenophobic attitudes surface particularly where social services are concerned. The fear that an already stretched resource base will be further weakened by the needs of irregular migrants has caused great concern. However, it has been argued that there is no evidence that irregular migrants are a burden on services, a net drain on the country or even that their presence is necessarily disadvantaging South Africans⁴⁹. Nevertheless, in 1997 the Minister of Home Affairs called on government service departments to "request the identity documents or passports of all foreigners requesting services... and in this way ensure that they (irregular migrants) do not gain access to services in short supply to our own people"⁵⁰.
- 10.2 The Immigration Act later framed this policy decision in a manner more compliant with international human rights law. In terms of Section 44 of the Act, organs of state shall endeavour to identify service recipients as citizens, residents or foreigners, and report any irregular migrants to the Department, "provided that such requirement shall not prevent the rendering of such services to which illegal foreigners... are entitled under the Constitution or any law". The 2004 amendments to the Act retain this provision.
- 10.3 Nevertheless, the rights of citizens must be balanced with the rights of irregular migrants. The United Nations⁵¹ recognises that human problems involved in migration are compounded with irregular migration, and that irregular migrants are exposed to undignified or at least less favourable conditions. Without protecting the rights of irregular migrants, irregular migration will remain good business for those who employ them under inferior conditions to benefit from unfair competition, and even for those involved in human trafficking and smuggling.
- 10.4 The rights enshrined in South Africa's Constitution and Bill of Rights are the first guideline to the rights of irregular migrants. When interpreting these rights, consideration should be given to international law. South Africa has acceded to the Convention on the Rights of the Child and the Convention on the Elimination of Discrimination Against Women, both of which affect the interpretation and enforcement of the rights of irregular migrants. International law is inclined to extend the protection of rights to all migrant workers, regardless of their status.

- 10.5 In terms of the 1990 Convention on the Protection of the Rights of All Migrant Workers and their Families, irregular migrant workers are entitled to have reasonable opportunity to settle claims for wages and other entitlements due to them prior to deportation⁵² and, upon deportation, to transfer their earnings, savings and personal effects⁵³. In respect of remuneration and other conditions of work, they should enjoy treatment not less favourable than that which applies to nationals⁵⁴, including the opportunity to join a trade union⁵⁵. In terms of social security such as maternity leave⁵⁶, access to medical care, especially emergency medical care⁵⁷, and access to education for their children⁵⁸ they should enjoy the same treatment as nationals. However, there is little knowledge or appreciation of such rights in schools, hospitals and particularly in the work place.
- 10.6 Due to the economic push factors in their own countries, combined with the hazards of clandestine entry across harsh terrain, many irregular migrants arrive in South Africa malnourished and in poor health. Thus they have little resistance to disease, making them susceptible to yellow fever, cholera, tuberculosis and AIDS-related illnesses⁵⁹. However, for fear of being reported, irregular migrants may not seek the services they require, exacerbating health risks and perpetuating poor standards of living. To make matters worse, hospitals have been known to reject irregular migrants.
- 10.7 Protection of the rights of irregular migrants once in detention is monitored by the SAHRC together with Lawyers for Human Rights. The SAHRC has pointed out numerous problems with Lindela, not least that the minimum standard of detention for no longer than 30 days is routinely violated. In December 2003, the Deputy Chairperson of the Commission expressed concern over poor record keeping by Bosasa. Not only could this lead to inaccurate numbers being fed to the Department, it could also create opportunities for corruption as Bosasa is paid a certain amount per detainee⁶⁰.
- 10.8 The view of the SAHRC⁶¹ is that South Africa should open its borders in a responsible manner, at least to citizens of SADC member countries. By avoiding a control mentality in migration policy and enhancing a management approach, South Africa would be in a position to collaborate more effectively with its neighbours in managing the movements of people in and out of the country. This would pave the way for more effective bilateral agreements.

11.0 What of Those Who Are Not Deported?

- 11.1 It is important to note that not all irregular migrants remain in South Africa until they are detected, detained and deported. In the case of those moving frequently between South Africa and its neighbouring countries, clandestine exit is as common as clandestine entry. The 1997 SAMP survey⁶² of migrants from Mozambique, Zimbabwe and Lesotho concluded that very few have any intention or wish to settle permanently in South Africa.
- 11.2 However, this may not be the same for those from further afield. The 2002 ISS survey conducted in Hillbrow, Johannesburg notes that 62% of foreign nationals surveyed were Nigerian, and of those 92% were from the Ibo ethnic group. The group was

largely young and male and motivated primarily by an interest in economic gain. The survey noted that most of the Hillbrow respondents wanted to forge long-term ties with South Africa. Although 11% wanted to leave the country as soon as possible, the majority (58%) wanted to stay in South Africa for as long as they could. Although most were not sure how they would achieve this goal, 75% said they were, or intended to get, married to a South African.

- 11.3 The question of who wishes to remain and who will leave of their own accord becomes relevant in determining the magnitude of the problem of irregular migration. If our SADC neighbours are moving back and forth trading, visiting relatives, conducting business, shopping and even working, the problem is less serious than a scenario in which foreigners from further afield are entering for a more permanent stay and are being implicated in criminal activities. Perhaps the focus on detection, detention and deportation of our immediate neighbours is therefore misdirected. Nevertheless, the extent of migration from our neighbours requires a clear policy approach that takes all factors into account.
- 11.4 The focus on “border jumpers” may also be deflecting attention from a more serious problem. If it is known that South Africa has a problem with Chinese and Pakistani irregular migrants entering South Africa fraudulently, it may be best to focus attention on air and sea ports of entry. As is evident from a case currently before the courts⁶³ it is necessary that the Movement Control System at these ports is enhanced and indeed revolutionised. Without photographs or fingerprints being taken, and without corruption at these points being addressed, our ports of entry may indeed be as porous as the rest of our 7 000km border.

12.0 Policy Recommendations and Further Research

- 12.1 Any policy approach aimed at addressing irregular migration is bound to be a stopgap measure, meant to stem the tide of a problem that already poses a considerable challenge to the Department of Home Affairs. There is much enthusiasm that the newly launched National Immigration Branch will be better equipped to meet this challenge. However, the focus on detection, detention and deportation must be supplemented with a variety of policy approaches.
- 12.2 South Africa’s good relations with its immediate neighbours are an essential component of a multifaceted approach. As in the case of Mozambique and visa fees, it is important that South Africa understands the specific obstacles faced by those entering South Africa most frequently. If it is too difficult, onerous, costly or time consuming to enter South Africa through legal channels, another way will be found. Maintaining a dialogue with our neighbours on migration issues will assist South Africa to understand why irregular migration is occurring and can create willing allies in its prevention, detection and resolution.
- 12.3 South Africa’s immigration legislation must be properly and uniformly implemented so that migrants understand what is required and how to meet the requirements. The changes in legislation since the Aliens Control Act have removed much of the excessive discretion that allowed officials to move the goal posts, as it were. The Immigration Act and its implementing Regulations create a checklist of requirements so that an applicant may have a fair idea of whether his or her application will be successful based on whether all the necessary documentation is submitted.

- 12.4 With the imminent introduction of the Amendment Act and the draft Regulations, which have undergone a period of public comments, concerns have been voiced about the cumbersome requirements for temporary residence permit applications. In some instances it would be impossible for certain foreigners to meet all the requirements. It is important that we do not exclude people from South Africa because they do not seem particularly skilled, have no large investment to make and are not conventional businessmen. Visitors, particularly from the African continent, should be made to feel welcome. Ultimately, the only exclusion should be criminals or those who threaten South Africa's stability, peace or security.
- 12.5 The effectiveness of the Lindela Repatriation Centre should be considered against the cost of its operation, particularly in light of the revolving door syndrome. If the recently implemented fingerprinting system proves the "revolving door" to be an overwhelming reality, it must be accepted that deportation is not acting as an effective deterrent. This is not to say that deportation should be scrapped, but merely that it should not be considered the first line of defence in preventing the recurrence of irregular migration.
- 12.6 Detention and deportation lack effect as a deterrent specifically because they pose minimal disruptive consequences to irregular migrants. Deported foreigners may simply re-enter South Africa clandestinely and resume life where they left off, possibly even getting their jobs back and reintegrating into the same social circles. The idea of a prison sentence, on the other hand, offers serious concerns to irregular migrants as it disrupts their ability to resume their lives and continue to fulfil whatever purpose drove them to South Africa. Considering the present overcrowding of South Africa's prisons and the burden on correctional services, this is not a viable option. It also falls short of ethical standards, not least due to failures in the system to properly classify refugees, asylum seekers, South Africans, legal migrants and irregular foreigners. However, there is potential for South Africa to discuss possible penalties to be imposed by the countries of origin upon receiving their deported nationals.
- 12.7 There is little benefit to be gained from further research into the numbers of irregular migrants entering South Africa. Investigating the potential benefits would perhaps also not be profitable, unless the possibility of a general amnesty was seriously considered. A general amnesty would allow South Africa to start again at zero, yet this is only hypothetically. There would still be little measurable understanding of the implications of irregular migration on our social services, economy and labour market. Moreover, the implicit fear in offering a general amnesty is always that it will spark a sudden increase in irregular migration.
- 12.8 Without presupposing that irregular migration constitutes a great cost to South Africa, or a hidden benefit, it is essential that research be undertaken into its impact on the labour market and the economy. The effects of irregular migration on the areas of South Africa's greatest concern should be considered, including poverty, HIV/Aids, criminality and unemployment. Rather than seeing irregular migration as one of South Africa's chief concerns, research should focus on the extent to which irregular migration impacts on these key areas.
- 12.9 Ultimately, much rests on the political will to address irregular migration with policies that are more than stopgap measures. If one considers the cross-cutting consequences of irregular migration, it should be clear that every department within the government

should be involved in finding solutions. Migration matters in general demand more co-ordinated, interdepartmental attention, policy consideration and priority. When all the facets of irregular migration are put together, a clearer picture will emerge and effective solutions may more easily be found.

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