



# Political Contestations within South African Migration Governance

Khangelani Moyo & Franzisca Zanker

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## KEY POINTS

- South African migration governance has adopted an increasingly securitised approach which also blurs the boundaries between refugees and migrants.
- Refugee protection is increasingly fragmented, enveloped by an exclusive immigration system and a weak regional approach in terms of free movement.
- There are a number of political stakes related to refugee and migration governance:
  - Migration governance is used as leverage in domestic politics. Xenophobic violence against migrant and refugee communities continues routinely. The exclusionary approach works particularly well as a form of leverage in scapegoating the governments failures to address poverty and job creation. A focus on securitisation further concretises an anti-refugee and anti-migrant stance in policy.
  - The exclusionary approach contrasts to visions of free movement and Pan-Africanism as well as the benefits of “skilled” migration. In practice however, domestic imperatives are still more important and are often strengthened by the approach to foreign policy, such as quiet diplomacy in neighbouring Zimbabwe. More recently, they have resulted in diplomatic tensions with other African countries.
  - The Department of Home Affairs has a performative relationship with civil society who try to keep them in check. Refugee activists are side-lined where possible and given a negative portrayal.
- Social xenophobic rhetoric is based on the premises of identity-construction through othering as well as being linked to economic deprivation. These discourses are reinforced both through rhetoric by politicians and the media.
  - The border town of Musina shows that such rhetoric is not ubiquitous and a more proactive role for political and community leaders to change the public discourse on the contributions made by migrants to communities is possible.

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## **LIST OF ACRONYMS**

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**AfCFTA:** African Continental Free Trade Area agreement

**ANC:** African National Congress

**AU:** African Union

**BMA:** Border Management Authority

**COVID-19:** disease caused by novel coronavirus SARS-CoV2

**CSO:** Civil Society Organisation

**DA:** Democratic Alliance

**DHA:** Department for Home Affairs

**DIRCO:** Department of International Relations and Co-operation

**DRC:** Democratic Republic of the Congo

**DZP:** Documentation of Zimbabweans Project

**LSP:** Lesotho Special Permit

**NGO:** Non-Governmental Organizations

**RNC:** Rwandan National Congress

**RRO:** Refugee Reception Office

**SADC:** South African Development Community

**SADCC:** Southern African Development Coordination Conference

**SAHCR:** South Africa Human Rights Commission

**SAPS:** South African Police Service

**SCCT:** Scalabrini Centre of Capetown

**UNHCR:** United Nations High Commissioner for Refugees

# 1 INTRODUCTION

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Since the attainment of democracy in 1994 and the end of race based discriminatory migration practices, South Africa has received increased flows of migrants from the African continent and other parts of the world (Crush, Williams, and Peberdy 2005). Whereas during the apartheid era, low-skilled labourers to the mines and agricultural farms dominated migration from the African continent, the post-1994 migration regime has diversified and includes large numbers of refugees and asylum seekers as well as other migrants.

## **Textbox 1: People on the move**

Migration terminology is contested, politicized and often stands in contrast to the lived reality of movement. In this report we use the terms migration, asylum and refugee in the legal sense but also acknowledging that they are (ab)used and reiterated as political constructs in the South African context, like elsewhere in the world.

The end of apartheid in 1994 and the increase in migrants from the African continent was met with an emergence of xenophobic sentiment which has at times escalated into violence and attacks on African migrants in South Africa. Such xenophobic violence has been a constant feature of South Africa's democratic dispensation. At worst, in May, 2008, 62 people were violently murdered, including 21 South Africans, and over 100,000 displaced (Misago 2019). Since then, there have been isolated incidents, which have at times escalated like the 2018/19 violence against truck drivers and the violence against foreign business owners in September 2019. Apart from these notable flashpoints, there have been other less publicised instances of violence against African migrants as documented by the

watchdog platform Xenowatch (Mlilo and Misago 2019).

Historically, migration in South Africa has traditionally been shaped by the growth of Johannesburg as a mining behemoth, following the discovery of gold in 1886 (Harrison and Zack 2012). The earlier migration streams to Johannesburg were dominated by overseas fortune hunters from places like England, Australia, Germany or Poland, all of whom congregated in the emerging city. The migration regime during the colonial era was racially selective and the successive colonial governments facilitated the entry of desirable white immigrants and excluded those deemed undesirable (e.g. Glaser 2010). While there was a dominance of white migrants, there were also other streams of migrants such as the Indian indentured labourers who were brought to work in the sugar plantations in the British colony of Natal between 1860 and 1911 (Vahed 2019) and the Chinese indentured labourers who were brought to work in the mines of Johannesburg between 1904 and 1907 (Harrison, Moyo, and Yang 2012). In addition, black African labourers arrived from neighbouring countries who were formally recruited to work in the mines as well as entering the country as 'border jumpers' (Musoni 2020).<sup>1</sup> This history also ties to the current experience of xenophobia, namely as a continuing form of discrimination closely related to racism because foreign status is declared on the basis of the crudest racist stereotypes (Neocosmos 2008; Vanyoro 2019c).

It is against this background of a long and diverse history of migration to South Africa that we seek to engage in the evolution of the South African refugee protection regime linked to the migration management discourse. We argue that the definition of migrants and refugees is blurred, also at a political level. Foreign nationals

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<sup>1</sup> Musoni uses the term border jumpers for crossings that avoid officially designated channels of movement, as a vernacular term that is less contested than terms like illegal or irregular. He documents border jumpers between Zimbabwe and South Africa over the last century.

are scapegoated, and refugee rights continuously dismantled for domestic political gain. In addition, though foreign policy reiterates these domestic imperatives, on paper the internal approach stands in paradox to foreign policy ideals of Pan-Africanism. We also show the different roles of actors involved in migration governance, as well as arguing that the xenophobic rhetoric is reinforced through the media and politicians. The report is divided into three sections – the governance of migration more broadly, an analysis of the political stakes of migration governance, including domestic and external legitimacy, and finally a discussion of the broader societal discourse on refugees and other migrants.

## 1.1 **METHODOLOGY AND RESEARCH BACKGROUND**

The report is a qualitative study based on a purposive sample of 32 expert interviews in Johannesburg, Musina and on the phone with policy makers, politicians, civil society activists, diaspora leaders and academic experts. In addition, we conducted four focus group discussions with refugee and asylum seekers in Johannesburg and Musina, as well as South African youth in both locations. For the youth groups, we aimed at getting a perspective from the townships and informal settlements of Johannesburg, historically places where xenophobic violence has occurred, and compare this to a smaller town, Musina with no major incidences of xenophobic violence recorded. Fieldwork took place between February – March

2020. Therefore, the information and opinions in this report are based on the interviews and focus group participants, unless otherwise stated. Additional resources include reports, parliamentary proceedings, newspaper articles as well as a review of existing literature on the topic. The research was conducted, analysed and written by one scholar based in South Africa and another in Germany, allowing for both insider and outsider perspectives. Due to the political nature of the questions, most of the direct references have been removed and we are keeping all our interview partners anonymous. We asked interviewees to state their opinions in their private capacity and thus they will not necessarily be representative of their organisation. An expert on the topic, Kudakwashe Vanyoro, reviewed the report.<sup>2</sup>

## 2 **“INFLICTING ADMINISTRATIVE VIOLENCE”: MIGRATION GOVERNANCE**

South Africa, as one of the biggest economies on the African continent, governs migration as something primarily unfavourable in spite of evidence to the contrary. Refugees and asylum seekers are embedded into this, and subject to absurd levels of bureaucracy, that it amounts to ‘administrative violence.’ There are two broad characteristics of migration governance in South Africa, namely a blurring of the categories of refugees and migrants, which reinforces the protection gap of the overburdened bureaucracy

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<sup>2</sup> Kudakwashe Vanyoro has been conducting research uptake work for the African Centre for Migration & Society since 2014, as part of the centre’s global partnership in the Migrating Out of Poverty Research Programme Consortium. As part of this role Kudakwashe is responsible for stakeholder engagement in South Africa and Zimbabwe and is regularly called upon to brief decision-makers in government and civil society, including the creation of synthesis documents and other communication products to make evidence more accessible and applicable to policy makers. We thank him for his insightful comments which vastly improved the report. We would also like to thank a number of research assistants who helped us with background research, transcriptions and translations: Christine Botha; Sibonginkosi Dunjana; Siyasanga Gxaba; Kira Kurz; Leon Lewin; Julia Minners; Miriam Glund; Unity Maserah; Sarah Matshaka; Adrian Nkoom, Antonia Noelke and Alina Pfeiffer. Our thanks also to all those who made the time to speak to us in interviews and our focus groups. We are grateful to Wendy Sheppard, who did the copy editing, all errors remain our own.

as well as an increasing securitization of migration and refugee approaches.

A White Paper on International Migration from 2017 is the most recent indication of the South African governmental approach towards refugees and other migrants. It highlights that – on paper like in practice – “international migration” encompasses both refugees and migrants, in contrast to the previous White Paper from 1999 which excluded refugees, to be dealt with separately. Importantly, it is contradictory in its core message, advocating both free movement (when it comes to ‘highly-skilled’ migrants) as well as restrictive policies.<sup>3</sup> According to one observer, the commitment to free movement “just gets put in there, is NGO language but they are not interested in that” (Interview Researcher, Telephone, February 2020). Whilst the interest in skills and especially “extraordinary” skills is also a practical response to brain drain problems, it does not indicate an overly inclusive immigration system (Peberdy 2013). Indeed, the paper wants “South Africa to adequately embrace global opportunities while safeguarding our sovereignty and ensuring *public safety* and *national security*” (emphasis added; White Paper p. 2). This poses a “risk-based approach” to migration, wanting to emulate other (European) countries “that effectively manage immigration [through applying] the basic principle of keeping risks outside their borders” (White Paper 2017; see also Department of Home Affairs Strategic Plan 2015-2020). The approach continues to hold relevance, which can be seen in the new Border Management Authority (BMA) Act of 2020, see below.

The White Paper is one of the first public acknowledgements of the idea of “processing centres” in border areas, to register and house asylum seekers whilst their application is processed by the Department of Home Affairs (DHA), a type of administrative detention. Whilst this may ease issues of housing, otherwise unavailable, it would also be a concrete step in restricting the tenets of free movement of asylum seekers (tied to work, school etc.), and therefore received considerable criticism and is unlikely to ever be implemented not least due to funding issues (see also Amnesty International 2019).<sup>4</sup> To illustrate the paradoxical nature of the entire paper, the section which introduces the processing centres starts by noting that the “current policy of non-encampment should continue as permanent camps in our context would create serious logistical, security and humanitarian problems” (White Paper 2017), but then goes on to lay out the steps for processing centres, which would seriously jeopardize the position of non-encampment.

Whilst the White Paper is not enforceable legislation, it highlights the tendencies of the South African governance system: restrictive towards asylum seekers, financial constraints for implementation and in favour of “skilled” migrant workers. Moreover, it highlights the bureaucratic burden placed on all people entering the country, essentially restricting movement through bureaucratic default. In sum, it “focuses on national security and securitisation of borders rather than applying a human rights-based approach” (Amnesty International 2019; see also Hiropoulos 2017).

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<sup>3</sup> Other critiques include the contradictory position on development, which favours “designer migrants”, an approach that can lead to brain drain and uneven regional development (Scalabrini 2019).

<sup>4</sup> The Refugees Amendment Act 2008 states that an asylum application must be made at an RRO “or any other place designated by the Director-General” (Article 13 Amendment of section 21) arguably leaving the door open for the creation of a processing centre (Interview Advocacy Organisation, Telephone, March 2020). The DHA says “effective and efficient management of the asylum seeker and refugee environment, including the relocation of refugee centres to the borderline and management of economic migrants” as a challenge in their strategic plan 2019-2020. At a committee meeting for home affairs in May 2020 the DHA said they “had taken a policy decision that refugee processing centres [are to] be established” (Home Affairs Portfolio Committee 2020a; see also Maunganidze and Mbiyozo 2020).

Underlining these characteristics is the simultaneous informal implementation of migration and refugee policies by street-level bureaucrats. The “burgeoning culture of bureaucratic informality” (Vigneswaran et al. 2010) plays a central part in the migration architecture. The fast-changing nature of migration policies also creates further room for inconsistencies, also at the local level see Textbox 2 and 3 below.

### **Textbox 2: Migration Governance in Johannesburg**

In addition to informal modes of governance there are also variations in different cities and regions of South Africa. In Johannesburg there is, for example, a Johannesburg Migration Advisory Panel – made up of civil society - and the Johannesburg Migration Advisory Committee –made up of city councilors - which advises the mayor. There is also a helpdesk with seven regional coordinators who carry out dialogues, workshops, educational sessions, awareness campaigns or rotation sessions in different parts of the city (see also Vanyoro 2019b). This work is dependent on political will, for example the Committee never met under the leadership of Herman Mashaba (see below).

As summarised in a discussion we conducted with a group of migration scholars; “it’s so hard to speak about rule of law in migration policy because so much of it is written and it changes very quickly, and it has so much to do with its interpretation on the ground and the selective enforcement “(Johannesburg, February 2020) (see also Landau et al. 2018).

Refugee and migration governance take place at three levels, which will be further discussed in the following sub-sections: growing restrictions for refugee protection, a bury-your-head-in-the-sand mentality for immigration regulations and limited commitment to free movement in the region and continent.

## **2.1 RESTRICTIVE REFUGEE PROTECTION**

South Africa’s refugee protection is often internationally lauded, as recently as 2019 by UNHCR’s Filippo Grandi, as being one of the best systems worldwide.<sup>5</sup> A stark change to the apartheid government, with the country only signing the 1959 Geneva Convention in 1996, post-apartheid South Africa allows asylum seekers to work, study and move around the country freely. The country in this sense is attractive for refugees from all over Africa – though by no means one of the top hosts on the continent - but also other world regions like Bangladesh. In particular, LGBTQ+ refugees have been welcome, since the 2008 Refugees Amendment Act includes persecution on the basis of sexual orientation as a ground for seeking asylum in South Africa (for the reality of reception, see Camminga 2018). There is however a difference between what is on paper and in practice (see also Dodson and Crush 2015). In addition to failures in implementation of policies, regulations and court rulings (Amnesty International 2019), laws have also become increasingly restrictive in the last decade or so. It has become “a refugee regime that still goes by the guise of “protection” but is characterized by negligence, deterrence and glaring contradictions ... piling on logistical and administrative barriers to the asylum process” (van Lennep 2018) and thus refugee protection

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<sup>5</sup> There is no real discussion on internally displaced persons in South Africa, though displacement does also happen in reaction to xenophobic violence (Interview Researcher, Telephone, February 2020). South Africa has not ratified the Kampala Convention (Interview International Organisation, Johannesburg, February 2020).

has “become highly compromised” (Interview Human Rights Organisation, Telephone, February 2020).

Asylum seekers are (now) given a transit visa on arrival<sup>6</sup> after which they must present themselves to a Refugee Reception Office (RRO), authorities under the DHA. Pending their asylum case hearing, asylum seekers are given a temporary permit. This temporary permit (section 22 permit) then has to be renewed every few months at the RROs and can be as little as 14 days depending on the officer in charge. The RROs have been criticised for corruption, capacity problems and even purposefully failing initial asylum applications, having (unwritten) orders from above including significant variance between the RROs (see also Lawyers for Human Rights, Corruption Watch, and Scalabrini Centre of Cape Town 2020). This resonates with earlier work from Vigneswaran et al. “Many [DHA] officials simply assume that it is their obligation to shore up South Africa’s porous borders, by deterring, undermining and denying applications for asylum status in South Africa” (2010). There is a rejection rate of around 90% for initial applications (for details see Amnesty International 2019; see also Vigneswaran et al. 2010; Hobden 2020; van Lennep 2018).<sup>7</sup>

Since 2011, only three out of six offices were fully functioning (Durban, Musina, and Tshwane) – with others completely closed (Johannesburg), only recently reopened partially (Port Elizabeth, in 2018), and still awaiting reopening (Cape Town) (court-ordered to open since 2018, processing old applications since 2020). Whilst some of the interviewees we talked to noted that it takes time to implement a

court order to explain the delay in reopening, especially given capacity and financial constraints of the DHA, others noted that this indicated a “crisis of the rule of law” (interview, refugee rights’ activist, telephone, March 2020). To date, the DHA has long ignored court orders and largely ignored the critique from activists (see also Carciotto and Mavura 2016; Estifanos, Zack, and Vanyoro 2019). One civil society actor summed it up as “they [the DHA] were ordered to open a refugee reception centre by a certain date. They failed. They failed. They failed. They failed. They failed. Nothing happens” (Interview Human Rights Organisation, Johannesburg, February 2020).

The burden of constantly renewing the permits, often having to travel far distances, waiting in long queues is unsustainable, and often takes years. In 2015, South Africa had a backlog of over a million asylum claims at various stages of the process (UNHCR 2016), the largest worldwide, see Figure 1 below.<sup>8</sup> The UNHCR reported 188,296 pending asylum cases in 2019 (UNHCR 2020). Using slightly lower figures from 2017, a 2019 audit of the immigration process at the DHA concluded that it would take 68 years to work through the backlog (Auditor General of South Africa 2019; Interview with human rights organisation, Johannesburg, February 2020).

Over the years, the logistical and bureaucratic demands on asylum seekers have increased, and the process can take anything from 5-10 years (or even up to 19 years; Amnesty International 2019). Many asylum seekers who cannot move, work or are otherwise constrained – for administrative or financial reasons – have become dependent on CSOs to provide the

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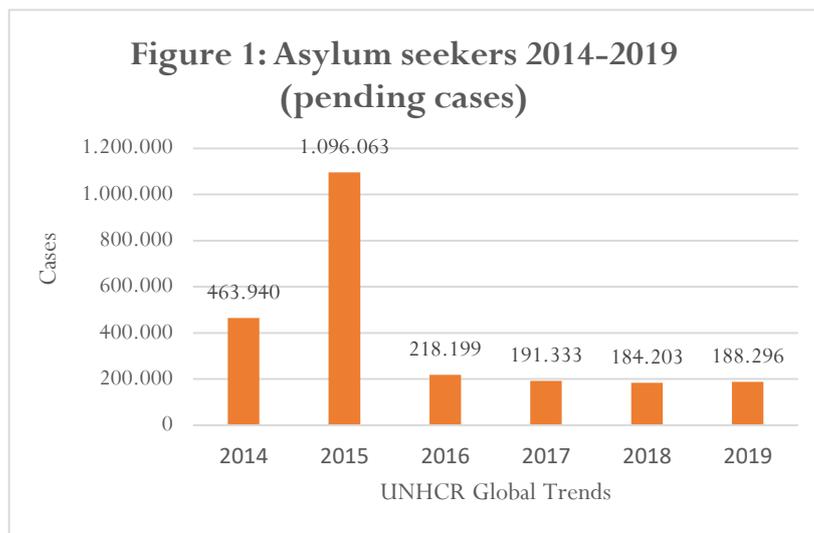
<sup>6</sup> This can be difficult for asylum seekers who want to avoid gender-based and other violence at border crossings and use alternative ways to enter the country.

<sup>7</sup> There are also unwritten rules about Zimbabweans having little to zero chance of getting asylum, resulting in them not even entering the RRO in the first place (inter alia Focus Group)

<sup>8</sup> South Africa is also one of the countries with the highest rejection rate of asylum claims, in 2016, 96% of applications got rejected (Amnesty International 2019; see also van Lennep 2018).

means for their basic survival, highlighting an intersection of formal state governance depending on humanitarian assistance from non-state actors. Many are stuck in Musina waiting to receive their initial section 22 permits, which can take a few months now instead of days, and are dependent on shelter and food in one of the few sorely underfunded areas in abysmal conditions (see also Vanyoro 2020). Additional layers of exclusion pertain to Zimbabwean nationals who are, according to reports, excluded from making a claim at the RRO in Musina and are unable to access the limited humanitarian assistance.

One Musina resident concluded; “the government is not protecting refugees because if we look at places where refugees stay, you can tell it’s not safe, not protected” (Focus Group with Youth, Musina, March 2020). A human rights lawyer speaks of the “layers of trauma” that asylum seekers experience including the “administrative violence inflicted by our asylum system’s dysfunction” (Interview Advocacy Organisation, Telephone, March 2020). With a lack of viable alternatives for working migrants to enter the country, some people leaving their countries for a variety of complex reasons choose to try the route of asylum. This leads to a common narrative – which ignores systemic factors and is entirely unsubstantiated in numbers – summed up in the words of an ANC-politician, the “majority of refugees are here for economic reasons, the system is open to abuse” (Interview Johannesburg, February 2020).



Seeking refuge has become increasingly difficult in South Africa. The lauded Refugee Act from 1998 has been amended three times in 2008, 2011 and 2017; though all three amendment acts only came into force in January 2020 with the publications of accompanying regulations.<sup>9</sup> On the one hand, the amendments reform the appeals process which would help to reduce the backlog and thus contribute to “filling the gaps in the policy” frequently related to the high number of immigrants making asylum claims (Interview ANC Politician, Johannesburg, February 2020, see also Hobden 2020). On the other hand, the amendments highlight an increasingly restrictive regime, not least due to the easing of the cessation of refugee status. For example, permits are considered to be ‘abandoned’ 30 days after they have failed to be renewed (Refugee Amendment Act 2017 Section 22 (12 and 13)). This leaves asylum seekers open to arrest and deportations and can violate principles of *non-refoulement*. The new regulations from January 2020 – in theory a mere side note meant to describe the implementation of acts which have been thoroughly reviewed by Parliament and with inputs from civil society – are particularly

<sup>9</sup> The 2011 and 2017 amendments were tied to the proclamation of the 2008 amendment act, which was gazetted together with the regulations at the end of 2019. However, “evident in the bureaucratic-level decisions being taken at DHA was that there was a type of unofficial implementation” prior to this (written communication refugee protection advocate, March 2020). The regulations arguably overreach the legislation passed by the Parliament (see also Hobden 2020)

controversial. They add, for example, that any form of political activity (Article 4 (2) Regulations)<sup>10</sup> can also lead to the cessation of refugee status. Defined loosely as “political activity or campaign in furtherance of any political party or political interests” it also forbids reaching out for consular assistance for issues like birth certificates or voting in elections in your home country (see also Hobden 2020). Considering the historical organisation of the anti-apartheid movement from neighbouring countries this clause is quite damning and in the words of one refugee, “they say a refugee cannot be politically active, but we know that people who fought for this country were somewhere (else)” (Focus Group with Refugees, Johannesburg, February 2020).

Other changes include the increasing curtailment of the right to work (which is already problematic in practice prior to these regulations, (see e.g. Amnesty International 2019) and was already suggested in the 2017 White Paper. Asylum seekers now have to declare their financial status on arrival and if deemed to be able to sustain themselves for four months – or have access to UNHCR provisions - are *not* given the right to work (Section 12 (5) Refugee Regulations and 2017 Amendment Act). The Standing Committee for Refugee Affairs is also asked to determine “the sectors in within which an asylum seeker is not permitted to work or study” (Article 5(3) Regulations).

Beyond working rights, the time between getting the transit visa and having to report to an RRO has now been reduced to five days (2017 Amendment Act) despite the fact that they have nationality days, meaning that certain asylum seekers can only go to an office on a certain day. One human rights activist noted “what they are doing is using the current system to make it impossible to access the asylum system, that’s what these regulations are doing” (Interview Human Rights Organisation, Johannesburg, February 2020).<sup>11</sup> These restrictions are likely to play along already existing layers of exclusion (i.e. of Zimbabweans, see above), which change over time alongside conceptions of what counts as a crisis or not. The additional bureaucratisation of further elements to the DHA through additional labour and work criteria is abundantly clear.

The courts have taken on a special role in refugee protection, recalling the government approaches several times, including the right to work and study during the asylum process in the Watchenuka case (2003) and the right to self-employment in the Somali trader case (2014). Moreover, the migrant rights organisation Scalabrini has taken up the issue of the abandonment clauses in court proceedings starting in June 2020.<sup>12</sup> More court proceedings with regard to the new amendments are likely to follow with the amendments in contradiction to a number of rulings and possibly some

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<sup>10</sup> The political activity clause is supposedly linked to the African Charter which in Article 23 states “for the purpose of strengthening peace, solidarity and friendly relations, State parties to the present charter shall and ensure that a) any individual enjoying the right of asylum under article 12 of the present charter shall not engage in subversive activities against his country of origin or any other state present for this charter” with subversive activities equated to political activities. A review of the role of the UNHCR and political participation notes that “traditionally, the UNHCR has been wary that the facilitation of refugee political participation could compromise the humanitarian and non-political mandate of UNHCR. Yet UNHCR has a duty to protect the human rights of refugees and refugee political participation should thus be viewed as part of this rights-based framework” (Long 2010, 54).

<sup>11</sup> Other changes include the removal of the individual rebuttal clause to group secession (2017 amendments); cessation of refugee status after committing a schedule 2 crime; and requirements for paternity tests (de Wet 2020); permanent residency papers can only be filed after 10 years not 5 (see also Hobden 2019). An overview of some of the issues can be found in this letter from the Helen Suzman Foundation to the Minister: <https://hsf.org.za/publications/submissions/refugees-act-and-regulations-helen-suzman-foundation.pdf>

<sup>12</sup> <https://scalabrini.org.za/news/press-release-abandonment-court-case-challenges-refugee-laws/>

constitutional rights and international refugee laws.<sup>13</sup>

## 2.2 EXCLUSIONARY IMMIGRATION SYSTEM

In terms of migration more generally, the South African approach favours “high-skilled” migrants who are welcome to apply for different visas available through the Immigration Act of 2002, which replaced the Aliens Control Act of 1991 (as amended through the Aliens Control Amendment Act of 1995). The 2002 Act has been amended by the Immigration Amendment Acts of 2007 and 2011 respectively (which came into effect with the publication of the Immigration Regulations of 2014). These amendments distinguish between visas for temporary residence and permits for permanent residence. The amendments also repealed the quota and exceptional skills work permits provided in the Immigration Act of 2002 and replaced them with a single critical skills visa. Foreign migrants can apply for the critical skills work visa even without a job and are given 12 months to search for employment in South Africa. The emphasis on critical skills is evident in the amendments and also in the 2017 White Paper on Immigration which highlights that, international migration is, in general, beneficial if it is well-managed.

However, migrants eligible for critical skills and business visas account for a small number of people entering the country, with the majority of migrants being low-skilled or semi-skilled foreign workers (Peberdy, 2009). This also has a gendered dimension, with the male bias in access to property, resources and education leading to discrimination against female migrants (Vanyoro 2019a). Under the Immigration Act of 2002, limited opportunities exist for low-skilled or semi-skilled workers to regularise their stay in

South Africa, with some exploiting gaps in the immigration legislation to regularise their stay. For example, many economic migrants claim a section 22 permit as an asylum seeker (see above) while others utilise the three months visitors’ permit under the Immigration Act (Zack et al., 2019). The Immigration Act can accordingly be regarded as having created an exclusionary immigration regime, which fails to address the reality of the many low-skilled migrants entering the country.

**Table 1: Origin Countries of Immigrants in South Africa (2016)**

Country of origin	Total Number of Immigrants residing in South Africa
Zimbabwe	574047
Mozambique	293405
Lesotho	160749
Malawi	78796
United Kingdom	56412
Swaziland	38038
DR Congo	31504
Namibia	30701
Nigeria	30314
India	25063
Ethiopia	22148
Zambia	19119
Germany	13894
Bangladesh	12764
Pakistan	11157
Somalia	10954
Botswana	10759
Congo	10686
Portugal	9931
Ghana	8943

Source: Census 2016

In the 2016 Community Survey, Statistics South Africa (StatsSA) put the number of immigrants at over 1.6 million, a decline from 2.2 million in the census in 2011. The 2016 figure is 2.8% of the total South African population, with the vast majority (90.9%) being from the African continent and 85% of immigrants originating from the Southern African Development

<sup>13</sup> There is also some discussion of whether the regulations overreach the amendment acts which they accompany (Interview Researcher, Telephone, February 2020; Interview Advocacy Organisation, Telephone, March 2020).

Community (SADC) region (Statistics South Africa 2016), see also Table 1.

The abuse of the asylum system by economic migrants is often highlighted by governments as the cause of inefficiencies and the insurmountable backlog in processing (Amnesty International 2019). However, this assertion is never quantified in terms of clearly indicating the numbers of those that are said to abuse the system and those that are considered to be genuine asylum applicants. The Zimbabwean crisis has played a major role in the conflation of refugees and economic migrants in the system. Consequently, there have been some ad-hoc short-term solutions to try to assuage the system.

Thus, the exception to the rule to the exclusionary immigration regime has been the introduction of the Documentation of Zimbabweans Project (DZP) in 2010, the Lesotho Special Permit (LSP) in 2015 as well as the Angola Special Permit in 2017. The introduction of the DZP was meant to ease pressure on the asylum system by providing an avenue for the regularisation of many undocumented Zimbabwean migrants (Moyo, 2018), see Table 2 below.

**Table 2a: Overview of dispensation programmes**

	<b>Purpose of Permit</b>
<b>ZDP 2010</b> 20 September 2010 - 31 December 2014	Regularizing stay of undocumented Zimbabweans in South Africa
<b>ZSP 2015</b> 1 January 2015 - 31 December 2017	Renewal for ZDP holders with valid passports, evidence of employment and a clean criminal record
<b>ZEP 2017</b> 1 January 2018 - ?	Renewal for Zimbabwean Exemption Permit (ZEP) holders Assistance to Zimbabweans to facilitate prompt return to Zimbabwe

The ZDP applicants were given amnesty for irregular entry into South Africa and those who had fraudulently obtained South African identity documents were allowed to surrender these without consequence. Zimbabweans could apply for three types of permits, namely work, study and business permits (Thebe 2017). The DZP permits expired in 2014 and there was an extension in 2014 and 2017, but there is no certainty as to whether it will be extended again in 2021 when the 2017 permits expire. How far they were able to reach most Zimbabweans is also questionable, with the actual given permits being much lower than the estimated Zimbabweans in the country (Vanyoro 2019a).

**Table 2b: Applications received and permits issued by the DHA**

	<b>Applications received by DHA</b>	<b>Permits issued by DHA</b>
<b>ZDP</b>	294 511	242 731
<b>ZSP</b>	197 303	185 075
<b>ZEP</b>	<b>180 188</b>	<b>178 172</b>

Sources: (Home Affairs Portfolio Committee 2014; South African Government News Agency 2015; Department of Home Affairs 2018)

The ad hoc nature of the DZP is not new, as South Africa has implemented similar programmes in the past, namely the amnesty for former mine workers (1996), Mozambican refugees (1996–1999) and for undocumented Southern African Development Community (SADC) citizens (1996) (e.g., Crush, 1999; Peberdy, 2001). The difference is that these newer amnesties only give recipients temporary residence with no option of permanent residence regardless of length of stay in South Africa. The DZP effectively keeps recipients in a state of permanent temporariness (K. Moyo 2020; I. Moyo 2017). The LSP follows a similar model to the DZP and was also introduced as a measure to regularise the status of undocumented Lesotho migrants residing in South Africa.

However, the Angolan special permits were first given for an initial two-year period upon the South African government's declaration of the cessation of Angolan refugee status in 2013 (Carciotto, 2016). Similar to the DZP and LSP, the usual conditions for the issuance of visas in terms of the 2002 Immigration Act were waived and the applicants were issued with two-year temporary visas for study, work, business, to elderly persons or spousal/dependent (ibid). However, there is a peculiarity to the case of Angolans, as the decision to grant them the Angola Special Permit (ASP) resulted from litigation by Scalabrini Centre of Capetown (SCCT), which also highlights the reactive litigation role (see below).

The South African government had no plans beyond the initial cessation permits of 2013 and had stipulated that former Angolan refugees would lodge applications in terms of the Immigration Act when the permits expired, which would have been difficult since many of them would not qualify. The SCCT took the DHA to court over the renewal of the permits and an out of court settlement was reached in 2016 with the DHA acceding to the receipt of applications for permanent residency facilitated by the SCCT. The DHA duly granted the rights of permanent residency to the Angolan applicants in July 2017, but with an expiry date of 2021 and similar conditions to the DZP and LSP permits which are non-renewable.<sup>14</sup> This places them in the same bracket with the holders of the DZP and LSP permits who have to endure periods of uncertainty and a state of permanent temporariness since the permits do not provide a route to permanent residency and citizenship in South Africa (see also Carciotto 2018).

While the South African government recognises the need to attract and retain high-skilled migrants for the development of the economy, these present the least of their problems from a

migration management perspective. In fact, it is also in South Africa's best interests to coordinate a regional migration policy framework that addresses the movement of low-skilled and semi-skilled migrants who are in the majority. The introduction of special permits for Zimbabweans and Lesotho citizens is a good start. Such permits, including pathways to permanent settlements and labour protection should be built upon for an integrated regional migration framework (see also Vanyoro 2019a). Given the importance of regional migration, the regional economic community is also relevant.

### 2.3 A WEAK REGIONAL FRAMEWORK

The Southern African Development Community (SADC) was originally constituted as the Southern African Development Co-ordination Conference (SADCC), in 1980 in Lusaka, Zambia. SADCC's original mandate was to coordinate the political liberation of countries within the southern African region and to also reduce dependence on and isolate apartheid era South Africa. Thus, the very origin is tied to the new post-1994 South Africa. Moreover, one of the key objectives of SADCC was the creation of "genuine and equitable regional integration"(SADC 2012). The agenda of regional integration was carried into the establishment of SADC in 1992 and the signing of the SADC Treaty which set the objectives as follows, "to achieve development and economic growth, alleviate poverty, enhance the standard and quality of life of the peoples of Southern Africa and support the socially disadvantaged through regional integration." Again, the objectives were set to be achieved "through increased regional integration, built on democratic principles, and equitable and sustainable development" (SADC 2012). The SADC Treaty, "...explicitly commits signatory states, in Article 5(2)(d), to developing policies

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<sup>14</sup> <https://scalabrini.org.za/news/scalabrini-news/press-release-special-permits-issued-to-angolan-former-refugees-2/>

aimed at ‘the progressive elimination of obstacles to the free movement of capital and labour, goods and services, and of the people of the Region generally, among Member States’” (Feltes et al., 2018:559).

Since its formation, SADC has always had regional integration and the facilitation of free movement as key objectives and to this end produced the Draft Protocol on Free Movement of Persons in SADC in 1995 (Nshimbi and Fioramonti 2014). However, the 1995 draft protocol was summarily dismissed by South Africa, Namibia and Botswana, and the revised version presented in 2005 as the Draft Protocol on the Facilitation of Movement of Persons in SADC has yet to reach the requisite number of signatories to come into force in the region (Nshimbi and Fioramonti, 2014). The negative attitude and dislike of the idea of a SADC-wide free movement protocol by South Africa stems from a fear that due to its economic power in relation to other economies in the region – the country will be overwhelmed by immigrants. Though they signed and ratified the 2005 protocol, this was watered down (e.g. Dodson and Crush 2015).

SADC offers a heavily securitised approach to migration, which is far off from any implementation (Vanyoro 2019b). However, the paradox is that South Africa does have a limited degree of free movement of people with neighbouring countries if that is construed to mean the absence of visas. These are limited to the movement of people rather than the movement of labour per se, thus far there is no signed protocol on this, except for the bilateral arrangements for recruitment in the mining sector (with Lesotho, Botswana, Swaziland and Mozambique) and agricultural areas in Limpopo (with Zimbabwe) (Nshimbi and Fioramonti, 2014). In sum, “the current migration regime resembles a relatively uncoordinated patchwork quilt of national laws and bilateral agreements, particularly between South Africa and other

SADC member states, together with some nonbinding agreements at the regional level” (Feltes, Musker, and Scholz 2018, 559).

Thus, there is a lack of coordinated policy decisions at the regional level, with bilateral agreements replacing a region-wide framework to manage the movement of people. In terms of refugee protection, SADC has made rather weak attempts to harmonise practices among the SADC states. Refugees were mentioned in the Draft Protocol on the Facilitation of Movement of Persons in SADC. The terms are vague, only noting that states shall act according to international refugee protection laws. All member states have approved the United Nations Global Compact on Refugees, though what effect this will have on regional migration governance remains to be seen.

The White Paper made a number of progressive recommendations including a SADC visa for economic migrants, but this is far off from materialising (Maunganidze and Mbiyozo 2020). In fact, many stakeholders involved in migration governance, warn against further integration in the region, fearing it would lead to an influx of migrants to the regionally and economically strongest country by far, South Africa. Thus, free movement is partly hindered by the fact that “South Africa is too afraid that everyone is going to flock here and take all the resources” (Interview Human Rights Organisation, Johannesburg, February 2020, see also Landau et al. 2018; Oucho and Crush 2001). Thus, the repeated calls from civil society actors in support of a SADC visa, not only to ease travel in the region but also to reflect the aspired goal of the AU still remain unanswered (see Home Affairs Portfolio Committee 2019).

Having discussed the restrictive asylum policies, exclusionary immigration system and the weak regional framework we now discuss the political interests in migration governance.

### 3 “EVERYTHING IS NOW SCAPEGOATED”: POLITICAL INTERESTS IN MIGRATION GOVERNANCE

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South Africa gives an almost archetypical example of how migration and refugee policies become intertwined and embedded in political interests. In some ways, migration is not high on the political agenda, dominated by issues related to the economy, corruption and electricity, yet exclusionary policies against migrants and asylum seekers make up a major cornerstone of domestic legitimacy and have done so for years (e.g. Peperdy 2013). A Kafkaesque and ever complicated bureaucratisation process has led to overburdened RROs and an exclusionary system as highlighted by the continuous decrease on rights to work and study (see above). Landau surmises “exclusion is both bureaucratically institutionalized and socially legitimate” (2010, 222; see also Amit and Kriger 2014).

A case in point: the RROs are supposed to independently judge the asylum rights of an individual, including allowing them into the system in the first place by giving out a section 22 permit. Allegations of quotas given to Refugee Status Determination officers are widespread, with the DHA effectively politicising what should be a first bureaucratic step. Thus, the RRO in Musina has nearly a 0% acceptance rate of initial asylum applications, which incidentally only further blocks the process in a backlog of appeals (Interview Human Rights Organisation, Johannesburg, February 2020; see also B. J. Bornman 2019). This is perhaps not surprising given the DHA’s self-description as “the patriotic guardians of our precious identity, citizenship and security” (DHA Strategic Plan 2015-2020: page 18). So

how does this patriotic guardianship play out? In this section, we show how migration governance is used as leverage in domestic politics, how it affects foreign relations and thirdly, how different actors interact.

#### 3.1 SYSTEMIC XENOPHOBIA AND SECURITISED PRACTICES AS DOMESTIC LEVERAGE

The increasingly restrictive environment for migrants and refugees in South Africa is shaped by systemic xenophobia and securitisation, both of which can serve as political capital for the ruling elites as we show in the following.

##### *Xenophobia not politically addressed*

The lack of political will the DHA shows in protecting refugees and making the best out of an – arguably flawed yet principally development-orientated migration policy (see also Landau et al. 2018) is amplified when we turn to xenophobia. From hospitals to schools to the institutions of the DHA there is systemic and institutionalised xenophobia.<sup>15</sup>

Though xenophobic violence takes place at the community-level and is often something that local leaders can capitalize on (Landau and Misago 2009), it is ultimately encouraged by a state that puts into place the conditions and the discourse to encourage it (see Neocosmos 2008). Thus, xenophobic violence against migrant and refugee communities continues routinely, with a lack of political will to address xenophobia at best, and complicity amongst a spectrum of politicians and civil servants including the police at worst (see also Polzer and Takabvirwa 2010). To some degree, politicians publicly decry the xenophobic violence, but then do not put the mechanisms in place to actually address it. The lack of political will was widely acknowledged in our interviews. A common evasion to avoid

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<sup>15</sup>Additional examples of xenophobic tendencies in South Africa and political priorities is the migrant-exclusionary nature of the National Health Insurance Bill as well as the lack of movement on the Hate Speech Bill

responsibility for xenophobic violence is to blame it on criminality (see also Chigumadzi 2019; Carciotto and Mavura 2016; Peberdy 2013; Peberdy 2000; Polzer and Takabvirwa 2010; and comments by MP Lekota in Home Affairs Portfolio Committee 2019). Thus, a prominent ANC politician told us in an interview, “It’s not xenophobia – just be documented and don’t be a criminal” (Interview Johannesburg, February 2020), effectively putting all blame of violence on refugees and migrants themselves.

Examples of how addressing xenophobia is disregarded are manifold, but include the lack of deterrence, as perpetrators of xenophobic violence seldom fear any judicial consequences. Moreover, since 2008 there is an Inter-Ministerial Committee (IMC) on migration which includes Home Affairs, Safety and Security, Social Development, Health, Education and the Presidency and was formed to deal with the threats of violence against foreign nationals. It was expanded in 2017 to include all Provincial Premiers and the South African Local Government Association. None of our interviewees were able to tell us anything about their work.

The lack of implementation of policies is a major factor when it comes to addressing xenophobia. One refugee activist noted, that “if political will is measured by policies,” then it does exist (Interview Migrant Organisation, Telephone, April 2020). Rather, the problem is when it comes to implementation of such policies. The South Africa Human Rights Commission (SAHCR) for example did a “brilliant” report (Interview Human Rights Organisation, Johannesburg, February 2020) with detailed recommendations for different government departments, Chapter 9 institutions<sup>16</sup> and civil society, but this has never been followed up on

(South Africa Human Rights Commission 2010). Thus, central to the political agenda of migration governance is the fact that xenophobia remains permissible by the lack of political will to address it.

Particularly exemplary of this lack of political commitment is the slow pace in the implementation of the National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance (NAP), which took nearly 20 years to be formally adopted, in 2019, after first being committed to at the 3rd World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance hosted by South Africa in Durban, in 2001. Notably, xenophobia is conceptualised as an economic problem within the NAP (see Makgale 2019), rather than a political one. It ‘may not go far enough’ according to one human rights activist, but, at least, ‘it gives a national policy framework’ (Interview Human Rights Organisation, Telephone, February 2020). The question will be how and when it will be implemented – the implementation plan remains incomplete in late 2019 (Majola 2019; see also Makgale 2019; Hiropoulos 2017).

Another example is the migrant help desk in Johannesburg which lost all meaning and political significance under the previous mayor, Herman Mashaba, since “these things are politicised you know. It depends on who is in power, so this is why sometimes you will think migration is a priority the next minute it’s at the back” (Interview Local Government Representative, Johannesburg, February 2020), see also Textbox 1.

Given the inequality in the country, the record-levels of unemployment, the exclusionary approach works particularly well as a form of leverage in scapegoating the governments failures to address poverty and job creation (see

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<sup>16</sup> This refers to a group of seven organisations established under Chapter 9 of the South African Constitution to guard democracy in the post-apartheid era.

also Landau et al. 2018). Social deprivation is often responded to by identity politics. The implication is “that building houses, creating employment and providing welfare for poor South Africans both necessitates and justifies the... deterioration of the refugee protection regime” (van Lennep 2018). More than that however, this ‘economic’ argument is used rhetorically to create divisions that politicians can politically capitalize on. As explained by one human rights advocate: “people get to be blamed and so you don't look at the bigger picture. If I throw you a bone, you can fight over that bone” (Interview SAHRC, Johannesburg, February 2020). In other words, according to a civil society activist

“it's an easy excuse to say we have the problems we have, we are failing to grant or to give you basic services because in fact it is the foreign nationals who are responsible for that, for overcrowding, for crime, for prostitution, for buying and selling drugs on the streets, so everything is now scapegoated and blamed on the foreign national” (Interview Human Rights Organisation, Telephone, February 2020).

This environment makes any policy that is not outright exclusionary politically difficult to implement, since the “discourse of fear and xenophobia has become hegemonic in the public sphere” (Neocosmos 2008). According to one refugee and migrant representative “the political pressure from the grassroots against migrants is so strong that very few politicians can disregard it” (Interview Migrant Organisation, Telephone, April 2020).<sup>17</sup> Additionally, migrants and refugees – with ever decreasing rights – are no political constituency in their own right. Landau notes the precarious gap between legal principle

– refugee protection – and popular legitimacy which has been exacerbated in recent years (Landau 2010, 217).

Thus, politicians continue to capitalize on xenophobic messages with little reprimand or accountability for their actions. For example, Herman Mashaba, see above, received human rights training for his office from the SAHRC, following a series of tweets blaming foreign residents of Johannesburg for high crime rates and linking them to Ebola, but his messages continue to propagate xenophobic rhetoric. For example, he frequently uses the hashtag #PutSouthAfricansFirst (see also Bornman 2019b).

He launched a new political party, Action SA, in August 2020. The current Minister of Home Affairs, Aaron Motsoaledi, also made unfounded claims that migrants were clogging up the health system in his time as health minister, but this did not stop him from taking up his new position, now largely in charge of migrant affairs in 2019. The anti-migration rhetoric was evident in 2019 elections (Chigumadzi 2019; Whitaker 2019).

They were later investigated by the Elections Commission (Heleta 2019; Zulu 2018). Perhaps, according to one of our respondents, the anti-migration propagated from politicians and election manifestos has worsened with the loss of an *absolute* majority of the ANC, resulting in “crude populism” following the idea of “this is what the citizens would like to hear, and they will vote for us” (Interview Human Rights Organisation, Johannesburg, February 2020).

The sole exception to the anti-migration rhetoric comes from the Economic Freedom Fighters, who are aiming for a class-based populism that also includes migrants from other countries and have condemned xenophobic attacks. Julius Malema announced in September 2019

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<sup>17</sup> Counter-narratives to xenophobia are scarce, but include for example the largest trade union NUMSA, who “condemns in the strongest terms any acts of violence against our brothers and sisters from the continent” (NUMSA 2017).

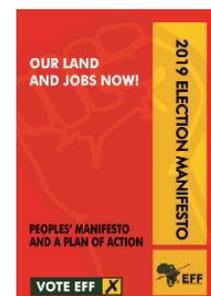
“Xenophobic violence will never resolve the problems our country face because they were never caused by foreign nationals in the first place ” (Chigumadzi 2019). Having said that, their manifesto (see Figure 2) was rather vague on that.

Part of the pervasive anti-migration rhetoric is the difficulty in knowing what the exact numbers of asylum seekers, refugees and migrants in the country are (see also Amnesty International 2019; Dodson and Crush 2015; Segatti and Landau 2008; Oucho and Crush 2001; Carciotto and Mavura 2016) as well as the conflation of migrants and asylum seekers. The migration helpdesk and the UNHCR representative were unable to tell us up to date numbers of migrants, refugees and asylum seekers in Johannesburg or

the country. There is a tendency to overinflate the numbers, which helps to inflame the anti-migration rhetoric, even though numbers of migrants and asylum seekers seem to have been dropping in recent years.

This relates to both undocumented migrants and to asylum seekers. Undocumented migrants are of course difficult to count as is the very frequent circular migration, but some of the dubious numbers go back to major reports who used problematic and later discredited counting methodologies to do so. As for asylums seekers, in 2015 the DHA reported over a million asylum seekers, which UNHCR repeated in their annual global report, see also Figure 1 above.

**Figure 2: Securitized Rhetoric in Election Manifestos**



**Africa National Congress**

- "Undocumented immigration has an adverse impact on national security " (p.52)
- "tough measures against undocumented immigrants involved in criminal activities" (p.52)
- "Ensure that our policies of regional integration and cooperation includes resolution of immigration matters" (p.65)

**Democratic Alliance**

- "Strengthen border security in the relevant provinces, with a specific focus on combatting cross-border crime, crime syndicates and undocumented migration" (p. 36)
- "Our plan for creating the capable state contains the following - Immigration: securing our borders" (p.61)
- "fairly, efficiently and legally deporting those who have entered " (p.73)
- "ensuring effective, efficient and coordinated border security and border control through increased policing capacity at our border posts and along our borders" (p.73)

**Economic Freedom Fighters**

- "All immigrants shall be registered and have their fingerprints captured by the new Department of Home Affairs and Internal Security." (p.52)
- "EFF government will fight for a borderless Africa and a single currency in the medium to long-term" (p. 168)

This figure – which has since then widely stuck – was likely due to the counting methodology of all those that had made a claim since 2006, rather than the actual number of open cases, since the fact that applications which were no longer in the system were not removed from the backlog of claims. The number was later reduced to 78,000 by the DHA stating many of the asylum seekers were now legalised or had left (van Lennep 2018; Africa Check 2016; UNHCR 2016).

The 2018 annual UNHCR report noted that South Africa is yet to submit national asylum data (UNHCR 2019). Thus it is more a problem with a system that inefficiently processes asylum seekers rather than such a high number of refugees entering the country (Africa Check 2016),<sup>18</sup> but the numbers (and the idea of such a large number) have stuck in media portrayals and the popular imagination. At times it helps to play to xenophobic violence.

#### *Securitized Practices*

In addition, to the political capitalisation of xenophobic rhetoric, there is also the securitisation of migration governance. This is the creation of fear of migrants (Neocosmos 2008) and an overtly securitized response, focusing on stronger borders, deportations and detention (Hammerstad 2012; Mthembu-Salter et al. 2014). South Africa is not alone in pursuing a securitization agenda, but joins a growing list of countries that have put their faith in walls and fences as well as externalization processes in order to keep away irregular immigrants (Bourbeau 2011; Huysmans 2000). This is not just an emulation of what is happening in the Global North (Tinti 2019), though that does make it more justifiable. The securing of borders agenda is deeply entrenched in South Africa. It has antecedents in the apartheid era period

where the state built electric fences on the Mozambican and Zimbabwean borders to stem the flow of irregular migrants (Crush 1999).<sup>19</sup> Even in the post-apartheid times there has been a strong focus on deportation and securing the border (e.g. Amit 2013; Mthembu-Salter et al. 2014). It includes long-standing reports of a SAPS-run deportation centre in Musina where migrants are deported from, with no DHA oversight or the fact that officers deny a transit visa at the border effectively denying any possibility to claim asylum (Vigneswaran et al. 2010; Solidarity Peace Trust and PASSOP 2012).

Thus, instead of pursuing perpetrators of violence, a frequent response to xenophobic violence is mass arrests of alleged undocumented migrants in preparation for deportation. The xenophobic discourse and brutal police behaviour in turn continues to give the green light to a disempowered community to vent their anger, what Hammerstad calls the “grassroots level securitisation” (Hammerstad 2012). The heavy-handed, militaristic Operation Fiela (or “sweep clean”) launched in response to xenophobic violence in 2015 (with a second round in 2018), largely rounded up undocumented migrants, violating a number of legal and human rights provisions (Dodson and Crush 2015). Over 9,000 arrests were made and over 15,000 people were deported. Civil society groups called the acts “state-sponsored xenophobia” (The Mail & Guardian 2015).

Deportations have long been a cornerstone of South Africa’s broader migration governance regime (Schäfer 2020; Hiropoulos 2017). At its height in the financial year 2007/8 the country deported 312, 773 people, most of them to Zimbabwe, see Figure 3 below (Department for Home Affairs 2008). According to the latest

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<sup>18</sup> Relatedly, in 2018, the situation of refugees from refugees from DRC and Somalia in South Africa became protracted - where the displacement of more than 25,000 refugees extended beyond five years (UNHCR 2019).

<sup>19</sup> Though this always coexisted with a degree of permeability, allowing some to get through in order have an exploitable group of migrants to service the farms with their cheap labour, see two-door system below.

figures for 2018/19 24,000 people were deported (Department for Home Affairs 2019). Given the porous nature of the borders, this approach is notoriously costly and ineffective, many deportees are thought to return to South Africa shortly after, in what has been named the “revolving door” system (van Lennep 2019a; Nshimbi and Fioramonti 2014; Solidarity Peace Trust and PASSOP 2012; Mthembu-Salter et al. 2014).

Deportations and in particular the detention of migrants awaiting deportation has financial benefits, “it’s a huge cash cow”, (Interview Human Rights Organisation, Telephone, February 2020) (see also Bornman 2019c). This fits into the idea of the neoliberal migration state (Adamson and Tsourapas 2020), but in reality the costs of the deportation approach are likely to be much higher than the benefits (see also Mthembu-Salter et al. 2014; Auditor General of South Africa 2019). A huge corruption scandal has been linked to the Lindela Repatriation Centre, where most deportees are kept prior to departure, and the company Bosasa that ran it for years, including over-reporting capacities to benefit from payments in relation to the number of migrants that were held (Bornman 2019c). There are considerable concerns over conditions and access to healthcare, child detainees, human rights abuses, as well as stays beyond the maximum period of detention. Independent monitoring by SAHRC and other human rights organizations is reported to only be partially functioning (van Lennep 2019b).

Since the introduction of the dispensation mechanism in 2010, deportations have plummeted, which also indicates a much lower number of irregularized migrants than usually propagated. During the COVID-19 lockdown skirmishes broke out at Lindela, due to strikes from security guards over the lack of protective equipment and working hours as well as “riots” from some of the residents (see Home Affairs Portfolio Committee 2020a). This led to

accelerated deportations, with reports of 977 migrants deported in one weekend in May, including 439 Mozambicans and 538 Zimbabwean nationals (The Club of Mozambique 2020) but also other deportations to Zimbabwe in April (Nyathi 2020) or Malawi and Lesotho later in May (AfricaNews 2020; Home Affairs Portfolio Committee 2020a).

Many migrants who are awaiting deportation are also held in police holding cells, and it is only with the ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2019 (signed in 2006) that SAHRC now has monitoring access to these. Deportations, though they have decreased in recent years, are an important symbol of securitized practice in South Africa, which despite the costs involved, plays out for domestic leverage: For example, during a parliamentary briefing in 2019, SAPS confirmed that policing migration has placed serious constraints on the police budget (Bornman 2019c). Yet, the political blame is not on the costly, burdensome ineffective system, but rather that ‘foreigners’ are taking up publicly funded resources, pushing the state to ever more securitisation.

The securitising practices that legitimize an anti-foreigner social discourse (see below) are also symbolized through its border policies. As South Africa was one of the first countries on the continent to go into the lockdown in response to the global Coronavirus pandemic, they also announced they would build a 40-km fence on the border between South Africa and Zimbabwe, see Textbox 2 above. Patricia de Lille, the Public Works minister, explained the fence would “ensure that *no undocumented* or infected persons cross into the country” (emphasis added Al Jazeera 2020).

Public health was used as an excuse at a time when the infections in the neighbouring country

only made up a fraction of the cases and infections had so far mostly come from people arriving from much further afield, especially Europe. It underscored a securitized understanding of migration, with migration as a constructed danger for public order, something to further politically capitalize from. In the words of one academic, “managing borders and managing immigration more generally can be seen increasingly as ... national security issues rather than just social problems” (Interview Researcher, Johannesburg, February 2020).<sup>20</sup>

In February 2020, a new Border Management Authority Bill was passed by the National Assembly, which aims to coordinate border security under a single authority. At the moment, 27 different state organs are involved in border security. It was signed by the President in July 2020 and is therefore now commencing. The Act has long been in the making, but faces criticism for potentially abusing basic principles of refugee protection and painting a militarized picture of ‘migrant invasion’, which is at odds with Pan-African free movement ideals (Bornman 2020; Maunganidze and Mbiyozo 2020).

It also firmly centralises power around the DHA, which is fast moving away from a civilians-orientated institution to a securitised one. Questions over its implementation (and budget to do so) remain.

There is widespread political consensus on the advancing securitisation, seen as a domestically legitimate narrative. Whilst the major opposition party, the Democratic Alliance, have opposed the Border Management Authority for technical and funding reasons, they have also pursued their own securitising agenda, especially in relation to border politics, not least in the elections (see also Chigumadzi 2019; van Lennep 2018). Though they have criticised the DHA for

the backlog in asylum cases and related failures, their own party has increasingly pushed a securitized rhetoric, especially in the 2019 elections (van Lennep 2018). The limited counter-narrative amongst political elites to the securitized and xenophobic agenda, further cements the current approach in gaining domestic leverage.

### 3.2 THE PARADOX OF FOREIGN POLICY? FREE MOVEMENT IDEALS AND ATTRACTING HIGHLY SKILLED MIGRANTS UNDERMINED BY DOMESTIC INTERESTS

Whilst refugee protection is politicised for domestic leverage as outlined above, the meaning for international relations stands in paradox to this. The foreign policy espouses Pan-Africanism as well as the benefits of skilled migration, yet domestically does the opposite and seeks to undermine immigration to the country (see also Mbiyozo 2018). Whilst the practice of the foreign policy in reality may even play into the domestic interests, the paradox on paper, namely the exclusionary and restrictive migration and refugee-governing regime, pays off domestically, causes diplomatic tensions.

#### *Foreign Policy Interests: Pan-Africanism and Welcoming Highly-Skilled Migrants*

The first element to the foreign paradox of domestic securitisation versus international visions of Pan-Africanism mirrors what Nauja Kleist calls the ‘mobility paradox’ whereby globalisation and free movement on the one hand is in tension with border securitisation and externalisation on the other (Kleist 2016).

President Ramaphosa has embraced a Pan-African vision, especially since he currently chairs the AU. In his opening speech as new chair in February 2020, Ramaphosa envisioned “an

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<sup>20</sup> Border policies are also a part of a cascade of migration policies in order to be seen as doing something, see below.

Africa connected through a vast network of roads and railways, enabling the free movement of goods, people and services” (Ramaphosa 2020). His foreign policy approach evokes a rekindling of the “African Renaissance” as once pursued by Thabo Mbeki, which would call on South Africans to embrace an African identity (Domiro 2019; see also Hamill 2019).<sup>21</sup> Yet, he has been slow to move on this, especially in relation to free movement.

With the signing of the African Continental Free Trade Area agreement (AfCFTA) in 2018, after initial reluctance by South Africa, free movement is necessarily on the agenda again, even though given the lack of political commitment to SADC, it is unclear exactly how this will take place. There is need to “coordinate the movement of people” due to the AfCFTA developments, states an ANC politician, but it is also a “threat, since movement will be South” (Interview Johannesburg, February 2020). Unsurprisingly therefore, the focus “is on the assets of trade and not necessarily on the free movement” (Interview Human Rights Organisation, Telephone, February 2020). How AfCFTA will come to political fruition remains to be seen, with SADC already relayed to a decidedly non-politically important space. The neoliberal economic agenda through free trade and an open market has long clashed with the political goal of creating more jobs for South Africans (Segatti and Landau 2008).

Related to the unfulfilled visions of Pan-Africanism, are the moves which are made to try and attain highly-skilled migrants. Whilst during the Mbeki years and with the advent of the Immigration Amendment Act 2002 a much clearer preference for enhancing skilled migration opportunities became evident (e.g. Segatti and Landau 2008), there was a move away from this under Zuma. At the time, the

ANC elite had been “confronted with the tensions ... between the acceptance of market rules that include the free circulation of labour and the consequences of South Africa’s limited weight in the global economy” (Segatti and Landau 2008, 35), which has led to a significant toning down of attracting skilled labour. In last year’s election, the opposition party (the DA) propagated a skills-based prioritisation of migrants, noting in their manifesto that “the DA by no means believes that migration into South Africa is a bad thing. Far from that, South Africa desperately needs skills” (p.72; The Manifesto for Change, Democratic Alliance). No significant moves on this have been made under Ramaphosa.

The type of skills that are needed is not clear, and there are many delays and difficulties even for people entering the country as highly-skilled migrants. With the current global pandemic, it is likely to take a bit more time for any change to become apparent, despite the skills shortage in South Africa, as much global movement – especially in terms of recruitment into high-skilled jobs - has slowed down significantly.

The Department of International Relations and Co-operation (DIRCO) has a focus on migration for development agenda which includes both the reaping of benefits from South African emigration as well as the immigration of highly-skilled migrants. This is reflected in the 2017 White Paper, despite the securitized and restrictive rhetoric in terms of refugee protection and immigration of so-called ‘low-skilled’ migrants. This is a pragmatic response to problems of brain drain related to skills shortages, service delivery and development, and not a strong move to a more inclusionary and open immigration policy (Peberdy 2000). This is very much tied into a racialized discourse, effectively inheriting the two-door system of

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<sup>21</sup> International organizations like the IOM have a lot of influence on policy development in South Africa and SADC often inserting their ideas and language into document, with countries having too few resources or expertise to react accordingly. Further research is needed to consider how this unfolds in South Africa.

apartheid, with the ‘skilled’ (predominantly white) migrants welcomed at the front door, and the ‘low-skilled’ (predominantly Black) migrants only through the so-called back door. This speaks to “a bigger, wide monopoly capital system that is operating and functioning on this precarious labour, particularly when you go to the border farms” (Kudakwashe Vanyoro, Discussion with academics, Johannesburg, February 2020). According to one of our respondents, free trade only works with the corresponding movement of people, which is why DIRCO is “quietly pursuing a goal of free movement” (Interview Researcher, Johannesburg, February 2020).<sup>22</sup>

One issue is that most of the immigration policy rests with the DHA, and DIRCO is only in charge of the parts that affect regional migration policy. The two departments have had different political backgrounds from the start of the post-apartheid regime, with DHA under control of the Inkatha Freedom Party (IFP) and DIRCO the ANC. Thus DIRCO has always sought out a close relationship with SADC, but this contravened the approach taken by the DHA (Carciotto and Mavura 2016). Since 2004 the ANC has control over the DHA again and despite the discussion of skills in the 2017 White Paper, the securitized agenda introduced in the 1990s (and in many ways inherited from the pre-apartheid era) continues to dominate even in foreign policy. Yet over time, it has led to diplomatic strains.

#### *A strain in diplomatic relations*

The practice of foreign policy, however, tends to reiterate the domestic interests. South African diplomatic relations – especially in Africa – tend to be very hands off, with a lack of interference dominant throughout the continent. This does not mean, however, that no action is not a political decision or that sometimes domestic

migration policies are not read as political acts. Increasingly moreover, the lack of concrete action on xenophobia is beginning to seriously strain diplomatic relations, highlighting the consequences of the seeming paradox between external - Pan-Africanism - and internal goals.

South Africa has traditionally held a very hands-off relationship to Zimbabwe, known as ‘quiet diplomacy’ with little to no diplomatic interference (see also Hammerstad 2012; Hamill 2019; Polzer 2010). Indeed, according to an ANC politician “South Africa respects the sovereignty of Zimbabwe and other countries; we do not interfere in their internal politics” (Interview Johannesburg, February 2020). Keeping sovereignty of all countries intact has played a central role throughout the existence of the AU. This means that for example “Mbeki ... didn't want to make a big deal out of the Zimbabweans arriving. Because if he starts saying, these are coming because they're refugees or these are coming because the economy has collapsed and they have no choice, then you are criticizing Zimbabwe” (Interview Researcher, Telephone, March 2020) (see also Hammerstad 2012; Thebe 2017). Thus,

“the choice of approach was not politically neutral: it avoided adding legitimacy to the MDC's (the opposition) cause. The asylum approach also supported South Africa's strong commitment to national sovereignty. By not granting “blanket” asylum to Zimbabweans, South Africa avoided indirectly criticising the internal politics of a sovereign country”(Hammerstad 2012).

This shows the political role of migration governance for bilateral diplomatic relations,

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<sup>22</sup> Similarly, there is by no means a huge consensus amongst the ANC which might explain the multiple directions taken on in the 2016 White Paper as well as that Pan-Africanism ideals are still prominent within some factions of the ANC. See also (Segatti and Landau 2008) for differences between government institutions and in the ANC implementing a more development-orientated migration policy in the early 2000s.

and that by following a “quiet diplomacy” approach, there is a reiteration of domestic policy goals, effectively cutting off the route of political asylum for Zimbabweans. Interestingly, Hammerstad suggests that the increase in xenophobic violence – what she calls a ‘securitisation from below’ - which reinforced the image of Zimbabwean migrants in the country as security threats, eventually also led to a change in diplomatic tact as mediation efforts increased which eventually led to the coalition government (Hammerstad 2012; though Polzer 2010 argues there was a much stronger business as usual approach which denied neither domestic nor regional political imperatives). The idea is then that domestic strains led to a change in foreign policy, showing the interaction between the two (see also Vanyoro 2020). Whilst the transition government “was far from a return to democracy, it did reduce political violence within Zimbabwe, allowed its economy to stabilise, and mitigated the influx into South Africa” (Hammerstad 2012). Whether foreign policy goals led to domestic changes through the dispensation mechanism is less clear. The motivations for the DZP amongst DHA officials were never entirely clear and the implementation problems suggest that political will here too, was constrained (Amit and Kriger 2014). Either way, the measure did help to alleviate pressure on the asylum system without the political decision of allowing substantial asylum claims to pass.

More recently, rumours in relation to the ‘political activity clause’ in the recent amendments do show the *potential*, albeit to date a rather speculative, way that diplomatic relations can play into domestic policies. The rumour noted that forbidding political activity would also curtail political dissidents from countries like Rwanda, Zimbabwe or the DRC (Jalloh 2020). Namely, “political leaders are now coming together trying to protect themselves at that political level, ... (to) say let’s silence those

voices, so, it’s actually to protect their own political positions” (Interview Humanitarian Organisation, Johannesburg, February 2020). Whilst “it’s very likely that it’s come from that kind of direction” ... “there’s no way for us to try and verify any of that” (Interview Human Rights Organisation, Johannesburg, February 2020). Nonetheless, the Rwanda example shows how the two can be linked. The exiled opposition party, the Rwandan National Congress (RNC) is based in South Africa and is viewed as a terrorist organization by the Rwandan state. In 2014, the relationship between Rwanda and South Africa came to a diplomatic halt, when the Rwandan government allegedly sent hit men to assassinate a former spy chief and RNC leader, Patrick Karegeya, who had sought political asylum in Johannesburg. Rwanda believed that the RNC leader had close ties to the previous Zuma government. In response, the South African government banned visas for all Rwandans (e.g. Haden 2018). Thus, if this political activity clause was to highlight a new approach from the Ramaphosa government towards Rwanda, it would mean a clear U-turn from the previous Zuma government. Suffice to say that the Rwandan (and Zimbabwean) government were allegedly pleased with the new regulations (Jalloh 2020).

When it comes down to it however, it seems that for the time being internal interests outweigh external ones, with a human rights activist explaining the responses to xenophobic violence are curtailed since:

“one of the challenges in South Africa is that all the politicians are focusing on staying in power so what happens is that anything beneath that ... whether it’s what is happening to foreigners... is a second, third or fourth priority. I think with the African states stepping up, the state was forced to put it central and make some reassurances, are they going to stick to that and deliver those? I don’t

know “(Interview Human Rights Organisation, Johannesburg, March 2020).

In that sense there is not so much a paradox between the foreign policy in practice and the domestic interests of stemming migration. Moreover, foreign policy is sued for domestic interests. However, the domestic problem of failing to deal with xenophobic violence and offering a fair and safe system for migrant workers increasingly results in diplomatic tensions.

Nonetheless, in recent years the diplomatic effects of the current approach to migration governance have worsened. As Hengari notes: “South Africa’s diplomacy of peace on the continent is inconsistent with a domestic order that undermines the human rights of migrants on its shores, specifically in its poorer communities” (2016; see also Mpungose 2018). Already in 2015, the South African government issued a warning to emigrants and businesses about potential retaliation attacks (Landau et al. 2018).

Notably, there was a considerable backlash with Nigeria when the 2019 xenophobic violence in particular targeted Nigerians. South Africa received condemnation from across the continents, and Nigeria repatriated some of its citizens on free flights, recalled its high commissioner and boycotted the World Economic Forum on Africa summit in Cape Town, in what was nothing short of a diplomatic crisis (Dahir 2019). Externally therefore, the approach to migration governance and the xenophobic violence embedded into it have come at a cost; “(President) Ramaphosa was booed as he spoke at Robert Mugabe’s funeral in Zimbabwe. Forced off script, the South African president apologised again for the most recent eruption of violence against African migrants in his country“ (Chigumadzi 2019). The economic repercussions were too important to avoid a political apology. Though the diplomatic

response was significant, it is generally restricted, not least due to the powerful position that South Africa holds on the continent because of its economic strength. Inversely, it is not surprising that only Nigeria, another major economic powerhouse on the continent, has most strongly reacted to the xenophobic violence.

On the whole migration governance still plays a subordinated role for the South African government, with domestic calculus currently outweighing the international ones. When it does play a role, it is unclear whether this is tied to a genuine belief of the benefits of free movement, or an attempt to improve the position of South Africa in external relations. More generally, South Africa is guided by an understanding of exceptionalism. The restrictive approach is very much embedded in the uniqueness in how South Africa sees itself. As an economic powerhouse in the region and the continent, the government does not want to become a magnet for economic migrants. A popular argument is that when it comes to “the question of regional integration”, the countries within SADC haven’t “integrated on a number of other issues - our politics, our economies, our levels of democracy, before we do that there is no way that borders can be opened”, see also above (Interview Researcher, Telephone, February 2020).

With the aspirational free movement ideals from the AU, in line with the development of the AfCFTA and with treatment of migrants becoming more important on the political agenda since the CNN video emerged of Libyan slave markets in 2017, the tables may be turning. For the time being, however, free movement stands in contrast to the securitized and exclusionary governance. Yet in practice the paradox is only limited, as much of the foreign policy seems to work concertedly with the domestic interests. The domestic approach does

however also have repercussions for foreign policy as outlined above.

### 3.3 POLITICAL INTEREST GROUPS

There are different actors and types of actors involved in the political game of migration governance. In other words, the inherently restrictive and xenophobic institutions are upheld by the agency enacting them, albeit – often in interaction with civil society actors trying to constrain them. In the following, we discuss the DHA as a political actor, and in particular in relation to CSOs before looking at refugee activists, as well as the contested role of the SAHRC and the UNHCR.

#### *The Department of Home Affairs*

Though the DHA, like most of the government ministries, suffers from capacity issues as well as endemic corruption (see also Estifanos, Zack, and Vanyoro 2019; van Lennep 2018; Segatti and Landau 2008; Mbiyozo 2018), the implementation of policies (or lack thereof) is also related to individuals working within the DHA. Whilst there are of course always exceptions,<sup>23</sup> which some of our interviewees noted, on the whole there is a bureaucratic vacuum since “immigration officials have lacked the professional capacity to understand their task, or fulfil their basic duties” (Segatti and Landau 2008).

The leadership of the DHA in particular speaks to a general political position, rather than only a capacity issue. For example, the first post-apartheid minister of home affairs, Mangosuthu Buthelezi, promulgating a decidedly different policy to Nelson Mandela, which meant that from the start refugees felt “their enemies had captured the Department of Home Affairs”

(Steinberg 2005; see also Neocosmos 2008; Hammerstad 2012; Peberdy 2000). The current Minister for Home Affairs, Aaron Motsoaledi, has long been known for his anti-migrant rhetoric, blaming overfilled hospitals on migrants in his previous post as Health Minister (see also Amnesty International 2019; Chigumadzi 2019).

**Table 3: Overview of post-Apartheid Ministers of Home Affairs**

Name of Minister of Home Affairs	Time Period	Political Party
<b>Mangosuthu Buthelezi</b>	May 1994 - April 2004	IFP
<b>Nosiviwe Mapisa-Nqakula</b>	April 2004 - April 2009	ANC
<b>Nkosazana Dlamini-Zuma</b>	April 2009 - October 2012	ANC
<b>Naledi Pandor</b>	October 2012 - May 2014	ANC
<b>Malusi Gigaba</b>	May 2014 - March 2017	ANC
<b>Hlengiwe Mkhize</b>	March 2017 - October 2017	ANC
<b>Ayanda Dlodlo</b>	October 2017 - February 2018	ANC
<b>Malusi Gigaba</b>	February 2018 - November 2018	ANC
<b>Siyabonga Cwele</b>	November 2018 - May 2019	ANC
<b>Aaron Motsoaledi</b>	May 2019 -	ANC

Source: Own compilation.

The DHA is highly evasive when it comes to transparency and responding to critique in the

<sup>23</sup> Especially in Musina at a sub-national level the interaction between refugee right activists and DHA officials differs. Nonetheless, as highlighted by Vanyoro, humanitarian actors reproduce a regime of ‘ambivalent hospitality’ that simultaneously ‘cares and controls’, reinforcing the bordering practices of the state (Vanyoro 2020).

migration governance field,<sup>24</sup> and allegedly seeks to further centralize their power (Interview Researcher, Johannesburg, February 2020). The ministry is subject to a significant number of re-shuffles – especially in the Zuma era – and has had ten different ministers since 1994, see Table 3.

The DHA has faced a backlash from other political parties outside the ANC, including the DA over the backlog and corruption and the Economic Freedom Fighter’s for the department’s overemphasis of security concerns, which contradict freedom of movement and a mutually beneficial migration policy (van Lennep 2018). On the whole however, the opposition to the policies themselves is limited, with the systemic xenophobia and securitized logic propagated by most political actors (see above).

The DHA does of course compete with other ministries, as with DIRCO outlined above. Moreover, in the securitisation field potential conflicts over mandates are plausible. During a parliamentary briefing in 2019, SAPS confirmed that policing migration has placed serious constraints on the police budget (Bornman 2019c; van Lennep 2019b). SAPS funds are regularly used to arrest and detain potentially irregular migrants. What is already a tension, can further cement itself with the new BMA which would centralize power in the DHA (Mbiyozo 2018). The relationship between the DHA and CSOs is discussed next.

#### *A performative relationship to CSOs*

The DHA also has a particular relationship with refugee and migrant rights organisations. Church or faith-based organizations often hold a relatively neutral role, as several of our interviewees told us, but are often providing

basic humanitarian needs – especially in Musina - rather than providing a political voice.<sup>25</sup> Other groups such as Lawyers for Human Rights or Scalabrini are active and vocal in their critique of the government and ready to push back when necessary, as can be seen in recent provisions for food aid etc. as a response to the Coronavirus pandemic. On the whole, the DHA has a highly performative role with critical CSOs – regular engagement on particular issues is prominent, but rarely followed up on, and most concrete action is played through the courts, again with only limited effects.

Though there are a whole number of stakeholder meetings and consultations held with the DHA, other government ministries and various organizations, whether the groups have influence or leads that result in direct political action is highly questionable. At times, during these meetings and consultations, only junior representatives of the DHA are present who are in no position to properly explain or justify any particular policies. At other times, meetings are cancelled or announced at last minute, and CSOs do not have enough time to develop a unified stance. The controversial regulations, which accompanied the recent amendments to the refugee law, were only open for public comment for 12 days in 2018, and despite an outcry this was not extended.

Between 2015 and September 2020 there were 148 meetings of the Portfolio Committee on Home Affairs, 50 of which were dedicated to migration issues.<sup>26</sup> Ten bills on migration or refugee issues were tabled for comments in the same period. Nonetheless, many of our respondents noted their concerns had never been taken up or felt that overall, the DHA was unaccountable for their actions. One of the

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<sup>24</sup> Despite repeated attempts and a formal application for a research permit, we were not given access to be able to talk to anyone working for the DHA.

<sup>25</sup> Though individual religious actors do of course also advocate for migrant’s rights.

<sup>26</sup> 62% of these addressed immigration or the BMA; 46 % refugee issues and just 2% regional migration governance and xenophobia respectively, see Appendix 1.

committee meetings in October 2019 was dedicated to the engagement with stakeholders. At this meeting, Thifulufheli Sinthumule from the Consortium for Refugees and Migrants in South Africa (CoRMSA) noted the growing gap and unwillingness of government to engage with CSOs. One of the parliamentary members of the Committee responded by noting “good engagement could ensue only if both the Members and the NGOs ... shared the same understanding of the crisis caused by immigration” (MP Lekota (COPE) see Home Affairs Portfolio Committee 2019).

Many of our interviewees told us that despite extensive submissions especially in relation to the refugee amendments, they were not considered. Also, migrant and refugee rights groups noted that they were not given a special expert status in these comments but were merely counted as the general public opinion, which disavows from their knowledge in the area. Public submissions were made for all the amendments and the regulations (in 2018), but the feedback (where civil society groups hold the same status as the general public) wasn't meaningfully engaged with: “but it seems that there's very little change whatsoever in the process. So, I would say that that suggests that it was more of a tick box approach and less of a meaningful engagement” (Interview Advocacy Organisation, Telephone, March 2020). Thus, feedback and submissions seem to have served a performative function with no real effect in terms of influencing migration governance thus far: “They are not listening. They are going through the motions” (Interview Human Rights Organisation, Johannesburg, February 2020) (see also Carciotto and Mavura 2016; Hiropoulos 2017).

Consequently, refugee and migrant rights CSOs have a reactive litigation role. This is reactive not because they are not proactive in their attempts to curtail the government in their exclusionary, securitized and restrictive practices (as above),

but because they are not given a meaningful platform to engage with the government. In the committee meeting on stakeholder engagement, Sharon Ekambaram from Lawyers for Human rights (LHR) “indicated that LHR does not want to litigate, but would rather like to work with the Committee and Department” (Home Affairs Portfolio Committee 2019). According to a legal aid lawyer we talked to, the DHA shares little to no information with those who need it. This has resulted in bringing cases to the courts, with the courts becoming the central arbiter of refugee protection, doing an ‘amazing’ job (Interview Human Rights Organisation, Johannesburg, February 2020) (Interview Human Rights Organisation, Johannesburg, February 2020; see also Landau et al. 2018). The lengthy times for the DHA to implement some of these court orders (in particular for example in relation to the RRO), has led to concerns (see also Carciotto and Mavura, 2016).

Barring exceptions at personal or operational levels, the relationship between the DHA and CSOs is at best one of co-existence' without much interaction (Interview Humanitarian Organisation, Musina, March 2020); at worst conflictive (Interview Advocacy Organisation, Telephone, March 2020) or ‘confrontational’ (Polzer 2010). The DHA does not see the necessity of improving their largely performative relationship to civil society actors since, refugee and migrant organisations do not have a significant political voice (see also Polzer 2010; Landau et al. 2018; Jinnah and Holaday 2009). There is no widespread popular political support for a rights-based approach towards refugees and other migrants a rights-based discourse and societal acknowledgement of this is still largely missing.

In addition to the DHA and the relationship they have with CSOs there are two other political interest groups which will be outlined now: refugee activists as well as support organisations.

### *Refugee Activists*

Recently, refugee actors have become more prominent. Between October 2019 and April 2020, a group of up to 624 refugee protestors occupied a public square and later a church in Cape Town with the aim of getting resettled to a third country, citing fears of xenophobic violence. They gathered because “they (claimed they) were really under siege, they were not protected, and they were victims of xenophobic violence without police protection” (Interview Human Rights Organisation, Telephone, February 2020). UNHCR and the DHA repeatedly claimed this wasn’t possible and that resettlement can only happen on an individual basis, with approval of destination countries. Despite a number of court orders evicting them from public property the final eviction of the last protestors in April 2020 took place in line with the country-wide lockdown enforcement. At a Committee Meeting of the Parliament on the matter in September, the City of Cape Town, DHA and SAHRC failed to submit reports on time (Home Affairs Portfolio Committee 2020c). The protestors were reported to have used violence and the threat of violence against some of the attempted mediation attempts, including against one of the Commissioners from the SAHRC.

Following a period of inactivity during the pandemic induced lockdown, the DHA has resorted to underhand tactics in dealing with the refugee standoff in Capetown – seeing that the refugees are refusing to be reintegrated into local communities and the option of transferring them to a third country is unworkable (Washinyira 2020). They have made moves to delegitimise the refugee grievances by targeting the leaders of the protest and effectively fast tracking the determination of their asylum claims which have been rejected and protection withdrawn. To this end, in a media statement the DHA stated that, it is in the process of deporting 20 of the

protesters whose asylum claims have been rejected (Department of Home Affairs 2020) .

The protests – which included an initial sit-in in Tshwane as well – have highlighted the dependent position of UNHCR on states – including where they are operational and where potential resettled refugees can go (see below). Frustration at this type of protest was high, with one of the involved parties noting “if you've looked at the process objectively, you realize that what they are asking for is something that cannot be achieved. And they have been obstinate in their own process” (Interview SAHRC, Johannesburg, February 2020). The protests have reinforced a negative image of asylum seekers, with one prominent politician claiming, “the action for those in Cape Town – they harass people, saying we must take them to Canada, (this) is pushing us towards camps” (Interview ANC Politician, Johannesburg, February 2020). According to some of our interviews, the DHA has taken limited responsibility for this, claiming it is a problem of the UNHCR, though of course ultimately the DHA is in charge of what they mandate to the UNHCR. The City of Cape Town in turn state that the responsibilities of these refugee protestors lies with the DHA (see Home Affairs Portfolio Committee 2020c).

Aside from this skirting of responsibilities, the altogether negative portrayal of the Cape Town refugees’ highlights how they are delegitimised in the public eye as a political group. One parliamentary member of the Home Affairs committee noted in October 2019 that “he had gone to monitor the events taking place outside the office of the UNHCR one night and had found that refugees and asylum-seekers were pounding on doors and windows and were vandalising the building. He described their behaviour as antagonism and resentment. He asked ...was xenophobic violence motivated by their creation of antagonism?” (MP Roos (DA) in Home Affairs Portfolio Committee 2019). The Cape Town protests are a recent example of how

unwelcome refugee activism is (see also Sonke Gender Justice 2012). For some, the new 2020 regulations were even seen as a curtailing response to the Cape Town protest. The quick adoption of the regulations during the Christmas period and shortly after the Cape Town protests were seen by some of our interviewees as a political reaction: “I mean.... even the refugee reception offices don't know what to do about these regulations... we don't know what's going on .... I'm pretty sure it was a political move; it was completely political doing this” (Interview Researcher, Telephone, February 2020; for a dismissal of the Cape Town connection see Interview International Organisation, Johannesburg, February 2020). Though a direct link between the new regulations and the Cape Town protests is unlikely, the role of refugee activists is threatened by the new regulations curtailing political activity. One interviewee sums up that “there is an aspect of that for the first time, refugees and migrants whilst they were now gaining some sort of voice and that voice has now been silenced quickly and they are brought into a second set of persecution whilst they are running away from another one” (Interview Humanitarian Organisation, Johannesburg, February 2020).

The Africa Diaspora Forum (which brings together over sixty different ‘communities’ and was created as a response to the xenophobic attacks in 2009) has for example allegedly been curtailed in their activities (Interview Researcher, Johannesburg, February 2020), though a representative from the group did not confirm this.

Though much like the CSOs (see above) refugee activists have limited influence on the government, they play a highly symbolic role as highlighted by the link between apartheid freedom fighters and today's contemporaries. Thus ‘the rules ban refugees from any sort of involvement in the politics of their home countries – including the type of campaigns that

were waged by the ANC in exile’ (de Wet 2020). But according to a TV interview with Minister Motsoaledi, the ANC-members were not ‘refugees but freedom fighters’ (Madia 2020).

*When neutrality becomes political – The role of the SAHRC and UNHCR*

In addition to the DHA there are protective organisations like the SAHRC – a Chapter 9 institution, see footnote 19, and the UNHCR, or “the overseers” who are contested in their neutrality. Since they are both dependent on the political good will of the government, their work is – at least to a degree – curtailed. By aiming to be neutral and non-political they have become even more politicised.

The SAHRC plays an important role in condemning xenophobic statements of politicians and other public leaders (e.g. Amnesty International 2019). They also became a go-between the refugee leaders of the Cape Town protestors and the UNHCR when their communication broke down. But they often have little impact, since their recommendations are not enforceable and they have “no political teeth” (Interview Human Rights Organisation, Johannesburg, February 2020). This is partly due to their mediator role. There have been no public reports on the Lindela Detention Facility since 2017, leading some analysts to conclude that they are simply no longer carrying out monitoring (van Lennep 2019b). SAHRC is monitoring the facility, according to our interviews, but has to choose which information to make public in order to make sure their relationship with the DHA remains intact, so as not to make them “too defensive” (Interview SAHRC, Johannesburg, February 2020). The SAHRC sees their own position as quite powerful (since they have a mandate to take recourse when public figures use xenophobic rhetoric) in comparison to CSOs, but also are not proactively a pro-migrant organization;

“we... are also aware of the problem. And we are not saying: let all undocumented migrants be assimilated into the system. So, as such, we could actually say we sit in between civil society and government” (Interview Johannesburg, February 2020). Thus, though they published an important report in 2010 (South Africa Human Rights Commission 2010) they had abandoned a previous campaign on anti-xenophobia in favour of a rights campaign for citizens (Crush and Tevera 2010). The umbrella organisation Consortium for Refugees and Migrants in South Africa (CORMSA) has repeatedly criticised the SAHRC for its ambivalent role (Polzer 2010).

UNHCR also plays an ambivalent role – not least in relation to the Cape Town protests. An employee from UNHCR that we interviewed noted “UNHCR also has a role to ensure that asylum systems are fair and so UNHCR does not (merely) implement government policies, UNHCR assists and supports governments to try and strengthen their asylum systems but also where there are gaps it brings this to the attention of the state” (Interview, Pretoria, February 2020). Organisations like UNHCR are, however, dependent on the host state where they reside to implement their work (see e.g. Koch 2014). This can make it difficult, when the state is seen to not provide adequate protection to refugees. The UNHCR is automatically seen to be endorsing the (in-)actions of the DHA.

One interviewee describes the relationship between the DHA and UNHCR as follows “Home Affairs and UNHCR are like the same WhatsApp group, they are very close” (Interview Human Rights Organisation, Musina, March 2020), highlighting their interconnection. Refugee focus group participants in Johannesburg noted they were “confused over the mandate” and that “we have the impression that UNCHR is under South African Government” (Focus Group with Refugees, Johannesburg, February 2020).

In light of the increasingly restrictive environment for asylum seekers in South Africa, UNHCR is often criticized by civil society actors for not taking on stronger opposition to some of the government policies that have been put in place. Through their dependence on the government, their silence can be read as approval of the regressing refugee protection or at least a prominent conflict of interest by having to work with the approval of the DHA. One CSO interviewee noted, “they know their place... they are a guest of the government... they are certainly not going to be openly hostile or antagonistic” (Interview Human Rights Organisation, Johannesburg, February 2020). The Cape Town (and Tshwane) protest highlighted this. One of the Cape Town protestors noted in a newspaper report: “We are questioning why in other countries the commission is active when it comes to refugee problems but here they are silent”(Dibakwane 2019). Their response – though of course the inability to provide resettlement has more to do with the lack of global resettlement spaces than unwillingness – was interpreted as a lack of responsibility taking, resulting in questioning of “where is the UNHCR; they are nowhere to be found?” (Interview Human Rights Organisation, Musina, March 2020).

One of the only things the UNHCR has taken a more – relatively speaking – pronounced stance on is in their opposition to processing centres. Whilst the DHA initially claimed that UNHCR would assist in funding such centres, this was quickly denied on the part of the UNHCR (Jordan 2017). Without this financial assistance, it is unclear how the processing centres can be funded by the state alone (In a committee meeting in May 2020, the DHA noted in passing that they had decided to implement processing centres (Home Affairs Portfolio Committee 2020b). No further information was available at the time of writing.

Making matters more complex for the work of the UNHCR is that due to the lack of an encampment policy in South Africa, their work is based on an advocacy position. Many actors fail to understand their role, including from the government and parliament themselves. Minutes from a committee meeting noted:

“it was incumbent on the UNHCR to assist them [refugees] or to offer them humanitarian assistance. It was not the duty of South Africa to do so. ... refugees could not be taken to hospitals. If refugees and asylum-seekers were to be taken to hospitals, hospitals would be overrun. As a result, there would be neither hospitals nor medication for citizens. To avoid this, the UNHCR should respond to the needs for basic services of refugees and asylum-seekers” (MP Lekota in Home Affairs Portfolio Committee 2019).

Refugee protection as something non-political has been at the heart of the work of the UNHCR which makes it very difficult for them to work in highly politicized contexts. The effect has been that they focus on the “professionalization” of the services offered to refugees and asylum seekers including, for example, through capacity building and the technical response to the asylum backlog (see also Human Rights Watch 2005).

The net result is that refugees and asylum seekers feel lost. UNHCR is also not present in Musina anymore, choosing to provide support through implementing partners such as Future Families, which has led to church-based organizations picking up the slack at huge costs. This led one of the refugees in a focus group in Musina to note: “For myself I can say, I supposed coming here that the support of the UNHCR was here for refugees, but I don’t see any. For example, in our countries (DRC, Burundi) UNHCR support too much the refugees. But here in South Africa,

I can’t see any support of UNHCR” (Focus Group with Refugees, Musina, March 2020).

In sum, in addition to the internal and external dimensions of the political interests of migration governance, more attention has been given to actors involved – including the DHA, their performative relationship to CSOs, the refugee activists and the contested role of international and national organisations. As introduced in the beginning, governance and political stakes are inherently tied to broader societal discourse which will be discussed in the final section.

#### **4 “BOUNDARIES NEED TO BE DRAWN”: SOCIETAL DISCOURSE IN MIGRATION GOVERNANCE**

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In addition to discussing the type of migration governance that has unfolded in South Africa as well as the political interests, we consider the societal discourse that ties migration governance to its political stakes. In discussing the societal discourse that informs common understandings and perceptions of refugees and migration in South Africa, we started by engaging the ways in which ordinary South African citizens make sense of the presence of migrants in their communities. During our interviews and, in particular, the focus groups, we asked questions about respondent’s understanding of the differences between refugees and migrants, as well as how these are portrayed in the media and discussed by politicians. Their responses inform the discussion in this section.

One of the main observations we made is that the differences between migrants and refugees are not well understood amongst the South African community members that we interviewed in both Johannesburg and Musina. In Johannesburg, emphasis seemed to be placed on the distinction between South African citizens

and foreign migrants, regardless of whether they are voluntary or forced and whether they are documented or irregular (Focus Group with Youth, Orange Farm, February 2020). In other words, there is a collapsing of internal differentiation of refugees and migrants in these communities, especially in the context of xenophobic violence, which speaks to the system of governance. Whilst in Musina, the differentiation did not seem to have xenophobic undertones, it still underlined little political conscience of refugees and protection in terms of a rights-based framework, as the government does little to educate the general public on this. For instance, some of the FGD participants highlighted that they could tell a refugee from a migrant by simply observing the dress code, with refugees seen as poorly dressed and poverty stricken.

In the following we discuss the pervasive nature of xenophobia across communities, in politicians' speeches and the media. We discuss how the social xenophobic rhetoric is based on the premises of othering and own identity-construction as well as being linked to economic deprivation. This is linked up to the interaction with politicians and the media, before showing how it can be different. Having noted the connection between xenophobic sentiment and the recognition (or lack) of contributions made by migrants and refugees to the economy of South Africa, we argue that in the Bordertown of Musina migrants are appreciated as critical contributors to economic activity in the area, and consequently xenophobic violence is rare.

#### 4.1 SOCIETAL RHETORIC ON XENOPHOBIA

The xenophobia context is important as it underlines the lack of differentiation and

merging of refugees and economic immigrants. The indiscriminate nature of xenophobic violence and the nativist idioms that inform it, have been highlighted in other research that looks at issues of xenophobia in South Africa (e.g. Misago 2017). During episodes of xenophobic violence, the assailants do not care whether a foreign national is documented or not, though this is often the starting premise, and sometimes even South African citizens are attacked, especially if one is seen to be too dark and construed as not *belonging* to the country (Tella 2016).

In a discussion with migration researchers and policy experts, an observation was made, that, in as much as xenophobic violence appears to be indiscriminate insofar as the differentiation between refugees and immigrants is concerned – it is however quite specific when it comes to black Africans.

Other academic writers have proffered the discourse of Afro-phobia as an additional layer of nuancing xenophobia (Amusan and Mchunu 2017; Dube 2018).<sup>27</sup> This has been linked to ideas of othering through identity constructions. In other words,

“... xenophobia ... is connected to the formation of a South African identity, a new South African identity and in order to form that kind of national identity you must other, other people. ... that is where the boundary needs to be drawn, because the boundary between Europeans and South Africans is already there or Chinese and South Africans is already there” (Discussion with academics, Johannesburg, February 2020).

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<sup>27</sup> Though there are also attacks on non-African citizens including on migrants from Bangladesh and Pakistan, often related to spaza shop ownership

This links up to other tropes of belonging. Frequently repeated for the explanations of the resentment of foreigners, which often culminates in violent attacks, is that foreign men “take” South African women. In the words of one focus group participant, “bathatha istock sethu” (they take our stock) (Focus Group with youth, Orange Farm, February 2020). Besides the problematic sense of entitlement to the bodies of women and the usurping of their agency, the logic holds that South African women are off limits to foreign men *who do not belong*, and such limits are sometimes violently enforced through xenophobic violence.

Another way to make sense of the targeting of black Africans is to consider it as an attempt to set boundaries between native South Africans and black foreigners in the context of material deprivation. Summed up by one academic we spoke to “What is very clear is, in the context of severe deprivation, it can be material, social, you know ...identity politics is almost a given; it comes up. When resources are limited, people are going to fight for resources and people are going to use their identities to include themselves and exclude others” (Discussion with academics, Johannesburg, February 2020).

South Africa is one of the most unequal societies in the world, which helps to understand the political importance of the scapegoating in relation to limited material resources. Thus, the notion that migrants take jobs from South Africans is not new and is often mentioned whenever there is an episode of xenophobic violence. The idea is that – like elsewhere – South Africans see immigrants as people that steal jobs from South Africans. The high unemployment rates, poverty and inequality have been labelled as the “triple threat” in South African government discourse (Muthambi 2014). This also highlights the link between official statements and societal rhetoric, with politicians often taking the next step in linking this to migration.

## 4.2 THE ROLE OF POLITICIANS

The often-repeated statements that migrants are involved in criminal activities and steal jobs and women seem to assume a life of their own in the Johannesburg context. In the Johannesburg FGD with community youth, these were repeated without much interrogation and explanation. Evidently, during episodes of xenophobic violence they are mobilised into slogans which conceals the substantive issues such as government failure to create growth in the economy and also address inequality (see also above). Politicians use the anger amongst community members to their own benefit by blaming foreign migrants. As such, there is interplay between the sentiments of the poor and marginalised communities and populist politicians. Jean-Pierre Misago summarised this interplay in the following terms:

“there are two sources and they feed on each other; voices from the deprived and voices from the political populists, they feed on each other. Political leaders have to appease their constituencies and when the constituencies hear their political leaders bark in support of their messages, it reinforces their sentiments and they say, ‘see... that’s what we’re talking about. Even our leaders agree with us’. Then sentiments become stronger and stronger because of that. But that’s still at the level of feelings and attitudes. It takes somebody to mobilise those into violence” (Discussion with academics, Johannesburg, February 2020).

There has been an increase in the number of political leaders who blame foreigners for issues ranging from crime, unemployment and other social ills in South Africa, as discussed above. Moreover, the media also play a role in transmitting the messages from xenophobic political leaders and therefore, giving them a national audience.

### 4.3 MEDIA AND SOCIETAL DISCOURSE

The media is a key platform through which societal discourse is formulated and propagated (see also Crymble 2010). Thus far, there is a perception that there is increased attention to issues affecting refugees and migrants in mainstream media, but the media has not done enough in terms of correcting distorted messages from political leaders that blame foreign migrants for South Africa's problems (for instance, "you still have a lot of bad journalism where they write down everything the mayor, politician says without contextualisation" (Interview Researcher, Telephone, February 2020). In fact, at times, "the utterances in the media are so irresponsible and they hold so much power, they can just say that economic migrants contribute to the South African economy, they have a power to say that and get into people's living rooms with that fact" (Interview Human Rights Organisation, Johannesburg, March 2020).

Similar misgivings were expressed regarding radio where people who express negative views on migrants and with little counter arguments often dominate call-in sessions. There is also a concern regarding issues of coverage, wherein the publishers are concerned about profit rather than responsibility, which has prompted advocacy groups to come up with training modules in order to assist journalists with responsible reporting around issues of xenophobia (Sonke Gender Justice and Scalabrini 2020). One NGO representative summed this in the following terms:

"When it bleeds, it sells. A lot of the media, they're businesspeople. So, for them when it bleeds, it sells... we don't care about the damage we are doing" (Interview Advocacy Organisation, Johannesburg, February 2020).

Civil society organisations have had to proactively engage the media through invitations during protests (Interview Advocacy Organisation, Johannesburg, February 2020) and at times using unconventional tactics to get coverage when highlighting issues affecting refugees and migrants in South Africa. For example, with the publication of the amended regulations, "...the political activity part is the first thing that the media picked up on and we, in our kind of communications advocacy, had been or tried to be quite strategic about it because it was very clear that that was a point that caught the public imagination" (Interview Advocacy Organisation, Telephone, March 2020). Thus, whilst the media landscape may be changing, it is yet slow to do so.

### 4.4 "MUSINA THRIVES ON FOREIGNERS": A DIFFERENT STORY

While in Johannesburg, we found xenophobia to be a common feature of societal discourse accompanied by violent outbreaks, we found that the story in Musina is different. The reason given is that the presence of foreign nationals is consciously acknowledged and appreciated as beneficial to the economy of the town, which is located closer to the Zimbabwean border. The following response from one of our key informant interviews is illustrative:

For three years, since 2017 there has not been any xenophobic violence incidences in Musina, and I think it's because Musina thrives on foreigners. If you look, most businesses here are run by foreigners and the people that buy are mostly foreigners, they always cross from Zimbabwe and so it's that understanding that the person that I am fighting might actually be my tenant .... So there has never been xenophobic violence. Even last year when there were flares in Johannesburg, Musina

remained very calm, in-fact, new arrivals chose to remain in Musina longer because they were afraid to go inland (Interview Humanitarian Organisation, Musina, March 2020).

Apart from the economic benefits of migrants in Musina, respondents also noted the better integration and coordination between different NGOs, community leaders and government officials which serve as a platform to resolve conflicts and ensure that xenophobic violence does not occur (e.g. Interview Human Rights Organisation, Musina, March 2020). The area also has a long history of migration dating back to the copper mining era which began in 1905 and ended with the closure of the last mine in 1992. The mine labour force included foreign migrants and some eventually settled in Musina permanently.

### **Textbox 3: Migration Governance in Musina**

Musina has been at the centre of the Zimbabwean migration influx, and it has been imperative from a governance perspective to have coordinating structures that incorporate civil society organisations and government departments. For example, the Vhembe Cross-border Forum which coordinates the health response to HIV/AIDS and TB between Beitbridge in Zimbabwe and Musina in South Africa (Vanyoro 2017). There are also local forums such as the inter-agency working group that consists of NGOs and government departments in Musina where key issues affecting communities, including migrants and refugees are discussed and responses coordinated. While the frequency of meetings has reduced and other NGOs such as MSF have left the town, there is still greater coordination amongst the remaining ones which is critical in handling migrant and refugee related issues. While in Johannesburg, the city has made a deliberate effort to establish a migration help desk, in Musina NGOs have been instrumental in getting government departments actively involved.

There is also greater sociocultural integration due to the presence of Venda speaking people in Musina, South Africa as well as in the Beitbridge area of Zimbabwe. For example, an NGO key informant shared that, "... because of that history and ties, if you hit a Zimbabwean for instance only to find a South African saying no, he is my cousin, he is my brother. So, if we hit each other here, we are harming one of our own. So, it helps us to understand that these people are our brothers and sisters" (Interview Human Rights Organisation, Musina, March 2020). The cordial relations extended to foreign migrants have also been observed by Vanyoro (2019d) in the provision of healthcare services in the Musina area where healthcare providers serve foreign nationals regardless of documentation status, often citing the fact that their job is to save lives (see also Vanyoro 2019c).

Xenophobia is a key feature of the societal discourse in South Africa, particularly in the migrant dense city of Johannesburg. A number of reasons are given for this, which includes the often-recycled notion that migrants take jobs and compete with South Africans for scarce resources. There is also interplay between sentiment in communities and the influence of politicians that often capitalise on the negative attitudes and attribute economic problems to the presence of migrants in South Africa. However, in Musina xenophobic violence is less prevalent and the economic contribution of migrants is appreciated. This also shows that xenophobia, and the social discussion around migration more broadly, is complex and nuanced.

It also shows the central role that political and community leaders can play in bringing to the public discourse the contributions made by migrants to communities. In Musina, which has the benefit of being smaller than Johannesburg and quite manageable in terms of propagating positive messages to the communities, civil society organisations have worked with the political leadership and actively encourage social

cohesion, and the avoidance of conflict between citizens and migrants.

## 5 CONCLUSION

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States are fundamental to protecting refugees and implementing migration governance, yet especially in the African setting we know very little about what choices are made and what stakes play a role. We know even less about how political instrumentalization of migration governance is made, unfolded, and contested. This report has tried to overcome this gap, analysing the contemporary migration governance in South Africa in light of its political stakes.

We have shown that the governance is characterized by a blurring of categorisation of refugees and migrants as well as an increasingly securitised approach. What was once the most advanced system of refugee protection has become dismantled. This is enveloped by an exclusive immigration system and a weak regional approach in terms of free movement.

The political stakes are threefold: firstly, migration governance is used as leverage in domestic politics. Xenophobic violence against migrant and refugee communities continues routinely, with a lack of political will to address xenophobia at best, and complicity amongst a spectrum of politicians and civil servants including the police at worst. Given the inequality in the country, the record-levels of unemployment, the exclusionary approach works particularly well as a form of leverage in scapegoating the governments' failures to address poverty and job creation. A focus on securitisation, including the very recent passing of the Border Management Authority Act, further concretises an anti-refugee and anti-migrant stance in policy. Secondly, in terms of foreign policy and migration governance, on paper at least, these stand in paradox to the domestic goals. The exclusionary approach

contrasts to visions of free movement and Pan-Africanism as well as the benefits of "skilled" migration. In practice however, domestic imperatives are often strengthened by the approach to foreign policy, such as quiet diplomacy in neighbouring Zimbabwe. Either way, the rampant xenophobia is increasingly resulting in diplomatic tensions with other African countries. Thirdly, there are a number of actors involved in migration governance that take on different political and politicized roles. These include the DHA who enable a performative relationship with civil society actors trying to keep them in check. Refugee activists are side-lined where possible and given a negative portrayal. Watchdog and refugee protection agencies like the SAHRC and the UNHCR are caught up in the political stance of the DHA, questioning the neutrality of their work.

Finally, we take on the societal rhetoric around refugees. We discussed how social xenophobic rhetoric is based on the premises of identity-construction through *othering* as well as being linked to economic deprivation. These discourses are reinforced both through rhetoric by politicians and the media. We show however, that it does not have to be different, like in the case of the border town of Musina.

The current South African government faces an ever-serious economic fallout, not least linked to the COVID-19 shutdown, which has further increased unemployment. Times of economic downturns have often been met with an increase in anti-foreigner sentiment, at worst spilling over into xenophobic violence. Yet, this rhetoric and the policies to match not only dismantle an international rights-based system, but they also entertain an immigration system which does little favours to ensuring a fair and transparent pathway to entering the workforce, for positions and jobs that are needed. Moreover, it contradicts visions of Pan Africanism and free movement ideals.

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## APPENDIX

Name of Committee Meeting	Date	Topics covered
<a href="#">Deputy Minister request for Immigration Act amendment on people who overstay or are illegal foreigners</a>	18 November 2015	immigration
<a href="#">Attracting foreign critical skills in line with National Development Plan: Home Affairs &amp; Engineering Council of SA briefing</a>	25 August 2015	immigration
<a href="#">Refugee Amendment Bill [B19-2015]: finalisation of Committee Bill</a>	4 August 2015	refugees
<a href="#">Draft Refugee Amendment Bill: consideration of submissions</a>	28 July 2015	refugees
<a href="#">Refugees Amendment Bill [B19-2015]: briefing by Parliamentary Legal Adviser; New immigration regulations: Consideration of problems</a>	9 June 2015	refugees, immigration
<a href="#">Refugees Amendment Bill [B19-2015]: Adoption of Memorandum for Committee to introduce this Bill</a>	19 May 2015	refugees
<a href="#">Constitutional Court judgment declaring section 21(5) of the Refugees Act invalid; Committee Strategic Plan; Gauteng Oversight Report</a>	12 May 2015	refugees
<a href="#">Regional Integration and Regional Migration Trends: Home Affairs, IOM &amp; African Centre for Migration &amp; Society briefing</a>	5 May 2015	regional migration policies, immigration
<a href="#">Violence against foreign nationals: Police/Home Affairs report with Home Affairs Deputy Minister &amp; Small Business Development Minister</a>	28 April 2015	xenophobia
<a href="#">Plans &amp; progress in relocation of Refugee Reception Offices a&amp; on implementation of Refugee Regulations: Departmental briefing</a>	3 March 2015	refugees
<a href="#">Congolese Community of South Africa submission; Border Management Amendment Bill: consideration; 2017 Programme</a>	29 November 2016	refugees
<a href="#">Refugees Amendment Bill [B12-2016]: public hearings</a>	15 November 2016	refugees
<a href="#">Border Management Authority Bill: deliberations; Constitutional Court ruling on search and seizure without a warrant</a>	8 November 2016	BMA
<a href="#">Border Management Authority Bill [B9-2016]: deliberations; Department Home Affairs Annual Report: reasons for delay</a>	1 November 2016	BMA
<a href="#">Border Management Authority Bill [B9-2016]: deliberations</a>	25 October 2016	BMA
<a href="#">Border Management Authority Bill [B9-2016]: discussion on way forward</a>	18 October 2016	BMA
<a href="#">Border Management Authority Bill: deliberations; Government Printing Works &amp; Electoral Commission 2015/16 Annual Reports</a>	12 October 2016	BMA
<a href="#">Border Management Amendment Bill: Department response to submissions</a>	20 September 2016	BMA
<a href="#">Border Management Authority Bill [B9-2016]: Department response to submissions &amp; deliberations</a>	14 September 2016	BMA
<a href="#">Border Management Authority Bill [B9-2016]: public hearings, with Minister in attendance</a>	13 September 2016	BMA
<a href="#">Border Management Authority Bill [B9-16]: Home Affairs, SAPS &amp; National Treasury briefing</a>	16 August 2016	BMA
<a href="#">Asylum statistics: Department Home Affairs briefing; Immigration Amendment Bill 2016 deliberations</a>	8 March 2016	immigration
<a href="#">African Union Vision 2063: Home Affairs &amp; DIRCO progress report on migration, regional integration and Africa Passport, with Minister</a>	28 November 2017	immigration
<a href="#">Refugees Amendment Bill: NCOP proposed amendments</a>	21 November 2017	refugees
<a href="#">White Paper on Migration: border refugee processing facilities: implementation by Home Affairs</a>	24 October 2017	refugees
<a href="#">Home Affairs BRRR; Committee Report on Sterkspruit, Eastern Cape oversight; Memorandum in support of migrants and Refugees from Catholic Archdiocese of Cape Town, with Minister</a>	17 October 2017	refugees, immigration
<a href="#">White Paper on International Migration, with Minister present</a>	13 June 2017	immigration
<a href="#">Refugees Amendment Bill [B12B-2016]: voting, with Deputy Minister</a>	8 March 2017	refugees
<a href="#">Refugees Amendment Bill; Border Management Authority Bill: adoption, with Deputy Minister</a>	7 March 2017	refugees, BMA
<a href="#">Refugees Amendment Bill; Border Management Authority Bill: deliberations, with Deputy Minister</a>	28 February 2017	refugees, BMA
<a href="#">Refugees Amendment Bill: Department responses to submissions, with Deputy Minister</a>	21 February 2017	refugees
<a href="#">Refugees Amendment Bill [B12-2016]: public hearings</a>	24 January 2017	refugees

<a href="#">Visa Facilitation Services (VFS) contact: Departments of Home Affairs, International Relations and Cooperation &amp; Auditor-General; with Deputy Minister</a>	5 December 2018	Immigration
<a href="#">Desmond Tutu Refugee Reception Office challenges: Minister &amp; Deputy Minister, SAPS &amp; Tshwane Metro Police briefing; Gupta Naturalisation Inquiry: preparation</a>	11 September 2018	refugees
<a href="#">Desmond Tutu Refugee Reception Office challenges, with Deputy Minister; Gupta Naturalisation Inquiry preparations</a>	4 September 2018	refugees
<a href="#">Immigration Amendment Bill: response to submissions; Civil Union Amendment Bill; Refugee Centres opening delays; Statelessness; IEC Commissioners</a>	28 August 2018	refugees, immigration
<a href="#">Immigration Amendment Bill: public hearings</a>	16 August 2018	immigration
<a href="#">Immigration Draft Bill; Gupta early naturalisation; Election of Chairperson</a>	30 May 2018	immigration
<a href="#">2019 Elections: IEC preparedness; Immigration Amendment Bill; Gupta early naturalisation</a>	29 May 2018	immigration
<a href="#">Minister's explanation for Home Affairs delay on Immigration Act court order; Fireblade Aviation privatisation</a>	08 May 2018	immigration
<a href="#">Section 34 of Immigration Act amendment; Naturalisation of Gupta family; Budget report</a>	24 April 2018	immigration
<a href="#">Issues that affect migrants and citizens: engagement with NGOs &amp; stakeholders</a>	29 Oct 2019	xenophobia
<a href="#">HANIS &amp; Automated Biometric Identification System (ABIS); Bosasa contract at Lindela, with Minister</a>	05 Mar 2019	regional migration policies, immigration
<a href="#">Immigration Amendment Bill: Police Minister &amp; Home Affairs Deputy Minister input; Home Affairs office accommodation: Minister of Public Works input</a>	26 February 2019	immigration
<a href="#">Refugees in Cape Town: stakeholder engagement postponed; with Ministry</a>	1 September 2020	refugees
<a href="#">Roll-out of one-stop border post, refugee processing facility, liquidation of Lindela Repatriation Facility and enhanced movement control systems; with Minister and Deputy Minister</a>	19 May 2020	refugees
<a href="#">DHA 2020/21 Annual Performance Plan; Lindela Repatriation Centre &amp; Shuttered DHA Offices; with Ministry</a>	7 May 2020	immigration, refugees
<a href="#">Refugee situation in Cape Town: stakeholder engagement; with the Minister</a>	10 March 2020	refugees
<a href="#">Department 2019 Quarter 2 &amp; 3 performance; BMA Bill; Impact of SONA, with Minister</a>	18 February 2020	BMA
<a href="#">BMA Bill: NCOP amendments; Performance Audit on undocumented immigrants; with Minister &amp; Deputy Minister</a>	4 February 2020	BMA

## About the authors:

**Dr Khangelani Moyo** is an associate researcher at the Global Change Institute of the University of the Witwatersrand, South Africa. He has a background in sociology and urban studies and his research interests include migration and refugee governance and migrant spaces. He is currently an associate at the Arnold-Bergstraesser-Institute in Freiburg where he collaborates on the political stakes of refugee governance in Africa research project.



**Dr Franzisca Zanker** is a senior researcher at the Arnold-Bergstraesser-Institute in Freiburg, Germany, where she heads the research cluster on “Patterns of (Forced) Migration.” She is a political scientist and her research interests include migration and refugee governance, peacebuilding and civil society. She is currently heading the research project on the political stakes of refugee governance in Africa, see below.



## About the project:

The research project **Displacement in Africa: The Politics and Stakeholders of Migration Governance** considers the political dimension of how individual African states (and with whom) deal



with migration governance in their own contexts. It considers the governance, political stakes and societal discourse of three types of policies, namely *protecting* displaced people, refugees and other migrants, *controlling* migration movements, often in relation to irregular migration and *easing* mobility and freedom of movement.

The project considers the role of different state and non-state actors as well as the regional contexts in South Africa / Zimbabwe and Uganda / South Sudan. Fieldwork was carried out in South Africa and Uganda in 2020.

The project is funded by the **German Foundation for Peace Research**, and led by Franzisca Zanker (Arnold Bergstraesser Institute).

**Contact:** [franzisca.zanker@abi.uni-freiburg.de](mailto:franzisca.zanker@abi.uni-freiburg.de)