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# Migration after apartheid: deracialising South African foreign policy

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ABSTRACT *Some critics have pointed to South Africa's restrictive migration policy as one of the areas most deficient in overturning apartheid legacies. Yet it is not a lack of democratic process that forestalls change—witness open parliamentary debate, an array of think-tanks and researchers providing input into the policy-making process, and the mobilisation of diverse grassroots voices. Rather, a new non-racial xenophobia creates a potent barrier to reform. Therefore, advocates of migrants' rights and opponents of violence should utilise regional and international points of leverage to their fullest potential if post-apartheid South Africa is to fulfill its democratic promise.*

The demise of formal apartheid and the sanctions that accompanied it brought an end to South Africa's fortified borders, both in geographical terms and in the symbolic sense of access to political power. More people, goods and ideas now enter the country, albeit not always easily, cheaply or legally. South Africa's reincorporation in the international system contributes to new pressures on policy makers, not least in the area of migration. Yet these transformations have not resulted in substantial shifts in immigration policy. Even the most recent February 2000 draft Immigration Bill retains a focus on control and enforcement, and the 1998 Refugee Act was passed in part as a measure to forestall perceived abuse of asylum claims. Some critics still call for ever-tougher measures to keep out migrants, while others go so far as to take matters into their own hands by physically attacking foreigners.

Continuities are strikingly manifest in migration legislation. Rooted in the Immigration Regulation Act of 1913, which drew on 19th century policies and practices, apartheid-era laws tightly controlled population flows.[1] Throughout the twentieth century, the government actively sought white settlers but strictly limited Africans to no more than temporary legal entry under the migrant labour system. Only in an attempt to bolster the Bantustans did the government lift explicit bans on black immigration after 1986, while simultaneously reinforcing state policing powers. The last piece of apartheid-era migration legislation, the 1991 Aliens Control Act, codified numerous legislative amendments which had reinforced, over the years, strict controls on the flow of people across the country's borders.[2]

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Critics of post-apartheid migration policy, furthermore, point out that the 1995 Aliens Control Amendment Act, which modified the 1991 provisions, actually increased the scope for repressive powers; in practice police often acted brutally and illegally.[3] More recent migration measures, including the current immigration bill and even the 1998 Refugee Act, still seek to limit population inflows drastically and bolster enforcement measures. The proposed new laws and procedures aim to be compatible with the new 1996 Constitution and the country's international commitments. While the refugee legislation, most observers agree, makes significant strides in this direction, immigration remains tightly controlled. Rights-based sceptics especially see proposals for a separate immigration court system and security force as problematic, and provisions to enable increased inflows of 'skilled' labour fail to satisfy the needs of the business community.[4] In sum, not much has changed since the 1913 Immigration Regulation Act.

This stasis in South African immigration policy derives, I argue, from identity politics. The politics of identity are particularly salient in two legislative areas: principles of citizenship, and distinctions between immigrants and refugees. Combined, both categorise (il)legal immigrants, and thus define 'insiders' versus 'outsiders'. Adopting a theoretical perspective which emphasises the social construction of threats, I demonstrate how the post-apartheid deracialisation of political debate led to a reinterpretation of South Africa's identity in regional and world affairs. Rather than embracing the outside world, a deracialised xenophobia now prevails. Indeed, current controversies over immigration manifest noteworthy parallels to the racial security discourse dominant during the 'total strategy' era.

Most analysis point out that such a *laager* mentality is neither conceptually nor pragmatically viable, although some persist in seeing migration as a threat to security.[5] All but a few observers, even those who advocate strong police powers, concur that no amount of militarisation of South Africa's borders can solve problems rooted in regional and global economic inequalities.[6] Why, then, does the apartheid-era emphasis on guarding territorial borders persist?

Since the 1994 democratic transition, certainly a broader array of voices informs debate, both within the parliamentary process and from society generally. Therefore, if migration policy has not changed as dramatically as critics desire, we need to look for an explanation that goes beyond presumptions of bureaucratic inertia. After all, some changes, such as the specification of refugee status, have been implemented, and many voices propose substantial changes to immigration policy. To understand the delays (and perhaps failure) in these efforts to overturn the legacies of apartheid, we need to examine the new mix of assumptions about South Africa's role in the region and the world.

Democratisation of the policy-making process, I argue, opens avenues for popular influence resulting—ironically—in the persistence of apartheid-style immigration policy. The new non-racial xenophobia frames migration policy through multiple avenues. I examine four dimensions of this process: parliamentary decisions, mass-based societal influences, regional dynamics and international pressures. Despite valid criticism of post-apartheid migration policy, evidence from the policy-making process supports some of the more optimistic

observers of the democratic transition. Much of the public and most members of parliament appear to support strict immigration restrictions; that is, the policy outcome indeed reflects popular preferences. The resulting legislative provisions both fuel and reflect popular views, in a mutually reinforcing process which constitutes South African identity.

But while rising xenophobia might temper exuberance about a greater popular voice in the policy-making process, it also should spur critics to make greater use of these same (legal) avenues for political participation. Whether current anti-foreigner sentiment can be redirected into a more open, and presumably less violence-prone, notion of South African identity remains to be seen.[7] One step in that direction would be for advocates of reform to utilise regional and international points of leverage to their fullest potential.

## Migration, sovereignty, identity

War and environmental devastation involuntarily displace large groups of people; labourers hope for jobs; individual asylum seekers escape political or religious persecution. This flow of people across borders, generated by diverse strategic, economic and cultural pressures, challenges the integrity of states as territorial authorities. The resulting demands on resources and, quite often, diverging cultural assumptions, force states to make critical political, economic and ethical choices.[8] Migration is more than the movement of people across space; it also entails a change in political community.[9] In turn, migration policy—especially the demarcation of 'illegal aliens'—serves to define nationality, citizenship and acceptable cultural characteristics of society, that is, who belongs to the community.

Current debates over the decline of sovereignty in a world of increasing economic competition and contested political identities—'globalisation'—offer a starting point for grasping the political significance of migration pressures on South Africa.[10] The expectation that states can deliver peace and prosperity articulates a particularly 'modern' vision of sovereignty in the international system, one which sees these functions as the foundation of their legitimacy as territorial units of political power. Yet states increasingly come under simultaneous pressures towards internal fragmentation and external integration. For example, global economic pressures and ideologies make redistributive policies increasingly difficult. While the needs of the poor come into ever-sharper relief, working and middle classes also clamour for protection from international competition. In effect, globalisation undermines the ability of states to provide both security and welfare to their populations, thus challenging the traditional conceptualisation of the state.

We see these trends across Europe and North America, but 'semi-periphery' Commonwealth countries like South Africa, Australia and Canada are no exception. No longer an exceptional 'pariah' state, South Africa re-entered a substantially altered international system, where increased capital, population and information flows, intestified cultural interactions, and the expanding scope of global governance all create new challenges to national autonomy. South Africa now struggles to become economically competitive; demands for it to

contribute to regional peacekeeping efforts escalate; the country finds itself the locus for people seeking jobs or fleeing regional conflicts.

The increasing (legal and illegal) flow of people across South Africa's borders is simply a very visible reminder of these new global realities. The apartheid system forestalled non-white immigration—both by creating an inhospitable environment for Africans and by refusing to grant any legal basis for their movement other than as temporary mine workers—and sanctions kept South Africa artificially insulated from general international changes. The government now faces more 'normal' circumstances.[11] When the anti-apartheid movement succeeded in gaining political power in 1994, the value of this prize had already diminished as a result of globalisation.

Pressures resulting from its sudden reincorporation into global economic competition, including the privatisation of state assets combined with increased expectations following the 1994 democratic transition, create strains on the South African state. It confronts challenges both to its ability to satisfy domestic demands (for jobs, new houses, protection from international economic competition) and its legitimacy as a decision-making institution (a new constitution, demands for greater provincial autonomy). Vocal calls to maintain, if not expand, welfare policies and for the exclusion of foreign job-seekers presume a state apparatus able to control its borders and remain the legitimate inscriber of the boundaries of political community. Migration thus highlights both the legal and symbolic dimensions of attempts to exercise state authority, in South Africa and around the world.[12]

As foreigners are portrayed as threats to security and welfare, migration serves as a touchstone for redefining community boundaries. At the heart of these global and domestic pressures lies anti-immigrant xenophobia which questions political identity. Who warrants the legal protection and redistributive benefits of the state? Who is a South African? Policy responses to migration, therefore, function as more than legal measures to control the physical flow of bodies across borders. Symbolic labelling processes identify which specific categories of outsiders are 'illegal aliens', simultaneously defining 'insiders', that is, legitimate South Africans.

In many parts of the world, race plays a persistent role in xenophobic processes of labelling outsiders as foreigners (regardless of their legal status).[13] Throughout Europe, for example, the rise of radical right parties fuels anti-immigrant sentiment, including violent attacks against foreigners reminiscent of contemporary trends in South Africa. Yet these are new forms of abiding xenophobic attitudes that have persisted throughout the past century.[14] Racism in Europe now targets foreigners of a darker hue, such as Turks and Senegalese, or racialises ethnic minorities, such as Albanians.

South African reactions to immigration are in some ways symptomatic of these global trends, but we cannot assume that they will conform to or mimic European or international patterns. Local particularities matter for how anti-immigrant sentiment manifests itself, even if xenophobia generally proves to be a global pattern. Like all states, South Africa continually (re)defines its identity by (re)creating 'outsiders'. The content behind the labels of 'foreigner' or 'alien' varies over time, as social context changes.[15] After apartheid, South Africa seeks

to move beyond racial categorisations. Even though foreign football (soccer) coaches do not escape the growing antagonism towards outsiders, the primary target of contemporary xenophobic sentiment and violence is Africans.[16] The shift away from explicit racialisation—in contrast to both its own history and that of other parts of the world—is notable. Post-apartheid xenophobia takes on a non-racial and non-ethnic face, inscribing a territorially defined national identity.

As social theorists of sovereignty point out, the demarcation of the boundaries between 'inside' and 'outside' are critical in the (re)creation of state identity and legitimacy.[17] Scholars from both postmodern and psychological perspectives emphasise the role of 'the other', that is, outsiders such as migrants, in the creation of enemies and threats.[18] Consequently, identity results not simply from the aggregation of domestic ethnic groups or the triumph of one nationalist agenda over another. Rather, states will redefine their identities in response to changes in the international context, including migration.

Too often these processes of state identity formation are associated solely with domestic ethnicities, both in South Africa in particular and the scholarship on identity in general. I do not argue that domestic ethnicities never matter but that local identity politics are structured by the larger global context. Given the overt role that the apartheid state played in identity formation, the assumption that domestic pressures are paramount is understandable.[19] However, this traditional domestic view ignores crucial international components which even shaped the particular direction of the apartheid project.[20] In the post-apartheid era, these factors, such as global markets and international institutions, become even more salient. The question, then, is how these internal and international factors, and the interaction between them, influence identity formation.

Contemporary debates over globalisation help us to conceptualise the role of the international system in this process. Globalisation draws our attention to the pervasiveness of economic competitiveness and the diffusion of norms in processes of identity construction. For example, the evolving nature of economic production and competition has shaped the relationship between states and markets for hundreds of years, at various times reinforcing or undermining state boundaries. Some now argue that new technologies create methods of production that redefine economic interests in ways that are no longer compatible with traditional territorial definitions of national identity.[21] Concurrently, global standards of rights, including tensions between self-determination and individual liberties, shape the range of legitimate states and the content of demands by political groups.[22] In this context, sociologists and legal theorists explore questions of citizenship for migrants and changes in the boundaries of political community.[23]

My conceptualisation of identity 'from above' reasserts the importance of international influences on domestic mobilisation and agenda-setting, in contrast to conventional comparative political analyses that emphasise domestic dimensions of nationalism and ethnicity. This theoretical perspective draws our attention to the intersection of migration, sovereignty and identity. How a state regulates the flow of people across its borders—which types of immigration and emigration are deemed legitimate—tells us how identity is defined in practice.

Yet the precise processes by which such global characteristics merge with domestic politics to define particular state identities remain unclear.

Contrary to much of the conventional literature on international security, which views threats as objective products of the distribution of military capabilities, I start from the assumption that states *interpret* their security environments. How this process of interpretation operates and which actors are the key interpreters are matters of significant debate among 'constructivist' and 'critical security' analysts.[24] For the purpose of understanding migration policy in South Africa, I adopt the view common to this literature that the social context in which foreign policy is made matters. Thus I explore how the 'discourse of threat' connects global and local identity politics in South Africa. In migration policy making, we witness the perhaps outdated processes of constructing a nation-state within an increasingly global and transnational context.

## The post-apartheid discourse of threat

Traditional approaches to foreign policy analysis present diverse explanations for the lack of clarity in post-apartheid South Africa's stated priorities as well as its often contradictory practice. Many observers, emphasising the importance of individual leadership, assumed that Nelson Mandela determined South Africa's foreign policy and expected Thabo Mbeki to do the same. But such a preoccupation with personality ignores other significant components of the policy process. For example, a bureaucratic politics perspective leads us to explore changes within the Department of Foreign Affairs (DFA) as well as its status relative to other ministries, most recently the rising Department of Trade and Industry (DTI).[25] Another institutionalist view points to schisms within the governing African National Congress (ANC).[26] Certainly we also need to ask how the military has been restructured, as well as the extent to which the whole policy process now offers avenues for popular participation.[27]

Yet a focus solely on the formal (bureaucratic and parliamentary) aspects of the policy process, particularly expectations that the DFA (or the military) will be the guiding light in the post-apartheid era, risks overlooking dramatic changes in who—and what—now shapes South Africa's foreign relations. Not only has the 1994 transition opened the policy-making process, making leaders more sensitive to a broader range of public views, the country's dramatic shift in regional and global politics also places new issues, such as migration, on the 'foreign policy' agenda.[28] Globalisation blurs the distinctions between domestic and international concerns and constituencies.

Two characteristics make migration policy particularly useful for gauging the effects of globalisation on foreign relations. First, the flow of people across borders sits uncomfortably between bureaucratic territories. Since its implications cut across jurisdictions of defence, policing, labour and foreign affairs (among others), migration necessarily challenges traditional policy-making routines and issue-area fiefdoms. In addition, migration results from individual people's choices (in contrast to, say, states acquiring weapons systems) and has a direct impact on populations (rather than at the more aggregate level of, for example, defence budgets). Consequently, it presents an inherently people-

centred policy issue, one likely to generate maximum societal attention compared with what may usually be perceived as esoteric or specialised subjects (like international finance or weapons systems).

Debate over illegal immigration demonstrates that, even as South Africa now strives for leadership in the world, persistent xenophobia limits the extent of any transformation away from a siege mentality. Democratisation does not automatically translate into a more outward-looking and co-operative foreign policy. The demise of apartheid as an ideology means the elimination of race as a legitimising discourse for the state, and by extension its foreign policy. Yet other dimensions of inherited world-views may not be discarded quickly. South Africa's politicians and populace retain a perception and vocabulary that are vestiges of an earlier era. Not just the legislation but also mindsets across society continue to reflect much of the apartheid 'total strategy' discourse.

By the 1970s the military dominated South African politics as a result of this siege mentality.[29] Policy makers presumed that internal discontent derived from external agitation, rather than legitimate opposition to the apartheid system. By blaming its domestic troubles on a communist insurgency backed by the Soviet Union, the regime painted a picture of a hostile outside world, using whatever means possible (military, economic, psychological, cultural) to undermine white rule. South Africa, policy makers believed, faced a 'total onslaught'.

With the dissolution of the Soviet Union, some of the most inflamatory imagery of total onslaught faded, albeit the sense of siege persisted as long as sanctions remained in place through the early 1990s. In the post-apartheid era, subtler elements of the onslaught remain, evident in the vocabulary of recent debates over illegal migrants and immigration policy. A *laager* mentality persists, although the images of what is under threat, and who comes within the protective circle of the wagons, has expanded.

Among these images of onslaught, we see a discourse of threat that again identifies external enemies infiltrating across borders. While these enemies are no longer portrayed in racial terms or as communists, they continue to be identified primarily as a black threat, from continental Africa. As one African migrant recently observed, black South Africans 'regarded us [other Africans] as being better off since racial segregation was not as harsh as it was in here. This made them to treat us with respect. Again the fact that we were all "kaffirs" strengthened our bond. Only now that South Africans are allowed to live in towns [rather than homelands] they have begun ill-treating their fellow African brothers.'[30] Even bonds of black solidarity, in other words, get broken in the post-apartheid context.

As during the apartheid era, South Africans presume their superiority to the rest of the continent, in both economic and political terms. Debates over employment, crime and migration still demonstrate a near consensus on the need to keep the rest of the continent at bay. These popular perceptions are reinforced by most of the literatures on South African politics, foreign policy and migration (among other issues), which lack international and comparative perspectives.[31]

Controversy over the number of illegal aliens in the country is one particularly public aspect of the new onslaught perspective. Estimates in recent studies, often using somewhat dubious methodologies, range as broadly as from two to 10

million unauthorised migrants. A widely quoted Human Sciences Research Council (HSRC) survey in 1996, the source of high-range figures, came under attack for its methodological limitations (particularly its extrapolation from an unrepresentative sample in certain Gauteng neighbourhoods).[32] Others debunk alternative statistical sources, such as deportation figures (a favourite of the Ministry of Home Affairs), because these fail to take into account repeat offenders and, in effect, mostly indicate a rise in effective enforcement. For example, some deportees may persist in crossing borders illegally (even on the same day) as they seek to settle in South Africa (and hence will not be deterred permanently by policing methods). Others may be undocumented traders who periodically cross and recross borders. (Often frequent travellers cannot afford the cost or inconvenience of repeatedly obtaining official paperwork; others may simply overstay their visas.[33]) Despite these problems of inference, inflated figures attain a life of their own, recurring in newspaper reports, parliamentary debates and public discourse, fostering the image of a country under siege.

Another striking aspect of the numbers debate is the picture of infiltration that accompanies the public concern about the massive 'influx' of illegal migrants into South Africa. Many subtleties get lost in the process. One of the most troubling is a widespread failure to distinguish between asylum seekers and other types of migrants. Until 1993, for example, South Africa refused to acknowledge the presence of Mozambicans as refugees fleeing their war-torn country (in part the result, of course, of South African destabilisation policies in the region). At the official level, the situation improved with the accord reached with the United Nations High Commission for Refugees (UNHCR), in effect until 1996, which enabled the repatriation of some Mozambicans. Yet even the UNHCR failed to recognise the complexity of the issues in South Africa, particularly the legacy of (undocumented) refugees who had become integrated into society, many of whom subsequently refused to come forward to be repatriated. A similar low turnout, far below policy makers' expectations, marked an amnesty for undocumented residents from Southern African Development Community (SADC) countries. These relatively ineffective measures indicate a pervasive lack of understanding of the perspectives, and hence motivations, of migrants themselves.[34]

Progress marked by the passage of refugee legislation in 1998 will probably be mitigated when it comes to implementation, because criminalisation is a hallmark of xenophobia.[35] Even the UNHCR criticised South African xenophobia.[36] Securing proper status and paperwork does not protect foreign Africans from harassment, imprisonment and/or deportation. The two most prevalent explanations for these 'mistakes' both focus on the role of the police in enforcing immigration policy. As during the apartheid era, the first critique points to a persistent disregard for legal rights, such as time limitations on detention.[37] Others point to widespread corruption, enabling law enforcement officials, as well as bureaucrats working for the Department of Home Affairs (DHA), to pocket substantial 'fees' for allowing undocumented migrants to remain in the country. News reports along these lines are common and culminated in the departure of the scandal-plagued department's Director-General in October 1999.[38]

A further problem is the disjuncture between official acknowledgement of refugees and societal perceptions. Popular reactions rarely take into account the migrant's legal status. Even legal residents, including asylum seekers who have obtained the right to work, remain subject to attack. Often Mozambicans who have lived peacefully in the country for decades are targeted.[39] Violence against legal foreigners also flared at the mines.[40] In some instances, these legal migrants have been subjected to violent assaults, marched to local police stations by neighbours targeting 'illegal aliens', or refused services to which they are legally entitled. News reports consistently link migrants to unemployment, although concrete evidence of a link between the two is still lacking. Street vendors in particular have borne the brunt of anti-foreigner animosity. Attacks against hawkers are hardly countered by the DHA's public stance that these informal sector jobs need protection from foreigners.[41] Indeed, the draft immigration bill would potentially exacerbate and legitimate this public hostility by institutionalising community monitoring and reporting of suspected 'illegals'.

Particularly striking in this growing xenophobia is the extent to which Africa remains the mental location of the threat. What apartheid defined as the 'black' threat, South Africans now generally apply to the continent as a whole, the *amakwerekwere*. 'Africa' remains a place outside its territorial boundaries, an area rife with crime and political instability. West Africans, and Nigerians in particular, become the stereotypical criminals, followed by Mozambicans and Zimbabweans. Innumerable news reports link illegal migrants with crimes ranging from the drugs trade, car-theft syndicates and covert weapons. One report even linked taxi wars to hired assassins from Mozambique.[42]

Although there appears to be some tendency to distinguish between the southern African region (some tolerance) and the continent (no tolerance), arguments that South Africans have a debt to neighbouring states for harbouring anti-apartheid exiles garners little sympathy. Even public pronouncements of debts to the region from high-ranking members of the government who spent time in exile (in Africa or overseas) have not altered general public views. Rather, these issues become subsumed within broader conflicts between those who participated in the external struggle and those who remained in South Africa. In the end, we should not expect notions of debt without clear domestic political constituencies to garner much influence in policy-making processes. Hence little of a regional post-apartheid dividend has materialised, and public prejudices remain remarkably unchallenged.

Attitudes towards the region further perpetuate views of South Africa's superiority which were the hallmark of the apartheid era. The previous regime revelled in any evidence that Africans sought to enter South Africa, using it as 'proof' to the world that apartheid was 'not that bad' compared with the rest of the presumably impoverished, unstable, conflict- and disease-ridden continent.[43] Such views continue to influence popular perceptions that all of Africa would come south if the country does not prevent this influx.

This general discourse of threat in South Africa creates significant problems. Not only does xenophobia result in ugly incidents of local violence but, at a broader level, these views detract from designing successful policies. Global and regional concerns, including migration, cannot be solved from within a national

perspective; they demand multilateral solutions. Mozambicans continue to flow into South Africa as a legacy of covert warfare during the apartheid era. Similarly, labourers from neighbouring states seek jobs after the slow dismantling of a more-formal regional contract system for the mines. Only economic opportunities decentralised in the region offer a potential solution to large scale economic migration into South Africa. Electric fences and other defensive measures only serve to employ soldiers and police in a futile cycle of arrests, deportations and re-entry.

The overtly racist component of the apartheid version of the security state has been discarded and replaced by a xenophobia articulating a 'national' identity which can encompass South Africans of various hues and most classes. How deep do the socialisation effects of the total strategy discourse run? Is this a vocabulary of the elite, perhaps especially the media? We turn to these questions by exploring the ways in which this discourse of threat influences the policy process.

## Xenophobia in the policy process

The xenophobia evident in public attitudes toward outsiders, and Africans in particular, plays an important role in policy-making, in part precisely because of the opening of the political process in the post-apartheid era. However, discourses of threat do not cause policy outcomes; rather, they frame policy debates. This distinction, critical to a constructivist view, means that discourses narrow (or widen) choices to a range of legitimate options. Those seeking to influence policy, in turn, can either manoeuver within a political process which takes particular discursive assumptions for granted, or they can seek to alter those assumptions. In South Africa, few challenge xenophobic definitions of threat; hence, efforts to reform immigration policy stall.

One of the marked features of contemporary debates over migration is the relative lack of controversy surrounding efforts to stop the influx of 'illegal aliens'. The Minister of Home Affairs, Inkatha Freedom Party (IFP) leader Mangasuthu Buthelezi, consistently advocates strict measures. More surprisingly, so do many within the ANC. Such consensus is particularly noteworthy in light of the depths of disagreement between the two parties in other areas.[44]

Despite their broad agreement, tensions remain which have delayed the production of new legislation. The Home Affairs Minister, criticised by some for not properly supervising migration policy, repeatedly battles with his ANC-dominated staff, even accusing them of sabotaging the department. Following the departure of his corrupt Director-General, Buthelezi fought with Mbeki over the appointment of a replacement, accusing the new Director-General, Billy Masetlha, of being a spy.[45] In addition, the Parliamentary Home Affairs Portfolio Committee, headed by the ANC, has insisted on its right to review and comment on the Immigration White Paper, a legislative process which Buthelezi sought to circumvent.[46] Approval of the February 2000 Bill remains unlikely in the near future as these two policy-making tracks need to be reconciled. However, these bureaucratic tussles are unlikely to alter significantly the content of immigration policy, because neither party seriously challenges the discourse of threat.

Not everyone agrees with the ruling consensus on excluding foreigners. Business seeks to import skills, particularly as the predominantly white 'brain drain' increases. While think-tanks such as the Institute for a Democratic South Africa (IDASA), which drafted the largely disregarded Immigration Green Paper, are not directly mouthpieces of business interests, they retain a public image much within the tradition of 'liberalism' in the South African context. More specifically, some critics claim that their proposed reforms would guard the interests of mining companies and farmers (the largest employers of migrant labour) more than poor and/or unemployed South Africans.[47] Indeed, the public justification for the policing of borders in terms of jobs and government budgets for social services appeals to labour constituencies as well as mass sentiment. Controversies over immigration policy reform thus tap into and exacerbate tensions in the 'corporatist' alliance of business, labour and the state, potentially undermining DTI's economic liberalisation agenda in foreign (as well as domestic) policy.[48]

Human rights groups, in turn, criticise the DHA for its arbitrary and secretive enforcement procedures and consequently demand constitutional protection of migrants. Human Rights Watch released a highly critical report on South Africa's treatment of migrants, which predictably received a scathing dismissal from Buthelezi as 'inaccurate'. He also characterised the report as implying that South Africa should provide five-star treatment to illegal aliens while more than half its citizens lived in poverty.[49] Operating primarily outside the parliamentary process, elite pressures tend to take the form of legal challenges to existing legislation on behalf of 'ordinary' migrants and refugees.[50] In addition, gay rights groups have successfully overturned various practices deemed unconstitutionally discriminatory.[51] Indeed, the need to bring the 1991 Aliens Control Act (and its 1995 Amendment) into line with new Constitutional protection instigated the immigration policy reform process.

Rights groups and their legal actions succeeded in opening the door for policy and procedural reforms by framing their claims in legal rather than foreign policy terms. In response to unfavourable legal rulings, proposals for reforms incorporate provisions for the protection of rights under the new Constitution and for greater transparency in implementation and enforcement. Similarly, the 1998 Refugee Act brings South Africa into compliance both with international obligations and Constitutional provisions. But the Immigration Bill's proposal for a separate Immigration Court has meet with scepticism, both on constitutional and procedural grounds.[52] It is doubtful that these ideas will be adopted in light of their legal shortcomings.

The proposed immigration bill will also probably be modified further, rather than implemented as drafted, because mass-based demands counterbalance the reformist pressures of business elites and human rights groups. Most notable are hawker protests and more spontaneous violence against foreigners. Of course, illegal immigrants are in no position to call for police protection (leaving aside, for the moment, issues of the police force's own brutal treatment of migrants). Given South Africa's history of mass-based extra-parliamentary politics, this trend of grassroots violent action against foreigners should come as no surprise.

Nonetheless, signs of counter-mobilisation are increasing. In 1996 refugees in Johannesburg protested at the withdrawal of UNHCR benefits. More recently, Ethiopian asylum seekers, supported by the Ethiopian Community Committee, marched to the Union Buildings in Pretoria to appeal for refugee status.[53] These protesters, in essence, are calling upon the South African state to abide by its commitment to international norms such as non-*refoulement* of refugees and other protection for asylum seekers.

Groups of legal migrants and asylum seekers, however, do not have natural advocates within the parliamentary process, if for no other reason than that they lack rights of citizenship and thus electoral salience. Thus far the Democratic Party (DP) representative, Dene Smuts, cames closest to being an advocate of migrant and refugee rights in Parliament, presumably because the issue falls easily within the broad contours of the party's agenda, which concentrates (in the post-apartheid era) on constitutional protection and concerns over crime.

With little reason to foresee wider domestic support, regional and international actors present potentially useful—perhaps necessary—advocates and allies for those seeking changes in migration policies. Without strong regional or international pressures, it is unlikely that (legal or illegal) migrants' influence will counterbalance the prevalent 'democratic xenophobia' that represents a broad-based constituency for most South African politicians.

On the surface South Africa's role in the region has shifted since its 1994 inclusion in SADC. However, in terms of the political balance in the region, little has changed. Bilateral consultations, in areas such as labour and refugees, perpetuate South African dominance. For example, in 1995 SADC first proposed in principle the evolution towards a regional free market for labour modelled loosely on the European system. South Africa firmly resisted such scenarios, and by 1997 SADC proposed a more limited protocol. In addition, discussion of multilateral co-ordination of social policies also failed to find a sympathetic audience. Rather, South Africa at best maintains bilateral consultations with neighbouring states on these issues.[54]

Responsibility for continuing South African hegemony, however, cannot rest solely at the level of the state, as transnational social initiatives and organisations have also been slow to develop.[55] COSATU, the trade union confederation, in principle calls for better treatment of migrants and the development of co-ordinated regional policies. Yet trade union regionalisation flounders, in large part because of the tendency of South African trade unions to align with South African industries.[56] However, COSATU's practice can also be understood in class terms. Within South Africa, it seeks to preclude stratification among workers, especially the further development of a non-unionised underclass of illegal immigrants in agriculture (a major employer of undocumented foreign workers).[57] Variations between unions also matter. Although it is generally against the migrant labour system, the National Union of Mineworkers (NUM) in particular has been a strong advocate for the rights of migrant workers (who are their members), including citizenship rights.[58] Particular unions, furthermore, experience tensions between national leadership and local branches on the migration issue. Overall, such differences can create or exacerbate divisions

within the labour movement, with implications both for South African policy and for the development of transnational pressure groups.

Regional analysts point out that countries clearly have no incentive to increase social benefits unilaterally, as this would simply increase the flow of migrants, in turn increasing social expenditures.[59] Co-ordination of social policies for migrants would, therefore, be a key component of a regional solution. But many of these states have yet to adopt international norms, such as those articulated by the International Labour Organisation (ILO). Presumably in the case of South Africa, such delays are partially the legacy of decades of isolation (hence the liberty to disregard multilateral standards). As long as regional relations remain bilaterally dominated by South Africa, none of the other states in the region can implement changes unilaterally.

Refugee policy, nonetheless, demonstrates that South Africa does abide by international agreements, when they exist. In particular, refugee flows and state responses to them are structured and regulated by international norms and institutions. The very definition of a refugee, for example, hinges on a 1951 UN convention which underpins international obligations on states to provide asylum. Resources then flow through the UNHCR and subcontracted non-governmental organisations. During the apartheid era, South Africa refused to grant Mozambicans refugee status, thus foregoing access to these international resources. By the mid-1990s, in contrast, South Africa shifted its position, thereby garnering UNHCR assistance.

Yet in practice, looking at individual migrants 'on the ground', it is often difficult to identify or distinguish between refugees and job seekers. Not surprisingly then, the South African populace rarely distinguishes between illegal immigrants and legal refugees; asylum seekers can hardly hope that an angry mob will ask for residency papers. Indeed, South Africa adopted the narrow UN definition of a refugee and instituted standard review procedures in order to reinforce exclusion of most migrants, so that few can apply for asylum in the first place.[60] The legislative separation of immigration and refugee policies further balkanises and bureaucratises the issues at the same time that the populace resists the legitimacy of refugee status as a legal category.

South African refugee policy thus conforms to international norms in principle, but practice leaves room for improvement. Global principles do provide pressures which can influence domestic policy choices. But these external resources and pressures need to be mobilised—presumably by transnational actors rather than by states.[61]

## Conclusion

Democracy, as witnessed in the migration area, does not necessarily lead to domestic peace or regional co-operation. The rising tide of xenophobia against the influx of foreigners creates a potent barrier to reforms in immigration policy. Ironically, it is not the failure of public input into policy that forestalls change—witness open parliamentary debate, the array of think-tanks and researchers providing input into the policy process, and the 'lively' mobilisation of grassroots voices on both sides. Despite its conservative orientation,

migration policy should not be overly criticised for merely replicating apartheid era practices; it is indeed largely the result of the contemporary political dispensation and popular views.

The full implications of current trends, however, should also prevent any complacency about the scope of the post-apartheid transition. A more open political system provides opportunities for perspectives of all persuasions. Advocates of migrants' rights and opponents of xenophobic violence need to take advantage of these avenues and—equally importantly—recognise the ways in which international resources and transnational allies can enable the 'new' South Africa to fulfil its democratic potential. These struggles over identity and the boundaries of political community will shape a broad range of foreign policy decisions, determining the extent to which South Africa constructs a nation-state in an era of globalisation.

## Notes

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[1] For a history of South African immigration policy, see E Bradlow, 'Immigration into the Union 1910–1948: policies and attitudes', PhD thesis, University of Cape Town, 1978; and S Peberdy, 'A brief history of South African immigration policy', Briefing Paper for the International Migration Green Paper, 1997, www.polity.org.za/govdocs/green_papers/migration/histsa.html.

[2] For a concise overview of the provisions of these various amendments, see S Peberdy, 'Obscuring history? Contemporary patterns of regional migration to South Africa', in D Simon (ed), *South Africa in Southern Africa: Reconfiguring the Region*, Oxford: James Currey, 1998, pp 191–192. This pattern of apparent elimination of racial discrimination combined with increasing state power typified reforms in the 1980s.

[3] For broad-ranging critiques, see contributions in J Crush (ed), *Beyond Control: Immigration and Human Rights in a Democratic South Africa*, Cape Town: Southern Africa Migration Project (SAMP), 1998.

[4] See, for example, responses during the White Paper hearings before the Home Affairs Parliamentary Committee on 26 October 1999, 17 May 2000 and 19 May 2000 (www.pmg.org.za). Perspectives on these laws and proposals will be discussed in greater detail below.

[5] A representative sampling includes: M R Sinclair, 'Community, identity and gender in migrant societies of southern Africa: emerging epistemological challenges', *International Affairs*, 74 (2), 1998, pp 339–353; and M Reitzes, 'The migrant challenge to *Realpolitik*: towards a human rights-based approach to immigration policy in South and southern Africa', Foundation for Global Dialogue, Occasional Paper No 7, Johannesburg, January 1997, pp 1–29. In contrast, H Solomon advocates a security perspective in 'From accommodation and control to control and intervention: illegal population flows in South Africa', in RI Rotberg & G Mills (eds), *War and Peace in Southern Africa: Crime, Drugs, Armies and Trade*, Washington, DC: Brookings Institution, 1998, pp 122–149.

[6] See, for example, Deputy Foreign Minister Aziz Pahad's response in parliamentary debate, 18 May 1995, reprinted in C Landsberg, G LePere & A van Nieuwkerk, *Mission Imperfect: Redirecting South Africa's Foreign Policy*, Johannesburg: Foundation for Global Dialogue and the Centre for Policy Studies, 1995, p 130; and the International Labour Organisation, Southern Africa Multidisciplinary Advisory Team (ILO/SAMAT), 'Labor migration to South Africa in the 1990s', Policy Paper No 4, Harare, May 1998, as well as the current draft immigration legislation.

[7] Reitzes goes so far as to advocate fostering notions of 'citizenship' rather than 'nationalism', as an alternative focus for post-apartheid state building; M Reitzes, 'Insiders and outsiders: the reconstruction of citizenship in South Africa', *Policy: Issues and Actors*, Johannesburg: Centre for Policy Studies, February 1995, pp 1–36.

[8] M Weiner, 'Introduction: security, stability and international migration', in Weiner (ed), *International Migration and Security*, Boulder, CO: Westview, 1993, pp 1–35.

[9] A R Zolberg, 'Labor migration and international economic regimes: Bretton Woods and after', in M M Kritz, L L Lim & H Zlotnik (eds), *International Migration Systems: A Global Approach*, Oxford: Clarendon, 1992, p 320.

[10] J G Ruggie, 'Territoriality and beyond: problematizing modernity in international relations', *International Organization*, 47 (1), 1993, pp 139–174; S Sassen, *Losing Control? Sovereignty in an Age of Globalization*, New York: Columbia University Press, 1996; and R Diebert, *Parchment, Printing and Hypermedia: Communication in World Order Transformation*, New York: Columbia University Press, 1997.

[11] This is not to say that South Africa remained insulated from international pressures to get rid of apartheid—to the contrary, sanctions significantly contributed to the democratic transition. See N C Crawford & A Klotz (eds), *How Sanctions Work: Lessons from South Africa*, Basingstoke: Macmillan, 1999.

[12] T M Wilson & H Donnan, 'Nation, state and identity at international borders', in Wilson & Donnan (eds), *Border Identities: Nation and State at International Frontiers*, Cambridge: Cambridge University Press, 1998, p 2.

[13] K A Manzo, *Creating Boundaries: The Politics of Race and Nation*, Boulder, CO: Lynne Rienner, 1996; R L Doty, 'Immigration and national identity: constructing the nation', *Review of International Studies*, 22 (3), 1996, pp 235–255; and M Tesfahuney, 'Mobility, racism and geopolitics', *Political Geography*, 17 (5), 1998, pp 499–515.

[14] S Sassen, *Guests and Aliens*, New York: New Press, 1999.

[15] D Campbell, *Writing Security: United States Foreign Policy and the Politics of Identity*, Minneapolis, MN: University of Minnesota Press, 1992.

[16] Following Bafana Bafana's loss in the 1998 World Cup, their French coach became a favourite target of anti-foreigner sentiments. See A Johnson, ' "Go back to your country" ', *Mail and Guardian* (Johannesburg), 26 June 1998, p 6. Links between sport and (gendered) identity should not be underestimated. See D Black & J Nauright, *Rugby and the South African Nation*, Manchester: Manchester University Press, 1998.

[17] R B J Walker, *Inside/Outside: International Relations as Political Theory*, New York: Cambridge University Press, 1993; and T J Biersteker & C Weber (eds), *State Sovereignty as Social Construct*, Cambridge: Cambridge University Press, 1996.

[18] Campbell, *Writing Security*; J Mercer, 'Anarchy and identity', *International Organization*, 49 (2), 1995, pp 229–252.

[19] See L Vail, *The Creation of Tribalism in Southern Africa*, Berkeley, CA: University of California Press, 1989.

[20] A Klotz, 'Diplomatic isolation', in Crawford & Klotz, *How Sanctions Work*, ch 10.

[21] R B Reich, *The Work of Nations: Preparing Ourselves for 21st Century Capitalism*, New York: Knopf, 1991; K Ohmae, *The End of the Nation State: The Rise of Regional Economies*, New York: Free Press, 1995; and S Sassen, *The Global City: New York, London, Tokyo*, Princeton, NJ: Princeton University Press, 1991.

[22] R H Jackson, *Quasi-States: Sovereignty, International Relations and the Third World*, New York: Cambridge University Press, 1990; A Klotz, *Norms in International Relations: The Struggle against Apartheid*, Ithaca, NY: Cornell University Press, 1995; C Clapham, *Africa and the International System: The Politics of State Survival*, Cambridge: Cambridge University Press, 1996; and S N Grovogui, *Sovereigns, Quasi Sovereigns, and Africans*, Minneapolis, MN: University of Minnesota Press, 1996.

[23] R Baubock, *Transnational Citizenship: Membership and Rights in International Migration*, Aldershot: Edward Elgar, 1994; Y N Soysal, *Limits of Citizenship: Migrants and Postnational Membership in Europe*, Chicago, IL: University of Chicago Press, 1994; and F Kratochwil, 'Citizenship: on the border of order', in Y Lapid & F Kratochwil (eds), *The Return of Culture and Identity in IR Theory*, Boulder, CO: Lynne Rienner, 1996, pp 181–197.

[24] See contributions in P J Katzenstein (ed), *Culture of National Security*, New York: Columbia University Press, 1996; K Krause & M C Williams (eds), *Critical Security Studies*, Minneapolis, MN: University of Minnesota, 1997; and J Weldes *et al* (eds), *Cultures of Insecurity: States, Communities, and the Production of Danger*, Minneapolis, MN: University of Minnesota Press, 1999.

[25] M. Muller, 'South African diplomacy and the security complex theory', *Round Table*, 352, October 1999, pp 585–620, esp 597–602; and G Mills, 'South Africa's foreign policy: from isolation to respectability?', in D Simon (ed), *South Africa in Southern Africa*, Oxford: James Currey, 1998, pp 79–80.

[26] P Vale & S Maseko, 'South Africa and the African renaissance', *International Affairs*, 74 (2), 1998, pp 271–287; and G Evans, 'South Africa's foreign policy after Mandela: Mbeki and his concept of an African renaissance', *Round Table*, 352, October 1999, pp 621–628.

[27] P Vale, 'Meiring's passing comes none too soon', *Mail and Guardian*, 9 April 1998; P Vale & I Taylor, 'South Africa's post-apartheid foreign policy five years on—from pariah state to "just another country"?', *Round Table*, 352, October 1999, pp 629–634; J van der Westhuizen, 'South Africa's emergence as a middle power', *Third World Quarterly*, 19 (3), 1998, pp 435–455; and P Nel, 'The foreign policy beliefs of South Africans: a first cut', *Journal of Contemporary African Studies*, 17 (1), 1999, pp 123–145.

[28] Since 1999 even the DFA now acknowledges migration as a key security issue; for the complete list of issues, see Muller, 'South African diplomacy', p 596.

[29] For details, see K W Grundy, *The Militarization of South African Politics*, Bloomington, IN: University of Indiana Press, 1986; and J Barber & J Barratt, *South Africa's Foreign Policy: The Search for Status and Security, 1945–1988*, Cambridge: Cambridge University Press, 1990, ch 13.

[30] Interview with M R Sinclair, quoted in 'Community, identity and gender', p 345.

[31] See J Barber, 'South Africa: the search for identity', *International Affairs*, 70 (1), 1994, pp 67–82; J Crush & W James (eds), *Crossing Boundaries: Mine Migration in a Democratic South Africa*, Cape Town: IDASA, 1995; and A Minnaar & M Hough, *Who Goes There? Perspectives on Clandestine Migration and Illegal Aliens in Southern Africa*, Pretoria: Human Sciences Research Council, 1996. One of the rare exceptions is H Solomon, 'Migration in southern Africa: a comparative perspective', *Africa Insight*, 24 (1), 1994, pp 60–71.

[32] See J Crush, 'Covert operations: clandestine migration, temporary work, and immigration policy in South Africa', SAMP Migration Policy Series No 1, Cape Town, 1997, p 18; and M Brunk, 'Undocumented migration to South Africa: more questions than answers', Cape Town: IDASA Public Information Centre, 1996.

[33] For elaboration on these distinctions among types of migrants and some of the methodological implications, see D McDonald, J Gay, L Zinyama, R Mattes & F de Vletter, 'Challenging xenophobia: myths and realities about cross-border migration in southern Africa', SAMP Migration Policy Series No 7, Cape Town, 1998; ILO/SAMAT, 'Labor migration to South Africa in the 1990s', pp. 9–15.

[34] Peberdy, 'Obscuring history?', pp 197–198; M R Sinclair, 'Solidarity and survival: migrant communities in South Africa', *Indicator South Africa*, 15 (1), 1998, pp 66–70.

[35] Tesfahuney, 'Mobility, racism and geopolitics'; and Peberdy, 'Obscuring history?', pp 199–200. Such a focus is clearly reminiscent of Foucault. See M Foucault, *Discipline and Punish: The Birth of the Prison*, A Sheridan (trans), New York: Vintage, 1979.

[36] *Daily News* (Johannesburg), 21 September 1999, p 8. South Africa has also repeatedly declined UNHCR offers to assist in processing the backlog of applications for asylum. *The Star* (Johannesburg), 9 December 1999, p 7.

[37] See the contributions in Crush, *Beyond Control*, esp S Duncan, 'Bad law: applying the Aliens Control Act', pp 149–59.

[38] Mbeki ultimately fired Albert Mokoena after findings of misconduct. *Business Day* (Johannesburg), 26 October 1999, p 1.

[39] In August 1999 the government extended eligibility for permanent resident status to Mozambican refugees who arrived before 1992. *City Press*, 15 August 1999, p 2.

[40] Z Mtshelwané, 'Mine violence', *South African Labour Bulletin*, 19 (2), 1995, pp 55–56.

[41] For example, 'We must protect SA hawkers, says Min', *The Citizen* (Johannesburg), 20 August 1997, p 15. See also 'Comment' in *The Sowetan* (Johannesburg), 20 August 1997, p 8.

[42] 'Taxi bosses hire assasins', *Mail and Guardian*, 29 May 1998, p 7. Such views are also evident in scholarly perspectives. For example, R I Rotberg & G Mills (eds), *War and Peace in Southern Africa: Crime, Drugs, Armies and Trade*, Washington, DC: Brookings Institution Press, 1998, includes a chapter on migration, thus equating the flow of people with crime, drugs and arms.

[43] For example, the South African trade mission in Harare delighted in creating long lines for visas as a way to send a visual signal to the Zimbabwean pro-sanctions regime that its populace wanted to trade despite apartheid. Personal observation and anonymous interview with South African immigration official, Harare, November 1989.

[44] Parliamentary debates demonstrate this general consensus. For example, see debates over budget allocation for Home Affairs since 1994: *Hansard*, 9 August 1994, cols 1017–1097; 11 May 1995, cols 1104–1171; 4 June 1996, cols 2105–2180; and 17 April 1997, cols 1235–1322.

[45] Masetlha came to home affairs from the secret service, hence the reference to spying. On the appointment controversy, see the *Sunday Independent* (Johannesburg), 5 December 1999; *The Citizen*, 6 December 1999, p 6; and *Business Day*, 7 December 1999, p 1.

[46] *ePolitics*, 13, 13 April 2000, www.idasa.org.za/epolitics/epolit13.htm; and Home Affairs Portfolio Committee hearings, 17 May 2000 and 19 May 2000.

[47] See, for example, an exchange in response to SAMP's 'Challenging xenophobia' report in the *Sunday Independent* on 16 April 1998, p 3; 10 May 1998, p 11 and 17 May 1998, p 11. These views continue to be evident in debates over the White Paper and Bill, as evident in testimonies before the Parliamentary Portfolio Committee by trade union, human rights and business groups.

[48] Immigration thus runs against the consensus that van der Westhuizen identifies as critical to a successful foreign policy ('South Africa's emergence as a middle power').

[49] Human Rights Watch, '*Prohibited Persons': Abuse of Undocumented Migrants, Asylum Seekers, and Refugees in South Africa*, New York: Human Rights Watch, March 1998; 'Rights Report "Inaccurate" ', *Cape Times* (Cape Town), 26 March 1998, p 6.

[50] On court challenges, see A Katz, 'Immigration and the courts', and L A de la Hunt, 'Refugees and immigration laws in South Africa', both in Crush (ed), *Beyond Control*, pp 79–91, 123–148, respectively.
[51] *Sunday Independent*, 17 May 1998, p 3; and *The Star*, 6 December 1999, p 8.
[52] See, for example, testimony at the Parliamentary Home Affairs Portfolio Committee hearings by the Human Rights Committee of South Africa (17 May 2000) and the South African Human Rights Commission (19 May 2000).
[53] 'Asylum seekers in plea to state', *Pretoria News*, 28 May 1998, p 3.
[54] See, for example, E Fultz & B Pieris, 'The social protection of migrant workers in South Africa', ILO/SAMAT Policy Paper No 3, Harare, November 1997.
[55] ILO/SAMAT, 'Labor migration to South Africa in the 1990s', pp 40–42.
[56] Interview with Peter Peek, Director, ILO/SAMAT, Harare, 4 June 1998.
[57] L Zita, 'COSATU reassesses international policy', *South African Labour Bulletin*, 19 (2), 1995, pp 87–90; COSATU testimony before the Home Affairs Portfolio Committee, 19 May 2000.
[58] Mtshelwane, 'Mine violence', p 56; and Peberdy, 'Obscuring history?', p 193. Presumably NUM pressure played a critical role in the decision to give miners the right to vote in the 1994 elections.
[59] Fultz & Pieris, 'The social protection of migrant workers in South Africa'.
[60] *Pretoria News*, 19 June 1998, p 7.
[61] Some preliminary initiatives in this direction, such as ILO support for the Southern African Trade Union Coordination Council (SATUCC), indicate such possibilities. 'Interview: Morgan Tsvangirai: SATUCC's new agenda', *Southern African Labor Now* (Newsletter of the ILO/SAMAT), 2, Harare, September 1997, p 4.


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