



Towards a Rights-Based Human Migration Policy in South Africa

A Colloquium held at Goedgeacht

21 - 22 June 2011

Under the Auspices Of:

The Black Sash

The Goedgeacht Forum

The Harold Wolpe Memorial Trust



FOREWORD

The 2008 xenophobia attacks was a very violent and visible wakeup call to the country to focus attention on the reality of human migration and its impact on South African society. In addition the skills shortage in the country that is impeding economic growth necessitates the active recruitment of skilled persons to migrate here as a short-term response to the need. The Black Sash, Goedgedacht Forum and Harold Wolpe Memorial Trust partnered in facilitating a dialogue on this subject, particularly since amendments to the relevant legislation is being debated by the policy makers at this time.

Programme

Tuesday, 21st June

Session 1: Setting the Scene

14h10 **Presentation:** Prof. Lawrence Piper: Economic competition and popular attitudes towards migrants at the local level including homogeneity and social cohesion at the local level.

14h30 **Discussion**

Wednesday 22nd June

09h00 **Introduction:** Facilitator – Nkosikhulule Nyembezi

Session 2: The Policy and Legislative Framework

09h20 **Presentation:** The current legislative process and regulations:
Nkosikhulule Nyembezi

09h40 **Discussion**

Session 3: International Experience

11h20 **Presentation:** Positive economic aspects of migration based on the recent Brazil ‘World Urban Cities Conference and Migration Patterns’:
Elroy Paulus

11h40 **Discussion**

Session 4: The Way Forward

14h00 The Way Forward

15h30 Closure and Thanks

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SESSION 1: SETTING THE SCENE¹

--Professor Laurence Piper,
Head, Department of Political Studies
University of the Western Cape

In Du Noon, where xenophobic attacks started and where civil society was active, points were made about price increases and inconvenience after attacks. It is not clear if South Africans who took over took advantage and inflated prices, or whether it is due to Somali buying power.

The other thing is the Somali barter system. Many have daily wage jobs. They want to purchase just enough for that night or day's meal – the South African shop owners do not apply this model. The General Household Survey and the Human Sciences Research Council survey looked at nutritional value and meagre income. Some choose to buy bread and fried meat from street corners. This unbalanced diet is driven by income.

The story from Imizamo Yethu in Hout Bay is that Habitat for Humanity did a survey on what kind of house would allow for study, cooking (fire safety), stability and good livelihood. They built houses and returned after 18 months to make assessments. Many people had built a backyard shelter and rented out the house proper to foreign nationals, particularly Somalis. They claimed that their lives had changed due to a regular income, that is, rental. In the wake of unemployment, people said they were unable to pay for services, so it was better to rent out the house. As this study expands, it will be good to pick out other factors affecting these situations.

Many of the people who reside in Delft are overflow from historical townships. It would be interesting to compare with a place like Atlantis which has a very apartheid-era structure. Wasn't it an area built for Coloured people and then "invaded" in 1992/1993 by people from Langa and Khayelitsha? As this happened on eve of elections nothing was done and so the area ended up mixed. A similar situation happened in KwaZulu-Natal. People took pictures of this time in Delft, especially with De Klerk wearing a new shirt and Basotho blanket. I was thinking of the new extension towards Eerste Rivier that was part of Premier Rasool's building project. The participant still wants to do some statistical mapping of spaza locations to see what comes out. Delft is close to Bellville which is the hub of the Somalis. Initially you create links in terms of supply in Bellville, and so it becomes a distribution point in terms of human resources.

Trade

The Somali Retailers' Association has an almost innate sense of the amount of people living in an area from their history of trading. Someone will look at the number of people living and moving on the streets and be able to say whether an area can hold a shop. They

^{1 1} This section reflects the input by Professor Piper, as well as the comments made by participants.

tend to have informal agreements among themselves as to locations of shops. There is a lot of bribing and paying each other to persuade landlords and for leads or standard business practices. There are people who go around and find properties that other people can move into. There are a whole lot of facets to how they have organised themselves. There are written agreements to not trade – one person had to pay R500 a month not to trade. Or there is an agreement that one person puts the container down and is paid to leave.

The way trade agreements are made is also problematic. In some cases, government officials, civil society, police and even the UNHCR are responsible for making peace agreements that are quite restrictive. In Swellendam, the Somali community had been reduced by 70% in the last year by an agreement made by one person through shop policy that is used to restrict people. They issue illegal trading notices and fines until the person gives up. It is a bizarre form of community policing. This person said to a Somali: “Your coming here meant my father had to close his shop. Now I have the power to close you down.” Local means even price fixing is used because there are no proper agreements in place. In Kraaifontein, there is relative stability due to the hard work of police and others, but it only needs one person to leave and the entire agreement goes out of place.

There seems to be a main road running parallel to the R300 and there are definite string interruptions between spazas, better than the spazas on the inside. This demonstrates the intention along with the buying power of Somalis.

Sometimes we tend to exoticise what foreigners are doing. About 10 years ago, research in a Senegalese community involved in the clothing business showed the same dynamic of international contacts, bulk buying, mentoring new arrivals and letting them go on their own. They got squashed by Customs. People are going to Singapore or Manchester regularly to get their products. It is the same model, but with Somalis it is in our faces so it is causing tension. There is resentment towards those who do well in business. Township communities have said that there is this resentment against those who do well.

What’s the difference between Walmart coming into South Africa and its relationship with Pick ‘n Pay and others and Somalis coming here to trade? The UN Convention! The DTI!

It is extremely difficult to run a legal business in South Africa. The pressure coming on shebeens is exactly the wrong way to deal with informal businesses. They are one of the few ways people can run a business in townships. You can take them away but people will still spend on alcohol but not in the townships. There are ways for people to incentivise ways to spend in townships. There are endless by-laws that are enforced in some areas and not enforced in others that don’t have the capacity to enforce them– they are incredibly confusing. It is not unusual to see people selling fake CDs, T-shirts, etc. Police are clamping down on informal business, including ‘working class pubs’ and some believe it is a prominent political party that is pushing this agenda. It was necessary for an amnesty period to allow Zimbabweans to process their documents; the same process should be done with shebeens and with spazas. We must have agreed-upon trade routes

or local mayors, councillors and MECs will make unequal decisions as to how many traders can be on a block. At some point spazas will need business licences. The department of trade and industry should see this as an opportunity. They should place toilets next to them. Organisations like SANCO end up hijacking decision over whether it is correct to place a spaza and tell police who to raid. The government doesn't have the capacity to arrest every shebeen owner. It is a question of resources. The same applies to the deportation order for Zimbabweans. Now that they have decided to deport a certain amount, the question is how many to deport based on budget. There is no difference between deportations and xenophobia. We need to formalize the informal economy. But there must be a window period for spazas and shebeens and laws must be amended that allow provisions for smaller businesses. It is actually a capitalist matter to strengthen larger businesses. The issue of migration and informal businesses must be dealt with in the same way. We need a regulated environment or corruption will thrive. Deportations will mean that foreigners will become ATM machines. One in every twenty won't meet legal requirements at this rate and therefore police will have a lot of power on the ground. We need to formalise these issues into one system, not like apartheid where we had two or three systems. We need requirements that may contribute to employment.

Conflict

In Alexandra, Diepsloot and in Gauteng, conflict has been expressed as due to undercutting and over-concentration, but also quality of goods. There are accusations from organised spaza shop traders that expired consumption goods such as tinned food or soap are sold from Somali shops. We need to think how supply chains are putting pressure on products. At Masiphumelela the local community came out two days after attack. They returned goods, identified perpetrators, welcomed them back. But after the soccer world cup, it seems conflict is between Somalians, not between South Africans and Somalis. The informal economy is huge because people are trying to find ways to survive.

The report of a court case involving the police's response to shops in Zwelithemba looked at what the problems were. It is a community that is very, very organised in mobilising. Someone just has to come out in the street and shout and they throw rocks. They stoned the mayor, the stone everyone including shopkeepers. So Somalis also look at which communities are activist and have a communal memory of activism.

Integration

Other things communities bring up when talking about Somalis is that they are dirty. This is due to four things: they are Muslim therefore they are other; they sleep in their shops; they smell different (including perfume) and they don't have much command of the language. This irritates people and causes misunderstandings. People complain that prices are not transparent and they feel that people get different prices due to one's knowledge or ignorance of prices. People also complain about integration that is, Somalis don't braai or drink alcohol with the communities, and neither do they employ South Africans. The Somalis don't feel they can trust South Africans. Many Somalis cannot get bank accounts and so are afraid that employed South Africans will tell others where the cash is.

One person is working about integrating Somalis into South African communities. He has succeeded in learning Afrikaans with a Cape Flats accent. He said that the way he stays safe in places like Lenasia and Soweto is that he has offered to train South African children in business practices. There are ways we cannot integrate for cultural reasons. In situations of stress, people stick together due to cultural identity.

Somalis are very expressive people. It is challenging as every issue is expressed. This is seen in very challenging situations where everyone is suffering and so they have to fight for everything. People have moved down to South Africa through different migrant camps – maybe three or four. The cream of the crop is living in Western countries that are presented as lands of milk and honey. But South Africa has a population that has survived tremendous hardship and are very good business people. The reason they suffer is because of racial issues. Just like there is a generalisation that white people cannot differentiate between black people, black South Africans cannot always tell who Somalis are. Perhaps they are seen as a different race such as Coloured. Because they are Muslim they do not get involved in churches and this is a very big means of integration. The Congolese have their churches. Not being able to tell the difference between one Somali and another perpetuates the idea that they are taking over. The discussant would like to see a survey of black South Africans to see whether or not this is the case. It is also the way the spazas work. One day a person buys from one ‘Mohammed’, the next from another person on shift. And so they think they are different. There isn’t an attitude of “let’s fix the problem and go back”. They have given up. There are no organisations in the Somali community that are lecturing South Africans on the situation there. Do any South Africans have an understanding of the political situation there and if not, why not? It is important to have these forums to educate locals about what is going on in these countries. Some locals fight Somalis because they don’t know the reasons for their presence in this country. It is important to use different mediums to highlight these issues in the media, churches and other places. Migration policy is a foreign policy issue, and so we must intervene in Swaziland and Zimbabwe. People come here because there are problems. South Africa is known as a terrible destination for foreigners yet they still come, so we need our government to hold leadership accountable or we end up paying. CORMSA had in their latest newsletter that there is an attempt to control migration. There is a move to not allow Somalis in and keeping them in Zimbabwe or setting them in another camp. But the reality is that Somali traders provide a service that benefits an entire community, whereas with other populations; for example Zimbabweans, we are depending on tolerance.

The discussants need to look at how people integrate into the economy and that is the informal economy for most migrants. The discussants need to look at it from a point of development for South Africans per se and also need to get an understanding of how to contain and how to incentivise it by a revamping of the system. As regards legality, there are examples where law can have an integrating effect, such as conflict resolution and the Roman law used in Europe for contracts. Are there any examples of how law is used to settle disputes? What aspects of South African law are drawn into this process? There might be aspects of law that can transcend the informal sector.

Legislation

What is so surprising is that South Africa has been under democracy for 17 years and we have an informal business sector that is not controlled by legislation. South Africans don't have a policy to control this. It is regarded as an unimportant sector. So South Africa has big companies from China or companies like Walmart investing here but when Somalis want to have a positive effect on our economy, the government does nothing. It is a very critical sector. Government must do something to protect it. The role is also on the Somali side – to educate the youth, hire locals, pay taxes and contribute back to community. Both sides need to come to the table. Walmart has given in to rules for the first three years. It is astounding that they agreed to this. There should be a contribution from both sides. A Somali who can speak Afrikaans or Xhosa has a huge advantage, and Muslim South Africans can have close ties. There are ties that can be exploited.

Civil Society is now going in a different direction. In the 2005 DAG workshop study to count total buildings to informal buildings, Cape Town had 19% and Johannesburg 32% in peri-urban communities. There are huge migration patterns due to cities not being able to cope. Nairobi has 60% and Addis Ababa 90%. North Africa is closed so people are moving south. We must understand that now more than ever we need to have a migration policy. It is not clear whether infrastructure benefits the wealthy or poor. The fact is that people are sitting on the edges of the central business districts; for example in Grabouw and the situation in Gauteng is worse. The quality of services in new areas is more important than Public-Private-Partnerships that benefit capital.

The discussants need to not get totally obsessed with Somalis. Francophone car guards get beaten up time and time again by police and security guards. They don't have networks to combat this. It is street traders, Zimbabweans selling their wares and foreign sex workers trying to put together a union that South Africans don't welcome.

Xenophobia

Migration is the issue, not necessarily the reaction to xenophobia. It is a global phenomenon. One person had excellent dental work done by a Nigerian who practices in the United States. Foreign communities are meeting the needs of others. There is no issue on this kind of migration. We focus on the xenophobic attacks and overlook the sophistication on this migration. But there are other people; for example, Senegalese. Around middle classes, xenophobia is not an issue. Are we trapped to analysing this through a xenophobic lens?

Looking at attacks in the Eastern Cape and the Western Cape and recent attacks in Diepsloot where Zimbabweans were attacked, most are attacked by African brothers. There are Chinese and Pakistani entrepreneurs who operate in communities but they are not attacked. It seems to be African-on-African attacks. It is difficult to understand the reasons behind that as they were forced to leave their countries and came to greener pastures here in South Africa. In Delft, the experience of shop owners is generalized. It is not just Somalis who are attacked. They may experience it more because they live in the shops and keep cash. It does not have anything to do with their being African; it just happens to be that they dominate the market. It has to do with tensions created around a

sense of loss of job opportunities. Buying from Somalis can be like buying from Checkers because the money goes out of the township. When buying from a shebeen one hopes that money is reinvested in townships. There needs to be more research in this. If it is the case that people end up in Bellville then we need to look at the economic model more closely. There are ways of keeping money in townships that do not mean expelling Somalis. People need to see a win-win situation. In De Doorns violence was against Chinese shop owners.

It could be that the South Africans were not organised enough. There is a perception that the Somalis are not organised. They are enigmatic. In an anti-xenophobia march, they are fighting about who will speak to the public. In Soetwater Camp, there were many levels of masters and people were trying to commit suicide. They were traumatised at the time. There are different levels of organisation including sophisticated liaison with the United Nations. Many have lived in camps in Kenya and so are familiar with international organisations.

Religion

An issue particular to Cape Town is one of faith. What faith do people renting to Somalis adhere to? Near Lansdowne, there are very established businesses that are renting out to Bangladeshis. The non-conflict in terms of rental agreement may be due to Islamic faith. The discussant thinks this is very important questions given the South African context where the majority is Muslim or Christian.

QUESTIONS

How do the Somalis understand their own migration? Is South Africa looked at not just as different from their own location or as a place to make money? Is it a business venture to migrate to South Africa especially in the light of a high turnover of shops? What does that mean? Is it a spreading of entrepreneurial opportunities? The risk is spread by taking shares in shops in different areas. Nearly all are grocery shops so the turnover of shares is frequent. Shares tend to be spread with others from the same tribal group. Newcomers don't have money but are employed by others and then build up money to buy somewhere else. That is part of the turnover.

Who are the owners? How many are there? How does it work that people are managing to negotiate such low rates? And has anyone done any comparison work? In some countries Somalis have a monopoly on Internet cafes. In 2008, there were representations made by United States about xenophobia in the Western Cape. There seems to be a phenomenon of Somali migration. It tends to work on tribal lines. In the Cape Flats there are mostly Ogaden people, and now the Abgal from Mogadishu who are more recent. They have made a real point of trying to have office holders in different groups as one inevitably sides with tribal brothers in conflict. Many people come here because their family is suffering and they are looking for income from outside their country. There is drought as well as war, so their children are their resources and they need to get them out of the country.

They come here to better themselves and to receive training. Some are beginning to go to Angola and Sudan (looking like new possibilities due to new government), because they are fed up of policing here. Some are going back to Somalia. It is difficult structurally, in terms of car and gun licences and bank accounts. It is difficult to be an entrepreneur. They go looking for less regulated environments. Conversations in research have confirmed this. Some have said that they would prefer to go home if they are going to face violence here. Many would return if Somalia was not a failed state. There is also a real risk for young men to be co-opted by Al Shabaab (they get \$100 a month) so families are sending them to South Africa to escape this co-option.

It sounds like a sophisticated, multinational business network, but people are coming from a war zone, too. There is clearly a lot of internal competition and Somalis sometimes kill each other. There is a network, but it's not a coordinated, centralised organisation. It's much more fluid and complicated. There are a number of bulk buyers who negotiate deals with other buyers, but in some ways it resembles other operations. And the Somalians have cornered the national market so it must be sophisticated.



SESSION 2: THE POLICY AND LEGISLATIVE FRAMEWORK

-- Nkosikhulule Nyembezi,
Advocacy Programme Manager, Black Sash

There are four pieces of legislation. Home Affairs has two branches: one to deal with foreign nationals and one to deal with citizenship issues. There is no hierarchy of ministers or departments in South Africa so there is no way of resolving issues. This problem relates to issues of intergovernance.

The recent stimulus for the department was more due to World Cup in that buildings and points of entry got revamped in a series of legislative revamps. This was actually a fire extinguishing measure to deal with the number of people coming into country. There is a problem of immigration agencies for people from developing countries.

South African citizens also have similar experiences with Home Affairs. Foreign nationals are the most vulnerable groups because no-one is speaking on their behalf.

Something big needs to happen for policy to be revamped. There is a lack of information and consultation from head office as to what will be done and how it will be done.

The legislation should support the policy and place of South Africa in terms of international relations with SADC, BRICSA and globally - as well as how South Africans see our own growth.

We do not have camps for refugees; so they live with communities. This has implications for the receiving communities; for example using resources as opposed to positive complementarity; that is, making new means of marketing and language available to local communities.

There is a lack of responsiveness; for example red identity documents not being FICAd had to go to court. This is also a part of foreign affairs; for example quiet diplomacy.

It sounds like a case of 'the operation was a success but the patient died!' The department of health, Home Affairs, Social Development and South African Revenue Service shared information in a central database in 2000. Take a simple thing like people trying to find a better quality of life in Cape Town by moving to Du Noon. Four hundred people lost their identity documents in fires, and so lost grants. It was possible to get an affidavit from the ward councillor so a person could get a highly irregular form of grant. The

participant personally witnessed councillors giving food to those who he thought would vote for him. That is how easily things can become corrupt.

Home Affairs acting in such a reactionary way blocks a whole bunch of things, for example not sharing the database. There are many things going on for social development such as in the department of health where one needs to register at the first point of intervention for NIH but this does not address the high rates of mobility of South Africans.

Uniqueness of migration patterns of South Africa

Rustenberg has a different population in the day and night. It is doubled during the day. There is also the level of migration of people moving for work. There has been an efflux of people from the Eastern Cape of over 300,000. They go to Cape Town and Gauteng. The Free State and Limpopo also see weekly migrations. This is standard practice. People want to better themselves or find employment. Put national level migration with daily or weekly migration and sub-Saharan patterns and you see resources being drained. The best example is De Doorns. Post 1994 black Africans were kicked off townships and coloured people kicked off farms from the Eastern Cape and on top of that Zimbabweans were coming to work on a seasonal level on farms. That is why migration policies need to look at migration. It needs input from civil society and foreign nationals themselves to help Home Affairs.

Migration is an issue that affects people at all levels, and that tells us something. National Assembly needs to be commended for passing four pieces of legislation. But they need contributions from forums like this, Pan African Parliament, ECOWAS and the African Union to take the policy under discussion to another level. It is a broader issue that needs discussion on higher levels. South Africans need to open up all areas of opportunity to all people in the country but by doing that we create a magnet and then the need to control becomes greater because we are sewing fertile soil for more immigration, that is, encouraging people to the country. The problem of resources will result in more reaction or violence from people in South Africa as they find themselves marginalised.

The discussants need to speak about the lens through which we view migration. States are putting up their borders and controlling that movement more. History shows that people have migrated to urban centres, become entrepreneurs and created opportunities. We should be viewing migration as a positive first, and then speak of controls? We can speak of facilitating migration instead of controlling it. The approach must be from a multidimensional level from all levels; for example small business, local government and Home Affairs. Some of the discourse that comes from government; for example “tapping skills”, is a very exploitative approach to having people here which speaks to using people staying here before sending them home. Not sending Angolans back so as not to cause more instability therefore having more migrants is an example. It is not about asking ourselves what is ours to blame? Many argue that violence is not about competition of resources. Some communities are much poorer and do get violent with migrants.

Moving is not an easy thing; creating good conditions able to be documented will pull more people. There is more that pushes people than pulls them, the former are usually stronger. Sometimes it doesn't really matter whether you create good conditions; people will move if they are running away. Improving conditions in sending countries also helps.

QUESTIONS

How does this impact on human rights framework and on migration policy? Do you think Home Affairs should have a different approach? You are speaking about national. What about local migration policy? The city of Cape Town does this. There are provincial migration policies. National struggles may not exist on provincial and local levels. Are there such openings to explore?

The issues of international migration can be handled with this but in terms of vulnerabilities and international instruments available, the focus remains on foreign nationals. We need to take a different view on foreign nationals but the two are not totally disparate – foreign national do not live separately.

In the SADC region, often political rights are ignored. The Systems Act and the municipality are defined to include community and community is defined to include visitors. One does not need to be a resident to be part of a community. All residents are entitled to participate in ward committees and other local governance bodies. From a human rights perspective, what are we focusing on? Is it a full spectrum, including political or is it social including detention. Should it be a focus on full rights?

One would say that this is the full spectrum of rights. The protection of rights is a reinforcing thing; by protecting others rights you also reinforce your own. Immigration policy is really about equality – which is irrevocable in the bill of rights. Under apartheid, inequality was legislated, there were unequal distribution of resources and customs system where South Africa paid neighbouring countries to send labour to work in mines. This was the appalling part of apartheid and we want to do away with that. But it seems that when it comes to apartheid they are not treated the same; they are seen as subhuman and not given the same access to healthcare and schooling. Why are foreign nationals now given blue identity documents? Patterns of immigration are such that people seek better opportunities: some people do not intend going back or their needs evolve. So the answer is the full spectrum of rights. Foreign nationals are concentrated in construction, farming and hospitality. People here are supposed to benefit from the Unemployment Insurance Fund; for example, only to find that their employer has been deducting but not paying. Being unable to draw benefits puts foreign nationals in a very poor situation due to noncompliance of the private sector.

For the past 15 years, the discussant sees that the world is a global village but that there is still a lack of interconnectedness. Migration is seen as third wave. In terms of the International Monetary Fund and the World Trade Fund, customs and trade issues are all regulated but there is no equivalent for migration. So let South Africa humanise the issue. The latest issues around migration tell us that due to opportunities, the pattern of African family life is changing. Unlike the past, where males worked and sent money home and

women stayed at home. Now women are educated and cross borders to support families. This suggests vulnerabilities; for example human trafficking in East London. The World Cup was focused on this. In the Free State and Lesotho girls are sold into slavery by both foreign and South African gangs. In other countries, foreign and military policy is one of the key issues that unite the country. In the United States, they may fight over health insurance but they will speak with one voice over foreign policy. This is not the case in South Africa; for example is it an open democracy in Zimbabwe or something else? Immigration policy is part of this issue. How do we make this advantageous to us? We have seen closing of borders and the militarisation of borders but we know this is a false reality. But this is the same in Germany and in Arizona, but their issue in rights-based policy is to take the politicisation away from this. Allocating resources can also take into account foreign nationals numbers so that receiving communities are not disadvantaged. One way to do this is to say that we are all a nation of migrants. Some have moved last week from a different province or from a different country. It is just a border. The participant always finds it peculiar that human rights only apply to citizens. I think we should separate human rights from citizenship.

In 2006, Noma Mfeketo signed on World Refugee Day to provide provision mainstreaming. Zille became leader very soon afterwards, but it was never capitalised on. It was big news at time; for example reported at UNHCR in Geneva but it was not followed up on.

There's a big issue around the fight for scarce resources; for example jobs and access to a whole range of services (health, social security benefits) which links to what is behind xenophobia. There are very liberal provisions in our Constitution without understanding how we resource the provisioning of that even for our own citizens. We still have children taught under a tree yet we say that there are refugees who say they are entitled to things and refer to Constitutional rights discussions. Then there are policies and now the quest to look at regulations and legislation: how do we look at migrants, refugees and scarce skills? And then there is administrative inefficiency on part of Home Affairs which seems unable to get a handle on a whole range of things it confronts. And then the question of where is the political will. And then we get bedevilled by the Zimbabwe situation. There is a disproportionate amount of attention on the Zimbabwe situation so we do not get to a proper discussion on refugees in conflict or other contexts. There is a history of the mining industry and recruitment of labour from many countries, and the liberation struggle and the moral imperative that is argued around South Africans having been refugees in several African countries; for example, Tanzania and Zambia, but a stand-offish relationship between Zimbabwe and liberation movements except the PAC.

Gevisser's look at Mbeki discusses how he started developing some relationship with Zimbabwe and an entry for the African National Congress into the country that highlights the disproportionate attention focused on Zimbabwe that does not fit into liberation history. Zimbabwe contributed a lot, for example the Freedom Charter, which is regarded as the bible of the Tri-partite Alliance, was published in Zimbabwe. It speaks to rights and State agencies; for example, the HAWKS, the South African National Defence Force and the South African Police are drifting away from key aspects of the Charter which

states that irrespective of national background, the country belongs to all. Blame cannot be put on individuals if Home Affairs does not have ability to process the case.

Who is doing the international comparative research? This is not unique to South Africa? The illegal immigrants are a major issue for the United Kingdom. Who is doing research into Canada, the United States and the European Union? There was a piece on television last week on illegal immigrants into Russia. Somalia is not the only failed state.

Migration studies are a huge area. The Southern African Migration Project must have done research on this. Many of the problems stem from the fact that there is not enough research even on the part of Home Affairs in terms of numbers; for example, the numbers of Zimbabweans in Johannesburg. Is it three million or half a million? This leads to other problems; for example how many people are you legislating for? In the immigration and refugee amendments, there are many stories used, and people tap into these as truths. There is an under-researching of the contribution that foreign nationals make to the economy especially at lower levels. As a result, the default position is that they steal our jobs and use our resources. It is also about other departments, in terms of verifying their qualifications. Many car guards have engineering qualifications that are not recognised. Is there not a way to bridge the course? The Centre for Policy studies showed that anyone with a degree can make a big contribution. What really is a special skill in a society with high levels of illiteracy? Doesn't any degree constitute a skill? There are agreements between neighbouring countries and themselves where we don't grant visas because they are asking us to not take their medical personnel. It is very complicated. South Africa needs people from all over the continent and society needs a diagram to unravel this.

South Africa is recruiting Cuban doctors outside of continent but no effort is made to verify their skills and the lack of effort made to pull African doctors speaks to policies of Home Affairs.

The NIH is gaining momentum and the balance of primary and secondary healthcare is another point of entry as to pull healthcare workers from the continent.

To what extent is the pull factor related to the resource question or perception?

In Zimbabwe, which was regarded as the bread basket of Africa, the economy collapsed as result of poor political management and not the economic climate. It is so serious you see unaccompanied minors crossing the border in search of better opportunities. Botswana's attitude to South Africans is firm saying we can only take so much and closing the border and in interactions with Harare telling them to sort it out because it is affecting them negatively; for example the border budget increasing. It does come back to Home Affairs processing at border. Refugees must be dealt with promptly, others must be dealt with in another way, and those that should not be here should be deported in a lawful, efficient way.

The discussants also need to frame positively the gifts of migrants. But we must be careful to not put the focus too much on foreign migrants being aware how easily this can be politicised by government. The choice for government is clear, that is nationals. By addressing local issues; for example housing they can take pressure off migrants. The

ZDP would not exist if there weren't strict forms in existence. So a focus on active foreign policy in which the South African government pushes foreign governments to sort out their houses, and internal migration is also important. The battle to majority could be lost by focusing on immigrants.

According to Jody Kollapen, the SAHRC Head, the biggest worry was people leaving the country without being debriefed – a bad testimony for the country. In safety sites there were people outside sites trying to reintegrate because they were hungry. Some sites have better conditions than normal conditions.

Overseas, Kollapen was entitled to vote in local elections because taxes were paid while studying. This should seriously be considered for foreign nationals. Politicians will pay attention to constituency. Foreign nationals pay tax in Value Added Tax and income tax, etcetera. This is taxation without representation but also symbolically says that we recognise you in our community as a long term resident therefore, you are entitled to contribute to imbizos and other forums. There are plenty of international practices to compare this practice.



SESSION 3: INTERNATIONAL EXPERIENCE

--Elroy Paulus,
Social Services and Subsidies Advocacy Programme Manager
Black Sash

What has happened to people who live in peri-urban areas and contribute to the economy? South Africa moved away from cooperatives to companies for waste removal companies. What legacy does that leave to our children? We need to start changing our mindsets regarding the urban and peri-urban. At the end of Lula's reign, HIV/Aids was 0,6% and they still see it as a serious problem, and unemployment was down to 6%. BRICSA has a lot to teach us but not if the president keeps on taking delegations of only business people and not civil society.

There is a connection between anti-foreign politics as opposed to bigotry and prejudice where there is competition for resources. People cohabiting in cities cannot be separated from migration policies. It is symbolic of a failure to provide for the poor in general in South Africa because it is about perceived competition for resources.

Largely Congolese and some other migrants were introduced into township containers. Local people were saying "What a relief! I don't need to go to Wynberg any more to get my shoes serviced!" The participant is very reluctant to adopt the competition of resources argument. There is a lot to tease this out – services, the kind of people who move in and the skills they bring. This links to the need for all migrants including foreign to have explicit, open access to programmes; for example Red Door. It helps to say that all the poor are in this together and to leverage these skills. There is something about justice and fairness. Gangsterism was originally an initiative to bring order to places where the state did not, and then it got hijacked by criminals. The same is seen in necklacing in Nelson Mandela Bay Municipality. In Brazil, there is the equivalent of the HRC and Scorpions, made up of half civil society and government. A professor made a racist statement about black Brazilians. He had to pay a fine, do community work and make a public apology. The discussants need to look at public-public partnerships. Part of the history is that the African National Congress (ANC) was a civil society that brought a blind government to its knees; now the ANC does not see that a vibrant civil society means that government does not have too much power. In South Africa, any questioning of the ANC means a questioning of liberation but in Brazil this questioning is seen as part of a legitimate partner.

Perception of economic competition is very different from economic competition. For example, "The population has grown by 300,000 due to Malema's children having more children" versus "The population has grown by 300,000 due to migrants and therefore we are struggling for resources." This is about language, discourse and power. Our studies show that there is intense competition between shopkeepers but this does not translate

into attacks. There is an intervening process that is about value judgements and how we see ourselves that is more prevalent.

But allowing a tiny minority to vote is allowing one to use the political will of the majority against them, but by using civil society to speak for them there is a much better chance to get their support. Opposition could just say that they are supporting the majority. Civil society is not there for any political agenda.

It is necessary to have migrants vote at local level because politicians use the issue of migrants as a scapegoat at election time by externalizing the problem. Politicians do not have answers as to why they failed to deliver, they use migrants and violence breaks out.

Many locals say that they have no problem with migrants; for example after the 2008 attacks, but elements stir up violence. It is in the elected officials' best interests to be accountable to all voters, and this would include foreign locals.

Land

The ruling party made promises that 80% of land in the hands of a minority will be redistributed but we have seen less than 5% of land redistributed. There are people living in squatter camps who would like to have a piece of land of their own. The discussants need to start looking at this and it will help to address xenophobic attacks. The scarcity of land is one of the factors affecting attacks.

Legislation

There is a window of opportunity to shape regulations. There may be areas that are so objectionable in policy documents on immigration for South Africa when they were introduced. Some of us meet in Parliament and endorse each other's submissions and strategise around bills. In the context of organisations providing services; for example monitoring Home Affairs processing applications, refugee reception centres, initiating legal action where there are regulations, and interactions with foreign national organisations in the country to ensure a holistic approach. It is also important to take into account unique experiences of foreign nationals. Some are organised; for example Somalians and Zimbabweans. The latter are very vocal and are strong and organised in conferences on the issue. We need to find ways to be more accommodating to organisations on this issue. Sometimes that voice is missing when policies are being debated. Research-based organisations (rather than grassroots or coal face) are the ones making submissions. It is a challenge for civil society to bring those voices on board or facilitate that their own interests are represented.

South Africa really needs to invest in our people. Social investment is a way of looking at our people. It is a people-based approach. There is also a discord between priorities of government making trade easier between countries but not people. Many people in parts of Gauteng and Mpumalanga say that they do not want foreigners using their clinics. Evaluations also demonstrated a huge misunderstanding of the other. The demonstration of intolerance because of the perceived lack of access to services and in some cases the real lack of access to services; for example in the Northern Cape where one must travel

vast distances to hospital is real. In some cases this has been self-imposed. There were many flawed assumptions as to whether a large municipality and small municipality can compete. This has been due to the division of revenue bill's sophisticated formula by the Treasury. The 2011 presentation shows they use 2001 national census statistics to divide resources, especially as Statistics South Africa reports to Treasury. It also doesn't take into account the mobility of people, including cross-border or municipality use of services. Catherine Haw of the Children's Institute has a very sophisticated paper showing that there are many variations on movement; for example children staying with their grandmother while their parents move. SASSA cannot take into account the grandmother's inability to have access to a fax machine. Institutional arrangements of state cannot meet sophisticated movement patterns of people.

Political issues

In terms of foreign nationals voting - it may be an area where a hierarchy of rights comes in, that is, socio-economic, protection and security and later on a right to vote. In the context of the South African electoral system, the president said we cannot look at aligning elections on same day. It will be difficult to accommodate foreign nationals in this environment.

In Polokwane, realigning provinces in order to have a strong level of municipal government is a process taking place from 2011 to 2014. It includes perhaps doing away with provinces or reconfiguring them in some way. These kinds of proposals are motivated by the Western Cape being controlled by the Democratic Alliance (DA) and how this emotionally charged political debate is something that could overshadow the inclusion of foreign nationals. Recently, electoral law was amended to allow for special votes; for example voting two days before. There were complaints that the Independent Electoral Commission (IEC) was lax and abused this option. These issues were expressed again at the May elections. The issue of identity documents for voting go back to Home Affairs. Logistics of including foreign nationals could also be an issue that could be a catalyst for ensuring that they have proper documents. We know that the voters' roll is compiled using birth and death registration and given to the IEC. The Minister is saying that Home Affairs will not give out identity books on eve of elections but are on a drive to provide people with Identity books long in advance. Even if the backbone of the DA is broken in the Western Cape, an argument can be made for advancing rights of foreign nationals by giving them the vote. Given that voting may encourage marginalisation, it may be something worth consulting with refugee organisations. It will emphasise the need for alternative participation. Civil society had the responsibility to encourage this.

Traditionally, rights started with political rights. In America social-economic rights still do not exist. There is a lot of discussion on the indivisibility of rights. So placing a hierarchy of rights is problematic.

It would be amazing if one act could be passed that said that all refugees and asylum seekers are included in all legislation, from professional councils to SETAs. This would mean a huge saving of work, instead of fighting each issue one at a time. There was a division in the Constitutional Court on two cases on whether refugees and other

categories of migrants can be included or should be excluded. It is a case by case push and one needs to look at the specific legislation and context in which that operates. This is a radical approach that won't find much play. There is a case in Equality Court in Zwelatemba where the judge is arguing that refugees are especially vulnerable in terms of security and therefore are open to special rights. Maybe we should not argue for blanket inclusion. The sensitivities of the listener are vital; for example Monsanto in encouraging rural development. The areas essential in maize cultivation for biofuel extraction called for people to live in camps alongside. This is scary. How this is communicated and asked is important. We have an incomplete rural development strategy that gives more money to where more people are. The Council of South African Trade Unions (COSATU) submissions in 2001/2002 on cross-border municipalities showed the inefficiencies of the system. In the issue of demarcation and urban rural classification, who is asking the question and the motivation behind the issue is extremely important. Tenure is one major issue. As an example, Tony Ehrenreich criticised the DA government for not mobilising helicopters in shack fires at night. This is not done as it is not feasible for shacks or at night. So this is very complex depending on who's asking and who is listening.

QUESTIONS

The first thing that comes to mind when talking about Brazil is drug trafficking. Many people are using it as place to transport drugs. What was your experience?

The media gives a false impression of the country: this is an issue of perception. Their prison system and the military police are scary – this is linked to their history. People were not seen using narcotics openly.

There was more concern about getting in and out of Brazil due to perceptions of Africans. There appears to be a mutual distrust from authorities on both sides. South Africa possibly has a worse reputation in terms of being transporters of drugs.

Many leaders of NGOs such as Oxfam and Civicus are excited to be doing work there. Many youngsters are very conscious. One youngster was aware of GEAR! Young Brazilians seem to be following macro-economic policies – unlike young South Africans.

Can migration help with rural development? Is there a way to encourage a move to rural areas and is this one of the positive lenses?

There is a shortage of teachers in rural areas and there is a huge database of Zimbabwean teachers. It is good that restaurants use the skills of foreign migrants to generate income but we must look at exploitation at different levels. They are not unionized and they are completely excluded from labour rights.

In 2001, foreigners were radicalised. For this census, what do the discussants think of introducing another category? The questionnaires for the Census 2011 will include “foreign nationals” and whether they are from Africa or outside Africa.

SESSION 4: THE WAY FORWARD

Deportation should reflect best practice foreign policy. If things continue in Zimbabwe as they are, the next wave of refugees will compete directly with South African poor, illiterate populations. Ndlamini-Zuma said that South Africa wants certain kinds of people to come here and will facilitate for scarce skills. The discussant thinks there is a danger to saying that we underestimate the kinds of contributions that can be made by less official qualifications. Research must be done into what foreign nationals can offer. There is a gap between selective types of policy and what we want in an emulation of Western countries in a designer, immigrant skills based policy. Extreme parties in France that are being voted in are trying to close elections to unskilled people but these are actually racist in that certain countries are treated very differently than others; for example Africans versus Europeans. This is a global phenomenon.

How do we deal with it without getting into the trap of getting into a conservative, reactionary mould on the one hand when there is a pragmatic reality we must deal with? There are economic migrants as distinguished from scarce skills and refugees. Isn't the phenomenon of recruiting skilled people a global reality? South Africa is as vulnerable to it as other African countries? South Africa has been exporting doctors to the United Kingdom.

One human rights officer said to close the borders after a certain number of immigrants have entered the country. What percentage do you allow in? The idea given who we were and being the engineer of development without a humanitarian and human rights framework is a very difficult dilemma. There is no easy solution. The lack of travel documents is a huge problem in terms of infringement of freedom of movement and family reunification etcetera, but there are arguments by migration economists that if you allow movement out, there will be a cycle and therefore it will allow a better stable number of people.

Government has decided to put Home Affairs in a security cluster. We can understand this in the context of xenophobic attacks but I think we can propose that Home Affairs be put in a social development cluster.

In terms of a human rights framework and the status of South Africa as a magnet in Africa, it is not clear as to how we achieve balance in these things and what does control mean in this context? We must look at this regionally. Every country needs to come together and accept responsibility for the movement of people, especially for those fleeing. There must be a shared responsibility to care for people; for example Botswana must take more people.

While people look at South Africa as having a pull factor, South Africa also has a need for immigrants. The United Nations Special Reporter for Refugees said that many people

came just for the good economy without recognising that the South African economy needs people and is growing due to migrants. South Africa must create conditions for locals to compete. If youth were educated well enough to have entrepreneurial capabilities, people would realize that there are no spaces to fill in South Africa and they will find other countries to go to. The immigrants show up to the government their failures to provide for people; they come with nothing and with very little support from the government they are succeeding yet locals are still failing. This makes policy in South Africa so complex; for example the number of amendments to the Act of 2000. Politicians don't want to face these hard issues. It is easy to blame the foreign nationals.

Historically white South African universities are attractive with research output and historically black ones have not done so well. The only way to bring equity is to take people from the former to go to work in the latter but this will not happen as no-one wants to give up their place in Cape Town to go to Limpopo. So how do we do this? That is the magnet that South Africa constitutes. Then it all becomes relative. South Africans leave here to go to Europe or the United States. We have four Nobel laureates but there are other South African-born laureates who excelled elsewhere. South Africa needs skilled immigrants just as other countries have designed their policies specifically to do this. How do we do the matching of all this? We also understand that there are the economic migrants who make just as valuable contributions.

With regard to closing borders and stopping people, people will still want to come as long as neighbouring countries are in shambles. It is in direct interest to help these countries flourish, as then these people will work in direct partnership with South Africans.

Suggestions on the way forward

- The following questions were asked and comments made as possible ways forward: How do we hold this together as a group?
- Do we provide information to other CBOs and non government organisations?
- Social capital should be harnessed and increased.
- A baseline is needed for information sharing and education, including accurate figures about the size of the migrant community. Research is also needed on the skills migrants bring to communities.
- South Africa needs to have more of role in foreign policy to create peace and stability.
- There is a challenge to Home Affairs being in the security cluster – needs to be part of social cluster.
- The policy document must be shared in the third quarter of this year with those who are not here and the networks we are not a part of. There are contact lists of everyone here. There is agreement that the communications list continues.

- The Wolpe Trust is prepared to look at one and a half hour discussion on certain areas.
- The Refugee and Immigration Acts are passed so new issues could be considered; for example the immediate crises of children's documents, deportations and the scrapping of certain permits. Certain practical things such as travel documents need to be addressed.
- What happens to people severely disabled by attacks, such as paraplegics and people who are burned by acid attacks? Though they get disability grants, many were young men who were productive. Technically they can't be sent home. Is there a policy to be made? It seems to be a special case for some kind of addressing. They don't have networks here to address. Many were supporting families. Their wives may divorce them as they are not being supported. There is a double shame – physical and familial.
- It is necessary to be looking at international examples of progressive immigration policies.

The Participants

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