

Xenophobia and Migrant Policy:



Sandcastle built by a Zimbabwean migrant on Durban beach at the height of the xenophobic attacks in 2008.

Getting to the roots of the violence

31 December 2009

Executive Summary

This paper provides a fresh perspective on xenophobia which is informed by the direct experiences of the Southern African Liaison Office (SALO) staff and our partners in the field, and the background studies of its team of writers and researchers. Since 2002, SALO has been actively engaged with the Zimbabwean community and the diaspora living in South Africa, as well as other African migrants and the poor and marginalised South Africans among whom they live. SALO has been working directly with communities (and women in particular) affected by migration, migrant policy, displacement and direct violence, and seeking to influence and inform South African foreign and migrant policy in relation to Zimbabwe.

By combining grassroots voices and academic research, a document has been produced that is well informed by current thinking, speaks directly to the needs and experiences of the affected communities, and is useful to policy makers intent on responding effectively. By making the links between migrant policy and the impact this policy has on the victims of xenophobic violence more explicit, both in this introductory paper and a more in-depth study to follow, SALO hopes to contribute during 2010 to the South African Government’s ongoing policy review in this area.

In understanding the eruption of physical violence now known widely known as the xenophobic attacks, it is necessary to include an in-depth analysis of the context within which these attacks occurred. This includes not only the socio-economic conditions and the macro-level politics that impact on attitudinal

and behavioural factors, but also the micro-level politics that turn tensions and prejudice into assault and displacement.

The outlined analysis contained in this paper recognises xenophobia as a combination of underlying structural and systemic conditions and attitudes that are rooted in prejudice that then create the conditions for triggers to manipulate these tensions and ferment violence. This speaks strongly to the need for community-based responses to prevent the physical violence of xenophobia.

However it also implicitly recognises the crucial fact that without the underlying context of xenophobic attitudes and a culture of intolerance, it is unlikely that such violence would have been able to gain hold. Any effective response to xenophobic violence would thus need to work at several levels and contain several complementary strategies that address the attitudinal and material, unearthing the roots of interpersonal animosity, as well as the systemic and structural contributing factors that make local violence possible.

There is a great deal of debate amongst civic groupings, and within government circles, over what would constitute an effective policy response. Several of the recommendations emerging from civil society bodies are contested or contradictory, reflecting the varied interests of these groups. Policy reforms suggested by various government bodies and officials also reflect the varied interests and views within the state.

The complex differences contained within these policy positions, and the clear tensions and potential for violence contained within the current context, speak strongly to the need for a major review of government policy on migration. It would seem clear that a dialogue process aimed at providing a forum for informed and constructive debate about what would constitute effective migrant policy is critical.

SALO supports the establishment of focus groups or inter-disciplinary advisory bodies that are made of multi-sectoral expertise from within state and civic bodies. Towards this end the Department of Home Affairs is already in the process of establishing links to civil society groups including SALO.

The inter-related socio-economic and political conditions, the systems and structures that do not adequately protect the rights of migrants and that create the perception of migrants as unwanted opportunists, as well as attitudes that are prejudiced and largely misinformed, are all addressed in the recommendations that follow.

SALO does not wish to either endorse or reject any of the ideas contained within this wide spread of suggestions. Rather, at this stage, we wish to recognise that these recommendations contain the beginning of an important discussion. These contested ideas, and the analysis that informs them, need to be taken forward in a manner which enables a cooperative partnership between the state and civil society. This partnership could develop a response which is consistent with the goals of transformation, the human and peoples rights contained in the African Charter, and the progressive values enshrined in our own constitution.

Piecemeal or isolated reforms of existing policy are unlikely to have the required impact. What is required now is a holistic and integrated response, led by a single ministry, but inclusive of many, that

can bring together all of the stakeholders, both from within the state and from amongst the civic movement. In many ways the process of how this policy response is developed is as important if not more important than the policy itself.

A cooperative effort is needed that works at several levels and recognises that a collective and coordinated response is the only way to turn the xenophobia around. At the close of 2009, against the background of recent fresh outbreaks of violence on some parts of the country, this approach does seem to be on the cards for 2010, led by a newly-invigorated home affairs ministry.

Introduction

This paper provides a fresh perspective on xenophobia which is informed by the direct experiences of the Southern African Liaison Office (SALO) staff and our partners in the field, and the background studies of its team of writers and researchers. Since 2002, SALO has been actively engaged with the Zimbabwean community and the diaspora living in South Africa, as well as other African migrants and the poor and marginalised South Africans among whom they live. SALO has been working directly with communities (and women in particular) affected by migration, migrant policy, displacement and direct violence, and seeking to influence and inform South African foreign and migrant policy in relation to Zimbabwe.



In order to explore the direct and indirect links between migrant policy and xenophobic violence, the paper draws on this direct experience, as well as insights and recommendations emerging from key civil society stakeholders and the ruling ANC Alliance and South African government spokespeople (past and present). The civil society groups include the Forced Migration Studies Programme (FMSP) at the University of the Witwatersrand, the Western Cape-based refugee rights organisation People Against Suffering, Suppression, Oppression and Poverty (PASSOP), and the International Organisation on Migration (IOM). The report also draws from the Southern African Migration Policy Series (SAMP) produced by *Idasa*, an African Democracy Institute.

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While much of this paper focuses on Zimbabwe, the insights and recommendations it contains apply equally well to migrants from other nations. Typically Somalis, Congolese, Mozambicans and Zimbabweans have borne the brunt of ineffectual migrant systems, corrupt and exploitative state

structures and direct physical attacks, but other nationalities, and minority South African ethnic groups, have also often become victims of these conditions and would benefit equally from appropriate policy reforms.

Xenophobia has become an issue of major public concern for all South Africans. In the December 2009 edition of ANC Today Deputy President Kgalema Motlanthe addressed the November attacks on foreign migrants directly:

“The unsavoury events that occurred in the Western Cape at De Doorns about two weeks ago cast a dark stain on our moral fibre. Just as the 2008 attacks on foreign nationals were acts of immorality and criminality, so were these latest acts by some members of our communities. As an ANC government we frown upon such acts and reaffirm our commitment to upholding and respecting the rights of every person living within the borders of our beautiful country. We reiterate our indivisible humanity and call upon all our people at once to respect and defend human rights as enshrined in our constitution.”¹

This paper begins by providing a brief summary of the current extent of migration to South Africa and the related outbreaks of xenophobic violence. This is followed by an analysis that attempts to deepen and extend an understanding of the interconnectedness of migrant policy and the systems and structures that create the conditions that foster the roots of xenophobic violence.

An outline of the impact of migrant policy on women in particular, drawing from the lived experiences of migrant women who participated in a SALO/PASSOP-hosted workshop in October 2009, forms part of the section that explores the nexus of migrant policy and xenophobia.

The paper then culminates in an outline of a range of policy recommendations from some key stakeholders - for migrant policy specifically, but also for other interrelated policy changes which would be required for an effective state response to the ongoing outbreaks of violence and the underlying factors that give rise to xenophobic attitudes and violence. This is the area that we wish to develop further during 2010 by consulting many more stakeholders, further research and consensus-building policy dialogue to arrive at a comprehensive set of policy recommendations to present to our government.

Background



Any exploration of the impact of migration needs to begin by recognising the historical patterns of migration into South Africa from countries across the continent. Migrant labour has been meeting the needs of mining houses and other forms of industrialisation since the early discovery of gold and diamonds. In part this migrant system included exploitative practices that often disregarded the rights and needs of those involved in providing the labour but for many Basotho,

Mozambicans and Zimbabweans a trip to Johannesburg became almost ritualised as part of a process of coming of age. The Ndebele of Zimbabwe share linguistic and cultural ties with South African Ndebele and Zulu groupings, and men in particular have a long history of cross border economic migration.

Since 1994 however migration from Zimbabwe has increased dramatically, including an increase in both Ndebele and Shona speakers. The impact of violent crises in countries like Somalia, the Democratic Republic of Congo and across the Great Lakes region and the Horn of Africa has also directly led to an increase in migration into South Africa from across the continent.

The approximately 50 000 people who were displaced by the violence of May 2008 included migrants from at least 15 different African countries.

An eye-witness account from SALO staff member, Rebone Ramphomane, describes the scene on the 11th May 2008 in Alexandra, east of Johannesburg.

“On that night of the 11th the attackers went door to door beating up the non-nationals in that area telling them to leave the country. They even took their personal assets. People were left homeless. A South African died on that night. The police from the Alexandra police station came to the rescue. Everyone thought that the attacks had come to an end. During the day in Alexandra things were normal; around 7pm the violence would start, after the media had left. They were using all sorts of objects while they were torturing the non-nationals around the township, the attackers would ask you to tell them what an elbow is in Zulu, if you did not know what the word meant in Zulu you would then be the next victim.”

Significantly, 20 of the 62 people who were killed were South Africans, all from minority ethnic groups. It is important to note that amongst the victims of the attacks were several Pakistanis. Violent attacks against minority groups have continued sporadically throughout 2009. Although these have not become as widespread, significant incidents have taken place in the De Doorns area of Western Cape and in Limpopo province, displacing thousands of additional victims, especially Zimbabweans.

While the attacks have affected diverse groups of nationalities, in the minds of many South Africans, it is Zimbabweans, and attitudes towards Zimbabweans, that tend to characterise the overall feeling towards foreigners. However, as a former senior Home Affairs official, Barry Gilder, points out:

“It is certainly true that the numbers of immigrants from Zimbabwe increased significantly as the situation in Zimbabwe deteriorated, but until about 2005 the majority of illegal immigrants were from Mozambique with Zimbabwe a close second. We have also seen significant increases in legal and illegal immigration from other parts of Africa, from China, from Pakistan, from Eastern Europe and elsewhere. It is this general increase, coupled with the frustrations of South Africans with service delivery, continuing poverty, lack of access to resources and opportunities that laid the ground for the xenophobic violence. But xenophobia was a problem before the increase in the influx of Zimbabweans.”²

The media plays an enormous role in influencing and shaping public attitudes towards migrants by constructing migrants as outsiders, and in perpetuating discursive myths. The use of terms like ‘illegals’ and ‘aliens’ implicitly connect migrants with crime and creates the basis for separating migrants out from the population as a whole. This stereotyping and irresponsible use of language forms part of the issues that will need to be addressed in any set of policy reforms aimed at transforming the roots of xenophobic violence. The complex interrelation between reporting on Zimbabwean migrants, South African foreign policy in relation to Zimbabwe and on the crisis inside Zimbabwe adds to the extent to which migrants are perceived as fortune seekers rather than victims of violence and desperate economic crisis.

At the height of Zimbabwe’s humanitarian crisis over 6000 people a day were estimated to be crossing the South African border. While the number of Zimbabwean migrants, refugees and asylum seekers is still under dispute, there is now a general agreement within the South African Government of the extent of the migration. In June 2009 President Zuma made it clear that this was an important factor in influencing policy in relation to Zimbabwe:



*"Because of the size of South Africa and its economy, Zimbabweans tend to come here in big numbers. Now that affects South Africa. It's an important point to take into account as we deal with the Zimbabwean situation, that it's not just a situation that affects Zimbabwe only. Zimbabweans are flocking to Botswana, Mozambique, Malawi and Zambia, and therefore it is affecting the whole region. We have got a situation, and therefore the correcting of the Zimbabwean situation is important, because it does ease the pressure that you would have in South Africa. The estimation is that between three and four million Zimbabweans are here; that's not a small number."*³

Economic conditions facing migrants often force people into a hand-to-mouth existence. Médecins Sans Frontières (MSF) released a June 2009 report highlighting ongoing migration as a necessary form of survival for thousands of Zimbabweans:

*"Each day, thousands of Zimbabweans cross the border into South Africa, many risking their lives to flee economic meltdown, political turmoil, and a critical lack of access to health care in their country. In the past several years, the crisis in Zimbabwe has given rise to food insecurity, an unprecedented cholera epidemic, political violence, rampant unemployment, an escalating HIV crisis and the near-total collapse of the health system. This breakdown in Zimbabwe has driven nearly one quarter of the entire population into neighbouring countries, particularly South Africa. Despite claims that Zimbabwe is 'normalising' following the establishment of a Government of National Unity, Zimbabweans continue to cross the border every day, legally and illegally, in massive numbers as a matter of survival."*⁴

The report exposed the harsh conditions faced by the migrant community in South Africa and the challenges this poses to South Africa’s ability to meet its constitutional obligations:



“Upon arrival, many Zimbabweans endure further suffering in South Africa, without access to proper health care, shelter or safety. During their journey to and within South Africa, they are subjected to violence, physical and verbal abuse, police harassment, inhumane

living conditions and xenophobic attacks. The South African Constitution guarantees access to health care and other essential services to all those who live in the country - including refugees, asylum seekers, and migrants - regardless of legal status. However, in practice, the fear of arrest, deportation, and xenophobia, coupled with a lack of accurate information about their rights, has kept many Zimbabweans from accessing basic services necessary for survival. Today, Zimbabweans are still often charged exorbitant fees to access public facilities despite policies to the contrary, turned away from hospitals when they need admission, discharged prematurely, or subjected to harsh treatment by health staff in the public services.”⁵

The xenophobic attacks in May 2008 appeared to be the most obvious manifestation of a crisis related to the influx of Zimbabweans and the treatment they receive, but one cannot be sure that the targets were directly related to a diaspora so recently arrived. Furthermore, one statistical analysis claims most victims had been in South Africa for more than a decade,⁶ although these victims may have been targeted simply because these ‘foreigners’ were better known than relative newcomers..

Nevertheless, the ‘Zimbabwean’ component as a cause of the xenophobic attacks was an ‘effective truth’: it raised the domestic and international awareness of the diaspora. The 43rd Ordinary Session of the African Commission on Human and People’s Rights and the Pan African Parliament, along with numerous other individual and collective voices, condemned the attacks and called on the South African government to institute further measures to ensure the protection of foreigners.

It is these further measures, and identifying from amongst them the most effective policy choices, that the rest of this paper will attempt to uncover.

An analysis of the xenophobic violence



In understanding the eruption of physical violence now known widely known as the xenophobic attacks, it is necessary to include an in-depth analysis of the context within which these attacks occurred. This includes not only the socio-economic conditions and the macro-level politics that impact on attitudinal and behavioural factors, but also the micro-level politics that turn tensions and prejudice into assault and displacement.

A paper on Human Development produced for the United Nations in November 2009 summarises this well:

“While there is an understandable reductionist tendency to view anti-foreign violence as a direct product of the material deprivation and competition amongst poor South Africans, this does not explain why all poor communities did not explode in May 2008. Certainly the violence was stoked by organized groups in affected communities and there is evidence of inter-community collaboration. But the truth is that the violence could, and very well may in the future, be much more widespread. In almost every case, attacks were accompanied by the most blunt and bellicose hate speech.”⁷

According to a research report based on a study conducted for the International Organisation for Migration by the University of the Witwatersrand there are broad structural and historical factors that led to the May 2008 violence including the legacy of institutional discrimination and generalised mistrust among citizens, police, and the elected leaders. But it agrees that these cannot explain the location and timing of the attacks. Similarly, the study finds little evidence to support early accounts blaming the eruption of the violence on a ‘third force’; poor border control, changes in national political leadership, or rising food and commodity prices. These factors may have contributed to generalised tensions, but they cannot explain why violence occurred in some places and not others.⁸

In explaining the timing and location of violence, the study finds that in almost all cases where violence occurred it was organised and led by local groups and individuals in an effort to claim or consolidate the authority and power needed to further their political and economic interests. It therefore finds that most violence against non-nationals and other ‘outsiders’ which occurred in May 2008 is rooted in the micro-politics of the country’s townships and informal settlements.

In other words, individuals involved in power struggles, and the support groups around them, make use of the widespread anti-outsider sentiments and the culture of xenophobic attitudes to fan violence and orchestrate upheavals that enable them to shift power to their advantage. This includes gaining access to land and property through the displacement of outsider groups or building popular support by being seen to act on popular sentiment in organising attacks that act against ‘outsiders’.

The study found that local leaders and police were in most cases reluctant to intervene for different reasons including: i) the fact that they shared the same attitudes with the general community and also wanted foreign nationals to leave; ii) their fear of victimization; and iii) their fear of losing legitimacy and political positions in the forthcoming elections.

This analysis speaks strongly to the need for community-based responses to prevent the physical violence of xenophobia. However it also implicitly recognises the crucial fact that without the underlying context of xenophobic attitudes and a culture of intolerance, it is unlikely that such violence would have been able to gain hold. Any effective response to xenophobic violence would thus need to work at several levels and contain several complementary strategies that address the attitudinal and material unearthing the roots of interpersonal animosity as well as the systemic and structural contributing factors that make local violence possible.

To mark the first anniversary of the 2008 May 8th attacks, the Consortium for Refugees and Migrants in South Africa (CORMSA) said that “statements from leading politicians continue to cause divisions in South Africa with some openly xenophobic statements being attributed to leaders. These reinforce the

many prejudices held within South Africa society and prevent the social cohesion South Africa so desperately needs to prevent vulnerable individuals or groups being marginalised. Accountability of those responsible for public violence remains minimal. Too few perpetrators of last year's violence have thus far been successfully prosecuted and it appears there have been insufficient investigations into those responsible for instigating and fuelling the violence in some areas. There has also thus far been no public inquiry by government.

The attacks added to examples of maltreatment by, and corruption in, the Department of Home Affairs and cases of police brutality – notably during the raids at Johannesburg's Central Methodist Church where nearly 2,000 Zimbabweans were hosted by Bishop Paul Verryn – became part of the South African public consciousness in May 2008, coincidentally just between the times when Zimbabweans had their freest election in March's final week, and their most brutal at the end of June.

Braam Hanekom of PASSOP links the xenophobic violence and the impact it has had on the state, to the implications of perceptions that the South African Government is doing too little to acknowledge and resolve the crisis in Zimbabwe.

“The xenophobic violence, peaking in May 2008 was really an eye opener. It brought a lot of international attention and pressure on South Africa to deal with the immigration crises. It highlighted many of the daily struggles the immigrants face. In a sense the xenophobic violence in May forced the state to assist immigrants because, after the violence, people were displaced and suddenly the South African government was forced to feed, accommodate and assist the immigrants they had not been assisting. It is important also to recognise that the xenophobic violence in Gauteng in particular was of an extremely harsh nature. There were several factors leading to it, but it was an indication of the frustration that South Africans on the ground have with the situation in Zimbabwe and the consequences of that situation, for the labour market in South Africa. So we paid for South Africa's failed foreign affairs policy, and failed stance on Zimbabwe. The frustration of the people of South Africa was released against foreign nationals largely because South Africa has failed to deal with the Zimbabwean situation. South Africans do not want to have to suffer because of their government's failure to deal with the Zimbabwean crisis.”⁹

Zimbabwe Solidarity Forum (ZSF) coordinator, Siphon Theys raised the issues highlighted in the MSF report in a February 2009 letter to parliament. He linked them directly to the climate of fear which has persisted beyond the initial 2008 xenophobic attacks. The ZSF called on parliamentarians to act decisively in dealing with the issues.

“Part of our people-to-people solidarity includes exposing the horrific conditions faced by Zimbabwean refugees in South Africa. The poverty of so many people in South Africa extends to vulnerable migrants, and there are many who are hungry and cold at night, who have no shelter and no access to services, who are victims of sexual abuse and exploitation. The constant threat of harassment, extortion or deportation from corrupt South African Police Service Officers, and the inhumane treatment often received from Home Affairs officials, is compounded by an undercurrent of violence and fear that still

exists following the outbreaks of xenophobic violence in May last year. Here is an area of enormous need that the South African Parliament could begin to address today!”¹⁰

In a September 2008 article for the Olof Palme International Centre website, SALO focused on the debate around the causes of the violence. Further research into the causes has been undertaken by SALO since then. The causes of violence identified include:

- The concept of the nation as a space of belonging for some, which introduces the idea of insiders and outsiders;
- The peculiar nature of apartheid in engendering stereotypes based on racial exclusion of others;
- Use of terms such as '*makwerekwere*' or 'alien' which creates divides between 'us' and 'them';
- The dehumanisation of others that was a key part of the apartheid socialization process. Where dehumanisation was once based on race, it has shifted its focus onto nationality;
- Confusion about the nationality of refugees and use of racial profiling to identify outsiders;
- Not understanding the human rights situations of other countries, the reasons why people have left and a general lack of knowledge;
- Lack of understanding of the historical assistance given to South Africa by neighbouring countries;
- The culture of generalised violence;
- Lack of adequate information on the humanitarian catastrophes in countries of origin;
- Global recessionary conditions inducing competition for resources;
- The denial of social and economic rights in South Africa and the slow delivery pace; and
- Media propagation of stereotypes.

Although the causes of xenophobia and violent behaviour in South Africa are complex and deeply rooted there is a widely held perception that government's long-term refusal to fully acknowledge the plight of Zimbabweans fleeing their homeland in search of a means of survival, and the potential implications of this situation for South Africa's own national security, are among the key underlying factors that have helped stoke xenophobic sentiments. The South African state has failed to develop an adequate national policy in response to the Zimbabwean influx.

This failure, as a report compiled by the Wits FMSP argues, has been rooted in “South Africa’s ... role in mediating the political crisis within Zimbabwe,” and responses to the migrant crisis should have been “designed to complement rather than undermine South Africa’s supportive role in reconciling and reconstructing Zimbabwe”. The xenophobic attacks were, the report opined, “as much the result of the lack of responses to the migration flow as to the migration itself.” The plans and programmes South Africa does have are largely unimplemented or ineffectual. For example, all unaccompanied minors, regardless of their status, are supposed to receive assistance but the programme which should be helping thousands of such children has not been implemented.¹¹

Up to one third of the migrants who manage to survive (and probably also support families in Zimbabwe) through various forms of low-skilled self-employment or possibly crime, have, the report notes, education or skills much in demand in South Africa, yet there has been no serious attempt to audit their skills and facilitate their participation in the formal economy. Most relevant to the xenophobic violence, there has been an inadequate humanitarian response to the ever-increasing influx of desperate Zimbabweans as the crisis in their homeland has deepened:

“There are currently no dedicated humanitarian services for Zimbabweans, access to mainstream housing, health care and emergency welfare services (such as the Social Relief of Distress grant) is limited, and non-governmental humanitarian responses are insufficient.”¹²

The Forced Migration Project’s report warned that the implications of this lack of basic humanitarian assistance include “increased homelessness and overcrowded accommodation, with their concomitant social, public health and infrastructural impacts” and the “potential increase of survival crime” - both of which have clearly had a direct impact on stoking xenophobic attitudes, despite the fact that foreign migrants bring much needed skills into South Africa and often do not commit crime or take jobs from citizens but fill gaps within the country, such as that of informal trader (Nyomnjoh, 2006).

The report concludes:

“If four million undocumented foreigners continue to be barred from participating in South African society — in the absence of any public policy which explains both their plight and value — then any success they do enjoy will inevitably be seen as an injustice by South Africans living in worse circumstances.”¹³

The culture of impunity surrounding the May 2008 attacks is also widely believed to have contributed to the ongoing outbreaks of violence that have occurred throughout 2009. Despite the government’s assertion that perpetrators of violence would be prosecuted, including the mention of special courts that would be established to deal with the vast numbers of people alleged to have been involved, there have been no prosecutions to date. Those few who were arrested appear to have been released, or their cases postponed indefinitely, and there have been no public convictions that have brought home the consequences of anti-outsider violence. This absence of consequence encourages local power brokers to use ongoing xenophobic sentiment as a basis to gain popular support and as a means through which they can pursue their own interests.

The nexus of migrant policy and xenophobic violence

The starting point of any exploration of migrant policy must by necessity acknowledge that implicit in any argument for policy reform is the recognition that the state has a responsibility and a right to determine who enters its borders and under what conditions. As Barry Gilder, former director-general of Home Affairs argues:



“This is a critical element of nationhood for all nations. Once the need for immigration management is acknowledged and unpacked, it becomes easier to argue for policy, legislative and implementation reforms.”¹⁴

The acknowledged right of the state to manage migration makes the responsibility to understand and be influenced by the direct impact of its policies and their implementation on the migrant community, and on the population at large, all the more pertinent.

The real and perceived poor treatment of migrants to South Africa appears to have an important impact on attitudinal stances taken towards them by South Africans. The arduous process of having to prove their legitimate right to the protection from violence that is guaranteed under international laws to which South Africa is a signatory, creates suspicion that their intentions are to take advantage of the country rather than to seek protection. Migrants are largely perceived as economic migrants looking for a better life, putting pressure on the scarce resources so many South Africans are themselves trying to access.

The reality, however, according to several recent reports, is that the distinction between economic and political migrants is often inadequate. A July 2009 UNHCR report suggests that Zimbabwean refugees constitute a new analytical category of ‘survival migrants’. They fall “neither within the legal definition of a ‘refugee’ nor are they voluntary, economic migrants.” Instead, they are “fleeing an existential threat to which they have no domestic remedy. The reasons for their flight have mainly been a combination of state collapse, livelihood failure, and environmental disaster.”¹⁵ South Africa’s (and many other countries’) response to the ‘survival migrants’ has been “ad hoc and insufficient”. For the last decade, South Africa has been at the forefront of a new phenomenon: its northern neighbour has not been subject to a full-fledged war or natural disaster, but its leaders have carried out a campaign of repression approaching a status of low-intensity warfare that defies legal categorisation and international intervention, and (except for the cholera epidemic of late 2008 and early 2009) the level of its humanitarian crises has been simmering rather than dramatic. The response of the international community has been just as ‘ad hoc’ as South Africa’s.

An in-depth study carried out by the Wits FMSP produced findings that challenge many of the common beliefs regarding asylum seekers and refugees who enter the migrant system.¹⁶ Among other things, they reveal the following picture of asylum seekers:

- Although economic conditions may be a contributing factor to flight, the majority of applicants who approach the reception offices cannot be characterised primarily as economic migrants.
- The majority of asylum seekers cited reasons for their flight that corresponded to the bases for seeking asylum under the Refugees Act.
- Most asylum seekers did not know about the possibility of seeking asylum before they entered South Africa.
- Even after asylum seekers make their way to a reception office, many do not understand how the asylum system works.
- The study concludes that the migrant policy system and the mechanism for determining the eligibility of asylum seekers has largely failed to fulfil its legal requirement of protection of victims of rights abuses.

The report notes further that:

“The attitudes and behaviour of reception and status determination staff are focused on controlling migration rather than protecting refugees. The protection officers tend to view applicants with suspicion, resulting in an obstructive attitude that directly or indirectly denies many legitimate asylum seekers the protection to which they are entitled. This inhibits the realisation of the protection framework envisioned by refugee law. Respondents recounted a number of inappropriate questions asked and statements made during their status determination interviews, demonstrating anti-immigrant prejudice and a lack of professionalism among status determination officers.”



The South African government has made significant shifts in domestic policy on migrants as part of its Turnaround Strategy aimed at reducing backlogs and shifting public perceptions. It is also acknowledged that the job of the Status Determination Officers is challenging, and that determining whether an applicant has legitimate a case for asylum under the relevant statues is not always clear. The waves of deportation during the 2008 migration led to the government being accused of demonising Zimbabweans, and contributing to their victimization during the xenophobic attacks. New policies relating to Zimbabwean migration were announced following the GPA signing (having first been introduced in 2004), including the introduction of a visa-free entry facility allowing Zimbabwean passport holders the right to work in SA for 90 days. In addition a proposed special permit for undocumented Zimbabweans already in the country would have afforded them legal status for up to a year as well as access to services such as health and education. The move was heralded by migration experts as a positive shift that would benefit migrants and that was also in the best interests of South Africa.

In a May 2009 report the FMSP at the University of the Witwatersrand outlined the positive benefits of the proposed new policy and drew attention to the international recognition that it would bring South

Africa: "This new package of policies, especially the special dispensation permit, is in South Africa's best interest. It responds to perceptions that, in the context of a recession and a newly elected administration, regularising Zimbabwean migration may not be a priority or that it may have negative impacts for South Africans. In fact, the regularisation of Zimbabwean migration is consistent with and complementary to many of the key goals of the new administration."¹⁷

However, that proposal had not been implemented as of the December writing of this chapter. Instead, Zimbabweans are allowed an ordinary 90 day work permit, renewable once at a cost of over R400 whilst within the country, or indefinitely on crossing the border. Given the costs of passports and emergency travel documents in Zimbabwe, this is actually more expensive than trying for asylum. Moreover, the differences between the old system and this new one are hard to fathom for the ordinary migrant: in interviews with sixty residents of the Central Methodist Church, only one person knew what an asylum permit was.¹⁸

It would seem that the South African government is moving away from the idea of a special dispensation for Zimbabweans and is trying to locate policy reform for this country's migrants within its overall migrant policy reform. This perception of current trends in government thinking has encouraged SALO to broaden the scope of its inquiry.

Solidarity and human rights-focused civil society organisations working on refugee and asylum seekers issues in South Africa, including SALO and its closest partners, have engaged extensively with the Department of Home Affairs (DHA). When two Zimbabwean detainees at the Lindela deportation facility died in July 2005, the Minister of Home Affairs appointed a Committee of Enquiry into conditions at Lindela. The report was published by the Minister and the implementation of its recommendations began almost immediately. However many problems remain, and conditions at the facility remain the focus of severe criticism and discontent. A report presented to the Portfolio Committee in 2005 by the ZSF led to further meetings at which the then incoming Minister of Home Affairs, Nosiviwe Mapisa Nqakula, expressed an interest in working closely with civic groups.

As part of this engagement Lawyers for Human Rights (LHR), together with several interested organisations, responded by commissioning a study of Zimbabwean asylum seekers and refugees living in South Africa. The survey that formed the basis of the report was carried out from January to March 2006. The report's executive summary noted that: "There have been numerous reports of the hostile reception that Zimbabwean exiles experience in South Africa. They include unlawful detention, arrest and extortion of asylum seekers (with and without legal papers entitling them to be in South Africa); assaults and ill-treatment of arrested persons and serious overcrowding, lack of timely medical attention and unsanitary conditions at the Lindela deportation facility as well as the inability of the Department of Home Affairs to process applications in a timely fashion."

The report concludes: "Although there is a fairly acceptable measure of legal and policy protective mechanisms for the protection of refugees and asylum seekers in South Africa, there is a serious lack of coherence in the government's implementation of these policies. Ineffectiveness can be attributed to negative social attitudes towards the influx of Zimbabweans, which has caused inconsistency and general insensitivity amongst SAPS and DHA officials in dealing with foreigners in general and Zimbabweans in particular seeking refuge in South Africa."¹⁹

More recently the FMSP at the University of Witwatersrand held a closed door roundtable discussion with officials from the Department of Home Affairs (DHA) on Friday 13 March 2009. The discussion centred on recommendations contained in a newly released FMSP study assessing refugee policy and service delivery at the country's five permanent refugee reception offices.

The report, titled "National Survey of the Refugee Reception and Status Determination System in South Africa," calls for revisions in the Department's Turnaround Strategy. The study revealed the extent of the difficulties at South Africa's refugee reception offices. It emphasized that problems with access, service delivery, inadequate staff training, and prejudice among staff at the reception offices is resulting in severe violations of asylum seeker rights. It also highlighted that the failures in the status determination process are creating an unmanageable backlog within the Refugee Appeal Board.

Participants at the meeting agreed that an independent research unit should be established to provide relevant and up to date country information in order to address these deficiencies and ensure that asylum seekers who face grave dangers are not improperly returned to their home countries in violation of the law. Recognizing that the limited research capacity of individual status determination officers contributed to the poor quality of asylum decisions, stakeholders at the meeting expressed their willingness to assist if called upon to build the DHA's research capacity.²⁰

The impact of migrant policy and xenophobia on women



In October of 2009 SALO hosted a workshop for migrant women to share experiences of the specific and particular ways in which women are affected by migration, xenophobia and the policies developed by the state. The workshop brought together women from diverse nationalities and backgrounds and civil society activists to discuss and make recommendations on policy in relation to migration and women in particular.

The workshop found that the journey to South Africa exposed women to high levels of abuse and sexual violence. A significant number of cross-border migrant women and girls from Zimbabwe continue to be exposed to rape by informal cross-border transporters, smugglers, and criminals while trying to enter South Africa. In addition sexual violence formed a significant part of the violence faced by victims of the May 2008 attacks. Several women shared stories of how during the xenophobic attacks of 2008, rape was used as a weapon to displace migrant women and girls from their homes.

But it is not only the direct physical violence that affects women. Sam Pearce, former volunteer communications liaison for the Joint Refugee Leadership Committee of the Western Cape, describes the condition of women who remain in the Blue Waters refugee camp, most of whom began their camp life at Soetwater, following the violence of May 2008. Simultaneously berating both the media and the public, Pearce compares the sympathetic public responses to the beaching of whales to the almost total silence surrounding the human beings still so devastatingly affected by xenophobic violence.

"Last week, 5 pan-African foreigners were murdered in 3 separate incidents across the Western Cape, a large group of SA businessmen issued warnings to Somali traders in

Samora Machel to shut shop and move out or else, and some of the few remaining Blue Waters children who attend school were beaten up by fellow learners in Mitchells Plain.

None of this made headlines like the whales.

The mostly single or widowed mothers who remain in the camp are in a paralysing state of post traumatic stress-upon stress-upon stress. The pressure of living in SA is killing them: they feel like they can't breathe easy here; they are mentally decomposing. They stay in tattered tents on the beach because they are too frightened to move. They live in constant fear of attack, on them or their children, in the choppy waters of Samora Machel, of Du Noon, of Khayelitsha. But our government is still in total denial about the realities on the ground.

Where are the soft hearts crying for them? And is the City's plan to evict them any more humane than rifles to put them out of their misery?"²¹

An important study by the Forced Migration Studies Programme on changing migration patterns to South Africa from Zimbabwe also highlighted how stereotyping of women added to their vulnerability:

"A widespread belief that the majority of women migrants are sex workers means they are often targeted for police harassment, arrest and deportation. While efforts to regulate migration and to prevent illegal practices may be necessary, these should be implemented in a manner that does not compound the vulnerability of already-vulnerable migrants, including women using informal work or sex work as a survival strategy in the absence of a regional response to their humanitarian needs."²²

An analysis of both physical and structural violence against women has not been sufficiently addressed. Adequate protection against gender based violence was not provided in the places of safety that were provided for victims of xenophobic attacks and women are not adequately protected within the current migrant systems. The experiences that were shared at the SALO workshop exposed that migrant women who are seeking justice following domestic or gender-based violence during the xenophobic violence remained vulnerable when they entered into Internally Displaced Persons camps, and that migrant women were often targeted for sexual violence and sexual exploitation.

Policy recommendations



Participants painting a banner at the SALO/ PASSOP workshop on "Women, Xenophobic Violence and Conflict Resolution Processes" October 2009.

There is a great deal of debate amongst civic groupings, and within government circles, over what would constitute an effective policy response. Several of the recommendations emerging from civil society bodies are contested or

contradictory, reflecting the varied interests of these groups. Policy reforms suggested by various government bodies and officials also reflect the varied interests and views within the state, and even within the ruling ANC.

Former Director General of Home Affairs Barry Gilder spoke out strongly on this in an interview with SALO:

“In my experience as DG of Home Affairs I came under a wide range of pressures – from the private sector, from different arms of government, from civil society, from the trade unions, from international migration bodies, from parliament and even from within the ANC itself - to tighten up immigration control on the one hand, and to introduce more liberal immigration policies on the other. As I said, I have long argued that the ANC needs to develop a comprehensive immigration policy to replace the hand-to-mouth policy and practice that developed during the first ten years of democracy when Buthelezi was Minister of Home Affairs.”²³

The complex differences contained within these policy positions, and the clear tensions and potential for violence contained within the current context, speak strongly to the need for a major review of government policy on migration. The Southern African Migration Policy paper produced by Idasa summarises this position well:

“South Africa urgently needs an immigration policy overhaul. The fraught and protracted political process leading to a new Immigration Act in 2002 delivered a policy framework that is incoherent and, in many respects, unimplemented and unimplementable. Neither the post 2002 skills-based immigration policy associated with JIPSA nor the enforcement measures contemplated by the Act are working, precisely as SAMP and other critics predicted at the time. There is a need to develop a coherent and workable development-oriented immigration plan and to “sell” that plan to an electorate steeped in isolationism and hostility to immigration; despite the many demonstrable benefits it brings the country. No pro-active immigration plan can survive for long with a citizenry that is so uneducated about and sceptical of the benefits of immigration.”²⁴

It would seem clear that a dialogue process aimed at providing a forum for informed and constructive debate about what would constitute effective migrant policy is critical. Within the ruling ANC the beginnings of such a debate are already in the making. Lucian Segami, a SALO staff member, who is also a member of several influential alliance structures, spoke to this issue:

“There is a debate starting on a mass naturalisation process of immigrants, especially those from the continent, subject to their approval or consent, with proper checking, and to give them full rights to work, to marry, to reproduce, to walk freely, not to be policed, to make money, to teach, to impart their skills and so on. But this is really only the beginning of the debate.”²⁵

Segami went further to propose that such a debate be taken further formally within multi-stakeholder structures such as, for example, NEDLAC, the National Economic Development and Labour Council. NEDLAC would provide an ideal forum to address the labour, employment and economic related aspects of the issue.

One issue which is already a subject of intense public discussion and disagreement is the role of labour brokers and employers in the South African economy, including allegedly exacerbating xenophobic tensions and in some cases, like at De Doorns in the Western Cape, actually igniting violence. While the ANC Alliance and government are united in demanding the banning of labour brokers, the opposition Democratic Alliance and employers argue for regulation rather than an outright ban.

In addition to this proposed NEDLAC-style process, SALO supports the establishment of focus groups or inter-disciplinary advisory bodies that are made of multi-sectoral expertise from within state and civic bodies. Towards this end the Department of Home Affairs is already in the process of establishing links to civil society groups including SALO.

The active engagement between civil society and governmental departments around refugees, migrants and asylum seekers already has a strong foundation on which to build. The contribution of civil society to the policy-making process is potentially huge. Research studies and reports are already being produced that could be used to provide valuable insights and information that could inform policy. Networks of migrants linked in to civil society organisations could become conduits for the dissemination of information and civic activists and volunteers could provide skills and experience that would be of enormous benefit to the department.

The outlined analysis contained in this paper recognises xenophobia as a combination of underlying structural and systemic conditions and attitudes that are rooted in prejudice that then create the conditions for triggers to manipulate these tensions and ferment violence. In a private interview with Barry Gilder reiterated the importance of recognising the complexity of the objective conditions that lead to the subjective responses that turn violent:

“I don’t think it is useful to deal with xenophobia in isolation from a more profound understanding of its roots and causes. We need a more in-depth analysis of the conditions that have led to this. I think we need to ask ourselves a more general question about our communities’ predilection for violent protest, not just against foreigners, but about service delivery issues etc. Like xenophobic attacks, service delivery protests are very complicated matters involving a range of issues – genuine frustration against lack of service delivery, expectations that people have since 1994, corruption, competition for power, influence, tenders, jobs, political in-fighting etc.”²⁶

The recommendations outlined below are extracted from a number of civil society sources. They are included here as an attempt to outline the wide range of integrated and inter-disciplinary set of recommendations that will be necessary to holistically begin to turn the tide. These recommendations are aimed at responding to the immediate needs of preventing further violence as well as beginning to address some of the deeper underlying causes of the sentiments that allow such violence to occur.

The inter-related socio-economic and political conditions, the systems and structures that do not adequately protect the rights of migrants and that create the perception of migrants as unwanted opportunists, as well as attitudes that are prejudiced and largely misinformed are all addressed in the recommendations that follow.



Recommendations and observations from PASSOP arising out of the joint SALO-PASSOP workshop:

Any policy reforms implemented in an effort to address some of the roots of the xenophobic violence would need to take place within the context of socio-economic reform. The issues that follow are identified by PASSOP as being key in this regard:

- Prioritise delivering on the promises made to provide all those within South Africa with housing, electricity, water, waste disposal, and all other municipal services necessary to a thriving civil society, and in doing so, relieve the tensions between South Africans and non-nationals that are created by their scarcity;
- Support the efforts of labour unions who fight for workers' rights, knowing that these actions will be best for the South African consumer in the long run;
- Ensure legal reforms and a reform of the SAPS and the Metro Police to ensure that charges against criminals be made regardless of the complainant.
- Foster an economic policy that focuses on bottom-up development strategies, such as job creation, investments in social infrastructure, affordable social services, and cultivating skills development in the South African work force;
- Take a clear, strong stance against human rights abuses not just within South Africa, but abroad, and especially in other African countries like Zimbabwe, DRC, and Sudan;
- Provide as much support as possible for the law enforcement branches as possible, including financial resources, equipment, information management technology, and skills development training for officers so they can deal fairly, sensitively, and effectively to crisis situations;
- Ensure that those who have committed human rights abuses are brought to justice by, for example, sponsoring independent inquiries into the May 2008 attacks and partnering with NGOs and civil society to draft conflict resolution strategies that can be written into law, while working to prevent further incidences of xenophobic violence by developing methods for detecting early warning signs and systems for responding quickly and effectively to emergency situations;
- Make targeting corruption at all levels of government a priority and foster environments in which corruption can be safely and anonymously reported;
- Guarantee sufficient resources be allocated to the national education budget, and focus on developing the education systems in the poorest areas of South Africa;
- Require more in-depth oversight functions be taken on by the national-level leadership of political parties; and
- Create a national environment that fosters strong civil society and a vibrant NGO community and embraces diversity.

Labour-force Issues

- There is a lack of clarity regarding the legality of employing non-nationals, regardless of what papers they have, and employers sometimes choose to discriminate against foreign nationals altogether to avoid legal issues. Other employers have prejudices against the South African work force and choose to employ foreign nationals for their work ethic. This often leads to a very segregated workforce and fuels ethnic tensions in the workplace.
- Opportunistic employers often take advantage of the desperate situation migrant workers are in.
- Some migrant workers are willing to work under harsher conditions or for less pay than local South Africans. Though this is not a widespread phenomenon.
- There are reports that some unions have unofficial exclusionary policies regarding the membership of foreign-nationals. This prevents them from having a clear, structured form of organization against opportunistic employers.

Recommendations

- Parliament should ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- The department of Labour should ensure that there is a stronger effort of dissemination of labour rights education.
- The South African Qualifications Authority (SAQA) should reduce, waive, or defer fees for certification of qualifications for recognised refugees and asylum seekers.
- Labour unions should encourage unionisation of refugees and asylum seekers and monitor labour rights abuses against non-national workers in the same way as abuses against citizens.

Women's Issues in Immigration

- A significant number of cross-border migrant women and girls from Zimbabwe continue to be exposed to rape by informal cross-border transporters, smugglers, and criminals while trying to enter South Africa.
- During the xenophobic attacks of 2008, rape was used as a weapon to displace migrant women and girls from their homes.
- Migrant women who are seeking justice following domestic or gender-based violence during the xenophobic violence remained vulnerable when they were entered into Internally Displaced Persons camps

Recommendations

- The police in border areas should prioritise the safety and security of female immigrants in transit who are without shelter, and provide them with protection instead of only focusing on curbing illegal migration.
- Police should ensure that gender based violence crimes are taken more seriously and confronted over less serious immigration violations.
- The documentation supply to refugees should be altered to allow easier access to disability grants, UIF other services.
- The Department of Health should increase its role out of ARVs and HIV testing at the Messina refugee centre and possibly set up a mobile clinic at the centre.

Refugee Reception Centres

- Many of the refugee centres have insufficient ablution services for the large number of asylum seekers queuing outside.
- There has been a complete failure of government and building security services to implement effective queue management systems.
- Many of those seeking asylum live far from the reception centres, and because they lack sufficient travel funds, are often forced to sleep overnight on the streets outside the centres. This poses a serious risk of illicit activity during building 'after hours', and creates a conducive environment for gang activity, robberies, and violence, especially against women.
- There is a lack of consistency in the training, practices, adherence to policy, and personal abilities of the refugee reception officers (RROs) that translate into inconsistent service delivery for those seeking asylum.
- There have been allegations that the national government puts pressure on the RROs to limit the number of asylum seekers permits the DHA approves.

Recommendations

- The Health Department should survey the refugee reception centres and determine the sanitation needs there and see that they are sufficiently met.
- The DHA and SAPS should work with civil society organizations to create effective queue management systems that make for a calmer, more orderly environment at the refugee centres.
- Wherever possible, government should identify sites where there are large numbers of refugees and asylum seekers who are not being served by the DHA. They should determine where satellite DHA offices, for example, can be set up to safely and efficiently deal with the larger populations of asylum seekers.
- DHA should work with SAPS in a coordinated effort to secure the building at night for those who have no other option than to sleep on the streets there. The DHA or

civil society groups involved on site should liaise with SAPS about the security concerns of those spending time at the centres.

- RROs should attend nationally standardized regular trainings to hone and renew the skill sets necessary to fairly serve the asylum seekers. RROs should additionally be regularly debriefed on the situations in the countries that are sending many refugees to South Africa so that they will best be able to make informed, fair decisions as to an asylum seeker's legal status.
- Claims that the government encourages rejection of asylum seekers status documents should be seriously investigated by independent bodies.

Social Services for Refugees

- Foreign nationals, even those with legal status in the country, are often denied fair access to health care, even in emergency situations.
- Many migrant children have also been denied entry into public schools on the basis of their legal status, though the law clearly states that they are entitled to free public education until they reach the age of fifteen. This is causing serious gaps in the education levels of migrant children in South Africa.
- It is very difficult, and often impossible, for non-nationals to open bank accounts in South Africa. The inability to safely deposit cash puts many foreign workers in dangerous situations and at high risk for being targeted by thieves.
- Many non-nationals have a very difficult time securing accommodation. Especially those who do not yet have any sort of legal documentation to be in the country are taken advantage of by opportunistic landlords. Many migrants are forced to live in homes that are far below safety codes with an unsafely high number of occupants.

Recommendations

- The Health Department should take a consistent stance in guaranteeing delivery of the rights promised in South Africa's constitution regarding the health care of non-nationals, especially in emergency situations.
- The Department of Education also needs to ensure that public schools in corners of South Africa are given clear information regarding the rights of migrant children to a free education.

The following additional recommendations include some that pertain specifically to the legal aspects of policy making that could begin to address the underlying culture of impunity that allows xenophobic attacks to continue.

These recommendations are contained within the report produced by the FMSP for the International Organisation on Migration. ²⁷

1. ***Develop interventions to promote accountability and counter a culture of impunity:*** There is little hope of reforming corrupt and potentially violent leadership structures if guilty parties continue to reap rewards for their misdeeds. The Department of Justice together with the Department of Provincial and Local Government (DPLG), and the National Prosecuting Authority (NPA) should lead an initiative to prosecute community leaders and others involved in the xenophobic violence and to strengthen justice mechanisms to protect the rights of minority and marginalised groups. Such an initiative should begin with an official Commission of Inquiry — potentially by the South African Human Rights Commission or another constitutionally mandated body — to identify guilty parties and unacceptable practices. Further efforts will lay criminal charges against official and unofficial leaders who used their authority to promote violence and illegal activities, or employ crime prevention and conflict resolution mechanisms that do not respect the rights of all community residents. However, criminal prosecution on its own will not be enough. Resources and mechanisms should be put in place to encourage existing civil society organisations to support the rights and welfare of non-nationals along with other marginalised and vulnerable groups. In the short term, election-monitoring mechanisms should be put in place to ensure that officials are not elected on an anti-foreigner/ anti-outsider platform.
2. ***Promote positive reforms to build inclusive local governance structures:*** As much of the violence is rooted in exclusive local politics, DPLG and others should identify and promote positive leadership models and leaders committed to tolerance and the rule of law. In all cases, interventions must be wary of empowering ‘unscreened’ community leadership structures such as street committees and other forums. Doing so may entrench the power of the same unscrupulous leaders who were responsible for the violence or promote others so inclined. Instead, we must find and support positive examples like those in Alexandra and Tembisa where community leaders successfully mobilised their constituencies to prevent the violence. Mechanisms within the public administration and political parties should encourage such efforts to build more inclusive and rights-based forms of governance. Doing so will require more inclusive community justice mechanisms, a more effective and responsive police service, and legal support for disenfranchised and marginalised groups.
3. ***Open up more channels for legal migration:*** Government should consider opening up more channels for legal migration, such an approach would not only encourage legal migration and help reverse clandestine migration, and it could also help reduce the ‘us vs. them’ mentality that contributed to the attacks. Furthermore, it could contribute towards reducing corruption, labour exploitation and other practices that undermine the rights and welfare of both South African and foreign nationals.
4. ***Support government to address xenophobic and discriminatory practices in public institutions:*** Donors and civil society should encourage and support government’s efforts towards eliminating xenophobic and discriminatory practices in public

institutions. Efforts to counter these practices can begin with sensitisation of public officials.

5. ***Promote a human rights culture among the people of South Africa:*** Leaders, citizens, and non-nationals should be made aware of rights, entitlements and responsibilities of various categories of foreign nationals. Effective interventions should not be limited to appeals to tolerance, but must also draw attention to the country's laws, the rights of different groups, mechanisms for countering discrimination, and the negative consequences of not respecting the law and rights of all.
6. ***Conduct ongoing, systematic inquiries into anti-immigrant and anti-outsider violence and the political economy of township life:*** This report is only the first step in understanding the actions and tensions that led to violence. Future intervention strategies designed without a clear appreciation of the violence and the reasons behind could be ineffective and counter-productive. Future steps must move beyond finger pointing over the May attacks, and encourage and enable local government and emerging leadership structures to be more proactive in building mechanisms that enhance the rights and ability of all residents to participate in planning their community's future. It is crucial to note this study's finding that perceptions and misrepresentations played an important role in triggering anti-foreigner violence. The dissemination of factually based reports and information can help counter existing negative attitudes among the members of public that lend credence to the 'criminalisation' of foreign nationals. Activists and advocacy groups should also find ways to use the media and other available platforms to disseminate research results that may counter such misconceptions.
7. ***The Government of South Africa should work together with International Organisations (e.g., IOM, UNHCR, OCHA) and civil society to develop early conflict and disaster warning and management systems:*** Local government should be capacitated to monitor ethnic and political divides and tensions that may escalate into widespread violence. Non-nationals and other local minority groups (also considered as outsiders) are particularly vulnerable to such conflicts, although political tensions may also affect other long-term residents. Similar mechanisms may be put in place to monitor natural disasters. In all cases, such monitoring mechanisms must be supported by rapid response systems and conflict resolution mechanisms involving the police, religious institutions, the courts, and other available mechanisms that can help forestall mob violence, address concerns and conflict, and prosecute those unwilling to respect the rights and dignity of all community residents.
8. ***Sensitise and capacitate media to undertake responsible reporting on migrants and migration issues:*** Implement programmes to capacitate the media to understand the different categories of migrants, the various aspects of migration, and the rights and responsibilities of migrants, in order to promote responsible and factual reporting about migrants and migration, based on proper investigation. This

will help to reduce the prejudices and stereotypes that are fostered by irresponsible media reporting that tends to refer to migrants generally as 'illegal immigrants'.

The following final set of observations and recommendations are taken from the SAMP migration policy series produced by Idasa.

1. **All past and future perpetrators of xenophobic violence should be vigorously prosecuted.** There are signs that this is indeed what the state intends though the penalties should be harsh and exacting for all of those who broke the law, destroyed and stole property and engaged in rape and murder. This is necessary not only to make an example of xenophobic thuggery but to dissuade similar actions in the future. The citizenry needs to know that despite its own dislike of foreigners, taking the law into its own hands will not be tolerated. The state also needs to revisit past incidents of xenophobic violence and prosecute those involved as well.
2. **Corruption in all aspects of the immigration system needs to become more costly than it is worth to the perpetrators.** Too many South Africans, and too many police and officials, have engaged for far too long in exploiting the vulnerability of foreign nationals. At the same time, South African employers who flaunt labour laws in their hiring and employment of migrants need to be exposed and prosecuted.
3. **The deeper problem of widespread and entrenched xenophobic attitudes needs to be seriously addressed.** There is no reason why the majority of citizens should favour a particular immigration policy provided they are well-informed about the purpose, nature and impacts of that policy. But there is absolutely no reason, or excuse, for that to be accompanied by abuse, hatred and hostility towards migrants and "fellow" Africans in particular. Attitudes that are so entrenched, pervasive and negative need to be attacked with the same commitment that state and civil society has shown towards the scourge of racism in post-apartheid South Africa.
4. **South Africa urgently needs an antidote to a decade of political inaction on xenophobia.** Since 1994, South African attitudes have only hardened. What has been done is too little, much too late. Required now is a broad, high-profile, multi-media, government-initiated and sponsored anti-xenophobia education program that reaches into schools, workplaces, communities and the corridors of the public service. This program should be systematic and ongoing. The programme needs to breed tolerance, celebration of diversity and the benefits of interaction with peoples from other countries.
5. **South Africans need to be educated about immigration and the benefits of managed migration.** They need to know that immigration is not really as harmful as they think. They need to understand that immigration can be extremely

beneficial. They need to know if it is. They need to be disabused of the myths and stereotypes they hold dear. They need to know what rights foreign nationals are entitled to when in South Africa. They need to be African and world leaders in refugee rights protection. They need to understand that South Africa is a member of a region and a world and has responsibilities to both. There needs to be informed public debate and discussion about pan-Africanism, the economic benefits of South Africa's interaction with Africa, and the need for immigrants. They need to abandon a myopic nationalistic siege mentality.

6. **Disgust at xenophobic actions should translate into disgust at pre-existing and enabling xenophobic attitudes and a serious campaign to clear the minds of all citizens.** The events of May 2008 may provide the necessary spur to political action. Certainly the humanitarian response of many in civil society suggests that there are South Africans who are repulsed and ashamed by what their fellow citizens have done. Officials and politicians also need to move beyond rhetoric to action and example. Strong political leadership and will is required. South Africa cannot hold its head up in Africa, in SADC, at the African Union, at any other international forum, if it continues to allow xenophobia to flourish. President Mbeki reacted with "disgust" to the events of May 2008.
7. **The media has certainly been complicit in encouraging xenophobic attitudes among the population. They would not uncritically report the opinions of every racist they come across. No more should they uncritically tolerate the opinions of xenophobes.** With the exception of the tabloid press, the media response to May 2008 has generally fostered informed analysis and debate. It has not always been this way. The real tragedy of the last ten years is the way in which the media has mishandled the issue of xenophobia. Several research studies have shown how the media has uncritically reproduced xenophobic language and statements, time and again.
8. **South Africa has not yet ratified the UN Convention on the Rights of All Migrant Workers and Members of their Families. South Africa should take the African lead in ratifying this convention and making the reasons clear to its own citizens.** The Convention is not inconsistent with South Africa's human rights and labour law. However, there has been little public debate about the treaty and knowledge of its content and implications is extremely low in official circles. Commitment to and adherence to the Convention would help to clarify for all exactly what rights and entitlements foreign nationals have when in South Africa.

SALO does not wish to either endorse or reject any of the ideas contained within this wide spread of suggestions. Rather, at this stage, we wish to recognise that these recommendations contain the beginning of an important discussion between the stakeholders concerned about the violence and destruction associated with the attacks that continue to affect all of us.

These contested ideas, and the analysis that informs them, need to be taken forward in a manner which enables a cooperative partnership between the state and civil society. This partnership could develop a response which is consistent with the goals of transformation, the human and peoples rights contained in the African Charter and the progressive values enshrined in our own constitution.

Conclusion



Clearly this set of recommendations is as complex as the xenophobic violence itself, and falls outside the scope of any single stakeholder, or government ministry. It is precisely this complicated set of required responses that has prompted SALO to produce this paper, which is an introductory paper that will be further developed during 2010. In particular a much wider group of stakeholders will be brought together to discuss recommendations for action.

In his open letter to the people of Zambia, South African President Jacob Zuma, invoking the memory of the late ANC President O.R. Tambo, reminds all of us of the enormity and urgency of the task at hand, and of the inextricable way in which combating xenophobia forms part of both our history and our future:

“(O.R. Tambo) ... would urge us to continue on this mission of a fundamental transformation and to work for the prosperity of the peoples of both Zambia and South Africa. He would urge us to rebuild that which apartheid and colonialism sought to destroy over many decades. He would urge us to advance in unity we nurtured during the most difficult period of our human history when we fought for liberation against our colonial masters.

He would frown upon the xenophobic tendencies that are becoming a regular occurrence in our country. He would urge us to share in our prosperity with our sisters and brothers in the continent like they shared and gave their all including paying the supreme price for our own liberation.”²⁸

Piecemeal or isolated reforms of existing policy are unlikely to have the required impact. What is required now is a holistic and integrated response, led by a single ministry, but inclusive of many, that can bring together all of the stakeholders, both from within the state and from amongst the civic movement. In many ways the process of how this policy response is developed is as important, if not more important, than the policy itself.

A cooperative effort is needed that works at several levels and recognises that a collective and coordinated response is the only way to turn the xenophobia around. At the close of 2009, against the background of recent fresh outbreaks of violence on some parts of the country, this approach does seem to be on the cards for 2010, led by a newly-invigorated home affairs ministry.

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