A Legal and Ethical Analysis of the South African Government's Response toward Zimbabwean Immigrants
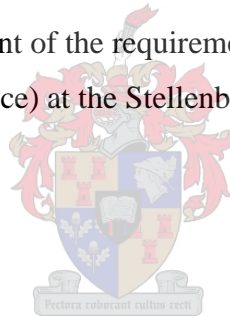
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Supervisor Professor Patrick J. McGowan

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Declaration

By submitting this dissertation electronically, I declare that the entirety of the work contained therein is my own, original work, that I am the owner of the copyright thereof (unless to the extent explicitly otherwise stated) and that I have not previously in its entirety or in part submitted it for obtaining any qualification.

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Abstract

This thesis is a study of the South African government's response toward Zimbabwean immigration, focusing on the period from 2000 to July 2009. The aim is to shed light on why the government has acted in the manner that it has, using a human security framework. South Africa's legal obligations under international, regional, and domestic law are investigated and the ethical debate concerning issues of entrance and borders is explored. Concepts of morality, universality, and human dignity are central to this discussion. Against this backdrop, the Zimbabwean migration is briefly analysed in terms of push and pull factors and numbers; and the legal debate concerning the classification of Zimbabweans is explored. The challenges Zimbabweans face in South Africa and how the government has dealt with the Zimbabwean immigration is covered. Key actors from civil society and government are interviewed in an attempt to engage opinions about the government's response. The main opinions as to why the government has responded in the manner it has are then discussed and other factors are considered. Issues of solidarity, land reform, and South Africa's involvement in the Zimbabwean mediation process are some of the factors considered. The conclusion of this study is that the South African government has not succeeded in meeting its legal obligations nor acted ethically concerning Zimbabwean immigrants. The particular sentiments of ex-president Thabo Mbeki, the solidarity amongst national liberation movements, regional considerations, and the capitalist interests of some South Africans are factors that carry the most weight in explaining the South African government's response to the Zimbabwean crisis and its subsequent migrants.

Opsomming

Hierdie tesis is 'n studie van die Suid-Afrikaanse regering se reaksie op die immigrasie van Zimbabwiërs na Suid-Afrika, met die klem op die tydperk tussen 2000 en Julie 2009. Die doel is om lig te werp op die regering se optrede in dié tydperk aan die hand van 'n menslike veiligheidsnetwerk. Suid-Afrika se regsverpligtinge onder internasionale, streek- en plaaslike reg, sowel as die etiese debat rakende kwessies soos die binnekoms van immigrante en grense, word ondersoek. Konsepte van moraliteit, universaliteit en menslike waardigheid , staan sentraal tot hierdie bespreking. Teen hierdie agtergrond word die Zimbabwiese migrasie kortliks ontleed in terme van die stukrag-en-trefkrag faktore en getalle; en word die regsdebat oor die klassifisering van Zimbabwiërs onder die loep geneem. Die uitdagings wat Zimbabwiërs in Suid-Afrika in die gesig staar en hoe die regering Zimbabiese immigrasie hanteer het, word bekyk. Onderhoude is gevoer met sleutelspelers in die burgerlike samelewing en die regering in 'n poging om agter die kap van die byl te kom met betrekking tot die regering se reaksie op Zimbabwiese immigrasie. Die belangrikste standpunte ten opsigte van die regering se optrede word dan bespreek in die lig van faktore soos solidariteit, grondhervorming, en Suid-Afrika se betrokkenheid by die Zimbabwiese mediasieproses. Die gevolgtrekking van hierdie studie is dat die Suid-Afrikaanse regering nie daarin geslaag het om sy regsverpligtinge na te kom nie, en nie eties korrek opgetree het nie met betrekking tot Zimbabwiese immigrante. Die sentimente van oudpres. Thabo Mbeki, die solidariteit onder die nasionale bevrydingsbewegings, en die kapitalistiese belange van sekere Suid-Afrikaners, is van die belangrikste faktore aan die hand waarvan die Suid-Afrikaanse regering se reaksie op die Zimbabwiese immigrasie-krisis verklaar word.

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This study is dedicated to all those persons who were in Harmony Park in Strand, after the xenophobic violence that spread through South Africa in May 2008.

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List of Abbreviations

ANC…………………………………………………………….Africa National Congress

AU...African Union

BEE...Black Economic Empowerment

CDE..Centre for Development and Enterprise

CORMSA..Consortium for Refugees and Migrants in South Africa

COSATU..Congress of South African Trade Unions

DHA……………………………………………...…………..Department of Home Affairs

DoJ...Departments of Justice

DSD...Department of Social Development

EU...European Union

GEAR...Growth Employment and Redistribution

ICCPR………………………………………….... International Covenant on Civil and Political Rights

IOM...International Organisation for Migration

IRIN...Integrated Regional Information Networks

MDC...Movement for Democratic Change

MK..Umkhonto we Sizwe

NCACC..National Conventional Arms Control Comittee

NEPAD…………………………………………………..New Partnership for African Development

NGO..Non-Governmental Organisation

NPA...National Prosecuting Authority

OAU…………………………………………………………..Organisation of African Unity

PAC…………………………………………..………………..Pan-Africanist Congress

RROs...Refugee Reception Offices

RSDOs...Refugee Status Determination Officers

SABC...South Africa Broadcasting Corporation

SADC …………………………………………..Southern African Development Community

SAMP..Southern African Migration Project

SAPS..South African Police Service

SMG...Soutpansberg Military Ground

UCT...University of Cape Town

UN...United Nations

UNDP...United Nations Development Programme

UNHCR..United Nations High Commissioner for Refugees

WITS..The University of the Witwatersrand

ZANU-PF..Zimbabwe African National Union-Patriotic Front

ZAPU...Zimbabwe African People's Union

ZESA...Zimbabwe Electricity Supply Authority

Chapter 1: Immigration into South Africa

Immigration into South Africa is a complex social, political, economic, and moral issue that poses numerous policy challenges for even the most stable democratic states. Relations between states are also affected, as population movements tend to create political tensions that can influence bilateral relations and put strain on social service delivery (Mawadza, 2008:4). The South African government appears to have been caught off guard by the "enormity, complexity, and seeming intractability of dealing with large-scale black immigration" from Zimbabwe and elsewhere (Maharaj, 2004:15).

This study aims to discover *why* the South African government has been relatively unresponsive towards the influx of immigrants hailing from Zimbabwe. While there is much existing literature on what South Africa's legal obligations are and what the actual problems refugees, asylum-seekers, and those who remain undocumented face once in South Africa's borders, there is very little conclusive and exhaustive literature as to why the government has responded in the manner that it has. This study highlights South Africa's legal obligations towards Zimbabwean refugees and asylum-seekers. Additionally, the arguments of ethical and political theorists frame South Africa's commitments in terms of morality towards all Zimbabweans fleeing their homes. An ethical framework compliments a legal framework in that it allows for a holistic approach ensuring respect for human dignity. Subsequently, empirical data in the form of interviews has been collected in order to discover why the South African government has remained so indifferent to the entire situation, which forms the focus of the study.

This chapter begins with the rationale for the research, and a brief background and literature review to contextualise the study and provide information on the current situation. Thereafter, the problem statement is formalised and the research questions posed. Subsequently the objectives of the study are articulated, the significance of the entire research explained, and the limitations of the study considered. The theoretical approach is explained and certain definitions are conceptualised. This is then followed by the research design and methodology

that is implemented for the research. The guiding conjectures are expressed and the structure of the study outlined.

Rationale

This study was motivated by a spate of violent incidents against non-nationals in South Africa. The attacks against non-nationals began on 11 May 2008, with Alexandra Township in Johannesburg receiving much of the media attention. The violence spread throughout the country, resulting in at least 62 deaths, 670 wounded, and the displacement of over 200 000 people (www.irinnews.org, 2008). There is a long history of xenophobic violence against foreigners in South Africa without effective steps taken by the various government departments. The year 2008 witnessed a massive increase in incidents (Williams, 2000; Nhlanhla, 2008). Government response has been negligible. The failure of government to regularise the large number of foreign nationals in South Africa and the absence of a humanitarian aid programme for Zimbabweans has only heightened anti-foreigner sentiments and tensions. In addition to this failure is the government's refusal to acknowledge the political factors behind the Zimbabwean exodus and thus categorise the majority of Zimbabweans as economic migrants (CORMSA, 2008:7,15,25). Many in the government and media have accepted a public discourse that "prioritises expulsion over admission, exclusion over inclusion, and control over management" (Crush, 2000:105). Public attitudes are being fanned by a highly emotive discourse that portrays South Africa as being "flooded" by outsiders (Crush, 2000: 110). Such actions and behaviour contravenes South Africa's legal obligations in terms of protection (Williams, 2000). The suffering Zimbabwean migrants face in South Africa motivates this study. The study therefore explores the *reasons* behind the government's failure to meet its legal obligations within an ethical framework.

Background and Literature Review

South Africa prides itself on having one of the most progressive constitutions in the world. These unprecedented rights and freedoms are extended to all who live within its borders (Crush, 2000:110). South Africa is currently attempting to meet a relatively ambitious and historically recent set of refugee commitments. South Africa is committed to its own policy documents and legislation in terms of the Refugee Act of 1998, and is a signatory to the 1951

UN Convention Relating to the Status of Refugees and the subsequent Protocol of 1967, as well as the AU Convention Governing the Specific Aspects of Refugee Protection in South Africa (Vigneswaran, 2008:3). However, the asylum regime gives states unilateral authority over refugees, thereby allowing states to avoid many of the rules of the international refugee convention (Sassen, 2008). The South African government's lack of capacity and budget in addition to widespread corruption has meant that it has failed to deliver on many of its promises. Failures towards its own people bring into question South Africa's ability to care for non-nationals. Despite the severe hardships many black South Africans face, South Africa remains a country of hope and prosperity for the rest of Africa and will continue to attract migrants for many years to come (Maharaj, 2004:2). As the political and economic climate in Zimbabwe has deteriorated, hundreds of thousands of people from Zimbabwe have been displaced across the border into South Africa and it is highly likely that more will follow.

Migration from Zimbabwe is motivated by a collapsed economy, lack of jobs, hyper-inflation, human rights violations, a food crisis and disease (Vigneswaran, 2008:3,5). The exodus from Zimbabwe is exacerbating and dramatising already existing inadequacies of South Africa's migration management (CDE, 2008b). South Africa has no previous institutional experience from which to draw on and thus continues to implement its normal migration strategies (Polzer, 2007:4). Despite legislation and policy, the reality of being an asylum-seeker or refugee in South Africa is fundamentally different from what is envisaged by these acts and conventions (Willams, 2000; Minyuku, 2008). Deputy UNHCR representative Fedde Groot implied that although refugee rights exist on paper in South Africa, the benefits on the ground do not correspond (Williamson, 2007).

The key public debate concerning Zimbabweans is whether they are primarily economic migrants seeking work or refugees fleeing violence and persecution. To date, the Zimbabwean migration flow has not been classified as a humanitarian crisis despite the fact that there are severe humanitarian implications of the Zimbabwean migration for both South African nationals and Zimbabweans (Polzer, 2007:5-6). The government currently is not addressing the scale of the migration, the specific vulnerabilities of Zimbabweans, South Africans' interests, the country's economic development, or migration information and management. The vast majority of Zimbabweans are not applying for asylum and probably would not qualify based on having

experienced individual persecution (CORMSA, 2008:66). Currently South Africa's immigration institutions only perceive some of Zimbabweans' motivations to be legitimate while some are ignored and others actively rejected. Basic humanitarian needs are being covered mostly by kinship and community based social support networks (Polzer, 2007:5-7).

Currently the many various responses ranging from that of the UNHCR, entry conditions, deportation, the asylum system, immigration law, disaster management, departmental responses, municipal responses, non-governmental responses, traditional leaders, employers, and South African citizens are ad hoc in nature, do not address the nature of the problem, and leave huge gaps to be filled (Polzer, 2007:15-19). Adding to the problem is the fact that many Zimbabweans enter the country through informal border crossings and thus remain undocumented within the country. This stems from a migration management framework that provides few options for Zimbabweans to cross the border legally or attain legal documents once inside the country. Zimbabwe is South Africa's only neighbouring country that only recently received a free 90-day visa policy. Additionally the current asylum system poses other problems for Zimbabweans fleeing their homes (Polzer, 2007:7). Many are unable or choose not to seek asylum due to the structural barriers inherent within South Africa's immigration system (Bloch, 2008:6). South Africa's Department of Home Affairs (DHA) is perceived as showing a lack of political will towards Zimbabwean migrants whilst claiming to be bound by international treaties (www.reliefweb.org, 2007). The DHA has been publicly criticised for its failure to observe basic rules of due process and equality before the law by several judges (Crush, 2000:103). The trauma many Zimbabweans experience is exacerbated once they enter South Africa's borders. Many are assumed illegal, arrested, detained, and deported unfairly. In 2007 alone 300 000 people (not all Zimbabweans) were deported (CORMSA, 2008:7-9).

Despite the DHA's attempt to reform the current refugee system with the introduction of a Refugee Amendment Bill, part of a 'Turn Around Strategy', this comes too late. Although the crisis in Zimbabwe has rapidly spiralled downwards since the March 2008 election, there is still no official policy from the South African government as to how it intends regularising and assisting the large number of Zimbabwean nationals in the country. Despite claims that the solution lies in halting migration, this is neither possible nor is it a solution. "As long as people live side by side, the welfare of one group cannot be separated from the wellbeing of the other"

(CORMSA, 2008:15-16). Analysing the gap between South Africa's legal obligations and its current lack of an efficient response in terms of protection is vital to understating the reasons behind the inaction.

Ethical considerations are crucial for the field of law in order to ensure that human dignity for all is respected and protected. In terms of ethics regarding issues of citizenship and human rights, two sides of the political debate are examined. On the one hand, partialists claim sovereignty and national rights as a moral claim, on the other hand, impartialists claim international human rights to be the fundamental moral claim. An alternative name for the debate is patriotism versus cosmopolitanism. The study incorporates the leading arguments pertaining to citizenship and human rights in relation to South Africa and Zimbabwean refugees and asylum-seekers.

Research Problem and Question

The South African government has been relatively silent on the political situation in Zimbabwe and the subsequent immigration. Speculation as to why South Africa has responded in this manner differs. The problem therefore addressed in this study is why the South African government is responding to Zimbabwean refugees, asylum-seekers and non-nationals in the manner that it is.

The research question for this study is as follows: "Given South Africa's obligations under domestic and international law and the arguments of ethical and political theorists, why is South Africa responding to Zimbabwean migration in the manner that it is?"

Objectives of Study

The primary objective is to explain why South Africa is responding to the Zimbabwean exodus in the manner that it is. The lack of an efficient, national, humanitarian, and political response is analysed. A subset of questions needs to be answered in order to meet the primary objective.

1. What are South Africa's obligations under domestic and international law, and regional agreements?

2. What are the arguments of ethical theorists concerning the debates on borders, citizenship, sovereignty, and international human rights?

3. Is the South African government meeting these obligations and ideals?

And ultimately;

4. Why is the South African government not meeting its obligations?

Significance

The uncertainty of Zimbabwe's situation poses a threat of an imminent change in the scale and form of migration that cannot be overlooked. Continued failure to address humanitarian concerns will likely have negative impacts for South Africa's international reputation and will affect relations between South Africa and both present and future Zimbabwean administrations. South Africa's current policy decisions will have far-reaching consequences on future attempts to address this recurring regional dilemma (Vigneswaran, 2007:1). Not only will political relations be affected but also South Africa's infrastructure and possibly the social stability of the country. Despite the political repercussions of inaction, the impact this has and will have on human suffering will be insurmountable and abysmal.

What is missing in the literature is a discussion, framed by clear understandings of South Africa's interests, capabilities, and domestic politics, of how the difficult policy questions posed by substantial flows of people across regional borders might be faced. The capacity of a society and a polity to absorb "others" is determined by many factors that need to be clearly understood and recognised (Weiner, 1995:92). Migration, driven by the differentials between South Africa and the rest of the region, will not go away and neither will those differentials (CDE, 2008a:34).

It is for this reason that this study holds considerable significance. In order for progress, the current situation of inaction needs to be clearly understood and analysed. This research hopes to find out what has been standing in South Africa's way of effectively responding to the Zimbabwean exodus so that such obstacles or inefficiencies can be tackled and overcome. Much of the literature covers the problems Zimbabweans face in South Africa, the impact they are perceived to have on services and welfare, xenophobic sentiments, suggestions for solutions; but not the *reasons* behind South Africa's response or lack thereof. By engaging with key players in

the field, I hope to learn what the most significant opinions on the matter are. The ethical and legal framework of the study allows for a holistic approach whereby morality is not sidelined in favour of the law.

Limitations

This study reflects opinions of both government and civil society key players responsible for or involved in response and advocacy for migrants. Empirical data is collected from across the country. In terms of limitations, the opinions reflected in this research are not necessarily illustrative of the country as a whole. Sixteen people are interviewed which is a small number. However, similar sentiments appear to be emerging in the interviews and more may not necessarily create any new insights. Certain members of government and civil society, who hold significant opinions, are not always included. This is due to time constraints on their part and, at times, due to a reluctance to offer opinions. Alternatively, key players may be excluded because of the author's unawareness of their role in the situation. The study therefore concedes that not *all* relevant opinions are included. However, much effort to include as many opinions as possible from a wide spectrum is attempted. Another limitation to consider is that events on the ground may not correspond with the study. This is due to the highly relevant and current nature of this study. For this reason, South Africa's response to the situation is only considered until July 2009.

Theoretical Framework

This study is contextualised within the human security framework. Globalisation, migration, and human security have become intertwined. The sheer magnitude of the phenomenon is creating social strain and political stress in many regions (Thakur, 2003:1). It has been estimated that 120 million people are living in countries other than those in which they were born. The twentieth century has been dubbed The Age of Migration. As a result, migration has increasingly been described in security terms. Conflict is believed to arise out of resource scarcity, population movements, and tensions between different identity groups. Whilst some argue that migration is a threat to the society of the host country as it can threaten economic stability by increasing employment competition, and undermine social stability where it is combined with the rise of xenophobia and lack of integration (Koser, 2005:11,13); others argue that it is the migrants themselves that are at risk (Ibrahim, 2005:163,167,170).

The framework originated towards the end of the Cold War when theoretical narratives that characterised international relations began to prove increasingly inadequate. The post-Cold War era presented a fundamental challenge to the dominant state-based system. Transnational, intra-state, and socio-economic conditions now demand far greater consideration in matters of security than ever before. The demise of the Cold War brought about much debate on the issue of security. An argument emerged for the widening of the levels of analysis of the concept of security to better explain causes and sources of insecurity in an increasingly destabilised international system (Jolly & Basu Ray, 2007:460). Experiences of much of sub-Saharan Africa and elsewhere suggest that security needs to be conceived as a much broader issue than merely a matter of defence and the use of armed forces to enforce peace. The need to bring social, economic, and environmental causes of conflict into the framework was greatly emphasised. Human security was one of the new alternatives to emerge.

It came to include the securitisation of issues not confined to military threats, a shift from the focus of the nation/state to the individual. Despite the many interpretations of the concept, the common thread lies with the need to contextualise experiences of insecurity (Jolly & Basu Ray, 2007:460). Regardless of the debates surrounding the definition of human security, Taylor Owen proposed a holistic threshold definition, "human security is the protection of the vital core of all human lives from critical and pervasive environmental, economic, food, health, personal and political threats" (Benedek, 2008:9). In this study, human security is defined as the security of people against threats to human dignity (Benedek, 2008:9). In its broadest sense, human security is both freedom from want and freedom from fear (Thakur, 2003:3-4). Despite numerous reports from 1982 onwards laying the groundwork for the conceptual development of human security, it was the 1994 UNDP Human Development Report that created and shaped the concept of human security (Benedek, 2008:8).

Human security is people-centred, multi-dimensional, interconnected, and universal. It provides a framework of analysis of human security at country level and of the interconnected factors that lead to insecurity. Human security can be seen as a construct that brings into focus and provides answers pertaining to how we can place the security of the individual on the same level as the security of the state. The focus is on the insecurities felt subjectively by people or experienced objectively by them. Dimensions of insecurity should not be predetermined but

rather the focus should emerge from the situation itself. It is recognised to prioritise the different insecurities identified (Jolly & Basu Ray, 2007:458-459). Human security encourages an involvement of individuals in developing new international normative instruments that will lead to a better reflection of the balance between the concepts of state sovereignty and concern for the individual. The approach can be viewed as holistic, participative, and preventive. It has seen an engendering of normative changes in the legal order (Benedek, 2008:7-10). While many question the necessity of the concept of human security, Jolly and Basu Ray (2007:458-459; 461-469) provide satisfactory answers to these criticisms. By applying human security considerations to humanitarian interventions, a sense of transnational responsibility to the fate of the global citizen will be reflected. Human security does not mean to weaken the state but rather to broaden our conception of peace and security and redefine and refine our approach to the realisation of human rights for all. It is a concept in motion, growing with new emerging human needs and international threats. Enhancing the role of human security will lead to a broader understanding of security (Benedek, 2008:7-17).

This approach is useful to the study as it allows for a holistic approach and considers security for all involved, both non-nationals and citizens as the human security framework should not prioritise one group of individuals over another, but rather issues. Using a framework of human security for migration does not necessarily imply that migrants themselves are a threat per se. The framework allows for an analysis of the insecurities migrants may or may not give rise to or the perception thereof, and the insecurities they may face in their new host country. Such an approach allows the situation to determine the issues. This permits flexibility and openness in the collection of empirical data, with the focus on the individual at all times. While this approach guides the entire study, it will be explicitly used in the discussion relating to the interviews and in the conclusions.

Guiding Conjectures

Due to the inductive nature of this study, four conjectures are highlighted, instead of hypotheses, to guide the empirical data collection in an attempt to answer the problem question.

C1: Due to South Africa's direct involvement in the political mediation process in Zimbabwe between two opposing political parties, namely the ZANU-PF and the MDC, the country is

reluctant to meet its obligations, both legally and ethically, for fear of jeopardising the process. This can be interpreted as an apparent lack of political will. ("Zimbabwe", 2008; Willams, 2000; Minyuku, 2008).

C2: South Africa is failing to meet its legal and ethical commitments due to a lack of institutional capacity and budget (CORMSA, 2008:7-9).

C3: The South African government is not taking a decisive stand on the issue of Zimbabwean refugees and asylum-seekers for fear of losing the political support of those who hold anti-foreigner sentiments.

C4: South Africa is not taking a decisive stand on the issue of Zimbabwean immigrants because it feels indebted to the ZANU-PF's support during the Apartheid struggle.

Conceptualisation

In order to ensure clarity it is necessary to have a clear understanding of the terms used throughout the study.

Asylum-seeker – An individual who has entered a country with or without legal documentation, who seeks to obtain refugee status, but whose status has not yet been determined. This term may also refer to an individual whose application has already been refused but on formal grounds. Asylum is not part of established international refugee instruments but is at the discretion of individual governments.

Citizen – A citizen is a member of a state who either is a native or has become naturalised and who owes allegiance to the state and is entitled to protection from it.

Economic migrant – Economic migrants normally leave their country voluntarily to seek a better life. Such migrants can return home and continue to receive protection from their government.

Illegal migrant – A person, who has entered the host country illegally, and has not attempted to legalise their stay and does not intend to do so.

Non-national – All people who are not citizens but are residing in a host country, irrespective of their legal status.

Refugee Definition (1951 UN Convention Relating to the Status of Refugees' definition) – A person who is outside his or her country of nationality or habitual residence; has a well-founded fear of persecution because of his race, religion, nationality, membership of a particular social group or political opinion; and is unable or unwilling to avail himself or herself of the protection of that country, or to return there, for fear of persecution (UNHCR, 1951 & 1967:16-18).

Refugee Definition (AU Convention Governing the Specific Aspects of Refugee Problems in Africa's definition) – In addition to the 1951 Convention, this definition also applies to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of the country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality. This definition is broader than the UN's definition (AU, 1969:2-3).

Temporary protection – Protection offered on a temporary basis when a country experiences a sudden mass influx that threatens regular asylum systems to become overwhelmed. In such events, people can be speedily admitted to safe countries but with no guarantee of long-term asylum. This is merely complementary to wider protection measures.

The 1951 Refugee Convention – This outlines who classifies as a refugee, a refugee's rights, refugees' obligations, the concept of non-refoulement, and those not covered by the convention's protection (UNHCR, 1951 & 1967).

The 1967 Protocol – This has turned the original convention into a universal document by removing the geographical and time limitations of the former and thereby standing to benefit refugees everywhere (UNHCR, 1951 & 1967).

Undocumented Migrant – A migrant who does not yet have legal documentation. This is often due to reasons beyond their control.

Research Design

This study uses the qualitative paradigm by incorporating empirical and secondary data. Interviews are conducted for the empirical section, whilst journals, e-articles, books, and newspaper articles are consulted for the legal and ethical aspects of the study. The guiding research question is explanatory in nature, with a subset of exploratory questions. The research is inductive in reasoning, to avoid preconceived perceptions and thereby build new interpretations and theories. This allows for flexibility and follows a non-linear path. Hypotheses are thus generated not predetermined. However, four conjectures are used to give some direction to the study. Such reasoning is in line with the human security approach whereby no previous assumptions are made. The context dictates the issues at hand for the individual in terms of security. The design of the study takes on the form of a case study with the unit-of-analysis being at the macro level, namely the South African government (Babbie & Mouton, 2007: 273, 280).

Research Methodology

The non-empirical data is collected from books, journals, newspapers, and the internet. Empirical data collection is based on a series of interviews. Two types of non-probability sampling techniques are utilised. Interviews, compromising the most significant part of the study, are based on purposive sampling at the initial stage. Such a sampling technique allows existing knowledge to be employed regarding whom to interview. These interviews target government officials and representatives, in addition to civil society, NGOs, and various organisations and institutions. Due to research into the issue, specific key actors were singled out via email and telephone and meetings arranged where possible (Babbie & Mouton, 2007:166-167). Thereafter, the snowballing technique was used to incorporate more people into the study. The interviews use basic individual interviewing. A general plan of inquiry is followed in the interview but there are no specific questions. Interview questions are adapted to each respondent. This allows for flexibility and openness, again in line with the human security approach (Babbie & Mouton, 2007:289).

Structure of study

Chapter 2 provides a thorough analysis pertaining to South Africa's legal obligations under international law, regional agreements, and domestic law. Secondly, normative, ethical

considerations are discussed by viewing current debates regarding the plight of nationals and those o f non-nationals. This section will look at issues of sovereignty, citizenship, morality, and universal human rights. This chapter serves to contextualise the study.

Chapter 3 examines the nature of the problem. Three aspects will be studied; the origin of the problem, difficulties additionally induced by the problem, and the response to the problem. Firstly, the situation in Zimbabwe is briefly explained and the flow of refugees and asylum-seekers in South Africa described. Secondly, structural barriers refugees and asylum-seekers face in South Africa in addition to the spate of xenophobic violence some experienced is discussed. Lastly, the way the South African government has responded to Zimbabwean immigrants is explored.

Chapter 4 is empirical in nature, consisting of results from interviews. This chapter seeks to engage the opinions of local government, NGOs, civil society, and research institutions regarding South Africa's response to the situation.

Chapter 5 is a continuation of chapter 4 and discusses the various opinions and their merits focusing on *why* South Africa has dealt with the situation in the manner it has. Chapter 6 concludes the study by summarising the findings and leading opinions on the debate that possess significant merit and recommendations for further study are provided.

Chapter 2: South Africa's Legal Obligations and Ethical Considerations Analysed.

This chapter serves to contextualise the study by analysing what South Africa's commitments are to non-nationals. The chapter is divided into two sections, whereby the first section will deal with South Africa's legal obligations towards non-nationals, and the second section will discuss ethical considerations in terms of the state's moral "duty" towards others. Due to the complex nature of ethical debates, the second section will compromise a larger portion of this chapter as it considers both sides of the debate. By combining both these aspects, a holistic understanding of the state's responsibility towards all persons is reached for where the one leaves gaps, the other complements.

I. South Africa's Legal Obligations.

A number of universal, regional, and domestic refugee instruments and mechanisms can be employed to enhance the protection of refugees and asylum-seekers. Where these leave gaps in terms of protection, international, regional, and domestic human rights law can be employed to provide a complementary legal framework for refugees (Gorlick, 2000). "It has been said that one of the greatest tests of a country's democracy is how its government and people treat foreigners" (Handmaker *et al*, 2008:278). It is for this reason that it is important to assess South Africa's behaviour toward foreigners in terms of the law as it provides a measure to which the state can be held accountable. The chapter thus provides a basic framework of South Africa's legal obligations towards refugees, asylum-seekers, and non-nationals resident in the Republic on three levels, namely the international, the regional, and the domestic. On each level, a host of agreements are mentioned pertaining to universal human rights with specific emphasis on those specifically relating to refugees, asylum-seekers, and non-nationals. The most important agreements are discussed and the main principles outlined. This section illustrates that the South African ideal of human dignity for all is firmly entrenched in an array of laws and treaties thus demonstrating its immense significance. This section does not discuss the problems nor assess whether South Africa is meeting its legal obligations. This section serves only to inform what these obligations are to contextualise further chapters.

International Obligations

Forced migration raises a host of complex legal issues whereby international law, broadly considered, provides tools for organisation and management, for solutions and protection. It establishes rules of conduct, clarifies institutional roles, and provides a framework of principle in which problems should be solved. International law also provides the human rights dimension for mass movements (Handmaker *et al*, 2008:12). By signing an extensive array of international conventions, South Africa's government has affirmed its respect for tolerance and universal rights, in addition to its own constitution and laws.

The main agreements, to which South Africa is party to, in terms of universal human rights, are the 1948 Universal Declaration of Human Rights and the 1966 International Covenant on Civil and Political Rights (ICCPR). The 1984 Convention against Torture, the 1989 Convention on the Rights of the Child, and the 1979 Elimination of Discrimination against Women further substantiate commitments to human rights on issues that are more specific but with respect for all persons. Concerning refugees and asylum-seekers, the South African government acceded to the 1951 United Nations Convention and 1967 Protocol Relating to the Status of Refugees in 1996. They provide a generally accepted definition of a refugee and cover the basic principles of protection. Protection covers issues of status and the standards of treatment to which that status gives rise (Handmaker *et al*, 2008:19,30). The ICCPR complements the Convention as many articles of the Covenant are readily applicable and relevant to the protection of refugees (Gorlick, 2000). For our purposes, the 1951 UN Convention and 1967 Protocol are the focus in terms of international obligations whilst the others are merely mentioned to illustrate the wide array of conventions that serve to uphold human rights and to which South Africa is committed. It is however impossible to cover every aspect of these conventions and therefore the discussion is on the main aspects and the most meaningful responsibilities of the host state towards refugees and asylum-seekers.

The 1951 Convention Relating to the Status of Refugees, with its 1967 Protocol, is the central feature in today's international regime of refugee protection and is by far the most widely ratified refugee treaty. In terms of human rights, the Convention follows the direct line of descent from the UN Charter and the Universal Declaration of Human Rights, which is stated in its Preamble (Gorlick, 2000). The Refugee Convention is the first and only instrument at the

global level that specifically regulates the treatment of those who are compelled to leave their homes because of a large-scale disturbance within their country of origin. They have a legal, political, and ethical significance that goes well beyond their specific terms. The institution of international refugee protection is embedded in the broader international human rights protection regime (Feller *et al*, 2003:3,6,37). It must be noted that the Protocol is an independent instrument and states can thus be party to the Convention, the Protocol, or both. The Convention also remains central to the United Nations High Commissioner for Refugees' (UNHCR) protection activities (Goodwin-Gill, 2008).

The main distinguishing feature between the 1951 Convention and the 1967 Protocol is that the former defines refugees as restricted to Europeans who became refugees due to events occurring before 1 January 1951. The 1967 Protocol amends this to include persons who became refugees due to events after this date and with no geographical restriction. The general definition of a refugee, without the time limit, includes "any person who is outside their country of origin and unable or unwilling to return there or to avail themselves of its protection, on account of a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular group, or political opinion". With specific reference to asylum-seekers in the Universal Declaration of Human Rights article 14, paragraph 1 recognises that "everyone has the right to seek and to enjoy in other countries asylum from persecution" (Goodwin-Gill, 2008).

The term "persecution" itself is not explicitly defined but articles 31 and 33 refer to those whose life or freedom "was" or "would be" threatened thereby implying threat of death, or threat of torture, or cruel, inhuman, or degrading treatment or punishment. Fear of persecution can also emerge during an individual's absence from their home country. Persecution does not necessarily have to be a result of cumulative events or systematic mistreatment but can equally compromise a single act of torture (Goodwin-Gill, 2008). It is irrelevant whether the persecution stems from state or non-state actors (Feller *et al*, 2003:42). Protection from persecution is also upheld in the 1966 ICCPR (article 7). The ICCPR may provide even broader protection than the refugee instruments as it is guaranteed to all persons without restriction (Gorlick, 2000). Persecution is therefore a complex of reasons, interests, and measures. Classification should however not interfere with the enjoyment of fundamental human rights (Goodwin-Gill, 2008). In other words, if a person does not meet the requirements of the definition their basic right to human dignity

must not be jeopardised. Additionally, the issue of refugees should not become a cause of tension between states for it is social and humanitarian in nature (Couldrey & Morris, 2001). Subsequent to the definition comes a host of obligations.

For those persons who do fall under the definition, the Convention accepts a number of specific obligations that are crucial to realising the aim of protection. The principle of non-refoulement (article 33) is the leading amongst these obligations and the most important. This prescribes that "no refugee should be returned in any manner whatsoever to any country where he or she would be at risk of persecution". Article 3 of the 1984 Convention against Torture reaffirms this. However, where a refugee poses a significant threat to the host country in terms of security or possesses a grave criminal record he/she may be expelled. However, such a decision has to be reached in accordance with due process of law and must be the absolute last resort to eliminate the danger (Feller *et al*, 2003:12).

In addition, in terms of standards of protection the Convention stipulates freedom from penalties for illegal entry (article 31) and freedom from expulsion (article 32). Article 31 "codifies a principal of immunity from penalties for refugees who come directly from a territory where their life or freedom is threatened and enter or are present in a country without authorisation, as long as they present themselves to the authorities 'without delay' and 'show good cause' for their illegal entry or presence'" (Feller *et al*, 2003:14). Persons may have briefly transited through other countries or were unable to find protection in the first country to which they fled. Asylum-seekers are also entitled to the benefits of this article until proven not to be in need of international protection. It is on this basis that the detention of asylum-seekers and refugees represents an exceptional measure and needs to be based on criteria established in line with international refugee and human rights law. Children are not to be detained nor should families be separated in detention (Feller *et al*, 2003:14-16). Article 9 of the ICCPR also states that no one shall be subjected to arbitrary arrest (Gorlick, 2000).

States have also agreed to provide certain facilities to refugees, including "administrative assistance (article 25); identity papers (article 27); travel documents (article 28); the grant of permission to transfer assets (article 30); and the facilitation of naturalisation (article 34)". As a minimum standard, the Convention proposes refugees should receive at least the treatment that is accorded to aliens generally, with the right to engage in wage-earning employment being one of

the most important. There are some rights, which apply to citizens, that also apply to non-nationals, specifically the right to access courts and legal assistance (article 16) and the right to elementary education (article 22). Articles in the ICCPR reiterate these provisions. Reservations are permitted under the Convention and Protocol on the behalf of certain states. However, a few articles are absolutely protected such as the principle of non-refoulement, the definition of a refugee, non-discrimination, and access to courts. The articles dealing with social and economic rights are where the greatest reservations lie. States party to the Convention and Protocol also have specific obligations to cooperate with the Office of the High Commissioner and to "facilitate its duty of supervising the application of the provisions" (Goodwin-Gill, 2008). The position of the UNHCR on the law or on specific refugee problems has to be considered in good faith. However, states generally do not accept the UNHCR has the authority to lay down binding interpretations of these instruments (Goodwin-Gill, 2008).

South Africa is therefore committed to a host of international agreements that promote universal human rights with the emphasis here on the rights of refugees and asylum-seekers. Despite criticisms of the Convention, it is the only global refugee framework that exists and it continues to play an important part in the protection of refugees and in the promotion and provision of solutions (Couldrey & Morris, 2001). International law alone will however not suffice; the effective implementation of international standards frequently depends upon complementary measures at the national level. International law merely identifies the required goal or standard, thus leaving it to states to decide how exactly to fulfil their obligations. However, when a state signs and ratifies a treaty, it accepts a legal obligation to make sure it has the means – whether legislative or administrative – to implement it (Handmaker *et al*, 2008:19). Before discussing South Africa's legal obligations on a domestic level, regional agreements are briefly considered to illustrate how committed South Africa is to human rights for *all* persons.

Regional Agreements

South Africa's inclusive and rights-based commitments surface again in its support for the Southern Africa Development Community (SADC), the New Partnership for African Development (NEPAD) and the African Union (AU). It is through these bodies that, on a regional level, South Africa seeks to extend its commitment to universal prosperity, and the rights and rule of law across Africa (Handmaker *et al*, 2008:30). The 1981 African Charter on

Human and Peoples' Rights of the OAU, the 1992 SADC Treaty, the SADC Charter of Fundamental Social Rights, and the AU Refugee Convention cover rights for *all* persons, with the latter on the rights of refugees and asylum-seekers specifically. The focus here is on the latter.

The 1969 AU Convention Governing the Specific Aspects of Refugee Problems in Africa is the regional complement in Africa to the 1951 UN Convention. It is not necessary to go into detail, as it is very similar to the UN Convention. The definition of a refugee is slightly different however as it is broader. It includes, in addition to the UN Convention's definition, a "person who owing to external aggression, occupation, foreign domination or *events seriously disturbing public order in either part or the whole of his country* (my emphasis) of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality" (AU, 1969:2-3).In addition to the fear of persecution, is the fear of civil disturbances, war, or public disruption. The AU Convention reaffirms the rights of refugees and asylum-seekers as in the UN Convention in terms of protection, proceedings, and treatment. It however offers a wider range of protection for refugees (Melander & Nobel, 1978:59,74; Feller *et al*, 2003:23).

Domestic Law

For international and regional agreements to carry any weight, their commitments need to be translated into states' individual legislation. National legislation is the only visible way to implement international principles and agreements (Melander & Nobel, 1978:76). South Africa has firmly committed itself to human rights and has thus entrenched these rights into its national legal system. In addition, the government has affected a range of statutory protection mechanisms for refugees (Handmaker *et al*, 2008:278). To ensure that no one in South Africa should again suffer prejudice on the grounds of their race, religion, class, or background, the Constitution's preamble explicitly promises that "South Africa belongs to all who live in it" (Handmaker *et al*, 2008:29). South Africa is renowned for its protection of a broad range of economic, social, and cultural rights and a sophisticated jurisprudence on these rights in its Bill of Rights in the Constitution (COHRE, 2008). Refugees, asylum-seekers and non-nationals are also specifically included in its Bill of Rights.

The Refugees Act 130 of 1998 deals with the application process and status of refugees. An asylum-seeker coming to South Africa has the right to enter the territory and apply for asylum, which is free of charge (Blacksash, 2007-2008). Additionally, a person may not be returned to his/her country of origin if "he/she may be subject to persecution on account of race, religion, nationality, political opinion or membership of a social group; or where his or her physical safety or freedom would be threatened on account of external aggression, occupation, foreign domination or events seriously disturbing or disrupting public order in either part or the whole of that country". An asylum-seeker has the right for his/her application to be received and the correct procedural rights adhered to. These include the right to assistance in completing the application for asylum; the issuing of an asylum-seeker permit (this Section 22 Permit is renewable at any Refugee Reception Office/Asylum Determination Office, usually valid for 1-3 months); to have the application for asylum decided on in a lawful, reasonable, and procedurally fair fashion including written reasons for rejected application; to receive such a decision within 180 days; to appeal an adverse decision (to be done within 30 days of written rejection); and confidentiality in applying for asylum (Handmaker *et al*, 2008:170; Barrish, 2008; Blacksash, 2007-2008). A successful application for refugee status warrants a Section 24 Permit, which is valid for 2 years and must be renewed 90 days before it expires. After five years of having this Section 24 Permit, the person is entitled to apply for Permanent Residence Status. With a Section 24 Permit, the person is entitled to apply for social assistance grants, namely the Disability Grant, Foster Care Grant, the Child Support Grant, and the Social Relief of Distress Grant (Blacksash, 2007-2008). All persons have the right to the mentioned process or the right to apply for it.

Rights inherent in the process are elements of specific importance to asylum-seekers, namely the right not to be detained arbitrarily and the right not to be detained in inhumane cruel conditions with degrading treatment. Children are by no means allowed to be detained. Those who do find themselves in detention have the "right of access to legal counsel; the right to communicate with the UNHCR; the right to notify family members of the fact and place of detention; the right to be visited by and correspond with family members; the right to correspond with the outside world; the right to medical care; and the right to physical safety thereby implying they may not be held with common criminals" (Handmaker *et al*, 2008:171). The

Immigration Act of 2002 sets out conditions for deportation and reaffirms rights such as legal assistance (Blacksash, 2007-2008).

On a more general level, South Africa's Bill of Rights in the Constitution is clear on whether asylum-seekers benefit from its provisions. All the rights in the Bill of Rights have *universal* application thereby benefiting "everyone" except where they are specifically excluded. Refugees are given the same rights as any other South African in the country, hence they can work and study in South Africa and are expected to integrate into the country (Barrish, 2008). Anyone with a Section 22 or 24 Permit can work and study (including adults); therefore asylum-seekers also benefit. Every person, irrespective of status, is entitled to health care; and all employment contracts are to be regarded as legal, and basic conditions of employment and a minimum wage apply (Blacksash, 2007-2008). The Refugees Act and Section 39 of the Constitution reinforce the rights of asylum-seekers in South Africa. They refer to international human rights law and refugee instruments, such as the 1951 UN Refugee Convention, the 1967 UN Refugee Protocol, the 1969 AU Convention, and the 1948 Universal Declaration of Human rights, in addition to other conventions South Africa has become party to. The rights embedded in South African law are echoed in the UN Convention (Feller *et al,* 2003:16). South Africa has thus succeeded in translating its international and regional commitments into national legislation, at least in theory.

However, despite South Africa's commitments to ensuring that its asylum system promotes human rights, administrative rationality and the rule of law, considerable obstacles remain to achieving this end. The existing system of laws and practices suggests an overestimation of the country's administrative capacities. Additionally, the immigration policy continues to be strongly influenced by a control ethos rather than one of management (Handmaker *et al*, 2008:27,31,32). It is not enough to have adequate legislation in place if there is neither the will nor the capacity to implement it correctly (Handmaker *et al*, 2008:89). Nevertheless, this section has clearly outlined South Africa's obligations under international law, regional agreements, and national legislation thus providing a legal context of commitments. The following section discusses ethical debates concerning issues of sovereignty and the plight of "others" in need. Chapters thereafter will assess whether South Africa is meeting both sets of obligations in terms of its treatment of Zimbabweans resident in the Republic.

II. Ethical Considerations Regarding Forced Migration

Having clearly outlined South Africa's legal obligations towards forced migrants, this second section considers the ethical dimension of asylum. Asylum exposes a profound conflict of values, which is exacerbated by the sheer extent of the contemporary problem. Although it is clear that South Africa does indeed have legal obligations towards "others", we, as the South African public, need to understand on what moral premises these obligations are based in a wider debate and why, *ethically* speaking, we ought to help those in desperate need. Additionally, it is important to examine the other side of the argument, which considers the plight of the state's citizenry as a primary concern.

The section of this chapter starts with a general introduction to ethics and discusses the question of morality at the interstate or global level and then moves on to explore the two sides of the debate concerning entrance with a brief mention of an alternative view. This will be followed by a critique of the main debate followed by the position taken in this study and how it ties in with the human security approach. It is not possible to go into great length on each of the many variants of the different arguments or offer prescriptions. The aim here is merely to give the reader a brief overview of the normative considerations of the issue of forced migration in the existing literature, both from the point of view of citizens and those of non-nationals. It must be noted that the majority of the literature pertains to the situation of Western democracies facing immigration influxes. There is very little from the perspective of Third-World developing countries, which in fact face the majority of the world's refugee burden. South Africa holds a unique position as it is a liberal democracy and has the most prosperous economy on the continent but with a population of which a significant number live in dire poverty. Because of this, it makes the welcoming of outsiders even more contentious than in a prosperous Western democracy.

Introduction

What constitutes a moral principle is of course a matter of dispute. For some, ethical behaviour means behaviour in accordance with a set of moral rules that may be accessible by reason; or wired into the way in which we think about the world; or it may be reached by divine revelation; or produced by convention. Others judge ethical behaviour in terms of its

consequences; others in terms of man's virtue – the virtuous individual will by definition know what do to in the face of a moral dilemma; others in terms of responsibilities towards other human beings. All these strands of how to view ethical behaviour may lead one to doubt whether anything general may be said about the relationship between interests and ethics. What we do find is that all strands reject the notion that behaviour based on short-run self-interest with no regard for the interests of others could be regarded as moral. Behaving ethically involves being aware of, and sensitive to, the interests of others. Acting ethically is to strike a balance between different conceptions of the good for oneself and the good for others (Brown, 2001:20-22). Theories seeking to analyse or explain the real world through a lens of ethics are known as normative theory.

Normative theory tends to be about what "should be", not about "what is" or what can be practically achieved. It is ultimately about what is desirable, right, or valuable. Prescriptions are often inclined to be otherworldly and practically irrelevant or inappropriate. C. S. Milligan said, "Ethics has to do with the means and the ends as they relate to the values of life for the individual and society. Ethics is frequently contrasted with pragmatism: the former is supposed to be ideal and the latter, real. But perhaps policies which are merely pragmatic will in the end fail if they ignore the moral dimension" (Plaut, 1995:53). Normative theory indeed should not be dismissed. Rather, ethical force needs to be combined with practical relevance, otherwise the former becomes redundant. To ignore the way in which limited abilities can corrupt the best of intentions in politics is utterly perilous. This synergy is crucial to interstate relations and domestic politics where often economic or political issues outweigh ethical concerns. Considerations of "value" and those of "agency" therefore need to be brought together when formulating policy and actions (Gibney, 2004:15-17).

Such thinking ought to guide issues of asylum, as it is a politically controversial and morally important matter. This is not to underestimate the daunting challenge of ensuring normative prescriptions meet the test of practical relevance. Nevertheless, it is an endeavour that needs to be addressed. However, there is great reluctance to extend "practical ethics" to the global sphere. We feel that we owe people something in direct relation to their proximity to us (Plaut, 1995:53). Furthermore, our commitment to human rights appears to come into conflict with our commitments to the system of sovereign states, a seeming incoherence internal to our

practices (Frost, 1998:872). Asylum thus brings to light the inherent conflict between the claims of refugees and those escaping desperate economic and social situations to a secure place of residence, and the claims of citizens to act together to limit access to the territory and resources of their community (Gibney, 2004:2). This gives rise to a greater debate, that of whether morality is compatible with the interests of the nation-state and therefore its people.

The relationship between the "national interest" and morality is a litigious, complex one. There are four main viewpoints. Firstly, for some, these two concepts are fundamentally different and neither can inform the other. There is no necessary relation between the concepts whatsoever. Secondly, for others, there is not and cannot be a tension between the two. What is in the national interest *is* the moral thing to do. National interest in itself is a moral concept of such a high power that it trumps all other moral considerations. A third view is that while both concepts are logically different considerations, the two do coincide. If we truly understand what will be good for the national interest, we will see that in the end the best way of securing peace and prosperity is always to seek to do what is right. The fourth view states that while the national interest is a concept with moral content, foreign policy at times fails a test of morality. However, in spite of these we should not bother to ask what the relationship is between the national interest and morality. The concept of the "national interest" is elastic enough to cover a wide range of issues and disguises. Instead, we should ask, "What is the right thing to do?" (Welch, 2000:3-4,7-8). By outlining these views, it already illustrates how the issue of forced migration is a highly debatable one as it questions whether morality can be applied to the interstate level. Therefore, it is necessary to illustrate why morality and therefore justice - for what is just is moral – must be applied at the global level.

According to the egalitarian conception of justice, justice is global, as it does not recognise any limits. Egalitarians conceive people as moral individuals who therefore owe justice to one another. For justice the criterion of impartiality is essential. Firstly, this implies that a given norm needs to be applied in a non-partial manner. Secondly, an impartial justification of the norms in question is required – the test of the "veil of ignorance"[1]. Justice

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[1] See Stanford Encyclopedia of Philosophy. 2008. *The Original Position*. [Online]. Available: http://plato.stanford.edu/entries/original-position/. [February 3 2010].

must exclude knowledge of particular circumstances, specific contingencies. It needs to take a global view of the "original position" (Carens, 1995:335). For Immanuel Kant, human rights, democracy, state power, and boundaries are all of them institutions whose justice is to be established rather than presupposed (O'Neill, 2001:59). Justice is primarily related to individual actions and we are all required to respect such claims and act accordingly. Justice requires an acceptance and recognition of universalistic and egalitarian morality of equal respect. Each person is to be treated as an equal and autonomous person from an impartial standpoint. For this reason, justice and therefore morality need to be applied to the global level (Gosepath, 2001:145-148,155).

For many though, global justice demands too much from individuals and their states. Regarding the issue of migration, what underlines much of the debate over migration is the fundamental moral contradiction between the notions that emigration is widely regarded as a matter of human rights while immigration is regarded as a matter of national sovereignty (Weiner, 1995:171). The sovereignty of the state when it comes to power over entry is well established by treaty law and constitutionally. There are various human rights declarations and conventions urging states to grant asylum on humanitarian grounds, but they all recognise the absolute discretion of states in this matter (Sassen, 1998:7). Additionally, it is a clash of a nation's real or perceived interests on the one side, and the needs of refugees on the other. In this clash power is distributed unevenly – nations have it and refugees do not except for the moral claim they make (Plaut, 1995:3-6). Governments often miss the nature of the duty that they owe to particular refugees, forever seeing refugee admissions as mere acts of charity rather than acts that may be demanded by any principles of justice. At the heart of the current debate about immigration is a conflict of convictions (Overland, 2007:186).

This conflict can be explained by examining two approaches to morality and thus also to the issue of migration, ideal and realistic. The idealistic approach requires us to assess current reality in light of our highest ideals. It is concerned with issues of fundamental justification and inclined to challenge what "is" in the name of what is "right". Its weakness is that it may not help us answer the question of how to act in our non-ideal world. The realistic approach wants to avoid too large a gap between the "ought" and the "is" and focuses on what is possible given existing realities. It is attentive to the constraints that must be accepted if morality is to serve as

an effective guide to action. However, this approach prevents us from challenging fundamentally unjust institutions and policies, although it informs actual discussions of public policy today. Each approach has something important to offer, but on their own, they ignore certain sets of concerns while focusing on others (Carens, 1996:156-157).

The following two sections will deal with the two dominant ethical perspectives on the responsibilities of states to entrance. Firstly, is the impartial debate, which to many is seen as idealistic. Within this debate are the arguments of cosmopolitans, egalitarians, and utilitarians, to name a few, which will be interspersed into the general argument. The second is the partial debate, which is viewed by many as the more realistic approach. Under this debate, the arguments of communitarians will be interwoven into the general argument. Subsequently a critique of both will be given and this study will be positioned in the debate. The entire section is discussed through the lens of the human security perspective, which places the welfare of the individual at the centre of any discussion.

The Impartial Approach to Forced Migration

The first side of the debate is that of "impartiality". The term is an umbrella name for other arguments of many different theorists but the general belief is that all people should be regarded impartially and thus equally, a view that is in line with the human security approach. Although a discussion on the morality of migration should consider reality, it should also consider whether one should accept that reality as an ideal or regard it as a limitation to be transcended as soon as possible. An idealistic approach to morality can enable one to do that. It tries to abstract in various ways from the status quo, limiting presumptions as much as possible. The concern is for absolute justice. It focuses on what is possible in principle or under the best of circumstances. Carens asserts that we should assess reality in light of our highest ideals (Carens, 1996:166). This approach is often described as the traditional moral view as it argues that states are obliged to take into accounts the interests or rights of the human community in its entirety in decisions on entry (Gibney, 2004:20). Impartiality works with an ideal of states as cosmopolitan moral agents and the only legitimate admissions policy is one that takes into equal account the interests of refugees and citizens. The impartial view is linked as an ideal to the notion of the universal whereby if an action is impartial it must be the morally appropriate choice for anyone to make who faces the same set of circumstances (Gibney, 2004:23,60).

For this reason, it requires that states consider impartially the claims of members and strangers alike. However, all too often people's imaginations remain oriented to the local. Human beings form intense attachments to the local first and only gradually learn to have compassion for people who are outside their own immediate circle. The Stoics, who influenced cosmopolitanism, stressed that to be a citizen of the world one does not need to give up local identifications, which can be a source of great richness in life. They suggested that individuals think of themselves not as devoid of local affiliations, but as surrounded by a series of concentric circles. While to give one's own sphere special attention is justifiable, Nussbaum argues that one should not confine one's thinking to one's own sphere. (Nussbaum, 2002:9,13). In other words, concern should not stop with these local attachments. Humans should recognise humanity wherever it occurs (Nussbaum, 2002:x,xii,7). This view represents a radical challenge not only to the partial view but also to well-entrenched state practices (Gibney, 2004:59). The power of the impartial argument lies in its attempt to capture human commonality. All individuals are able to face great suffering or to be deprived of liberty. Gibney asks why then should nationality or citizenship make any difference to the obligations one has to one's fellow human beings? (Gibney, 2004:64). Put differently, why should citizenship rights automatically be conferred on individuals who, through no act of their own, happen to be born in a particular place? (Weiner, 1995:177). Migration policy therefore raises the issue of fairness. The fact that one's life chances can be strongly constrained permanently by the simple chance of birth seems unfair (Weiner, 1995:172).

Subsequently, impartialists believe firmly in the rights of all individuals and a responsibility towards others. Fundamental human rights are rights that we have by virtue of our being human. Our rights are considered to be claims that trump other claims and each person's set of rights is equal to the next person's set of rights. Our basic rights are not derived from our membership of any particular kind of association, i.e. being a citizen. They are rights that would hold even in a world without states (Frost, 1998:872). Henry Shue has tried to explain the moral roots of the obligation towards others in that it stems from the general human duty not to deprive others of their natural needs; to protect them from deprivation; and to aid those who in fact have been deprived (Plaut, 1995:58). Martha Nussbaum offers one way of conceptualising human rights and justice, a version of Amartya Sen's concept of substantial capabilities, known as the capabilities approach, which is wide in its reach and acceptable to most impartialists. The

approach focuses on what people are actually capable of doing or being, considering each individual. She lists a range of factors that she sees as central to life being truly human, i.e. life; bodily health; bodily integrity; senses, imagination, thought; emotions; practical reason; affiliation; other species; play; control over one's environment, both political and material. These capabilities can be linked with human rights. The capabilities of human beings should not be permitted to fall below a certain floor (Garrett, 2008).

Impartialists therefore believe that no individual should deny anyone these basic rights of opportunity or capability. All persons should have the same opportunity to achieve a position, independently of what nation, state, class, religion, or ethnic group within which they belong. This is the ideal of global equality of opportunity, strongly purported by liberal egalitarians. It must be noted that such an ideal does not require an equality of outcomes and it is a procedural rather than an outcome-related concept. Refugees, through no action of their own, in Nussbaum's view, would be seen to be denied their core capabilities and therefore human rights. Andrew Shacknove offers a definition of refugees that encourages policies of protection to take into consideration the global equality of opportunity principle. According to Shacknove, refugees are "persons whose basic needs are unprotected by their country of origin, who have no remaining recourse other than to seek international restitution of their needs, and who are so situated that international assistance is possible". He goes on to say, "What appears on the surface to be the result of natural forces, on scrutiny, may reveal state negligence or indifference". That is to say that we should treat people suffering persecution on par with people lacking basic means of subsistence as this is often complicated by human actions. We should not differentiate between the causes of suffering on the surface level (Overland, 2007:187-188). Refugees are thus individuals who have been denied the liberty to realise their fundamental capabilities and in turn a life worth living.

Liberty is a crucial element to the realisation of human rights/capabilities/equal opportunities. Current entrance restrictions are viewed as a gross violation of human liberty by impartialists. They argue that the right of a community to implement its own entrance policy is circumscribed morally by the right of all individuals to reside wherever they wish. This line of thought is derived from the work of John Rawls. Rawls argues that the basic structure of a society is just if it is consistent with principles that would be chosen by individuals in a

hypothetical "original position" in which individuals are deprived of the kind of knowledge that would enable them to tailor principles to their personal advantage. While Rawls' principles focus on a single, closed society, Carens extends the logic of the original position globally to humankind as a whole in order to examine the justice of entrance restrictions imposed by states (Gibney, 2004:23,60; Weiner, 1995:176).

Liberal egalitarianism entails a deep commitment to freedom of movement as both an important liberty in itself, essential to an individual's life plans, and a prerequisite for other freedoms. Individuals should be free to pursue their own choices about how they live their lives as long as it does not interfere with the legitimate claims of other individuals to do likewise. The claims of locals then should not be given priority over the claims of others simply by virtue of their citizenship (Gibney, 2004:23,60; Weiner, 1995:176). Others go on to argue that it seems contradictory for states to support the right to exit but limit the right to entry. In addition, according to Robert Goodin, there is something hypocritical in the way liberal states support free international movement of goods and services while restricting the free movement of people. In supporting their arguments against borders, some of these liberal writers hold that borders reproduce poverty. They argue that borders stand as a barrier to a more equal world by helping to protect the privileges of those who live in the riches states (Gibney, 2004:23,62). Egalitarians do not stand in direct objection to the fact that citizenship is awarded by birth or parentage. However, they hold that citizens should be free to change their membership at will. Freedom of movement is seen as a basic human right (Carens, 1992:25-30,37).

Egalitarians such as Carens admit that restrictions to movement are sometimes warranted, as they will promote liberty and equality in the end. A certain degree of risk to oneself or one's community implicitly limits the duty to others. Liberty may be restricted for the sake of liberty and all liberties depend on the existence of public order and security (Carens, 1995:336). Freedom of movement can indeed impose significant costs. For example, issues of national security, restrictions on non-liberal entrants who threaten the liberal character of the regime if admitted, threats to liberal institutions and practices, and threats to public order may be causes for permitting restrictions to entry. However, Rawls warns against this argument being used in an expansive fashion for restrictions on liberty undertaken for other reasons. The threat to public order cannot be the product of antagonistic reactions from current citizens. Carens offers a few

criterions for inclusion and exclusion. For example, need should be an important one, therefore refugees rank highly as do immediate family members. Criteria that discriminate based on a particular human trait are particularly objectionable (Carens, 1995:336). Egalitarians, at least Carens, admit that such a viewpoint is politically unfeasible in today's world. It should rather be used to assess existing restrictive practices and policies and thus provide a critical standard. What underpins egalitarianism is the conviction that it is unfair if someone suffers worse chances in life because of his or her particular identity (Caney, 2001:124-126).

While utilitarians are very similar in their stance to egalitarians, as they also believe that the concerns of aliens must be counted too, they often place more weight on reasons for restrictions, for example economic and cultural considerations. The fundamental principle of utilitarianism is to "maximise utility" (Carens, 1995:340). Utilitarians proclaim that liberal democratic states are obliged to increase their intake of new entrants, taking into account both the benefit to them and the costs to residents, until the costs to current residents outweigh the benefits accruing to new entrants. Rinata Singer and Peter Singer connect this view to the concept of "equal consideration of all interests view", whereby the more pressing and fundamental interests take precedence over the less pressing (Gibney, 2004:23,62,65). Although utilitarians and egalitarians possess methodological differences of which we cannot go into here, they agree on the fact that borders should be far more open. Morality ought to be applied to every person based on the virtue of them being human. For these theorists, citizens or nationals have no greater or lesser claim to our ethical concern than anyone else. This does not imply that they believe states have unlimited obligations to admit foreigners. For example, utilitarians use the equal consideration principle; whilst egalitarians allow for restrictions if admitting new entrants would jeopardise pubic order, security or the maintenance of liberal institutions (Gibney, 2004:63).

What this argument shows is that it is implausible to think that bounded societies provide the sole contexts of justice (O'Neill, 2001:46). If one perceives that people have a warranted claim on the protection in another's country because they are persecuted in their own, how can one justify reducing their chances of escape and sanctuary? (Overland, 2007:189). Membership in territorially exclusive nation-states ceases to be the only ground for the realisation of human rights. The individual is now an object of law and a site for rights regardless of whether a citizen

or an alien, placing the welfare of the individual at the centre of the discussion. International human rights codes have great power in challenging the legitimacy of the state but at the same time, it needs to be noted that these rights depend on the state for their implementation (Sassen, 1998:22-23). While the ideal can be criticised as inapplicable to the real world, it is a useful way of analysing the world and setting a target for which governments should aim. However, impartiality is weakened by its failure to account for the claims and interests of citizens, which the partialists point out (Gibney, 2004:20).

The Partial Approach to Forced Migration

The gap between the "ought" and the "is" that realists speak of is both necessary and inevitable. If there were no gap, people would feel no sense of obligation or any remorse when they violate the norm. However, when the gap becomes too big any system of law or of morals is doomed. To avoid too large a gap concerning international migration, whatever governments say ought to happen should not be too far from what they think actually might happen, what the community might actually do. Three types of realities might be regarded as constraining an inquiry into the ethics of migration that aims to guide practice; namely, institutional, behavioural and political (Carens, 1996:157-160).

From the realist perspective, the starting point of the discussion should be the modern state. This includes recognition that every state has the authority to include or exclude aliens as it sees fit, as this is an essential element of the concept of sovereignty. This view rejects any ideas of world government or any other radical ideas of the constraints that may be put on states' migration policies. Such options of morality cannot help to determine what is to be done in practice. In terms of the behavioural, one cannot use moral standards that no one ever meets or even approximates in their actual behaviour. From the realist perspective moral norms should not stray too far from what most actors are willing to do much of the time. This does not imply that morality is irrelevant but that what is morally obligatory depends to an important extent on what is being done. In terms of the political constraints, some assessment needs to be made as to what is politically feasible; no doubt, this will be highly contestable. One such example could be a possible backlash against immigrants and refugees by current citizens (Carens, 1996:157-160). Consequently, reality needs to be carefully scrutinised as the context in which moral principles are to be applied.

The realist approach accordingly forces a consideration of those factors that make morality effective in the actual world. Carens divides these prerequisites into three groupings, namely psychological, sociological, and epistemological. In terms of the psychological, one tradition, traced back to Hume, sees the motivation for moral behaviour as the outgrowth of an emotional identification with others. This identification is strongest in its immediate sense and weakens as it becomes further away from one's own concerns. Consequently, the moral demands resting on this emotional identification also weaken as the identification weakens. This view holds that one ought not to place greater moral demands on people in any given context than their degree of emotional identification with others in that context will enable them to fulfil. Obviously, this identification varies both culturally and historically and is the product of human action and circumstance. It would be a mistake to assume that people would be prepared to make the same kinds of sacrifices and bear the same sort of burdens for outsiders as for those with whom they share a common political life. States will therefore give greater weight to the interests of current members than to those seeking to enter and it is proper and reasonable for them to do so. In this light, a realistic morality can only hope that individuals will transcend narrower group identifications and ask, what is the good for the collective community? (Carens, 1996:160-164).

In terms of the sociological, the more harmonious morality is with interests, the more likely that moral prescriptions will be obeyed. The key to an effective morality is its link to broader interests. Concerning migration, one should not expect people to adopt policies that conflict with their fundamental, long-term interests. In terms of the epistemological prerequisites, one needs to acknowledge that moral knowledge is rooted in a particular historical and social context. One cannot abstract entirely from culture and social mores. One therefore needs to understand the moral understandings of others, as it constitutes a departure point and a realistic constraint upon moral argument (Carens, 1996:160-164).

Within this light, is the second side of the debate, namely partialism, which argues that states are morally entitled to privilege the interests of their own citizens regarding entrance. This approach is characteristic of the communitarian and nationalist realist strands of political theory. This line of thought justifies the right of states to decide the admissions according to their own criteria by appealing to the importance of political and cultural autonomy for communities (Gibney, 2004:19,24). The approach works with an ideal of states as distinct cultural

communities possessing a right to self-determination that justifies priority for the interests of citizens over those of refugees in entrance decisions. This exclusive right of states is derived from the *moral* claims of people to the entitlement to give public expression to their shared culture. There are different arguments supporting this entitlement. For example, Will Kymlicka claims that participation in a living culture is essential for individual autonomy as cultures provide people with choices as how to live their lives. Culture orients individuals in the world giving them an identity, based on a sense of belonging. Communitarians such as Michael Walzer, Michael Sandel, David Miller, and Charles Taylor offer a more conventional perspective. They emphasise that individuals are constituted largely by their membership in cultural and national communities (Carens, 1995:342).

Walzer treats the question of membership as central to his theory of justice. For him, states are free to take strangers in or not. He shuns the search for universal principles and is concerned instead with the "particularism of history, culture, and membership". Walzer likens the nation-state to a club. Those in the club are bound together by a pact of mutual aid, distributing justice and exchanging social goods. Admission policy, according to Walzer, would depend on political/economic considerations; the character and destiny of the host country; the character of the political community – assuming that members have a fair idea of what constitutes their country (Plaut, 1995:73-74). Issues of distributive justice should not be addressed from behind a "veil of ignorance" but from the perspective of membership in a political community in which people share a common culture and a common understanding about justice (Carens, 1995:342). This strong sense of community is a fundamental principle of partialism.

The culture individuals are born into and live in shapes their goals, relationships, and sense of self. States have the right to distribute membership as they wish because without this right people would not be able to protect and reproduce their cultural identity, unable to express an aspect of themselves that is essential to their sense of who they are. Sovereign states are thus a legitimate and powerful ideal (Gibney, 2004:31-32). The role that cultural circumstances play in making individuals moral agents in the first place is emphasised. National communities, partialists argue, therefore have a moral right to reproduce their culture free from the interference of outsiders. Walzer argues that this right "derives its force from the rights of contemporary

individuals to live as members of a historic community and to express their inherited culture through political forms worked out amongst themselves" (Gibney, 2004:25). According to Taylor, national communities have the right to be sovereign states because people have the "right to demand that others respect whatever is indispensable to their being full human subjects" (Gibney, 2004:26).

State boundaries are assumed to demarcate unique and largely autonomous cultural communities with a common way of life and a commitment to each other. This political community provides the required largest feasible context for collective political projects in pursuit of the common good of the nation for the community as a whole. For some partialists the nation-state is the site of a moral unity between people; for others it makes possible the survival of distinct communities of character who share some special sense of their common life. The state can be seen as an "intergenerational cultural project". It must be noted that there are many conflicting arguments amongst partialists themselves but they agree on the fact that sovereignty is seen as the guarantee and survival and prospering of many national communities (Gibney, 2004:23-26). With regards to the duty of states to outsiders, most partialists are relatively silent on the matter.

However, partialism implicitly implies that by privileging community members, the welfare of outsiders is comparatively diminished. Foreigners are not part of the bond that unites members. The entry of outsiders may disturb the distinct way of life and bonds of attachment that citizens currently share - disturbing the abilities of states to fulfil their fundamental responsibility to meet the basic needs and security requirements of their citizens. Changes in membership can also affect a state's cultural environment in less directly political ways, i.e. language, mores, religion (Gibney, 2004:26-28). Partialists are not only concerned with cultural implications of immigration. They are also sensitive to the effects that changes in the composition of membership can have on the state as a political agent. For conditions of distributive justice to be realised, for social justice to be maintained, and for democracy to be meaningful, partiality of membership is essential. Community in this sense is a group of people that have come to trust and identify with each other in a special and exclusive way. The route to better societies lies in strengthening this trust among members. There are many disagreements as how to achieve this. However, admitting foreigners is a dilution of the commonalities that

members currently share. Members thus should be able to decide questions of entrance and membership (Gibney, 2004:30-31).

Additionally, exercising control over entrance possesses a practical role in facilitating collective political action in pursuit of justice (Gibney, 2004:31-32). Garrett Hardin (2003) maintains that the notion of lifeboat ethics as a metaphor should be applied to issues of immigration. In his example, the lifeboat has fifty people in it with only space for ten more. In the surrounding seas there are one hundred desperate people swimming begging for admission so as not to drown or be eaten by sharks. Either the people already on board the lifeboat can help everyone, making a total of one-hundred-and-fifty. The boat is swamped and the entire boat sinks. "Complete justice, complete catastrophe." On the other hand, the people in the boat can choose to take on just ten more people (but which ten?) and thus lose the safety factor. Alternatively, they can allow no one else on board thereby ensuring the survival of those fifty persons. Hardin equates the nation's land to that of a lifeboat with a limited capacity and holds that we ought to govern our actions by the principles of a lifeboat. For Hardin, practicality is of greater concern than ethics when dealing with immigration - which is a morally questionable outlook.

Partialism does not consider the plight of others irrelevant. That is to say, partialism must not be equated with political realism where moral considerations are regarded as extraneous. Partialism claims to be an ethically defensible account of the legitimate entitlements of political communities. Concerning refugees, a policy is only legitimate if it reflects the values and interests of the state's members. There is debate as to how these are to be interpreted. But partialism possesses very little critical power for standing firm against citizen hostility or restrictive entrance policies that have flowed from the approach (Gibney, 2004:32,35). While partiality does possess a degree of ethical force, the position is weakened by its unjustifiable assumption of the legitimacy of the current territorial holdings of states, the claim of a nation or of a distinct culture, and its failure to account for the harm that states can inflict on others. (Gibney, 2004:19). In sum, the realistic approach to morality aims to focus moral discussion on issues that are actually up for debate in society and thus to have an impact on public life. However, an approach that prioritises some people's basic human rights over other people, based

on a morally irrelevant factor such as place of birth, can pose as a great danger (Carens, 1996:160-164).

An Alternative Viewpoint

An alternative outlook is the sociobiology argument. Although it possesses a lot of criticism ethically speaking, the sociobiology argument is worth mentioning, as it may be a realistic factor to consider and thus overcome. The sociobiology argument proceeds from the assumption that our genetic structures are evolutionarily predetermined with a whole series of characteristics, capacities, and drives that are common to all of us. These theorists propose that human beings react to each other in ways that have to do with our evolutionary development. Feelings such as xenophobia and ethnocentrism may in fact be related to our humanness; although such sentiments can be influenced by education. That is to say, xenophobia may be a normal aspect of human behaviour that can be changed by strong cultural training and the exercise of one's will. In relation to the issue of refugees, this implies that an attitude of welcoming is something that has to be learnt, something that runs counter to biological impulses, something which runs against ingrained human structures. Robin Dunbar relates the basic attitudes of hospitability to an individual's own survival instincts. Sociobiologists speculate that human beings have predetermined degrees of sympathy. According to Ben Ike, people are incapable of sympathising with more than a limited number of their fellow human beings. The passion people can muster up on behalf of refugees often stands in direct relation to the number of refugees whose cases they take up. There are thus limitations to caring in this view. Whether this argument can guide us in refugee policy is uncertain, but their assumptions should be considered. It is for this reason of limited sympathy that a comprehensive and inclusive legal framework founded on strong moral convictions should accompany our natural behaviour. This argument carries weight in that it forces us to consider those natural obstacles that humans may present because they are human but should not alone guide policy (Plaut, 1995:65,69-71).

Critique of the Impartial and Partial Debates

It must be noted that both impartialists and partialists share the common belief of universalism. Impartialists differ in their perception of the proper scope of moral principles, which they extend to include all humans, wherever they live. Some go to the extreme and argue

for the removal of all national boundaries and hence the creation of a world state. This study has not even attempted to look into this argument, as it is too simplistic and unrealistic. Partialists on the other hand, also think that ethical principles should be of universal form but restrict the scope to the territory of communities, of nations or states. Numerous conceptions of the basis of moral standing are appealed to in debates between these two groupings of theorists. Impartialists claim that all human beings have equal moral standing while partialists see the matter relationally (O'Neill, 2000:188-190).

Impartialism as an attitude may help governments to strive for the ideal, but as a political destination, it is inappropriate and robs the citizenry of a sense of community and identity (Barber, 2002:36). To regard close ties as morally irrelevant is to undermine the very basis of people's natural sociality (McConnell, 2002:82). To accept the principle of impartiality in entry without amendment is therefore to deny the validity of such special obligations – obligations to others that involve a bias to particular others such as family members, neighbours or compatriots. The problem is that ideal theory fails to acknowledge the complexity of human moral experience. Although logically the life of everyone matters equally, there is an overriding recognition that more concern is attached to our own concerns, a view shared by sociobiologists. This special relation to our own concerns and of those close to us is crucial to our identity. Through our own particular concerns, however we can come to realise that the concerns of others matter equally to them. These special relations give rise to communities and responsibilities that are often in direct tension with those that emerge from impartial reflection. It must be noted here that many impartialists do recognise the importance of close relational ties (metaphor of the concentric circles) but that we should not stop there in our caring for others (Gibney, 2004:77-81,194). On a more particular note, it may be argued that Rawls' theories and those of other liberals have been taken out of context. Some may argue that liberalism emerged with the modern state and presupposes it, and liberal theories were not designed to deal with questions of aliens. Their context was that of the sovereign state (Carens, 1995:341). The arguments of impartialists are seen by some to be based on false or misinterpreted premises.

Despite attacks on the concept of the state or calls by some cosmopolitans for a world state, it still remains the world's dominant form of political authority and is thus the central political reality of the world's population. The logic of the state is thus strongly particularist. A

crucial justification for states is their ability to guarantee for their citizens a certain standard of living. States do not equate the needs of citizens with the needs of outsiders. When states accept refugees, they are responding to extremity not equality. Government action towards refugees therefore depends a great deal on its domestic political environment and many factors need to be analysed to avoid a backlash against the state and/or refugees. Aspects that need to be considered include: the needs of claimants; determining who in fact is a refugee; the wealth of the host state; the levels of unemployment and housing; ethnic affinity; the history of integration in the host country; the policies and intentions of other states in the region; and how to maintain appearance of state control over entrance (Gibney, 2004:203,207-212). Impartialism fails to acknowledge that the state remains the core political authority and is primarily responsible to its citizenry. Impartialists also pay too little attention to the realities of accepting large influxes of immigrants.

Impartialism could make sense in relation to a world that was a universal state consisting in uniformity of rights and obligations. However, the actual situation is very different. In our world, the problem is of how far bonds of obligation and loyalty can stretch. In practice, a good majority of humanity violates cosmopolitan ideals of love for humanity and equality; and not all of humanity accepts them in principle (Glazer, 2002:63-64). The wide scope of the inquiry impartialism opens up and the degree of abstraction from current realities makes it difficult to see how whatever conclusions are reached is relevant to the question of how to act in the real world (Carens, 1996:166). Additionally, it is hard to set free from its inevitable connection with the Western cultural tradition (Glazer, 2002:63-64). Impartialism is criticised as being utopian and unrealistic in its assumption of commonality and unwarranted optimism. It is an outlook that denies the givens of life – all that which relates to community. People are born into a particular context, which gives rise to various identities that should not be ignored. To be committed to impartial ideals is to try to transcend the particularities and realities of life that constitute one's natural identity. Impartialism is an illusion, according to the critics (Himmelfarb, 2002:74,76-77). It is worthy to note that the impartial approach therefore does indeed have some criticisms.

On the other side, criticism of the partial approach is also significant. These critics argue that an adequate account of justice cannot proceed properly if justice of existing boundaries is taken for granted. Thinking about justice must begin by abstracting from existing institutions. The Kantian question of "what ought I (or we) do?" - the question of obligations should be the

starting point for thinking about ethical requirements (O'Neill, 2000:198). Partialism fails in that it does not fully recognise universal responsibilities. Communitarians can be criticised for the absence of any settled sense about the scope and scale of the social entity that they have in mind. What is the meaning of this so-called "community" that they give such importance to? Perhaps the popularity of communitarianism, Waldron argues, is that it does not give answers to these types of questions because it depends on "using premises that evoke community on one scale to support conclusions requiring allegiance to community on quite a different scale" (Waldron, 1995:95). Carens criticises Walzer on his comparison of states to clubs, for states are public and clubs are private. Public institutions must practice equal treatment while private clubs determine admission policy at their discretion. However, it is plainly obvious that states today base their current practices on the foundations of communitarian theories (Plaut, 1995:76). Global egalitarians dismiss the idea of community as an impediment to a just world (Weiner,1995:178).

While each approach does indeed capture an important moral claim raised by the current crisis, neither approach represents an adequate integration of personal and impersonal moral claims. The one view threatens the conditions conducive to communal self-determination and the provision of public goods, while the other risks legitimating the current actions of states in paying negligible regard to the sufferings of millions as a ground for the right to communal autonomy (Gibney, 2004:82-83). What we ought to strive for is a compromise between the two, which is ideal in its aim and simultaneously realistic in its implementation.

A Proposed Ideal

This subsection does not intend to offer lengthy prescriptions but serves merely to highlight what would be a proposed ideal, which lies between the two approaches, but more on the side of impartialism for its strong claim on global human rights, which is in line with the human security approach. There is no general reason to think that justice or other moral relations between vast numbers of distant strangers are impossible (O'Neill, 2000:187). If morality once stopped at the border, that is no longer the case today (Weiner, 1995:169). As Matthew Gibney argues, states *could* be justified in restricting entry only in order to protect the institutions and values of the liberal democratic state. Civil, political, and social rights associated with welfare and economic justice ought to be included in this perception. Therefore, states should allow entry to as many foreigners as practically possible, although this will be a contentious decision. For

this reason, it makes sense to distinguish between those people most in need, between those who can be helped where they are, and those whose needs can only be met through the admission to a new state. Refugees and asylum-seekers therefore, from this view, ought to be prioritised in terms of entry as there is only one conceivable way that their immediate needs can be addressed. No doubt, this view gives rise to its own set of new questions but it appears to offer a reasonable compromise between the two approaches and nevertheless forces one to question claims of morality (Gibney, 2004:83). This viewpoint sides more with a utilitarian approach but considers consequences that may be referred to as a type of humanitarianism. It is acknowledged that the term humanitarianism is a highly debatable and criticised term. The meaning used here is specific and in direct relation to the two approaches.

A credible ideal needs to take seriously both the claims of citizens and those of refugees, striking a balance between partial and impartial claims. The idea of humanitarianism applied to entrance holds that states have an obligation to assist refugees when the implications of doing so are sustainable for their own citizenry. Humanitarianism attaches priority to refugees over other immigrants, is attentive to the modern state's kind of agency, and is therefore cautious of the demands it makes. Humanitarianism may be considered as the overlapping point of consensus between partialists and impartialists on the minimal responsibilities of states. This principle offers a framework within which a state is required to assess and defend its response to refugees. The acknowledgement of the validity of the principle ensures that the debate proceeds on the assumption that states have responsibilities to refugees that they cannot ignore. It outlines the limits of what one can reasonably demand of states in their responses to refugees and asylum-seekers (Gibney, 2004:230-235).

The reason for this outlook is that if the responsibilities of states are to have any critical force, they need to take into account the actual capabilities of states. Practical constraints that a morally informed government would face in moving the world closer to our ideal need to be carefully analysed, discussed and acknowledged, some of which have been mentioned previously. Weiner adds that the capacity of a society and a polity to absorb migrants is largely determined by three factors: the willingness of the society to absorb migrants; the structure of the labour market; and the commitment of migrants to their new society. Another consideration is that by classifying individuals as refugees, the receiving country implicitly accuses the sending

country of engaging in persecution. The mere granting of asylum can create an antagonistic relationship (Weiner, 1995:131-137). Every country certainly has a limit on the number and composition of immigrants that it finds acceptable (Weiner, 1995:92). The morality of an act should be judged by its probable consequences not by its intent (Weiner, 1995:172-173)**.** A strict set of rules is not what is needed. Rather it would be better to proceed with a sense of both openness and compromise – made by both the resident community and the newcomers. Each must accept the other to the highest degree possible (Plaut, 1995:62).

Conclusion

Both approaches, the impartial with its focus on global human rights and the partial with its focus on sovereignty and community, possess moral weight but can also lead to considerable dangers if not amended. Different theorists within the various strands of both impartialism and partialism differ on their exact thoughts but perhaps impartialism and partialism are not at odds. Concern for others grows out of and is dependent on the human affections that begin close to home, as already mentioned. Impartialism can be praised for correcting a serious neglect – that of the interest of people who are not related to us in some particular manner. By asserting that one's fundamental allegiance is to humanity at large, is to bring every other person into the domain of concern (Sen, 2002:114-115). However, we also need to acknowledge that the sovereign nation-state remains the primary political authority in the world and is universal in its grasp as it represents the one compulsory association. Transnational migration challenges the understanding that the nation is the sole provider for the full realisation of rights. Now states must increasingly take account of persons *qua* persons as opposed to limiting state responsibilities to its own citizens, an illustration of how human security is replacing state security or gaining comparable recognition.

Transnational migration can appropriately be seen through the lens of the human security framework as population displacements are seen as a threat to the economic, social, environmental, and political security of the host country thereby affecting individual citizens; as well as a direct threat to displaced persons themselves, usually with the latter being the most vulnerable. Forced migration therefore is seen as adding to an environment of insecurity just as much as those who are forced to move are seen as both products and victims of insecurity (Adelman, 2001:7-8). The human security framework brings to the forefront the vulnerabilities

of forced migrants thereby linking the question of human security and that of human rights. Such rights need to be affirmed in international and domestic law. States are subsequently becoming accountable to all their residents because of international human rights law. International human rights instruments are designed to protect persons as a transnational category and fill the void that states at times do not. The individual, as opposed to the state, is becoming the object of international law and institutions, a sign of the shift towards the concern of the individual.

Nevertheless, one must also remember that the state is the critical mechanism in advancing human rights. For these rights to have any significance they must have a reasonable chance of being met. Individuals must have the means to make claims on the state. The state and the new international order are consequently, mutually reinforcing (Jacobsen, 1997:4,9-11,74). Moral reasoning in migration policy must take into account many countervailing but equally legitimate concerns. It must also take into account the unintended moral consequences of policies, recognising that moral intent in itself is a poor guide to public policy (Weiner, 1995:197-198). Assumptions that all social institutions and policies must respect all human beings as moral persons and that this entails recognition, in some form, of the freedom and equality of every human being, are hard to defy (Carens, 1995:341). I hope that it has become clear as to what the moral and legal debates are surrounding the issue of entrance into the state. This chapter's aim has been to contextualise the rest of the study, to make the reader aware of the importance of law and ethics in decisions. By being conscious of both the legal and ethical dimensions of immigration, we are better equipped to assess the current situation in South Africa concerning Zimbabwean immigrants.

Chapter 3: The Zimbabwean Exodus to South Africa – Problems and Responses

Introduction

Having discussed the legal obligations South Africa has towards persons from elsewhere and the ethical implications of entrance, this chapter deals with the issue in relation to Zimbabweans entering South Africa over the last decade. The first section of the chapter considers the factors responsible for this migration. Within this discussion is the debate of whether or not Zimbabweans ought to be classified as refugees or grouped as people who warrant some form of temporary protection and/or assistance or whether they are mere economic migrants. This study supports the argument that Zimbabweans entering South Africa should be given some form of legal protection at the very least, according to international law. The actual migration flow in terms of its nature and numbers, which are mere estimates, is discussed. The second section examines some of the many problems Zimbabweans face and attention is given to the xenophobic sentiments many South Africans harbour toward them and other foreign Africans. The third section will be a description of the South African government's response to the situation of Zimbabwean migration. The last section explains recent developments in terms of government policy. It must be noted that due to the current nature of this study, events on the ground and government responses will only be accounted for until July 2009. Despite any new developments that may occur, this study nevertheless holds importance as it seeks to discover *why* the government has taken so long in reaching a decision over the matter and been reluctant to condemn the leadership in Zimbabwe whilst thousands suffered and continue to suffer gross human rights violations and even death. This chapter and the previous chapter will thus provide the context for the succeeding chapters.

I. Factors Responsible for the Zimbabwean Migration Flow

Migration between Zimbabwe and South Africa is nothing new as Zimbabweans migrated to work in the mines of South Africa during the colonial period providing a source of cheap labour for the growth of the mining sector. However, since 1999, Zimbabwe has been on a downward spiral towards political and economic collapse. Zimbabwe has one of the world's fastest shrinking economies and the world's highest inflation rate, at an estimated 89.7 sextillion

percent in November 2008 (Hanke, 2009). An estimated 83% of people were living below the poverty line and 80% were unemployed in 2007 (Simpson, 2008b). Due to the collapse of much of Zimbabwe's formal economy, the informal sector expanded and by 2005, it employed three to four times the number of people employed in the formal sector (Simpson, 2008b). The Zimbabwean crisis is essentially structural and deeply rooted. The style of rule associated with the liberation struggle has scarcely evolved in institutional terms. It is still characterised by intolerance, intimidation, and violence (Maroleng, 2008:23-24). The Zimbabwe African National Union (ZANU-PF), although always authoritarian when facing political opposition, became even more repressive when the opposition party, the Movement for Democratic Change (MDC), started to emerge as a realistic political alternative in the late 1990s. The government's political repression has taken many forms, including the dislocation of hundreds of thousands of citizens, the seizure of commercial farms, and assaults on the informal trading sector. These policies have resulted in atrocious social and economic disruption for enormous numbers of people (Simpson, 2008b).

Since 2000, the deterioration of human rights in Zimbabwe has become appalling, leading to many Zimbabweans seeking asylum in the United Kingdom and South Africa (Bloch, 2006: 69). A culture of fear pervades Zimbabwean society. Besides the economic and social crises, there have been credible and verifiable reports of torture, intimidation, harassment, rape, violent attacks, and even murder on human rights defenders, political opponents, the media, and other dissenting voices opposed to the Government of Zimbabwe. All state institutions have become politicised which has resulted in a selective application of the law and denial of fair trial for the many victims of political violence. A loss of confidence in the judiciary and the justice delivery process has exacerbated the levels of lawlessness. Since 2003, the government has increased its use of torture to quell any form of dissent. These crises are exacerbated by high HIV related deaths, a collapsed health system, disease, and starvation due to a collapse in food production causing a serious food deficit (Simpson, 2008b). The latter three can be seen as a result of the country's administration (Civil Society Organizations, 2006:5-7). The food deficit has affected 4.1 million people. Millions therefore depend on food assistance programmes by international agencies, but in June 2008, the authorities announced a complete halt to the work of all aid agencies. They alleged that agencies had been using their programmes to campaign for the opposition party. Hunger caused tens of thousands to leave (Simpson, 2008b). Today the crisis

has only deepened. Migration has become a crucial way for households to diversify their livelihood survival strategies (Bloch, 2006: 69).

On the 18th of May 2005, the Zimbabwean government launched "Operation Murambatsvina" (which translates as "Operation Clear the Filth") which led to the destruction of houses, livelihoods, and families and lasted for two months. It was justified by the government to enforce by-laws that prohibit all forms of alleged "illegal activities in areas such as vending, illegal structures, and illegal cultivation, among others". The evictions took place against a backdrop of a housing crisis. After the evictions, the police strictly enforced a ban on informal trading which employs 3-4 million Zimbabweans, causing secondary displacement. The government's action to destroy the informal economy was done in full knowledge that there would be no other employment alternative for those targeted. The government targeted people who it knew "were already among the most economically disadvantaged groups in society" and who were thus "pushed deeper into poverty" (Civil Society Organizations, 2006:5). Many of the areas targeted were active or potential opposition MDC strongholds. The evictions were almost certainly carried out for political reasons. The destruction that was left in the wake of the evictions was devastating – thousands were left destitute. The operation resulted in 700 000 people losing their homes, their source of livelihood or both. A further 2.4 million were affected in varying degrees. After the evictions, traders were told they had to obtain new licenses, but these were given out depending on political affiliation (Simpson, 2008b).

A special report by the UN labelled the operation a "man-made disaster", precipitating "a humanitarian crisis of immense proportions" (Civil Society Organizations, 2006:8). Two probable underlying intentions were forcibly to return many of the urban poor back to where they came from, namely rural areas. In this way, they could be more easily controlled through the manipulation of food aid; and for these people to contribute in reviving the agricultural sector that the government's fast-track land reform policy helped to destroy. The government responded to the UN's criticism by claiming to provide alternative accommodation for those affected. However, in 2006 Human Rights Watch reported on the government's utter failure to respond to the needs of the evictees (Simpson, 2008b). The UN deemed the evictions as a severe breach of the Zimbabwean Constitution, international human rights law, and humanitarian law that is prosecutable in the International Criminal Court. Many of the Operation Murambatsvina

victims found their way into South Africa (Civil Society Organizations, 2006:5,8; Simpson, 2008b).

The latest wave of Zimbabwean migration consists of those fleeing the brutal crackdown on political opponents in the aftermath of the March 2008 elections. Thousands of MDC supporters and activists were displaced, many of which crossed the South African border. These most recent asylum-seekers are fleeing persecution in the form of torture, beatings, arbitrary arrest, detention, and murder (Simpson, 2008b). Despite Zimbabwe's new temporary political stabilisation, new arrivals of Zimbabweans in South Africa have neither stopped nor slowed. The Consortium of Refugees and Migrants in South Africa (CORMSA) claims we should expect to see similar levels of migration for the next two to five years. If the Government of National Unity in Zimbabwe collapses, even larger volumes of migration could occur (CORMSA, 2009:12). The relative economic prosperity, democratic values, emphasis on regional integration and African renaissance of South Africa, coupled with porous borders, remain, and will remain a pull factor for the near future (Mawadza, 2008:3-4). It is therefore a mixture of failed governance; food insecurity and manipulation of food for political ends; economic meltdown, including inflation, high unemployment, and large shortages of consumer items, fuel, and foreign currency that are some of the many problems forcing thousands to leave (Simpson, 2008b). The emphasis here is on the *political* nature of the crisis in Zimbabwe.

Debate over Classification of Zimbabweans

The crucial question regarding Zimbabweans crossing the border is whether they deserve refugee status. Although violations of social and economic rights and extreme poverty are not grounds for refugee status according to the 1951 UN Refugee Convention, the UNHCR does note that some migrants within these broader patterns will have "protection needs that may not include a Refugee Convention reason – that is, a well-founded fear of persecution on the basis of race, religion, nationality, social group or political opinion – but that this should not deter from their need for protection" (Bloch, 2008:3). Additionally, the South African 1998 Refugees Act adopted, word for word, the refugee definition from the 1969 AU Refugee Convention, which includes "every person who, owing to . . . *events seriously disturbing public order* in either part or the whole of his country of origin . . . is compelled to leave" (emphasis added). The Act also authorises the Minister of Home Affairs to declare that a given "group of persons" qualifies for

refugee status. In legal terms, the South African government could therefore find that the political and economic conditions in Zimbabwe constitute an "event seriously disturbing public order" and declare Zimbabweans refugees. It should be noted that with regard to the potential political implications of such a declaration, the AU Refugee Convention states, "the grant of asylum to refugees is a peaceful and humanitarian act and shall not be regarded as an unfriendly act by any Member state" (Simpson, 2008b). Whether one wishes to focus on domestic law or regional and international conventions, an international human rights framework, should in theory, protect all people regardless of whether they are citizens or non-citizens. The concept of universality underlines this treaty regime. What distinguishes refugees is their lack of protection by their own government (Bloch, 2008:5-6).

Due to the particular nature of the Zimbabwean crisis, there are different "types" of Zimbabwean migrants and many are motivated to leave for a variety of reasons. These "types" include politically persecuted refugees, economic migrants (from professionals to unskilled persons), humanitarian migrants (including unaccompanied children), traders, shoppers and transit migrants (Polzer, 2008:7). Many possess mixed motives. What complicates the issue is that many of these motives for leaving are in fact indirect manifestations of the political crisis - a result of a failure of political leadership. Zimbabweans should not be regarded as voluntary economic migrants even though for many, economic destitution is a driving force (Simpson, 2008b). According to CORMSA, the majority of Zimbabweans are both economic migrants *and* refugees. CORMSA claims that the current nature of Zimbabwean migration has a strong humanitarian element that cannot be overlooked (CORMSA, 2008:66). Nevertheless, generally Zimbabweans have been typecast as economic migrants while the nature of the migration is highly complex. Attempting to categorise the outflow of people essentially obstructs the humanitarian response by focusing on why people do or do not qualify for aid. Indeed not all Zimbabweans have a direct fear of persecution but the economic and political grounds for leaving are not mutually exclusive but rather reinforcing (IRIN, 2007).

The terminological issue of "refugee status" has become politically significant and contentious. The Department of Home Affairs (DHA) maintains that almost none of Zimbabwean migrants are legitimate asylum-seekers. The Department backs its claim up with the fact that incredibly few Zimbabweans themselves claim asylum (Vigneswaran, 2007:7).

However, whether all refugees are actually seeking asylum is a matter for debate. Not all potential refugees will choose to seek asylum or be able to do so. The prohibitive costs of seeking asylum such as reaching the Refugee Reception Offices (RROs) to make a claim, translation costs and fees to file claims (although these are meant to be free) mean that some who might try to seek asylum end up dropping out of the system and staying in South Africa as undocumented migrants instead. Others may not even attempt to seek asylum due to the urgency of needing to make an income to survive and to send remittances home. One must also remember that it was only from 2003 that asylum-seekers were allowed to work legally in South Africa. This may have acted as a deterrent for those who had arrived prior to this date or at that point in time. Often among asylum-seekers, the main motivation for migration does not always reflect their immigration status (Bloch, 2008:5,15).

Strictly speaking, one's status as an asylum-seeker cannot be determined until one has registered an application at one of the five Refugee Reception Offices located inland. These offices are located in Pretoria, Port Elizabeth, Johannesburg, Cape Town, and Durban (Department of Home Affairs, 2009). A factor to consider when analysing the figures of those actually applying for asylum may be that the numbers are significantly distorted due to officials' poor understanding of, and/or unwillingness to administer the country's refugee laws. Due to the array of criteria used to determine who is a refugee, the definition of a refugee is open to broad interpretation and can be problematic. For this reason, Refugee Status Determination Officers (RSDOs) may arbitrarily adopt a broad or narrow approach towards this definition with a lot depending on different levels of qualifications and experience (Civil Society Organizations, 2006:8). Therefore, many officials make their own conclusions about the status of refugees, usually believing them to be economic migrants or not "real" refugees. The Musina Legal Advice Office observed in 2007 that almost no Zimbabweans claim asylum at Beitbridge because officials do not provide them with the opportunity to make such a claim. Instead, they are often sent back across the border. If such accounts are correct, the South African government is responsible for contravening the most fundamental principle of international refugee law, namely refoulement and its own laws (Vigneswaran, 2007:7-88).

Examples of those who may indeed qualify for refugee status under the 1951 UN Refugee Convention are the many victims of Operation Murambatsvina now residing in South

Africa (Simpson, 2008a). Under international refugee law, Zimbabweans *directly* affected by the evictions can claim to have suffered persecution at the hands of the Zimbabwean authorities. Not only did the Zimbabwean authorities cause the human rights violations but also they continue to fail to protect the victims against those violations. These victims can argue that they will be persecuted because of the political threat they are perceived to pose, i.e. of the "political opinion" they supposedly possess. Refugee law does not require that a refugee actually has a political opinion – it is enough if the agent of persecution attributes an opinion to the refugee, even if incorrectly. Human Rights Watch believes those who were targeted under Operation Murambatsvina are refugees (Simpson, 2008b). Like those fleeing Operation Murambatsvina, the recent wave of asylum-seekers has a strong claim for refugee status under international refugee law. Zimbabweans fleeing generalised economic deprivation caused by Mugabe's ruinous policies cannot be regarded as *voluntary* migrants merely seeking financial advantage. The severity of the economic crisis suggests that almost all are leaving involuntarily due to extreme desperation and as a last option to cope with the crisis at home. Their movement can and should be described as involuntary (Simpson, 2008b). Since the roots of the economic crisis are so evidently political, the distinction between economic and political reasons given by respondents should be treated in context (Makina, 2008:15).

The Migration Flow

The number of migrants in South Africa is rising, but South Africa's foreign-born population is still far lower than many imagine (CORMSA, 2009:28). As already noted Zimbabwean migration into South Africa is nothing new but the current flow is unprecedented in its nature (Simpson, 2008b). The exact number of Zimbabweans present in South Africa is a highly debatable and problematic issue. The estimates range from between several hundred thousand to approximately three million. Some believe that the figures have been exaggerated to support arguments or research or are mere numeric speculations (Vigneswaran, 2007:5). Estimates that are exaggerated or unfounded only serve to fuel animosity amongst some South Africans who feel they are being hit by a "human tsunami" (Mawadza, 2008:4). A likely estimate lies at between 800 000 and 1 000 000 (CORMSA, 2008:65). There are a number of factors that exacerbate the problem of accounting for the numbers of Zimbabweans in the country. Zimbabweans have been entering South Africa via multiple routes thereby making them

harder to detect. Thousands cross and stay illegally; some deportees escape before reaching home; and some simply return after being dumped on Zimbabwean soil. Many only stay a couple of days or even hours and unless they are counted going both ways, these movements further complicate estimation. Due to the DHA's notoriously poor record keeping, any figures they provide must be treated with caution. Operations within the DHA complicate matters further. Neither country can provide reliable estimates of the migratory flow. The only factual data emanates from those who cross legally and from deportation statistics (Mawadza, 2008:4).

Indeed, Zimbabwean cross-border migration has generally increased in recent years although the magnitude of these increases remains unclear. Migrants in general are not distributed evenly throughout the country: they compose 4.1% of the urban population, but only 1.6% of rural residents. Despite being the most vulnerable migrant group, most Zimbabweans are in fact self-sufficient as only a few have urgent humanitarian needs. Many bring skills and resources that generate jobs. As such, migration is not a threat to South Africans' economic or physical security. Managed properly it can lead to investment, job creation, and a more productive economy (CORMSA, 2009:28 -29). A survey of 4654 Zimbabweans conducted by a group of NGOs and led by Professor Daniel Makina in mid-2007 helped formulate a profile of Zimbabweans in the Johannesburg area. The key findings were that 92% had migrated between 2000 and 2007; those having migrated between 2000 and 2006 tended to cite the political situation as reason for departure; those having migrated after 2007 tended to cite unemployment as a main driver; the majority were between the ages of 21 and 40 years (Makina, 2008). Evidently, the numbers of Zimbabweans migrating to South Africa have been rising significantly since 2000. However, despite this evidence by 2008 the South African government had still not developed and implemented a coherent response to recognise and assist Zimbabweans in South Africa (CORMSA, 2008:65).

The Forced Migration Studies Programme at the University of Witwatersrand observes that numbers should not guide policy but rather values, principles and laws. There are key humanitarian needs and concerns that must be addressed. Some Zimbabweans should indeed qualify as refugees (Landau, 2008a:10). The migration should certainly be framed as a humanitarian issue but one cannot deny that it is also an issue of control and management. Additionally, the Zimbabwean migration flow should not be approached with resignation and

hopelessness nor be regarded as a short-term problem. Zimbabwe's temporary political stabilisation has neither stopped nor slowed new arrivals, and the volume of circular migration (migrants who move back and forth between Zimbabwe and South Africa) remains high (Johnston *et al*, 2008:34-35). It is therefore a matter that requires urgent attention for the near future.

II. Problems facing Zimbabweans

Recent research has shown that in general, Zimbabweans face more acute social and human security challenges than either South Africans or other non-nationals in South Africa (CORMSA, 2009:12). Of course, other migrant groups also experience many of the problems facing Zimbabweans in South Africa. These include difficulties surrounding documentation; harassment by public officials and victimisation due to illegal practices; hostility from South Africans; and difficulty in accessing public services, housing, and jobs. Zimbabweans also face particular concerns related to their legal status and the conditions of their deportation (Landau, 2008a:10). Many are unable to obtain passports and visas in Zimbabwe. Once in South Africa, Zimbabweans have few channels for accessing legal documentation (CORMSA, 2008:66). Many remain undocumented and thus highly vulnerable to arrest, deportation, exploitation and abuse.

Access to the asylum process in South Africa can be a problematic and lengthy process (Bloch, 2008:5). The current state of disarray in South Africa's refugee reception system is particularly concerning. Asylum-seekers in South Africa experience extreme difficulties and trauma by simply attempting to enter a refugee reception office and lodge their claim. Monitoring conducted by Lawyers for Human Rights at the Gauteng Refugee Reception Offices (RROs) illustrates the immense difficulties that asylum-seekers face when trying to lodge a claim. Few gain entry to an office on their first attempt due to the limited number of applications per day because of quotas, resulting in very long queues. These quotas directly contravene statutory law to receive claims. Security guards and other officials often demand bribes in return for one of the positions in the queues. Those who do not gain access sometimes have to return numerous times risking being caught by the police without documentation in the interim periods (Vigneswaran, 2008:4; Mawadza, 2008:5).

Others risk being victims of crime and harsh weather conditions by sleeping outside the offices, sometimes for as long as three months, in order to retain their positions with no guarantee of being received the following day. There have been reports of police visiting during the night, demanding bribes, engendering physical harm and making arrests. The situation is highly tense and the physical conditions are unhygienic and squalid (Vigneswaran, 2008:4; Mawadza, 2008:5). Whether the limitation of daily applications is a result of capacity issues or whether it is a more intentioned barrier to access is unclear. In other studies, it has been suggested that long queues are created and maintained by corrupt officials to engender a demand for illegal services to evade the line. Either way, the long queues do not guarantee the correct and appropriate attention that is legally required. South Africa's RROs commonly fail to meet the basic procedural obligations prescribed by legislation (Vigneswaran, 2008:12). For those that are received, the process of application is itself often a challenging encounter.

There have been reports that officials offer little or no assistance in completing the forms and interpreters are often unavailable. Once again, applicants are not fully aware of their rights or when they are about to be interviewed and therefore often do not have the required evidence to substantiate their application. Many do not receive a permit legalising their stay in the country on the same day as their application has been lodged. Others report mistakes on their permits thereby making them vulnerable to police scrutiny and even subject to refoulement (Vigneswaran, 2008:15). Additionally, the decision-making by the Refugee Status Determination Officers (RSDOs) has been unprofessional and of a poor quality (Civil Society Organizations, 2006:7). There is no specific legislation prescribing the validity period for asylum permits, but officials usually stipulate on average a two-and-a-half-month period. Therefore, many asylum-seekers have to return to the office several times a year to renew their permits (Vigneswaran, 2008:14). Having obtained a Section 22 Permit, an asylum-seeker can wait up to six years to receive their formal recognition as a refugee (Section 24 Permit). This interim period is often characterised by much hardship and immense suffering (Civil Society Organizations, 2006:9). In addition to this, there have been incidences in the last few years whereby the DHA has refused to accept any asylum claim made by a Zimbabwean, irrespective of their motive (Bloch, 2008:5,15). Furthermore, the Department of Home Affairs has its own internal tribulations.

The Department of Home Affairs is facing serious human resource and administrative capacity challenges that exacerbate the problem. These include corruption, slow turnaround time for processing documentation and inadequate systems checks. Reception Offices are understaffed and RSDOs are under-trained (Mawadza, 2008:7). The DHA has notoriously bad information technology and "case flow management systems" (Vigneswaran, 2008:14) although in recent months there have been reports of technological improvements (CORMSA, 2008:19). There is also a large and growing backlog of undetermined asylum claims (Vigneswaran, 2008:3-4). At the start of 2008, the asylum processing backlog stood at 89 033; 207 206 asylum applications were made in 2008 with 69 114 being finalised. Out of that, 10% were approved and 90% rejected. By the end of 2008, there were 227 125 outstanding asylum applications (CORMSA, 2009:30). The backlog of cases at the DHA continues to grow making it almost impossible to make an application for protection, let alone having the application considered. Although this applies to all non-nationals, the situation is particularly dire for Zimbabweans (Williamson, 2007). Some theorists argue that the UN Convention protection systems are not suited to countries in Africa, which experience mass influxes and often do not possess the bureaucratic resources or legal expertise to deal with these people. In South Africa, the total number of asylum-seekers entering the country is almost certainly higher than the fixed quotas accepted by Refugee Reception offices per day (Vigneswaran, 2008:5). Other migrants who turn to the asylum system as a last resort to legalise their stay exacerbate the poor quality of the system.

The asylum claims process is overburdened with false claimants. In South Africa, other migrants who do not qualify for refugee status lack any viable way of regularising their stay in the country and thus turn to the asylum system for legal protection (Simpson, 2008b). The asylum system is therefore overtaxed by this additional problem. The immigration and asylum regime is "generating unintended by-products that directly threaten South Africa's wider obligations to human rights and the law" (Landau, 2008b: 35-36). These additional obstacles to the asylum system often indirectly violate the most fundamental provisions of South African refugee law. As it is unlawful to deport an asylum-seeker until the claim has been processed, the dysfunctional nature of the asylum system and of current deportation practices means there is a high risk of Zimbabwean asylum-seekers being deported and thus a contravention of international law (Simpson, 2008b). What is needed is a system that is able to recognise

qualifying refugees and offer them the immediate protection they are entitled to. Whilst institutional challenges are certainly one of the most severe problems facing Zimbabweans as it manifests onto all levels of life, it is but one amongst many others.

There have been alarming reports on a national level regarding abuse from public officials who are acting outside their legal mandates. Not only does this have implications for violating human rights but also for disregarding international law. It is exceptionally concerning and a reality for thousands of migrants (CORMSA, 2008:30). Despite legislation, many refugees and asylum-seekers feel unprotected. In addition to the trauma of having to flee their country and cross the border, refugees and asylum-seekers are further traumatised by those who are supposed to protect them (Williams, 2000). The scale of these violations ranges from day-to-day maltreatment to more alarming, brutal occurrences. The South African Police Services (SAPS) have unofficially adopted the role of immigration agents due to the latter's lack of physical power. The SAPS have exploited this unofficial role to legalise what would normally be considered illegal raids, often arresting South Africans and non-nationals without respect for normal legal provisions. In January 2008, the police raided the Central Methodist Church in Johannesburg that shelters over 1000 homeless Zimbabweans. There have been other unlawful practices such as rapid deportations in the border region (Simpson, 2008b). Police also often target non-nationals as incentives to meet periodic arrest quotas, often refusing to accept officially authorised identification or even destroying identity papers. There have also been numerous assertions that police elicit bribes from apprehended migrants (Landau, 2008b:39). On the one hand, the SAPS are meant to protect the rights of non-nationals but on the other hand, they are also trying to control their access into the country's cities. Many non-nationals claim that when they report abuse to officials, they are refused assistance (Williamson, 2007).

Many who are unable to pay bribes to be released or hire an advocate disappear into the system. Many end up in Lindela Repatriation Centre, which is a privately run detention and deportation facility located on the outskirts of Johannesburg in Krugersdorp. Breaches of minimum living standards at Lindela have been regularly documented (Simpson, 2008b). Many are often detained in holding cells with murderers and other criminals (Mawadza, 2008:5-6; CORMSA, 2008:31). Some of the offences are for having expired permits, which migrants had tried, unsuccessfully, to renew or for being unlawfully arrested and detained despite being in

possession of valid documents as already mentioned (Simpson, 2008b). There have been reports of sexual abuse, violence, and bribery within the centre. There is also evidence that many are held for longer than legally required even when the necessary documents have been provided, despite the legal detainment period of thirty days. (The centre receives R50/night from government for every person they house) (Landau, 2008b:41). The police take other migrants entering South Africa to the Soutpansberg Military Grounds (SMG) in Musina before being taken to a Refugee Reception Office. This is a direct breach of the North Gauteng High Court's order in May 2009 for immediate closure as it had been declared unlawful and unconstitutional. The DHA has thus far not been held accountable for contravening Gauteng High Court. (CORMSA, 2009: 33-34). The situation is even worse for those who are deported, and who sometimes have to pay the costs thereof (Landau, 2008b:40-42).

In July 2008, the UNHCR expressed its concern that Zimbabweans fleeing violence at home were not being properly screened at the South African border, leading to the possible deportation of refugees. These migrants are often deported within days or even hours - before they have gone though the correct process of status determination at the DHA. Many of the officials whom migrants first meet tend to be security officials with limited working knowledge of asylum laws. Therefore, many Zimbabwean nationals are deported without consideration of the law. Those that enter through the border post are in a slightly better position, as they will be more likely to meet a DHA official. However, there have been reports of DHA officials commonly denying applicants their right to register. Some reported that they were not given a permit when they informed officials at the border. It is common knowledge that Zimbabweans are often denied the right to asylum at the Beitbridge border post. Not only do DHA officials actively try to create barriers to entry, but also many of them do not inform applicants of their rights. The majority is usually told by friends and family of the right and need to register for asylum (Vigneswaran, 2008:11-12; Simpson, 2008b).

Many of these migrants are subsequently deported. The International Organization for Migration (IOM) claimed that in the period from January to June 2007 the South African authorities deported a total of 102 413 illegal immigrants to Zimbabwe (CDE, 2008b). An estimated 200 000 Zimbabweans were deported for the entire year of 2007 (Simpson, 2008b). On 23 May 2008, Amnesty International called on the "South African government to take all

necessary measures to protect the human rights of people at continuing risk of violent attacks and displacement from their homes on the basis of their perceived ethnic origins or status as "foreigners" or "asylum-seekers" (Amnesty International, 2008). However, over the months of June and July 2008 alone, some 17 000 Zimbabweans were sent back through the Beitbridge border post, despite calls from human rights organisations to halt all deportations (JRS, 2008). It is likely that South Africa has been deporting Zimbabweans with valid refugee claims, making the country guilty of refoulement.

These problems are exacerbated by difficulties in accessing the job market despite legal provisions for the right to work. This is especially challenging in a country where there is an estimated 40% unemployment rate and no support for its own unemployed (Williamson, 2007; Landau, 2008b:37). Zimbabweans also repeatedly speak of employers' unwillingness to recognise asylum-seekers' permits as valid documents (Simpson, 2008b). Accommodation is another problem as many Zimbabweans arrive in South Africa with no place to stay. Some find their way to shelters whilst others live in shared apartments that are often overpriced and overcrowded. Those who are undocumented are unable to report irregularities or exploitation by landlords. Many others resort to living on the street, in bus stations, on vacant land or in makeshift shelters (Mawadza, 2008:5). The legal right to accessing healthcare is immaterial in reality. Many officials in the health sector often possess the inability or unwillingness to distinguish between different classes of immigrants, which is aggravated by a general disregard for non-nationals' rights. Such actions have compromising implications for the wider community. "Not only is this a violation of human rights and dignity, but also a threat to the capabilities and contributions of all resident within the country" (Landau, 2008b:36-37). Protective legislation is in place but it is clearly not being adequately applied. However, to these migrants the push factors are far greater than the challenges that they face in South Africa. There is very little awareness of non-nationals' rights amongst refugees themselves, the public and the bureaucracy. Therefore, enforcing these rights in light of evident discrimination is immensely difficult (Williamson, 2007).

Xenophobic Sentiments

In addition to institutional challenges and abuse on the official level, thousands of migrants experience hostility and even violence on the local, personal level. Many South

Africans hold very negative views about African foreigners and the country has a long history of violence against non-nationals without any effective actions taken by any of the government departments to address this issue (CORMSA, 2008:7). Most South Africans make no distinction between refugees and economic migrants or even foreign criminals operating within the country. To complicate matters further, the general term for all migrants is "refugee". As expectations of post-Apartheid opportunities wane, "refugees" become blamed for the problems many South Africans face (Williamson, 2007).

The hostility stems from the belief that people are losing their jobs to migrants. Undocumented migrants are often prepared to work for lower wages in unstable and unsafe jobs, regularly finding work in unprotected or poorly regulated sectors. Many Zimbabweans with higher skills often settle for menial jobs, indicating their growing desperation. There is competition for housing in informal settlements, access to limited primary healthcare and education. The South African government already struggles to provide free housing, medical care, and employment to its own people. Zimbabweans, the nation's largest migrant group, are increasingly seen as intruders, not victims (Wines, 2007). Bitterness and anger amongst citizens often fuel resentment and xenophobia. Attacks on foreigners are hard to track and record as undocumented migrants cannot seek protection from public officials but it is believed that they occur frequently (Mawadza, 2008:5; CORMSA, 2008:7). According to Joel Stern, a world-renowned economist, the belief that immigrants are "stealing" local residents' jobs is a serious misconception that ought to be refuted by government (Rostoll, 2008). The size of the pie is not a zero-sum game. Immigrants become consumers therefore increasing the demand for goods and services and that means more jobs (Rostoll, 2008).

However, poverty and desperation are only part of the story. Studies by the Southern African Migration Project (SAMP) have shown South Africa to be one of the most xenophobic countries in the world, especially towards those from elsewhere in Africa. What is interesting is that these sentiments cut across all major socio-economic and demographic categories. SAMP found that anti-immigrant sentiments exist in South Africa despite relatively little direct contact with people from other countries. The misinformation and sentiments stem from the collusion and public utterances by some political leaders and public officials and more importantly from media images. Foreigners are often portrayed in a negative light as "criminals", "illegals",

"women stealers", and "job stealers". However, these stereotypes are never substantiated by evidence (Jacobs, 2008; Bloch, 2008:8-9; Crush, 2000: 108-109). Xenophobic sentiments on all levels and a public unawareness or disregard of human rights for all persons residing in the country have serious implications for human rights. Despite visible warning signs, of which local police were often aware in advance of attacks, the government did not intervene to prevent the violence of 2008 (CORMSA, 2009:18,41).

Violence against non-nationals exploded across the country in May 2008 killing at least 62 people, injuring hundreds, and displacing over 100 000 migrants from neighbouring countries. It must be noted that 21 of the 62 deaths were South African citizens. The initial security crisis quickly turned into a humanitarian emergency. This violence followed many similar isolated incidents that took place in 2007 and early 2008 (IRIN, 2008; CORMSA, 2008:7; Simpson, 2008b). The violence was fundamentally the result of "institutional marginalisation of some poor and non-citizen residents, and of local government failures. In almost all cases where it occurred, violence was organised and led by identifiable local groups and individuals—primarily official or self appointed community leaders—who used the attacks to further their political and economic interests" (CORMSA, 2009:10).

On the one hand, the May attacks are a manifestation of widespread disaffection with South Africa's transformation, and on the other hand, they are a migration issue. The government's failure to regularise the large numbers of foreign nationals in the country and the absence of a humanitarian programme for Zimbabweans has only served to increase anti-foreigner sentiments. As the government appeared to have been caught off-guard by the May attacks (although it did act strongly thereafter by calling on the armed forces and ordering a halt on deportations), it was civil society that stepped in, recognising the inadequacy of the government response (CORMSA, 2008:7,15,26-27). More than a year has elapsed since the outbreak of the xenophobic attacks of 2008 and not much has changed for the thousands of people who were affected and displaced during the violence.

Instead, we have seen displaced persons being evicted from safety camps and the deportation of victims of violence. The state has been largely silent in the aftermath of this violence. Almost as many people were killed and injured during this violence as in the 1960 Sharpeville massacre, yet the xenophobic violence has not attracted the same level of scrutiny or

sustained public outrage. Despite the arrest of many perpetrators in the days immediately following the attacks, only a small number have been successfully convicted. According to the National Prosecuting Authority (NPA) 1 627 people were originally arrested in relation to the violence. Of 469 cases, just 105 have been finalised, with only 70 guilty verdicts. The convictions were mostly for theft and assault, and the most common sentence has been direct imprisonment with the option of a fine. There have been no reported convictions for rape or murder associated with the 2008 attacks (CORMSA, 2009:5,26).

The factors that led to the violence have not been addressed and claims that the post violence reintegration has been peaceful and unproblematic are false. International migrants continue to be killed and assaulted as they return to communities and new incidents are regularly taking place. Attacks have not stopped and the humanitarian response and efforts to reintegrate people were poorly organised. All the conditions that promoted the violence are still there. Officials' visible ambivalence regarding the violence and its victims has helped entrench public convictions that non-citizens are not equal before the law. There are also indications that some police officers supported or passively tolerated the violence and others were involved in looting (CORMSA, 2009:10,43).

While South Africa has enshrined progressive laws relating to the humane treatment of foreigners in the constitution, it has done little to transform the "social attitudes and institutional cultures that perpetuate hostility" (Zondi, 2008:33; Williams, 2000). Non-nationals have been repeatedly attacked and killed in South Africa over many years with few being held accountable for these hate crimes. Actual and perceived impunity only encourages further attacks (CORMSA, 2009:10). It can perhaps be argued that the post-1994 South Africa government neglected social dialogue in favour of service delivery, leading to the concepts such as identity and belonging to be disregarded. The discourse of service delivery was designed to ensure that government appeared to be efficient but this in turn heightened popular expectations and promoted a culture of entitlement. It can be argued that this discourse resulted in dependency on the state and intensifying competition for access to the state and its goods. With the focus on tangibles, the state de-emphasised aspects such as dialogue between the state and citizens, between leaders and the people. This allowed feelings of alienation and abandonment to permeate through poor areas in society, especially amongst the black youth – often resulting in violence against foreigners.

However, it must also be noted that the existence of violence precedes mass immigration. The root of the violence stems from disillusionment and dissatisfaction with the political economy and socio-economy of present-day South Africa. The failure to deal with public resentment has allowed anger to build up unabated (Zondi, 2008:33-35).

III. Government Responses

Critical opinion since 1994 has commonly viewed the South African government as anti-immigration with little political will at even the highest levels of government to deal with immigration (Crush, 2000: 108). Although the government has made a commitment on paper and in legislation, it has made little commitment in terms of the resources required to administer the process of seeking asylum and uphold its responsibilities, thereby failing to deliver on many of its promises (Williamson, 2007; CDE, 2008a:34; CORMSA, 2009:32). South Africa seems reluctant to come to terms with the responsibility of providing refuge to those fleeing war and persecution from other parts of Africa (Williamson, 2007). This has been exacerbated by the spread of corruption through the bureaucracy affecting all people residing in the country. However, limited capacity and corruption are not the sole reasons for an incompetent refugee reception system (Vigneswaran, 2008:5). A lack of decisive political leadership has resulted in government denying any political factors being behind the exodus and a failure to provide even a basic framework to assist those coming from across the border (CORMSA, 2008:15).

South Africa was appointed by the Southern African Development Community (SADC) as the official mediator between the ZANU-PF and the MDC in Zimbabwe in March 2007. South Africa has subsequently avoided statements that could be regarded as critical of President Mugabe and has pursued a policy of "quiet diplomacy" - a term used by the media, not the South African government - to assist with conflict resolution in Zimbabwe (Mawadza, 2008:3; Simpson, 2008b). A focus on the humanitarian needs of non-nationals and on refugee rights would be a controversial issue for many poor South Africans and a politically sensitive one for South Africa's role in the Zimbabwean mediation process (Polzer, 2008:6). Nevertheless, the approach of "quiet diplomacy", in the face of the economic and political crises of Zimbabwe, has been criticised severely by both domestic and international observers (Schoeman & Alden, 2003).

During ex-president Thabo Mbeki's seven-year rule he consistently avoided criticising President Mugabe's authoritarian leadership, trying to present himself as an impartial mediator in negotiations (Wines, 2007). He referred to Zimbabweans as an "inflow of illegal people" whilst other South African officials made statements implying that Zimbabweans were not eligible for asylum (Simpson, 2008b). The only public statement on Zimbabwean migration has been President Mbeki's much quoted proclamation in Parliament that "as to this... inflow of illegal people, I personally think that it's something we have to live with... it's difficult; you can't put a Great Wall of China between South Africa and Zimbabwe to stop people walking across" (Polzer, 2008:16). There has been no consideration of the reasons as to why so many people are leaving their homes; nor an outright condemnation regarding the political human rights abuses. Neither during Operation Murambatsvina in 2005 nor the violent post-March 2008 elections, did the South African government have a clear public policy assessing the reasons for the migration nor recognising the immense humanitarian needs of these people (Simpson, 2008b).

In June 2008, Human Rights Watch called on the South African government to recognise that political repression and economic deprivation were the reasons why Zimbabweans were fleeing their country and that deportations should stop immediately (Simpson, 2008a). Despite such calls over the years, the South African government has continued to ignore the cause of the Zimbabwean migration. Zimbabweans have been treated like any other migrant group having to go through immigration procedures or apply for asylum in an inefficient system (Simpson, 2008b). Despite some efforts to improve the country's migration regime, there is no indication that the government is serious about reform that will protect migrant rights and promote development in Southern Africa (CORMSA, 2009:33). There is a general confusion, mixed with denial and at times, hopelessness. South Africa has never had a comparable institutional experience of such a large-scale migration flow since the inception of democracy. Not only is there a lack of leadership in terms of coordinating the multi-departmental commitments within government but civil society too remains fragmented and with limited capacity (Polzer, 2008:6). The different legal instruments were not designed to deal with migration compromised of mixed motives and the implementation of these instruments is thus fragmented and inappropriate. By only using existing legal instruments, not only has the system become overloaded but South Africa has also failed many of its legal obligations including the prevention of refoulement and upholding human rights (CORMSA, 2008:66).

By the end of 2008, the South African government was still applying standard refugee and migration tools to Zimbabweans (CORMSA, 2008:66). That same year, Human Rights Watch stated that Zimbabweans' presence in South Africa "underlines a failure of foreign policy – the failure to use South Africa's leverage effectively to address the brutal human rights violations and failed economic policies in Zimbabwe causing their flight. Their undocumented status and vulnerability in South Africa, and the increasing public resentment against them, represents a failure of domestic policy – the failure to develop and implement a legal, comprehensive, and workable policy to address the reality of the existence of Zimbabweans in South Africa" (Simpson, 2008b). The government's refusal to recognise the nature and cause of the migration has obstructed any form of a coordinated response being constructed. In turn, the nature of the migration in South Africa has also made it difficult to construct a unified policy, due to the mixed motives of migration, the variety of needs, the scale, and the dispersion of Zimbabweans throughout the country. Due to these factors, there has not been a clearly defined "trigger" for government action (Polzer, 2008:7-8).

The Department of Home Affairs continues to consider reforming the country's refugee and asylum system but has made little progress. The DHA initiated a Turn Around Strategy, intended to improve the running of the Refugee Reception Offices, which has alleviated some of the problems in the status determination process with waiting times being significantly decreased but access to the asylum determination process remains difficult. Asylum-seekers who were in the system prior to the Turn Around Strategy, however, continue to experience long waiting times and to undergo multiple interviews with different reception officers (CORMSA, 2008:7; CORMSA, 2009:86). Why individual officials often act outside their legislative mandates is unclear (Vigneswaran, 2008:5,9-10). However, it is not up to the DHA alone to deal with the situation; but rather it calls for the involvement of the Presidency, local government and various departments such as the Departments of Justice (DoJ) and Social Development (DSD), Provincial and Local Government bodies, and the Ministry of Police (CORMSA, 2008:15,29). Some government departments at local and national levels have begun to realise that migrants and refugees are an important part of the population, but few have the resources or knowledge to move beyond this initial recognition (CORMSA, 2009:27).

South Africa's involvement in the mediation process may thus partially explain South Africa's silence regarding Zimbabwean migration both on a national level and within the various government departments. The silence from government is surprising as many in South Africa's cabinet have been migrants themselves at some point in their lives (Lefko-Everett, 2008:27,32; Vigneswaran, 2008:7). Any responses that have been carried out have neither addressed the scale nor the particular nature of the Zimbabwean migration (Polzer, 2008:4). Rather, the government has carried on with a business-as-usual approach. Such an approach allows the government to avoid making an open policy statement to any of its constituencies. Tara Polzer, from the Forced Migration Studies Programme at Witwatersrand University, claims the political reasons for the seeming paralysis include a "combination of domestic pressures for service delivery to poor citizens and South Africa's 'quiet diplomacy' foreign policy stance towards the Government of Zimbabwe" (Polzer, 2008:6). Whether one buys into the justifications for "quiet diplomacy" or not, the approach is severely challenged in the face of Zimbabwean immigration. By viewing all Zimbabweans in identical terms, the South African government has been able to overlook its legal obligations towards Zimbabweans in South Africa; to avoid considering how meaningfully to respond to their presence; to ignore the causes of their flight and how to deal with this (Simpson, 2008b).

IV. Current Government Policy

Many stakeholders in civil society have called for temporary status to be granted to all Zimbabweans who are residing in South Africa. Regularising Zimbabweans' status would help protect them against exploitation and violence in South Africa. It would also unburden South Africa's asylum system of false claimants, provide data on the thousands of undocumented Zimbabweans, and offset the cost to the South African taxpayer of ineffective deportation and wasted police resources. The right to work would encourage Zimbabweans to fend for themselves and be able to send remittances home. This would address their humanitarian needs and thus reduce pressure on South African social assistance programmes. Additionally, by ensuring that they earn the minimum wage, rivalry for jobs would be reduced due to fair competition thereby creating a more level playing field. This may in turn lessen social tensions with South African nationals. By granting temporary status, the South African government would be sending a clear message to its citizens that Zimbabweans have a right to be in South

Africa and should not be targeted. It would ensure that South Africa is meeting its fundamental international legal obligation not to deport Zimbabweans (Simpson, 2008a; Simpson, 2008b).

As already mentioned, under Section 31 (2)(b) of the 2002 Immigration Act, the Minister of Home Affairs, Mrs. Dlamini-Zuma, has discretionary power to exempt certain people from standard immigration procedures (Simpson, 2008b). On the 3rd of April 2009, the previous Minister of Home Affairs, Nosiviwe Mapisa Nqakula, announced a drastic shift in policy towards Zimbabweans shortly before she left office, under Section 31 on economic and humanitarian grounds. It was announced that there would be a moratorium on deportations, a 90-day free visa for Zimbabweans entering South Africa, and a 12-month special dispensation permit for undocumented Zimbabweans already in the country. Up until then, Zimbabwe had been the only neighbouring country with a visa policy. These visas can be obtained free of charge by Zimbabweans with the correct travel documents and entitle Zimbabweans to casual work. It is renewable once inside the country for a fee of R450 and there is no limit to the number of times an individual may receive a new visa by exiting and re-entering the country (CORSMA, 2009:12, 36,56-57).

The exemption permit would entitle Zimbabweans to stay and work in South Africa and would be valid for one year. Depending on circumstances, it would be renewed or extended at the Minister's discretion. Zimbabweans would still be allowed to move back and forth between the two countries and apply for asylum or for normal work and study permits. The deportation moratorium and free visa were implemented immediately, while the implementation of the special dispensation permits has been delayed due to the national elections and the selection of a new minister. At the time of writing, it is under review by the Cabinet. In addition to this policy package, Zimbabweans whose nationality has been confirmed, are to be released and, reportedly, provided with a temporary Section 23 permit or other documentation that legalises their stay until they can apply for more long-term documentation such as the new special dispensation permit (CORSMA, 2009:12, 36,56-57).

These initiatives are generally regarded as positive steps in the right direction. One of the hurdles that may prevent the success of the permits is the difficulty Zimbabweans continue to face in accessing the forms of identification that South Africa has agreed to recognise. These include a Zimbabwean passport, an emergency travel document, or a border pass. Zimbabwean

passports are estimated to cost in the region of US$670, an emergency travel document costs in the region of US$40, and a border pass is only valid for travel for a radius of 20 kilometres around the border. For these reasons, many may continue to enter South Africa illegally. The Departments of Home Affairs and of International Relations and Cooperation are reportedly engaging with their Zimbabwean counterparts on the fast provision of affordable Zimbabwean passports. CORMSA recommends that the two countries formulate the provision of an alternative form of acceptable documentation that is free or inexpensive to encourage people to enter legally. It must also be noted that there may be a continued discrepancy between legislation and ordinary officials who exercise their own unlawful mandates. Additionally, there seem to be few improvements with the problems at Lindela detention centre. The moratorium on deportations has not been clearly communicated to the SAPS who continue to arrest undocumented Zimbabweans (CORMSA, 2009:12,15-16,36).

However, if the government does not go further, these welcome initiatives will be too little and too late to achieve the envisioned management and protection goals. While the Cabinet decides what documents to issue Zimbabwean migrants in South Africa, many Zimbabweans remain undocumented and continue to be subject to arrest and detention. The Forced Migration Studies Programme at WITS University claims that the temporary permits alone will not solve the problem. It may bring an end to illegal entries and subsequent deportations but what is needed is a strong stance on the part of government in Pretoria. Pretoria needs to collaborate with local government and communities and solve potential conflicts between citizens. South Africa needs to recognise the impacts these new obligations will have on host communities and the effects on further migration trends (Vigneswaran, 2007:11).

Conclusion

Due to the trans-national nature of the problem, South Africa cannot ignore its legal obligations and ethical responsibilities towards Zimbabweans who have crossed the border. It too cannot ignore the root of the problem for it is not only having calamitous effects of human rights violations but also the social and economic implications it will have on South Africa may threaten the stability of South Africa itself and perhaps even the region. Human suffering should not be politicised. What is needed here is a focus on the individual, both Zimbabwean and South African. Policy failure or rather a lack thereof is culminating in the deaths of thousands of

Zimbabweans and builds up resentment among South Africans. Until the national government takes a stance on this issue, individual government departments cannot act. The Presidency needs to define South Africa's stance and thus mandate certain departments to engineer certain responses. Collective government action is needed.

It is essential to acknowledge that South Africa's democratic values and economic success will continue to be pulling factors of migration for the near future, and that the wider and longer-term issues of immigration policy need to be debated. It is therefore imperative to manage migration that sustains, strengthens, and broadens that position. The situation in Zimbabwe is therefore highly interlinked with the welfare of South Africa. Whether one agrees or not as to whether it is South Africa's duty to intervene with Zimbabwean politics, one cannot deny that South Africa certainly has a stake in events happening there. South Africa should act to protect its own people's interests, and defend the respect for human rights in the region (Johnston *et al,* 2008:35; CDE, 2008b). Whilst public resentment against foreigners should not be ignored, it should also not prevent the South African government from fulfilling its legal obligations and doing what is ethically right. Despite the National Unity Government, the lives of millions of Zimbabweans remain insecure. The lack of central direction on how Zimbabwean migrants should be understood and what the government's position should be is having and will have dire effects on South Africa, Zimbabwe and the SADC region.

Chapter 4: The Opinions of Government and Civil Society Regarding Zimbabwe Immigration into South Africa

Introduction

As shown in Chapter 2, South Africa has clearly defined legal obligations towards non-nationals who reside within its borders. However, Chapter 3 presents substantial evidence to suggest that South Africa has not acted in an ethical manner nor has it abided by international standards or its own laws. It appears that at the root of this disregard for the law, on many levels, is a lack of political leadership from the Office of the President. Due to the national elections that took place in April, there is a new administration in power. This assessment therefore focuses more on the previous administration of ex-president Thabo Mbeki. However, the problems remain, and as of yet, we have not witnessed a more appropriate approach. The puzzling question is *why* there has been no clear leadership on the issue of Zimbabwean immigration and why it has been allowed to reach such a calamitous level, despite early warning signals. It has been the intention of this research to engage in a dialogue with members of society to discuss the current plight of Zimbabwean immigrants who flee to South Africa, and how and why they have been received in the manner that they have. This chapter reports the results of interviews with representatives of civil society, NGOs, think tanks, and government.

The initial technique used to determine whom to interview, was based on purposive sampling, which allowed existing knowledge to be employed. Through research, a profile of thirty-five suitable people, with diverse backgrounds, was formulated. These people were subsequently contacted via email and interviews were set up with those willing to be interviewed. For those people in the Cape Town area, face-to-face interviews were conducted with the use of a digital recorder. For those further afield, this was done telephonically and notes were taken. The interviews used basic individual interviewing whereby a general plan of inquiry was followed in the interviews. Questions were adapted to the respondent, thus allowing for flexibility and openness (Babbie & Mouton, 2007:166-167, 289). The guiding conjectures were utilised where appropriate. For those people already interviewed, the snowballing technique was utilised. Due to their own experiences, these people were able to suggest other people to

interview working in the field. Both techniques do have their disadvantages but appear to be appropriate for this study.

The issues covered in the interviews were: South Africa's legal obligations to Zimbabweans and whether these have been met; South Africa's involvement in the political situation in Zimbabwe; issues of xenophobia; implications of Zimbabwean immigration for the SADC region and South Africa specifically; the legal classification of Zimbabweans; the new temporary exemption permits for Zimbabweans; the new Zuma administration and its dealings with immigration; and possible solutions. Sixteen people were interviewed. The interviewees focused on issues they felt to be significant. All interviewees speak as individuals and do not represent the ideas of the institution to which they are associated, unless otherwise stated. Two of the interviewees at times contradict themselves. This is thus not an error on the part of the author.

Every effort was made to contact as many people as possible to represent a range of perspectives. However, for matters beyond the control of the author, such efforts often came to nothing. Specifically, an application was made well in advance, to conduct research at the Department of Home Affairs in Cape Town. At the time of writing, this application had still not been answered, despite numerous contact attempts. No one from the African National Congress (ANC) in the Western Cape could avail himself or herself for comment on the matter of Zimbabwean immigration, except a member from the Provincial Task Team, who wished to remain anonymous. However, the interview was never completed for unknown reasons. Those that initially gave consent to be interviewed were unreachable on the predetermined day of contact and thereafter. Additionally, all the main political parties were contacted. For these reasons, the findings may not be entirely representative of the variety of expert opinion.

The Importance of Understanding South Africa's Response

In the preamble of the South African constitution, it explicitly says that "South Africa belongs to all whom live in it" (Handmaker *et al*, 2008:29). South Africa has committed itself to the respect and defence of human rights on a universal level, with specific attention given to the rights of refugees and asylum-seekers in the constitution. Regardless of whether people meet the legal requirements of refugee status, people are foremost human beings, and because of this,

their dignity ought to be respected at *all* times. Another important aspect is that the suffering of individuals should not be something that becomes politicised, nor overlooked for other reasons. When South Africa signed and ratified the UN Refugee Convention, it accepted the legal obligation to make sure it has the means to implement it. However, it is clear that South Africa has not respected the dignity of thousands of Zimbabweans and the plight of these people has indeed become political. Thousands of Zimbabweans have not been protected and many have instead been deported before an appropriate determination of their status has been carried out, contravening Articles 31 and 33 of the UN Refugee Convention. It is evident that South Africa has legal obligations to non-nationals, but that these obligations have been ignored.

Despite South Africa's legal obligations, something more fundamental has been breached. In the opinion of this study, South Africa has not acted ethically towards Zimbabwean immigrants and the crisis in general. The South African government has not been aware or sensitive to the plight of ordinary Zimbabweans and has not balanced its own interests with their concerns. It is believed that policies that are only pragmatic (whether one can view South Africa's response as pragmatic is highly questionable) and ignore the moral dimension, will in the end fail. If justice in its purest sense is applied, humanity should be recognised wherever it occurs. Due to South Africa's legal commitments and in light of ethics, it is important to explore why the government has ignored these two fundamental aspects in the hope of avoiding such immense suffering in the future. It is my aim that opinions of key players in society will shed some light onto the question.

Views on Government Response to Zimbabwean Immigration

The general belief, which emerged from these interviews, is that the South African government has mishandled the Zimbabwean migration question. Many of the respondents share similar sentiments but differ on particular issues, such as South Africa's role in Zimbabwe's domestic politics; the legal classification of Zimbabweans and the exemption permits. What is striking is that all the interviewees shared the same opinion on South Africa's silence on the matter of the Zimbabwean political crisis and the subsequent immigration, although some interpreted this differently. Although this is a speculative belief, it is an opinion that may carry significant weight in explaining relations between Zimbabwe and South Africa.

Kenneth Mubu (2009), Shadow Minister of International Relations and Cooperation for the Democratic Alliance, states that the previous administration under ex-president Thabo Mbeki, "failed to manage the crisis in Zimbabwe and the subsequent migration". In his view, Mbeki's silence on the situation in Zimbabwe has "clearly not worked" (Mubu, 2009). James Chapman (2009), a refugee attorney at the Refugee Rights Project at the University of Cape Town, adds, "Quiet diplomacy is in fact no diplomacy". South Africa's decision not to intervene in Zimbabwe is a significant oversight, which is not only causing much suffering for Zimbabweans, but also a heightened sense of anxiety and struggle for South Africans, says George Pambason (2009), director of the Alliance for Refugees in South Africa. Pambason (2009) and Paul Verryn (2009), Bishop of the Central District of the Methodist Church of Southern Africa and Minister of the Central Methodist Mission in Johannesburg, feel that South Africa has had a "direct role to play in the political failure in Zimbabwe". Daniel Makina (2009), associate Professor at the University of South Africa, believes that South Africa has "contributed to prolonging the crisis and enabled the effects to spill over into South Africa". For this reason, recovery efforts will take longer than if there had been some type of intervention condemning the "wayward activities" occurring in Zimbabwe (Makina, 2009). Glen Mpani (2009), Regional Coordinator at the Centre for the Study of Violence and Reconciliation, elaborates on this by saying that "Mbeki's denial of the crisis has made it difficult to now deal with the realities and repercussions". This is not to deny that South Africa has its own problems to address.

A member of the ANC Provincial Task Team, who wishes to remain anonymous, points out that not everyone within the ANC endorsed Mbeki's response to Zimbabwe. Mbeki's actions and statements did not always reflect the different beliefs within the ANC. He comments, "Mbeki was warned as far back as 1999 about the social tensions that would arise if migration were not dealt with adequately". He goes on to say that, the ANC's response could indeed have been different if they had listened to the warnings of civil society, NGOs and Human Rights Watch in particular. In reference to the political situation in Zimbabwe, this member of the ANC stated, "by not getting involved, it becomes unconstitutional". In other words, by overlooking the human rights violations in Zimbabwe, South Africa is undermining or rather contradicting its own pledge to respect human rights and dignity. He raises the question that if we are not saying anything about what is happening in Zimbabwe, what are we in fact saying about our own

country and its constitution? He claims that, "we need to *live* our own constitution" (Member of ANC Provincial Task Team, 2009).

Concerning South Africa's own internal problems, Verryn (2009) asserts that South Africa already has its own crisis in terms of abject poverty. Citizens and non-nationals are competing for the same jobs, in a limited market, and for the same accommodation. There is "very little public awareness of the enormity of the commitments South Africa has become party to since 1994". However, these legal commitments to non-nationals directly affect large sectors of the South African population. "South Africa has not dealt with poverty and there is thus some justification to citizens' anxieties that they express towards non-nationals". In addition to this, South Africa is a country "schooled in prejudice", reeling in racism in all its forms. There is no system in place to acknowledge and deal with diversity. This hostility to non-nationals may partially stem from the lack of a clear policy and cohesion on the matter of migration from the country's leaders (Verryn, 2009).

James Chapman (2009), who is himself a Zimbabwean, says it is evident that the crisis in Zimbabwe is "extreme". The Refugee Clinic at UCT receives several applications of asylum per day (Chapman, 2009). Mpani (2009) agrees that the sheer numbers of immigrants is a direct reflection of the severity of the situation in Zimbabwe. To think that many Zimbabweans who arrive are aware of the incredible hardship they will face in South Africa but still choose to come, is an indication of the situation in Zimbabwe, says Verryn. Such denial in the face of such clear evidence is "bizarre" (Verryn, 2009). The crisis in Zimbabwe is a humanitarian one, which is a direct result of the political situation (Mavhinga, 2009). Despite this evidence, the government has chosen to overlook this migration and its causes.

Richard Smith (2009), ACTION for Conflict – Global Steering Committee, says that the South African government's response to Zimbabweans has been inappropriate and at times, unlawful. "The waves of deportations that occurred during the migration of 2008 have left government accused of demonising Zimbabweans, and contributing to their victimisation during the xenophobic attacks" (Smith, 2009). "There has been a lack of realism and a failure of leadership within the southern African region with regards to regional migration", says Makina (2009). The passive attitude typified by Mbeki's suggestion that we "just live with it" carries with it immense dangers. "By not taking charge of refugee and asylum issues and demonstrating

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the ability to not only be generous but also to be administratively efficient in discharging legal obligations, is the risk of discrediting all migration in the eyes of the public" (Makina, 2009). Dewa Mavhinga (2009), researcher for the Africa Division of Human Rights Watch South Africa, Mpani (2009) and Chapman (2009) firmly believe that South Africa "has not been meeting its legal obligations towards Zimbabweans". The application process for asylum is "cumbersome" and deportations have occurred "without adherence to correct procedures and laws, making South Africa guilty of refoulement", says Chapman (2009). Mavhinga (2009) believes the government has been "slow to respond and to take the appropriate measures". Gabriel Shumba (2009), a human rights lawyer and Executive Director of the Zimbabwe Exiles Forum, feels that the South African government's response to Zimbabwean immigrants has been both "abysmal and extremely insensitive". Shumba (2009) and Mavhinga (2009) believe "Zimbabweans should not be regarded as economic migrants".

Charles Goredema (2009), senior research fellow at the Institute of Security Studies, feels that the government has met certain legal obligations and taken steps to address the issue. For example, granting Zimbabweans asylum and the implementation of the 90-day visa. Goredema however goes on to say that, "the government has certainly not acted within its full capacity". The way in which the South African government has ignored the clear human rights violations in Zimbabwe is "deplorable" (Goredema, 2009). In theory, South Africa's policy towards non-nationals is good, adds Verryn (2009). For example, the principle of integration rather than segregation is a good policy. However, this has only led to an "aggregation of responsibility". In practice, the policy is "appalling" as "not only is there a lack of political determination but also a lack of capacity". The Department of Home Affairs' response has been "tardy and inefficient". The state of affairs within the DHA has been of a critical nature for the last five years, yet this has been largely ignored (Verryn, 2009). The Member of the ANC (2009) adds, "Many South African officials leave a lot to be desired". According to Verryn (2009), there remain considerable problems for those that try to legalise their status but fail to do so due to institutional obstacles. These people "remain in an ambiguous position and incredibly vulnerable. The way non-nationals are received in South Africa is a disgrace" (Verryn, 2009).

Pambason (2009) believes that the government has "violated many of its legal commitments". The institutional obstacles that many Zimbabweans face in accessing legal

documentation are a "direct violation of their freedom and dignity". He goes on to say that the 180-day waiting period for reaching a decision of asylum is breached on a regular basis and that there is no material protection offered to these people once they have been classified as refugees. The management of immigration has "utterly failed to manage the influx of Zimbabweans" (Pambason, 2009). Joyce Tlou, Programme Coordinator for Non-Nationals and Migrants at the South Africa Human Rights Commission, also remains concerned about the level of protection provided for Zimbabweans. She highlights issues such as difficulties accessing the asylum procedure; the lack of a clear foreign policy on Zimbabwe; and a lack of political will from South African leaders on the matter (Tlou, 2009; Shumba, 2009). She believes that South Africa has "only partially met its legal obligations and with conditions". For example, Zimbabweans can now apply for asylum but such a decision came about through intense lobbying and legal litigation on the part of Lawyers for Human Rights. She points out that the laws regarding non-nationals are comprehensive in theory, "but in practice they are not implemented accordingly". Tlou says South Africa has "adopted an ambivalent position towards Zimbabwe due to Thabo Mbeki's denial of the situation in Zimbabwe". The Human Rights Commission is not clear on South Africa's policy regarding Zimbabwe (Tlou, 2009).

Smith (2009) responds to these criticisms by saying that it must also be "acknowledged that Mbeki has made a positive contribution in the mediation process in Zimbabwe and has significantly contributed to the process of reaching the Global Political Agreement". South Africa has stood by its sentiment that Zimbabweans should find the solution to their own problems. "To a degree, Mbeki should be commended for his diplomatic efforts. However, the utter disregard for human rights, by both Mbeki and those aligned to him, is particularly alarming and highly questionable". SADC has a role to play in ensuring that both parties in Zimbabwe stick to their commitments in the agreement. (South Africa was Chair of SADC until September 2009). South Africa, working with the SADC mandated Mediation Team for Zimbabwe, thus has a very important role to play in holding those who break these commitments to account (Smith, 2009). Goredema (2009) also claims we must acknowledge that to some extent, South Africa has done something in the way of mediating the conflict. Moyisi Majeke, advocate of the High Court and member of the Internal Executive Committee of the Pan-Africanist Congress, has respect for Thabo Mbeki, as he believes that he managed to bring Tsvangirai and Mugabe together to talk. There have however only been limited positive results,

partly because South Africa has "not been meticulous and forceful in insisting that both parties comply with the agreement" (Goredema, 2009). The ANC member notes that Mbeki had good intentions but which have materialised into little (Member of ANC Provincial Task Team).

Tjerk Damstra (2009), Acting Chairperson of the Refugee Appeal Board, also feels that the government and DHA have in fact been "trying very hard to meet their obligations but have been swamped by the sheer volume of the migration". He also notes, "Many officials are not properly trained in refugee law", which on the surface appears simple but is in fact complex. Many status determination decisions made within the DHA are not always comprehensive decisions, as officials have to deal with large numbers and time limits (Damstra, 2009). Mubu (2009) adds that in terms of meeting its legal obligations, South Africa has met some of them to a degree. For example, the government has adhered to its principle of not setting up camps, rather encouraging integration into society. Additionally, it has observed the 1951 UN Refugee Convention but has been too slow in processing asylum applications. The opening of the border with the introduction of the 90-day visa is another aspect that South Africa has undertaken by way of addressing the situation (Mubu, 2009).

Possible Reasons for Government's Response

Smith (2009) notes that we "need to understand that the concept of mutual respect is an important theme in South Africa's foreign policy, which is often perceived as turning a blind eye to human rights violations". The criticism of South Africa not speaking out against the atrocities that have been occurring in Zimbabwe has often been validated by the belief that it should be Zimbabweans themselves who should find their own solutions and the manner in which they are to be reached. For this reason South Africa will act in the way that Zimbabwe chooses for them (Smith, 2009). We need to remember the historical and emotional relationship between the ANC and ZANU-PF born out of liberation comradeship, say Mpani (2009) and Makina (2009). According to Goredema (2009), the "government has found it difficult to contradict the populist rhetoric of the ZANU-PF", perhaps due to "fear of falling out of favour with the rest of the region". For example, in 2000 South Africa did not speak out against the violent farm seizures, as land reform is itself a contentious topic in South Africa and one that is high on the agenda. In 2002, South Africa failed to condemn the violence that followed the elections. "The South African government has almost become a partisan of the ZANU-PF. Every possible validation

has been utilised in order to justify their support of the ZANU-PF" (Goredema, 2009). In other words, the South African government appears to be a follower or supporter of the ZANU-PF through the decisions and actions it undertakes. Pambason (2009) adds that the South African government "has not wanted to appear as an imposing supporter of the West". There is deep respect for President Mugabe as he fought against colonization and the West and to challenge him would be to challenge what he has stood for (Pambason, 2009; Madikane, 2009; Verryn, 2009).

Makina (2009) believes "this affiliation with Mugabe has had a direct influence on South Africa's dealing with Zimbabwean immigration. These migrants have not been regarded as a consequence of a political crisis, because the actual crisis has been denied". In Mavhinga's (2009) opinion, ex-president Thabo Mbeki failed to act appropriately due to the "ANC's close affiliation with the ZANU-PF in the liberation struggles". In his opinion, this reluctance to place pressure on the Zimbabwean authorities has "served to worsen the problem by allowing the political crisis to manifest into a humanitarian one". Pambason (2009) also feels that the South African leadership views the ZANU-PF as their "allies". Tlou refers to the relationship as members of an "old boys club" looking after each other. To speak out against Mugabe would be "to disturb the balance or rhetoric of the liberation struggle" (Tlou, 2009). Mpani (2009) also points out that "the ZANU-PF tends to alienate those who criticise its ruling". Shumba (2009) adds, "The ANC may be weary of the MDC gaining power due to their leftist, labour movement roots'.

Mubu (2009) warns that the ANC should no longer view the ZANU-PF as their allies due to the liberation struggles, but rather as a political party that needs to respect human rights. In Chapman's (2009) opinion, South Africa's response "was influenced by the solidarity of the old boys club" and the perception of Mugabe as "an eternal hero against the West". However, he also adds that such an approach has been "easy and cheap", which has allowed the government to ignore a multitude of issues. For example, if South Africa were to condemn the farm issue in Zimbabwe, it would have to address the farm matter at home, a point previously made by Goredema. "As soon as one starts pointing fingers, one needs to acknowledge internal issues". In addition, "the influx of so many migrants has been used as a scapegoat to explain the state of the economy, which takes some of the blame off the government" (Chapman, 2009).

However, Tara Polzer, senior researcher at the Forced Migration Studies Programme at Witwatersrand University, cautions against speculating on the reasons for the government's response (Polzer, 2009). Nevertheless, whether one places weight on an issue such as solidarity being influential on current political decisions or not, one needs to consider the social and psychological ramifications of colonisation on African leaders (Madikane, 2009). Historical ties of such a nature may indeed be of fundamental importance in the subsequent international relations between African leaders. Relationships such as these, whether they are perceived as just or not, are perhaps only fully understood by those who share the same history. This is not to say that African leaders are free to undertake unethical decisions that affect their populace, but rather that when new foreign policies are formulated, an explicit mindfulness of such relationships must be accounted for to ensure the effective implementation of the policies at hand.

Majeke (2009) sheds a different light on the matter. Majeke feels that South Africa will not be able to offer Zimbabweans protection until South Africa can transcend its own economic problems. These problems are direct manifestations from Apartheid and policies made in the West. To him, the current crisis in Zimbabwe is also a direct result of colonisation and recent economic sanctions and not a consequence of the actions taken by the ZANU-PF. For this reason, members and leaders within the ZANU-PF and society are victims. "Officially" the PAC supports President Mugabe and the ZANU-PF as they share the same philosophy and the PAC supports the ANC's Pan-African ideals. He goes on to say that "all Zimbabweans should be classified as refugees" and that "all human rights violations should be stopped". However, "one side should not be punished by the other". South Africa needs to act in a way that will not worsen the situation, he says (Majeke, 2009).

Mavhinga (2009) also raises the issue of ulterior motives, whereby it is in South Africa's economic interests to have a weak neighbour. In this way, South Africa remains the dominant player in the region. Additionally, Zimbabwe continues to provide South Africa with a source of cheap labour (Mavhinga, 2009). One must also remember that South Africa is Zimbabwe's largest trading partner. Not only this, but the Zimbabwean economy is a potential investment for South Africans. This would provide a means to absorb some of the domestic effects of the global economic recession on South Africa itself. For this reason, "it would be in South Africa's

economic interest to maintain diplomatic ties with Zimbabwe" (Smith, 2009). However, this is purely speculative.

Views on the Legal Classification of Zimbabweans and the New Exemption Permits

To both Pambason (2009) and Miranda Madikane (2009), Director of the Scalabrini Centre, all Zimbabweans qualify for refugee status. Madikane feels that "all Zimbabweans are affected by the political situation and at this stage are unable to change their circumstances". She adds though, that a simple granting of work permits may in fact be the solution as this would not be of a political nature (Madikane, 2009). Verryn (2009) believes "Zimbabwe should be regarded as a refugee producing country". Chapman (2009) points out that the political crisis as also culminated in an economic crisis, making the status determination of Zimbabwean immigrants a complex dilemma. The result is thousands of people migrating for different reasons (Chapman, 2009). Tlou (2009) feels that not all Zimbabweans classify as asylum-seekers and "should continue to be assessed on an individual basis". Mubu (2009) and Mpani (2009) agree with Tlou in that a blanket term of refugee status for Zimbabweans would be unsuitable. The anonymous member of the ANC adds that to grant a blanket term of refugee status to all Zimbabweans would allow some to exploit the system.

Damstra (2009) says, "The Appeal Board does not treat Zimbabweans any differently to other migrant groups". The only problem regarding Zimbabweans is the volume of the migration. "The legal status determination of Zimbabweans is performed on an individual basis" (Damstra, 2009). Chapman (2009) explains that in legal terms, the AU definition of a refugee, which has a clause that accounts for *events seriously disturbing the peace,* does not apply to the Zimbabwean situation. Although some Zimbabweans have obtained refugee status, they are "few and far between and inconsequential in relation to the amount of applications" (Chapman, 2009). Damstra affirms that the Appeal Board does not believe Zimbabweans qualify under this clause, as there is "still a legal system in Zimbabwe". The Board regards the conflict in Zimbabwe as of a "civil nature". If there were open war, it would be a different situation all together, he says. He claims that only "10-15%" of Zimbabweans have legitimate claims to refugee status (Damstra, 2009).

Those appealing, do so more for economic reasons than political. Damstra explains that the Appeal Board is a creature of statute, which has to follow a certain legal formula in determining those that qualify as refugees. "The Board cannot act beyond its mandate and those with economic reasons do not fit into the legal definition of a refugee". Damstra points out that it is both MDC and ZANU-PF supporters that are suffering and both are fleeing the country. Only "Mugabe and his fat cats" are benefitting. Damstra, whilst "highly sympathetic" to the plight of Zimbabweans, feels that the situation in Zimbabwe has been "overstated". Additionally, Damstra believes that many abuse the system and appeal to "play for time". He estimates that about 50% of failed asylum applicants appeal to the Board, which "is overloaded and understaffed with only four members". This figure is open to correction. Decisions for appeals can take up to two years (Damstra, 2009). Off record, one of the interviewees noted that granting refugee status to all Zimbabweans would be completely impractical for South Africa.

Concerning the new temporary exemption permits for Zimbabweans, currently under review, (Chapman (2009) points out the government were under no legal obligation to create such a policy) Mavhinga (2009) sees this as a step in the right direction but has doubts about the actual implementation of the policy. Goredema (2009) shares similar sentiments, feeling that they will alleviate humanitarian needs but the likelihood of their implementation is "questionable". To him, a lot depends on the political situation in Zimbabwe (Goredema, 2009). Off record, another interviewee shares these doubts. The permits are recognition that a shift in migration policy is required, says Tlou (2009). However, "refugee status should continue to be accorded to those that qualify in conjunction with the permits" (Makina, 2009).

Polzer agrees that the permits are a step in the right direction but is certain that "they *will* be implemented", to which Shumba (2009), agrees. The regularisation of Zimbabweans will also be beneficial to South Africa, which can then utilise the skills many Zimbabweans possess (Polzer, 2009). However, in Chapman's opinion, "the borders should ideally be opened and the status of Zimbabweans legalised, as the immigration is inevitable". Verryn (2009) feels that the "SADC region should be regarded as one unit". He believes this would lead to the stabilisation of the region and unleash a flood of economic prosperity. For this reason, "conflict and bad governance should not be supported in the region" (Verryn, 2009).

The delay in implementation is merely due to "internal bureaucratic procedures that have to be adhered to and certain details that have to be clarified", explains Polzer (2009). Polzer goes on to say that, the permits will not directly address the humanitarian needs of Zimbabweans but that they will make it possible for people to assist themselves. Additionally, they will make it easier for NGOs and civil society to address their humanitarian needs as those in question will be a legalised population. The moratorium on deportations and the 90-day visa are welcome developments but are part of a policy package that needs to include the implementation of the permits (Polzer, 2009). Tlou (2009) and Makina (2009) however stress the fact that these developments have not materialised over night; but are rather the product of intense lobbying over a lengthy period. Whether the permits are implemented or not, Chapman (2009) points out, that in this interim period of uncertainty regarding the permits, there is "a slight positive in that there is a clear directive that Zimbabweans cannot be deported at this stage". They can "legitimately be here and work until a decision is made" (Chapman, 2009). Either way, Smith (2009) is certain that some new form of domestic policy is inevitable.

For Pambason (2009), the permits are not a long-term solution. He is concerned that the permits will allow the government to avoid its legal commitments and allow them to avoid facing the situation in Zimbabwe. The temporary nature of the permits "protects the government from committing to any long lasting obligation" – a type of escape from the current chaos. He acknowledges that the permits are positive but only in the short-term (Pambason, 2009). Majeke agrees with this outlook. The permits "allow government to change its stance in the future" (Majeke, 2009). Mubu (2009) affirms these sentiments in saying that the permits should indeed be implemented with conditions and a time limit to ensure that the recipients of these permits leave when the time arises. Makina stresses, "That many critical questions need to be addressed before the permits are implemented". For example, "when does South Africa stop issuing these permits?" (Makina, 2009).

Solutions for the Future

The Office of the Presidency is the only department that can lead an effective response to Zimbabwean immigrants, says Goredema (2009). Pambason (2009) agrees, as he firmly believes that people follow the sentiments of those that lead them. The individual government departments cannot make decisions until there is clearly articulated leadership from the top

(Goredema, 2009; Pambason, 2009; Mubu, 2009; Mpani, 2009). Mubu adds that the government has to speak out more forcibly on the atrocities that are occurring in Zimbabwe. With the signing of the Global Political Agreement, Mubu (2009) still receives reports of ZANU-PF intimidation. The responsibility of migration is not for the DHA alone though (Tlou, 2009) but adjustments are needed within the department says the ANC member. Officials within the DHA need to embrace a more humane approach to Zimbabwean immigrants. More "manpower and time needs to be prioritised to the applications of Zimbabweans" (Member of ANC Provincial Task Team, 2009)

Mavhinga (2009) and Shumba (2009) are more hopeful about the new administration, which they feel is more open to dialogue, and sensitive to the plight of refugees, but of course, it is a "wait and see situation". Goredema (2009) agrees that President Zuma seems more decisive; and is "not hamstrung by previous promises". Zuma has consistently spoken out against the xenophobic violence in South Africa last year and did not endorse the fraudulent 2002 elections (Goredema, 2009). Zuma has recognised the crisis in Zimbabwe; perhaps due to the influence which COSATU – a critical commentator of the situation in Zimbabwe - has over him (Shumba, 2009). On the other hand, perhaps this is due to the realisation that the Zimbabwean problem will not simply disappear without some form of intervention (Makina, 2009). Majeke (2009) also feels that Zuma, who possesses a more socialist ethic, is more problem-orientated with a greater concern for the individual. However, Majeke maintains that he does not forecast any change in direction in terms of South Africa's dealings with the political situation in Zimbabwe (Majeke, 2009). Chapman (2009) also feels that Zuma is party to feelings of "brotherhood" with Mugabe and does not forecast any form of punishment or accountability. The member of the ANC also has his doubts as to whether Zuma will condemn Mugabe and questions "what could practically be gained by such an approach?" (Member of ANC Provincial Task Team, 2009).

Smith (2009) points out that one must remember that President Zuma was engaged in affairs in Zimbabwe well before his election as President – when he was still deputy president. There are thus "existing relationships which we cannot overlook". However, due to the historical relations between the ANC and ZANU-PF, any shifts in leadership *will* have an impact on their relations. President Jacob Zuma acknowledges that the crisis in Zimbabwe is a regional issue that requires South African leadership and regional partnerships to be resolved. Zuma has made statements that suggest he is more ready to get involved in Zimbabwe's internal politics. This is

a move away from Mbeki's more diplomatic approach. These shifts within the ANC may have some effect on the manner in which SADC has chosen to intervene in Zimbabwe. In a press conference, President Zuma implied that the ANC had never formally endorsed Mbeki's role in the process. Zuma suggested that the ANC's involvement in Zimbabwe might change. There is therefore the possibility that the new leadership will take on a different, more condemnatory approach to Zimbabwe. However, this point is highly contentious amongst political commentators. People closer to those in power claim things are unlikely to be any different from before. It is "likely that South Africa will continue to operate within a framework of South-South cooperation, which balances South Africa's domestic interests with the common long term interests of its neighbours" (Smith, 2009).

Mavhinga (2009) suggests, "The South African government needs to explicitly acknowledge the political nature of the crisis in Zimbabwe" and the resultant number of refugees. South Africa needs to focus on the cause of the migration flow, in addition to a consistent response led by the Office of the President. Tlou (2009) feels that South Africa needs to assess whether its approach of "quiet diplomacy" is in fact still the appropriate method of addressing the political situation in the face of thousands of immigrants. Goredema (2009) adds, "A tougher line needs to be taken to ensure the ZANU-PF complies with the Global Political Agreement. Discussions should be undertaken with other SADC members in the event that the ZANU-PF goes against its word" (Goredema, 2009). There is a great need for co-operation amongst the government departments in South Africa (Mubu, 2009). Mavhinga feels that "each government department should be made fully aware that people have a right to access the asylum system and to understand what those rights mean in practice. Each department should be assigned a specific task or response dedicated particularly to Zimbabweans, who are not the same as other migrants". He goes on to say that, Zimbabweans residing within South Africa need their stays to be regularised, which will manage the sheer numbers, and create some relief for the overburdened asylum system (Mavhinga, 2009).

Another suggestion, according to Verryn (2009), is that the DHA should be decentralised. Pambason (2009) suggests, "Extensive training is needed within the DHA, in addition to a national synchronised data system to process applications and document cases". Within society, people need to be educated in the commitments the government has signed up to regarding non-

nationals and what this entails. Without dialogue, the laws and exemption permits are meaningless (Pambason, 2009; Shumba, 2009; Tlou, 2009; Madikane, 2009). Madikane (2009) feels that a change in the mindset of many officials and citizens would in turn ensure better service delivery. South Africa can itself also benefit from the migration by tapping into the skills base of many migrants (Chapman, 2009; Madikane, 2009). Not realising that many of these people can help us through our own transition, is such a "tragedy" says Verryn (2009). "Migration needs to be dealt with efficiently to restore public confidence" (Makina, 2009).

By not dealing with this situation, outbreaks of xenophobia become a very real possibility, especially against Zimbabweans. Social tensions such as these have the ability to destabilise the SADC region if not addressed (Mavhinga, 2009). Pambason (2009) is also concerned that the new political leaders may undertake decisions in order to satisfy the masses and gain political capital at the expense of respecting human rights. "To compliment the policy package (moratorium on deportations; 90-day visa; and exemption permits) a general recognition of the social welfare commitment in the constitution is needed", says Polzer (2009). There needs to be a "realisation that public goods need to be made available". The challenge lies in the implementation and monitoring of the new package and the constitution (Polzer, 2009). Tlou (2009) and Mpani (2009) acknowledge that the challenge currently facing South Africa is no easy task. South Africa has its own problems with the many of its population living in poverty. However, migration is inevitable and an issue that South Africa will have to face for many years to come. Therefore, migration should be "managed not controlled" (Tlou, 2009; Mpani, 2009).

Conclusion

The common feeling among the respondents is that the South African government has failed to help resolve the crisis in Zimbabwe, but more importantly, it has failed to address the migration issue. Although some people feel that South Africa has made concerted efforts in this regard, the majority outlook is that the South African leadership has turned a blind eye on grave human rights violations and immense suffering and chaos. Feelings are mixed about the exemption permits and the legal classification of Zimbabweans. All those interviewed, express the hope that the new administration will deal with the migration problem more effectively. Some are however uncertain as to whether we will witness an outright condemnation of Mugabe. Almost all of the respondents highlighted the ANC's historical and emotional affiliation with the

ZANU-PF in explaining the silence on the matter. What is interesting is that only one interviewee made a brief reference to a lack of capacity in explaining the paucity of leadership in addressing Zimbabwean immigration. Such opinions carry weight as they may serve to explain many of the relationships between African leaders themselves, and between their people - which are often not understood by those that do not share the same history.

Chapter 5: Discussion on Reasons behind South Africa's Response to Zimbabwean Immigrants

Introduction

This penultimate chapter discusses the main opinions from the interviewees from Chapter 4, which I believe to be of value. It is an attempt to assess which reasons possibly carry more weight in explaining the government's (specifically Thabo Mbeki's) response to Zimbabwean immigrants. Although each reason no doubt possesses a speculative dimension, it is worthy to explore the truth and relevance behind the main opinions. This chapter does not seek to assess the reasons. Rather, the aim is to examine what they may be so that future decisions can be formulated on an awareness of the various nuances that exist in foreign policy and the historical relationships between leaders. That is not to say that existing injustices should be maintained, but rather that they should be overcome. The dignity and welfare of individual human beings, irrespective of who they are, should be the guiding force in all foreign policy decisions. All other factors should come second to the realities of human beings, wherever and whoever they are.

The problem with giving someone asylum is that you have to make a statement about the country that individual is fleeing. South Africa's policy of "quite diplomacy" towards Zimbabwe, in the opinion of this study, explains why South Africa is quiet on the issue of the large immigration influx of Zimbabweans. "Quiet diplomacy" is a combination of methods that include "behind the scene engagements, secret negotiations, and subtle coaxing". South Africa has taken this a step further by protecting Zimbabwe from external criticism and has provided the country with finances and fuel (Prys, 2007). As already mentioned, once a country categorises a group of people as refugees, it is implicitly making a negative statement about the country of origin. In the opinion of this study, South Africa's foreign policy towards its neighbour is the underlying logic of its attitude toward the migration problem. South Africa's foreign policy toward Zimbabwe has determined South Africa's domestic policy toward Zimbabwean immigrants. The foreign policy has necessitated a denial of the refugee crisis and even the granting of refugee status. It is therefore imperative to explore *why* South Africa has chosen this particular foreign policy.

The aim of this chapter is to explore *why* South Africa has chosen this path and why it is so adamant to avoid such a statement about the crisis in Zimbabwe. The focus is then on South

Africa's relationship, specifically ex-president Thabo Mbeki, to the ruling Zimbabwe African National Union-PF (ZANU-PF) and President Robert Mugabe. The chapter begins with a summary of the main opinions from the interviews from Chapter 4. The concept of human security is then reincorporated to explain why it is an ethically appropriate framework to use in assessing South Africa's reasoning behind its policy to Zimbabwe. However, it is later illustrated how Mbeki has not abided to such a concept and examples are given of his explicit support for Mugabe. The reasons behind the government's response are then explored through the lens of the human security framework.

Conclusions from Interviews

The main opinion from the interviews as to why South Africa has not responded to Zimbabwean immigration in a forceful and condemnatory manner is due to the historical and emotional relationship between the ANC and ZANU-PF born out of liberation comradeship. Different interviewees possess different feelings about this relationship, but a significant majority highlight this factor as being highly influential. In light of this view, the respondents add that South Africa does not want to appear as a supporter of the West. Some other topics that are highlighted are worth exploring. A point that is only made by two interviewees, but may be highly relevant, relates South Africa's foreign policy decisions to its economic interests. One interviewee briefly mentions the fact that Mbeki does not see the Movement for Democratic Change (MDC) as a realistic alternative, which is of significance. The controversial issue of land reform in South Africa is also mentioned as an inhibiting force in criticising Mugabe and his land evasions. The issues that this study wishes to explore in relation to what was raised in the interviews are issues of solidarity, South Africa's economic interests, and land reform. In addition to these factors, other issues are worth mentioning. Mbeki's philosophy of the "African Renaissance" is important to highlight as it may explain the context in which many of his decisions were made. Furthermore, South Africa's position in the region and ethnic tensions are two other elements worth exploring. These factors are explored in light of human security.

The Ethical Importance of Human Security

"Human security is not a concern with weapons – it is a concern with human life and dignity" (UNDP, 1994:22). The main components of this concept are that it is universal,

interdependent, people-centred, and its philosophy is that prevention is better than intervention. Human security is best understood rather "through its absence than its presence". It is security from chronic threats such as hunger and disease, and protection from "sudden and hurtful disruptions in the patterns of daily life" (UNDP, 1994:23). Such threats can come in many different forms, from many different sources, over different speeds of time. Human security enables people to have the freedom and ability to make decisions that affect their lives that enable development and sustainability. It is the opportunity for people to take responsibility for their own lives, be free, and make a full contribution to development. A lack of security inhibits human development and vice versa. When people are continuously deprived, violence may erupt. Likewise, when people perceive threats to their immediate security, they may become less tolerant. A few indicators of human insecurity are food insecurity, job and income insecurity, human rights violations, ethnic or religious conflict, inequity, and excessive military spending. These indicators can provide an early warning for a country that may be on the brink of social disintegration and even collapse (UNDP, 1994:38).

Human security not only encourages human development and promotes freedom, but also keeps instability at bay. The essence of human security is that it "recognises the universalism of life claims" and requires solidarity amongst human beings (UNDP, 1994:23). Human security makes a moral claim, which cannot be ignored if human beings are to survive and prosper. It is a framework that is universal in its appeal as it recognises humanity before all else and aims to reduce the suffering and threats to life and dignity. Human security does not appear to have been a priority in South Africa's foreign policy toward Zimbabwe. The human security framework is used to explore the reasons behind South Africa's response to Zimbabwean immigrants and subsequently to the crisis itself. The reason for this is that it considers the suffering and plight of individual human beings. It is a framework that fills the moral vacuum that often exists in foreign policy.

Mbeki and the "African Renaissance"

It is important to briefly describe Mbeki's views about his "African Renaissance" to contextualise the decisions he has made over the years and specifically toward Zimbabwe. It is not my intention to pass judgement on these views, but rather to highlight what they are. Mbeki first started talking about a renaissance when he was called back to South Africa in the face of a

"decultured South African society" (Gevisser, 2007: 324). It is rooted in a strong sense of something having been lost, which needs to be reborn. This stems from his family's own experience of prosperity that was taken away from them, and that lifelong need to get it back. Mbeki grew up in the 1930s and 1940s when his elders started to reject the colonial rhetoric and embrace the ideals of "New Africanism". Mbeki's renaissance has its roots in these ideals. Officially launched in 1998, it is a philosophy that strives to salvage and overcome black people's own perceptions of themselves and the perceptions of others who see them as failures. To do this, black Africans need to look to the past and rediscover themselves (Gevisser, 2007:16).

It is a "moral and political awakening" to pursue "personal autonomy and African self-sufficiency" (Gevisser, 2007:32-33). At its core, is a quest for African identity, cultivated by Africans themselves in an attempt to realise their own needs. It is not only a sentiment, but also a recovery for both black African people and for Mbeki (Gevisser, 2007:234). It is this fundamental belief that has influenced the Black Economic Empowerment (BEE) schemes, the New Economic Partnership for African Development (NEPAD), and Mbeki's response to Zimbabwe. It is a philosophy built around a neo-liberal discourse, which encourages regional integration and a desire to locate South Africa within the continent and the continent within the world. This language fits in with the neo-liberal agenda of globalisation that many African countries are finding hard to resist (Swatuk, 2000). The belief itself is not questionable, but rather how it has been translated into political actions is. It has fuelled Mbeki's sentiments about imperialism and the West. Much of the debate around Zimbabwe has turned into an "us" against "them', white against black, North versus South debacle, with much to do with this philosophy.

Jeremy Cronin argues that what informs much of Mbeki's strategy to Zimbabwe is a "belief that national liberation movements in our region should close ranks". He goes on to say, "This is informed by a conviction that the crisis in Zimbabwe is being used as an entry point by imperialist powers to reassert hegemony over a former colony and eventually over our whole region" (Cronin, 2008). To do this they infiltrate their tactics through opposition parties. The MDC is an example, in the eyes of Mbeki (Johnson, 2008). The fact that support or condemnation for Mugabe is racially divided, feeds into Mbeki and Mugabe's rhetoric. For

example, those people and countries that are "against" Mugabe are predominantly Northern and white, while those that support Mugabe are Southern and non-white (McKinley, 2004:357).

The land reform issue is a case in point (McKinley, 2004:357). Mbeki fervently believed that the only reason the Western world had condemned Mugabe in 2000, was because his victims were white rather than nameless black masses. He cites Angola, Mozambique, DRC, and Rwanda as cases where thousands of black people have been murdered, but where there was no international outcry. Mbeki also believed that white people in South Africa were disapproving of Mugabe due to a fear that the same thing would happen to them. This is of course a good point. However, Mbeki ignores the fact that Mugabe has black critics too and millions of black victims (Gevisser, 2007:440). Mbeki has used the issue of race to divert attention elsewhere (McKinley, 2004:360). As Brian Raftopoulos explains, "To criticise Mugabe is to be seen as Western and anti-African" (Lamb, 2006). He has used this rhetoric to disguise other interests and emotions that have influenced his decisions regarding Mugabe and Zimbabwe. This rhetoric stems from his notions of a renaissance and his obsession with race and colonialism.

Mbeki himself has raised many reasons for his policy of "quiet diplomacy". These have included trying to prevent a civil war and an influx of refugees, a weariness of the MDC, an attempt to quell South Africa's reputation as being arrogant, and an acknowledgement that Mugabe still commands mush loyalty on the continent. Despite these "logical" explanations, there are also emotional and historical ones (Gevisser, 2007:432). The reasoning behind Mbeki's response to Mugabe, both those he claims and ones he does not, are supported by the conception of the "African Renaissance". To criticise Mugabe would be to undermine the idea that black Africans need to stand up to the West and assert their own programme and identity. What Mbeki fails to consider, is that such an agenda should not be at the expense of human suffering and death.

South Africa's Perception of the Source of the Crisis

In light of Mbeki's personal views, it is important to briefly explain how many in the ANC leadership regard the origin of the crisis in Zimbabwe. It must also be noted that some people within the ANC and the tripartite alliance, most specifically COSATU, are highly critical of Mbeki and his decisions regarding Zimbabwe. However, the majority view is that the crisis in

Zimbabwe is not a direct result of the actions of Mugabe. South Africa has described the crisis largely in terms of unequal land distribution and the failure to met post-colonial responsibilities (Prys, 2007). This denial of the significant role Mugabe and the ZANU-PF has played in the crisis influences how the ANC believes the crisis should be solved. One cannot condemn someone that you do not believe is guilty in the first place. Whether this is a genuine sentiment, or rather a tactic to justify policy and disguise other interests in questionable.

Mbeki's Support for Mugabe

Although this study is not directly about the political crisis in Zimbabwe but rather about the South African government's response to Zimbabwean immigrants, the two factors are evidently linked. One cannot be explained, without explaining the other. To understand the government's response to immigration, we need to understand their relationship to the cause of the migration, the actions of President Robert Mugabe, and the ruling ZANU-PF. First, it is worthwhile to illustrate how this support has manifested into actions. Mbeki has continued to argue that gentle persuasion is a better tool to use with Mugabe than direct force (Baldouf, 2008). Mbeki has a record of being reluctant to criticise African leaders. The Matabeleland massacre in which 20 000 Ndebeles were slaughtered by Mugabe's men in the mid-1980s received no response from many ANC leaders. This is the equivalent of a Sharpeville massacre every day for over nine months (Tatchell, 2008). Mbeki has not only refused to criticise Mugabe, but he has actively supported Mugabe's rule and decisions.

In 2000, ZANU-PF started the widespread land invasions of white farmers in response to a rejected referendum just before election time. The party saw this as a threat to their survival and embarked on a strategy to quell dissent and gain support. The ZANU-PF had become increasingly unpopular amongst workers due to Mugabe's (encouraged by the West) structural adjustment policies. Many farm labourers and farmers were left dead, women were raped, and hundreds of thousands were left jobless and displaced. The clear aim was to destroy any opposition to the ZANU-PF, emanating predominantly from farm labour. Mbeki's response, "We are engaging this issue. We are in favour of land redistribution in Zimbabwe. You couldn't sustain a colonial legacy and let it be". The violence spilled over into the parliamentary election of 2000 and presidential election of 2002 with those opposing the ZANU-PF being brutally suppressed. Mbeki's observer missions deemed the elections "free and fair" and the results

"credible". While the rest of the world condemned the elections, Mbeki infamously stated that some people are treating "human rights as a tool" for overthrowing the government in Zimbabwe (Matyszak, 2008).

Mbeki criticised the EU when they imposed travel sanctions on senior ZANU-PF officials and when the Commonwealth decided to suspend Zimbabwe. The following year, in 2003, Mbeki made efforts to reinstate Zimbabwe into the Commonwealth. Mbeki tried to take some of the pressure off Mugabe by announcing he would be undertaking efforts to facilitate meetings between the two parties. Mbeki also repeatedly blocked condemnatory resolutions on Zimbabwe at the annual meetings of the UNHCR. In 2004, South Africa proposed a no-action vote for the crisis in Zimbabwe at the 59th Session of the General Assembly's Third Committee. At the time of "Operation Murambatsvina", Mbeki's government remained silent. When the AU proposed a resolution about the crisis in Zimbabwe, South Africa immediately defended Mugabe and prevented discussion of the proposed resolution. In 2006, the South African owned SABC banned critics of Mugabe and Mbeki's Zimbabwe policy from SABC. In 2008, the Mbeki administration prevented any action on Zimbabwe at the United Nations Security Council. In the same year, South Africa lobbied China and Russia to exercise a veto against sanctions and an arms embargo on Zimbabwe (Matyszak, 2008). The June 2008 runoff election was conducted outside the bounds of Zimbabwean law with violence and intimidation, yet Mbeki supported the fraudulent results and the fact that they were withheld for over a month and more than likely adjusted. The subsequent run-off election in June was carried out under brutal military crackdown. Many who voted for Tsvangirai were too scared to do so again (Baldouf, 2008).

In 2008, Mbeki dispatched a team of Generals from the National Defence Force to go and assess the situation in Zimbabwe (Baldouf, 2008). The team said they had found "shocking" levels of state-sponsored terrorism. In a statement, the generals stated that, "We have heard horrific stories of extreme brutality and seen the victims. We have seen people with scars, cuts, gashes, bruises, lacerations and broken limbs, and bodies of those killed. It's a horrifying picture" (Herald Scotland staff, 2008). However, this report was ignored and never made known to the public. Despite this information and international outcry regarding the results, Mbeki quickly encouraged a government of national unity to revive Mugabe's long lost legitimacy (Baldouf, 2008). It was at precisely at this time that Mbeki allowed a shipment of armaments to reach

Harare, despite the fact that he was very much aware of the situation in Zimbabwe due to the Generals' report.

Between 2004 and 2005, armaments to the value of more than R3, 3 million were privately transferred from South Africa to Zimbabwe. In 2008, this flow of arms received international outrage when Armscor was contracted to transport weaponry destined for Zimbabwe and carried by the Chinese freighter, the An Yue Jiang from Durban port inland to Harare. The weaponry was due just in time for the elections when the Mugabe regime was arranging for mass suppression to ensure victory. Despite the National Conventional Arms Control Committee (NCACC) policy to not allow the flow of arms from South Africa to conflict zones, Mbeki and the head of the Committee, insisted the delivery be allowed. Due to widespread protest from the public, NGOs and COSATU, the cargo was unable to reach South Africa (Matyszak, 2008). However, the ship was secretly refuelled offshore by the South African navy vessel SAS Drakensberg. The An Yue Jiang then made its way to the Congo-Brazzaville port of Ponta Negra. It was confirmed that Mbeki both knew and condoned the transhipment across South African territory of the Chinese weapons (Herald Scotland staff, 2008; Myburgh, 2008). In 2008, South Africa was selling electricity to Zimbabwe at a price 36% lower than it was selling it to South African consumers. According to press reports, South Africa actually increased its supply to Zimbabwe in 2008 (Tupy, 2008). In August 2009, David Meynier revealed that the NCACC was planning to export ammunition to Zimbabwe, which will no doubt be used against civilians. This was in light of Kenneth Mubu and James Wilmot's fact-finding visit to Zimbabwe, which claimed that there is increasing paramilitary activity in the countryside and that hit squads were still busy and land evasions had not ceased (James & Mubu, 2009).

These are some of the many incidents where Mbeki has openly supported Mugabe, which is a reflection of his "African Renaissance' philosophy. It is an attempt to show solidarity amongst African leaders and to stand up against international intervention. However, Mbeki's support for Mugabe has been at the expense of hundreds of thousands of people, both in Zimbabwe and outside. The avoidance of any criticism and outright support for the ZANU-PF has only served to exacerbate the plight of Zimbabwean immigrants in South Africa. Without a clear directive from the host country, their fate is left unknown and despondent. In addition to the millions of people in Zimbabwe, these immigrants are facing much insecurity, at times deadly.

South African citizens, who are already socially and economically vulnerable, face further challenges in light of this influx. Without leadership from the ANC, tensions are rising and people are frustrated. All of these factors of insecurity have profound destabilising effects on a country and even the region as a whole. The curiousness of the situation is *why* South Africa has chosen to avoid a statement about the crisis in Zimbabwe and the many migrants in the country.

Mbeki and Mugabe's Relationship

As already mentioned, the majority of the interviewees believe that the historical and emotional relationship between Mugabe and Mbeki has been a key driving force behind South Africa's foreign policy decisions toward Zimbabwe. Therefore, it is important to give an overview of this relationship - why it formed and matured in the manner that it did. Historically, for most people in the ANC, the ZANU-PF was seen as the enemy. The ZANU-PF was actually aligned to the Pan-Africanist Congress (PAC) and China, and the ANC to the Zimbabwe African People's Union (ZAPU). When Mugabe won a victory in 1980, Mbeki seemed to be the only one from the ANC who predicted it and even approved of it (Gevisser, 2007:431). The election results at independence in 1980 reflected the demographic divisions of Zimbabwe. Mugabe's support was largely from then Shona, while ZAPU's support was from the Ndebele. The Ndebele are the descendants of Mzilikazi, Shaka's breakaway general, and the link between ZAPU and the ANC (Gevisser, 2007:433-434).

In the late 1970s, Mbeki came to understand that there were more Shona than there were Ndebele and that Mugabe's victory was imminent. Mbeki realised that it was in his interests to befriend Mugabe, both for the liberation of South Africa as it had access to the border and because the ZANU-PF were a highly effective party, compared to ZAPU. South Africans in exile would be able to travel freely through Zimbabwe and begin to interact with those at home. For these reasons, Mbeki kept informal contact with the ZANU leadership. Despite the tensions that persisted between the ANC and ZANU, Mbeki made it his mission to befriend Mugabe. In 1980, Mbeki was assigned to lead the ANC mission to Zimbabwe (Gevisser, 2007:433-434). Mbeki met Mugabe in 1980, when Mugabe had just gained independence from Britain. From that moment on, the tone of their relationship was set, with Mugabe as the father figure and liberator from colonialism (Baldauf, 2008).

To make peace between ZANU and the ANC, Mbeki's main contact and door into ZANU was with Emmerson Mnangagwa, who in later years became the minister of state security. Mnangagwa had served many years in jail with the ANC's Umkhonto we Sizwe (MK) and was thus unusually closer to the ANC than to the PAC. In 1980 Mbeki spent most of the year trying to strike a deal with ZANU – a deal that he, years later, felt was the most promising offer the ANC had ever received. Umkhonto we Sizwe would be allowed to move weapons and cadre through the country and would be issued with Zimbabwean identity documents. Additionally, the Zimbabwean military would assist them and the MK would be allowed to have an office (Gevisser, 2007:436). It must be noted that Mbeki may have exaggerated his relations with ZANU at the time. Mnangagwa at the time said that he "found no reason to embrace the ANC" (Gevisser, 2007:437). However, Mbeki pulled out of Zimbabwe for personal reasons and handed the operation to Chris Hani. From that moment on, relations between the ANC and ZANU broke down and became "ambiguous, tenuous, and vulnerable" (Gevisser, 2007:436). Pressure from South Africa and being caught in the crossfire between ZANU and ZAPU are two of the reasons explaining how relations between ZANU and the ANC deteriorated. However, Mbeki believed that it was the ANC and the MK who did not handle the relationship properly (Gevisser, 2007:438).

In spite of the tensions between the ANC and ZANU-PF, Mbeki tells a story in his biography by Mark Gevisser that portrays him and Mugabe as "kinfolk; that Mugabe cared about him as if he were his own son" (Gevisser, 2007:436). Mbeki goes on to say that Mugabe's response had been "very supportive and vigilant"; ZANU "became one of our biggest supporters and it has to be acknowledged. It's fact. Whatever mess *we* made of it..." (Gevisser, 2007:439). Gevisser induces from this statement that Mbeki's current approach to Zimbabwe is "rooted at least in part in an acute sense of the role the two men had played, together, in turning a bad relationship into a good one" (Gevisser, 2007:439). Mbeki clearly felt as though the ANC squandered ZANU's support and let Mugabe down. "Mbeki would not let him down again" (Gevisser, 2007:439). Mbeki's policy of "quiet diplomacy" seems to have been deeply influenced by his loyalty to Mugabe as a father figure and freedom fighter against the white West and white settler colonialism in Southern Africa. Mbeki regarded himself and Mugabe as part of the same family of freedom fighters (Gevisser, 2007:441). In a letter to the new President of the ANC, Jacob Zuma, Mbeki refers to Mugabe as one of the several leaders with whom he has been

"privileged to interact" and which is one of the "titans" who "were and are the true heroines and heroes of our struggle" (Matyszak, 2008). Given the history, solidarity amongst freedom fighters is understandable and inevitable but not when it is as the expense and suffering of millions of fellow black people. While Mbeki has shown solidarity with Mugabe and the ZANU-PF, he has shown no solidarity with the ordinary people of Zimbabwe and the many migrants in South Africa.

South Africa's Economic Interests and Mbeki's Neo-liberal Agenda

South Africa's economic interests are the second suggestion that is offered to explain South Africa's response to Zimbabwe. In the Southern African region, old capital that prospered under colonial and apartheid rule has accommodated itself to new realities. The most important new economic groups to emerge are black capitalist elites themselves and the corporations and agglomerations they control. Big business leaders and other organised economic interests play a significant part in shaping the region's economies. These "new" groups may be new in the sense that they are now black, but they are still driven by old motivations of profit and self-empowerment. Additionally, their interests cannot be disassociated from the interests of large multinationals and international financial institutions who also play an important role in the region (Andreasson, 2007).

Soon after liberation, the moral dimension in South Africa was soon surpassed by economic imperatives. In 1994, the ANC took over a state whose main imperative was to secure the economic interests of an Afrikaner national bourgeoisie. All that changed after 1994 was that this bourgeoisie became a black bourgeoisie. Although the political leaders changed, the political economy did not and remained pro-capitalist within the context of a global neo-liberal agenda. The result was economic policy that did not consider the masses but rather a select few. The South African state's existence and legitimacy was built and continues to be built on the social and physical suffering of the poor (McKinley, 2008).

When South Africa announced its neo-liberal GEAR economic policy, some predicted that it would make a certain few incredibly rich. The fortunes of these South Africans are affected by how the relations between old and new economic groups, and between economic groups and governments, evolve. Since liberation, South Africa has been intent on formulating a

new type of regionalism. This is based primarily on interstate cooperation and trade liberalisation in an attempt to integrate into the neo-liberal global economy. Part of South Africa's economic strategy is privatisation, which professes to encourage a broader, entrepreneurial class. In reality, it is the transfer of a limited amount of assets from public elites to private elites, thus benefiting a select few. The new black bourgeoisie in South Africa have bought into existing economic structures that offer great rewards for those few that are able to take advantage of them. The country has given priority and prominence to the international and investment community. The placation of business and financial interests has been the main concern of South Africa. It is clear that the ANC leadership has aligned itself with capitalist interests. That is not to say that the ANC is unanimous on such sentiments, but that this has been the path that has been followed since liberation. Government has been sensitive about business responses to its policies and especially responses from old, established economic groups. These groups thus have considerable power in influencing policy, both domestically and internationally (Andreasson, 2007).

Since 2000, the Mbeki government, guided by GEAR, has targeted all of South Africa's main parastatals for privatisation or corporatisation. This has been in line with Mbeki's aim to create a new black capitalist class, linked to the ANC, as the driving force for economic growth (McKinley, 2004:363). This has been carried out by the indirect manipulation of state resources and power. For example, "ANC aligned politicians-cum-capitalist entrepreneurs" have largely initiated the BEE schemes. These people have used their political affiliations with the ruling party to receive financial backing for private corporations. What has emerged is a select few who benefit from the privatisation and corporatism of parastatals, at the expense of the masses. This new black bourgeoisie continues to benefit from the billions of Rand that are pumped into BEE projects via government-controlled financial institutions. In 2003 alone, the National Budget allocated R10 billion to BEE projects while less than R4 billion was allocated to poverty alleviation (McKinley, 2004:358-359,363).

Dale McKinley (2004:357) argues that South Africa's foreign policy towards Zimbabwe has been, and continues to be driven by the "class interests of South Africa's emergent black and traditional (white) bourgeoisie". In other words, South Africa's response to Zimbabwe should also be understood by reference to South Africa's economic interests. In 2000, when the ZANU-PF's legitimacy was beginning to be challenged by the MDC, the Mbeki government announced

a R1 billion "rescue package" for the Mugabe regime. Some viewed this as an attempt to prevent the economy from declining for the benefit of the Zimbabwean people. Others held a different opinion. It emerged that the real beneficiaries were in fact South African government parastatals and government-controlled financial institutions – all of which are now privatised or corporatised. In early 2000 one of the targets, the Zimbabwean electricity parastatals (ZESA) was estimated to owe South Africa's ESKOM approximately R300 million; while the government-owned National Oil Company of Zimbabwe owed R250 million to its suppliers, with South Africa's SASOL being a major supplier. Included in the "rescue package" were more than twenty joint investment projects in Zimbabwe. All involved South Africa's state-owned corporations (McKinley, 2004:358-359).

The "rescue package" may be regarded as an attempt to secure the economic (class) interests of an emergent black South African bourgeoisie and the traditional white capitalists. The foreign policy was used as a disguise. No doubt, the package did assist the Mugabe regime in surviving the 2000 elections. However, the main reasoning behind the package seems to have been to look after South African capitalist interests through Zimbabwean indebtedness and South African investment and trade options. It was simultaneously tying the future health of Mugabe's capitalist cronies to South African investment/patronage. South Africa's class interests and economic strategy have required the political survival of the Mugabe regime (McKinley, 2004:359-360).

Another argument concerning the economic dimension is that Zimbabwe has become a "Bantustan" of South Africa. Zimbabwe "exports" hundreds of thousands of cheap and desperate labourers, who in turn send money home to family and friends. They in turn buy South African goods that are no longer available or too expensive to buy in Zimbabwe. The money made in South Africa is therefore eventually returned to South Africa, in the same way the Bantustan system worked (Zvomuya, 2009). This applies to Africa as a whole. The entire continent is a crucial market for South African goods. Some have argued that the disorder on the continent is good for South African business (Lodge, 2004). This line of argument believes that maintaining the current disorder is in South Africa's interests as it provides cheap labour and boosts supply and demand. If these arguments are true, considerations for the individual are totally ignored.

Mbeki and the MDC

Mbeki's perception of the Movement for Democratic Change is worthy to mention, as it may be one of the contributing factors to Mbeki's response to Zimbabwean immigrants. If Mbeki were to have openly criticised Mugabe and pressed for his stepping down from power, there would have to have been a political alternative. The MDC was and is still the only political alternative at this stage, an option that may not have pleased Mbeki. The 2000 "rescue package", mentioned earlier, can also be regarded as having been a "pre-emptive political tactic" to prevent a victory by a relatively unknown and potentially unfriendly party, the MDC (McKinley, 2004:359). The opposition leader, Morgan Tsvangirai of the MDC, comes from a union background. Tsvangirai was previously a mineworker who in 1988 became the general secretary of the Zimbabwe Congress of Trade Unions (Hamilton, 2002). Mbeki, who had a tense relationship with his own trade unionist coalition partners and following a spate of worker protests, may have feared that a victory for the MDC would have encouraged mobilisation in South Africa. There was that fear that they would have pushed the ANC towards policies that would have undermined South Africa's economy (Baldouf, 2008).

However, it must be noted that the MDC has quickly turned into a party that supports a neo-liberal agenda, due to the fact that its funding comes mainly from neo-liberal capitalists. This has lost it some support from its traditional voter base. What many people do not seem to realise, is that the ZANU-PF has also been following a neo-liberal agenda for the last two decades at the expense of the masses (Bond, 2002). The MDC has also been significantly weakened by state repression, a split within the party, failure to address key issues, and a lack of support from the region, which has thus lost it further support (Phimister & Raftopoulos, 2007). Instead, it has turned to the international community and large financial institutions for help. This factor has met with much criticism on the continent, denouncing the MDC as a supporter and agent of imperialism (Hamilton, 2002). The party also attracted a middle class representing local and international business interests, which also caused the party to lose some its credence amongst the masses (Zeilig, 2008). If the MDC were to take over power, there would very likely be a military coup against Tsvangirai. It would seem unlikely that the formidable security apparatus in Zimbabwe would honour a MDC takeover. There is thus a very real fear that if Mugabe were to forfeit power, the country could break into war. A military coup would place

even more pressure on South Africa, especially due to its own military shortcomings (Lodge, 2004). Additionally, leaders in SADC would not be able to give formal recognition to the leaders of a military coup (Baldouf, 2008).

Mbeki's brother, Moeletsi Mbeki, believes that Mbeki did not regard Tsvangirai as a suitable alternative to the ZANU-PF both in terms of effectiveness and in terms of what he represents. To have a trade unionist party defeating a liberation movement party was inconceivable to Mbeki (Baldouf, 2008). The fact that the MDC was a product of a revolt against the ZANU-PF and its economic policies creates further antagonism (Hamilton, 2002). Tsvangirai was not seen as part of the family of freedom fighters, due to his lack of struggle credentials. Tsvangirai's increase in support was seen as a threat to the liberation movement and a potential threatening influence to the internal politics of South Africa. It was therefore a better idea to consider a successor from within the family of freedom fighters, and to have someone in power who would guarantee that South Africa had influence in Harare. This is not to say that this is the sole reason for Mbeki's response to Zimbabwe and Zimbabwean immigrants, but it seems to have certainly have been a persuasive consideration subconsciously. Although Mbeki denies this in his biography, he makes comments later that suggest he certainly did regard Tsvangirai as an outsider who was not involved in the Zimbabwean freedom struggle (Gevisser, 2007:441).

Land Reform

The issue of land reform is the fourth factor that is brought up in the interviews as being a contributing factor to Mbeki's response to Mugabe. Mbeki claims that in 1990 Zimbabwe had been persuaded to put its own land reforms on hold, because it was the same year of political break-through for South Africa. The reason was not to scare white South Africans from agreeing to majority rule. In this line of thought, Mbeki later felt indebted to Zimbabwe to assist them in their efforts of land reform due to the sacrifices they had made for South Africa (Gevisser, 2007:445). For Mbeki, his government at the time, and most black South Africans, Mugabe's land reforms, *in essence*, represented an attempt to address one of the "enduring legacies of colonialism". This is of course not to say that all black people agree with the manner in which it has been carried out, but rather that it is something that should be addressed, and rightly so (McKinley, 2004:357).

In 2003, Mbeki wrote an online letter saying that it was in fact Britain who "had created the problem by reneging on a commitment to fund land redistribution in Zimbabwe because it did not want to dispossess its 'kith and kin'" (Gevisser, 2007:440). Mbeki firmly believed that at the root of the crisis was the issue of land, not human rights abuses. In truth, Britain had given Zimbabwe 44 million pounds for land reform but stopped after 2000 because they believed these funds were disappearing into Mugabe kleptocracy. When Britain refused to give more funds due to the violent manner in which the farms were being reclaimed, Mugabe and Mbeki saw this as racist and hypocritical and were outraged (Gevisser, 2007:440). If Mbeki were to have condemned Mugabe's actions he would have been regarded as a supporter of the West and white people's interests – something that Mbeki would at all costs try to avoid.

Perhaps more importantly, is the fact that land reform is also a controversial issue in South Africa as most farmland remains in the hands of white people. The question of land is key to the country's future stability, democracy and development (Cousins, 2009). South Africa has its own model policies in place for the restitution of land of those who were displaced by the apartheid regime. In 1994, it was stated that 30% of good land was to be given over to black people within five years (Bond, 2002). However, progress has been slow. A decade after liberation and only 5% of farmland had been redistributed to black people. These aims have been extended to 2014 (Cousins, 2009). Feelings of resentment and frustration are on the rise (Lamb, 2006). There is immense bitterness amongst black South Africans regarding this inequality, which is a reflection of wider deprivations and oppressions that were experienced in the past. Despite this sense of inequality, is the belief that land reform will tackle poverty (Cousins, 2009). If Mbeki had criticised and opposed the land evasions in Zimbabwe, it would have been viewed by some as undermining South Africa's attempts to address her own land issues. If Mbeki had resisted Mugabe's land reforms, it would have been a hypocritical stance to take, some respondents argued. The issue of land has the potential to be politically explosive. However, the manner in which the land reforms were undertaken and the suffering it caused and continues to cause is the issue here.

Regional Considerations

Although this is not mentioned in the interviews, South Africa's decisions towards Zimbabwe should also be viewed within the wider context of regional politics. This includes the

limitations and historical intricacies that may influence foreign policy. As already noted, South Africa has received international criticism for its failure to address the situation in Zimbabwe. South Africa could have for example, induced economic sanctions, or ceased the export of power (although it would be ordinary Zimbabweans who would suffer the most). South Africa no doubt regards itself as a leader on the continent, and especially in the region. However, there are three main premises that explain South Africa's approach to Zimbabwe in light of regional considerations. They do overlap. The first premise alleges that South Africa is a "misunderstood regional power". South Africa has continued to state that Zimbabwe is a sovereign country and its domestic issues need to be solved by Zimbabweans themselves, which South Africa can only help facilitate. South Africa is fearful of being seen as the regional bully, coercing other states to reform their internal politics. This may provoke anger, jealousy, and resentment. Although South Africa is aware of its relative power, it has avoided a leadership role on the issue. Some people argue that South Africa is sensitive to historical hostilities in the region. By adopting a "strategy of denial", South Africa thereby emphasises concepts of partnership, solidarity, and sovereignty but still manages to influence the terms of engagement in Zimbabwe (Prys, 2007).

When Mbeki came into power, a major goal in his foreign policy was to reconstruct and reform African continental institutions so that they in turn could "help foster regional forms of economic collaboration and institutional renovation and democratisation at a national level". NEPAD is a clear example of this initiative. The main principles were democratisation, good governance, and popular participation. However, not all countries were welcoming of this initiative of reconstruction incorporating democratic principles. The success of this initiative has thus depended on a very fragile alliance. SADC's support for South Africa's positions has been crucial. In relation to Zimbabwe, if South Africa had criticised Mugabe many members of SADC would have responded negatively. For example, Namibia, Mozambique, and Zambia have been supportive of Mugabe's land seizures. South Africa therefore prefers to engage with other African countries in the careful promotion of democratic principles via a multi-lateral diplomacy to secure support for its own positions on other matters. Whether, South Africa is in fact promoting such principles and not other interests, is questionable. Nevertheless, South Africa is aware that it needs the support of other countries on the continent if it wishes to condemn others or pursue its own agenda. When Mbeki was in power, he did not have that support to condemn Mugabe (Lodge, 2004).

The second premise is that South Africa wishes to be seen as an African anti-imperialist state by its peers. Much of the literature relates this desire back to South Africa's own struggle for an identity and a need to gain acceptance from other African leaders. Again, the issue is raised that in order to stand against another African leader, one needs considerable support. The focus is rather on consensus building and multilateralism in order to uphold solidarity. Minister Dlamini-Zuma once put it eloquently, "if your neighbour's house is on fire, you don't slap the child who started it. You help them to put out the fire". The need to be accepted and secure solidarity also requires a rhetoric that denounces racialism and neo-imperialism by Western states. Mbeki and Mugabe have often referred to the issue of Zimbabwe as a racial issue and as white hypocrisy. Through the policy of "quiet diplomacy", South Africa has been able to reveal itself as a legitimate and authentic African power (Prys, 2007).

The third premise relates to South Africa as being a responsible state – a view held by many government officials. This sense of responsibility to other African states may be rooted in an aspiration to compensate those states that assisted in the apartheid struggle, but this is merely a thought. Nevertheless, South Africa has tried to portray itself as a stronghold against the West and an advocate for post-colonial responsibilities. It is an immense desire to depict itself not as dominating, but as responsible and considerate to sensitivities. The fact that South Africa is at a clear material advantage to other African states, may also affect its sense of responsibility. For this reason, South Africa wishes to export its own model of conflict resolution, which emphasises inclusive participation. These views are clearly illustrated in the case of Zimbabwe where South Africa has protected Mugabe from international criticism at all costs and has attempted to incorporate all parties involved into a mediation process (Prys, 2007). Anybody who opposes these sentiments, risks being labelled as an imperial supporter of the West.

These premises have been justified in that they have prevented regional instability; have secured solidarity against the West and against domestic opposition; and have maintained SADC unity. However, while these tactics may have value to some, they are clearly not working. Millions of people continue to suffer due to their leaders' desires to be accepted, and maintain solidarity. What these leaders seem to overlook is that in a democracy, your first allegiance is to your people, to ensure that they live their lives with dignity. Within this conceptualisation, is a commitment to uphold human rights for all people, and to endeavour to transport democracy to those that have not yet grasped its moral significance. Regional considerations, in the case of

Zimbabwe, appear to have placed considerable limitations on the leadership of South Africa and caused serious damage to her status as a democratic leader on the continent. South Africa's implicit commitments to Africa have countered her commitments to human rights, the law, and democracy.

Ethnic Tensions

Mbeki himself also incorporated an ethnic dimension to the reasoning behind his "quiet diplomacy". He says he did not want to physically intervene in Zimbabwe as he was trying to avoid a civil war between the majority Shona and historically market dominant minority Ndebele. As previously mentioned, the Ndebeles are the descendents of Mzilikazi. Mzilikazi invaded the Shona empire in 1837 and this is something that still haunts the memories of many Shona nationalists. The Ndebeles are regarded by many Shona as their original conquerors and allies of the West. The Shona believe the Ndebele have always run to their "kith and kin" for help under pressure. In other words, the Ndebeles have often fled to South Africa for help. Mbeki believes the majority of migrants in South Africa are Ndebeles. South Africa and the ANC have historically been viewed by the Shona with distrust and scepticism. If South Africa were to have intervened, the Shona ZANU-PF may have used the Mzilikazi card and tensions may have risen between the Shona and the Ndebeles, claims Mbeki. However, in reality, the support for the MDC (with roots in ZAPU) is a multi-ethnic split between Shonas and Ndebeles. Tsvangirai is himself a Shona, as are many of the migrants currently in South Africa (Gevisser, 2007:442). This dimension seems to carry very little weight. The tension is between those who support the ZANU-PF and those that do not. This has already manifested itself in brutal violence. Mbeki's ethnic spin on his foreign policy seems hypocritical. While he seeks to avoid ethnic tension that may occur, he was prepared to overlook brutal political tension that already exists.

Conclusion

While the focus of this chapter has been on South Africa's response to the crisis in Zimbabwe, the general focus of this study is on South Africa's response to Zimbabwean immigrants. However, as already explained, if South Africa were to implement a coherent policy that views Zimbabweans as a specific vulnerable group that require special protection, South Africa would be admitting that these people could not return to their home country. This admission is to acknowledge that there is something severely wrong in their own country, which

can no longer protect them. If South Africa had condemned Mugabe and taken some form of action against him, it is questionable as to whether Zimbabwean immigrants would have been treated differently, on a policy level. Nevertheless, South Africa's foreign policy has succeeded in overshadowing and determining the country's domestic policy. To be accepted and supposedly appropriate, South Africa's foreign policy has required a vehement denial of the crisis in Zimbabwe. This denial has caused much suffering and insecurity. It is therefore vital to attempt to understand *why* the South Africa government chose to follow a policy of "quiet diplomacy". This chapter has aimed to explore why South Africa has so vigilantly avoided criticising Zimbabwe's ruling elite. The main issues raised are the personal relationship between Mugabe and Mbeki, economic interests of capitalism, ANC perceptions of the MDC, land reform, regional considerations, and ethnic tensions. Contextualising these possible reasons is the ANC's perception of the origin of the crisis and Mbeki's philosophy of an "African Renaissance". It appears that South Africa's foreign policy has predominantly been a reflection on one man's reasoning and personal beliefs.

It is clear that South Africa has been faced with a dilemma to either condemn Mugabe and uphold human rights, or to support Mugabe and secure solidarity and acceptance on the continent. It also appears that the ANC believes that the continuation of power by the ZANU-PF offers the best prospect for stability. South Africa can be commended for its commitment to conflict resolution and avoiding military intervention to a degree (Lodge, 2004). "Quiet diplomacy" and its engagement in mediation has allowed the South African government to appear to the Western world as a responsible leader, whilst simultaneously maintaining its influence over Mugabe and acceptance in the region as a true African country. The aim here has not been to assess the other options that South Africa might have taken to Zimbabwe. Rather, it has explored the possible reasons why it has responded to Zimbabwean immigrants in the unlawful and neglectful manner that it has. The conclusion is that South Africa has largely ignored the plight of Zimbabweans residing in South Africa due to its foreign policy toward Zimbabwe, which has required a denial of the crisis. As has been described in this study, South Africa is facing a significant number of desperate migrants, predominantly from Zimbabwe who warrant some form of protection. What Mbeki and others in the ANC have failed to realise, is that their actions are creating instability and insecurity for millions of Zimbabweans, South

Africans and close neighbours in the region. The disregard for human security in favour of other interests is alarming to say the least.

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Chapter 6: Conclusions

The aim of this study has been to explore the possible reasons why the South African government has not directly addressed the plight of Zimbabwean immigrants residing in South Africa. The South African government (under ex-President Thabo Mbeki) vigilantly avoided a public stand on the issue of the Zimbabwean crisis and the hundreds of thousands of immigrants within its borders. This was in spite of hard evidence illustrating the utter disregard for the law and atrocious human rights violations in Zimbabwe. What is curious is that South Africa has been willing to risk its international reputation and democratic values for this. The foreign policy of "quiet diplomacy" has allowed the government to avoid implementing a domestic policy toward Zimbabwean immigrants. By adopting an attitude of denial, the government was able to evade addressing the issue of immigration. One cannot consider refugee status or temporary protection status if there is "no crisis". South Africa's foreign policy toward Zimbabwe is the underlying reason why South Africa has disregarded Zimbabwean immigration. This study had, therefore, to explore *why* South Africa adopted the approach of quiet diplomacy. The study places immense importance on the concepts of individual freedom and dignity for the individual, irrespective of who or where they are. The human security framework is thus an appropriate approach to adopt for understanding why South Africa has dealt with Zimbabwean immigrants in the manner that it has.

I have demonstrated that South Africa has an extensive and comprehensive array of laws that protect human rights, freedom, and dignity. These rights are not for South African citizens exclusively, but for all persons residing within its borders. Despite these laws there appears to be a lack of political will to implement them. The fulfilment of these laws is crucial to South Africa's prosperity and harmony. All policies and decisions undertaken must at all times abide to these laws. However, I have argued that the law alone is inadequate to guarantee that policies at all times respect the individual's welfare, freedom, and dignity. It is hard to assert that these three concepts are not morally desirable. Morality at the international relations level is possible and is desirable. I have proposed for a balance between the debates of partialism and impartialism, with a leaning toward the latter. A state ought to allow as many people in as possible. For this to be fair and ordered there needs to be a distinction between needs. Human

suffering, under no circumstances, should be politicised. The impartial/ideal argument does also have its disadvantages in that it may not take into account the interests of citizens' and the state's actual capabilities and authority on the advancement of human rights.

A state can only justify restricting entry when its institutions and democratic values are under threat from such an influx. It is of course difficult to assess at what point such a threat becomes real. There is the danger of preventing something long before it is an imminent threat, or realising too late that prevention ought to have been implemented earlier. Nevertheless, using the question of "what is the morally right thing to do" concerning immigrants as the starting point, is an acknowledgment that the state has a responsibility towards "others". From there on, questions of what is achievable practically can be addressed. However, in international relations realist arguments dominate the discourse to secure the interests of the state. Within this discourse, many decisions are justified if they serve the interests of the state. The partialists, who fall within the realist discourse, argue that the community needs to be protected above all else. However, I argue that there needs to be a careful balance between the needs of citizens and the needs of "others". South Africa has failed to both think and act morally, and to address the plight of its own people and that of immigrants. Mbeki has not only acted unethically, but his actions also did not serve the long-term interests of the state and community. His decisions have failed both the ideals of the impartialists and the interests of the realists/partialists. By not addressing these issues firmly, the South African government is creating insecurity for its own people, Zimbabweans, and the region. South Africa needs to shift its emphasis to the predicament of ordinary people. Both the law and ethical considerations are critical for human beings to live free and dignified lives, as close to as what possibly can be achieved.

I have highlighted the many problems and brutality Zimbabweans (and other nationalities) face in South Africa. Until the government takes a stand on the Zimbabwean immigration issue, individual government departments and municipalities are unable to respond effectively and implement a course of action. South Africa's relative economic success and political values are going to lure migrants from Africa for many years to come. The turbulent and unstable nature of the continent is a guarantee that thousands more will arrive in the near future. Therefore, it is essential for South Africa to formulate a model policy to be implemented in such circumstances as with the case of Zimbabwe. It is also crucial that South Africa lead by example

and defend human rights and dignity on the continent. Whether one agrees or not that South Africa should intervene in the crisis in Zimbabwe, one cannot deny that South Africa certainly has a stake in the events happening there. Large influxes of people are the product of and creator of instability and insecurity. Unless these insecurities are dealt with, the stability of South Africa is at risk.

The inexplicable question is *why* South Africa has allowed such insecurities and suffering to persist. The majority of respondents agreed that South Africa has not followed its laws regarding Zimbabwean immigrants. The main reason offered was the ANC's loyalty to the ZANU-PF as a fellow liberation movement. A significant majority raised this issue, although some had different interpretations of the relationship. Land reform, South Africa's capitalist economic interests and Mbeki's dislike of the MDC were other issues that were offered as explanations. All these opinions have a speculative dimension. For this reason, I have considered their truth and relevance. By consulting the literature on South Africa's response to Zimbabwe, I found there were three other issues worth mentioning. The first was not a direct explanation, but rather one that almost certainly has influenced many of Mbeki's decisions. This is Mbeki's philosophy of the "African Renaissance". Another important issue was South Africa's sub-hegemonic position in the southern African region and her sensitivity to this role. Mbeki gave the last explanation, in that he was trying to avoid raising ethnic tensions in Zimbabwe. I have therefore illustrated that are a range of possible reasons explaining Mbeki's response to Zimbabwe, and the resultant immigrants. I do not believe that one issue can be isolated as being solely responsible. In my opinion, it is a range of factors that have come together in different degrees to influence South Africa's foreign policy toward Zimbabwe, and its immigrants.

I argue that South Africa's foreign policy toward Zimbabwe has overshadowed and dictated her domestic policy toward Zimbabwean immigrants. This foreign policy appears to have been predominantly formulated along the lines of one man's ideals and beliefs. Thabo Mbeki's philosophy of the "African Renaissance" has been instrumental in many of his decisions. I believe this outlook to be a driving force behind South Africa's "quiet diplomacy". Its conviction that Africans must rediscover their own identity and worth on their own terms is reflected in Mbeki's support for Mugabe against the West. At all costs, Mbeki has avoided being seen as a supporter of the West in an effort to show solidarity with his elder liberation hero,

Mugabe, and to retain acceptance as an authentic African country in the region. The importance of these latter two issues, I believe, is the underlying factor behind South Africa's "quiet diplomacy". Mbeki's emphasis on liberation, black versus white, south versus north, has also influenced his perception of the MDC and Tsvangirai. The MDC is viewed as a puppet of the West and a threat to a liberation movement. An MDC victory seems to be viewed as a defeat to the struggle. The issue of land reform in South Africa is certainly another element hindering condemnation of Zimbabwe's own land reform. Again, this seems to stem from a desire for solidarity against the international community and to fight the last traces of imperialism.

Another part of Mbeki's philosophy is also to empower Africans economically. When in power, Mbeki undertook many decisions and policies that would sanction and encourage a black capitalist class to emerge and prosper. The other constituents of his philosophy seem to have played such an important part in his decisions that it is hard not to believe that economic interests were also at play with regard to Zimbabwe. South Africa's approach to Zimbabwe has received so much criticism both domestically and internationally, that it seems questionable that issues of solidarity and acceptance are the only factors to have affected its foreign policy decisions. I have given some reasons as to why I believe that capitalist interests are being protected in relation towards Zimbabwe. However, I do believe that such speculations require further thorough and specific inquiry. I believe that Mbeki's suggestion that he was also trying to avoid ethnic conflict is a weak argument. If he were concerned with issues of conflict and instability, he would not have approached the issue of Zimbabwe as he did. Mbeki seems to ignore the fact that Zimbabwe is already infested with violence and instability, which have already spilled over into neighbouring countries.

My main conclusions are that South Africa has failed to consider and protect the plight of Zimbabwean immigrants in accordance with the law. I also believe that it has acted unethically toward both Zimbabwean immigrants, to the crisis in Zimbabwe, and to its own citizens. Fundamental concepts of individual freedom and dignity have been overlooked in their entirety. The South African government's decisions and actions have not considered or protected the country's long-term interests. South Africa has seriously weakened its self-proclaimed status as a leader of democracy and defender of human rights and has ignored the social tensions in its own society. I believe that South Africa has fuelled further insecurity, instability and suffering in

Zimbabwe, in its own land, and in the region. I have argued that South Africa's approach to Zimbabwe was influenced predominantly by the ethos of one man but it was however also an amalgamation of a number of factors. This policy has required a denial of the situation in Zimbabwe. In other words, the justification of "quiet diplomacy" imposes a denial of the crisis in Zimbabwe and therefore of granting refugee status. Zimbabwean immigrants have suffered on a macro level because of South Africa's foreign policy.

Not by any means do I wish to underplay the immense dilemma South Africa faces concerning migration. There are no easy solutions. What I have tried to highlight is that the concern for individual human security must be the underlying premise of all policy decisions. In the case of Zimbabwe, this has not been the case. Rather, personal ideals and viewpoints, regional and historical considerations, and capitalist interests, seem to have guided foreign policy. Policy has to be ethical, which means to balance one's own interests with the interests of others in order to ensure that one's own actions to do not worsen the freedom and welfare of another person. Policy needs to start with the basic welfare of the individual and expand from there. By not upholding basic human rights, freedom and dignity, South Africa faces a future rife with exacerbated social tensions and instability. Ethics can be ignored but only in the short-term when gains may be realised, but the long-term implications of acting unethically will be negative and destructive. South Africa has already had a taste of such implications when xenophobic violence spread through the country in May 2008. South Africa needs a clear policy on Zimbabwean migration, not only for the welfare of Zimbabweans, but also for the stability of its own people. While South Africa's policy of "quiet diplomacy" has earned it solidarity and acceptance in the region, it may be doing the opposite amongst ordinary South Africans.

There is a lot still to be studied on this subject. Literature on South African foreign policy and migration and ethics is hard to come by. There is a range of topics that require investigation. I have chosen to highlight the few that I think hold the most importance at this stage. It is necessary to consider the implications of a different policy toward the Zimbabwean crisis. However, I believe that we are not likely to see any significant shifts in the near future. I believe the most viable solution at this stage is the temporary exemption permits for Zimbabweans that are currently under review in the Cabinet. The social and economic implications of temporary exemption permits on South African society and on Zimbabweans need to be carefully

investigated. This would seek to assess whether such permits would be practically viable, including both benefits and dangers. It is crucial to include the perceptions and sentiments of ordinary South Africans who are closer to the effects of immigration than other groups of people who experience no effects directly. These people have to live with the implications of the decisions made in government. Within such a study, it would be important to assess the practical capabilities of various departments and public services and what would be needed to counter the pressure of greater demand. Much of the focus needs to be on economic costs. Parallel to this assessment, would be an investigation of the economic benefits African migrants can have on the South African economy with illustrative examples. I believe these examples should be used to create awareness and acceptance amongst ordinary citizens about the benefits migrants can offer. Further studies should be conducted on how such learning can permeate through society and what the benefits of this would be. Schemes should be devised to ensure that South Africa is utilising the skills migrants have to offer whilst at all times assessing what the implications would be for South African citizens. As I think social tensions between citizens and immigrants are mainly economic tensions and because immigrants are a permanent component of South Africa, this issue is the first that needs to be addressed.

It is in South Africa's interest to formulate a coherent policy toward Zimbabwean immigrants in order to uphold ethical ideals *and* to serve the interests of the country. In the future, South Africa's domestic policy ought to direct and describe foreign policy, and not vice versa. No other considerations besides human life should ever be accommodated at the expense of human suffering. This includes both citizens and "others". South Africa needs to shift its allegiance to the people who reside within its borders. In that way, South Africa will be a truly democratic country that gives identity to its own people and gives them the freedom to empower themselves.

Appendix: Interview Details

UNIVERSITEIT·STELLENBOSCH·UNIVERSITY
jou kennisvennoot·your knowledge partner

August 2009

Dear Madam/Sir

INTERVIEW FOR MASTERS THESIS

I am a Masters student from the Department of Political Science at Stellenbosch University and am in the process of completing my thesis. The thesis focuses on the issue of Zimbabweans residing in South Africa and how the South African government has responded to the problem and why. I will be conducting interviews with key actors who have been involved with this matter, ranging from government officials, NGOs, think tanks, and journalists. I would like to incorporate a range of ideas into my thesis.

I would like to set up an interview with you or a colleague who possesses expert knowledge on the issue and who can represent your organization or department. I hope that you will be able to assist me with my research. If you wish, the interview can be anonymous.

I will be conducting the interviews in the month of August in Cape Town. If you are not in Cape Town, perhaps we can organise an alternative means of communicating.

I would greatly appreciate and value your time and opinions.

I look forward to hearing from you.

Please do not hesitate to contact me if you have any queries. Alternatively, you can contact my supervisor, Prof Patrick McGowan (pjm@sun.ac.za) to verify my credentials.

Yours sincerely,

Chiara Baumann

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List of Interviewees

Chapman, James – refugee attorney at the Refugee Rights Project at the University of Cape Town's Law Clinic. Interviewed on 2/09/09.

Damstra, Tjerk – Acting Chairperson of the Refugee Appeal Board. Interviewed on 10/09/09.

Goredema, Charles - Senior Researcher at the Institute for Security Studies. Interviewed on 7/08/09.

Madikane, Miranda – Director of the Scalabrini Centre. Interviewed on 20/08/09.

Majeke, Moyisi – Internal Executive Committee of the Pan-Africanist Commission. Interviewed on 20/08/09.

Makina, Daniel – Associate Professor at the University of South Africa. Interviewed on 07/09/09.

Mavhinga, Dewa – Researcher at the African Division of Human Rights Watch South Africa. Interviewed on 12/08/09.

Member of ANC Provincial Task Team – anonymous. Interviewed on 02/09/09.

Mpani, Glen – Regional Coordinator at the Centre for Violence and Reconciliation. Interviewed on 08/09/09.

Mubu, Kenneth – Shadow Minister of International Relations, Democratic Alliance. Interviewed on 02/09/09.

Pambason, George – Director of the Alliance for Refugees in South Africa. Interviewed on 17/08/09.

Polzer, Tara – Senior Researcher at the Forced Migration Project at Witwatersrand University. Interviewed on 14/08/09.

Shumba, Gabriel – human rights lawyer and Executive Director of the Zimbabwean Exiles Forum. Interviewed on 20/08/09.

Smith, Richard – ACTION for Conflict Transformation, Global Steering Committee. Interviewed on 07/09/09.

Tlou, Joyce – Programme Coordinator for Non Nationals and Migrants for the South African Human Rights Commission. Interviewed on 20/08/09.

Verryn, Paul – Bishop of the Central District Methodist Church of Southern Africa and Minister of the Central Methodist Church of Johannesburg. Interviewed on 08/09/09.

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