

International migration, xenophobia and the South African state

Catherine Kavata Musuva



Dissertation presented for the Degree of Doctor of Philosophy in the Faculty of Arts and
Social Sciences at Stellenbosch University

Supervisor: Dr. Nicola de Jager

January 2015

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 sole author thereof (save to the extent explicitly otherwise stated), that reproduction and publication thereof by Stellenbosch University will not infringe any third party rights and that I have not previously in its entirety or in part submitted it for obtaining any qualification.

Date: 14 January 2015

Copyright © 2015 Stellenbosch University

All rights reserved

Abstract

This dissertation seeks to advance the political understanding of xenophobia in South Africa by examining the relationship between the South African state and its African migrant population. It investigates the practices of frontline officials of three state institutions when dealing with African migrants and relates such practices to the prevalence of xenophobia. These institutions are the Department of Home Affairs, the South African Police Service and the City of Cape Town.

The state of exception, propounded by Giorgio Agamben, provides a conceptual lens through which to examine the practices of state officials towards African migrants and the place of migrants in South African society. This concept is concerned with the law and the conditions of its application or suspension. It is characterised by the relationship between sovereign power and ‘bare life’ – the form of deprived subjectivity produced by and captured in the exercise of sovereign power.

The research is guided by a central question: Do the practices of state officials (from the three institutions), as experienced by African migrants, reinforce xenophobia in South Africa? This question is addressed by way of four secondary questions: a) How are the practices of state officials experienced by migrants?; b) To what extent are migrants treated differently by state officials in terms of their legal status or nationality?; c) Is the approach of state officials towards migrants evidence of a state of exception?; and, d) If so, to what extent has a state of exception in dealing with migrants shaped xenophobia in South Africa?

In order to answer the research questions, an ethnographic field study was undertaken in Cape Town. The data-collection instruments were semi-structured interviews and observation at selected Home Affairs offices. A total of 40 African migrants, seven key informants from organisations that work on migration issues and two state officials were interviewed. The migrant sample represented 13 African countries and comprised five legal migrant categories.

The key findings are that, firstly, migrants’ experiences with state officials were predominantly negative. Secondly, the primary basis for differential treatment of migrants was their foreignness, regardless of their nationality. With regard to the police and municipal officials, migrants’ experiences were further differentiated by other variables such as residential area, socio-economic status, and knowledge of the law or access to human rights organisations. There were also apparent differences in how migrants experienced Home Affairs officials based on their legal status with asylum seekers and refugees experiencing worse treatment than temporary and permanent residents. Thirdly, evidence of the state of exception varied within the three institutions. The main agents of the state of exception were mainly Home Affairs officials followed by the police. In the case of Home Affairs officials, the targets were predominantly illegal foreigners, asylum seekers and refugees, and in the case of the police migrants who are informal traders were targeted. The most evident site for the practice of the

exception was the Refugee Reception Office. Fourthly, both the state of exception and xenophobia have an exclusionary power, which makes them mutually reinforcing.

Opsomming

Hierdie verhandeling is daarop toegespits om groter politieke begrip van xenofobie (vreemdelingehaat) in Suid-Afrika te bewerkstellig deur die verhouding tussen die Suid-Afrikaanse staat en sy migrantebevolking uit Afrika te verken. Dit ondersoek die praktyke van frontlinie-amptenare by drie staatsinstellings in hul omgang met Afrika-migrante, en lê 'n verband tussen hierdie praktyke en die voorkoms van xenofobie. Hierdie instellings is die Departement van Binnelandse Sake, die Suid-Afrikaanse Polisie en die Stad Kaapstad.

Die staat van uitsondering, 'n konsep wat deur Giorgio Agamben geskep is, bied 'n konseptuele lens waardeur staatsamptenare se praktyke teenoor Afrika-migrante sowel as migrante se plek in die Suid-Afrikaanse samelewing ondersoek kan word. Hierdie konsep handel oor die reg, en die omstandighede vir die toepassing of opskorting daarvan. Dit word gekenmerk deur die verhouding tussen soewereine mag en 'blote lewe' – die vorm van ontblote subjektiwiteit wat geskep word deur én vasgelê word in die uitoefening van soewereine mag.

Die navorsing word deur 'n kernvraag gerig: Versterk staatsamptenare (by die drie instellings) se praktyke, soos Afrika-migrante dit ervaar, xenofobie in Suid-Afrika? Hierdie vraag word met behulp van vier sekondêre vrae ondersoek: a) Hoe beleef migrante staatsamptenare se praktyke? b) In watter mate behandel die staatsamptenare migrante verskillend op grond van hul regstatus of nasionaliteit? c) Getuig die staatsamptenare se benadering tot migrante van 'n staat van uitsondering? d) Indien wel, in watter mate dra die staat van uitsondering met betrekking tot migrante tot xenofobie in Suid-Afrika by?

Om die navorsingsvrae te beantwoord, is 'n etnografiese veldstudie in Kaapstad onderneem. Die data is met behulp van semigestruktureerde onderhoude en waarneming by gekose kantore van die Departement van Binnelandse Sake ingesamel. Onderhoude is met altesaam 40 Afrika-migrante, sewe sleutelinformante van organisasies wat met migrasiekwessies werk, en twee staatsamptenare gevoer. Die migrante-steekproef het 13 Afrikalande verteenwoordig en uit vyf wettige kategorieë van migrante bestaan.

Die belangrikste bevindinge is soos volg: Eerstens ervaar migrante staatsamptenare hoofsaaklik negatief. Tweedens is die vernaamste rede waarom migrante verskillend behandel word, hul vreemdheid, ongeag hul nasionaliteit. Wat die polisie en munisipale amptenare betref, word migrante voorts verskillend hanteer op grond van ander veranderlikes, soos woongebied, sosio-ekonomiese status, en kennis van die reg of toegang tot menseregte-organisasies. Daarbenewens is daar duidelike verskille in migrante se ervaring van amptenare van Binnelandse Sake op grond van die migrante se regstatus, met asielsoekers en vlugteling wat swakker behandeling ontvang as diegene met tydelike en permanente verblyfreg. Derdens bestaan daar wisselende bewyse van die staat van uitsondering

binne die drie instellings. Die hoofagente van die staat van uitsondering blyk die amptenare van Binnelandse Sake te wees, gevolg deur die polisie. In die geval van Binnelandse Sake is die teikens hoofsaaklik onwettige migrante, asielsoekers en vlugteling, terwyl die polisie weer meestal informele handelaars in die visier het. Die plek waar die uitsondering die duidelikste in die praktyk beoefen word, is die Vlugteling-ontvangskantoor. Vierdens beskik die staat van uitsondering en xenofobie albei oor 'n uitsluitingsmag, wat die een die ander laat versterk.

Acknowledgements

I hereby acknowledge the funding that was awarded to me by the Graduate School of Arts and Social Sciences to pursue my doctoral studies full-time at Stellenbosch University. I also acknowledge the research grant awarded to me jointly by the University for Peace Africa Programme and the International Development Research Centre. I extend my sincere gratitude to these two sponsors.

I acknowledge and specially appreciate my supervisor, Dr. Nicola de Jager, for her constant support, motivation, guidance and deep commitment. Nicola, I don't think I can thank you enough for walking this journey with me. I am grateful to all the research respondents for their willingness to share information with me and for making my fieldwork experience in Cape Town the most interesting phase of my research. I also extend my thanks to my family for their support and confidence in me, and to those dear friends who took a keen interest in my research and urged me on. Last, but not least, I thank God for making all things possible.

Table of Contents

Declaration	i
Abstract	ii
Opsomming	iv
Acknowledgements	vi
Table of Contents	vii
List of Figures	xi
List of Tables.....	xii
List of Abbreviations.....	xiii
Chapter 1: Introduction to the study.....	1
1.1 Background and rationale.....	1
1.2 Problem statement and focus.....	5
1.2.1 Research questions	6
1.2.2 Research objectives	6
1.3 Limitations and delimitation	6
1.4 Research design and methodology.....	7
1.4.1 Sampling methods and sample profiles.....	8
1.4.2 Research methods.....	11
1.4.3 Data analysis.....	13
1.4.4 Reflection on methodology	15
1.4.5 Ethical considerations.....	18
1.5 Chapter overview	19
Chapter 2: Context: International migration in South Africa.....	21
2.1 Introduction	21
2.2 International migration as a function of state sovereignty	21
2.3 International migration in South Africa: past and present.....	23
2.3.1 Historical context of international migration in South Africa.....	23
2.3.2 International migration in post-apartheid South Africa.....	26

2.3.3	Post-apartheid immigration policy	30
2.3.4	Legal categorisation of migrants in South Africa.....	31
2.3.5	Popular perceptions of international migration in South Africa.....	33
2.4	Conclusion.....	37
Chapter 3: Literature review: Xenophobia and the state of exception		38
3.1	Introduction	38
3.2	Definition of key concepts	38
3.2.1	Migrant	38
3.2.2	The state	39
3.2.3	Xenophobia	43
3.2.4	State of exception	44
3.2.5	Bare life	45
3.3	The prevalence of xenophobia in South Africa.....	45
3.4	Theoretical approaches to xenophobia	50
3.4.1	Rational choice	50
3.4.2	Relative deprivation	51
3.4.3	Scapegoating	53
3.4.4	Ethnic riots	54
3.4.5	Isolation and exceptionalism	55
3.4.6	Bio-cultural hypothesis.....	56
3.4.7	‘Othering’ discourse on African migrants.....	58
3.4.8	Denialism and a culture of impunity	59
3.4.9	Micro-politics	61
3.4.10	State discourse on xenophobia, citizenship and nationalism.....	63
3.5	Agamben’s theory of the state of exception	65
3.5.1	Migrants, human rights and the nation-state	69
3.5.2	The camp	73
3.6	Critiques of Agamben’s political theory of the state of exception.....	74
3.7	The application of Agamben’s state of exception in scholarship.....	76
3.8	Operationalising the state of exception	78

3.9	Conclusion.....	80
Chapter 4: Legal foundations and institutional context: Migrants and the Department of Home Affairs, the South African Police Service and Local Government.....		
4.1	Introduction	83
4.2	Legal framework	83
4.2.1	The Constitution	84
4.2.2	The Refugees Act	85
4.2.3	The Immigration Act	88
4.3	Institutional context.....	90
4.3.1	The Department of Home Affairs.....	91
4.3.2	The South African Police Service	96
4.3.3	Local government.....	99
4.4	Conclusion.....	104
Chapter 5: African migrants’ experiences with state officials		
5.1	Introduction	106
5.2	Experiences of African migrants with state officials.....	106
5.2.1	Department of Home Affairs officials.....	107
5.2.2	South African Police Service officials	110
5.2.3	City of Cape Town officials	116
5.3	Differential treatment of African migrants by state officials	118
5.3.1	Department of Home Affairs officials.....	118
5.3.2	South African Police Service officials	123
5.3.3	City of Cape Town officials	126
5.4	Conclusion.....	130
Chapter 6: African migrants, the state of exception and xenophobia.....		
6.1	Introduction	131
6.2	Evidence of a state of exception in the three state institutions.....	131
6.2.1	Department of Home Affairs officials.....	132
6.2.2	South African Police Service officials	147
6.2.3	City of Cape Town officials	152

6.3	The state of exception and xenophobia in South Africa.....	156
6.3.1	Bare life	156
6.3.2	Xenophobia	159
6.3.3	Discussion	161
6.4	Conclusion.....	163
Chapter 7: Conclusion		165
7.1	Dissertation overview.....	165
7.2	Summary of findings	169
7.3	Conclusions	171
7.4	Summary of this study’s contributions.....	174
7.5	Suggestions for further research.....	177
References		178
Appendices		195
Appendix A: Interview themes and questions for respondents		196
Appendix B: Cases of xenophobic violence recorded in 2011 and 2012.....		199
Appendix C: List of interview respondents.....		203
Appendix D: Code list.....		206

List of Figures

Figure 1.1: Number of migrants with experiences with officials from the DHA, SAPS and CoCT	17
Figure 2.1: Number of recipients of temporary residence permits from the eight leading African countries, 2012	29
Figure 2.2: Number of recipients of permanent residence permits from the top eight African countries, 2012	30
Figure 3.1: The state of exception in operation	80
Figure 4.1: The refugee status determination process in South Africa	87
Figure 4.2 The Department of Home Affairs executive structure	93
Figure 4.3 The South African Police Service executive structure	97
Figure 4.4 The City of Cape Town executive structure	102
Figure 6.1: Indicators of a state of exception in the practices of DHA officials	155
Figure 6.2: Indicators of a state of exception in the practices of SAPS officials	155
Figure 6.3: Indicators of a state of exception in the practices of CoCT officials	156
Figure 6.4: Migrants, the state of exception and xenophobia	163

List of Tables

Table 1.1: Country of origin of sample migrant population	9
Table 1.2: Current legal status of migrant sample	10
Table 1.3: Gender breakdown of migrant sample	10
Table 1.4: List of key informant organisations	10
Table 1.5: List of state institutions	11
Table 2.1: Categories of migrants selected for the study based on DHA categories	32
Table 3.1: Indicators of state practices which constitute a state of exception	79
Table 4.1: Functions of municipalities	100

List of Abbreviations

ACMS	African Centre for Migration and Society
ANC	African National Congress
APRM	Africa Peer Review Mechanism
ARESTA	Agency for Refugee Education, Skills Training and Advocacy
CAQDAS	Computer assisted qualitative data analysis software
CDE	Centre for Development and Enterprise
CoCT	City of Cape Town
CoRMSA	Consortium for Refugees and Migrants in South Africa
CTRC	Cape Town Refugee Centre
DHA	Department of Home Affairs
DRC	Democratic Republic of Congo
ID	Identity document
IR	International Relations
LRC	Legal Resources Centre
NCT	Notice, collect, think
NGO	Non-governmental organisation
PASSOP	People Against Suffering Oppression and Poverty
RRO	Refugee Reception Office
RSDO	Refugee Status Determination Officer
SADC	Southern Africa Development Community
SAHRC	South African Human Rights Commission
SAMP	Southern African Migration Project
SAPS	South African Police Service
SASSA	South African Social Security Agency
Stats SA	Statistics South Africa
UN	United Nations
UNHCR	United Nations Refugee Agency

Chapter 1: Introduction to the study

1.1 Background and rationale

Contemporary, democratic South Africa is a recipient state of people from all corners of the world who reside temporarily or permanently in the country. Increasingly, these international migrants are of African origin. In 2008 the United Nations estimated that 72% of international migrants to South Africa came from African countries (United Nations, 2008). In 2009 the total number of migrants was estimated to range between 1.2 million and 1.7 million, or less than 4% of South Africa's population by the African Centre for Migration and Society (ACMS) (Landau, Polzer & Wa Kabwe-Segatti, 2010:220). These migrants enter and remain in the country through both legal and illegal means.

Perhaps because of their relatively low numbers compared to the national population, migrants are insignificant political actors in South Africa and do not constitute a primary political constituency. However, their presence in South Africa is an issue that draws much attention. International migration to South Africa is broadly viewed in negative terms. Landau (2008b:105) states that foreigners in South Africa have been regarded as "groups to be feared, disdained, occasionally pitied and often exploited". Foreign migrants, regardless of their legal status in South Africa, are generally conflated into the one category of 'illegal aliens' and viewed as potential contaminators of the physical and metaphysical metaphorical body of the nation (Peberdy, 2009:158). The state has also blamed foreigners for its shortcomings in providing public services to its citizens by presenting them as a strain on resources that are meant for citizens and a threat to the country's security (Landau, 2006:228).

The arrival of international migrants in South Africa, particularly those of black African origin, has been met with intense intolerance. Xenophobia remains one of the negative and widespread features of post-apartheid South Africa. It is not only racialised, but it is also Africanised, with black African foreigners being disproportionately the targets of xenophobia (Nyamnjoh, 2006:49). It is within this context that some authors such as Matsinhe (2011:298), Everatt (2011:7) and Mngxitama (2008:195) use the terms 'negrophobia' or 'Afrophobia' to refer to the racialised xenophobia directed towards black African migrants, which they view as a more accurate term to describe xenophobia in South Africa. Bekker (2010:136) alludes to a hierarchy of belonging of the different races based on a ranking of races and stereotypes of the different racial groups.

Black African foreigners in South Africa are often referred to by the derogatory term *amakwerekwere*. The term, coined by black South Africans, is loaded with negative connotations and symbolises the sound of the unintelligible languages other Africans speak (Nyamnjoh, 2006:39). The *amakwerekwere* are regarded as a deep threat to personal and community security (Vale, 2002:10), and a danger to the South African nation (Nyamnjoh, 2006:39). Thus the African migrant is constructed as the 'other'.

According to Vale (2002:13), this ‘othering’ was “derived ironically from a sense of superiority and inflated by the celebration of the success of South Africa’s transition, but it simultaneously constructed another underclass around the same conceptual primitives upon which apartheid once rested”. Nyamnjoh (2006:51) underscores how ironic it is that black Africans should be the victims of racial profiling in a new democratic dispensation.

In practice, xenophobia in South Africa is manifested in the prejudice, discrimination, hostility and violence directed towards foreigners. Incidents of physical xenophobic attacks have been reported in the media since the mid-1990s. In 2008 South Africa was in the international spotlight following a wave of xenophobic violence, the worst violence witnessed in the country since the end of apartheid. Over a period of two weeks, violence spread across townships in Cape Town, Durban and Johannesburg and left 62 dead, hundreds injured, tens of thousands displaced and a lot of property destroyed (Worby, Hassim & Kupe, 2008:1-2). Although the attacks were targeted at black African migrants, some South Africans from smaller ethnic groups were also victims.

After an initially slow reaction to the 2008 xenophobic violence, the government attributed it to a ‘third force’ and denied the existence of xenophobia. A year prior to the attacks the Africa Peer Review Mechanism (APRM) had noted the poor treatment of migrants by South Africans. It noted that African foreigners are being subjected to brutality and detention and that the rising tide of xenophobia should be stopped (African Union, 2007:286). However, in its response, the state denied the existence of xenophobic tendencies (African Union, 2007:377). Misago (2011:96) argues that, alongside the denial, the state has allowed a culture of impunity in relation to perpetrators of xenophobic violence to prevail. This is despite the existence of a legal framework guaranteeing international migrants more rights than ever before (Landau et al., 2010:222). In short, the South African state has not only downplayed the seriousness of xenophobia, but has allegedly also been guilty of fostering it.

In March 2012 the South African government was accused of being xenophobic by the Nigerian government after Home Affairs deported 125 Nigerians who, upon landing at the airport in Johannesburg, allegedly produced fake immunisation cards (Butunyi, 2012). The Nigerian government retaliated by deporting 84 South Africans from Nigeria, sparking off a diplomatic spat between the two countries. The South African government then issued an apology to the Nigerian government, which resolved the issue.¹

Foreign nationals have repeatedly been the victims of human rights violations at the hands of state officials (Human Rights Watch, 1998; South African Human Rights Commission, 1999). In February 2013 the gruesome death of Mozambican Emidio Macia in police custody made news headlines. An eye-witness released a video recording of Macia, a taxi driver in Johannesburg, being assaulted by the police who then dragged him for metres attached to the back of their police van to Daveyton Police Station, where he was tortured and died a few days later (Zvomuya, 2013). While Macia’s death was

¹ South Africa’s Deputy Foreign Minister said that the yellow fever certificates had not been checked properly by South African immigration officials and the Nigerians should not have been deported (BBC, 2012).

widely condemned as yet another case of police brutality by South Africa's militarised police known for their aggressive use of force, commentators also described the brutalising and killing as "mixed with xenophobia" (Sosibo, 2013). More recently, in March 2014, two Cape Town policemen were caught on video assaulting a Nigerian man who had apparently been arrested following a robbery complaint. The video shows the two officers on a street in the central business district stripping the handcuffed man naked and then repeatedly punching and kicking him in the groin area (Phakathi, 2014).

International migration is a matter of state sovereignty as states have the right to determine under what conditions they permit or prohibit entry of non-citizens into their jurisdictions.² Management and control are the key concepts in immigration policy. On the one hand, this entails the legal and bureaucratic aspects of passports, visas, finger-prints, deportation and so on. On the other hand, it reflects a concern with national security and consequently a belief that international migration levels should be kept as low as possible and should be limited to only that which is necessary to maintaining economic advantage in an increasingly competitive global system.

South Africa's Immigration Act of 2002 determines under what conditions the state permits or prohibits entry of non-citizens into its borders. The Act is seen as largely retaining a strong sovereignty and security-centred agenda reflecting a narrowly defined notion of national interest, which is not very different from the position of the former apartheid regime (Landau et al., 2010:223). In other words, South Africa has taken a neo-realist approach to immigration policy (Vale, 2002:10).

While the Immigration Act largely deals with economic migrants and gives priority to migrants with skills that are in short supply in the country, the Refugees Act of 1998 deals with persons forced to flee their home countries as a result of a range of circumstances and South Africa's obligations under international law to host such people. The Refugees Act guarantees migrants a broad range of human rights and legal protections. However, together with the Immigration Act it has been described as schizophrenic on paper and sloppy in practice (Landau, 2008a:8). This is because those who are entitled to documentation struggle to get it through legal channels in part because of bureaucratic inefficiencies in Home Affairs, which is responsible for implementing immigration policy. All migrants are guaranteed the rights in the Bill of Rights in the Constitution of 1996 with the exception of the right to form or support a political party, vote and stand for public office. Consequently, South Africa is regarded as having one of the most expansive rights regimes in the world for migrants (Human Rights Watch, 2009:2).

Klaaren and Ramji (2001:35) argue that the institutional and symbolic effect of South Africa's immigration policy is that it tends to 'irregularise' people by making it almost impossible to retain legal status over time. As a result, the majority of foreigners reside in the country with few practical legal protections and residency rights (Landau, 2011:8). Becoming and remaining legalised can be a

² International refugee law is an exception to this rule (Dauvergne, 2008:62).

costly, stressful and time-consuming exercise and many migrants find it easier simply to avoid the legal framework altogether by purchasing fraudulent documents from corrupt Home Affairs officials or going undocumented (Hoag, 2010:208).

International migrants challenge the triad of state-territory-citizen on which the modern state is founded and are thus constructed as a threat to the national order of things. The state, by definition, is structurally characterised by a bias towards citizens and an implicit alienation of the non-national (Monson, 2012:463). Yet large-scale migration, both forced and voluntary, and the reasons that drive it suggest that there is no turning back to the ideal state with sedentary citizens bounded by birth, descent or culture (Mehta & Napier-Moore, 2010:236). Thus international migration brings into question orthodox notions of citizenship and all the elements associated with it.

This study is being undertaken with the understanding that migration is “a central part of processes of social change everywhere” (Castles, 2012:26), which has been accompanied globally by xenophobia and anti-immigrant sentiments. Therefore, it is pertinent to conduct research into how states regulate the entry of international migrants into their borders and respond to their presence in their polity. In spite of the great strides made by South Africa towards creating a diverse, non-racial, democratic state, the country is typically considered to be a “deeply divided” society because of its history of apartheid (Gibson & Gouws, 2003:15). This study broadly investigates how the South African state deals with the presence of African migrants in light of the country’s pressing challenges of poverty, inequality, unemployment and crime on the one hand, and citizens’ high expectations of the state, on the other. This raises the question of the extent to which the state is able to defend the rights of an unpopular minority (Gibson & Gouws, 2003:16).

Both the inherent citizen bias of the state and the exclusionary nature of immigration laws, raise the question of the extent to which the state itself is central in attempting to understand widespread xenophobia as a response to South Africa’s mostly African international migrants. This research on international migration, xenophobia and the South African state seeks to explore this issue by examining the relationship between the state and non-citizens highlighting the role of power. It does this by focusing on state officials, how they behave in the various spaces in which they interact with African migrants, and the implications of their behaviour for the prevalence of xenophobia in South Africa.

Although much of the literature on African migration has focussed on African migration to the global North, the reality is that most African migration is to other African countries than to other parts of the world (Berianne & de Haas, 2012:1). Moreover, according to Crush and Ramachandran (2010:210), various aspects of xenophobia in Northern countries have been studied extensively; however, xenophobia in the South as a result of increasing South-South migration has been neglected. By focusing on African migration to South Africa and xenophobia in South Africa, this study is a contribution towards filling the gap identified by migration scholars. It approaches the study of xenophobia from a different angle – theorising about state practices towards African migrants and the

implications of such practices for shaping xenophobia. It seeks to provide an insight into whether the state's approach to migrants reinforces xenophobia in South Africa. In this way, supplements the existing political explanations of xenophobia in South Africa by using the state of exception theory of Giorgio Agamben, which focuses on the state and how it exercises power over people's lives.

1.2 Problem statement and focus

This study seeks to investigate how state power is exercised by frontline officials of the state bureaucracy when dealing with African migrants and how this relates to xenophobia in South Africa. It appears that alongside conventional law, the paradigm according to which African migrants are dealt with by the South African state also includes a realm of practices that fall outside state regulation and within the non-application of the law. This paradigm may have implications for xenophobia in South Africa.

The study examines the practices of state officials from three selected institutions towards African migrants. These institutions have been selected as they tend to have greater face-to-face interaction with African migrants compared to other state institutions. They are the Department of Home Affairs (DHA), the South African Police Service (SAPS) and local government – the City of Cape Town (CoCT). The study, which was conducted in Cape Town as an ethnographic field study, relies mainly on the experiences of African migrants of varying legal status, nationality and socio-economic class to examine how state officials exercise their authority while going about their daily routines. Based on the migrants' experiences, the study further seeks to understand the state's practices towards African migrants in the context of widespread xenophobia in South Africa. This is a qualitative study which uses ethnographic instruments and is approached from a political science perspective. The hypothetical 'state of exception' espoused by Giorgio Agamben (1998, 2005) provides a useful theoretical framework from which the behaviour of state officials towards African migrants is examined. More fully defined in Chapter 3, the state of exception essentially refers to the suspension of the law by the state in order to protect it from threats, but the law remains in force. Captured in the state of exception is 'bare life' where people are stripped of their rights and abandoned by the law.

The key arguments and assumptions that the researcher makes in this dissertation can be summarised as follows. The author asserts that the negative perceptions of migrants and the concern with state sovereignty in South Africa have led to a discourse that constructs African migrants as vectors of insecurity. She argues that in response to the assumed threat posed by migrants to the wellbeing of South Africans, some state officials use their authority to disregard their own laws with impunity in order to constrain and exclude migrants with serious consequences for their wellbeing in South Africa. The assumption was made that state behaviour is motivated by the threat, real or perceived, posed by migrants in terms of security, national identity, health and livelihoods. The researcher analyses bureaucratic practices within Agamben's theoretical framework of the state of exception. The researcher then argues that extra-legal practices reinforce xenophobia. The dissertation seeks to

advance the political theorisation of xenophobia in South Africa by examining the relationship between the South African state and its African migrant population both theoretically and empirically.

1.2.1 Research questions

The central question that the research seeks to answer is: Do the practices of state officials (from the DHA, SAPS and CoCT), as experienced by African migrants, reinforce xenophobia in South Africa?

The main question will be further broken down into four secondary questions:

- a) How are the practices of South African state officials experienced by African migrants?
- b) To what extent are African migrants treated differently by South African state officials in terms of their legal status or nationality?
- c) Is the approach of South African state officials towards African migrants evidence of a state of exception?
- d) If so, to what extent has a state of exception in dealing with African migrants shaped xenophobia in South Africa?

1.2.2 Research objectives

The study has the following four objectives related to each of the research questions:

- a) To understand how African migrants experience the sovereign power of the state through their interactions with frontline DHA, SAPS and local government (CoCT) bureaucrats;
- b) To establish if there are differences or patterns in how African migrants experience state officials based on their legal status or nationality;
- c) To locate the practices of state officials towards African migrants within political theory;
- d) To investigate the relationship between African migrants' experiences of sovereign state power and xenophobia in South Africa.

1.3 Limitations and delimitation

This qualitative field study has three limitations. The first limitation is that it is not representative of the entire South African state and the whole African migrant population. The second limitation is that although it is about the state, it relies heavily on the experiences of African migrants and key informant non-governmental organisations (NGOs), because of the challenges of gaining direct information from state officials. Related to this is the fact that migrants have different levels of contact with state officials. So while it is guaranteed that all migrants will have had experiences with the DHA, they will not necessarily have had personal experiences with the other two selected institutions.

The third limitation is that generalisability is difficult. However, Bryman (2008:391-392) points out that "the findings of qualitative research are to generalise to theory rather than to populations".

Furthermore, Williams (in Bryman, 2008:392) argues that it is possible to make what he refers to as *moderatum* generalisations “in which aspects of the focus of enquiry can be seen to be instances of a broader set of recognisable features”.

In terms of delimiting the study, firstly, it only focuses on selected state officials from three state organs (DHA, SAPS and CoCT), NGOs and African migrants based in Cape Town. Secondly, although the study is conducted in Cape Town, the experiences of migrants are broader and include other areas where they have encountered the selected officials. Thirdly, the period of the study is January 2012 to August 2014. However, the experiences of Africans migrants covered in the study range from the post-1994 period up to the end of the fieldwork, which is October 2013. Fourthly, the study only compared the experiences of migrants with state officials to the legal and normative framework relating to migrants. It did not compare the experiences of migrants with state officials to the experiences of citizens with state officials.

1.4 Research design and methodology

An ethnographic field study research design was selected as it was particularly suited to the exploratory and descriptive nature of the research questions. Ethnography is one of many established qualitative research approaches in the social sciences. Fetterman (1989:11) defines ethnography as “the art and science of describing a group or culture”. Ethnography has its roots in anthropology, but has over time spread to other disciplines. Whitehead (2005:6-7) defines ethnography as “an open-ended emergent process of learning episodes that is facilitated through iterative processes of continual observations, asking questions (interviewing), making inferences, and continuing these processes until those questions have been answered with the greatest emic validity possible”.

Hammersley and Atkinson (2007:2) claim in their seminal book *Ethnography: Principles in Practice* that ethnography does not have a universal definition, having been remoulded over time by various disciplines to deal with particular contexts. Their emphasis is on the common features of ethnographic work, which are that people’s actions are studied in everyday contexts rather than in situations specifically set up for research purposes; data are drawn from multiple sources but mainly from participant observation and/or informal conversations; data collection is mostly ‘unstructured’ as it does not develop from a fixed research design at the outset; data are collected from a few cases to enable in-depth study; and data analysis involves interpreting meanings, functions and consequences of human actions and institutional practices, as well as their implications for local and wider contexts (Hammersley & Atkinson, 2007:3). Ethnography in political research is sometimes referred to as political ethnography (Manheim, Rich, Willnat, Brians & Babb, 2012:329). Bryman (2008:403) observes that conducting research for a dissertation is a form of “micro-ethnography” as opposed to “full-scale ethnography”, which requires the researcher to be immersed in a social setting for long periods of time.

An ethnographic field study allows the researcher to be flexible and open-minded in searching for data (Shaffir & Stebbins, 1991:5). The strengths of this research design are that it offers high construct validity, in-depth insights, and establishes rapport with research subjects (Mouton, 2001:148). In addition, analysis and data collection can occur simultaneously in ethnographic research, unlike with most research designs, where data analysis is undertaken after data collection has been completed (Fetterman, 1989:13). However, every research design has its limitations, so it is incumbent upon the researcher to be aware of them and minimise the main sources of error. The limitations associated with ethnographic research, according to Mouton (2001:48), are the lack of generalisability of results, non-standardisation of measurement, and the time-consuming nature of data collection and analysis.

Fieldwork, which is synonymous with ethnography, refers to going out into the social setting in order to experience the worldview from the selected cases. Fieldwork for this study took place over a period of four months from July to October 2013 in order to immerse the researcher in the social context within which South African state officials and African migrants interact. Fieldwork was conducted with the aim of recording as much information as possible about the actions of state officials towards African migrants. The researcher observed, gathered and examined the experiences of African migrants with state officials from the DHA, SAPS and CoCT. Throughout the fieldwork all three forms of note taking – mental, jotting and full field notes – were used.

The researcher operationalised three concepts – xenophobia, the state of exception and bare life. This was necessary in order for the researcher to know what to look for in the field (Bryman, 2008:373). Chapter 3 defines these concepts and how they were measured.

1.4.1 Sampling methods and sample profiles

Purposive sampling was used to ensure relevance to the research questions (Bryman, 2008:415). The research sample of the study consisted of 40 African migrants, seven local and international organisations based in Cape Town, which work on migration issues, and two state officials from the institutions selected for the study. Having different cases, i.e. individual migrants, organisations and state officials, helped to cross-validate the findings of the study. It also helped to counter the challenge anticipated by the researcher of getting information from state officials, who may have perceived the study as sensitive because it examines their behaviour, and as a result may not have been willing to participate.

The geographical site at which the study was conducted was Cape Town. As it was not possible to study the entire state, the focus was on officials of three state institutions that interact with African migrants. These institutions are the DHA, SAPS and CoCT. These institutions were selected based on the fact that their responsibilities lead them to interact with foreigners to a greater extent compared to other state institutions. The DHA has immigration-related responsibilities, the SAPS is involved in addressing crime, maintaining public order and providing security, and the CoCT has a public services

provision mandate that affects migrants. In addition, the DHA and SAPS are key sites of institutional xenophobia in South Africa (Human Rights Watch, 1998; South African Human Rights Commission, 1999; Harris, 2001) while public violent xenophobia has been linked to local politics at the ward/municipal level (Steinberg, 2008; Misago, 2011; Nieftagodien, 2011). Within these institutions, the practices of frontline officials were the subject of study, as they were experienced by African migrants. These were relatively junior bureaucrats who interact directly with foreigners. Given that junior officials would be unwilling to speak to the researcher because of the government hierarchy, the researcher sampled one senior official from each institution for the fieldwork, although as will be pointed out the DHA did not participate.

The sample of migrants was as heterogeneous as possible in order to provide as much diversity as possible and allow for any patterns to emerge from their experiences. It also avoided the nationality bias and vulnerable migrant bias in much of the research on migration in South Africa. A total of 40 migrants from countries within the African continent were identified through snow-ball sampling and with the assistance of the selected NGOs. They differed in terms of immigration status, nationality, age, sex and income. They had been residing in South Africa for between one and 13 years and lived in different parts of Cape Town. They represented 13 African countries as shown in Table 1.1 and they comprised five legal categories of migrants as provided for in the Immigration and Refugee Acts (see Table 1.2). Table 1.3 shows the gender spread of the migrant sample.

Organisations that work on migrants' issues were also selected as cases due to their knowledge of the issues related to the study. As these organisations interact with migrants on a daily basis, they were able to direct the researcher to "situations, events or people likely to be helpful to the progress of the investigation" (Bryman, 2008:409). The key informants targeted were mostly NGOs which are members of the Consortium for Refugees and Migrants in South Africa (CoRMSA) based in Cape Town. A list of the seven key informant organisations is provided in Table 1.4. It is worth pointing out that of the seven key informants only two were South African.

Table 1.1: Country of origin of sample migrant population

	Country	Number of respondents
1	Angola	1
2	Burundi	2
3	Congo	2
4	Democratic Republic of Congo (DRC)	7
5	Ethiopia	2
6	Kenya	2
7	Malawi	3
8	Mozambique	4

9	Nigeria	2
10	Rwanda	2
11	Somalia	3
12	Uganda	2
13	Zimbabwe	8
	Total	40

Table 1.2: Current legal status of migrant population

Status	Number of respondents	% of total
Permanent resident	1	2.5
Temporary resident (work permit holder)	4	10
Temporary resident (study permit holder)	5	12.5
Temporary resident (visitor's visa)	1	2.5
Refugee permit holder	15	37.5
Asylum seeker permit holder	9	22.5
Illegal foreigner	5	12.5
Total	40	100

Table 1.3: Gender breakdown of migrant sample

Gender	Number	Per cent
Male	25	62.5
Female	15	37.5
Total	40	100

Table 1.4: List of key informant organisations

	Organisation	Respondent's designation
1	African Centre for Migration and Society (ACMS)	Researcher
2	Agency for Refugee Education, Skills Training and Advocacy (ARESTA)	Advocacy Officer
3	Cape Town Refugee Centre (CTRC)	Director
4	Legal Resources Centre (LRC)	Attorney
5	People Against Suffering Oppression and Poverty (PASSOP)	Community Liaison Officer
6	Scalabrini Centre	Advocacy Officer
7	United Nations Refugee Agency (UNHCR)	Head of Field Office

Table 1.5: List of state institutions

	State institution	Respondent's designation
1	City of Cape Town	City Manager
2	South African Police Service	Deputy Provincial Commissioner

1.4.2 Research methods

The study employed three techniques of data collection: secondary data analysis, semi-structured interviews and observation. Using different data-collection tools ensured cross-validation of the conclusions drawn from each method and case group, thereby reducing the degree of subjectivity and increasing the degree of validity (Manheim *et al.*, 2012:345).

1.4.2.1 Secondary data analysis

The collection of secondary data began before fieldwork and continued thereafter. This data is used mainly in Chapters 2 to 4 of this dissertation. The analysis of this data identified the gaps in the literature, outlined the theoretical framework, set the context of the research and augmented the primary data. The researcher analysed the literature on xenophobia in South Africa and the state of exception. This was informed mainly by scholarly publications, speeches, media articles and other relevant documentary sources. The legal framework relating to international migrants and the three state institutions was also analysed. Key legislation that was analysed include the South African Constitution of 1996, the Immigration Act of 2002 and the Refugees Act of 1998. This analysis of legislation, which is included in Chapter 4, enabled the researcher to assess the extent to which the actions of state officials, as presented in other sources and in the primary data conform to the law or not.

1.4.2.2 Semi-structured interviews

Interviews were deemed appropriate as they generate narratives and thick descriptions that are appropriate to the research questions. A total of 49 in-depth semi-structured interviews were conducted with African migrants, state officials and migrant organisations (see Appendix C for the list of the interview respondents). The interviews were guided by measuring instruments developed by the researcher in the form of open-ended questions and themes for discussion. A research instrument was developed for each of the three categories of respondents (see Appendix A). Probing and follow-up questions were used to solicit in-depth information and details (Genzuk, 2003:7). The interviews were conducted in English and face-to-face in various locations in Cape Town except for one that was done telephonically. All but two of the interviews were audio recorded. In the two cases the respondents were not comfortable with being recorded.

The starting point with the semi-structured interviews was with organisations that work on migration issues. Key informant interviews were conducted initially with member organisations of CoRMSA, a network of NGOs that promotes and protects migrant rights. CoRMSA member organisations based in

the Western Cape include the Cape Town Refugee Centre, Scalabrini Centre, the Agency for Refugee Education, Skills Training and Advocacy (ARESTA) and People Against Suffering Oppression and Poverty (PASSOP). Additional interviews were later held with representatives from the Legal Resources Centre, United Nations Refugee Agency (UNHCR) and the ACMS.

Two semi-structured interviews were then conducted with state officials from the SAPS and CoCT (Table 1.5) to gain insight into their implementation of relevant legislation, how they describe their interaction with clients and how they exercise any discretionary powers given to them by the law. These interviews, which targeted senior state officials, also aimed to observe any similarities or differences between what they say and how migrants experienced frontline junior officials. Limited direct interaction with state officials was deliberate not only due to the expected difficulty of access to state officials, but also because additional interviews with state officials were unlikely to yield new information.

Finally, semi-structured interviews were conducted with 40 African migrants residing in various parts of Cape Town. Sourcing information from migrants countered the foreseeable challenge of accessing information directly from state officials. These interviews were aimed at capturing the practices of state officials from the DHA, the SAPS and CoCT from the perspective of the migrants. The interviews also sought to draw out perceptions of xenophobia and state exceptionalism. As is characteristic of qualitative research, the questions were open-ended.

The interviews with key informants and state officials were held in their respective offices. The location of the interviews with migrants varied. Some spot interviews with migrants were conducted at the offices of the key informants. Pre-arranged interviews were held in the migrants' places of work and study. Others were held in public places, such as restaurants and parks and in some cases, in the cars of migrants. The average length of an interview was 40 minutes but depending on the experiences that the respondent had to share and how well they were able to express themselves in English, it varied considerably from approximately 15 minutes to 100 minutes.

1.4.2.3 Observation

Prior to commencing fieldwork, the researcher had planned to gather data using direct or participant observation in the form of covert or passive observation, where the research would be unknown to the subjects of the study (Brians, Willnat, Manheim & Rich, 2011:327). This meant that the researcher would be present but detached from the scene of action only taking on the role of 'by-stander' or 'spectator' (Spradley, 1980:59). Passive observation is undertaken in a natural setting and as the subjects are unaware that they are being observed, they tend to behave as they would ordinarily (Johnson & Reynolds, 2005:191). According to Hammersley and Atkinson (2007:4), studying people's actions in everyday contexts rather than in situations created by the researcher gives ethnography a distinctive character.

Direct observation was limited to DHA officials in two DHA offices and the Refugee Reception Office (RRO) in Cape Town. This is because, unlike other state institutions, the DHA has separate sections for citizens and foreigners making it easy to identify the non-citizens. The RRO caters only to foreigners, so it was also a suitable site for observation. Observation of state officials has been used before as a means to explain their behaviour. For example, the study conducted by Sutton and Vigneswaran (2011:630) on detention and deportation in South Africa included observation of police interactions with civilians and observing everyday practices in government offices over a period of months.

The main advantage of this form of observation is that it yields highly valid information, as the subjects do not alter their behaviour because they are being studied. The disadvantage is that covert observation can be difficult to organise and implement. Taking notes on the spot can be difficult as the researcher is always anxious about being detected and ethical tenets are transgressed (Bryman, 2008:406).

However, during fieldwork limited observation than initially envisaged was done by the researcher at DHA offices, which amounted to four hours in total. In the case of the two DHA offices in Bellville and Cape Town, it proved difficult to passively observe the behaviour of DHA officials as they went about their day-to-day activities in terms of xenophobia and the state of exception without an element of intrusion with regard to either the clients or the staff, which the researcher wanted to avoid. In the case of the RRO, the challenge of access hampered observation as will be explained later. Nevertheless, the limited observations during those visits were quite insightful. Fortunately for the researcher, the participation of some migrants who had previously worked at the RRO in the research provided a useful insider perspective. In addition, two of the NGOs interviewed had also previously conducted monitoring research at the RRO, before the RRO started restricting access, and were able to share the findings of their research.

Studying the practices of state officials through a mix of direct and indirect methods as described above is a strategy that has been used by other researchers (see Human Rights Watch, 1998; Harris, 2001; Landau, 2005a; Sutton & Vigneswaran, 2011).

1.4.3 Data analysis

Data analysis refers to the “process of bringing order to the data, organising what there is into patterns, categories and basic descriptive units” (Genzuk, 2003:9). Primary data were analysed using computer-assisted qualitative data analysis software (CAQDAS) which “searches, organises and annotates textual and visual data” (Smit, 2005:107). A CAQDAS does not actually analyse the data but it is useful for data management. The main advantage of using it is that it allows “for more rapid, rigorous and scientific qualitative data analysis” (Rambaree, 2008:3).

All 49 interview transcripts and field notes were stored in Atlas.ti. Thereafter, they were systematically analysed using the NCT (notice, collect, think) model of qualitative data analysis which is well detailed in Susanne Friese's book *Qualitative data analysis with Atlas.ti* (2012). The book served as a step-by-step guide for the researcher. NCT is derived from the process of noticing things, collecting things and thinking about things (Friese, 2012: 92). It is not a linear process but an iterative one.

The first step followed in the context of the NCT model was to look through the data, noticing things in the data and then labelling what was noticed in the form of codes. Coding is essentially the same as collecting things. Coding is the basis for summarising or reducing the data (Saldana, 2009:2). The researcher went through a few cycles of coding, starting with coding a few words, a sentence or paragraphs. Unprescribed labels, which were derived from the data were assigned. The researcher then went back to the data to review the codes, adding and removing some in the process. In another cycle of coding she coded for patterns and categories during which three concepts of the study – xenophobia, state of exception and bare life were operationalised. These concepts are further defined and operationalised for measurement in Chapter 3. This coding phase ended when the researcher could no longer notice anything new in the data. The final code list had over 200 codes and is attached in Appendix D. Friese (2012) recommends coding all the data as it provides a holistic picture of the data. In instances where a pre-developed code list derived from theoretical concepts is being used there is a risk of ignoring what does not appear to fit into the coding system. Coding all the data prevents this and also allows for new insights to be revealed. Up to this point, the tasks undertaken were part of a descriptive level of analysis.

The next step in applying the NCT model was to conduct conceptual-level analysis by noticing things in the already coded data and the relations between them. In this step the data were analysed from the perspective of the research questions. The analysis tools in Atlas.ti such as the query tool as well as the memo function, were useful in this regard. Analytic memos were created for each research question to systematically develop and document the researcher's interpretation of the data. At this stage of analysis it was also possible to explore and link the data visually through network views, a feature in Atlas.ti used to create concept maps. The researcher also used the memo writing feature to transfer hand written field notes, document the entire data analysis process and jot down thoughts in a research diary memo. Storing and organising all the data in Atlas.ti as well as documenting the analysis process created an audit trail that contributed to the transparency of the data analysis process.

After data analysis, data interpretation was done. According to Genzuck (2003:9), it involves “attaching meaning and significance to the analysis, explaining descriptive patterns, and looking for relationships and linkages among descriptive dimensions”. The interpretation of the data is presented as part of the research findings in Chapter 5 and Chapter 6 of the dissertation.

1.4.4 Reflection on methodology

It is worth reflecting on the research design and methodology of the study as it unfolded in practice in order to capture the variable and evolving nature of fieldwork (Schutt, 2012:332) and to highlight any shortcomings, limitations and gaps in the data (Mouton, 2001:124).

All in all, the interviews went smoothly as the respondents demonstrated their interest in the study. They were all willing to share information and the researcher was able to establish a good rapport with them. Some key informants and migrants were particularly helpful in pointing the researcher to other respondents and to secondary sources of information. There are a number of possible reasons for the responsiveness of the research respondents. In the case of the migrants, perhaps there was already a measure of trust in the research because the researcher had either been referred to them or had approached them in the offices of the key informants, which offer a safe space for migrants. It was also perhaps because it was conducted by an African migrant, which made it easier for them to open up. Another possible reason for their willingness to participate is that the research was framed in a non-threatening manner as a process of gathering the experiences of African migrants in South Africa for academic purposes. The responsiveness of the key informants and state officials, with the exception of the DHA, was possibly due to being accustomed to receiving requests for interviews and the public orientation of their work.

It is necessary to point out that no interview was conducted with the DHA, which was one of the state institutions selected for the study. The researcher's efforts to get a DHA official to interview were unsuccessful. Several attempts in the form of emails and telephone calls were made to secure an interview with the Deputy Director-General: Immigration Services based in Pretoria but no response was received. The researcher then wrote to the Provincial Manager of the Western Cape asking for an interview. A written response was never received but upon calling the Provincial Manager's office to follow-up, his personal assistant acknowledged having received the interview request. She then said that he needed authorisation from the head office. After several follow-ups she said that she was still waiting for a response from Pretoria but that it was not forthcoming. The researcher then asked her for details of the official in Pretoria she had contacted in order to approach him. However, just like with the Deputy Director General, his phone went unanswered and he never responded to the researcher's emails. In addition, the researcher's written request for statistics on migrants made in terms of the Promotion of Access to Information Act was ignored.

The challenges the researcher experienced with the DHA could be an indicator of the perceived sensitivity of the study and hence the possible challenges of relying on state officials for information on a topic of this nature. However, it was starkly different from the responses of the two other state institutions, so it could also say something about the DHA. In this regard, it also worth noting that with the other two state institutions, as well as the key informants, they all responded in writing to the researcher's request for an interview, which was also put in writing, whereas no written response was ever received from the DHA. Even efforts to get the DHA in Cape Town to put in writing what they

communicated to the researcher over the telephone or to reply to the researcher in writing, were ignored. This suggests that the non-responsiveness of the DHA could also be due to basic ineptitude. Some of the key informants had also experienced similar challenges in contacting officials from the Department so the researcher was not surprised.

The data collection method of observation of DHA officials did not go as anticipated because of the barriers to entering one of the DHA offices which was of particular interest to the researcher – the RRO. During the first visit to the RRO, the researcher discovered that access to the main service area is only granted upon presentation of an asylum seeker or refugee permit and the researcher was advised by the security guards to seek permission from the Centre Manager to gain entry as a researcher. In the process of trying to get this permission, the researcher had to visit the office and walk through some service areas in order to get to the manager's office. This provided a small window for observation. The Centre Manager was not in the office but the researcher was able to get his contact details to request the permission. He was very evasive when the researcher later telephoned and emailed him. The researcher then made a second visit in the hope of meeting him in person but he was out of the office. Fortunately, on the way to the Centre Manager's office, the researcher had to pass through a different and smaller service area without being asked for identification and was able to get a glimpse of the officials going about their activities. In hindsight and from experience, it was important for the researcher to see the physical spaces within which the DHA provides services to migrants but she would not recommend conducting observation of these spaces as a research methodology in future as it is unlikely to yield much beyond an appreciation of the context.

Overall, the research design and methods were deemed appropriate and reliable for answering the research questions. The data set was enriched by the variety of migrants' experiences, which transcended Cape Town although the study was conducted in Cape Town. In terms of DHA encounters of the migrants, not all of these had occurred in Cape Town. Some took place in other provinces or even outside the country, specifically in South African embassies in Mozambique and Zimbabwe, where migrants had applied for their permits. The embassy staff who provide consular services abroad are employees of the DHA, so these experiences were taken into account in the study. Encounters with the SAPS were also not limited to Cape Town as some migrants had come into contact with the police while residing in other parts of the country before moving to Cape Town. It is only in the case of the CoCT that migrants' experiences were specific to Cape Town.

In addition, some migrants who had been approached in their individual capacities turned out to be particularly resourceful. This was because of their involvement in migrant associations and networks. Their interaction with other migrants in these groupings exposed them to issues facing migrants at different levels and they shared these with the researcher. On top of that, three migrants had previously worked at the Cape Town RRO as interpreters between DHA officials and asylum seekers.³ They were

³ These interpreters were not on the DHA payroll, however. They were employed by an NGO (Refugee Ministries Centre) and placed at the RRO.

therefore able to shed light on how things work behind the scenes at the RRO, a perspective the researcher would never have had exposure to otherwise.

However, some limitations of the data set exist. Firstly, the experiences of African migrants were primarily impacted upon by the DHA, which every migrant had encountered simply by virtue of being foreigners, compared to the other two selected state institutions. The researcher was unable to control this, as it was difficult to know beforehand which of the other two state institutions migrants had encountered beyond the DHA. Figure 1.1 below shows the migrant sample in relation to their experiences with officials from the three selected institutions. While all forty migrants had encountered DHA officials, not all of them had had any experience with SAPS and City officials. Only 28 reported having had an encounter with the police and 11 with CoCT officials.

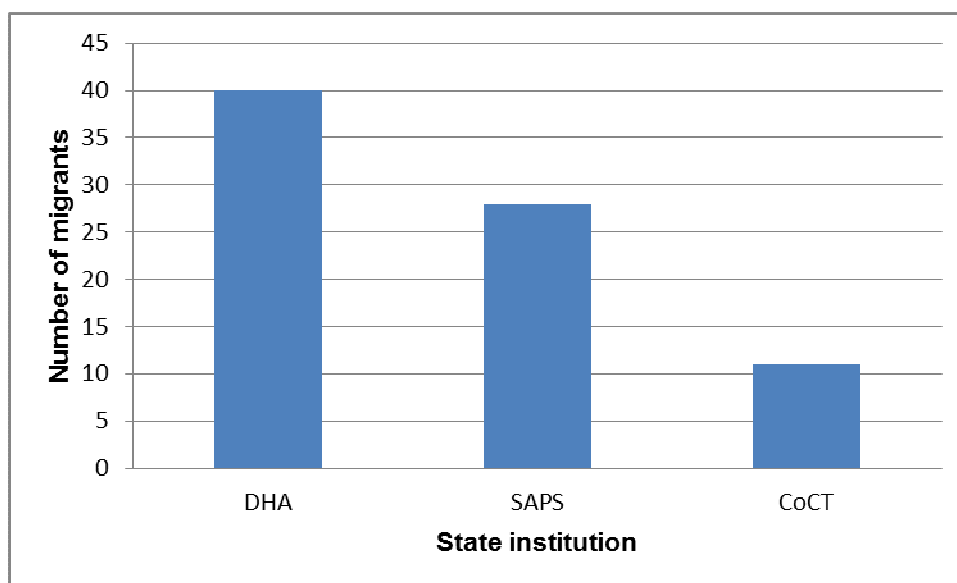


Figure 1.1: Number of migrants with experiences with officials from the DHA, SAPS and CoCT

Secondly, the data do not reveal the frequency of certain practices of state officials that were of interest to the study. The inability to get an accurate measurement of the frequency of attitudes and behaviours measured in the study, even when they are recurring, is a limitation of qualitative methods (Castles, 2012:25). Thirdly, the overreliance on migrants as a data source meant that it was not possible to empirically ascertain the motivations, intentions and constraints that drive bureaucratic behaviour from the officials themselves and to compare how distinct migrants' experiences were from South Africans who also encounter the same state officials. As already pointed out, the decision to rely on migrants was justified by the foreseeable challenge of accessing state officials and getting information from them. In addition, the researcher would most likely have found it difficult as a foreign researcher to interview ordinary South Africans given the topic of the study. Nevertheless, the researcher was able to make certain valid assumptions on the motivations of officials' actions and comparative experiences of citizens and non-citizens from the scholarly literature.

A final point of reflection is on the positioning of the researcher as an African migrant. The researcher is from Kenya and has lived in South Africa for 12 years. This background and her experiences of living in South Africa influenced the choice of the research topic. To minimise any biases that may be inherent as a result, the researcher strove to be objective in the formulation and sequencing of interview questions. She also sought to minimise her influence on the responses of the respondents by emphasising her interest in their unique and personal experiences. As already alluded to, the positioning of the researcher as a migrant probably made the migrant respondents more willing to talk to her.

1.4.5 Ethical considerations

The study was conducted in line with professional ethical codes for social science research and the 'Framework policy for the assurance and promotion of ethically accountable research at Stellenbosch University'. Since the study involved gathering data from human subjects, the researcher was guided by key ethical principles for responsible research highlighted by Spradley (1980) in his book *Participant Observation*. These principles are: consider informants first; safeguard informants' rights, interests and sensitivities; communicate research objectives; protect the privacy of informants; do not exploit informants; and make reports available to informants (Spradley, 1980:20-25). To this end, the research goals were made clear to all those who were interviewed. This included the NGO representatives, African migrants and the representatives of state agencies. The researcher sought their written or oral consent to participate in the study without any financial compensation. The researcher ensured the anonymity of the migrant respondents by using codes when presenting the findings. The researcher also ensured privacy and confidentiality of the data by storing it in a password-protected computer that could be accessed only by the researcher. In an effort not to harm the informants or the researcher, interviews were conducted in secure spaces. All sources of information are duly acknowledged and properly referenced in the dissertation.

Observation DHA officials, albeit limited, was done without their informed consent as they were not made aware of the study. According to Manheim *et al.* (2012:345), using unobtrusive observation "involves some degree of deception". However, the researcher does not view going into the public areas of a public institution as an onlooker as an ethical transgression. The researcher was not going to interfere with the activities of the officials or to expose the names or identities of officials if these were to become known to the researcher during observation. However, it is apparent from the restricted access to the RRO that state officials are wary of this data collection method. The researcher came to learn from key informants that the DHA had started to restrict access in the recent past only after NGOs apparently took advantage of the public access to monitor the RRO and report their findings to the media, which the DHA felt portrayed them in a negative light.

If state officials know that they are being observed, they are likely to act differently, thus creating an artificial setting, bar access altogether or sabotage the research. Indeed, the researcher's efforts to get official permission from the DHA to conduct research at the RRO were unsuccessful. The experiences

of the ACMS while conducting research on barriers to asylum in South Africa are quite instructive in regard to studies related to the DHA. Despite a deliberate decision by the ACMS to administer surveys to asylum seekers outside DHA offices, the DHA approached the researchers to seek DHA permission because the research could portray the department in a negative light. The DHA sought to “manage the results and control the sharing of information held by private individuals”, yet the research was being conducted in public spaces where direct permission was not required (Amit, 2012:21-22). Continued harassment and threats of arrest by the DHA led the ACMS to file a complaint with the Public Protector and substantially reduce its sample size. Although the researcher relied less on observation and more on interviews, there was a case for undisclosed observation. The argument is that the greater good of the research outweighs any harm that could be caused to the subjects not knowing that they are being studied (Manheim *et al.*, 2012:346). Taking on the role of spectator presented the only real chance to “discern the real from the ideal, the tacit from the explicit and the back from the front” (Whitehead, 2005:15) and the only way to minimise the researcher’s effect on the state officials being studied.

1.5 Chapter overview

This dissertation consists of seven chapters, including this introductory chapter. Subsequent chapters are as follows:

Chapter 2: Context: International migration in South Africa

Chapter 2 provides a background to international migration in South Africa and lays the foundation for an exploration of the relationship between the state and non-citizens residing within its borders. It begins with a general overview of international migration as a function of state sovereignty. It then reviews international migration in the South African context by focusing on African migration, the role of state policies in shaping international migration, the different categories of migrants and the perceptions of international migration in South Africa.

Chapter 3: Literature review: Xenophobia and the state of exception

This chapter reviews the literature on xenophobia in South Africa and contains the theoretical framework that informs the study. After defining the key concepts of the study, the first part of this chapter examines xenophobia and the various explanations that have been put forward to explain it in xenophobia. The second part of the chapter presents the theoretical framework of the dissertation that will be used to analyse xenophobia in South Africa – Giorgio Agamben’s theory of the state of exception. Thereafter, it examines the relevance of Agamben’s theory in establishing the grounds for inclusion and exclusion in South Africa by the state. Finally, it operationalises the key concept of the state of exception as an analytical tool. The chapter concludes with a discussion of how the study will contribute to the body of literature after pointing out gaps in the existing literature.

Chapter 4: Legal foundations and institutional context: Migrants and the Department of Home Affairs, the South African Police Service and Local Government

This chapter examines the constitutional and statutory underpinnings of South Africa's immigration policy and practice, including migrants' rights. The chapter analyses the Constitution of 1996, the Immigration Act of 2002 and the Refugees Act of 1998 in terms of the rights and obligations of the different categories of migrants. It also provides an overview of the functions and operations of the three state institutions.

Chapter 5: African migrants' experiences with state officials

This chapter presents and analyses the findings of the empirical qualitative research with regard to the first two research questions of the study. These questions relate to the experiences of African migrants with state officials broadly and in terms of their legal status and nationality.

Chapter 6: African migrants, the state of exception and xenophobia

This chapter presents more findings and analysis of the empirical qualitative research in relation to the other two research questions of the study, which relate to the state of exception and xenophobia.

Chapter 7: Conclusion

Chapter 7 summarises the entire dissertation and key research findings. It also draws the overall conclusions of the study. Finally, it articulates the theoretical and practical significance of the study and identifies possible areas for future research.

Chapter 2: Context: International migration in South Africa

2.1 Introduction

Xenophobia in South Africa occurs against the backdrop of international migration – the movement of populations across national borders. It is therefore important to begin by examining state responses to international migration and the consequences thereof. Furthermore, one cannot discuss xenophobia without an understanding of the extent of international migration in South Africa given that xenophobia is mostly targeted at migrants from outside the boundaries of South Africa who live in the country. Therefore, this chapter contextualises international migration in South Africa.

The chapter begins with a broad context on immigration as a function of the state. It then provides a historical overview of migratory patterns in South Africa highlighting the role of state policies in shaping mobility. It then moves to international migration in post-apartheid South Africa. Here the focus is on the trends with regard to African migration, the immigration policy, the different categories of migrants and finally, the perceptions of migration in South Africa.

2.2 International migration as a function of state sovereignty

Sovereign states have the right to determine under what conditions they permit or prohibit entry of non-citizens into their jurisdictions.⁴ Put differently, international migration is a matter of state sovereignty. Torpey (1998:239) argues that modern states have deprived people from moving freely across international boundaries and subjected them to being dependent on states for the permission to do so, unlike in the medieval era when this authority was mostly held in individuals and private entities. Thus, over time states have expropriated the legitimate “means of movement” (Torpey, 1998:239). Herbst (2000:228) observes that in Africa this process began in the 1960s as newly independent states closed their borders in order to assert their sovereignty.

States have sought to “monopolize the capacity to authorize movements of persons – and unambiguously to establish their identities in order to enforce this authority – for a great variety of reasons that reflect the ambiguous nature of modern states, which are at once sheltering and dominating” (Torpey, 1998:241). Some of these reasons mentioned by Torpey (1998:241) include the extraction of taxes and labour; the facilitation of law enforcement; the exclusion, surveillance, and containment of “undesirable elements”; and the supervision of the growth and spatial distribution of populations within their territories, among others.

States have, over hundreds of years, created elaborate bureaucracies and technologies in order to identify people and regulate their movements. According to Torpey (1998:256), passports and

⁴ International refugee law is an exception to this rule (Dauvergne, 2008:62).

identification documents produced by these bureaucracies heralded a new era in human affairs. He describes the social transformation as “akin to those identified by Marx when he analysed the monopolisation of the means of production by capitalists, and by Weber when he discussed the modern state’s expropriation of the legitimate use of violence” (Torpey, 1998:256).

A fundamental moral contradiction in international human rights law is that it provides for a universal right to emigrate without any reciprocal right of admission elsewhere (Richmond, 1994:57). The right to migrate is regarded as a matter of human rights, asserted in the United Nations (UN) Universal Declaration of Human Rights, while the right of admission is regarded as a matter of national sovereignty (Weiner, 1996:171). States pursue immigration policies that advance their own collective self-interest and include draconian enforcement measures against those perceived as illegal migrants (Richmond, 1994:64). Richmond (1994:210 & 216) has argued that with increasing migration from poorer to richer countries there is a trend in most economically developed and affluent countries to stem international migration in order to protect their privileged positions using legislation and regulative institutions similar to those used during apartheid South Africa to control the movement of people from outside and within its borders.

State immigration policies control the membership of the nation-state thus performing the gate-keeping function of enforcing territorial sovereignty (Dauvergne, 2004:86). In so doing, immigration law is coupled with national identity to the extent that it distinguishes between members and non-members. Management and control are the key concepts in immigration policy. On the one hand, this entails the legal and bureaucratic aspects of passports, visas, finger prints and deportation and so on. On the other hand, it reflects a concern with national security and consequently in a belief that international migration should be kept as low as possible and should be limited to only that which is necessary to maintaining economic advantage in an increasingly competitive global system. To this end, immigration policies prescribe degrees of membership through a ‘migration hierarchy’ consisting of different legal statuses or permits with varying rights (Dauvergne, 2004:85). Torpey (1998:276) states that this codification of migrants is what ultimately determines their identity. Labour migration and free movement for investors, entrepreneurs and certain categories of skilled workers is generally welcomed as long as it is controlled. Tourism, even when it conflicts with the need to control borders, must be facilitated since it is a major contributor to the economy. Selection of migrants is therefore largely based on economic criteria.⁵

Additionally, immigration policies serve to mark the individual as external to the nation-state in order to facilitate identification and control (Tuitt, 2004:48). In this way they possess “an enhanced power of exclusion” demonstrated by the label of ‘illegal’ migrants (Dauvergne, 2004:92). As Dauvergne (2004:92-93) argues, the term ‘illegal’ lacks content as it circumscribes identity to its bearers purely in relation to the law. She contends that the label operates by masking the identities of those to whom it

⁵ Asylum seekers and refugees are considered as a separate category from economic migrants. International law places obligations on states to host asylum seekers and refugees on humanitarian grounds. States have domesticated these obligations into national laws, for example, the Refugees Act in South Africa.

is attached and obscuring the differences among the illegal individuals. She adds that its emergence as a global identity serves to create a common understanding of insiders and outsiders. Furthermore, it reflects a global view of what are proper and improper reasons to migrate (Dauvergne, 2004:94). On one level, Dauvergne (2004:94) argues that in the present age, migration is for the privileged. She claims that being poor and willing to start one's life over again, for instance, following wars and economic crises, were not reasons for being excluded from migrating in the nineteenth and twentieth centuries as the bulk of migrants were largely people in search of a better life. However, the era of globalisation has reframed traditional 'class' lines by according preference to the educated, skilled and moneyed whose migration is seen as positive while migration of the lower class represents the negative side of globalisation.

On another level, Dauvergne (2004:93) argues that the desirability of richer Western nations as destinations for illegal migrants from poorer countries also "functions as a measure of their status and standing as nations", which they collectively use as justification for securitised immigration policies and the exclusion of the have-nots as it threatens the prosperity of the nation-state. Mills (quoted in Vale, 2002:15) has stated that the painful truth of restricting cross-border movement of people and a securitised immigration policy is that it only reinforces "one of the paradoxes about the contemporary practice of sovereignty: even as states are increasing their efforts to control their borders, they [lose] ground". In this regard, while states have monopolised the authority to restrict movement, they have not been able to effectively control all movement of people (Torpey, 1998:240).

2.3 International migration in South Africa: past and present

2.3.1 Historical context of international migration in South Africa

Transnational human mobility into South Africa has a long history dating back to the pre-colonial era. In fact, it is international migration that has given rise to the diversity of people that make up the 'rainbow nation' of South Africa. South Africa's population, which is estimated at 52.98 million people, is broken down as follows: Black Africans – 79.8%, Coloureds – 9%, Whites – 8.7% and Asians – 2.5% (Statistics South Africa, 2013b:3-4).

It is believed that the Khoikhoi and the San were the first inhabitants of what is presently South Africa from approximately 1,000 BC (Butler, 2009:6). The descendants of the African Bantu population migrated southwards from Central Africa thousands of years ago and began to settle in South Africa by 300 AD (Butler, 2009:10). At the time, Africa was a borderless continent and migration was caused by ecological problems, conflicts and the search for better land and water (Butler, 2009:8; Lekogo, 2008:12). The Caucasian or European population arrived in South Africa between the 16th and 20th centuries. It was during this period that exploration, colonisation and partitioning of Africa into national boundaries took place. South Africa was colonised by the British and later by Dutch

descendants. In the 1800s the British colonialists also imported indentured labour from India, China and Malaysia giving rise to the Asian population in South Africa. Intermarriages between the different racial groups led to the emergence of South Africans of mixed race, commonly known as Coloureds. Previous patterns of African migration were destroyed by colonialism and later patterns of African migration after decolonisation and independence have been largely determined by the legacy of colonialism (Lekogo, 2008:15). The formation of sovereign African states has given states the exclusive authority to decide on rules of entry and exit as well as citizenship.

The modern South African state, formed in 1910, emerged from the two British colonies and two Afrikaner republics that had formed in southern Africa by the end of the nineteenth century (du Toit & Kotzé, 2011:36). It is worth highlighting that the early policies and practices of the Union of South Africa under white minority rule, firstly, through segregation and later apartheid, have not only had a particularly profound impact on South Africa's socio-economic and political development but also shaped migration patterns and policies. These policies together with the migrant labour system and the immigration policy are discussed briefly below in terms of their ramifications on the movement of people.

The Union government and its predecessor were directly involved in the regulation of labour in order to secure and control a steady supply of labour for the industrialisation of South Africa (Stadler, 1987:87; Wolpe, 1995:65). An unprecedented demand for labour had been created by the discovery of diamonds in 1867 and gold in 1886 at the height of British imperialism (Butler, 2009:12; Thompson, 2001:110).⁶ In order to effectively and profitably exploit these resources, the British colonial power realised the need for a combination of massive cheap manual labour and skilled labour – many say that this was done at the will of British mining capital (Southall, 2013:18).

The establishment of reserves in rural areas for the black population provided a source of cheap labour not only in the mines but also in agricultural and manufacturing industries, which were located outside of these reserves and in the hands of white capital (Stadler, 1987:13-14). The demand for these labourers extended beyond the reserves to what were then the British protectorates and colonies, and Portuguese colonies in southern Africa. This led to the establishment of a migrant labour system based on exploitation of the unskilled, rural, African. In the case of those mine workers from outside South Africa, fixed contracts were signed for several months at a time between sending states and the host state. The sending states did not want to permanently lose the migrants while the South African government did not want them to settle in South Africa permanently, so both parties agreed that the migrants would not be accompanied by their families and they would return home after their contracts ended (Crush, 2000a:14).

⁶ Migrant labour began before the discovery of minerals in the sugar plantations in Natal, which depended on labourers from Mozambique (Butler, 2009:13) but rose dramatically from the 1890s to the 1930s (Neocosmos, 2010:56).

Stadler (1987:47) notes that the state also encouraged white migrant labour, especially on the mines, by opening the country up to British citizens and other immigrant workers with experience of the Californian and Australian goldfields, and the Cornish tin mines. These migrants were not only employed in supervisory and skilled positions, but they were also given permanent residency rights in the cities as well as voting rights. White immigration in general was encouraged not only to provide skilled labour but also to boost the numbers of white people in South Africa. Welsh (2009:25), for example, illustrates how British immigration in particular was encouraged as a political strategy ahead of the 1948 elections and was seen as a threat to Afrikaner supremacy and identity.

Immigration policy was a sphere relegated to whites-only politics (Klotz, 2012:195). International migrants had to be able to assimilate into the white population and this was ensured through the use of racist selection criteria in the immigration policy (Crush, 2000b:108; Hopstock & de Jager, 2011:122). The Immigration Act and Regulations of 1913 disallowed black immigration to South Africa except as temporary guest workers who fell under the influx control legislation once in the country. The state therefore pursued a ‘two gates’ policy which differentiated between black and white immigrants and privileged white migration over black migration (Peberdy, 2009:13). South Africa’s two gates immigration policy fell into Castles and Davidson’s (2000:60-61) categories of assimilation and differential exclusion.⁷ The common principle in these categories is that migration “should not bring about significant social and cultural change in the receiving society” (Castles & Davidson, 2000:61).

Vale (2002:21) reveals how violations of sovereignty in pursuit of economic growth, though not unique to South Africa, operated in the context of South Africa’s two-gate apartheid immigration policy – the one gate for cheap migrant labour and the other gate for other forms of migration. He describes how the bilateral arrangement between South Africa’s mining industry and other states in the region “enjoyed a special place in the affairs of southern Africa, beyond the trappings of sovereignty” – the legal fictitious notion that nation-states have a right to rule themselves in their own territory (Vale, 2002:20) and that all states are equal (Keohane, 2003:277). By ensuring that migrant labour remained an easily managed, contained and always temporary commodity, South Africa’s economy grew and helped the apartheid government maintain its racial exclusion policy. Ironically then, “while the migrant labour system seemed to violate orthodox interpretations of South Africa’s sovereignty, in practice it was an important component of it” (Vale, 2002:20).

After the formation of the Union, government policy continued to focus on the supply of labour. It did so through a set of laws known as segregation policies, which also regulated movement of people and the relationship between races (Beinart & Dubow, 1995:1). Some examples of the state’s laws on land and the movement of people included the Land Acts of 1913 and 1936; the Urban Areas Acts of 1923 and 1945; the Bantu Amendment Act and Bantu Labour Act (influx control measures); and the Group

⁷ Assimilation, which was essentially defined by race and religion applied to whites of Christian faith from Europe while differential exclusion was used to control blacks. Differential exclusion meant accepting migrants within strict confines “as workers, not as settlers; as individuals, but not as families or communities; as temporary sojourners, but not as long-term residents” (Castles & Davidson, 2000:61).

Areas Act of 1950 (Matlapeng, 2000:187-188). Collectively these laws ensured: forced resettlement of the African population leaving them with 13% of the land while the remaining 87% was allocated to whites, which served to separate the races; confinement of Africans in rural reserves and exceptional limited residence and movement in urban areas, thus creating impermanence of Africans in urban areas; and denial of land-tenure rights to Africans.

Black workers were housed in hostels in the mine compounds in order to prevent them from filtering into black townships and so remaining in the country (Vale, 2002:20). Deegan (2001:6-7) states that they were accommodated as single workers and paid as such, which allowed employers to keep costs low and minimised the responsibility of the state on their welfare (Vale, 2002:20). Black labourers were denied political and permanent residence rights in urban 'white' areas and were regarded as migrants with no citizenship rights (Hopstock & de Jager, 2011:124; Klotz, 2012:198).⁸ According to Butler (2009:13), the migrant labour system based on the exploitation of black workers "became the backbone of the industrial and commercial systems of apartheid as a whole". Overall, the history of state responses to migration was selective on the basis of race and ethnicity and excluded blacks from citizenship. In addition, they left South Africa with "a socially and spatially fragmented population, suspicious of movements within and across its borders" (Landau *et al.*, 2010:220).

2.3.2 International migration in post-apartheid South Africa

This section shows the changing patterns of migration and the diversity and composition of migrants in democratic South Africa. Johnson (2010:7) notes that as other southern African states gained independence the number of migrant workers they sent to South Africa shrunk drastically. According to Crush (2000a:18), the apartheid government had also begun to see these migrants as a political threat as their countries became politically independent and in the 1960s established the first border posts between South Africa and Botswana, Lesotho and Swaziland. By the time of the transition from apartheid to democracy, the number of African migrants working in the mines had dropped drastically as a result of the implementation of a policy of internalisation, which favoured black South Africans over other Africans, mechanisation of labour and the poor economic performance of minerals in world markets (Simelane, 1999:13).

The creation of a new, democratic, non-racial South Africa in 1994 opened up the country to new migration patterns while retaining some aspects of South Africa's long history of cross-border movement. When the restrictions on movement internally were lifted, the country's previously forbidden cities became major nodes of migration for black South Africans.⁹ As Polzer (2010:2) notes,

⁸ The designation of 'South African' was for whites born in South Africa, as distinguished from white settlers or colonials born in Europe (Prah, 1996:120). Blacks were regarded as citizens of the so-called self-governing homelands or of the neighbouring colonial states for those who came from outside South Africa.

⁹ It must be noted that segregation and apartheid policies did not succeed in preventing the emergence of a permanent urban black population (Stadler, 1987:89; Welsh, 2009:18-19). The abolition of pass laws only allowed an increase in that population and eliminated the control mechanisms previously applied by the state on

the scale of internal migration between provinces and municipalities is by far the most numerically significant form of movement in South Africa, which poses challenges for government planning and social cohesion. The elimination of the ban on non-white immigration also meant that Africans from around the continent could migrate to South Africa. As a result, contemporary democratic South Africa is now a host country to people from other countries who reside temporarily or permanently in the country.

South Africa is an economically prosperous country on the continent and is therefore a major migration destination in Africa. The inflow of people from other African countries into South Africa has been driven by several factors. These include an overlapping cluster of economic, political and socio-cultural factors (Sabela, 2000:104; Tsheola, 2000:85; Solomon, 2003:55). The term ‘mixed migration’ has been used to describe the heterogeneous migration streams from the rest of the continent and the complex migration dynamics. According to Van Hear (2011:2) the notion of mixed migration has gained recognition over the last two decades as “people may move to escape life or death circumstances, they may move to escape intolerable living conditions, they may move to better themselves, or they move for these and other reasons”.

South Africa’s liberal legislation on asylum seekers and refugees makes it an attractive destination for those seeking protection. This is because asylum seekers and refugees enjoy freedom of movement and are not confined to refugee camps as is the case in many African countries. They also enjoy wide protections under the Constitution and Refugees Act which, as will be discussed in Chapter 4, include the right to work, study, primary healthcare and basic education.

The productive activities that migrants are engaged in while in South Africa are not known precisely and they vary. Given the country’s history of migrant labour, the majority of low-skilled migrants from the region today still work in the mining, agricultural and construction sectors, which are the backbone of South Africa’s economy. Migrants are also concentrated in the hospitality industry, cross-border trade, domestic work and informal trading. Several highly-skilled migrants are also found in professions in which South Africa faces a shortage of skills such as the health and education sectors while a substantial number of migrants are pursuing higher education in the country’s tertiary institutions.

As in the past, most African migrants are still from southern Africa – Botswana, Lesotho, Malawi, Mozambique, Namibia, Swaziland and Zimbabwe (Crush & Williams, 2003:2). Zimbabweans arguably make up the largest group of African migrants having overtaken Mozambicans in the last decade (Human Rights Watch, 2007:16-17). In addition to migrants from the region, South Africa has also attracted population flows from Central, East, North and West Africa. While most African migrants in South Africa originate from neighbouring countries, it is worth pointing out that this is not as a result of relaxed entry rules for citizens of these countries, which are all members of the Southern

the movement of people in urban areas. Welsh (2009:21-22) states that the realities of racial interdependence meant that total separation remained a utopian vision.

Africa Development Community (SADC) regional bloc, but rather due to the history of migrant labour, geographic proximity and cultural affinities.

Post-apartheid South Africa, together with Botswana and Namibia, has in the past opposed measures to allow the free movement of persons within southern Africa as part of regional integration (Oucho, 2007:1; Mawadza, 2008:2). These three countries with the highest gross domestic products in the region are considered the most desirable destinations on the continent for African migrants (Oucho, 2007:1; Mawadza, 2008:2). Rejecting the draft protocol on the free movement of people developed in 1995 by the SADC, South Africa feared that the protocol would lead to an influx of jobseekers to South Africa and a rise in xenophobia (Mawadza, 2008:2). Subsequently the protocol was revised and diluted in 1997 and again in 2005 before it was acceptable to member states. South Africa signed the Protocol on the Facilitation of Movement of Persons in the SADC in 2005. The protocol proposes a 'progressive minimisation' of controls as opposed to a complete removal of all controls on the free movement of people (Oucho, 2007:157). To this end, South Africa has signed visa waiver agreements with several SADC countries which allow their citizens entry into each other's countries for up to 30 days without a visa.

It is not known precisely how many foreign migrants reside in South Africa as no official statistics exist. International migration is difficult to measure because of its transient nature, the existence of undocumented migrants and the fact that it is associated with "highly politicised issues surrounding nation building, citizenship and belonging" (Landau *et al.*, 2010:218). It "changes the very composition of one's population and therefore potentially one's domestic policies; it brings the outside in, as it were, and it involves sending a piece of one's nation into another society" (Weiner, 1985:453).

In 2009 the total number of migrants was estimated to range between 1.2 million and 1.7 million or less than 4% of the total population by the African Centre for Migration and Society (ACMS) (Landau *et al.*, 2010:220). The majority of international migrants originate from within the African continent and reside predominantly in metropolitan areas. The UN estimates that 72% of international migrants to South Africa in 2008 came from African countries (United Nations, 2008). In 2013 Statistics South Africa (Stats SA) estimated that the African migrant population between 2006 and 2010 stood at 974,000 and projected a rise to 998,000 between 2010 and 2015 (Statistics South Africa, 2013b:6).

In the absence of any accurate figures on the number of migrants in South Africa, the number of permits issued by Home Affairs gives an indication of the numbers of legal migrants, their purpose in the country and their countries of origin. According to Stats SA, a total of 141,500 temporary resident permits and 1,283 permanent residents were issued by the DHA in 2012 (Statistics South Africa, 2013a).¹⁰ Of these, 54.4% temporary resident permits and 53.2% permanent residents were issued to African migrants. Figures 2.1 and 2.2 show the top eight recipient African countries of these permits.

¹⁰ However, these figures do not indicate how many of these permit holders are still in the country and how many of them are changes from one permit to another by migrants who were already in the country, as opposed to first time applicants.

They show that while most temporary and permanent resident permits were issued to Zimbabweans, which borders South Africa, the other top permit recipients were from countries that do not border South Africa and that fall outside the southern African region such as Nigeria, the Democratic Republic of Congo (DRC), Cameroon and Kenya.

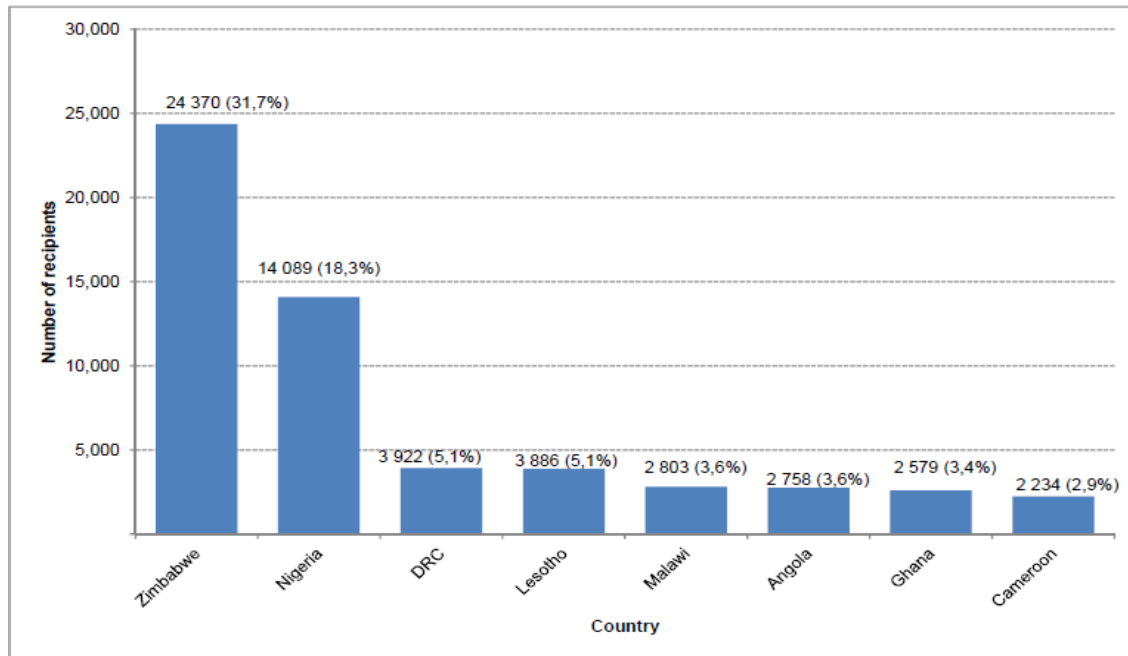


Figure 2.1: Number of recipients of temporary residence permits from the eight leading African countries, 2012

Source: Statistics South Africa (2013a:17).

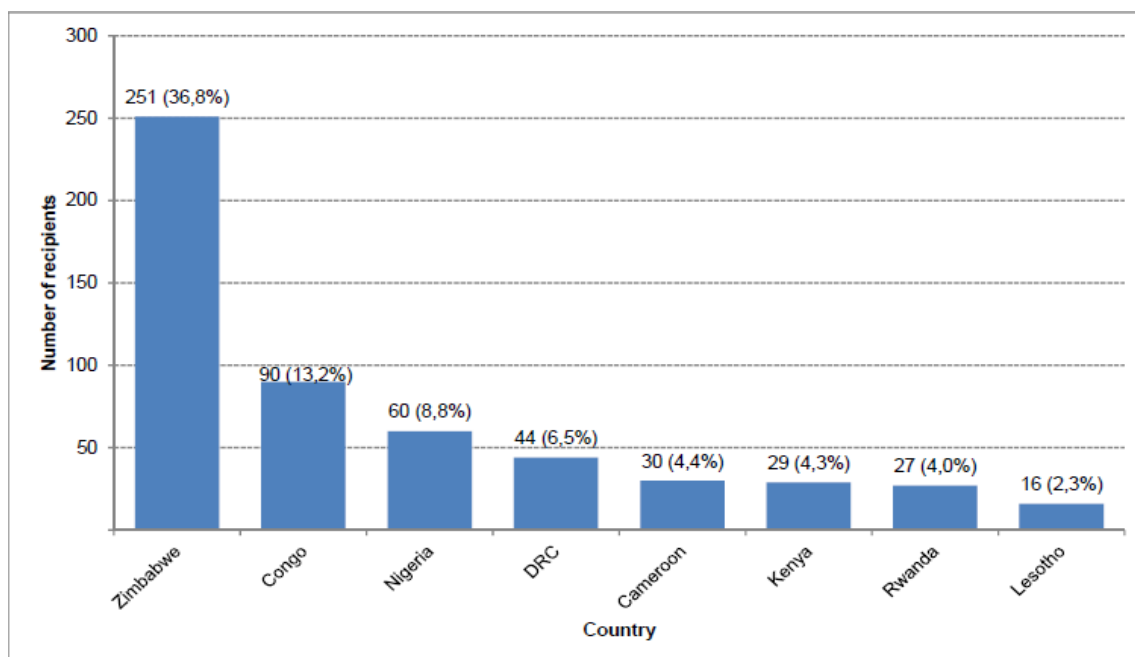


Figure 2.2: Number of recipients of permanent residence permits from the top eight African countries, 2012

Source: Statistics South Africa (2013a:32).

According to the United Nations Refugee Agency (UNHCR), South Africa hosts approximately 230,500 asylum seekers and 65,300 refugees (UNHCR, 2013:2). They are mostly from Zimbabwe, Ethiopia, Somalia and the DRC.

2.3.3 Post-apartheid immigration policy

International migration in post-apartheid South Africa is regulated by the Refugees Act which came into effect in 2000¹¹ and the Immigration Act, which was promulgated in 2003 replacing the Aliens Control Act of 1991. The former deals with persons forced to flee their home countries due to a range of circumstances and South Africa's obligations under international law to host such people while the latter deals with economic migrants. While the Immigration Act mainly gives priority to migrants with skills that are in short supply in South Africa, it also retains the migrant labour system by giving special privileges to the mining and agricultural sectors to recruit temporary labour from outside South Africa.

According to Vale (2002:10), South Africa has taken a neo-realist perspective towards international migration to the country. By focusing on the idea that South Africa "lives up against, rather than with, its neighbours", he makes two theoretical points underlying the government's perspective. First, is the assumption that policy considerations must only be made based on the 'national interest', including migration, and second is that the main driving force behind policy options is power considerations (Vale, 2002:11). The latter allowed South Africa, as a super power in southern Africa to "stake out an assertive position on cross-border movement in the region" (Vale, 2002:11). Writing about events following the transition from apartheid, Vale (2002:12) asserts that this neo-realist perspective gained its power from the public discourse on the influx of foreign Africans into the new South Africa. It also rested on the "hegemonic authority of constructions of danger and the link between these and the search for national identity" (Vale, 2002:12). The security discourse of the old South Africa based on control and surveillance, argues Vale (2002:12), was seen as the best policy option in dealing with the migration 'problem' notwithstanding that migration has made South Africa and indeed the region.

South Africa's post-apartheid immigration policy has been characterised by containment, exclusion and deportation (Human Rights Watch, 2007:17; McKnight, 2008:21). The Immigration Act of 2002 is seen as largely retaining a strong sovereignty and security-centred agenda reflecting a narrowly defined notion of national interest, which is not very different from the former apartheid regime's position (Landau *et al.*, 2010:223). Klaaren and Ramji (2001:35) contend that the post-apartheid immigration policy did not change substantially and if anything, the Immigration Act has entrenched

¹¹ Prior to this South Africa did not officially recognise refugees even though it hosted significant numbers of Mozambican refugees in the 1980s (Crush & Williams, 2003:8).

the lack of legal status of undocumented migrants. Further, they argue that the institutional and symbolic effect of the Immigration Act is that it ‘irregularises’ people by making it almost impossible to retain legal status over time. Some of the mechanisms of “illegality” are:

- a) South African citizenship is difficult to obtain resulting in a number of residents in the country without citizenship rights;
- b) avenues for the regularisation of stay are hampered by bureaucratic inefficiency and lack of political will;
- c) the bureaucratic inefficiency of the DHA in the delivery of immigration services contributes to the production of illegality; and
- d) the continuation of the ‘two gates’ system for temporary labour in South Africa (Klaaren & Ramji, 2001:39).

The Act criminalises undocumented migrants and grants the police generous provisions for arrest, detention and deportation of any person suspected of being in South Africa illegally (Landau, Ramjathan-Keogh & Singh, 2005:14).

It is almost impossible for foreigners with “temporary contracts, without contracts or with refugee/asylum status to regularise their stay or claim the status of inalienable, inviolable insiders” (Landau, 2011:8). As a result, the majority of the foreigners, reside in South Africa with few practical legal protections and residency rights (Landau, 2011:8). According to Vale (2008), migration to South Africa is only possible through the same battery of conditions which enable migration to Europe and the United States. These conditions include wealth and skills, which Vale argues are in short supply in Africa. This leads Vale to conclude that in this way, the immigration policy “includes and excludes along a chain determined by the chance of birth and the privilege of childhood” (Vale, 2008).

The content of the Refugees Act and the Immigration Act and their implementation will be discussed in greater detail in Chapter 4. This makes it possible to later identify from the empirical data when officials actively and intentionally step out of the legal and normative order thus denying migrants their rights. The chapter will therefore also focus on the rights and obligations of migrants and incorporate the Constitution of South Africa into the discussion.

2.3.4 Legal categorisation of migrants in South Africa

International migrants are broadly categorised as temporary residents, permanent residents, asylum seekers, refugees and illegal foreigners by South African law. *Temporary residents* include those with permits to enrol in learning institutions, those with work permits and others visiting the country on a short-term basis for reasons other than work or study. Work permits of different kinds are issued to those with scarce skills, those who have been transferred to the country because they work for an international company with offices in South Africa, and those who have been hired in positions where no suitably qualified South African could be found. Other temporary residents include those operating

their own businesses in South Africa and retirees of a certain net worth determined by the Minister of Home Affairs. Temporary residents with work, investor or retiree permits may be eligible to apply for *permanent residence* after five years in South Africa. Individuals residing outside South Africa with a high net worth or exceptional skills may also qualify for permanent residency without necessarily having lived in South Africa before. Refugees who have been in the country for five years and are deemed to remain refugees indefinitely also qualify for permanent residence. Another avenue for acquiring permanent residence status is through government amnesties. The South African government implemented three amnesty processes between 1995 and 2000 for eligible citizens of SADC countries (Steinberg, 2005:15). An *asylum seeker* is a non-citizen seeking refugee status in South Africa while a *refugee* is a person who has been recognised as a refugee in South Africa in terms of the law. Such a person has successfully gone through the process of refugee status determination, which is explained in Chapter 4.

While the majority of migrants in South Africa are legal, a sizeable number are *undocumented migrants/ illegal foreigners*. The literature prefers to use the term ‘undocumented’, which is the term used by the UN and the International Organization for Migration. It is seen to be a more neutral term than ‘illegal’, which is arguably loaded with connotations of criminality. However, South Africa’s Immigration Act of 2002 makes use of the term ‘illegal’. These migrants might initially have entered the country legally but have either overstayed their visas or not lodged an asylum claim to regularise their stay. They could also have simply entered the country through unauthorised means. Some ways of entering the country illegally include being smuggled through official border posts using networks most of which work in cahoots with immigration officials and jumping the border using unofficial ports of entry, for example, swimming across the Limpopo River from Zimbabwe and walking through the Great Limpopo Transfrontier Park from Mozambique and Zimbabwe. Table 2.1 shows the categories of migrants based on DHA classification which are of interest to this research.

Table 2.1: Categories of migrants selected for the study based on DHA categories

Involuntary/Forced migrants		Asylum seekers
		Refugees
Voluntary migrants	Temporary residents	Students
		Workers
		Others (investors, retirees, dependant relatives of temporary and permanent residents)
	Permanent residents	Permanent residents
Undocumented migrants		Illegal foreigners

2.3.5 Popular perceptions of international migration in South Africa

Migration is said to be neither positive nor negative. Indeed, it is the inability of government institutions to respond adequately to human mobility that produces so called negative effects (Landau *et al.*, 2010:219). Given the politicised nature of international migration in South Africa, foreign migrants are viewed as “potential contaminators of the physical and metaphysical metaphorical body of the nation” (Peberdy, 2009:158). Broadly speaking, migrants in South Africa are viewed in negative terms, which in itself is a breeding ground for xenophobia. A number of false claims are often stated as facts with little regard for empirical evidence to reinforce these claims. Four common perceptions that have long been perpetuated by state officials, policy makers, journalists and researchers on international migration in South Africa are discussed below and contrasted with the evidence available. These claims may help to explain the behaviour of the state officials examined in this study towards African migrants.

The *first perception* is that South Africa is being flooded with foreign migrants. Sensationalist headlines and metaphors depict African migrants as ‘masses’ or ‘hordes’ that are ‘flooding’ or ‘invading’ South Africa creating the impression that migration is out of control and if allowed to continue spells doom for the country.¹² Migration is presented as a new and seemingly overwhelming problem for the post-apartheid state that has created a sense of fear, helplessness and desperation (Trimikliniotis, Gordon & Zondo, 2008:1324; Centre for Development and Enterprise, 2008:8). In 1994 the police estimated that there were 8 million undocumented migrants in the country (Human Rights Watch, 1998:19). In 1997 former Minister of Home Affairs, Mangosuthu Buthelezi, in his contribution to the Budget Debate in the South African Parliament in 1997 proclaimed that:

With an illegal population estimated at between 2.5 million and 5 million, it is obvious that the socio-economic resources of the country, which are under severe strain as it is, are further being burdened by the presence of illegal aliens. The cost implication becomes even clearer when one makes a calculation suggesting that if every illegal costs our infrastructure, say 100 Rand per annum, then multiplied with whatever numbers you wish, it becomes obvious that the cost becomes billions of Rands per year. (Minister of Home Affairs, 1997)

The problem with this perception is threefold. First, legal and illegal migrants are conflated into the one category of ‘illegal aliens’. Second, it assumes that migrants are a burden without considering their contribution to development. Third, alarmist and exaggerated figures, whose sources are unclear and unsubstantiated have been presented by state officials and become public discourse. While data on illegal migration remains elusive, the deportation statistics of the DHA have been used by the state to provide an indication of the number of illegals even though it is not clear how the figures arrived at run into the millions presented by the Minister. Moreover, Valji (2003:3) indicates that using deportation statistics is “a problematic methodology that is premised upon an even more problematic process”. The statistics show that there has been a growing increase in the number of deportations

¹² In this sense media reportage both reflects the reality that xenophobia exists in society as well as the media as a source of xenophobia (McDonalds & Jacobs, 2005:296).

from 50,000 deportations in 1990 to just over 300,000 in 2007 (Vigneswaran & Duponchel, 2009:8).¹³ While this is a cause for concern, these numbers speak to the issue of migration management in South Africa, which also contributes to the production of illegality. However, this is not something that will be pursued at this juncture. The point being made is that the number of illegal migrants is overstated.

More educated guesses on the number of international migrants have estimated the figures to be much lower. The earlier cited estimates by the ACMS of between 1.2 million and 1.7 million or less than 4% of the total population in 2009 include both legal and illegal migrants. It is not clear whether the 2013 estimates of Stats SA of an African migrant population of 974,000 include illegal foreigners. However, as stated earlier, these estimates, which are regarded as more credible than others, are not consistent with those which put the Zimbabwean migrant population alone at 1.5 million. Nonetheless, it is difficult to fathom that the number of illegal migrants could exceed that of legal migrants at any given point in post-apartheid South Africa. The evidence suggests that the numbers are much lower than popular estimates and that certain state officials are playing the 'numbers game' and stigmatise migration as a 'problem' (Trimikliniotis *et al.*, 2008:1326).

The *second perception* is that foreigners present serious challenges to the country's social services thereby threatening citizens' livelihoods and socio-economic rights (Landau, 2006:228). This is the point that the former Minister of Home Affairs was making in the excerpt of his speech quoted above. It was also echoed a few years later by Johannesburg's Executive Mayor, Amos Masondo (quoted in Landau *et al.*, 2005:6), in 2004 when he argued that:

In keeping with the international trend of growing migration, our city has become a magnet for people from other provinces, the African continent and indeed the four corners of the world. While migrancy contributes to the rich tapestry of the cosmopolitan city, it also places a severe strain on employment levels and public services.

In addition, McConnell (2009:35) states there is a common perception that every job occupied by a foreigner is one less job for a South African. There is, however, little evidence to back the claim that foreigners are threatening the livelihoods and entitlements of citizens. To paraphrase Landau (2006:232), firstly, their numbers in South Africa's cities pale in comparison to the number of South African citizens migrating from rural areas to the cities. Secondly, employers have expressed preference for the work habits of foreign workers who are on average better trained, more experienced and willing to work for lower wages than their South African counterparts (Crush and Williams, 2001:8). This means that they are able to contribute economically. Finally, those particularly from countries not bordering South Africa must demonstrate to immigration officials that they have the resources to support their extended stay in the country, thus only the more economically endowed are able to migrate. Of those who can easily enter the country from bordering countries, there are bound to be those who would attempt to benefit from free public services, however, to single them out makes little sense. Research by the Centre for Development and Enterprise (CDE) in Johannesburg showed

¹³ These figures do not include repeat deportations/offenders.

that foreigners are twice more likely to be self-employed and self-sufficient than local residents (Centre for Development and Enterprise, 2008:10). Migration in this instance, therefore, becomes a scapegoat for the shortcomings in the delivery of public goods by the government.

A *third claim* is that ‘illegal immigrants’ are responsible for the high crime in South Africa (Human Rights Watch, 1998:124). For example, the Executive Mayor of Johannesburg was quoted in the press in 2004 as having stated that there are “30 Nigerians on every street corner committing crime and undermining the city’s safety and security” (Landau *et al.*, 2005:8). To quote Solomon (2003:33), who argues that illegal migration is a source of insecurity, “the millions of illegal immigrants living in South Africa overstrain the country’s social services and exacerbate South Africa’s spiralling crime rates”. Another of the Southern African Migration Project (SAMP) surveys found that 48% of South Africans feel that foreigners are a criminal threat (Crush & Williams, 2003:1).

No one can deny that foreigners have been convicted of various crimes in South Africa. For instance, transnational organised crime networks, ranging from human trafficking to narcotics and arms trade, certainly include foreigners and locals and contribute to the security challenges of states, including South Africa. However, the link between foreignness and crime is a tenuous one as people commit crime for reasons beyond the fact that they are foreigners. Moreover, in 2001 statistics from the SAPS showed that no more than 2% of arrests were of non-nationals (in Harris, 2001:34). So while some migrants have been involved in criminal acts, a generalisation has been made to the effect that migrants are responsible for crime. SAMP’s research has shown that migrants are disproportionately the victims of crime given the prevalence of xenophobia and the lack of protection by the police (McDonald, Mashike & Golden, 1999:2). Morris’s interviews with Congolese and Nigerian migrants in Johannesburg indicated that “they all felt that crime in South Africa was far more widespread and violent than in their country of origin” (Morris, 1998:1129).

The *fourth commonly held belief* about African migrants in South Africa is that they are poverty stricken, desperate people who intend to settle in South Africa permanently as immigrants (Harris, 2001:128). In fact, it seems that the term ‘refugee’ has pejorative connotations in South Africa and does not evoke the empathy that one would expect. It is synonymous with all poor foreigners (Landau *et al.*, 2005:18). While African migrants tend to be stereotyped into this category of refugee, as it is commonly interpreted, section 2.3.3 has shown that there are different categories of migrants who are in the country for different reasons and are thus not a homogenous group. In addition, immigration law, through its stringent visa requirements, tends to be more selective of those who are better off economically than the destitute. Nonetheless, even the poor migrants who manage to make their way to South Africa tend to find work relatively easily because they take whatever comes their way. However, because of their desperation and vulnerability to exploitation, often times they earn lower wages than South Africans for the same job. SAMP’s extensive research also suggests that migration to South Africa is predominantly short-term and migrants retain links with their home countries with the hope of returning one day (McDonald *et al.*, 1999:2; McDonald, 2000:8). However, it is not

uncommon to find migrants who have been in South Africa longer than they had hoped due to prolonged unfavourable conditions in their home countries. Many migrants also come to South Africa unaccompanied by their entire immediate family members with the intention of going back home, or migrating to a third country after some time. Whether a migrant decides to settle in South Africa permanently or not is a personal choice based on a number of considerations, including having to navigate a restrictive immigration policy.

Research conducted in Johannesburg found that “African migrants were more likely to hire someone to work for them in the past year than the South Africans amongst whom they lived and that more than two-thirds of those hired by migrants were South Africans” (Landau, 2006:231). The CDE study also found that 12% of the 44% of foreigners who are self-employed created jobs for South Africans (Centre for Development and Enterprise, 2008:8). In the last decade foreign entrepreneurs, particularly Somalis with refugee status, have come to dominate the *spaza* shop market in South Africa’s urban informal settlements (Charman & Piper, 2012:83). Therefore, the evidence does not seem to support the proposition that many of the migrants are the desperate poor, dependent on South Africa’s social services, and planning to settle in the country for the rest of their lives.

It can be argued that these misconceptions have shaped state and public responses to migration in post-apartheid South Africa. This is despite the evidence available to counter these claims. Such negative perceptions have led to South Africans being strongly opposed to immigration and have translated into negative feelings towards international migrants. While such arguments might be similar to those advanced by those who are anti-immigration in other countries, what is unique in South Africa is that these negative views are biased towards African migrants. As a result, migration is framed “as a phenomenon to be prevented, slowed or stopped” (Landau, 2006:222). This is in line with much of the literature by migration scholars which highlights the potential threats that migrants pose to national security. According to Ibrahim (2005), there has been a global trend towards securitisation of migration where migration is increasingly described in security terms and which normalises the view that migrants are a threat. This is in contrast to the rarely mentioned fundamental role that migrants can play in developing national economies.

The increase in international migration into South Africa, particularly of Africans, has been accompanied by a rise in xenophobia (Guy, 2004:85). One would expect that negative perceptions of international migration, such as those highlighted above, would be accompanied by negative attitudes towards foreigners. Handmaker and Parsley (2001:48) argue that this is because the migration debate in South Africa has centred on blaming migrants for a host of South Africa’s socio-economic problems. It is worth stressing from this section that state officials have played a key role in promoting a negative discourse on migration and a fear of foreign domination.

2.4 Conclusion

This chapter examined international migration in South Africa. It focused on a particular group of international migrants – African migrants – who form the majority of migrants into post-apartheid South Africa and the attention that they receive from South Africans, which are important for this dissertation. The chapter began by recognising that states have the sovereign authority to decide who can and who cannot enter and stay on its territory. By providing an overview of international migration trends in South Africa and the role of the state in shaping migration, it showed that South Africa has a long history of cross-border migration and its diversity is the result of international migration. It also highlighted differences between African migration in the pre-apartheid and post-apartheid era. In the former, migration was pursued by the state through a two gates policy – black migration took place within the context of the migrant labour system and under the government's segregation policies, whereas white migration was regulated by immigration legislation. In the latter, all migration is regulated by the Refugees Act and the Immigration Act (which replaced the Aliens Control Act from 2002). With regard to similarities between migration in the two dispensations, the chapter highlighted the fact that most African migrants historically and to date still come from neighbouring southern African countries while legal provisions exist within the Immigration Act for the continuation of the migrant labour system. An important takeaway from the discussion on state responses to the issue of immigration is that they have implications for the conditions of the migrant population in the host country.

The chapter also noted that contemporary migration is more complex and African migrants, who now come from all sub-regions of the continent, are drawn to South Africa by a range of economic, political, socio-cultural and personal factors. It also pointed out that the presence of African migrants in South Africa is largely viewed in negative terms by the state and the public. This is reflected by a dominant political discourse that has centred on: overstating the scale of international migration to suggest an overwhelming problem for the country; presenting migrants as a threat to citizens' livelihoods and security; and fears that migrants plan to settle in South Africa permanently to the detriment of South Africa's scarce resources, which belong to its citizens. The resulting xenophobia, which continues to be a feature of South Africa's democracy, is discussed in the following chapter.

Chapter 3: Literature review: Xenophobia and the state of exception

3.1 Introduction

This chapter, structured in two main parts, reviews the existing literature which informs this study and to which this study seeks to contribute. After defining some key terminology, it proceeds to provide an account of the prevalence of xenophobia by looking at the various ways in which xenophobia is manifested. It also critically reviews various theories that have been proffered to explain the emergence and spread of xenophobia. These are thematically distinguished in terms of economic, sociological, socio-cultural and political factors. The literary sources examined here primarily relate to the South African context in the post-apartheid period.

The second part of the chapter is an extension of the theoretical section on xenophobia and focuses specifically on the theoretical framework that will be used in this dissertation – Giorgio Agamben’s theory of the state of exception, which is characterised by sovereignty and bare life. The author will apply this theoretical framework to explain how sovereign power in the South African state operates through day-to-day practices of state officials that result in the drawing of distinctions between citizens and non-citizens and its implications for xenophobia. Reference is then made to South African and international literature critiquing Agamben’s theory and also showing how it has been interpreted and used as an analytical tool in the social sciences and humanities. This leads to the author’s operationalisation of the theory in the study in order to identify it in the case of South African state officials’ treatment of African migrants. The chapter concludes with a discussion of the gaps in the literature which this study hopes to address by focusing on the relationship between the state and non-citizens rather than on the relationship between citizens and non-citizens which has received much attention in the literature.

3.2 Definition of key concepts

Five key terms used in the study are defined here – migrant, state, xenophobia, state of exception and bare life.

3.2.1 Migrant

The study adopts the United Nations (UN) definition of a migrant as “an individual who has resided in a foreign country for more than one year irrespective of the causes, voluntary or involuntary, and the means, regular or irregular, used to migrate” (International Organization for Migration, 2011:62). As stated in Chapter 2, the different categories of African migrants included in this research are asylum

seekers, refugees, temporary residents, permanent residents and illegal foreigners of various African nationalities who have been living in South Africa for a minimum of one year.

3.2.2 The state

The South African state, disaggregated into three state institutions, is the interpretive frame through which international migration and xenophobia are examined in this study. Structurally, the state is characterised by a bias towards its citizens and an implicit alienation of the non-national (Monson, 2012:463). International migrants, therefore, challenge the triad of state-territory-citizen and are thus constructed as a threat to the national order of things. Agamben, in his writing, takes the state as a given and does not provide a definition of the state. However, the Western context in which he writes, his acknowledgement that the state is constituted by a defined territory with a population that is ruled by a government, and the notion of violence by the state suggest that he adopts a classical definition in line with Max Weber and others.

The sovereign state is the primary unit of analysis in mainstream International Relations (IR) theories, which trace the emergence of the global state system to the 1648 Peace of Westphalia treaties. The state is accepted as a universal form of governance and is the supreme authority within its jurisdiction. According to Keohane (2003:276), the state still remains as “the principle unit of protection and collective action”. This is despite claims that suggest its diminishing importance in the face of globalisation and organisations that increasingly operate beyond the boundaries of states.

Dominant traditional definitions of the state describe it in terms of functionalist and organisational dimensions (Heywood, 2007:90). The most dominant definition in scholarship is perhaps that of Max Weber who defines the state in terms of control of the means of violence. Weber defines the state as “a human community that (successfully) claims the monopoly of the legitimate use of force within a given territory” (Weber, 1984:33). Richmond (1994:35) suggests that the accuracy of this assertion depends on interpretation of the term ‘legitimate’ as states do not have a monopoly on violence or the use of weapons. Weber holds that “the right to use physical force is ascribed to other institutions and individuals only to the extent to which the state permits it” (Gerth & Mills, 1948:78). Giddens, on the other hand, recognises that it is only in some modern states that the state can “successfully lay claim to the monopoly of the means of violence, and only in such states does the administrative scope of the state correspond directly with territorial boundaries about which that claim is made” (Giddens, 1985:18). According to Weber, the bureaucratic state order is an especially important characteristic of the modern state (Gerth & Mills, 1948:82).

Giddens (1985:17) contends that in ordinary language the state can either refer to an apparatus of government or power, or to the entire social system subject to that government or power but he technically defines the state as “a political organization whose rule is territorially ordered and which is able to monopolize the means of violence to sustain that rule” (Giddens, 1985:20). A nation-state is “a power-container whose administrative purview corresponds exactly to its territorial delimitation” (Giddens, 1985:172). It is a set of institutional forms of governance maintaining an administrative

monopoly over a territory with demarcated boundaries, its rule being sanctioned by law and direct control of the means of internal and external violence (Giddens, 1985:121). The idea of a nation in nation-state encompasses the idea of a community that shares a common language and history, and whose borders coincide with such a community.

Dryzek and Dunleavy (2009:2) characterise a state as “a single, unified source of political authority for a territory, drawing upon the undivided loyalties of its population, operating in a well-organized and permanent way and directed towards the interests of the whole society”. According to Jackson (1990:38), a sovereign state “consists traditionally of a bordered territory occupied by a settled population under effective and at least to some extent civil – that is ‘civilized’– government”. It is a political organisation that has the following elements: “the capacity, within a delimited territory or territories, to make laws and effectively sanction their up-keep; exert a monopoly over the disposal of the means of violence; control basic policies relating to the internal political or administrative form of government; and dispose of the fruits of a national economy that are the basis of its revenue” (Giddens, 1985:282).

While the state has continued to evolve since its early beginning into the modern state as we know it today, the definitions above seem to refer to the original modern European nation-state, which has globally emerged as the dominant political form since the early nineteenth century. The four definitions of the state advanced by Weber, Giddens, Dryzek and Dunleavy, and Jackson emphasise the territorial, institutional and central nature of the state. They can be viewed as describing an ideal state, with Western states believed to bear closest resemblance to these definitions. The ‘classical’ state, as it were, has continued to evolve and has provided a model to other states outside Western Europe that have since developed. It has been adopted across the world with variations.

The state exists to provide political goods to those living within its borders and focuses on the concerns and demands of its citizens (Rotberg, 2003:2). The political (public) goods typically provided by states include security; essential political, civil and human rights; healthcare; education; physical infrastructure; and a monetary and banking system (Rotberg, 2003:3; Rotberg, 2004:3). Rotberg (2003, 2004) argues that states can be judged as strong, weak or failed according to the extent to which they are able to provide these goods, which according to him are hierarchical, with security being the most crucial. Zartman (1995:5) identifies the following three key intertwined functions of the state:

the state as the sovereign authority – the accepted source of identity and the arena of politics; the state as an institution – and therefore a tangible organization of decisionmaking and an intangible symbol of identity; and the state as the security guarantor for a populated territory.

The trajectory of state formation in Africa differs from that in Western Europe where modern states first emerged. As many African states vitiate from the Weberian benchmark, the scholarship on the African state has attached many adjectival qualifiers in defining and theorising the African state. Some of the qualifiers of the misnomer African state which are used in academic writings include ‘post-

colonial', 'predatory', 'failed', 'weak', 'quasi' and 'fragile'. These depictions are the result of African states' inability to perform the functions required for them to pass as states as outlined by Zartman (1995:5) and Rotberg (2003:2). Gambari (1995:222) suggests that the maintenance of law and order in Africa has existed tenuously because the instruments of the state have been unable to cope with the demands of governance. According to Khadiagala (1995:35), the African state is thus described because it lacks "social cohesion, an institutional core and organizational capacities".

The modern African state, though meeting the basic characteristics of states, is unique in a number of ways. As Gambari (1995:222) and Giddens (1985:272) note, it emerged from state apparatuses originally established during colonialism. Zartman (1995:1) alludes to the scepticism surrounding the viability of African states brought about by the relative newness of the African state and colonialist claims of African unreadiness for sovereignty at independence. The African state is largely based on boundaries drawn up by the colonialists, which resulted in the arbitrary splitting of nations and peoples across borders (Gambari, 1995:222). Consequently, they have been referred to as 'state-nations' to denote the emergence of the state prior to that of the nation in contrast to European states where the process occurred in the reverse (Giddens, 1985:272). This term also highlights the heterogeneous ethnic and cultural groups that make up the populations of African states perhaps with the partial exception of Lesotho, Swaziland and Somalia (Giddens, 1985:273). Giddens acknowledges that the sovereignty of numerous post-colonial states, such as those found in most of Africa, "may be limited both by a relatively low level of internal administrative control and by external economic dependence" (Giddens, 1985:287).

Herbst (2000:94) argues that the territorial boundaries of Africa established following the Berlin Conference of 1884/5 were the most consequential part of colonialism. Herbst (2000:103) explains why African leaders at independence collectively agreed to retain these boundaries. Firstly, the new leaders realised that basing their boundaries on the actual territory administered by the state would result in the size of the state becoming much smaller. Secondly, they recognised that redrawing their boundaries would inevitably be a violent process that would threaten their own positions. Indeed, many of these boundaries have persisted with a few notable exceptions such as the secession of Eritrea from Ethiopia and South Sudan from Sudan. Herbst (2000) contends that the creation of territorial states in Africa, in contrast to nation-states in Europe, has had ramifications on state consolidation as African states have struggled to exercise authority over their entire jurisdictions. Furthermore, he notes that African states are not confident of their sovereignty because they do not control the full extent of their territories and are resistant to any measures that would purportedly diminish their authority such as implementing certain agreements within the context of regional integration and reducing the salience of citizenship by conferring a broad range of human rights to non-citizens (Herbst, 2000:234). This could explain why many states are against open borders and free movement of people within their regional economic groupings.

Jackson (1990:21) describes post-colonial states (not an internally undifferentiated category) as being similar to all other states only in terms of juridical statehood. His argument is that the main reason for the persistence of the African state is its recognition by all other states since statehood became a global norm. In terms of 'empirical statehood', these states are limited in their "political will, institutional authority and organised power to protect human rights or provide socio-economic welfare." In the sense of empirical statehood, therefore, he claims that they are still far from complete and refers to them as 'quasi-states' (Jackson, 1990:21). His analysis of sovereignty is shaped around the ideas of negative and positive sovereignty, which are worth explaining briefly. He defines negative sovereignty as freedom from outside interference or non-intervention (Jackson, 1990:22). Negative sovereignty is a legal attribute that refers to the constitutional independence that post-colonial states acquired from their former colonies. Positive sovereignty as a substantive condition refers to a government which not only enjoys negative sovereignty but also "possesses the wherewithal to provide political goods for its citizens" (Jackson, 1990:29). Jackson associates empirical statehood with positive sovereignty and challenges the capabilities of post-colonial states, which in his view lack both empirical statehood and positive sovereignty. He states that most of them "are not yet beneficial to the masses of ordinary people who inhabit them and whose living conditions have improved little if at all as a result of independence" (Jackson, 1990:176).

Mamdani (1996:16-18) argues that the structure of sovereign rule in African states is based on the colonial legacy of "the bifurcated state" that is based on the urban-rural divide. To quote him:

Direct rule was the form of urban civil power. It was about the exclusion of natives from civil freedoms guaranteed to citizens in civil society. Indirect rule, however, signified a rural tribal authority. It was about incorporating natives into a state-enforced customary order. (Mamdani, 1996:18).

This legacy points to the challenge that African states face in projecting power beyond their main cities into their hinterlands and, by extension, the relationship between central authorities and local leaders. Herbst (2000:197) points out that it is in the rural areas that the contradiction of states having sovereign authority but not actual control is most glaring.

Dunn (2001:55) criticises the unproblematised acceptance of the state in IR and argues that dominant definitions of the state do not fit the African reality. This, he opines, is not due to the African context in which the state was transplanted but rather due to the limitations of state-centric approaches for understanding the state in Africa. Dunn (2001:56) argues that there is need to further interrogate and re-examine the conceptualisation of the state. In contrast, Chabal and Daloz (1999:11) maintain that the most prevalent interpretations of the African state have a tendency to overemphasise the impact of colonialism on the formation of the African state. Herbst (2000:29) seems to agree with Chabal and Daloz by observing that most scholars have not succeeded in "developing a view of African politics that takes into account the precolonial period seriously while still acknowledging the traumas created by white rule". However, Mazrui (1986:67) recognises the existence of states and stateless societies in

Africa before colonialism. Pre-colonial African states had “centralised structures of authority and coercion” while in stateless societies authority was “diffuse and decentralised” (Mazrui, 1986:67).

South Africa is regarded as a ‘strong’ state when compared to most African states. It is ranked among the top five best governed African states in international governance indices year after year alongside Mauritius, Cape Verde, Botswana and the Seychelles. However, South Africa grapples with the apartheid legacy, high crime (reflected in low safety rankings), corruption, poor quality of basic education and HIV/AIDSs (Rotberg, 2013:180).

It is important to highlight that this study does not study the state as a unit of analysis in the traditional IR sense. It also recognises that conventional definitions of the state refer to ideals, which many states including the South African state fall short. However, it is important for purposes of the study to underline the role of the state as a guarantor of rights and provider of security to those living in its territory. Non-citizens are excluded from the state by definition but at the same time states also have obligations towards non-citizens residing within their borders. The fact that non-citizens also form part of the population within states makes research into how states regulate the entry of international migrants into their borders and respond to their presence in their polity pertinent. The South African constitution confers rights to all who live in its territory rather than to citizens only, with a few exceptions. Thus, a fundamental question this study explores is whether in reality the actual enjoyment of rights is tied to citizenship or dissociated from citizenship.

This study presents an opportunity to test, albeit on a limited scale, some of the inherent assumptions on the nature of the state and sovereignty in the context of three South African state institutions. These include that: the state is a unitary system and coherent set of institutions and practices; that state actors are bound by official law, policy and principles; and that internal sovereignty is authored by the state or informed by unified strategies of control (Landau & Monson, 2008:333; Landau, 2011:15-16). By using Agamben’s theory of the state of exception, the study investigates how the state “employs law through the exception, helping to reveal the paradoxical and omnipotent qualities of sovereign power” (Brophy, 2009:199).

3.2.3 Xenophobia

Xenophobia is a global phenomenon that varies in intensity and manifestation in different contexts. Two things are unique about xenophobia in South Africa. The first is that it is predominantly directed at black African foreigners, hence the term ‘Afrophobia’. The discrimination that black migrants experience in South Africa is comparable to that faced by black immigrants in other continents (Morris, 1998). This is despite the fact that South Africa is an African country and the majority of its population is black. African migrants in South Africa are no less immune to xenophobia in South Africa than they would be in Europe, Asia or North America where xenophobia stems from rivalry between nationals and non-nationals over scarce resources and a clash of cultures. Secondly, is the

violent manifestation of xenophobia beyond xenophobic attitudes. According to Matsinhe (2011:306), the 2008 pogroms, which were neither the first nor the last of xenophobic violence, are a salient manifestation of a broadly and deeply entrenched disdain of black foreigners.

The common definition of xenophobia is “the hatred or fear of foreigners, combining the Greek *xenos* (foreign) with *phobia* (fear)” (Crush, 2008:15). The South African Human Rights Commission (SAHRC) defines xenophobia as “the deep dislike of non-nationals by nationals of a recipient state” (South African Human Rights Commission, 1998). Xenophobia includes “all forms of discriminatory attitudes towards non-nationals, whatever their source or rationality” (Landau *et al.*, 2005:4). According to Neocosmos (2010:13) it is a discourse and practice which results in the social and political exclusion of its targets from the rest of the population. Xenophobia in South Africa is manifested in the prejudice, discrimination, hostility and violence directed towards foreigners. This study distinguishes between the attitudinal and behavioural aspects of xenophobia, focussing on the former. It defines and measures xenophobia in terms of a set of negative attitudes or dispositions towards non-South Africans. Xenophobia includes discriminatory attitudes, hostility and intolerance towards foreigners by citizens and the state. The author takes the position that xenophobia arises from a political discourse that constructs African migrants as a threat to the human security of South Africans. This discourse spreads and gains acceptance within the general population and leads to practices that result in the exclusion of migrants from citizenship entitlements.

3.2.4 State of exception

Agamben (1998:18) posits that the state of exception is the situation that results from the suspension of the law by the sovereign (in this case state officials), but the law remains in force. It is an increasingly common mechanism used by sovereign states to exert power over populations in order to protect the state from threats (Agamben, 2005:1). The state of exception is a wilful act declared by the sovereign power during a period of emergency when the constitutional order is at stake. It can also be declared when there is a threat or perceived threat to national belonging, security and well-being of the state. In this instance, the state of exception is not a formal proclamation, however. Instead, it refers to the implicit authorisation of state officials to operate outside the law in order to protect the state from the migrant who is perceived to be a threat. Declaring a state of exception in this context endorses practices in which the law itself is either suspended or regarded as an instrument that state officials may enact as a strategy for constraining and monitoring the African migrant population. The state of exception impacts negatively on the lives of migrants. The state of exception is justified by the imperative to defend the state from the apparent threat to the body politic presented by the migrant. It is understood as an attribute of the political system and the institutional character of the state, which allows for state officials to discriminate against migrants.

The state of exception “is a state of suspended law but not of lawlessness” (Brophy, 2009:200). This can be understood by drawing upon Agamben’s understanding of politics as “an ongoing process of

clarification between inclusion and exclusion, between forms of life that the sovereign will protect and represent and those it will not” (Rajaram and Grundy-Warr, 2004:34). This process of distinguishing forms of life which are included and excluded enables the state to maintain sovereignty. Thus, the state of exception is distinguished from general lawlessness as the sovereign “is able to operate both inside and outside the legal system simultaneously” when a state of exception has been declared (Jones, 2009:881).

A more detailed engagement with Agamben is contained in section 3.5. Also, the operationalisation of the state of exception in this study, which focuses on the practices of state officials in their daily dealings with migrants, how these practices impact upon the lives of African migrants and consequently, how this shapes xenophobia, is explained later in this chapter (section 3.8).

3.2.5 Bare life

Bare life is the form of subjectivity produced by and captured in sovereign power. This is central to the state of exception. Those reduced to bare life are biologically alive but “lacking almost all the rights and expectations that we customarily attribute to human existence” (Agamben, 1998:159). Agamben claims that outside citizenship all non-citizens are potentially reduced to a state of bare life because the lives of non-citizens do not make sense in terms of the state-nation-territory triad. The state is the producer of humanity, by protecting citizens, and of bare life by denying it to non-citizens (Ong, 2006:22). Agamben’s definition does not lend itself well to empirical observation and measurement as it is formulated. Therefore, in order to operationalise bare life in this study, the author borrows from the interpretations of other scholars. According to Rajaram and Grundy-Warr (2004:50), bare life includes the dependence on the whims of state officials “for full enjoyment of life, livelihood, and personal security and dignity”. Kearns (2007:7) interprets bare life as a condition in which some lives are treated as if they were either not worth living or not worth protecting.

The attention now turns to the extensive body of literature on xenophobia, which helps to position this study. It first reviews the group of largely survey-based literature which focuses on establishing the prevalence and experience of xenophobia in South Africa and then moves on to review the literature concerned with explaining the causes of xenophobia. These two groups of literature are not mutually exclusive. However, reviewing them separately here merely helps to structure the chapter.

3.3 The prevalence of xenophobia in South Africa

Incidents of xenophobic attacks, inflicted predominantly by black South Africans, began to appear in the media in the 1990s.¹⁴ Fine and Bird (2006:59) note that incidents of xenophobia have been a regular feature of media coverage between 1994 and 2002, the period covered by their research on newspaper coverage of racial violence and xenophobia. According to the Consortium for Refugees and

¹⁴ Steenkamp (2009:442) contrasts these post-apartheid attacks with the apartheid years when African migrants were integrated into black townships, intermarriage was common and migrants were united with black South Africans in workers’ struggles and the struggle against apartheid.

Migrants in South Africa (CoRMSA) (2011:9), xenophobia in South Africa is not decreasing but the fact that many violent incidents of xenophobia go unreported in the media creates the impression that xenophobia is no longer a problem. CoRMSA has recorded over 250 incidents of violence towards foreigners between December 1994 and December 2012. Appendix B shows the xenophobic incidents from 2011 to 2012 compiled by CoRMSA from civil society and media reports.

In 1998 a partnership between the SAHRC, the National Consortium for Refugees and UNHCR spearheaded a nationwide public education and information campaign – the Roll Back Xenophobia Campaign – after it identified xenophobia as a major source of concern to human rights and democratic values in the country (Crush, 2001:1). An evaluation of the campaign is not known to exist but the success of this campaign is questionable on two accounts; continued media reports of xenophobic incidents and research that reveals strong anti-immigrant sentiment since the campaign.

The *first category of research* reveals xenophobia through surveys among South Africans of their attitudes towards migrants. Some of the earliest and most extensive primary research, which revealed xenophobic attitudes in South Africa, has been conducted since the late 1990s by the Southern African Migration Project (SAMP). The SAMP, which already had a history of research on immigration issues and migrants' rights, began to pay attention to xenophobia in the 1990s after a series of violent attacks on African foreigners perpetrated by citizens took place in various parts of the country. The series of SAMP national public opinion surveys reveal a high level of intolerance towards non-citizens regardless of their immigration status in the country. These studies show that “South Africans not only hold negative attitudes towards foreigners but they also have a readily accessible set of stereotypes with which to justify or rationalise their negative attitudes” (Mattes, Taylor, McDonald & Richmond, 1999:19).

According to Crush (2001:18), South Africans display distinctive negative reactions to Africans from elsewhere on the continent and show definite preferences for European and North American immigrants. This is followed by Africans from southern Africa who are regarded more favourably than those from the rest of the continent (Crush, 2008:4). However, even among southern Africans there are variations. Migrants from Botswana, Lesotho and Swaziland are more desirable than Mozambicans and Zimbabweans (Crush, 2008:30). Most unpopular are Africans from elsewhere particularly Angolans, Congolese, Nigerians and Somalis (Crush, 2008:31). This could explain why Somalis, Mozambicans and Zimbabweans are mostly the victims of violent xenophobia (Crush, 2008:30). According to Neocosmos, (2010) some nationalities have borne the brunt of xenophobia more than others by being singled out in the South African press. Nigerians and Mozambicans have long appeared in the press for drug dealing and illegal migration respectively, and in more recent times Zimbabweans have been the victims of opprobrium following reportage on the economic crisis in their country (Neocosmos, 2010:1, 96-97).

A 2006 SAMP Survey shows South Africans as the least open to outsiders compared to citizens of other countries (Crush, 2008:1). Negative attitudes translate into strong support for policies that would

limit or prohibit immigration altogether. These include a total ban or very strict limits on immigration and repatriating every foreigner. The results are based on a widely held view by the surveyed South Africans that too many foreigners are being allowed into the country (Crush, 2001:13). This view might reflect the homogenising perception that South Africa is flooded with migrants as discussed in section 2.3.4, in spite of a selective immigration policy. It also reflects the lack of distinction or recognition of the various categories of migrants. Indeed, most South Africans in the survey believe that most of the foreigners in South Africa are here illegally and for that reason should be denied basic human rights (Crush, 2008:3).

A 2010 SAMP Survey revealed a reduction in xenophobic sentiments among South Africans compared to its 2006 Survey (Crush, Ramachandran & Pendleton, 2013:4). However, the proportion of those willing to transform their xenophobic sentiments into violence remained constant in the aftermath of the 2008 xenophobic eruption (Crush, Ramachandran & Pendleton, 2013:6). It also noted that globally South Africa is still the country most opposed to immigration (Crush, Ramachandran & Pendleton, 2013:4).

Popular attitudes toward foreigners have also been surveyed by Afrobarometer.¹⁵ Data from the 2008 national survey (Round 4) in South Africa indicate that “the majority of South Africans are extremely distrustful of foreigners” (Afrobarometer, 2010:2). Negative attitudes toward foreigners are corroborated by data from the 2006 World Values Survey on public attitudes. The results show that “South Africans generally do not like the presence of foreigners and support policies that make it more difficult for them to settle in their midst” (du Toit & Kotzé, 2011:164). However, they are prepared to put up with foreign workers living in the country, even though they do not like them (du Toit & Kotzé, 2011:170). There appears to be consensus among the SAMP, Afrobarometer and World Values Surveys that South Africans are generally xenophobic across class, race and income lines. The 2008 SAMP survey found that the most xenophobic are Coloureds, followed by whites, then blacks and finally, Asians/ Indians (Crush, 2008:5).

This kind of research points to the potential for violence by bringing to the fore the strong and widespread character of xenophobia in South Africa, but as Fauvelle-Aymar and Segatti (2011:60) point out, it does not allow for localised variations of the appearance of xenophobia. For example, when one looks at the violent expression of xenophobia, one may believe that blacks are the most xenophobic. However, the SAMP also finds that in terms of class, “xenophobic attitudes are stronger amongst the poor and working class than the wealthy and middle class” (Crush, 2008:5). Again, looking at xenophobic violence, the fact that the vast majority of the underclass is black and may have greater interaction with African migrants could explain why blacks are the main perpetrators. However, because xenophobia is broader than violence and encompasses attitudes as well, the SAMP

¹⁵ The Afrobarometer public opinion surveys measure attitudes towards democracy, governance, civil society and markets in 20 African countries including South Africa.

findings counter the misconception that xenophobia can be pin-pointed to specific groups of South Africans based on income, race, gender, political affiliation and so on (Lefko-Everett, 2008:24).

A *second category of research* on xenophobia focuses on the experiences of migrants and this study falls under this category. Some of the notable research on xenophobia informed by the perspectives of migrants in South Africa has been undertaken by Morris (1998), Harris (2001) and Dodson (2010). Morris's study was based on Congolese and Nigerian nationals living in Johannesburg's inner-city neighbourhoods. These two groups are believed to be the most numerous groups of African migrants from outside southern Africa. His research shows that they "have experienced significant antagonism and prejudice from the local population, more especially from black South Africans" (Morris, 1998:1116). He argues that these foreigners are easily identifiable by their physiognomies, distinctive dress and inability to speak South African languages. A common view expressed by the interviewees was that South Africans, especially black South Africans, who they tended to interact more with, were unwelcoming and treated them harshly (Morris, 1998:1122). Each of them had encountered verbal abuse such as being told to go back home or being called *amakwerekwere* – a derogatory term for African foreigners. The men were also accused by South African men of taking their women. They also felt that being black and African did not offer them any protection from prejudice and hostility contrary to the Pan-African consciousness espoused by some politicians.

Harris's research for the Centre for the Study of Violence and Reconciliation explored the experiences of foreigners along the themes of violence, crime and xenophobia. The study finds that "a general climate of xenophobia renders foreigners vulnerable to exploitation and violence" (Harris, 2001:9). The general climate refers to the negative and stereotypical manner in which the media portrays foreigners; the xenophobic statements that have been made by politicians and public officials; public protests against foreigners and physical attacks targeted at foreigners. According to Harris (2001), foreigners are the victims of abuse, extortion and human rights violations at the hands of state officials. These include the police, the army and the DHA. The report distinguishes between victimisation of foreigners directed by economic exploitation and financial gain, and by xenophobia. Xenophobia is said to take the following forms: murder, violence, institutional discrimination, verbal abuse and public hostility (Harris, 2001:10).

Harris (2001:98-99) highlights a subtle distinction between broad xenophobia based on foreignness and focussed xenophobia based on nationality. In the former, xenophobia operates in terms that are relative to South African identity and nationality. It is motivated by a general sense that the individual is not South African. Xenophobia by nationality, on the other hand, perpetuates myths and generalisations about specific nationalities. It comments on the national membership of the foreigners, for example, Nigerians as drug dealers or Somalis as shrewd traders.

Dodson's (2010) research was conducted with African migrants living in Cape Town. Migrants from 13 African countries narrated their day-to-day experiences of life in South Africa. The findings "provided accounts of everyday xenophobia in the fear, dislike and disrespect that they encountered in

simply going about their lives” (Dodson, 2010:15). Examples of these included being victims of robbery and verbal abuse, and accusations of taking South African jobs and women.

A third area of research focuses on institutional xenophobia at the state level, which is also a critical aspect of this study as it reviews officials’ behaviour. While Harris’s research also includes an element of this, studies have been conducted by Human Rights Watch (1998), the South African Human Rights Commission (1999), and Klaaren and Ramji (2001). This category of research draws attention to the xenophobic behaviour of state officials and the human rights violations suffered by vulnerable migrants classified as refugees, asylum seekers and undocumented migrants. It highlights the abuses that these migrants endure as part of immigration enforcement by the DHA and the SAPS. Also included are officials of the army and the Lindela deportation centre.¹⁶ The research investigates how state officials interact with migrants in the issuing of permits, search and arrest procedures, and the detention process. The SAHRC report finds that in many cases immigration-related officials act as a law unto themselves, exercising their power with total disregard for human rights (South African Human Rights Commission, 1999:4). Handmaker and Parsley (2001:42) observe that state officials do not abuse or exploit white illegal foreigners in the way that they do African migrants noting that white foreigners who have overstayed their visas do not end up in Lindela suggesting that state officials treat migrants differently based on their race.

A fourth area of research focuses on violent xenophobia with specific reference to the 2008 eruption. In 2008 South Africa was in the international limelight following a wave of xenophobic violence, the worst sustained violence witnessed in the country since the end of apartheid. Over a period of two weeks, violence spread across townships in three of the country’s biggest cities and left 62 dead, hundreds injured, tens of thousands displaced and property destroyed (Worby *et al.*, 2008:1-2). Although the attacks were targeted at black African migrants, some South Africans from smaller ethnic groups were also victims because they were perceived as outsiders. Following this episode, over 20,000 foreigners were sheltered in temporary refugee camps and many were reported to have left the country (Bekker, 2010:126).

Much of the research that emerged in the aftermath of the 2008 attacks analyses xenophobic violence within a history of political violence in South Africa’s townships and locates xenophobia within the broader socio-economic and political issues facing the country. Because much of this literature is anchored in answering the question “what happened?” it is dealt with in the following section, which discusses some of the theories for the existence of xenophobia in South Africa. The research discussed in this section only confirms the existence of xenophobia in South Africa as an enduring social phenomenon, characterised by attitudes of intolerance, prejudice, human rights violations and violence, but says little about what the roots of xenophobia are. In terms of the different research

¹⁶ The Lindela deportation centre serves as a central holding facility for illegal foreigners awaiting deportation. It is located in Krugersdorp just outside Johannesburg and has a holding capacity of about 4,000. The centre, which is owned by Dyambu Trust, a private company allegedly owned by senior members of the ANC Women’s League, has been leased to the DHA since 1996.

approaches discussed above, this research is a combination of the second and third in that it focuses on the experiences of migrants as the targets of xenophobia and on institutional xenophobia with state actors as the perpetrators.

3.4 Theoretical approaches to xenophobia

Xenophobia is a complex phenomenon that cannot be explained by a single theory. The research theorising the causes of xenophobia in South Africa is of a multidisciplinary nature resulting in competing explanations and framings of this phenomenon. This review focuses on eleven causes emerging from the disciplines of economics, sociology, psychology and political science. They are not necessarily mutually exclusive but are rather approached from different theoretical perspectives and offer different levels of explanation – individual versus collective and micro versus macro – exposing the complexity of xenophobia. Intellectually, these explanations are broadly grouped as economic or materialist, sociological, socio-cultural or historic, and political. Within each broad grouping is a set of supplementary explanations. The economic or material explanations include rational choice theory and relative deprivation. The sociological or psychosocial explanations include the scapegoating hypothesis and ethnic riots. The socio-cultural explanations consist of the isolation hypothesis, bio-cultural hypotheses, and ‘othering’ discourse on African migrants. The political explanations comprise government denialism and impunity, micro-politics, state discourse on xenophobia, citizenship and nationalism; and the state of exception. Each of these is discussed in turn below highlighting the arguments and counterarguments, and stating those that are relevant for this study.

3.4.1 Rational choice

According to rational choice theory, the rivalry between foreign migrants and nationals for scarce resources leads to xenophobia (Wimmer, 1997:19). Xenophobia, not only in South Africa but also in other countries, is commonly justified on the grounds of economic necessity. According to Steinberg (2008:1), the economy is conceptualised as a finite lump; the assumption then is that access to resources is a zero-sum game and this breeds conflict. In relation to foreigners, Steinberg (2008:2) explains that successful foreigners are perceived to prosper by benefiting unrightfully from national resources that belong to South Africans. On the other hand, seeing foreigners prosper without any assistance from the state “upsets one’s conception of one’s own relation to the state and what one’s entitlements are” (Steinberg, 2008:2).

South Africans perceive foreigners as “competing with them for jobs, housing and other resources to which they themselves feel entitled” (Dodson, 2010:5). This is played out against a background of poverty, high unemployment and high income inequality between the rich and the poor. Fears of perceived foreign domination in the job market create conflict and make people feel that labour immigration should be limited and that the government is not doing enough to reduce the number of

foreign migrants. The perceived competition for economic opportunities is associated with unskilled and casual jobs in the domestic sphere, on farms, construction sites, and in the hospitality and informal sectors. It is believed that migrants undercut citizens in these sectors where they are willing to work for less pay and for longer hours. In so doing, they also encourage employers to get away with unfair labour practices.

South Africans also have a fear of foreign domination in small businesses, for example by Somali-owned shops in townships. Yet these are entrepreneurs who have started their businesses with their own capital and are not eligible for support from the state or financial institutions. Many South Africans are blind to the difficulties that African migrants face in obtaining work that matches their skills and qualifications. Obtaining a work permit is difficult without evidence from the potential employer that no South African is suitably qualified for the job or that the applicant possesses exceptional skills.¹⁷ Asylum seekers and refugees, who by virtue of their immigration status have the right to work without the need for a work permit, also struggle to find suitable work often due to discrimination and resort to finding unskilled jobs, which they are seen to compete for with their unskilled South African counterparts (Hopstock & de Jager, 2011:123).

Rational choice theory is widely accepted as an explanation for xenophobia in South Africa both at the individual and collective levels. This is supported by the results of a 2009 survey conducted by the Gauteng City-Region Observatory. The survey, which investigated satisfaction and quality of life among 6,636 Gauteng residents and those of selected areas in neighbouring provinces, uncovered xenophobic attitudes that cut across race, class and sex. A total of 69% of the respondents were in agreement that foreigners are taking benefits that are meant for South Africans (Gauteng City-Region Observatory, 2009). However, the relationship between xenophobia and a drop in wages or rising unemployment – both economic indicators of intensive competition in the job market – has not been scientifically tested in South Africa. Therefore, rational choice theory is not based on indicators of intensive competition in the economy but on perceptions of illegitimate competition, which lead to resentment of migrants. While this does not invalidate the theory, it does not explain the conditions which give rise to the negative perception of migrants given that other countries welcome migrants into their societies because of the positive contribution they make to the economy.

3.4.2 Relative deprivation

A second thesis on xenophobia that complements the first is the relative deprivation theory. It highlights socio-economic class, power and access to resources as inter-related causal factors (Pillay, 2008:93). It also introduces a psychological level of explanation that is applied specifically to urban poor South Africans and township xenophobia. The poor develop a sense of relative deprivation and frustration based on the belief that they are getting less than what they are entitled to. Frustration

¹⁷ The DHA defines exceptional skills in relation to those professions which the government has gazetted as being in short supply in the country.

breeds over slow service delivery, especially housing, and the corruption of government officials involved in the provision of these services (Human Sciences Research Council, 2008:6). Xenophobia in this instance is often expressed by the poor and displayed through violence. As a result, this form of xenophobia has received the most attention from the media and increasingly from researchers. This might explain why authors such as Solomon (2003:93) view xenophobia as being confined to individuals at the lower end of the socio-economic and educational spectrum.

In the aftermath of the 2008 attacks against African migrants in South Africa, Pillay (2008) and Gelb (2008) argue that class inequality as a structural problem of uneven development lay at the root of the violence. Pillay (2008:100) describes the attacks as the reaction of the marginalised, the unemployed and the working poor to the self-enrichment of a tiny minority. The absence of a disciplined and organised association through which they could challenge their subdued discontent results in angry, desperate and barbaric expression (Pillay, 2008:101). Gelb (2008:80) points out that poverty and inequality are distinct issues and that while both are major issues in South Africa, the government has made gains in addressing poverty but not inequality which is on the rise.¹⁸ Gelb argues that it is “the sense of unfairness engendered by inequality, of being discriminated against, which creates resentments and hostility towards those perceived, rightly or wrongly, to be better off or to have received preferential treatment” (Gelb, 2008:79-80).

Relative deprivation in itself falls short as it is a micro-level explanation that neither explains why poor foreigners were targeted nor does it explain why rich South Africans and migrants were not targeted by poor South Africans in 2008. It only suggests that xenophobia is a symptom of a deeper social malaise attributed to the country’s history of separate development, which means that it may not explain xenophobia in other countries which did not experience apartheid or a similar type of socially-based engineering. By bringing in structural issues and legacies of the past, relative deprivation takes no notice of the shortcomings of the post-apartheid state in promoting social cohesion and embracing diversity. It is also not clear whether the targets are viewed by the relatively deprived perpetrators as being relatively gratified or whether they are easy targets due to their vulnerability as ‘outsiders’ or what Neocosmos (2010:4) calls the “political weakness of foreigners”. Everatt’s research (2011:27) suggests that African migrants in townships are seen to be better off than the locals, which ties in with former President Mbeki’s argument that only those with property to loot were targeted and therefore the attacks were merely acts of criminality.

Pillay (2008:94) suggests that the frustration brought about by relative deprivation is conducive to identifying soft targets or scapegoats. Similarly, Tshitereke (in Harris, 2001:58), notes that violence is not an inevitable outcome of relative deprivation but rather that the pent up frustration leads people to release their anger through scapegoating the foreigner. Fauvelle-Aymar and Segatti (2011:56) point out another weakness of this thesis, which is that there is no evidence to show how these broad

¹⁸ South Africa’s Gini index is among the highest in the world indicating vast inequality between the rich and the poor. In 2009 South Africa had a Gini index of 63.1 according to the World Bank.

structural factors advanced by Pillay and Gelb can be isolated to the areas where the xenophobic violence occurred in 2008, and by extension, explain why the violence occurred in some socio-economically deprived areas and not in others. Relative deprivation as a structural explanation shows correlation but not causality and negates agency and thus choice. However, Charman and Piper (2012:85) argue that while relative deprivation may not necessarily be useful in explaining macro-level xenophobic attitudes, it is valuable to understanding the attitudes of South African shopkeepers towards their Somali counterparts in Delft, Cape Town, where they conducted a micro-level study.

3.4.3 Scapegoating

The two economic perspectives on xenophobia above are reductionist and do not explain xenophobia in irrational terms. Scapegoating, which is linked to sociology, is the first of the explanations that does this. It explains that “the foreigner represents a scapegoat, someone to blame for social ills and personal frustrations” (Harris, 2001:58). Scapegoating is also the first of three explanations of xenophobia offered by Harris (2001, 2002), the other two being isolation and bio-cultural hypotheses, which are discussed subsequently in this section.

The scapegoating theory, which locates xenophobia within the context of social transition and change, suggests that South Africa’s transition to democracy has highlighted the unequal distribution of resources in the country (Harris, 2002:171). Citizens’ expectations of a better life in the post-apartheid era have been heightened but the pace of delivery and redistribution has not matched their expectations, resulting in discontent. According to Tshitereke (in Harris, 2001:58), this creates the ideal climate for xenophobia to take root and flourish. Steinberg (2008:4) notes that many argued that those attacked during the 2008 pogroms were victims of misplaced anger. Klotz (2012:203) states that the violence was seen as a sign of resurgent populism expressing frustration with the ANC government and in which foreign Africans were easy targets.

While scapegoats can always be found among ‘insiders’, it is the author’s view that the reason that ‘outsiders’ have become scapegoats is because of the entrenched xenophobic discourse which constructs migrants as a threat to the security, health, economy, jobs and other entitlements of South Africans (Crush & Williams, 2003:1; Landau *et al.*, 2005:6-9; Crush & Ramachandran, 2010:216; Dodson, 2010:5). As discussed in section 2.3.5, the foreigner in South Africa is viewed – by the state and the public – as a group of illegals threatening citizens’ livelihoods and socio-economic rights as well as being responsible for the high crime in South Africa. Such scapegoating of African migrants by the state, as gleaned from the speeches of the former Minister for Home Affairs and the Johannesburg mayor cited in section 2.3.5, for example, diverts attention from the real issues, such as whether the government is managing the resources it has at its disposal effectively. Furthermore, it tacitly justifies exclusionary and discriminatory actions by citizens and state officials towards migrants. Conversely, as the citizens join in scapegoating the foreigner, they blame the presence of

African migrants on an ineffective immigration regime and take it upon themselves to get rid of the foreigners in their communities, even if this calls for violence.

3.4.4 Ethnic riots

Specific to the 2008 attacks, du Toit and Kotzé (2011), and Bekker (2010) apply the Horowitz framework of ethnic riots to examine the events from the perspective of the perpetrators. The Horowitz framework, which builds on social identity theory, considers the violent outbursts as ethnic riots. They entail the sudden attack of strangers by crowds (Horowitz, 2001:xiii). The perpetrators are seen as usually being from groups that find themselves unable to compete effectively in a modernising economy and society, whereas the targets are from the ranks of those who prosper in such a modernising economy (du Toit & Kotzé, 2011:162). Du Toit and Kotzé (2011:160) explain that a culturally and ethnically divided society such as South Africa is “prone to conflicts about cultural incompatibilities and/or matters of relative group status”.

According to Horowitz (2001:71), and similar to the 2008 violence, the ethnic riot follows a particular sequence, starting with rumours followed by certain preparations that then lead to violence and mass killings. Not only is there a degree of spontaneity and deep emotion associated with the riot, there is also passion and calculation (Bekker, 2010:142). Such violence, according to Bekker (2010, 143) is likely to emerge under the following conditions:

- a) Shared widespread antipathy against ‘outsiders’;
- b) Selection of targets based on the perception of immunity from punishment;
- c) An assessment of a reduced risk of retaliatory attacks;
- d) Justification of mobilisation in terms of the meanings residents give to local issues;
- e) The reversal of humiliation through collective action.

To explain the diffusion of the violence, Horowitz argues that violence does not occur in isolation but gains momentum from events viewed as comparable elsewhere. For this contagion to occur, the perpetrators perceive that there is tacit acceptance of their actions by the authorities (Bekker, 2010:145). Different authors have attempted to explain the contagion of 2008. For Misago (2011:104), the contagion was explained by similarities in social and political structures. Fauvelle-Aymar and Segatti (2011:76) attribute the contagion to a correlation between heterogeneity (in terms of language and socio-economic status) and violence. Their research reveals that very homogeneous wards seem less prone to violence while heterogeneous wards are significantly prone to violence. For Steinberg (2008:6), the contagion was driven by the will to loot and burn.

While Horowitz provides a useful framework that analyses the specific events of 2008, it needs to be complemented by the previous scapegoating explanation. The anger of South Africans towards the government, for reasons such as poor service delivery, was unleashed on foreigners who were in an unranked relationship instead of at the government itself (du Toit & Kotzé, 2011:162). In this sense,

the 2008 violence is compared to the widespread service delivery protests by poor communities that have plagued the country. The perpetrators exhibit the same mix of passion and calculation and their body language seems devoid of guilt or fear of retribution as those of 2008 but with little evidence of xenophobic violence (Bekker, 2010:146).

3.4.5 Isolation and exceptionalism

Moving to the socio-cultural explanations, Harris (2001, 2002) rightly acknowledges that scapegoating does not explain why the African migrant, as opposed to any other individual or group is targeted. She therefore goes a step further by presenting the isolation hypothesis to explain why the foreigner becomes the scapegoat. The isolation hypothesis “situates foreignness at the heart of hostility towards foreigners” (Harris, 2002:172). Due to years of isolation of South Africans from the rest of Africa during the apartheid years and the inadequate education of South Africans about the continent, they find it difficult to incorporate foreigners into their frame of reference (Morris, 1998:1125). Furthermore, the isolation of groups of South Africans from other South Africans due to institutionalised racism and the creation of boundaries of movement has made it difficult for them to tolerate difference (Harris, 2002:172). In the isolation hypothesis people see difference as ominous (Harris, 2002:172).

The isolation hypothesis is similar to the culture of exclusion argument which attributes xenophobia to historical roots of discrimination, general mistrust among citizens and a scarred national psyche (International Organization for Migration, 2009; Landau *et al.*, 2010; Everatt, 2011; Hopstock & de Jager, 2011; Peberdy & Jara, 2011). While isolation or a culture of exclusion creates the space for xenophobia to develop, in the author’s view, it serves as a more accurate explanation for the slow integration of South Africans of all races and the challenge of eliminating racism.

One limitation of this explanation is exposed by the fact that isolation has not resulted in uniform treatment towards foreigners from all parts of the world. Therefore, it is the researcher’s view that complementing isolation with exceptionalism (Coplan, 2009; Neocosmos, 2006 & 2010), which is still in the socio-cultural realm as it deals with feelings of cultural superiority, may better explain xenophobia towards African migrants. Exceptionalism as a ‘superiority complex’, leads to self-isolation based on the belief that South Africans are better than other Africans. Previously institutionalised isolation has morphed into exceptionalism in the post-apartheid era.

The literature suggests that South Africans have a feeling of superiority towards other Africans and a belief in the exclusivity of their nation when compared to the rest of continent (Neocosmos, 2010 & 2006). This is despite a number of African countries having hosted refugees from South Africa during the apartheid years. In the aftermath of the 2008 attacks, township residents complained that they had not fought for liberation to benefit foreigners who had made their own countries unliveable (Coplan, 2009:78). In 2013 President Jacob Zuma, who is one of those who were exiled in other countries in

southern Africa, made some off-the-cuff comments which illustrate the exceptionalism with which South Africans view themselves in relation to other Africans and the backwardness which they associate the rest of Africa with. Speaking in Johannesburg in reference to the need to pay e-tolls, he remarked that South Africans should not “think like Africans generally” and that this was Johannesburg and “not some national road in Malawi” (Ephraim, 2013). His remarks were met with laughter by his audience but later became the subject of debate when they were reported by the media.

The advent of democracy and consequently South Africa’s readmission into the global community has brought South Africans into contact with foreigners. However, Landau (2008b:113) points out that despite the rhetoric of pan-Africanism which emerged with democracy, particularly under the leadership of Thabo Mbeki, many South African state officials show disdain for what happens elsewhere on the continent. The pan-African rhetoric rings hollow to ordinary South Africans as little effort has been made to generate local interest in the affairs of the rest of the continent and to embrace Africans in the ‘new’ South Africa. Neocosmos (2006:5) highlights a dominant arrogant political discourse held by many South Africans regarding the apparent exceptionalism of their country on the African continent. Sub-Saharan Africa is identified with failure and black South Africans desperately desire northern hemisphere models of success (Coplan, 2009:71). Harris (2002:175) makes reference to a newspaper article in which the author argues incorrectly that even at the height of apartheid, the conditions of blacks were never as bad as those of blacks in the rest of the continent. Stephen Chan, a leading scholar on Africa, made the following remarks in a newspaper interview:

I've always been slightly appalled that in South Africa there's so little interest in the affairs of your neighbours, and only lip service to Africa as a whole. South Africa wants to be seen as representing the continent, but its understanding of the rest of the continent is no greater than during the apartheid days. That's to your jeopardy in the future. Stephen Chan (in De Waal, 2011)

3.4.6 Bio-cultural hypothesis

The second socio-cultural explanation for xenophobia – the bio-cultural hypothesis presented by Harris (2001, 2002) – explains the asymmetrical xenophobia towards African foreigners. For Harris, this is the third explanation in her three-pronged approach to theorising xenophobia which includes scapegoating, isolation and bio-cultural hypotheses as an interconnected set of explanations. According to Harris (2002:174), other explanations tend to present xenophobia as “uniform or monolithic” when the reality in South Africa is that it is mostly black Africans who bear the brunt of xenophobia. She attributes this to the use of bio-cultural characteristics or visible difference (Harris, 2001:60). This includes physiognomies, accents, dress, hairstyles, vaccination marks and inability to speak South African indigenous languages.

Morris (1998:1125) and Harris (2001:60) point out that these are the irrational standards used by state officials, mainly the police and immigration officials, to determine foreignness. Racial or ethnic

profiling is used as a more 'effective' means of determining a person's nationality and immigration status rather than the person's documents or government databases (Vigneswaran, 2011:165). Gordon (2010a:16) points out the exceptional bio-cultural markers used to identify African non-citizens by the police are justified on the basis that identity documents can be forged or obtained fraudulently thus they cannot be relied on as definite indicators of either South African citizenship or being in South Africa legally. Due to the subjective nature of this profiling, a number of black South Africans have borne the brunt of xenophobia after having been mistaken for being foreign. Greenburg (2010:69) points out, from her research conducted in Johannesburg, that while racial profiling builds on apartheid era practices its victims are people who have been in the country following the fall of apartheid which demonstrates the manner in which race has become spatially re-inscribed post-apartheid.

This specific racialisation, according to Gqola, makes African migrants victims of everyday abuse and discriminatory practices by state officials (2008:213). It is also only used to sift out black people and is not applied to any other racial group in South Africa (Gqola, 2008:218). In other words, while other races may also have different accents, wear distinct cultural dress and not be able to speak an indigenous language, they will not be singled out as not belonging to South Africa on the basis of these irrational criteria, which are only applied to black people.

Trimikliniotis *et al.* (2008:1331) caution against not seeing xenophobia in South Africa for what it is, which in their view is essentially a continuation of the apartheid regime's treatment of blacks and the result of years of institutionalised racism. Nieftagodien (2011:132) believes that xenophobia should be understood as part of a broader politics of discrimination rooted in the country's history. Parallels have been drawn between the manner in which institutionalised racism and apartheid in South Africa criminalised being black and foreign on the one hand, and xenophobia in post-apartheid South Africa, on the other (Klaaren & Ramji, 2001:37; Harris, 2001; Trimikliniotis *et al.*, 2008; Matsinhe, 2011). According to Matsinhe (2011:302), "the ex-oppressed in South Africa have taken on the character of their ex-oppressor". Nyamnjoh (2006:51) underscores how ironic it is that black Africans should be the victims of racial profiling in a new democratic dispensation. It is difficult to reconcile the discourse, language and exclusion of African migrants in South Africa with the values of a constitutional democracy, diversity and a culture of human rights.

The bio-cultural hypothesis links xenophobia directly to racism. According to Wimmer (1997:33), xenophobia and racism can be seen as two points on a continuum of exclusionist discourses that construct the relation between 'us' and 'them'. Xenophobia is characterised by "fears of inundation, phobia of interbreeding and the perception of a zero-sum game" while racism is distinguished by "the hierarchisation of the groups and the idea of impregnation".¹⁹ Although Wimmer captures the link between racism and xenophobia as concepts that support each other, he does so from a Eurocentric

¹⁹ The idea of impregnation refers to the view that certain bio-cultural characteristics are so deep that they cannot be changed during the lifetime of an individual and form part of the history of the whole group (Wimmer, 1997:33).

perspective. The Media Monitoring Project of South Africa provides a more nuanced account of the connection:

Racism and xenophobia operate on the basis of the profiling of people and making negative assumptions about them. While the former profiles individuals in terms of their race, the latter profiles individuals in terms of their nationality. These profiles are often negative and lead to the creation and perpetuation of generalisations and stereotypes. (Media Monitoring Project, 2003:82-83)

3.4.7 'Othering' discourse on African migrants

This socio-cultural explanation, which complements the previous two above, and is also convincing on its own, argues that xenophobia can be understood by looking at the manner in which other Africans are imagined in the minds of South Africans collectively. The cultural affinities of black Africans throughout the continent notwithstanding, Tadjó (2008:238) posits that in the collective imagination of South Africans, the rest of Africa is largely unknown and carries negative associations, allowing for clichés to be reproduced. According to Handmaker and Parsley (2001:44) xenophobia is “largely based on unfounded myths and stereotypes”. Everatt (2011:7) refers to this as the underlying social base that feeds xenophobia in South Africa.

Black African foreigners in South Africa are referred to as *amakwerekwere* – a derogatory term coined by black South Africans that symbolises the sound of the unintelligible languages they speak (Nyamnjoh, 2006:39). According to Nyamnjoh (2006:39), the term is loaded with negative connotations and the *amakwerekwere* are interpreted as a deep threat to personal and community security (Vale, 2002:10). *Amakwerekwere* also denotes: one who is not conversant in indigenous South African languages; one who originates from an African country that is backward compared to South Africa; an uncivilized person; the darkest of the dark skinned; and a danger to the South African nation (Nyamnjoh, 2006:39). Thus the African migrant is constructed as the ‘other’. According to Vale (2002:13), this ‘othering’ is “derived ironically from a sense of superiority and inflated by the celebration of the success of South Africa’s transition, but it simultaneously constructed another underclass around the same conceptual primitives upon which apartheid once rested”.

It is not surprising that xenophobia in South Africa has a strong racial dimension. Bekker (2010:136) refers to a hierarchy of belonging of the different races based on a ranking of races and stereotypes of the different racial groups. It is therefore wrong for the CDE to state that xenophobia has nothing to do with racism on the part of black or white South Africans when the evidence shows black African foreigners to be disproportionately the victims of xenophobia (Centre for Development and Enterprise, 2008:10). Xenophobia is not only racialised, it is also Africanised (Nyamnjoh, 2006:49). It is within this context that some authors such as Matsinhe (2011:298), Everatt (2011:7) and Mngxitama (2008:195) use the terms ‘negrophobia’ or ‘Afrophobia’ to refer to racialised xenophobia towards black African migrants, which they view as more accurate terms of describing xenophobia in South Africa. Moreover, Mngxitama (2008:195-196) suggests that the black-led South African state

regularly sends out the message that black Africans are undesirables and singles them out for harassment. Referring to the xenophobic events of 2008, he argues that the poor were only mirroring the manner in which the state treats African migrants and wonders how the same government that has helped structure xenophobia can be called upon to quell xenophobic violence (Mngxitama, 2008:196).

Differential treatment is extended to African migrants and migrants from elsewhere. Indeed, in South Africa white foreigners are generally more positively viewed as tourists, investors and representatives of countries that South Africa aims to impress with its status as 'world class' or 'emerging nation' (Gqola, 2008:221). Black foreigners, on the other hand, are viewed as freeloaders and criminals. Whites are not expected to speak any of the African indigenous languages nor are they judged as foreigners based on their looks. On the other hand, the police and communities, in turn, use the inability of black people to speak a local South African language and the degree of blackness as markers of foreignness and therefore of possibly being in the country illegally.

Dodson (2010:6) explains that the construction of the 'other' was the inevitable outcome of the construction of a new South African national identity after the end of apartheid. Gqola (2008:211) contends that African migrants belong to a category of people in the South African public eye "who do not matter, whose humanity, once successfully misrecognised, renders them safe to violate". Gqola (2008:213) argues that what makes attacks on some foreigners possible and on others unthinkable is the sexualised, class marked and racialised narrative about foreign migrants. She makes the point that whiteness is valued and considered safe while blackness is considered disposable and can be brutalised. Codifying African migrants as being very dark skinned makes them visible as their identity is marked on their bodies. Their 'unusual' blackness categorises them as not belonging to South Africa. This specific racialisation, according to Gqola, makes African migrants victims of everyday abuse and discriminatory practices by state officials (2008:213). It is also only used to sift out black people and is not applied to any other racial group in South Africa (Gqola, 2008:218). Tadjó (2008:234), in her contribution to what South Africa can learn from the experience of Côte d'Ivoire with xenophobia, attributes xenophobia to the construction of the 'other'. Defining belonging in terms of autochthony serves to alienate those who are perceived to be non-natives (Tadjó, 2008:227).

3.4.8 Denialism and a culture of impunity

The final set of competing explanations falls within the realm of the political and includes both triggers and underlying causes. Denialism by government and a culture of impunity when dealing with perpetrators can be argued to have exacerbated xenophobia in South Africa. Both features may not explain the emergence of xenophobia but they are critical enabling factors which bring the state into sharp focus. They point to a lack of political leadership in acknowledging the existence and extent of xenophobia, and in addressing it. The highest political level has been reluctant to use the term 'xenophobia' and, for instance, labelled the 2008 events as 'criminal acts'. This is despite the evidence

from a range of studies, including of the 2008 events, that they were in fact xenophobic (Crush, 2008; Dodson, 2010; Everatt, 2011).

Crush and Ramachandran (2010:219) have observed that political responses to xenophobia are mostly characterised by silence. During the 2008 violence, the government was initially slow to respond. When it eventually acted, it first denied that there was a crisis, then blamed criminal elements and a 'third force'. The Minister of Intelligence at the time, Ronnie Kasrils, later admitted that these accusations were 'misguided' (Landau, 2011:1). While paying tribute to the victims, President Mbeki was adamant that the xenophobic attacks were acts of criminality and not motivated by xenophobia. He stated that South Africans were not xenophobic and anyone who said they were was xenophobic. He continued:

These masses are neither antipathetic towards, nor do they hate foreigners... I heard it said insistently that my people have turned or become xenophobic... I wondered what the accusers knew about my people which I did not know. And this I must also say – none in our society has any right to encourage or incite xenophobia by trying to explain naked criminal activity by cloaking it in the garb of xenophobia. (Mbeki, 2008)

Perhaps Dodson (2010:8) is right that Mbeki's denialism of South Africans being xenophobic was based on the fact that it did not fit into the discourse of an African Renaissance. As Everatt (2011:9) adds, Mbeki's African Renaissance dreams were 'shredded away' by the xenophobic violence.

A year before the 2008 attacks the Africa Peer Review Mechanism (APRM) country report on South Africa highlighted the poor treatment of migrants by South Africans. It noted that African foreigners are being subjected to brutality and detention and recommended that the rising tide of xenophobia should be stopped (African Union, 2007:286). The South African government replied that it was simply not true that xenophobic tendencies prevail (African Union, 2007:377). In hindsight, this reflected the general lack of concern that has prevailed in addressing previous erratic attacks on foreigners dating back to the 1990s. As Lefko-Everett notes, the government has all too often attempted to downplay xenophobia (2008:27).

Also of concern is the endemic culture of impunity in relation to perpetrators of xenophobic violence in the country (Misago, 2011:96). The fact that xenophobic violence has been an on-going feature of post-apartheid South Africa but only a few perpetrators have been charged and fewer convicted suggests impunity and complicit policing. In some instances, state agents have actively promoted those accused of anti-foreigner violence. As Misago (2011:96) reveals; before, during and after the May 2008 violence, some arrests were made at the different scenes of violence but most of those arrested were released without charge due to community protests and mobilisation. He observes that:

The National Prosecuting Authority (NPA) seems to share – with political leaders at different levels – a lack of interest or incentive to hold the offenders of the xenophobic violence accountable. Indeed, of approximately 500 cases that resulted from the May 2008 attacks, police struggled for months to investigate, and 41% of the cases (including some murder cases) were withdrawn [...]. Only 27% have

been finalised thus far, including only one murder conviction. This despite the fact that at least 62 people were murdered during the violence. (Misago, 2011:96)

Misago states that the main reason given by the NPA for cases being withdrawn and for the low conviction rates is the lack of witnesses or interpreters.

The denial of the existence of xenophobia and the perceived sense of impunity may not explain the appearance of xenophobia. However, such responses illustrate state responses to xenophobia which have, in turn, fostered the continuity and spread of attacks on migrants. Indeed, if politicians, most of whom remained silent during the 2008 pogroms, are being responsive to public sentiments towards African migrants in particular, they have little incentives to protect them. At the same time, if the public feels that the government cares little for these migrants, they will only continue to target them. The issue of impunity is relevant for this study as it brings the actions of state officials in relation to the law into focus.

3.4.9 Micro-politics

This theory stems from the events of 2008 and draws on the political economy of xenophobic violence to explain the territorial variation and timing of the attacks (International Organization for Migration, 2009:7). Drawing on months of fieldwork in selected sites in South Africa that were affected by the 2008 attacks, Misago (2011) argues that local politics and local leaders fostered the violence. For Misago, this occurred against the backdrop of an existing xenophobic climate and a culture of impunity regarding xenophobic violence (Misago, 2011:94). His analysis identified increased crime, heightened ethnic tensions, a history of violence, impunity and ineffective local leadership as the main issues facing the communities that experienced the violence (Misago, 2011:97).

Focusing on the issue of local leadership, Misago (2011) discusses three interrelated features observed in the communities selected for the study. Firstly, there was evidence of a lack of effective conflict resolution mechanisms. This is also noted by Peberdy and Jara (2011:51) in their analysis of the 2008 violence. Concerns raised by the communities with the police and local councillors about the presence of foreigners were dismissed. Misago reveals that there were instances where the local authorities knew that communities were organising attacks and took no action, viewing this as an indication of the extent to which communities are allowed to govern themselves. Secondly, informal leadership groups had sprung up in the affected areas to occupy the vacuum created by local government as a result of poor service delivery. Purporting to protect citizens and articulate their demands, these groups are characterised by infighting and competition for power and legitimacy. In the process, communities have been confused about the mandates of these community leaders and have also been required to pay bribes or fees to these leaders in order to get their problems solved. Thirdly, the attacks were instigated by these local groups and perpetrated by willing residents who long harboured resentment towards outsiders. Indeed, by mobilising action to deal with the problem of foreigners, these leaders

were seen by residents to be effectively responding to the concerns of local citizens, which in their eyes, the police had failed to do. These informal leaders capitalised on the prevailing xenophobic attitudes and lack of trust in state institutions among the communities.

Misago (2011) bolsters his argument by also examining two non-affected areas in the same townships where the violence took place. He argues that the distinguishing factors that prevented the violence were the composition of the community – which resisted and/or condemned the violence – and the ability of the leaders to represent and protect the interests of the residents. Nieftagodien (2011:131) agrees with Misago in his analysis of xenophobia in Alexandra township in Johannesburg. He argues that undemocratic or fragmented local politics combined with an exclusive political discourse of belonging which casts ‘outsiders’ as a threat to ‘insiders’ could explain the occurrence of the violence in some areas and not in others. In this argument the state is implicated by alluding to how state failures can nurture an environment that engenders lawlessness. According to Fauvelle-Aymar and Segatti (2011:60), Misago’s research falls short of explaining the relative importance of structural factors, how a history of micro-politics translates into violence and why this remains at the local level and does not escalate to the national level.

Steinberg (2008) also offers an analysis of the local political economy based on interviews conducted with perpetrators and victims of the violence around Johannesburg. As with Misago (2011), Steinberg (2008:5) also notes the premeditated nature of the attacks in Alexandra where discussions were held in public forums and threats to foreigners announced in a police station and church just days before. Steinberg (2008:6) notes that it is not only these informal groups that are caught up in power struggles but also political parties. For Steinberg (2008:6), it boils down to the politics of deciding who gets what. From his interviews with perpetrators and victims of 2008, Steinberg concludes that in addition to xenophobia, the violence involved “old ethnic tensions among South Africans themselves and old struggles for shares of local booty” (2008:6). For him, the local politics in the affected areas were the result of struggles for state patronage (Steinberg, 2008:1). Landau *et al.* (2010:225-226) point out that Misago’s (2011) findings show that violence against foreigners can be viewed as “a continuum with – and, indeed, often something which happens in tandem with – violence against marginalised South Africans”. Even so, the low conviction rates of the perpetrators of the 2008 violence do not differ much from those of other crimes committed towards nationals who are perceived to be outsiders in particular environments.

This theory holds little relevance for the study as this study does not focus on local government politics and xenophobic violence at the community level. However, it is included here to acknowledge it as an existing political explanation.

3.4.10 State discourse on xenophobia, citizenship and nationalism

Neocosmos (2006:3) attributes xenophobia in South Africa to a state discourse that is xenophobic. Acknowledging that other explanations of xenophobia may include a grain of truth, he still finds them inadequate as they do not take into account the role of politicians and state institutions in engendering a culture of xenophobia (Neocosmos, 2006:2). He argues that xenophobia must be understood as a political discourse and presents four theses: “xenophobia is a discourse and practice of exclusion from community; this process of exclusion is a political process; xenophobia is concerned with the exclusion from citizenship, which denotes a specific political relationship between state and society; and xenophobia is the outcome of a relation between different forms of politics” (Neocosmos, 2006:15-18).

According to Neocosmos (2006:124), xenophobia relates to a “‘politics of fear’ and consists of three elements: a systemic state discourse on xenophobia; a discourse of state exceptionalism and a conception of citizenship founded on indigeneity”. The first element refers to anti-foreigner statements made by the state, as well as the mistreatment of migrants by state officials. The second element refers to a dominant view held by many South Africans regarding the apparent superiority of their country on the African continent (Neocosmos, 2006:5). These two elements have already been discussed elsewhere; anti-immigrant statements by the state were pointed out in sections 2.3.5 and linked to the scapegoating of migrants in section 3.4.3. The mistreatment of migrants by immigration officials and the police specifically was briefly reviewed in section 3.3 and is elaborated further in Chapter 4.

The third element of Neocosmos speaks to the idea that the nation’s resources should be reserved for natives who are the rightful beneficiaries. Nyamnjoh (2006:40) describes this as a narrowly defined citizenship where only nationals matter. Neocosmos (2008:591-592) argues that the post-1994 state has failed to construct a nationalism that is rooted in Africa with the ideas of African Renaissance and *Ubuntu* being mere state slogans. He contends that blackness in South Africa is only stressed in relation to whites but not in relation to other Africans (Neocosmos, 2008:591).

McKinley (2008) purports that xenophobia is the corollary of the nationalist discourse of the post-apartheid state. He describes South African nationalism as narrow, chauvinistic and exclusivist (McKinley, 2008:3). Peberdy (2001:28) states that citizenship is the basic marker of South African identity. By delineating who belongs to the nation, the dangerous side of nationalism is exposed as it draws lines between citizens and foreigners (Peberdy & Jara, 2011:53). Peberdy (2001:29) adds that South Africans feel threatened by the prospect of other Africans becoming part of the nation and thus deny them their rights and entitlements, which is why other Africans have come to be defined as a “threat” to South Africa. The arguments put forward by the scholars cited here are critical to this study in terms of understanding how, in practice, migrants can be socially and politically excluded by discourses and practices that cast migrants as a threat to national cohesion, identity and well-being. On the one hand there are competing demands on the country’s finite resources while on the other, the liberal constitution dissociates a wide range of human rights from citizenship thus making migrants

entitled to them. The state discourse on xenophobia, citizenship and nationalism explanation confronts the underlying political causes of xenophobia, and is relevant to the study at hand, which seeks to advance political understanding of xenophobia.

This theoretical section on xenophobia has so far discussed ten theories. Nyamnjoh (2006:5) aptly captures the economic, sociological, socio-cultural theories discussed above when he states that “xenophobia often explains, as much as it is explained by, poverty, underdevelopment, economic disparities, and assumptions of social and cultural superiority”. The researcher agrees with this as xenophobia in the South African context cannot be narrowed down to one explanation. However, these seven explanations are incomplete because they pay little attention to the relationship between the state and non-citizens even though some of them do acknowledge the xenophobic discourse of some politicians and state agents. This is important to bear in mind for this study, which examines the role of the state in shaping xenophobia in the South African context based on how African migrants are treated by state officials. As the researcher has already noted, the construction of African migrants as a threat to the human security of South Africans in the broadest sense breeds xenophobia. This is also a common thread running through most of the non-political explanations, which makes them relevant to this study to the extent that they provide a possible underlying motive for some of the actions of state officials and could shed light on why African migrants are victimised by state officials. However, due to their focus on relations between migrants and their host communities in South Africa, these explanations give little attention to underlying political factors that have to do with the way that the state relates to migrants.

This study seeks to expand statist explanations of xenophobia beyond merely describing certain state practices as xenophobic by providing empirical evidence of how the state engenders xenophobia on an everyday basis through bureaucratic practices. Hence, two political explanations discussed so far are regarded as more relevant for the research questions. These are the culture of impunity and the state discourse on xenophobia, citizenship and nationalism. This is because they support the author’s view that xenophobia is also a political phenomenon brought about by a political discourse which characterises migrants as a threat to South African society and that state practices result in the exclusion of migrants from citizenship entitlements. A final political explanation discussed below has to do with the application or non-application of the law to African migrants by agents of the state and how this enables xenophobia. It is dealt with exclusively because it is at the centre of the dissertation. The state of exception is adopted as a theoretical basis from which to examine the manner in which state power is exercised by South African state officials towards African migrants and the place of African migrants in South African society. It has also generated a global literature, which is explored. The author’s understanding of the concept and its application in the study at hand are also discussed.

3.5 Agamben's theory of the state of exception

Contemporary Italian philosopher and theorist Giorgio Agamben begins his theorisation of the state of exception in politics and how it constitutes the basis of modern state power in *Homo Sacer* (1998) and extends it in the sequel *State of Exception* (2005). In both books he theorises the state of exception in historical and philosophical context. Agamben's theory is not a mainstream state-centric theory. However, together with his other writings on politics, it has attracted increased scholarly interest in the social sciences and humanities. This has made Agamben one of the most important, influential, provocative and controversial figures in contemporary political theory (Edkins, 2007:70; Ek, 2006:364; Murray, 2010:2).

Agamben's state of exception is concerned with the law and the conditions of its application or suspension. He announces at the beginning of his book *State of Exception* that his investigation explores the "no man's land between public law and political fact, and between the juridical order and life" (Agamben, 2005:1). The state of exception describes a situation in which "the state's habitual nature and culture is suspended" (De la Durantaye, 2005:179). Agamben observes that those caught in this suspension are "not simply set outside the law and made indifferent to it but rather abandoned by it, that is, exposed to and threatened on the threshold in which life and law, outside and inside, become indistinguishable" (Agamben, 1998:28).

Before going any further, it must be noted that the fact that the law can be suspended is not new in politics and history. What is novel about Agamben's theory is that firstly, as he argues, the state of exception becomes the rule, that is, it "becomes a measure of global dominance and control, the ground for repressive policies and the surest way to turn everyday life, everybody's life into naked life" (Gullì, 2007:219). Secondly, and in the context of pre-emptive war, is that "the law is suspended, not because there is a state of emergency requiring exceptional measures, but because such a state of emergency could arise" (Gullì, 2007:219).²⁰ In both of these instances, the suspension of the law enters and acts within the sphere of potentiality within which "repression and control become most efficient and powerful" (Gullì, 2007:220). In other words, what is new from Agamben about the state of exception is that over time, it has ceased to be a provisional measure and has become a working paradigm of governments or a fact of everyday life in contemporary politics that is difficult to reverse.

Agamben takes up and extends the analysis of the sovereign exception by German jurist and political theorist Carl Schmitt. The Schmittian exception, or state of emergency, is "a political decision that is made outside the juridical order and general rule" (Ong, 2006:5). It is an extraordinary decision invoked in a context of war to delineate friends and enemies (Ong, 2006:5). In his book *Political Theology*, Schmitt defines the 'sovereign' as "he who decides on the state of exception" (Schmitt, 1985:1). In other words, the sovereign has the legal authority to decide who shall be removed from the purview of the law in the state of emergency (Norris, 2000:46). So "while a judge decides on the

²⁰ Gullì (2007:220) gives the Iraq war as an example. The invasion of Iraq by the United States and its allies in 2003 was initially justified by allegations that Iraq possessed weapons of mass destruction and then following lack of evidence it was justified on the basis of Iraqi capacity to develop such weapons.

application of individual laws, the sovereign decision gives the law as a whole the force it needs in order to apply and regulate life” (McLoughlin, 2009:247). Schmitt also states that:

The exception is more interesting than the regular case. The rule proves nothing; the exception proves everything: it confirms not only the rule but also its existence, which derives only from the exception. In the exception the power of real life breaks through the crust of a mechanism that has become more torpid by repetition. (Schmitt, 1985:15)

Agamben credits Schmitt for his attempt to construct a theory of the state of exception. However, for Agamben, Schmitt’s analysis and definition (the sovereign is the one who declares and decides on the exception) are problematic because they are inscribed in the juridical order. Agamben’s understanding of the exception moves beyond the Schmittian state of emergency to a “more original function in which the exception reveals itself as a kind of exclusion” (Ek, 2006:365). Agamben (1998:181) concludes that “the fundamental activity of sovereign power is the production of bare life”. Sovereign power then is about bodies and not only about territories (Das & Poole, 2004:10). The exception, according to Agamben, is “a kind of exclusion” which “maintains itself in relation to the rule in the form of the rule’s suspension” (Agamben, 1998:17-18). Agamben notes that the word ‘exception’ refers to its etymological root “*taken outside (ex-capere)*, and not simply excluded” (Agamben, 1998:18). For Agamben (1998:26-28), the exception is “a fundamental principle of sovereign rule that is predicated on the division between citizens in a juridical order and outsiders stripped of juridical protections” (Ong, 2006:5).

Agamben (2005:50) argues instead that the state of exception is “a space devoid of law, a zone of anomie in which all legal determinations...are deactivated”. Referring to Schmitt’s identification of the paradox of sovereignty in which the sovereign is both inside and outside of the law, Agamben argues that it brings into relief a deeper relation between law and violence, in which sovereignty marks the limit “in the double sense of end and principle” of the domain of law (Agamben, 1998:15). For Schmitt, the exception exists in the sovereign decision, which by virtue of being outside the law, permits the normal situation of the law’s operation to be constituted. For Agamben, however, to designate the exception as external to the law is not entirely accurate. For him whatever is excluded from the juridical order is also included by virtue of its exclusion, a relation he terms as one of “inclusive exclusion”. “Being-outside and yet belonging: this is the topological structure of the state of exception” (Agamben, 2005:35).

DeCaroli (2007:54) explains that

by establishing a threshold between law and non-law the exception effectively produces them both. The sovereign exception is, for both Schmitt and Agamben, the condition for the possibility of juridical order, for it is through the state of exception that sovereignty creates and guarantees the order the law needs for its own validity.

Agamben makes clear that “the state of exception is thus not the chaos that precedes order but rather the situation that results from its suspension” (Agamben, 1998:18). Agamben’s approach to the state

of exception is said to transcend Schmitt's which emerges from a sovereign decision that is taken in a spatially and temporally bounded space of exception (Hagmann & Korf, 2012:207). For Agamben, the state of exception is "not so much a spatiotemporal suspension as a complex topological figure in which not only the exception and the rule but also the state of nature and law, outside and inside, pass through one another" (Agamben, 1998:37). As Hagmann and Korf (2012:207) put it, "Schmitt's state of exception is an event, a decision that grounds the rule of law; Agamben's state of exception is a rationale that pervades all law and order as the state of exception becomes the rule".

Butler explains that for Agamben, sovereignty "names the power that withdraws and suspends the laws" (2004:60). When the state annuls its own law, this is "an operation of sovereign power, or, rather, the operation by which a lawless sovereign power comes into being or, indeed, reemerges in new form" (Butler, 2004:61). According to Butler (2004:98) "sovereignty's aim is to continue to exercise and augment its power to exercise itself; in the present circumstance, however it can only achieve this aim through managing populations outside the law". Therefore, for Agamben, sovereignty is "a term that designates a specific relationship between power and law that is played out on the field of life" (Erlenbusch, 2013:51).

Agamben historically traces the state of exception to 'states of emergency', 'states of siege' and 'martial law' in Western democracies starting with Napoleon and the time of the French Revolution. In showing how the state of exception is rooted in the legal traditions of Western states, Agamben notes that there has been a division between orders that regulate the state of exception in the text of the constitution or by law (such as France and Germany) and those that do not regulate it explicitly (such as Italy, Switzerland, England and the United States) (Agamben, 2005:9-10). Agamben highlights that these two legal traditions correspond to the scholarship on the state of exception, which divides those who include the state of exception within the juridical order (such as Schmitt) and those who consider it an external phenomenon (Agamben, 2005:22-23). This leads Agamben to declare that "in truth, the state of exception is neither external nor internal to the juridical order", and "the problem of defining it concerns precisely a threshold, or a zone of indifference, in which inside and outside do not exclude each other, but rather blur with each other" (Agamben, 2005:23).

The state of exception is an increasingly common mechanism used by sovereign states to exert power over populations in order to protect the state from threats (Agamben, 2005:1). To demonstrate the biopolitical significance of the state of the exception, Agamben cites the United States Patriot Act of 2001 and the "military order" authorising the "indefinite detention" in Guantanamo Bay, and trial by "military commissions" of foreigners suspected of terrorist activities (Agamben, 2005:3). For Agamben, these measures have not only resulted in the expansion of executive powers in the United States by assuming the power of the judiciary but also radically erase "any legal status of the individual, thus producing a legally unnameable and unclassified being" (Agamben, 2005:3). These individuals are not even called "prisoners", or "accused persons" as to do so would suggest that certain internationally recognised legal safeguards pertaining to the treatment of these categories ought to be

granted (Agamben, 2005:3; Butler, 2004:64; Hyndman & Mountz, 2007:83). Rather they are called “detainees” or “enemy combatants”, those held in waiting indefinitely. Butler points out that “neither the decision to detain nor the decision to activate the military tribunal is grounded in law” and the state effectively maintains that there are those “for whom the law does not apply” (2004:58).

Agamben compares these measures of the United States’ ‘war on terror’ to the Decree for the Protection of the People and of the State of 1933 in Germany, which suspended the articles concerning personal liberties in the Weimar Constitution (Agamben, 2005:2). The detainees at Guantanamo Bay are similar to the Jews in the Nazi concentration camps “who along with their citizenship, had lost every legal identity, but at least retained their identity as Jews”. (Agamben, 2005:4). De la Durantaye (2005:181) suggests that Agamben’s isolation of both historical and contemporary instances of the state of exception serve to make clear that the state of exception is not only restricted to the instance where the sovereign suspends the rule of law. Furthermore, such states of exception are not after all so exceptional and have not disappeared from Western politics.

Mills (2007:191) explains that through the exception’s capacity to bring about the suspension of the law, it provides the conditions for the law’s application. She also specifies that the “structure of the exception that grounds law is itself the means by which life is taken into law, since the state of exception allows for an immediate coincidence of life and law” (Mills, 2007:192). As Agamben writes, “law is made of nothing but what it manages to capture inside itself through the inclusive exclusion...law has no existence in itself, but rather has its being in the very life of men” (Agamben, 1998:27).

The state of exception allows extra-legal practices to occur without the violation of the law (Mosselson, 2010:643). It is equivalent to a space that is devoid of law, in which law is emptied of its content (Humphreys, 2006:680). This state of affairs can be attributed to the suspension of the juridical order, with the state of exception defining the law’s threshold (Agamben, 2005:4). Agamben restates the modern state of exception as “the attempt to include the exception itself within the juridical order by creating a zone of indistinction in which fact and law coincide” (Agamben, 2005:26). The state of exception can be described as “a zone in which application is suspended, but the law [*la legge*], as such, remains in force” (Agamben, 2005:31). Agamben adds that not only is there a suspension of the law but also a suspension of the administration of justice correspondingly. He explains this by using the term ‘*iustitium*’ (meaning ‘standstill’ or ‘suspension of the law’).

Agamben describes the state of exception as “an anomic space in which what is at stake is a force of law without law” (Agamben, 2005:39). This means that in the exception, “the anomie is included in law through its exclusion from it” and law is “in force without significance” (McLoughlin, 2009:249). “The suspension of the norm does not mean its abolition, and the zone of anomie that it establishes is not (or at least claims not to be) unrelated to the juridical order” (Agamben, 2005:23).

Describing the contemporary condition of the state of exception at the end of *State of Exception*, Agamben remarks: “the normative aspect of law can thus be obliterated and contradicted with impunity by a governmental violence that – while ignoring international law externally and producing a permanent state of exception internally – nevertheless still claims to be applying the law” (Agamben, 2005:87). Here Agamben suggests that the violence of exceptionalism is ever more present and pressing than ever before (De la Durantaye, 2005:182). In this condition, life which is excluded from the *polis* initially exists in a zone of exception such as the concentration camp but later such zones extend beyond the camp at which point “the exception becomes the norm and all life becomes bare life; life under the sway of sovereign power is no longer politically qualified” (Edkins, 2007:75).

Agamben explains that “the sovereign is the point of indistinction between violence and law, the threshold on which violence passes over into law and law passes over into violence” (Agamben, 1998:32). He elaborates:

To show law in its nonrelation to life and life in its nonrelation to law means to open a space between them for human action, which once claimed for itself the name of “politics”. Politics has suffered a lasting eclipse because it has been contaminated by law, seeing itself, at best, as constituent power (that is, violence that makes law), when it is not reduced to merely the power to negotiate with the law (Agamben, 2005:88).

What Agamben’s writings on the state of exception constantly emphasise is the transformation of the state of exception today into a topology of rule and that it results in increasingly large sections of people deprived of political rights and reduced to bare or naked life (Agamben, 2000:133). In this aspect, he is influenced by Walter Benjamin who in his “Theses on the Philosophy of History” hypothesised that for the marginalised and poor, the exception has almost always been the rule (Agamben, 2005:57). The structure of the state of the exception “is such that bare life is included in the sovereign sphere precisely through its exclusion from it” (Edkins, 2007:75).

3.5.1 Migrants, human rights and the nation-state

Agamben also explains how bare life is embodied by the figure of the refugee and the way the refugee throws into question the notion of human rights and the order of the state. Agamben (2000:16) plots the appearance of refugees as a mass phenomenon to the end of the First World War in Europe. Refugees have since become a dominant feature of international politics.²¹ According to Agamben (2000:17), although a distinction is often made between refugees and stateless people in theory, such a distinction is not so simple in reality. He narrates how many refugees in Europe, such as the Polish and Roman Jews, who were in France or Germany, preferred to be regarded as stateless people rather than return to their country after the war. On the other hand, the Turkish and Soviet governments denationalised Russian, Armenian and Hungarian refugees in their territories.

²¹ At the beginning of 2013, UNHCR estimated that the global refugee population of concern stood at 10.4 million. See <http://www.unhcr.org/pages/49c3646c1d.html>.

Around the same period, European states had begun passing laws allowing the denaturalisation and denationalisation of their own citizens who were alleged to have committed acts that made them unworthy of citizenship.²² These laws, to quote Agamben (2000:18), “mark a decisive turn in the life of the modern nation-state as well as its definitive emancipation from naïve notions of the citizen and a people”. He argues that the United Nations, through which states have tried to solve the refugee problem, has proved to be “absolutely incapable not only of solving the problem but also of facing it in an adequate manner” (Agamben, 2000:19). The reasons for this, he continues, are not only bureaucratic but are grounded “in the ambiguity of the fundamental notions regulating the inscription of the *native* (that is, of life) in the juridical order of the nation-state” (Agamben, 2000:19). So, for Agamben, exclusionary practices directed at migrants stem from the originary distinction between citizen and non-citizen.

Agamben draws on the writings of political theorist Hannah Arendt to assert that the idea of human rights is a façade as human beings, in reality, are not equal because of their mere humanness. For Arendt, refugees represent a problem of political space not of geographic or territorial space (Mehta & Napier-Moore, 2010:236). In her book *Imperialism*, Arendt discusses the refugee problem in a chapter titled ‘The Decline of the Nation-State and the End of the Rights of Man’. Agamben suggests that the title binds the fate of the Rights of Man with that of the modern nation-state in such a manner that the waning of the latter necessarily implies the same for the former (Agamben, 2000:19). The paradox herein is that the refugee – precisely the figure that should have embodied human rights more than any other – marked instead the crisis of the concept (Agamben, 2000:19). Agamben agrees with Arendt’s claim that the conception of human rights based on the supposed existence of a human being as such becomes untenable when one witnesses a human being reduced of all relations except the fact of being human (Agamben, 2000:19). Arendt argues that human rights are lost because they are dissociated from political identity and maintains that when all that a person has is his or her humanness, it is difficult for others to treat that person as human (Johnson, 2001:24). Arendt’s point is not that humanity is externally determined but rather that the humanness of the refugee or stateless person becomes most apparent when they are stripped of their rights, thus exposing their vulnerability.

Arendt also posed the question of the human condition at the end of the Second World War which resulted in numerous refugees and stateless people. Our human condition, she claimed, “is given to us in three kinds of fundamental human activities in which we engage: as biological life-forms, as labouring beings, and as political actors” (Arendt quoted in Ong, 2006:22). Agamben has in more recent times recast Arendt’s idea of the human condition to argue that undocumented migrants, asylum seekers and refugees are reduced to the human condition of bare life because of their exclusion from national citizenship by the sovereign state (Ong, 2006:22). Thus, the state, according to Ong (2006:22) is “the producer both of modern humanity, by giving protection to citizens, and of bare life, by denying it to non-citizens”.

²² France was first in 1915, followed by Belgium in 1922, Italy in 1926 and Austria in 1933 and Germany in 1935.

The law of the nation-state does not conceive of a stable statute for the pure human (Agamben, 2000:20). The evidence lies in the status of the refugee who stands at the threshold of the nation-state. Agamben (2000:20) points out that even in the best of cases, refugee status has always been considered temporary and possibly resulting in either naturalisation or repatriation. For Agamben (2000:20), “human rights represent the originary figure for the inscription of natural naked life in the political-juridical order of the nation-state”. The nation-state, by definition, makes nativity or birth the foundation of its own sovereignty and rights “are attributed to the human being only to the degree to which he or she is the immediately vanishing presupposition of the citizen” (Agamben, 2000:20).

Refugees defy conventional and formal notions of citizenship as their belonging in host countries is thrown into question. They undermine the state-nation-territory triad that defines citizenship in their home and host states (Agamben, 2000:22). They also problematise the international system by questioning the assumptions that people belong to certain territories bound by harmonious affiliations and that states provide protection for their citizens (Kyambi, 2004:29). Thus refugees become an aberration to “the national order of things” (Malkii quoted in Mehta & Napier-Moore, 2010:235). Agamben’s explanation for this is that “by breaking the identity between the human and the citizen and that between nativity and nationality, it brings the originary fiction of sovereignty to crisis” (Agamben, 2000:21). Agamben sees the figure of the refugee as a modern example of *homo sacer*²³ and the sovereign exception. The refugee reveals how sovereign power and the exception operate to define the life of the state’s citizens from others (Agamben, 1998:134). Agamben states,

The refugee must be considered for what he is: nothing less than a limit-concept that radically calls into question the fundamental categories of the nation-state, from the birth-nation to the man-citizen link, and that thereby makes it possible to clear the way for a long-overdue renewal of categories in the service of a politics in which bare life is no longer separated and excepted, either in the state order or in the figure of human rights. (Agamben, 1998:134)

Although Agamben has been criticised for romanticising the refugee as *homo sacer* (Ek, 2006:371), in the author’s mind, the refugee’s position in relation to the nation-state makes it a trope for the different categories of migrants whose experiences are similar to those of refugees.

In the contemporary political context, “if we all have inalienable ‘human rights’ it simply means that all of us are reducible to a mere bodily existence, that like refugees we can be excluded, abandoned by the sovereign state and reduced to bare life” (Murray, 2010:68). This is because Agamben argues that all human life is linked to the order of the state through the logic of the exception. So “whereas a citizen of a sovereign nation-state may think s/he is living under the protection of sovereign power, s/he is in fact internally excluded within the legal and political community that sovereign power founds” (de Boever, 2009:262).

²³ *Homo sacer* (sacred man) is an ancient Roman figure who may be killed and yet not sacrificed. He is defined by “both the particular character of the double exclusion into which he is taken and the violence to which he finds himself exposed” (Agamben, 1998:82).

In order to show that the concept of ‘citizen’ is no longer adequate for describing the socio-political reality of industrial states, Agamben (2000:23) credits Tomas Hammar who coined the term ‘denizens’. Denizens are non-citizen residents who do not want to be and cannot be naturalised or repatriated, and are in a condition of *de facto* statelessness (Agamben 2000:23). However, Agamben also notes that in some industrialised countries some legal denizens are able to become non-citizen permanent residents so that in certain social strata citizens and non-citizens enter an area of potential indistinction (Agamben, 2000:23). Cohen (in Desai, 2008:61) refers to the more privileged group of migrants who enjoy many citizenship rights except voting as denizens while he refers to those migrants who have entered the country illegally or overstayed their visas as helots. Helots, according to Desai (2008:61), have been the main targets of attack in South Africa.

According to Ong (2006:6), the elements associated with citizenship – rights, entitlement, territoriality, a nation – are not only being brought into question by population movements generated by conflicts and wars but are becoming disarticulated and rearticulated by market forces. She notes the increasing association between citizenship entitlements and benefits with neoliberal criteria whereby on the one hand those with capital or expertise are highly valued and are able to enjoy citizen-like claims outside their countries of origin. On the other hand, those seen not to possess such tradable competence or potential are seen as less worthy and become vulnerable to exclusionary practices (Ong, 2006:6-7). Tuitt and Fitzpatrick (2004:xi) use the term ‘critical beings’ to refer to these excluded or marginalised groups of people who are constituent of, and integral to, the unsettled processes of national/global affirmation.

As was discussed in section 2.2, states draft immigration policies in line with their national interests. Immigration policies not only in South Africa but elsewhere aim to attract capital and labour in order to promote economic growth, which is viewed as the primary benefit of international migration. This is important for understanding the influence of big business in immigration policy, for instance, the mining sector in South Africa which has over the years been given preferential access in the law to low-skilled labour from other countries in southern Africa. The economic considerations reflected in immigration policies possibly explain the differential treatment accorded to migrants due to their legal status with professionals and the highly skilled (in possession of work and permanent resident permits) favoured over refugees and asylum seekers, who are perceived to be low-skilled.²⁴ The former are probably able to claim citizenship-like entitlements and benefits based on their legal and socio-economic status (Ong, 2006:16). As Ong (2006:16) explains, “low-skill citizens and migrants become exceptions to neoliberal mechanisms and are constructed as excludable populations in transit, shuttled in and out of zones of growth”. All this is because of the neoliberal logic that defines, evaluates and protects certain categories of people and not others (Ong, 2006:16). From a neoliberal lens, the line between citizens and non-citizens begins to blur as “certain rights and benefits are distributed to

²⁴ Although among those exiled in South Africa are wealthy remnants of some of Africa’s fallen despotic political regimes, intellectuals, and those with some level of tertiary education, the prevailing image of the refugee is associated with poverty.

bearers of marketable talents and denied to those who are judged to lack such capacity or potential. The neoliberal exception is allied to a moralized system of distributive justice that is detachable from the legal citizenship status” (Ong, 2006:16).

3.5.2 The camp

Agamben’s description of the contours of life and politics in contemporary politics is epitomised by the ‘camp’ (taken from the concentration camps in National Socialist Germany) – a space of suspension of national, territorial law and its replacement by police power. According to him, the camps were not born out of ordinary law nor were they the product of a transformation and development of prison law. Rather they were born out of the state of emergency, which was essentially a temporal suspension of the state of law, which then acquired a permanent spatial arrangement that remained outside the normal state of the law (Agamben, 2000:38-39). Although Agamben focuses on the Nazi concentration camps, particularly Auschwitz, he traces the origin of the camp to colonial spaces of exception with the first camps created by the Spanish in Cuba at the end of the nineteenth century and the English in South Africa at the beginning of the twentieth century (Agamben, 1998:166).

The camp is “the space that opens up when the state of exception starts to become the rule” (Agamben, 2000:39). Law and life become indistinguishable in the camp in the sense that the rule of law no longer applies to the living body, but the living body has become the “rule and criterion of its own application” (Agamben, 1998:173). Agamben explains that the camp is not simply a territorial space. It is the space “of this absolute impossibility of deciding between fact and law, rule and application, exception and rule, which nevertheless incessantly decides between them” (Agamben, 1998:173). Paradoxically, what is being excluded in the camp in the state of exception is at the same time included by virtue of its very exclusion (Agamben, 2000:40).

If sovereign power is founded on the ability to decide the state of exception, the camp is the structure in which the state of exception is permanently realised. Agamben argues that it is because the camps constitute a state of exception that anything is possible in them (Agamben, 2000:40). He goes on to declare that

If the essence of the camp consists in the materialization of the state of the exception and in the consequent creation of a space for naked life as such, we will then have to admit to be facing a camp virtually every time that such a structure is created, regardless of the nature of the crimes committed in it and regardless of the denomination and specific topography it might have. (Agamben, 2000:41-42)

Agamben claims that the camp has in modern times become a permanent spatial arrangement inhabited by that naked life that increasingly cannot be inscribed into the underlying order of the nation-state (Agamben, 2000:43). To quote him, “the increasingly widening gap between birth (naked life) and the nation-state is the new fact of the politics of our time and what we are calling “camp” is

this disparity” (Agamben, 2000:44). Agamben adds the camp as a fourth element to the three elements that define the nation state – territory, order (the state) and nation (birth) – arguing that it is “the new biopolitical *nomos* of the planet” (Agamben, 2000:44-45).

The camp “delimits a space in which, for all intents and purposes, the normal rule of law is suspended and in which the fact that atrocities may or may not be committed does not depend on the law but rather on the civility and ethical sense of the police that act temporarily as sovereign” (Agamben, 2000:42). In the metaphorical camp, the state is able to act without restraint towards its subjects whose capacity to resist is minimised in a state of exception (Sutton & Vigneswaran, 2011:628).

3.6 Critiques of Agamben’s political theory of the state of exception

Having discussed Agamben’s theory of the state of exception, this section presents some of the criticisms that have been put forward by other scholars on his theory, as it has been explained thus far. Laclau expresses great admiration for Agamben’s work. Nonetheless, he suggests that perhaps Agamben “jumps too quickly from having established the *genealogy* of a term, a concept or an institution, to determine its actual working in a contemporary context, that in some sense the *origin* has a secret determining priority over what follows from it” (Laclau, 2007:11). Laclau’s critique considers each of the three theses that summarise Agamben’s argument in the book *Homo Sacer*:

1. The original political relation is the ban (the state of exception as a zone of indistinction between outside and inside, exclusion and inclusion).
2. The fundamental activity of sovereign power is the production of bare life as originary political element and as threshold of articulation between nature and culture, *zoē* and *bios*.²⁵
3. Today it is not the city but rather the camp that is the fundamental biopolitical paradigm of the West. (Agamben, 1998:181)

With regard to the first thesis, Laclau recognises that Agamben has touched something crucial concerning the political in the ban but questions whether Agamben has exhausted all the possibilities that the structure of the ban opens. Laclau also views the history of the state of exception differently from Agamben. While for Agamben the state of exception, which is now the rule, inevitably advances towards a totalitarian society, Laclau determines countertendencies to the exception, such as social movements that point to a more optimistic future (Laclau, 2007:17).

In terms of Agamben’s second thesis, Laclau (2007:20-21) argues that as much as sovereign power can be totalitarian, it can also be democratic, for example, when it “empowers” the underdog and thus suggests that sovereignty should instead be conceived as hegemony. He also opposes the role that Agamben assigns to the distinction between *zoē* and *bios* in historically explaining sovereign power.

²⁵ The Greeks used two distinct terms for ‘life’. *Zoe* “expressed the simple fact of living common to all living beings” and *bios* “indicated the form or way of living proper to an individual or group” (Agamben, 1998:1).

For Laclau, *zoē* is simply an abstraction because all human beings who have *bios*, also have *zoē*. He notes that while biopolitics implies that more areas of social life are submitted to control and regulation, one does not have to assume, as he suggests Agamben does, that such control assumes increasing control by an over-powerful state (Laclau, 2007:18). Agamben's second thesis also effectively dismisses other theories grounded in human rights and justice as they are blind to the biopolitical foundation of the state of nature, which makes all humans biopolitical subjects who are potentially excludable. Related to this is another criticism that Agamben is dualistic in his theorisation of *homo sacer* or bare life, which should instead be regarded as being "less solid and stable" than Agamben submits (Long, in Ek, 2006:371). One is either *homo sacer* or potentially *homo sacer* with no in-between.

Laclau dismisses Agamben's third thesis. He argues that Agamben's casting of modern politics as being constructed around the paradigm of the camp not only distorts history but also "blocks any possible exploration of the emancipatory possibilities opened up by our modern heritage" (Laclau, 2007:22). Agamben overlooks non-state forms of governance through which migrants can obtain services and the possibility of migrants accessing their rights through informal or extra-legal channels. Therefore, he insufficiently addresses the problem of resistance (Ziarek quoted in Zembylas, 2010:41). In Agamben's defence, Zembylas (2010:41) argues that this is because his focus is on "undermining sovereign power rather than on transforming bare life".

According to Ong (2006:23), Agamben's thesis on the production of bare life in the state of exception "ignores the possibility of complex negotiations of claims for those without territorialized citizenship". His claim that outside citizenship all non-citizens are potentially reduced to a state of bare life, according to Ong (2006:23), "seems to preclude the possibility of non-rights mediation or complex distinctions that can buttress claims for moral protection and legitimacy". She terms it politically and ethnographically incorrect and precarious that Agamben presents the camp as the *nomos* of modern sovereignty arguing that the shifting legal and moral terrain of humanity has become more complex (Ong, 2006:23). Thus she cautions against a strict adherence of Agamben's universal division of humanity into those with rights and those without as it could lead to missing out on the rich complexity and possibilities of multiple ethical systems at play (Ong, 2006:23).

Agamben's "overall prognosis is taken by many to be a pessimistic one" particularly his nihilistic view of the end of politics with no solutions (Edkins, 2007:70). His arguments that the exception has become the rule, that the camp is the *nomos* of contemporary life and that there is an increasing convergence between totalitarian states and democratic states have caused controversy (McLoughlin, 2009:245). He argues for a rethinking of existing political categories and advocates for a community of whatever being as a foundation for a coming politics (Edkins, 2007:71-72). He does this in a separate work called *The Coming Community* not dealt with in this study as it lies outside the theoretical framework. Perhaps Agamben's fourth book in the *Homo Sacer* series, which is forthcoming, may address some of the criticisms that the previous volumes have received.

The critiques above show that Agamben's theory is not without its limitations. Some of these, particularly those relating to Agamben's theorisation of bare life, his claim that the exception has become the rule and his non-recognition of countertendencies to the exception, are relevant to this study. This is demonstrated by the empirical data and discussed in Chapter 6.

3.7 The application of Agamben's state of exception in scholarship

This section reviews the growing literature on Agamben's theory by highlighting some of the ways in which Agamben's work on politics has been 'applied' by others. His work has informed research in various topics with the most salient being the condition of refugees, asylum seekers and migrants, and the security situation since the global 'war on terror' (Ek, 2006:370). As Ek (2006:363) observes, "Agamben's writing is usually complex, dense, multi-layered and written in a continental philosophical, post-foundation tradition". Scholars have therefore read and interpreted Agamben's conclusions in different ways and used his work in a multitude of contexts including a range of topics not specifically covered by Agamben himself. Some have also used Agamben's work in combination with that of other theorists in their analyses.

Agamben's work on sovereign power and bare life has generated much scholarly interest in the aftermath of the 11 September 2001 attacks in the United States and the ensuing global 'war on terror'. Some scholars have drawn upon Agamben's work to investigate the biopolitics of sovereign power (Butler, 2004; Ek, 2006; Salter, 2008). Others have explored the increased security practices that states have deployed to restrict mobility and enforce their sovereign authority (Salter, 2008). These include stringent visa requirements, biometric identification and travel documents, and immigration policing inside the state's territory (Butler, 2004; Salter, 2008).

Salter's (2008) analysis of the state border, which sets limits on the political community through the decision to admit or exclude, concludes that the border is a permanent state of exception. Jones (2009) analyses the borderland between India and Bangladesh where she explores the connections between the state of exception and securitisation processes. Rajaram and Grundy-Warr (2004) examine the detention of irregular migrants in Australia, Malaysia and Thailand using Agamben's concept of *homo sacer*. Hagmann and Korf (2012) have used Agamben's work to scrutinise the recurring practices of sovereign power that are constitutive of the state of exception in the Ethiopia-Somali frontier. Das and Poole (2004) use case studies from Africa, Latin America and South Asia to show how people in these regions perceive and experience the agency of the state through everyday workings at the margins of the state. They show how Agamben's bare life is produced by the state and how the state is configured at the margins (Das & Poole, 2004:19).

Brophy (2009) has used Agamben to examine sovereign power in the colonial context, which she argues operates in much the same way that Agamben describes in his account of the state of exception. She purports that sites of colonialism have always been zones of exceptionalism and therefore a

feature of the colonial state. Brophy (2009) proposes that reading Agamben's work alongside some texts of Frantz Fanon and Aimé Césaire offers insights into the dangers of the state of exception and how it can be challenged.

Agamben's state of exception, together with Foucault's notion of biopolitics, has been used by Ong (2005) to make an interesting connection between sovereign power and capitalism, which Agamben does not. To begin with, Ong (2006:5) conceptualises the exception more broadly as "an extraordinary departure in policy that can be deployed to include as well as exclude". The conventional understanding of the sovereign exception is a negative decision. It is an exclusive inclusion which marks out those within who can be excluded by being denied protection. However, according to Ong (2006:5), the exception can also be a positive decision to "include selected populations and spaces as targets of calculative choices and value orientation associated with neoliberal reform". She applies her definition to an ethnographic study in East and South East Asia on how states are making exceptions to their usual practices of governing in order to position themselves to compete in the global economy.

Ong traces how 'neoliberalism as exception' and 'exception as neoliberalism' trigger practices that unsettle established notions of citizenship and sovereignty. Beyond the common view of neoliberalism as an economic doctrine aimed at limiting the scope of government, Ong (2006:3) posits that it can be viewed as "a new relationship between government and knowledge through which governing activities are recast as non-political and non-ideological problems that need technical solutions". The main thrust of her argument is that "neoliberalism is reconfiguring relationships between governing and the governed, power and knowledge, and sovereignty and territoriality" (Ong, 2006:3). To this end, Ong traces neoliberal governmentality to Foucault's notion of biopower or biopolitics – "a series of regulatory controls exerted on the population and on individuals in order to harness and extract life forces" (Ong, 2006:13). For her then, neoliberalism is "a governmentality that relies on market knowledge and calculations for a politics of subjection and subject-making that continually places in question the political existence of modern human beings" (Ong, 2006:13).

Finally, scholars in South Africa have also engaged with the state of exception, though not quite in the way that this study does. Sutton and Vigneswaran (2011) have established in their study that South Africa's deportation system is a zone of exception which state officials capitalise on. They mention the ability of state officials to exert extra-legal power over deportation procedures through temporary suspensions to the deportation law, prolonging periods of detention and extending the processes of adjudication on deportation as constituting a state of exception.

In another application of the concept in South Africa, Landau (2005b:1115) defines zones of exception in the migration landscape of South Africa as "areas in which the state authorises its agents to work outside the law". This authorisation is not a formal institution of a state of exception in the Schmittian sense, but rather is an "endorsement or tacit acceptance of systems in which government officials legitimise or help create parallel-extra-legal-systems for policing foreigners" (Landau, 2005a:13). This implies the need to also analyse what Neocosmos (2006:3) refers to as a xenophobic state discourse,

which effectively permits the targeting of African migrants “by whatever means state officials and citizens deem appropriate” (Landau & Monson, 2008:333).

Landau’s interpretation of the state of exception refers to state sanctioned extra-legal policing of non-citizens and extra-legal detention and deportation procedures. Landau (2005b:1121) identifies three areas in which abuses of migrants are particularly visible: acquiring residence permits from the DHA, securing social services and banking services; and migrants’ engagement with the state’s coercive apparatus of immigration enforcement. According to him, nativist discourses have given rise to zones of exception in South Africa. Landau argues that xenophobic violence – the most extreme display of xenophobia – can partly be viewed as “the result of an extended series of actions that has generated a segment of the population that is institutionally and socially excluded from legal protection” (Landau, 2008a:3). Landau (2005a) contends that while extra-legal patterns of immigration enforcement in South Africa are popular, they have not succeeded in establishing order or security and instead have undermined the sovereignty that the law is designed to protect.

Gordon (2010a, 2010b) has argued that the logic of South Africa’s immigration policy is shaped by the state of exception. Gordon (2010b:45) regards South Africa’s immigration policy as an instrument of control which has relegated migrants to a space outside the workings of the law (Gordon, 2010b: 45). Gordon (2010a:16) suggests that the criminalisation not only of the illegal foreigner but of foreignness in itself makes foreigners living in South Africa become *homo sacer*. Mosselson (2010) has used the state of exception to argue that it is key to understanding how the politics of belonging is mediated in post-apartheid South Africa. Mosselson (2010:641) argues that xenophobic violence is partly the result of “the entrenchment of extra-legal and, in some cases, overtly illegal ways of dealing with foreign nationals”. In other words, xenophobic attacks are a manifestation of a state of exception.

The different applications and renderings of Agamben’s theory discussed above have informed the author’s interpretation of his complex conceptual framework in this study. Its application to the condition of migrants in different contexts makes it relevant as this study attempts a more empirically grounded engagement with Agamben’s work than has been undertaken in South Africa. In addition, other scholars’ investigations of the biopolitics of sovereign power, the dehumanising tactics of the state and the spatiality of the state of exception are especially salient. They suggest the usefulness of Agamben’s work to debates on security, national identity formation and ‘othering’ based on discourse and power, which have been highlighted in this study as key elements in political explanations of xenophobia in South Africa. Finally, other scholars’ descriptions of what constitutes a state of exception in concrete terms are relevant to the author’s definition as discussed next.

3.8 Operationalising the state of exception

In order to concretely identify evidence of a state of exception in this study and its relation to xenophobia, the concept is defined as a structural condition of the political system and of the

institutional character of the state consisting of four elements. These are: a rationale of governing consisting of a set of recurring state practices, a topology of rule where law and lawlessness blur with each other, a condition manifested in different spatio-temporal contexts and the politics of bare life. As noted at the beginning of this chapter, the sovereign can declare a state of exception during a period of emergency when the constitutional order is at stake or when there is a threat to national belonging, security and well-being of the state. The state of exception can be a formal proclamation or an implicit authorisation by the state to suspend the law when the order is threatened.

In this study, the state of exception refers to the implicit authorisation of state officials to operate outside the law in order to protect the state from the ‘migrant threat’. The African migrant is marked as a threat to the national identity, security and well-being of the South African state. This declaration of the state of exception endorses practices in which the law itself is either suspended or regarded as an instrument that state officials may enact as a strategy for constraining and monitoring the African migrant population. The state of exception impacts negatively on the lives of migrants.

Thirteen indicators of state practices that constitute a state of exception have been developed for the study. These indicators are not stand alone indicators meaning that the presence of one does not necessarily indicate a state of exception. Instead, a combination of these indicators happening on a recurring basis constitutes a state of exception. The indicators are presented in Table 3.1.

Table 3.1: Indicators of state practices which constitute a state of exception

Indicator
Flouting the laws relating to migrants
Overstepping the bounds of designated state authority
Abuse of official and discretionary powers
Establishment of barriers to migrants obtaining services and permits from Home Affairs
Fraudulent practices surrounding the production and acquisition of documentation
Production or generation of illegal migrants
Institution of extraordinary measures to exclude migrants from accessing basic social services
Eliciting of bribes from migrants
Exploitation and extortion of migrants
Illegal arrest and detention of migrants
Illegal raids to homes and businesses of migrants and/or looting of the same by Home Affairs and the police
Irregular policing of migrants
Impunity from any penalty of perpetrators of xenophobic violence and other crimes against migrants

Jones (2009:880) notes that “sovereign power operates as a few particular agents of the state make the decision to target a few particular individuals for the exception, a process that occurs in a few particular places much more frequently than others”. She proposes that in order to understand the state

of exception, it is critical to identify the agents, the targets, and the spaces where the practice of sovereign power occurs. This study adopts this approach. As shown in Figure 3.1 below, state officials from the DHA, SAPS and CoCT are identified as the possible agents of the exception. They are what Butler (2004) calls the ‘petty sovereigns’ or agents of governmentality. The targets of the state of exception are African migrants in Cape Town who have been resident in South Africa for at least one year. The spaces where the practices of sovereign power occur are the situations and sites in which state officials and migrants interact, shown by the shaded area in Figure 3.1.

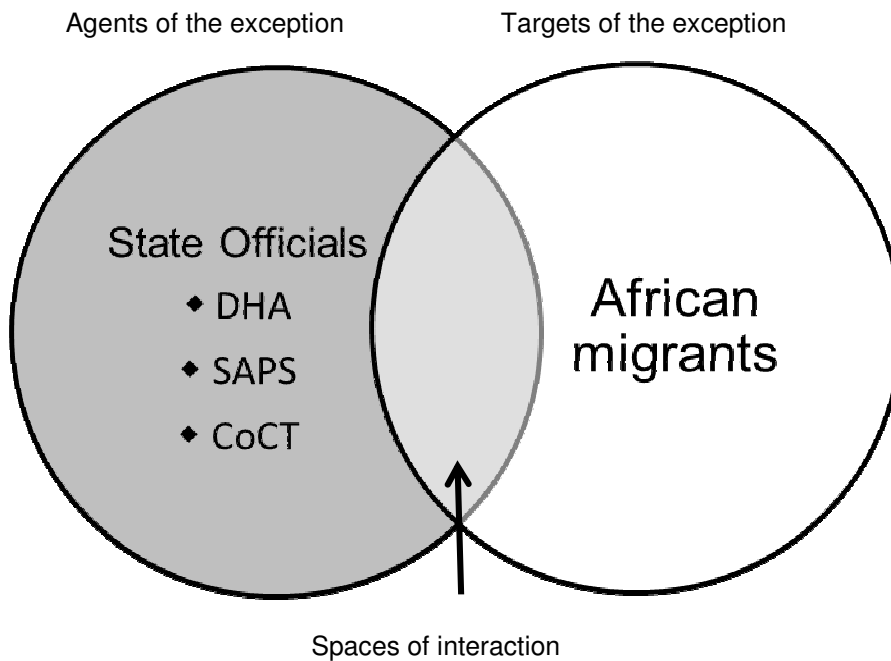


Figure 3.1: The state of exception in operation

3.9 Conclusion

This chapter has reviewed the literature on xenophobia and how the study will add to this literature. Xenophobia was identified as a longstanding and widespread phenomenon, which makes for a hostile reception for many African migrants in South Africa. It showed that xenophobia ranges from the expression of general attitudes of intolerance to violence. However, in the context of this study the definition of xenophobia was limited to an attitudinal response to foreigners. It also examined some of the theories that have been put forward to explain the causes of xenophobia from the disciplines of economics, sociology, psychology and political science. It acknowledged the extent to which these explanations hold relevance for this study.

The chapter then located the study at hand within the state of exception theory of Giorgio Agamben (1998, 2005) by linking xenophobia to official legal discrimination as well as withdrawal and non-application of the law when it comes to migrants. Underlying the detailed discussion of Agamben’s biopolitical theory of sovereignty is the argument that sovereign power is not only about territories but

also about bodies and that this power is exerted over populations in order to protect the state from threats. It also reviewed the literature on Agamben's theory, which has informed research in various country settings on topics such as the condition of refugees, asylum seekers and migrants, and the security situation since the global 'war on terror'.

This study shifts away from mainstream analyses which attempt to explain xenophobia on the basis of strained relations between African migrants and their host communities due to the contestation of resources, a legacy of apartheid and citizens' disillusionment with the socio-economic performance of the ANC led post-apartheid administration, which dominate the literature. Instead, it deploys Agamben's theory to argue that having construed the unprecedented arrival of African migrants as a national human security threat, the South African state has implicitly sanctioned extra-legal measures to control and discourage immigration, with serious consequences on the dignity and welfare of African migrants.

The chapter then explained the application of Agamben's theory in this study. The state of exception was defined as the implicit authorisation of state officials to operate outside the law in order to protect the state from the migrant threat to the national identity, security and well-being of the South African state. This declaration of the state of exception endorses practices in which the law itself is either suspended or regarded as an instrument that state officials may enact as a strategy for constraining and monitoring the African migrant population. The state of exception impacts negatively on the lives of migrants.

Thereafter 13 indicators were developed in order to identify the state of exception. These indicators include the following practices by state officials: flouting the laws relating to migrants; overstepping the bounds of their authority; abuse of official and discretionary powers; irregular policing of foreigners; perpetration of human rights violations; institution of extraordinary measures to exclude migrants from accessing basic social services; impunity of perpetrators of xenophobic violence; barriers to accessing documentation from Home Affairs; fraudulent practices surrounding the production and acquisition of documentation; production or generation of migrants who are extra-legal by denying them documentation; exploitation and extortion; irregular arrest and detention of migrants; illegal raids and looting of migrants' property; and corrupt behaviour in service provision, for example bribery. These indicators will be operationalised alongside two other concepts – bare life and xenophobia – which were also defined in this chapter. Lastly, the possible agents, targets and spaces of the state exception were identified for the operationalisation. The potential agents of the state of the exception are state officials from the DHA, SAPS and CoCT, the targets are African migrants and the spaces are the various sites where the state officials and migrants interact.

In conclusion, this study addresses two gaps which can be identified from the literature review. The first is that the studies on the prevalence of xenophobia provide insufficient explanation of the variables which determine how migrants experience xenophobia, for example nationality and immigration status. Secondly, the reviewed political explanations of xenophobia do not sufficiently go

beyond describing certain state practices and discourses as xenophobic to provide supporting empirical evidence of how the state engenders xenophobia on an everyday basis through its practices. This study builds on previous research by attempting to fill these gaps with empirical evidence. It seeks to provide a nuanced understanding of how migrants experience xenophobia based on variables such as their legal status and nationality. In addition, it attempts to expand on existing statist explanations of xenophobia by bringing in the element of state power. After 20 years of democracy in South Africa, the relationship between the state and African migrants living in the country warrants further investigation. Underlying this investigation is the implicit alienation of non-citizens in the definition of the state and in Agamben's theory, on the one hand, and the state's obligations towards non-citizens, on the other. The following chapter examines the legal framework relating to migrants, the functions of the three selected state institutions and their operating context.

Chapter 4: Legal foundations and institutional context: Migrants and the Department of Home Affairs, the South African Police Service and Local Government

4.1 Introduction

Given that the main research question of this study attempts to understand the practices of South African state officials in dealing with African migrants and relate such practices to xenophobia, it is necessary to highlight the legal framework, which forms the basis for interaction between the selected organs of state and international migrants. These laws also outline the different categories of migrants and their rights and obligations. Highlighting three key laws relating to migrants and their rights enables the researcher in the subsequent empirical chapters to identify instances when state officials violate the law and deny migrants their rights. The legal framework is therefore the focus of the first part of this chapter as it relates to migrants, the potential targets of the state of exception.

It is also vital to have an overview of the context within which these institutions operate in democratic South Africa and the way they are experienced by African migrants. The three state institutions – the Department of Home Affairs (DHA), the South African Police Service (SAPS) and the City of Cape Town (CoCT) – have been chosen because of the extent to which they interact with African migrants. Chapter 3 identified the state officials of these institutions as potential agents of the state of exception. The second part of the chapter provides a brief overview of the mandate and structure of these institutions, their operations, their general performance as perceived by the public and some of the broad challenges that they face in fulfilling their mandates. It also points out some of the possible spaces of the exception.

4.2 Legal framework

In terms of legislation this chapter focuses on the Constitution of the Republic of South Africa Act 108 of 1996 (hereafter referred to as the Constitution), which came into effect in 1997, the Refugees Act 130 of 1998 (hereafter referred to as the Refugees Act), which came into force in 2000 and the Immigration Act 13 of 2002 (hereafter referred to as the Immigration Act), which came into effect in 2003. It also makes reference to relevant amendments to the Refugees and Immigration Acts and to the Regulations of the respective Acts. Where necessary, enabling legislation is also mentioned. As Neocosmos (2010:84) points out, “the importance of legislation is that it consists of the fundamental way in which the state addresses sections of the population under its control. It is also indicative of a

specific form of politics, state politics”. The abovementioned laws describe the legal categories that the state uses to define non-citizens living within its borders as well as their rights and obligations.

4.2.1 The Constitution

The Constitution as the supreme law of South Africa is particularly relevant for a number of reasons: it establishes South Africa as a unitary state with federal features, namely, the three different tiers of government and state institutions; it outlines the role of local government; it contains the Bill of Rights, which is a cornerstone of South Africa’s democracy; and it distinguishes between citizens and non-citizens.

The use of the language of rights is commonly used by citizens and non-citizens alike in post-apartheid South Africa to articulate needs and make demands on the state (Amisi & Ballard, 2006:301). In theory every person, by virtue of being human, is entitled to the rights and freedoms set forth in the Universal Declaration of Human Rights adopted by the United Nations (UN) General Assembly in 1948. The domestication of these rights in the South African context is found in Chapter 2 of the Constitution, known as the Bill of Rights. As Albertyn (2008:176) notes, the language of the Constitution extends beyond a narrow notion of citizens to an inclusive society of all who live in South Africa. The preamble of the Constitution states clearly that the South African people “believe that South Africa belongs to all who live in it, united in our diversity” (Republic of South Africa, 1996). Albertyn (2008:178) also points out that the subject of almost all of the rights entrenched in the Bill of Rights is ‘everyone’, which is interpreted to include those who are not citizens. Everyone has a right to equality; dignity; life; freedom and security of the person; privacy; fair labour practices; freedom of religion, belief and opinion; freedom of expression; assembly, demonstration, picket and petition; freedom of association; and freedom of movement and residence. Everyone is also given a range of socio-economic rights, such as housing; healthcare, food, water and social security; and education.²⁶ Rights to access to information; just administrative action; and access to courts are also to be enjoyed by everyone.

Only two sets of rights in the Bill of Rights are limited to citizens of South Africa. They include political rights (Section 19) and freedom of trade, occupation and profession (Section 22). The former includes the right to form or support a political party, vote and stand for public office.

The application of human rights to everyone, however, has been formally contested from time to time and the Constitutional Court has been called upon to make judgements. Albertyn (2008:178) states that the Constitutional Court has “established citizenship or nationality as a prohibited ground of discrimination in South Africa and confirmed foreign nationals as part of the community of people

²⁶ With respect to the rights to housing, healthcare, food, water and social security, the Constitution requires the state to “take reasonable legislative and other measures, within its available resources to achieve the progressive realisation of each of these rights” (Republic of South Africa, 1996).

protected by the Constitution”. The equality clause in Section 9 (3) of the Constitution provides the grounds which prevent the state from unfairly discriminating against anyone. Alibertyn makes reference to the *Larbi-Odam v MEC for Education (North West Province)*²⁷ case concerning the right of permanent residents to be granted permanent teaching positions in which the court was asked to consider adding citizenship or nationality as a prohibition. The court agreed with the request and concluded that “unjust treatment based on nationality has the potential to impair the fundamental dignity of persons as human beings” (Alibertyn, 2008:178). Stated differently, in terms of Agamben, unjust treatment of foreigners potentially reduces them to bare life.

Migrants are entitled to administrative justice as outlined in the Constitution and in the Promotion of Administrative Justice Act 3 of 2000. Examples of where this right is applicable include in the adjudication process to determine migrants’ legal status and when migrants are detained and/or arrested for being on the wrong side of the law.

4.2.2 The Refugees Act

The Refugees Act (as amended in 2008 and 2011) governs migrants who are generally classified as involuntary or forced migrants. These include asylum seekers and refugees. The Act gives effect to the relevant international legal instruments, principles and standards relating to refugees. International law obliges states to protect non-citizens residing within their borders (Mehta & Napier-Moore, 2010:233). South Africa’s Refugees Act reflects its commitment to international legislation relating to refugees that it is bound to. South Africa is a signatory to the 1951 UN Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees. It has ratified the 1969 Organisation of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa and is party to the 1948 Universal Declaration of Human Rights. The Refugees Act provides for the reception of asylum seekers; the regulation of applications for, and recognition of, refugee status; and the rights and obligations of refugees (Republic of South Africa, 1998).

An asylum seeker refers to a person who is seeking recognition as a refugee in South Africa (Republic of South Africa, 1998). A Section 22 asylum seeker permit allows the applicant to remain in the country temporarily as their claim for asylum is examined to determine whether they qualify for refugee status. By law a foreigner arriving at any port of entry in South Africa without a valid visa may seek asylum in South Africa. An asylum transit permit, which was until recently valid for 14 days, is issued to the foreigner at the port of entry and he/she must report to a Refugee Reception Office (RRO) to apply for asylum before the transit permit expires. The validity period has been reduced to five days in the 2014 Immigration Regulations.

According to Amit (2012:10), many asylum seekers, however, do not receive an asylum seeker transit permit at the border. Immigration officials refuse to issue these permits in an attempt to deny asylum

²⁷ 1998 (1) SA 245 (CC); 1997 (12) BCLR 1655 (CC).

seekers access to asylum (African Centre for Migration and Society & Lawyers for Human Rights, 2013:5). There are also reports that those who manage to gain entry into the country without an asylum transit permit and report to a RRO to lodge an asylum claim are turned away for not being in possession of an asylum transit permit (African Centre for Migration and Society & Lawyers for Human Rights, 2013:5). The non-issuance of asylum seeker permits at the border and the refusal to issue asylum seeker permits at RROs to those without an asylum transit permit are contraventions of the Refugees Act and the Immigration Act (African Centre for Migration and Society & Lawyers for Human Rights, 2013:5).

The application process for asylum is explained in Section 21 of the Refugees Act and states that applications for asylum are to be made in person at a RRO. Once an asylum claim is lodged an asylum seeker, or Section 22, permit is issued to the applicant. It is printed on A4 security paper and contains a photograph of the applicant and his/her fingerprint. Asylum seeker permits, which are issued for between one and six months, have to keep being extended since the adjudication process usually takes longer than the legally stipulated 180 days.

A refugee in South Africa is one who has been granted asylum in terms of the Refugees Act and is in possession of a Section 24 refugee permit. With this permit a refugee can then apply for a maroon refugee identity document (ID) book. Section 3 of the Act defines a refugee as a person who,

- a) Owing to a well-founded fear of being persecuted by reason of his or her race, tribe, religion, nationality, political opinion or membership of a particular social group, is outside the country of his or her nationality and is unable or unwilling to avail himself or herself of the protection of that country, or, not having a nationality and being outside the country of his or her former habitual residence is unable or, owing to such fear, unwilling to return to it; or
- b) Owing to external aggression, occupation, foreign domination or events seriously disturbing or disrupting public order in either a part or the whole of his or her country of origin or nationality, is compelled to leave his or her place of habitual residence in order to seek refuge elsewhere; or
- c) Is a dependent of a person contemplated in paragraph (a) or (b). (Republic of South Africa, 1998)

Refugee status is initially granted for a period of two or four years. Thereafter, it is renewable at the discretion of the DHA. The asylum application and adjudication process leading up to the determination of whether an asylum seeker qualifies for refugee status is summarised in Figure 4.1:

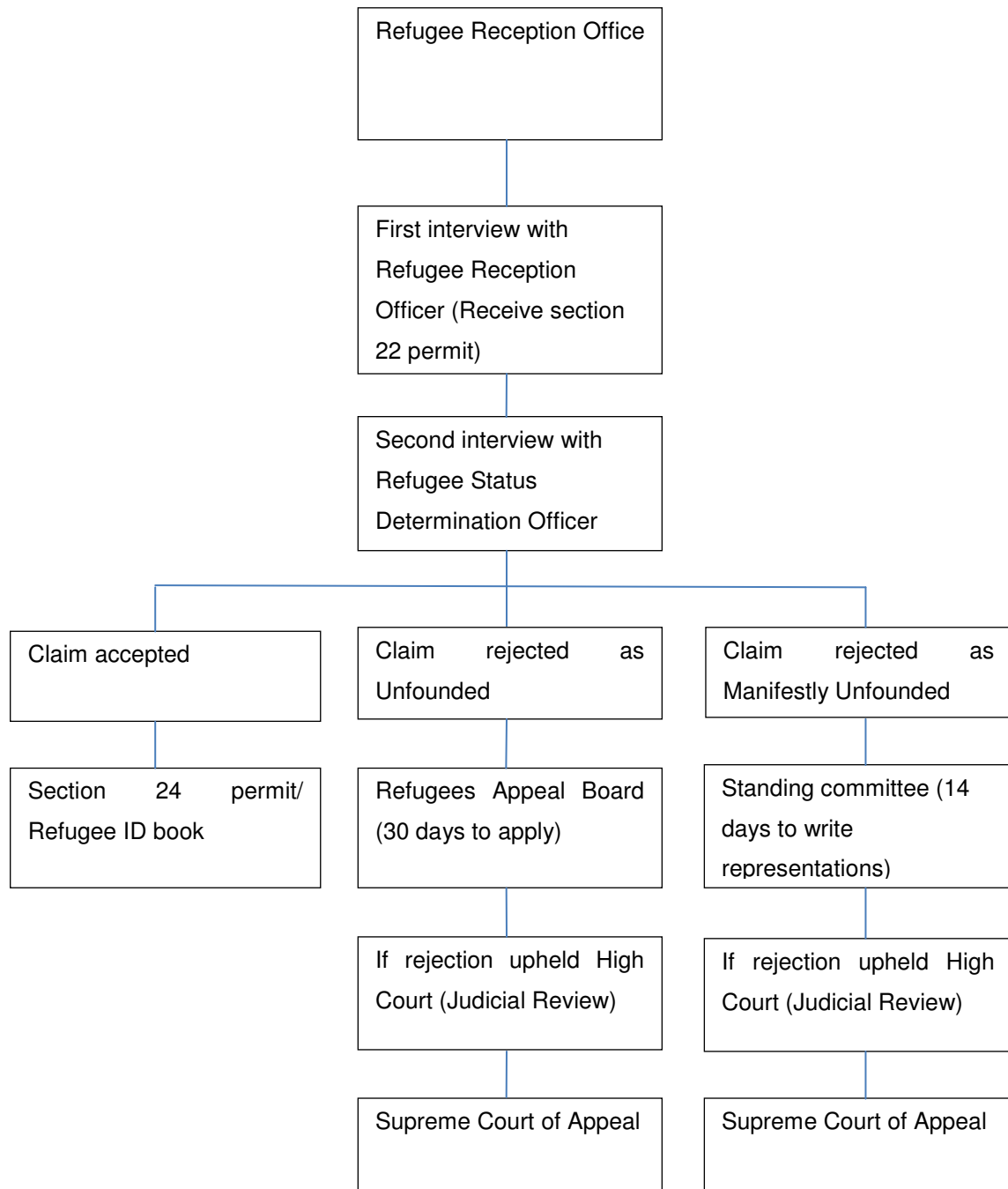


Figure 4.1: The refugee status determination process in South Africa

Source: University of Cape Town (No date:6).

In addition to the Constitution, the Refugees Act also extends rights and obligations to asylum seekers and refugees. With regard to asylum seekers, Section 27A of the Refugees Act provides for their right to remain in South Africa pending the outcome of their application for asylum; protection from unlawful arrest or detention, and the rights contained in the Constitution in so far as those rights refer to an asylum seeker. This suggests that asylum seekers may not be entitled to the full spectrum of rights while awaiting determination of their status, but the law is silent on the exact limitation of rights. Perhaps the tenuous nature of asylum seeker status is itself a limiting factor to enjoying a broad

range of rights. The Act also provides for *non-refoulement*, a fundamental tenet of refugee protection, which prevents individuals from being returned to their country of origin or any other country where their life or liberties may be at risk (Amit, 2012:17).

In line with the Constitution, the Refugees Act entitles refugees to “full legal protection, which includes the rights set out in Chapter 2 of the Constitution of the Republic of South Africa, 1996, except those rights that only apply to citizens” (Republic of South Africa, 1998). In addition, other refugee rights included in Section 27 of the Act are: permanent residence status after five years of continuous residence in South Africa from the date asylum was granted if they are certified to remain a refugee indefinitely; an identity document and a travel document. They also have the right to work and to “the same basic health services and basic primary education which the inhabitants of the Republic receive from time to time” (Republic of South Africa, 1998). Section 29 (1) protects refugees from arbitrary detention and arrest. An amendment to the regulations of the Social Assistance Act 13 of 2004 in 2012 extends social assistance to impoverished recognised refugees.

The Refugees Act grants full rights to work to both asylum seekers and refugees.²⁸ It also requires that asylum seekers and refugees respect the laws of South Africa. Asylum seekers and refugees are also obliged to provide the RRO with their current residential address.²⁹ Asylum seekers must also renew their Section 22 permits in person at any RRO.

4.2.3 The Immigration Act

The Immigration Act regulates the entry of foreigners, their residence in, and their departure from South Africa (Republic of South Africa, 2002).³⁰ Permits and visas are generally issued at South African consulates outside the country to foreigners before they arrive in South Africa with the exception of asylum seeker and refugee permits. The Immigration Act allows foreigners to change from one legal status to another and extend their permits once in the country. However, since the enactment of new Immigration Regulations in May 2014 this no longer applies to those with visitor’s visas and medical visas. Those in possession of these visas have to make an application in their home country if they wish to change their status in South Africa. The Act also allows illegal foreigners to become legal subject to certain conditions prescribed in the Immigration Regulations.

The Immigration Act of 2002 (as amended in 2004, 2007 and 2011) provides for two categories of voluntary migrants in South Africa – temporary residents and permanent residents. These are further

²⁸ Under the regulations of 2000 asylum seekers were not allowed to work, study or be self-employed until they were granted refugee status however, they could apply for special consideration to work after being in the country for six months (Crush & Williams, 2003:9). This changed in 2004 following a court order.

²⁹ In South Africa asylum seekers and refugees enjoy freedom of movement and are not confined to camps. Instead they are required to live among local communities, a policy which is seen as progressive (Human Rights Watch, 2009:6).

³⁰ The Immigration Act defines a foreigner as “an individual who is neither a citizen nor a resident, but is not an illegal foreigner” (Republic of South Africa, 2002).

categorised based on their intended purpose and duration of stay in South Africa. Migrants applying for the different categories of temporary and permanent resident permits are required to meet a set of criteria determined by the type of permit they wish to apply for. These criteria are contained in the Immigration Act and Regulations. Temporary residents include migrants who are students, workers, investors, retired and dependant foreign relatives of citizens or permanent residents. They are issued with one of the 13 different types of temporary residence permits in the form of a sticker in their passport, which qualify them as temporary migrants. The general expectation is that they are not accompanied by their families and will depart South Africa after a particular duration.

Temporary residents are distinguished from those whose stay in the country is seen to be of a long-term or unlimited nature as contemplated in the Immigration Act. Commonly known as immigrants, this category consists only of permanent residents (who may or may not have previously resided in South Africa). It is worth noting that those with temporary resident permits may after continuous residence in South Africa and subject to certain conditions become eligible to apply for permanent resident status (Sections 26 and 27 of the Immigration Act). Permanent residents get a permit stamped in their passports and also receive a permanent residence certificate. With this status they are required to apply for a South African green ID book. Permanent residents risk losing their status if they stay away from South Africa for more than three consecutive years (Section 28). After a further five year sojourn in South Africa permanent residents may acquire South African citizenship thus becoming naturalised South Africans.

According to Section 25 (1) of the Immigration Act, “the holder of a permanent residence permit has all the rights, privileges, duties and obligations of a citizen, save for those rights, privileges, duties and obligations which a law or the Constitution explicitly ascribes to citizenship” (Republic of South Africa, 2002). In affirming the rights of permanent residents Albertyn (2008:180) refers to the Constitutional Court’s judgement in the *Khosa v Minister of Social Development* case.³¹ In the case a community of indigent permanent residents of Mozambican origin challenged the notion that only citizens had a right to social grants from the government and argued against their exclusion. In the landmark judgement the court held that their exclusion from social grants was not only discriminatory and unfair but also infringed their constitutional rights.

Poor permanent residents are also eligible for state housing. They qualify for a ‘Reconstruction and Development Programme (RDP)’ house if they have dependants and earn less than R 3,500 a month and for subsidised rental housing if they earn less than R 7,500 a month (Silverman & Zack, 2008:148&150). Of course with the demand for government housing far outstripping supply in South Africa, many of the poor end up housed in informal settlements rather than in government houses in townships.

³¹ 2004 (6) SA 505 (CC), (2004) 6 BCLR 569 (CC).

Not all migrants have the right to employment as the right to be in South Africa is distinct from the right to work. Those granted full rights to work by the Immigration Act include work permit holders and permanent residents. Those with study permits and retired person permits may be granted limited working rights subject to conditions set out by the DHA. Those with relative's permits are not authorised to work.

The aforementioned categories of temporary and permanent residents relate to migrants who are in South Africa legally. However, there are migrants who reside in the country unlawfully. They could either have entered the country through irregular means or legally, but became undocumented while in the country. The law uses the term 'illegal foreigner' to refer to a foreigner who is in the country in contravention of the Immigration Act. According to Section 32 of the Immigration Act, illegal foreigners are to be deported unless authorised by the DHA to remain in the country pending their application for status (Republic of South Africa, 2002).

Illegal foreigners are, arguably, not entitled to any constitutional rights by virtue of the fact that they are in the country unlawfully. The Immigration Act implies that once detected illegal foreigners are, however, entitled to just administrative action during detention and deportation. The status of illegal foreigners raises moral issues with regard to human rights. While human rights are accorded to all the question arises as to whether states are morally responsible to those residing within their territory illegally and are not engaged in crime, but are merely trying to better their lives. It also highlights the tension raised by Weiner (1996:176) between migration serving the interests of the host state and migration serving the interests of migrants.

A shared obligation in the law for all migrants is that they abide by the laws of the Republic of South Africa. It is clear from the above that the Constitution, Refugees Act and Immigration Acts guarantee migrants a broad range of human rights and legal protections. As such, South Africa is regarded as having one of the most expansive rights in the world for migrants (Human Rights Watch, 2009:2). Nevertheless, this does not mean that these rights are fully realised by migrants as will be demonstrated in Chapter 6. This may be due to several reasons; however worth highlighting at this point is the fact that the legal status of a foreigner by definition means having inferior claims on the state in contrast to citizens (Amisi & Ballard, 2006:321). Chapter 2 on xenophobia alluded to state officials violating the human rights of migrants with impunity. This section paves the way for the discussion in Chapter 6 on whether African migrants exist in a state of exception where they are not afforded the protections guaranteed in the Constitution, the Immigration Act and the Refugees Act in practice. The focus now shifts to the three state institutions.

4.3 Institutional context

Due to its immigration-related responsibilities, interaction with the DHA at ports of entry and DHA offices forms an integral part of the life of migrants in South Africa. All the migrants in the study

therefore have had one or more encounters with the Department when applying for documentation, renewing their permits, changing their immigration status, or when entering and departing the country. To this extent, the DHA interacts with foreigners extensively albeit, differently from the way it interacts with citizens because it provides different services to citizens and to foreigners. The SAPS' main responsibilities relate to crime, public order and security. However, it has been known to conduct immigration-related responsibilities, such as immigration policing and border management (Apleni, 2012). This means that SAPS officials come into contact with both citizens and non-citizens alike in several sites. These include police stations, the streets, business premises and even private residences. Local government is the tier of government that is closest to the people and is responsible for providing basic public services to all persons living in South Africa. Local government in this study is represented by the City of Cape Town (CoCT). It interacts with migrants as users of the various services it provides which are not only limited to basic services, but also include issuing of trading licences to street traders, by-law enforcement and policing crime (under the Metro Police).

The institutional context in this section covers the following aspects for each of the institutions in turn: mandate and functions; leadership and executive structure; operations; and challenges facing the institution. It is by no means exhaustive, but is aimed at providing some context to these institutions which also serve South Africans. It is also meant to draw attention to the gap between the formal rules that define institutional structure and functions, and the real politics of how government agencies work as pointed out by Boone (2003:4), among others. In the section on the DHA recent policy and administrative changes affecting migrants are also discussed.

4.3.1 The Department of Home Affairs

The DHA deals with citizens and foreigners by providing both civic and immigration services. It describes itself as “the custodian, protector and verifier of the identity and status of citizens and other persons resident in South Africa” (Department of Home Affairs, 2012). This role involves maintaining the National Population Register; managing the birth, marriage and death records; determining and granting citizenship; issuing travel documents and passports; and issuing identity documents. The DHA also “controls, regulates and facilitates immigration and the movement of persons through ports of entry” (Department of Home Affairs, 2012). This includes administering admissions into South Africa; determining the residency status of foreigners and issuing permits; custodianship over refugee affairs; and policy directives. Because of its functions, the DHA is regarded as “the backbone of national security, service delivery and development” (African National Congress, 2012:3).

The headquarters of the DHA is in Pretoria like all national government departments. The Department also has offices throughout the country and is present in all South African embassies and high commissions and at all ports of entry, which include 10 airports, nine harbours and 53 land border

crossings.³² While all the DHA offices throughout South Africa provide civic services only a few provide immigration services. There are two DHA offices that offer immigration services in Cape Town. These are the Bellville and Cape Town offices.

The Department's services for international migrants, which are of interest to this study, fall under the National Immigration Branch. Its functions are to implement the Immigration Act and its accompanying Regulations (2005, 2014) as well as the Refugees Act and its Regulations (2000). The regulations contain, among other things, detailed application information for the various permits such as the forms to be completed, the procedures to be followed and the accompanying documentation that must be submitted to the DHA. While implementing the Immigration Act the Department pledges to prevent and counter xenophobia, promote a human rights culture and issue permits expeditiously and on the basis of simplified procedures (Republic of South Africa, 2002).

The DHA has also established RROs in different parts of the country to deal specifically with the asylum process. Figure 4.2 summarises the executive structure of the DHA. For this study the Deputy Director-General in charge of Immigration Services, who is based in Pretoria, was contacted for an interview but never responded despite several follow-up attempts. Following this the Provincial Manager of the Western Cape, who is based in Cape Town, was contacted. He said that he was unable to grant an interview without permission from the headquarters and this permission was never forthcoming.

Home Affairs is led by a Cabinet Minister who is appointed by the President. The current Minister of Home Affairs is Malusi Gigaba. The first post-apartheid minister of Home Affairs was Mangosuthu Buthelezi, leader of the Inkatha Freedom Party. He led the DHA from 1994 to 2004. He was famous for his xenophobic utterances, drawing links between migrants and crime and depicting illegal migration as a threat to the development of South Africa (Klotz, 2012:1999; Crush, 2008:16; Lefko-Everett, 2008:6). During his tenure administrative irregularities flourished in what was already regarded as one of most corrupt departments under apartheid (Landau *et al.*, 2005:25). Furthermore, the DHA adopted a protectionist approach to immigration and a tough stance towards undocumented migrants (Segatti, 2011:55; Vigneswaran, 2008a:18).

According to Vigneswaran (2008a:18), Buthelezi's ideas live on in the current administration. Yet the African National Congress (ANC)-led government has blamed the failure to effectively manage migration to the appointment of an opposition figure to the head the Department for a decade (African National Congress, 2012:5). Certainly, the lack of consensus, confusion and political deadlock, which characterised the process of developing the current Immigration Act in the late 1990s and early 2000s was partly due to the tension that existed from having a minority political party being part of a coalition government with the majority ANC (Handmaker, de la Hunt & Klaaren, 2008:3). However,

³² See DHA website <http://www.dha.gov.za/index.php/south-african-ports> [2012, December 14].

placing the blame for an inadequate immigration policy squarely on Buthelezi glosses over the fact that the ANC undermined his authority throughout his tenure (Vigneswaran, 2008b:792).

Buthelezi was succeeded by his deputy Nosiviwe Mapisa-Nqakula from 2004 to 2009 under whose leadership the Department embarked on the implementation of a turnaround plan. In 2010 Nkosazana Dlamini-Zuma was appointed Minister, a position she held until 2012. Under her term in office the Department was credited with strengthening internal systems, streamlining the process of applying for official national documents, improving service delivery to citizens and obtaining its first unqualified audit. Naledi Pandor took over executive authority of the Department in 2012 and was replaced by Malusi Gigaba in May 2014 after a new administration was ushered in following the national elections.

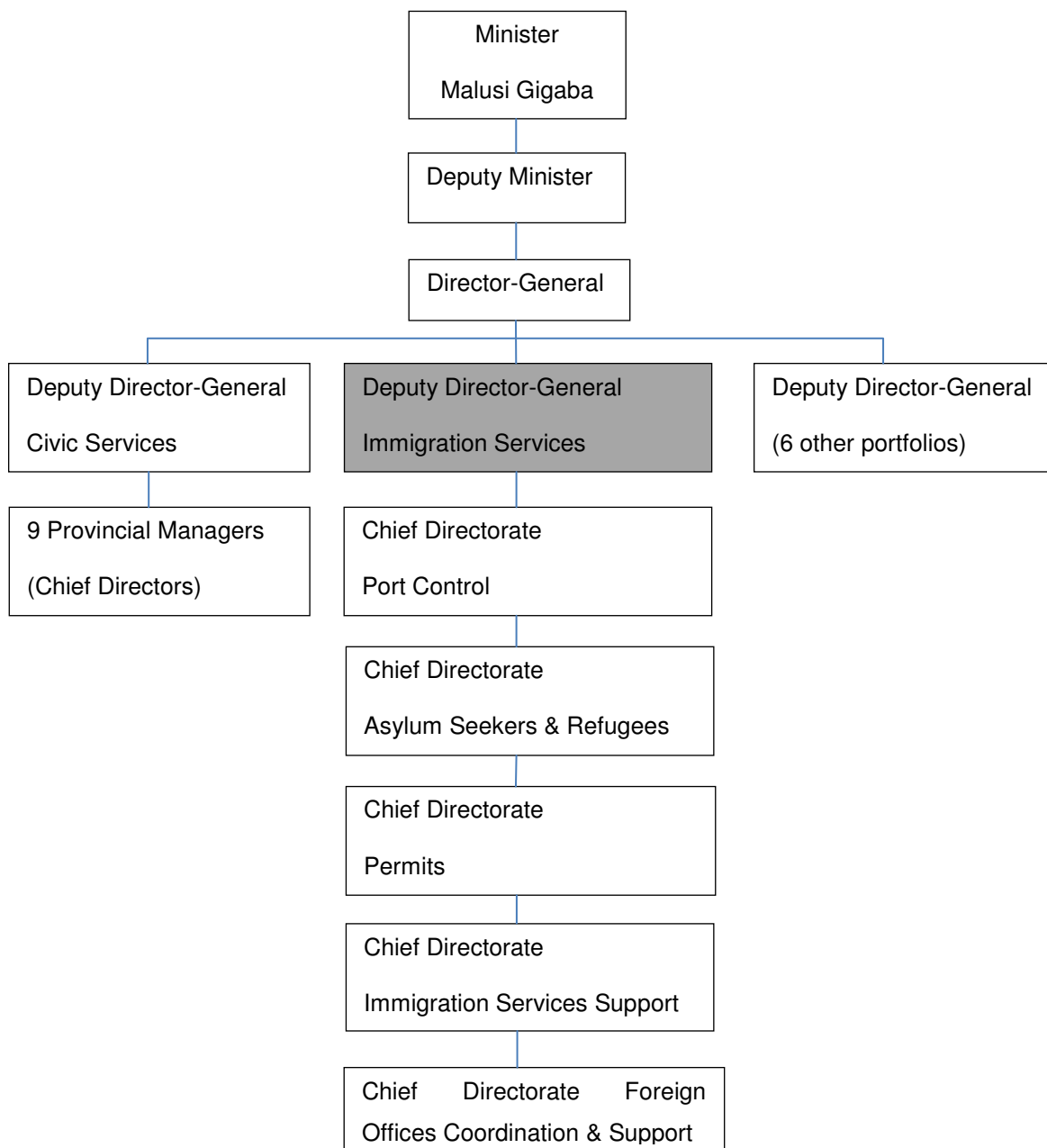


Figure 4.2: The Department of Home Affairs executive structure

Source: Adapted from DHA (2012:21).

In terms of its internal operations and professionalism the DHA has over the years attracted immense public criticism for its poor service standards in comparison to other government departments (Davids, Lefko-Everett & Williams, 2005:5; Hoag, 2010:205). Media reports indicate a widely held perception that the DHA is inaccessible, unresponsive and poorly managed (Davids *et al.*, 2005:5). It has also been riddled with widespread corruption (Mail & Guardian, 2009). Interestingly the findings of a SAMP survey conducted in 2004 to test perceptions on the quality of DHA services were inconsistent with the negative media reportage of the DHA, public opinion and the Director General's assessment (Davids *et al.*, 2005:4). The surveyed customers, both citizens and non-citizens in and around DHA offices countrywide, generally reported rather positive experiences regarding the DHA's service delivery, customer relations and staff attitudes. In a separate study of the DHA from 2008-2009 almost everyone Hoag (2010:205) came across had a personal experience of corruption, inefficiency and/or disarray with DHA officials. Indeed, for many citizens and foreigners alike, the DHA represents "government bureaucracy" at its worst and the use of the label "horror affairs" has become common when referring to Home Affairs (Hoag, 2010:205).

In 2003 the Department's Director-General announced a Turnaround Strategy after publicly admitting that the DHA was in a "scandalous" state and that immigration services were a "joke" when compared to other countries (Xundu, 2003; BBC, 2003). The Turnaround Strategy called for radical changes in the DHA in order to efficiently service its customers (Mail & Guardian, 2007). Significant improvements have been observed since the inception of the strategy and hailed by the public, the media and government (Amit, 2012:15). However, a decade later Amit (2012:15) argues that these improvements are not reflected in the immigration activities of the DHA. Segatti (2011:58) also notes that there have been notable improvements in civic affairs services under the successive ministers but immigration services have been disappointing. Amit (2012:15) describes the DHA's performance in immigration services as "highly dysfunctional" and criticises the asylum system for "consistently failing to carry out its functions in accordance with the law". This is despite the establishment of the National Immigration Branch in 2005 as part of the strategy with the aim of professionalising the implementation of its immigration services (Human Rights Watch, 2005:19).

The Department has been conducting an immigration policy review over the years but the details have not been made public. However, the annual reports of the DHA suggest that the review entails an overhaul of the asylum system (Department of Home Affairs, 2012:10), separation of economic migrants from asylum seekers, and facilitating the entry of skilled migrants (Department of Home Affairs, 2011:10) but they are thin on details. Amendments to the Immigration Act announced in 2014 were thought to be part of the immigration policy review. However, the former Home Affairs minister, Naledi Pandor, explained that they were only interim measures to address some shortcomings of the Immigration Act while the review was underway (Paton, 2014). She added that the Human Sciences

Research Council (HSRC) has been commissioned to conduct a review on managing migration taking into account international perspectives. Nevertheless, the new regulations, which took effect in May 2014, point towards a hardening stance towards immigration. According to Segatti (2014), many migration experts believe that in the short term, they will result in more chaos in an already inefficient bureaucracy and an increase in litigation against the DHA by those declared 'undesirable' by the new rules while in the long term they will result in more costs to taxpayers.

The closure of some RROs in the last couple of years can be viewed in the context of the DHA's policy changes and deserve a more detailed discussion. The RROs exist to receive and adjudicate asylum claims. The RROs also extend asylum seeker permits for those who are waiting for their claim to be adjudicated and those whose claims have been rejected, but have appealed and are waiting for a hearing. Section 8 of the Refugees Act gives the Director-General powers to establish RROs after consultation with the Standing Committee for Refugee Affairs. An RRO must consist of at least one Refugee Reception Officer and a Refugee Status Determination Officer (RSDO). When the Refugees Act took effect in 2000 the DHA established five RROs based in Cape Town, Durban, Johannesburg, Port Elizabeth and Pretoria. Following a steady increase in the number of applicants seeking asylum the DHA's administrative capacity was stretched to the limit and it experienced a backlog in processing applications. This led to the opening of additional offices in Durban, Johannesburg, Musina, Port Elizabeth and Pretoria. However, in 2011 it began a series of RRO closures reducing its administrative capacity for asylum seekers and refugees (Amit, 2012:16). The closures of the Johannesburg, Port Elizabeth and Cape Town RROs in 2011 and 2012 mean that asylum seekers must travel to Durban, Musina or Pretoria to submit their applications.

The Department has announced plans to relocate the RROs to the land borders of South Africa through which many asylum seekers enter the country. However, the closures have taken place before the infrastructure to facilitate this move has been put in place. As already mentioned details of these changes have been scanty. The DHA has maintained that "it is not changing policy but merely implementing existing policy through administrative decisions" (African Centre for Migration and Society & Lawyers for Human Rights, 2013:13). Whatever the case may be internal discussions within the ANC shed some light on the thinking behind these changes and are a sign of the ruling party's endorsement of the steps being taken by Home Affairs.

The ANC policy discussion document discussed at the party's 2012 policy conference in Mangaung states that it is unusual for a country to have RROs right in the middle of the country and that relocating them along the border will "alleviate this problem" (African National Congress, 2012:7). Moreover, it claims that "over 95% of those claiming asylum in SA are not genuine asylum seekers but rather looking for work or business opportunities" (African National Congress, 2012:5). It then suggests a "risk-based approach" in which asylum seekers who present a high risk will be accommodated in a secure facility in the border until their status has been determined (African National Congress, 2012:6). If this document is anything to go by then the changes, some of which are

already being implemented, indicate both a shrinking space for asylum and a crackdown on asylum seekers in South Africa.

The closure of the Johannesburg, Port Elizabeth and Cape Town RROs was challenged in court by organisations which champion migrants' rights. The court established that the closures were unlawful "due to a lack of substantive consultation with the Standing Committee on Refugee Affairs or with affected groups", but the DHA has disregarded court orders to reopen the RROs or offer the equivalent services in these cities within three months of the ruling (African Centre for Migration and Society & Lawyers for Human Rights, 2013:7). The Cape Town RRO closure was contested in the Western Cape High Court by organisations working with refugees in the case *Scalabrini Centre Cape Town and 8 others v the Department of Home Affairs and 4 others*.³³ Following the court ruling the DHA then opened a temporary office in the city centre to finalise existing claims and deal with renewals of permits. It appealed the court ruling so it is still not accepting new applications. Since it is not offering the full range of services that an RRO should it is not a RRO by definition and the DHA officials have been referring to it as a 'centre', although for the sake of consistency the researcher continues to refer to it as a RRO.

4.3.2 The South African Police Service

Chapter 11 of the Constitution states that the SAPS, which is the national police service, is part of the security services of the country. Other security services include the defence force and intelligence agencies. According to Section 205 (3) of the Constitution, the objectives of the police service are "to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law" (Republic of South Africa, 1996). The SAPS Act 68 of 1995 and SAPS Amendment Act 83 of 1998 further establish the powers and functions of the SAPS and Municipal Police Services. National legislation provides for policing in the three spheres of government, namely, national, provincial and local government. This study will focus on policing at the national and local government levels. This section addresses the national police, the SAPS, in Cape Town. The local government police in Cape Town, known as the Metro Police, will be addressed in the next section as it falls under local government.

The SAPS falls under the executive authority of the Minister of Police (currently Nkosinathi Nhleko). The National Commissioner of Police (currently Mangwashi Phiyega) is responsible for the control and management of the SAPS. Both officials are appointed by the President. There is a SAPS head in each of the nine provinces whose title is Provincial Commissioner. Provincial Commissioners report to the National Commissioner. For this study the Western Cape Provincial Commissioner was contacted for an interview. He then referred the researcher to the Deputy Provincial Commissioner in charge of

³³ 11681/12

operations who granted the researcher an interview. An organogram of the executive structure of SAPS is shown in Figure 4.3.

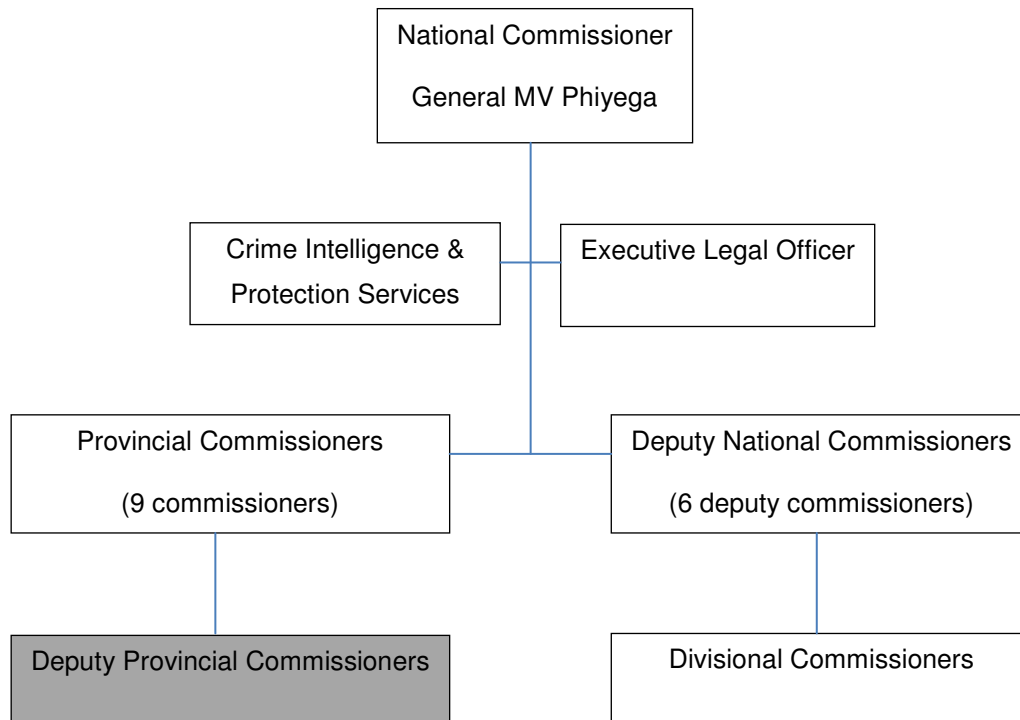


Figure 4.3: The South African Police Service executive structure

Source: Adapted from SAPS website.³⁴

South Africa experiences exceptionally high rates of violent crime despite longitudinal analysis of crime statistics revealing a downward trend in crime (South African Police Service, 2012). The high crime rates have broadly been attributed to the legacy of apartheid and colonialism, and factors in post-apartheid South Africa, which reinforce the apartheid legacy (Centre for the Study of Violence and Reconciliation, 2009:5-10).

The South African police force is frequently at the receiving end of public criticism and has struggled to project a professional image. Members of the police have been found to engage in crime and corruption at all levels. A former national police commissioner, Jackie Selebi, lost his job after he was charged and found guilty of corruption (News 24, 2010). The use of lethal force has become an established reality (The Guardian, 2013). This has hampered SAPS' efforts to transform itself from its previous apartheid and militaristic orientation into community policing (Matshedisho, 2011:222). Generally, and when dealing with migrants, the police have been accused of replicating apartheid-era policing and justifying morally compromising practices as the fulfilment of duty (Vigneswaran, 2011:166).

³⁴ http://www.saps.gov.za/saps_profile/strategic_framework/structss.htm [2013, December 12].

In March 2012 an eye-witness released video footage showing police officers assaulting a Mozambican taxi driver who they then dragged for metres attached to the back of their police van to the Daveyton Police Station. He later died a gruesome death in police custody (Zvomuya, 2013). In March 2014 two Cape Town policemen were caught on video assaulting a Nigerian man who had apparently been arrested following a robbery complaint. The video shows the two officers on a street in the central business district stripping the handcuffed man naked and then repeatedly punching and kicking him in the groin area (Phakathi, 2014).

The police have also been accused of engendering impunity and complicit policing during and after xenophobic violence. For example, they were accused of doing little to protect Zimbabweans and not making a single arrest following the 2009 xenophobic violence in De Doorns in the Western Cape, where over 2,500 Zimbabweans were displaced and their property looted (Solidarity Peace Trust, 2010:38). This was the largest xenophobic eruption since the 2008 national one where only a few perpetrators were arrested, and even fewer charged and convicted.

Questions have been raised about the impact of SAPS' involvement in immigration enforcement activities on its capacity to conduct its other duties. Vigneswaran and Duponchel (2009:2) have drawn attention to the diversion of large amounts of resources towards immigration policing in Gauteng Province at the expense of visible policing; the tension between SAPS responsibilities to police communities while at the same time protecting the country's borders; and the negative impact of immigration policing on police integrity.

What is the legal basis for police involvement in immigration policing? It is believed, on the one hand, that the immigration enforcement powers of the SAPS to search, arrest, detain and deport illegal foreigners are delegated by the DHA owing to a shortage of staff (Human Rights Watch, 2007:45-46). Section 3 of the Immigration Act permits the Minister and Director-General of Home Affairs to delegate some powers to other officers, employees and persons in the Public Service (Republic of South Africa, 2002). On the other hand, Section 41 of the Immigration Act is believed to be the key clause that outlines a role for the police in immigration enforcement (Vigneswaran & Duponchel, 2009:4). Section 41 states that:

When so requested by an immigration officer or a police officer, any person shall identify himself or herself as a citizen, permanent resident or foreigner, and if on reasonable grounds such immigration officer or police officer is not satisfied that such person is entitled to be in the Republic, such person may be interviewed by an immigration officer or police officer about his or her identity or status, and such immigration officer or police officer may take such person into custody without a warrant, and shall take reasonable steps, as may be prescribed, to assist the person in verifying his or her identity or status, and thereafter, if necessary detain him or her in terms of section 34 (Republic of South Africa, 2002).

Aglotsson and Klaaren (2003:3) observe that "police officials have interpreted the 'reasonable grounds' test as a right to arrest and detain persons who look or behave foreign, not illegal",

particularly black foreigners. Whereas Section 41 empowers the SAPS to conduct a range of immigration enforcement activities Vigneswaran and Duponchel (2009:4) emphasise that the law does not oblige them to do so. This means that the Section 41 powers or police involvement in immigration enforcement are discretionary. Mosselson (2010:646-647) argues that Section 41 places all migrants, whether legal or illegal, in an exceptional and vulnerable space because anybody suspected of being a non-citizen can potentially be turned into an illegal person.

4.3.3 Local government

Chapter seven of the Constitution is dedicated to local government. In addition to the Constitution, the Municipal Demarcation Act 27 of 1998, Municipal Structures Act 117 of 1998, Municipal Electoral Act 27 of 2000, Municipal Systems Act 32 of 2000, Municipal Finance Management Act 56 of 2003, and other supplementary legislation provide a comprehensive regulatory framework for local government. It is one of the three spheres of government, which are “distinctive, interdependent and interrelated” (Republic of South Africa, 2006). South Africa is a unitary state which has federal features with the government constituted at national, provincial and local level. Section 152 of the Constitution outlines the purpose of local government as:

- a) To provide democratic and accountable government for local communities;
- b) To ensure the provision of services to communities in a sustainable manner;
- c) To promote social and economic development;
- d) To promote a safe and healthy environment; and
- e) To encourage the involvement of communities and community organisations in the matters of local government. (Republic of South Africa, 2006)

Municipalities have extensive executive and legislative powers contained in Sections 156 and 229 of the Constitution. They include, *inter alia*:

- a) The right to administer the local government matters entrusted to it in schedules 4(B) and 5(B) of the Constitution;
- b) The authority to make and administer by-laws for the effective administration of the matters assigned to it, and to impose rates, taxes and surcharges for the services provided by, or on behalf of, the municipality;
- c) The right to develop and adopt policies, plans and strategies, promote development, and implement national and provincial legislation as assigned to it; and
- d) The right to do anything else within its legislative and executive competence. (Thornhill, 2008:73)

The day-to-day municipal functions in schedules 4(B) and 5(B) of the Constitution are grouped according to functional areas and summarised in Table 4.1. The three shaded rows indicate the areas in

which the migrants interviewed in this study interacted with local government officials from the CoCT.

Table 4.1: Functions of municipalities

Functional Area	Description
Water Services – Water and Sanitation	Water supply services and sanitation services
Electricity and Gas Reticulation	Electricity and gas reticulation, Street lighting
Municipal Transport	Municipal public transport, Municipal airports, Pontoons, Ferries and harbours
Waste Management	Refuse removal, Refuse dumps and solid waste disposal, Cleansing
Roads and Stormwater Systems	Municipal roads, Stormwater systems in built-up areas
Community and Social Services	Beaches and amusement facilities, Local amenities, Local sports facilities, Municipal parks and recreation, Public places, Cemeteries and crematoria, Child care facilities, Libraries, Museums
Planning and Development	Municipal planning, Building regulations, Land use management, Property development (non-municipal property)
Emergency Services	Fire fighting, Rescue services, Disaster management, Ambulance services
Municipal Health	Municipal health, Licensing and control of undertakings that sell food to the public, Noise pollution, Pounds, Accommodation, Care and burial of animals, Licensing of dogs
Primary Health Care	Primary health care facilities (e.g. day hospitals and clinics etc)
Environmental Management	Environmental planning, Bio-diversity management, Climate change interventions, Alternative energy planning, Air pollution
Economic Development	Local tourism, Markets, Abattoirs, Trading regulations, Street trading, Billboards and the display of advertisements in public places, Control of undertakings that sell liquor to the public, Fencing and fences, Local economic development
Housing	Housing facilitation (managing developers, housing lists etc), Acting as developer of housing projects, Landlord (owning and managing housing stock)
Traffic and Policing	Traffic and municipal police, Community Safety, Control of public nuisances, Driver licensing, Motor vehicle licensing

Source: Municipal Demarcation Board (2012:6-7).

Local government is made up of 278 municipalities, which cover the entire territory of South Africa. These include eight Category A (metropolitan) municipalities, 226 Category B (local) municipalities and 44 Category C (district) municipalities.³⁵

Municipal elections to elect councillors are held at intervals of not more than five years in accordance with the Local Government: Municipal Electoral Act 27 of 2000 and Regulations. In the Western Cape where this research is conducted, the Democratic Alliance – the official opposition party in parliament – won the most municipalities in the 2011 local government elections.³⁶ It won seats in all but one of the municipalities in the province but not by a majority. Municipal elections are conducted using a mixed electoral system, i.e. on a 50% ‘first-past-the-post’ ward and 50% proportional representation basis (Zybrands, 2006:137). The councillors then elect officials to the various decision-making positions, which comprise the Speaker, Executive Mayor or members of the Executive Committee, and in some municipalities, members of permanent and ad hoc committees (Zybrands, 2006:139). Municipalities operate on the basis of an Integrated Development Plan, which is the strategic plan developed by every municipality. The main sources of local government finances are revenues generated by the municipality and an equitable share of national revenue.

Local government is crucial to the realisation of many socio-economic rights not only of citizens but also of migrants. This is because the realisation of these rights requires state intervention and the use of public resources (Kabeer, 2005:2). However, local government performance varies greatly with some performing well and others performing poorly (Municipal Demarcation Board, 2012:151). Indeed, a large number of municipalities face major challenges in fulfilling their obligations. De Villiers (2008:18) attributes many of the service delivery challenges experienced by South Africans to “poor understanding of the Constitution, lack of training and coordination, and inadequate sharing of resources”. According to Cloete (2008:100-101), poor service delivery at the local government level is the result of weak leadership, political party turf wars and “the bad implementation of an appropriate (constitutional) system”. Zybrands (2006:149-150) states that several municipalities are in a precarious financial position due to a culture of non-payment for services, poor financial management and the lack of legal measures to enforce accountability.

The poor performance of many municipalities has led to widespread and often violent community protests. Over the period 2007 to 2012 a total of 218 protests over poor service delivery were reported in the media second to 303 protests over land and housing (de Visser & Powell, 2012). Protestors were aggrieved by municipalities’ poor delivery of electricity, water, sanitation and transport infrastructure. The Multi-level Government Initiative shows that there has been a dramatic rise in the number of protests between 2007 and 2012 with 2012 having had more protests than 2011, and more protests than 2010 and 2011 combined (de Visser & Powell, 2012). In 2012 the Western Cape not only

³⁵ See Municipal Demarcation Board website <http://www.demarcation.org.za/#> [2013, January 21].

³⁶ See Electoral Commission website http://www.elections.org.za/content/Pages/LGE_NPE_Reports/reports.aspx?IEETypeID=3&id=1427&name=Elections [2013, January 21].

reported the highest number of protests but also the highest number of violent protests (de Visser & Powell, 2012).

Having said that, the Western Cape has some of the best-performing municipalities in the country. The CoCT is the top ranked metro and seven out of the top-ten best-performing local municipalities are located in the Western Cape (Municipal IQ, 2013). This makes the province among the most productive in the country and hence attractive to both local and international migrants (Municipal IQ, 2013).

The CoCT has an estimated population of 3.2 million inhabitants. It is the only Category A (metro) municipality in the Western Cape Province, which has a total of 30 municipalities.³⁷ The executive structure of the metropolitan municipality is shown in Figure 4.4 below. An interview was conducted with the City Manager, who has held this position since 2006. The City Manager is in charge of the municipality’s administration and is also the accounting officer.

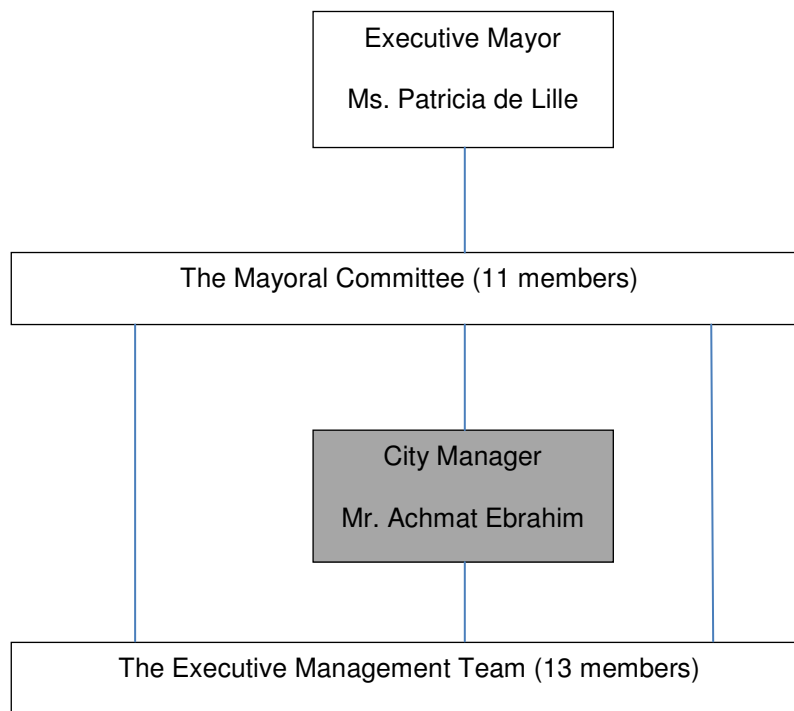


Figure 4.4: The City of Cape Town executive structure

Source: Adapted from City of Cape Town website.³⁸

The role of local government in the provision of services to migrants is not explicitly stated in the Refugees Act and the Immigration Act. However, the terms ‘everyone’ and ‘communities’, used in the Constitution and local government legislation respectively, imply that all categories of migrants are

³⁷ See Western Cape Government website <http://www.westerncape.gov.za/eng/tenders/opportunities/municipal/> [2013, January 21].

³⁸ https://www.capetown.gov.za/en/Management/Documents/CoCT_Structure_130912.pdf [2013, December 12].

included. The expectation that asylum seekers and refugees should live side by side with South African citizens as opposed to living in camps, where they receive specific services, suggests that they are expected to receive basic services in the same way that local communities do, which is through local government.

The City Manager confirmed to the researcher that the municipality does not distinguish between citizens and non-citizens and is there to serve all residents of the CoCT (City Manager, respondent 48). International migrants are therefore entitled to municipal services by virtue of the fact that they live in Cape Town. The fact that migrants have a right to access local government services does not mean that they are free of charge. Only primary healthcare facilities are accessible free of charge. All migrants interviewed in this study were renting private housing and they pay for water, electricity and refuse collection, which are provided by the municipality. Those who use the City's public transportation system, MyCiti, pay for it. Migrants are thus expected to be self-sufficient by the state. The ability of migrants to support themselves is based on the right to work and the right to freedom of movement in the Constitution (African Centre for Migration and Society & Lawyers for Human Rights, 2013:37).

Although all migrants receive services from the CoCT only a handful of them have had any encounter with municipal officials. Most migrants are tenants and the monthly rent that they pay covers their utilities such as water, refuse collection and electricity, which the tenant could also pay for directly using a pre-paid system, which does not entail any contact with a local government official. As a result, they do not have face-to-face contact with local government officials with regard to the basic services they receive in their homes. The number of migrants in this study who have had face-to-face interaction with CoCT officials are those who have made use of local clinics, those who operate businesses in the municipality and those who have come into contact with the Metro Police at roadblocks. The Metro Police are responsible for traffic control, policing municipal by-laws and regulations, and crime prevention. These are the areas highlighted in Table 4.1.

Some local authorities have expressed the view that foreigners use scarce municipal resources meant for South Africans and are to blame for crime and violence (Palmary, 2002:17). This is similar to the broader perceptions of migrants in South Africa examined in Chapter 2 where their presence is widely seen as threatening the socio-economic rights and lives of South Africans. However, the lack of evidence to support these perceptions, alongside the reasons for poor service delivery presented above, suggest that migrants are used as scapegoats for the government's shortcomings.

The Cape Town City Manager holds a different view, which he shared with the researcher. According to him, international migrants are not a strain on the resources of the city, but rather the general influx of people and the rate at which the city is growing (City Manager, respondent 48). For him, these are challenges of urbanisation, which Cape Town is confronted with and the city has to plan to accommodate its growing population. Furthermore, he mentioned that the CoCT does not gather statistics on its migrant population as it is more concerned with the total population of the city not

where people come from. In planning for the city's development, it works with future projections of population growth estimates.

Additional contact between municipalities and migrants has occurred in the context of large scale attacks on foreigners none of which took place during this research. Violent outbreaks of xenophobia have compelled the Metro Police and Disaster Management to intervene in conflicts between South Africans and migrants living in the same communities, for example, by providing temporary shelters and food to displaced victims of xenophobic attacks. The CoCT established temporary camps to host foreigners who had been victims of the 2008 xenophobic attacks. Palmary (2002) states that the CoCT have revealed that they do not have the resources to provide such services in a sustainable manner and have also questioned whether providing such services to victims of xenophobic violence are within the domain of local government, provincial or national government.

It is important to mention that this study did not venture into local government politics and focused on the administrative side of local government. Previous studies by Steinberg (2008), Misago (2011), Nieftagodien (2011) and Peberdy and Jara (2011), have linked local politics to xenophobic violence and the City Manager acknowledged that the role of politics in xenophobic violence in Cape Town cannot be disputed. He noted that some of the service delivery protests are genuine and others are politically instigated particularly around election time (City Manager, respondent 48). While the distinction between the administrative and political domains might not be explicit to those disadvantaged communities that protest about service delivery, this distinction is clear when it comes to foreigners. Migrants neither engage in local politics at the ward level nor take part in service delivery protests. This is because they are generally not reliant on the state for welfare and the quality of basic services they receive are determined by where they can afford to live. In urban areas in South Africa these services are bound to be better than those provided by African governments in other African cities. However, a common aftermath of these protests is that migrants are targeted and their businesses are looted and their property destroyed.

4.4 Conclusion

This chapter began by outlining the legal context that regulates the rights and obligations of migrants. The focus was on the Constitution, the Refugees Act and the Immigration Act. With regard to the Constitution, the focus was on the Bill of Rights and the provisions that establish the different tiers of government. The discussion on the Refugees Act and Immigration Act highlighted the legal categories covered under the respective Acts, i.e. asylum seekers and refugees in the former, and temporary residents, permanent residents and illegal foreigners in the latter. These are the potential targets of the state of exception. It then highlighted the rights and obligations of migrants stated in these laws. This section concluded that, according to the letter of the law, the South African laws grant migrants of different legal status a broad range of rights and protections. In fact, the Constitution and the Refugees Act are regarded as among the best in the world.

The chapter then turned to the three state institutions as possible agents of the exception. It outlined the situations and sites in which officials interact with migrants, or the potential spaces of the state of exception. Furthermore, it described the legislated functions of the DHA, SAPS and local government broadly and then in relation to the services they provide to migrants in particular. It also sketched a picture of the context within which these institutions operate and are perceived in terms of service delivery. Common to all of them are issues of capacity, skills, resources and delivery. It also noted some of the policy shifts in the asylum system being implemented by the DHA.

By pointing out the regulatory and institutional environment in which the possible agents of the exception operate, the possible spaces of exception and the rights of migrants, this chapter has laid the basis for the presentation of the empirical data in Chapter 5 and Chapter 6. This is in terms of analysing the practices of state officials in their dealings with African migrants, which may be inconsistent with the laws discussed in this chapter.

Chapter 5: African migrants' experiences with state officials

5.1 Introduction

The focus of this chapter is on the results of the ethnographic field research conducted between July and October 2013 in Cape Town, and whose methods were discussed in Chapter 1. It is informed by interview transcripts and field notes. This chapter is the first of two results chapters that answer the central research question which is: Do the practices of state officials as experienced by African migrants, reinforce xenophobia in South Africa? It is addressed through the following two sub-questions:

- a) How are the practices of South African state officials experienced by African migrants?
- b) To what extent are African migrants treated differently by South African state officials in terms of their legal status or nationality?

The state officials in question are those from the Department of Home Affairs (DHA), the South African Police Service (SAPS) and the City of Cape Town (CoCT). The results are presented in order of the research questions above. The findings are presented with respect to the selected institutions starting with DHA officials, then SAPS officials and, lastly, CoCT officials.

5.2 Experiences of African migrants with state officials

The findings reported here are the outcome of the data analysis process outlined in Chapter 1. In order to answer the first research question the responses of migrants were analysed in their totality to interpret the way that they are generally treated by state officials. This was bearing in mind that in order to ensure objectivity, the interview questions were phrased in a neutral rather than a presumptuous manner. For example, what was your experience when you visited the DHA office? How were you treated by SAPS officials? This allowed a variety of responses with thick descriptions to emerge. Using Atlas.ti, the first step was to group all the experiences according to the three institutions. Secondly, the experiences were coded using short descriptive labels. Thirdly, the codes were grouped broadly into positive and negative experiences and reports generated for each state institution. Fourthly, a frequency test was run to see which experiences were cited most commonly. The results are analysed below.

5.2.1 Department of Home Affairs officials

As mentioned in Chapter 4, all migrants interact with DHA officials as they rely on them to process and issue them with residency permits. Consequently, every migrant had had an experience with a DHA official in a DHA office, SA embassy or at street level when DHA officials were going about immigration enforcement. During the interviews, respondents were asked to talk about the treatment they received when they visited the RRO or DHA offices. The responses were mixed.

Firstly, a small group of migrants described their experiences as sometimes positive and sometimes negative. Speaking about customer service they stated that the treatment varied depending on the individual official, with some treating them well and some not treating them well. This suggests that there was no consistency and predictability in the way they expected to be treated whenever they visited the DHA as shown by the quotes below:

It depends on the actual official. I know the ones in Cape Town and I know the ones who are nice and the ones who are not so I always pray that I get a nice one. In Zim they are not as nice as the nice ones in Cape Town. They are not very happy to see us. I can't say they are evil but they are not nice. (Zimbabwean woman, respondent 2)

Sometimes you can go and be lucky. I am planning to go there but I don't know. If they are in a good mood they can extend. If not, they will not. (Malawian woman, respondent 11)

Secondly, migrants said they had positive experiences. These were described in terms of customer service and in the success of permit applications. Some examples of each of these from both DHA offices and RRO are quoted below.

The service is fine. The only thing is that you have to queue. (Mozambican man, respondent 15)

I've never met anyone who has ever applied for a permit and had it declined. (Zimbabwean woman, respondent 2)

That time they were still in Foreshore where they are now. There I get my first asylum seeker... There was no problem. When they close the Foreshore office, they move it to Nyanga... I just went there I think twice to extend my asylum and then after that I was booked for interview. So I went for interview, I was issued or granted refugee status. Ja, I didn't have any complications or any bad experience of Home Affairs myself. When my wife came from DRC, also she didn't have any problem. I brought her there and it was already on their file, so they check the file and everything and then they issue her permit as well. (Congolese man, respondent 23)

There was a very dedicated lady at DHA. She said after 6 months I will give you status. Then I received 2 years status and after that 4 years. Personally I have had no problem. The way they treat me is not like how others are treated. They assist me. I know how to express myself and

...speak for my rights. Some refugees can't express themselves well. That's a big problem.
(Ethiopian man, respondent 35).

Interestingly, what the last quotation above suggests is that even though the migrant had experienced being treated well he was aware that he was somewhat of an exception. The migrant also implies that it is not only because of the individual official that he was treated well but also because he was able to assert himself. It is also worth noting that he had only recently moved to Cape Town and his experience was with the RRO in Port Elizabeth. This respondent's experience also suggests that even though migrants have rights, it does not necessarily mean that those rights are recognised by state officials and migrants may be required to assert their rights in order for those rights to be respected.

Thirdly, and for the most part, migrants reported negative experiences during their encounters with DHA officials. One respondent claimed that most officials do not treat migrants well and those who do are the exception. He was speaking from his experience when he worked at the RRO.

You see a few that they are very quiet, very humble when you talk to them, one or two. If you have twenty, two of them are nice, eighteen is nonsense. Very, very rude... (Somali man, respondent 26)

Negative experiences reported by migrants ranged from poor customer service, verbal and physical abuse and unfair treatment to generally ill treatment as a result of their foreignness. Examples of each are provided below.

In terms of poor customer service, migrants gave examples where the officials were slow to attend to them or were rude to them.

There is people that have got babies, there is old people... but they don't help them. They just busy with Whatsapp and Facebook. (Ugandan woman, respondent 30)

I heard one day at Home Affairs an official saying to a refugee, but 'I didn't ask you to be a refugee' and that's not an answer they should give to a person... Maybe I didn't understand what was the question but that's the answer she gave. Whatever was the question that's not the correct answer. (Angolan man, respondent 34)

There is one official there who is very rude... His name is Luyanda. One day I was even thinking of calling the minister because there is no help for us. Sitting in front of him he starts insulting you, chasing people. He starts asking you 'what are you doing here? why don't you go back to your country?' He is still there. Most of us we know him but we don't know where to complain. One day we even complain to the manager but he is doing nothing. (Congolese man, respondent 21)

The above quotes are also a demonstration that migrants felt powerless at the hands of frontline DHA officials. In the first two excerpts, the migrants share their observations of how other migrants have been poorly treated in their presence as if to show that it is normal for migrants to be treated poorly.

The first quotation implies that mothers with children and the elderly, who would normally get priority service, are treated no better. One of the migrants just quoted went further to narrate the verbal abuse and humiliation he suffered from a DHA official when he went to apply for family reunification after his wife had joined him later from the DRC.

He started insulting me in front of my wife. I cried that day. He said to me, 'this is a street woman. You took a street woman, it's not your wife'. I had a letter from UCT Law Clinic stating that this woman is my wife. I got married to her in DRC... I showed the letter to that guy, he threw it away. I went to pick it there... Until now they never join my wife to me. She is still holding an asylum seeker. I have tried twice they are refusing. (Congolese man, respondent 21)

Migrants revealed having been assaulted by DHA officials and the security guards, who are not state officials but are from a private security company that has been hired by the DHA. One key informant confirmed that such incidents are commonly reported to them (Community Liaison Officer at PASSOP, respondent 47).

They slap sometimes... They kick in your face. (Ethiopian man, respondent 36)

I saw the securities beating people. (Rwandan man, respondent 28)

Such brutality illustrates power relations at play between officials and migrants. It is an example of abuse of power and of officials acting as a law unto themselves.

Migrants also spoke of just being treated unfairly in decisions about their legal status:

We are treated unfairly by DHA. It's not the law. It's not only me. I know people who have been living here for 10 years and they still have asylum papers. (Congolese man, respondent 33)

Finally, some migrants used what could be regarded as strong language to highlight the plight of migrants at the mercy of DHA officials. It also shows that their legal status is taken for granted and officials treat them as they please:

That place is terrible! They treat people like criminals! ...The staff there, I don't know how they perceive a refugee. You know when they look at you they see you as nothing. They talk to you the way they like. (Ugandan woman, respondent 31)

They are either inhuman or they are ignorant... They lack this empathy. I was actually reading about the slave trade yesterday and it sort of brought back how people were dehumanised and all that and brought back to me this thing of Home Affairs. You are not seen as a person, you are seen as this thing that is there to be accommodated, but reluctantly. (Rwandan woman, respondent 29)

You go into Home Affairs you are like a slave. Serious, they are like treating someone as a slave because...you are a refugee, you are seeking for a refugee, you are a foreigner. That's

the reason why... Talking about the attitude of the people there, you know, the people that are trying to attend to us. Those people, some of them they don't have manner of approach or they like taking advantage...because we don't even have anything to say even if they are insulting us because there's something we need there from them. They will just bring down our self to do whatever thing they want us to do. (Nigerian man, respondent 17)

I see others how they are treated, it's inhuman. The time I was like working there you have to accompany women who are pregnant. Some they were pushed, squashed, almost miscarriages, people who faint on the queue. There was even a guy who died. (Burundi woman, respondent 37)

The Burundian migrant quoted above had worked as an interpreter at the Cape Town RRO and observed on a daily basis the interaction between migrants and DHA staff. The fact that three of the four migrants quoted above who reported such treatment, even though they have refugee status, is concerning. This is because in terms of rights, refugees are afforded almost the same rights as permanent residents, whose rights are the same as citizens with few exceptions. Yet in practice, their treatment does not match up to their legal status, which means that the treatment is based on the fact that the migrants are non-citizens regardless of the legal identity they have been granted by the state, which should translate into better treatment. Their experiences would not be surprising if they were illegal foreigners as their status tends to be criminalised and that is used to justify denying them their dignity as human beings, even when such treatment is unlawful.

The negative experiences reported thus far resonate with Agamben's notion of bare life where certain lives are treated as not worth living or protecting. They are also examples of the state treating migrants as undesirable and singling them out for harassment as Mngxitama (2008:195-196) has noted in his analysis of race, class and nation in South Africa.

To sum up, it is worth pointing out that the above experiences have little if anything to do with bureaucratic issues or the institutional challenges facing the DHA outlined in Chapter 4. Instead, they have to do with the perceptions that DHA officials have of migrants, their treatment of these migrants, and the power relations between state officials and migrants.

5.2.2 South African Police Service officials

Migrants who had encountered the police had done so in police stations, on the streets and in their homes and businesses. As with the DHA, migrants' experiences with SAPS officials were mixed.

The positive experiences were almost entirely in cases where the migrants went to the police to get affidavits, police clearance and certification of documents. Migrants expressed satisfaction in how these administrative services were provided by the police. A few positive examples related to the response of the police to migrants who were victims of crime. For example, a Somali woman (respondent 25) appreciated the role of the Delft police who came to her aid when her shop was being

looted by transporting her together with her goods to Bellville. A Burundian woman (respondent 37) said that despite an initial reluctance by the police to open a docket after she went to report having been physically assaulted, they arrested the perpetrator and he was later charged in a court of law.

Migrants spoke of their negative experiences in terms of police unresponsiveness and ineffectiveness; impunity; extortion and harassment. Each of these are addressed in turn. The most common complaint mentioned was the unresponsiveness and ineffectiveness of the police. For instance, respondents talked about the police coming when it was too late or not at all and the police not investigating their cases. There were other complaints regarding impunity from sanction of those who stole from or attacked migrants, and abuses of power displayed in the manner in which the police raided migrants' homes and businesses, exploited and extorted them. Others spoke of being threatened and harassed or intimidated by the police. Lastly, the police were accused of not being impartial. Some of these experiences come up again as practices that constitute a state of exception and/or xenophobia in Chapter 6.

One migrant's experience elaborates on the unresponsiveness and delayed response of the police:

I was attacked and bitten by dogs on the way to the shop and the owner just came out and took the dogs inside and did nothing. I went to the police and they said 'sorry we can't help you, just go to the hospital'. The second time I was 'arrested' at the Retreat Station after I found that I had lost my ticket. I was going to buy another but they said no, I had to pay a fine. The security guard handcuffed me, took me to a room, smacked me and do all kind of nonsense. While they were attacking they were telling me that I have to go back to my country. After three hours they kicked me out and I went to the police station by the train station and they said 'no, we're only here for metro-rail people. We don't help any other people'. The third time, three guys robbed me on my way home from school. I saw a police van and I told them those guys had just robbed me they said 'sorry, we can't help you' and the guys who robbed me were there. (Congolese man, respondent 19)

On impunity, an Ethiopian man (respondent 36) said that locals can get away with robbing a foreigner. Firstly, they think that there is nothing that the foreigner can do and secondly, even if the police come and arrest them they will soon be released. Another migrant reported:

If you look into the incident last year, I think in Bishop Lavis... Somali shops have been looted and petrol bombed... There was one media which took some pictures and they were showing that the police were just standing while the people were looting the shops. (Kenyan man, respondent 39)

On extortion, a key informant and migrant explained what happens when police conduct searches and raids:

The locals are aware that these people are having money in their houses and money on them and now that's where the police is doing a lot of havoc. They go to people, for instance, those who are running shops. They will come and pretend they are looking for guns, they will take out the money

and people can't go to police to report because the same police who are looting them are the police you want to report to. (Advocacy Officer at ARESTA, respondent 45)

I was at home one night and I saw six police officers. They came and said that they received information that there is somebody selling drugs. I told them we are from DRC and we don't do that so they started searching the house. I was so disappointed cause I used to keep my two pornography DVDs and my wife didn't know about them. They picked them and put them in my DVD player and they start watching them in front of my wife and three year old child. I told them it's not right, what they're doing is not right. I never watch this with my wife. They said 'this is not your country'. (Congolese man, respondent 21)

Lastly, in terms of negative experiences migrants spoke of police harassment:

I was coming to report an incident that happened to me... I was attacked in the shop and it was actually a physical attack and some things were damaged...and my cousin who was with me was injured and I was trying to report that ... So instead of helping me there was this police officer who was giving me a history of who we are and how we live in South Africa, and why we should leave, and all these things. So when I challenged him, he threatened me and told me, 'look here I am the one who is opening dockets here and I am the one who is investigating cases. If you argue with me or challenge me I am not going to help you at all and you can do nothing'. I told him, 'you are not the only police officer and this is not the only police station. I am going to move to another police station and I am going to be helped while you are still here and I can be without you'. (Kenyan man, respondent 40)

Migrants attributed their negative experiences with SAPS officials to general police ineffectiveness, geographical location, the fact that they were not from South Africa, and to the personalities of individual SAPS officials. In the case of general ineffectiveness of the police force, migrants did not see their experiences as different from those of many citizens and thus share in the lack of public confidence in the police force that exists in South Africa. As discussed in Chapter 4, the country experiences high rates of crime and the police are known to be corrupt and have been guilty of also engaging in criminal activities. Some migrants even went as far as stating that it is a waste of time to report a crime to the police.

In the case of geographical location, migrants were suggesting that better resourced areas had better policing. This highlights another challenge faced by the police, that of resources. So while in theory the police are duty bound to protect everyone, they do not always have the necessary capacity to do so. They noted that those in the suburbs tended to have better responses from the police than those dealing with police in the townships as exemplified in the quote below. By extension, migrants also felt safer and less prone to crime in the suburbs than in the townships.

I was staying in Plumstead. I know in Plumstead when you call the police they don't take time, they will come quick. But I'm more interested to see the dynamics between someone who's in

Plumstead and someone who's in Gugulethu. (Congolese man, respondent 32)

Maybe if I get robbed in Blouberg, cause it's a nice area the cops might be more professional but if I get robbed in Khayelitsha or De Noon the cops might not act the same cause I'm not from there. I've seen that happen. (Zimbabwean man, respondent 3)

By migrants ascribing their negative experiences with the police to the ineffectiveness of the police and the residential area of the migrants, they are showing that the South African state is unable to provide security, the most critical public good, uniformly to its citizens let alone non-citizens.

Thirdly, migrants attributed their poor treatment by SAPS officials to their foreignness. For instance, they talked about how the police picked up on their foreign accents while speaking to them on the phone and as a result failed to arrive at the crime scene or to assist them. One migrant respondent who works with migrants gave the example of what he had heard from fellow migrants.

When the husband pick a phone and call the police and when the accent, the English it's mixed French or Swahili, it's a problem. The ambulance sometime will not come. I don't have really evidence but you know we have to sometime respect what the person is saying. And to say the ambulance doesn't come but compare when the same person take the phone and give to a citizen neighbour and talk in a few minute the ambulance is there or the police. (Congolese man, respondent 32)

Another migrant seemed to confirm that such things do happen:

I was calling police and what I notice when they hear that it's a foreigner talking over the phone, they not take it serious. (Congolese man, respondent 24)

Since English is one of the official languages in South Africa, one would expect that the ability of migrants to speak English would give them a sense of inclusion and enable them to access services easily. However, it seems that their ability to speak English is used to exclude them in certain instances. Apparently, the use of English when speaking to a black South African is an indicator of being a foreigner because of the tendency of black South Africans to speak to fellow blacks in the indigenous African languages. When migrants speak to officials of other races in English, it is their foreign English accents that are the basis for discrimination. So, the inability of migrants to speak indigenous South African languages spoken in the area where they reside and their English accents are used by officials to single out migrants as not belonging to South Africa. These are the irrational standards that the police and immigration officials apply to determine foreignness as also observed by Morris (1998) and Harris (2001), and which are evidence of institutional xenophobia.

Interestingly, migrants who spoke about xenophobic police went further to single out black or Xhosa police as particularly disliking foreigners and being unhelpful towards them adding that their experiences with coloured and white policemen were better.

Honestly, I think they ignore it because I am a foreigner. Don't go Steenberg Police Station. They're not gonna help you as a foreigner. Believe me. Go to Muizenberg. But if you go to Muizenberg you find the Xhosa polices, you just wasting your time. It's better you find a colored one or a white one. The first investigation, everything was written by a Xhosa. He never even contacted me but the second one it was a coloured one and he did contact me. He did try his best but that one never. (Malawian woman, respondent 10)

I think the white and the coloured are understanding but the black they don't like us, they say go back to your country. (Ugandan woman, respondent 30)

These remarks ironically reveal how the same blacks who were historically oppressed in South Africa's racist history have now taken on the character of their ex-oppressor towards African migrants (Matsinhe, 2011). It also suggests a narrow definition of belonging or citizenship by black South Africans based on autochthony, which alienates not only African migrants but also citizens who are not black.

In the excerpts below, migrants reported how they were treated negatively because of their foreignness. They bemoaned the fact that foreigners generally, and members of the Somali and Ethiopian communities particularly, had been injured or lost their lives in what they believe were hate crimes, but no action had been taken by the police simply because they were foreigners.

In Capricorn it was every weekend the foreigners dead and we never see the police investigate. (Malawian woman, respondent 10)

A lot of people have been killed here and the police are not taking any proper action. There is too many dockets, files of Somalis who have been killed, Somalis who have been robbed, Somalis who have been injured, Somalis who have been looted... and I think police are very well aware of this. Even the leadership they are very much well aware of this. There is nothing, there is no development in the whole thing and we have even gone to them several times and complained to them. (Kenyan man, respondent 39)

I have seen this six years more than ten Ethiopians bodies being sent home... That is why I decided to run out of township... So the inspectors, what what, they never found anyone from all of them...They take the body but afterwards when forensics or the ones taking body they take then the case goes zero. No response will come afterwards. Police! There isn't any that I can say they found the criminals or the person who shot and this one is sentenced for this. Never been. (Ethiopian man, respondent 36)

The non-responsiveness of the police to crimes committed against foreigners was echoed by one key informant respondent:

On Monday and Tuesday two Somalis were attacked by gun wielding youths who robbed them and apparently shot them as well and the police is 500 meters from where the incident

happened and they told them they didn't have a car to go and attend to the incident. They don't need a car; they can just walk up there. It's not far. (Community Liaison Officer at PASSOP, respondent 47)

Furthermore, migrants stated that the police displayed xenophobic attitudes and verbally abused them.

Some police are very helpful but others are very negative. When it comes to helping the foreigners they have got the very negative perception. Unless if they see you that you are a bit, maybe sometimes educated, or maybe you are going with someone who is a citizen, that time maybe they might help you, but if you go alone in many cases they usually do not, they don't treat you very nicely. (Kenyan man, respondent 39)

The police are rude with us foreigners... He said, you are kwerekwere, he shouted at me. He said so many things, you are for Mugabe. It was the first time I saw a policeman shouting that's why I think they are rude. If I was South African they would never have done that. (Zimbabwean woman, respondent 7)

According to police issues we are facing a lot of problems. And sometimes the police will not talk to you...not respect you as a human being. They are the ones saying kwerekwere. (Somali man, respondent 26)

'Oh you are a refugee, you don't have something to eat in your own country, you run away, and now you have eaten our bread and now you look nice and good...Your physical appearance, you have changed it. I have seen how your people die from the TV because of hunger'. I have heard that from police officers. (Kenyan man, respondent 40)

It seems that the police take the categories of migrants and the corresponding rights for granted seeing them simply as foreigners or *amakwerekwere*. In addition, they have little incentives to protect migrants. This is not only due to institutional xenophobia but also because they are aware of the broader public sentiment on migrants and so they can get away with discriminatory attitudes and practices towards migrants.

There are two elements to the way that negative treatment is linked to foreignness from the above. One aspect has to do with xenophobia, where the foreigner is disliked because of not meeting the criteria for membership of the national body and is thus an alien body. The use of the derogatory term *kwerekwere* also symbolises the 'othering' of African migrants at the level of the state. It also points to broad xenophobia, which according to Harris (2001) is based on foreignness relative to South African nationality. Then there is the aspect where the migrant's life is viewed as not having any worth which translates into the migrant being this powerless or defenceless individual. Some police officers regard migrants as the underdogs of society who can be trampled on by the police and citizens. Worth highlighting are the reported deaths of Somalis and Ethiopians due to alleged hate crimes and the police inaction and impunity of perpetrators that followed. This indicates that migrants are killable,

which relates to Agamben's explanation that bare life is 'bare' because it can be taken without any intervention of the law and without anyone incurring the guilt of murder.³⁹

Finally, migrants attributed their experiences with SAPS officials to the individual official they came across. In other words, they avoided making any generalisations about SAPS officials. One key informant acknowledged just as the migrants did that "*there are good apples and bad apples*" (Director at CTRC, respondent 41).

5.2.3 City of Cape Town officials

As already pointed out in Chapter 4, although migrants receive services from the CoCT, they have little face-to-face interaction with the officials. The few migrants who reported any direct encounters said that these were with health workers at public health facilities, with officials at the Civic Centre and with the Metro Police in their businesses or at road blocks. Their experiences were also mixed.

In terms of positive experiences, one migrant said that he was satisfied with the service he had received when he went to register his business. Other migrants spoke positively of the health officials. They said that they were treated the same way that they saw South Africans being treated, that they faced no problem of acceptance and that the service was good. Two other migrants spoke positively of the basic services they receive from the CoCT notwithstanding the fact that they had never encountered any officials from there. One acknowledged with appreciation that the services they receive in the township where he lives are better than those he received from the government in his home country (Zimbabwean man, respondent 4). The other stated that regardless of the shortcomings in service delivery, South Africa was doing better than other African countries (Mozambican man, respondent 14).

Some migrants and key informants seemed to confuse public hospitals (which fall under provincial government) with public clinics (which fall under local government). This was evident when they spoke of the negative treatment of pregnant women at the hands of nurses in government hospitals because municipal clinics do not offer maternity facilities. Nevertheless, their experiences are worth including.

Nurses are saying 'these refugees are making rubbish to our country. Why you making kids and why you get pregnant each and every year? You are making us poor'. (Somali man, respondent 26).

They say, 'Every year you come here to give birth, you're making the cost of living higher and higher'. (Somali woman, respondent 27)

A key informant also confirmed the migrants' experiences with health workers in public hospitals:

³⁹ Agamben (1998:82) gets his notion of bare life from the ancient Roman figure of *homo sacer* who may be killed and yet not sacrificed.

They are always accused of coming here to give birth so that they would access grants, which is a lie. It's a lie. I saw that on TV sometime and I wanted to complain honestly because there was an article that said Zimbabweans cross the border and give birth in South Africa so that they would claim grants. It's not the case. (Community Liaison Officer at PASSOP, respondent 47)

The above accusations are part of the negative discourse that constructs migrants as a threat. They reflect the contest over resources that citizens feel only they are entitled to. Furthermore, the scarcity of these resources is implied by suggesting that migrants benefit from state services at the expense of citizens, whether or not they are paying for these services or have a right to them.

Another example of negative experiences was related to extortion. These experiences came from migrants who were operating or had previously operated businesses, as well as a key informant. They were similar to migrants' experiences of extortion by SAPS officials discussed earlier. This shows that migrants who run businesses are soft targets for law enforcement officials wishing to take advantage of them.

Finally, one migrant narrated how she experienced a xenophobic attitude from the Metro Police after she was found to be driving without her driving licence at a police road block. The migrant was not stopped because of her nationality but when the policeman discovered that she was not South African, probably due to her accent and her inability to speak Xhosa, he became hostile. Her experience is also an example of the inability to objectively distinguish between African migrants and black South Africans at face value.

One day I left my driving permit at home then there was a road block. They stopped me and ask for my driving licence. I say I left it at home. He say, 'we are tired of you people, you foreigners. I don't know why you don't go back to your country, what's happening in your country?' The guy was very cross my friend. We argue, I say, brother, I never do something to you, what's the problem? You don't need to argue with me if I don't have a driving licence. You know what you are supposed to do.' (Ugandan woman, respondent 30)

All of the above experiences contained in this section can be summarised as follows in order to answer the first research question: the experiences of migrants with state officials were mixed. In some instances, migrants had positive experiences with state officials and in other instances they had negative experiences. Furthermore, the positive and negative experiences were not balanced when it came to the DHA and SAPS. Experiences with officials from these two institutions were heavily skewed towards the negative. The worst experiences migrants had were by far with DHA officials especially those at the RRO, followed by those with SAPS officials. Migrants' experiences with CoCT officials, however limited they were, were more balanced between positive and negative.

The findings show that state officials are not impartial when discharging their duties. This is despite the existence of service delivery standards for state officials, for instance the *Batho Pele* principles, which include courteous treatment of all customers. Migrants experiences with state officials were the

result of the officials' own perceptions of migrants. Such perceptions included their own interpretation of the power relations between them and migrants and their own first impressions of individual migrants. Migrants also stated that they felt less prone to crime and negative treatment from SAPS officials in particular, in suburbs than in townships implying that a migrant's socio-economic status and residential area were possible determinants of how they experienced particular state officials.

The finding that migrants had mostly negative experiences with state officials is not surprising. Chapter 2 has already pointed out the negative attitudes towards migrants, particularly those of African origin, that prevail in South Africa. This finding can be seen as a reflection of that at the level of the state. It also an indication that things do not seem to have changed over time as state officials generally continue to treat migrants poorly. Further analysis and theorisation of the negative experiences of migrants will be conducted under subsequent research questions. In the next section, which is an extension of the research question just addressed, the researcher investigates if there were any nuances, along the lines of migrant categories or migrant's nationality, that could be observed in how state officials treated migrants.

5.3 Differential treatment of African migrants by state officials

This section answers the research question: to what extent are African migrants treated differently by South African state officials in terms of their legal status or nationality? In order to answer this question, the researcher used the Atlas.ti query tool to filter all the experiences (positive and negative) of migrants according to the five legal categories of migrants sampled. In addition, the experiences of migrants were filtered according to the 13 different nationalities. The results are presented below in order of state institution.

5.3.1 Department of Home Affairs officials

Although the focus of the research question was on differential treatment on the basis of legal status and nationality, migrants also pointed out differential treatment based on race and differential treatment between migrants and citizens, which are worth stating before moving on to the findings on the specific research question. According to one migrant, race or colour plays a role in how they are treated by DHA officials:

An England or white woman or an American white man in Home Affairs is a privileged client, even Chinese. I happened to see Chinese applying for asylum although by law it's debatable but Chinese at Maitland Home Affairs were given certain priorities and people from Bangladesh. (Congolese man, respondent 32)

This quote alludes to Afrophobia or negrophobia, which is a more appropriate term for xenophobia in the context of South Africa where it is racialised. It also implies that migrants are aware that the racial

dynamics in South Africa affect not only citizens but also foreigners. The migrant cited above is essentially pointing out that there is a ranking of races with white migrants being at the top, closely followed by Asian migrants and then black migrants at the bottom. Gqola (2008:221) and Bekker (2010:136) recognise this differential treatment extended to migrants and associate it with stereotypes of the different migrants. White migrants are viewed as investors and tourists, hence bringing something positive to South Africa, while black migrants are seen as criminals and freeloaders (Gqola, 2008). These are, however, unexamined prejudicial attitudes as there a number of examples that do not fit within the stereotypes. For instance, the media has reported about mafia type crimes committed by Eastern Europeans living in South Africa and there are several Nigerian and Congolese doctors working in South Africa.

The researcher then asked him if he had observed any differences in the way black people were treated by DHA officials. He said that black migrants were generally treated poorly. However, if a black person looks good and makes an impression he is treated well.

Black, you must have money and you must have power, people who we call in French 'impressionist'- people who impress you. They look nice, will put a suit, nice cut hair and nice perfume. African people some of them need that. (Congolese man, respondent 32)

Another migrant compared how asylum seekers and refugees are treated at the RRO to how South African citizens are treated at the civic offices. From his assessment below, the staff are courteous to citizens and rude to foreigners. He attributed the poor treatment of migrants at the RRO to xenophobic attitudes within DHA staff arguing that xenophobia does not have to be physical, that is can be mental (Ethiopian man, respondent 36).

If you go to the Department of Home Affairs in town, the one which deals with South African citizens, there are proper seats, there is a proper line, no one will shout at you. 'My sister', 'my brother', 'sir', 'madam' and 'miss' that is how you are called in the line. But here even if he is old, no 'sir' here. 'Don't go there', 'hey you, come here'. (Ethiopian man, respondent 36)

Although this research did not sample citizens in order to compare whether or not they are treated differently from migrants, the above quotation suggests that officials treat citizens better than migrants. From the above quote, one gets the impression that the migrants who are served at the DHA office have better facilities and probably better client service because the office primarily provides civic services to citizens and that if the RRO also served citizens, migrants' experiences might have had similar facilities and services as the DHA office. The respondent above is also aware that xenophobia is not only expressed through violence towards foreigners but also through other subtle ways.

The findings of the previous research question were that most migrants experienced DHA officials negatively rather than positively with a few exceptions. In terms of the second stated research

question, the experiences with DHA officials were first analysed in relation to the legal categories to see if certain categories were treated better or worse than others. The data showed that all negative experiences came from asylum seekers, refugees and illegal foreigners. The other negative experiences were confirmed by the key informant organisations, whose clients are almost exclusively asylum seekers and refugees. There were also migrants who reported both good and bad experiences from the categories of refugee, temporary resident and illegal foreigner. They said that the treatment they received was not consistent. Sometimes they were treated well and sometimes not. They said it depended on the individual one encountered. Positive experiences were reported by asylum seekers, temporary residents and a key informant.

The data revealed differences in the way migrants were treated by DHA officials based on legal standing. This has to do with the administrative distinction the government makes between migrants that fall under the Refugees Act and those that fall under the Immigration Act. Asylum seekers and refugees are served at the RRO. There is only one RRO in the Western Cape Province located in the Cape Town Business District. Temporary and permanent residents are served in selected Home Affairs offices, which mainly exist to provide civic services to citizens but also serve migrants. As stated earlier, there are two in the Cape Town Metro which perform immigration functions – the Bellville Home Affairs office and the Provincial headquarters in central Cape Town.

The findings, which also include the researcher's personal observations, suggest that the distinction is not merely administrative. There are differences in the facilities that these offices have, the manner in which services are provided and the way migrants experience them. The researcher visited the RRO on two occasions. The first time there were was a very long queue outside the office. Access to the main service area was denied by the security guards because entry is only permitted upon presentation of an asylum seeker or refugee permit. However, she was able to access a different service area. This area also had long queues flowing out of the building. Inside there was a reception area which was crowded and the room was stuffy. There were also service cubicles. A few of them had DHA officials in them serving clients. However, there were more which either had an official without a client or were just empty. It was difficult to make out what services clients were waiting for as there are no signs. When the researcher tried to inquire from those in the queue they said that that area was for those who required other services other than the routine asylum permit extension. For example, those who had to pay fines for having expired permits.

The second time the researcher visited the RRO it was less crowded. There was only one queue overflowing to the outside unlike the previous time. This queue was not from the main service area but from the same area that had been previously visited. It was just like it was the last time. In addition, the researcher noticed that the corridor and staircase where the queue had spilled over were littered with empty plastic cups and plastic bags and wrappings from food and drinks consumed by the clients. Migrants spoke of the unpleasant environment at the RRO. The toilets are filthy, migrants spend long hours standing in queues and because of the crowds it is very prone to chaos.

The crowding at the RRO could be partly explained by the fact that it is the only one in the province that serves asylum seekers and refugees while there are at least two offices that serve temporary and permanent residents. Other explanatory factors include the fact that the RRO issues permits with shorter validity periods compared to those issued by the DHA offices which means that migrants served at the RRO – asylum seekers in particular – have to make regular visits to the RRO. The crowds can also be explained by the fact that asylum seekers and refugees have to appear in person to apply for documents while migrants served at the DHA do not always have to do so. Finally, the crowding at the RRO has been linked to bureaucratic inefficiencies such as poor staff supervision, high staff absenteeism and sudden changes to office procedures.

The two other DHA offices visited were accessible without presentation of any identification. The immigration sections at the DHA offices in Bellville and Cape Town are clearly demarcated from the civic sections thus making it easy to identify the foreigners. The immigration section in Bellville consists of two service counters, a waiting area, interview rooms and offices all of which are clearly labelled. On the afternoon that the researcher visited it was very quiet with only a handful of clients. The Cape Town office has a much larger immigration section. In fact the entire first floor is only for immigration. It is made up of a waiting area and several service counters which are clearly marked. The waiting area was not being used and clients were queuing at the respective counters. It was much busier than the Bellville office and some of the counters had queues but not as long as those at the RRO. In all three offices it was noted that some DHA officials wore uniforms and name tags while others did not.

The Home Affairs offices are more orderly, cleaner and more aesthetically pleasing compared to the RRO. One refugee who went to the Barrack Street office to apply for permanent residence noted that the differences in the ‘look and feel’ of the RRO and DHA are apparent from the facilities they have to receive clients. *“The reception place is different. The refugee one, they don’t have. Even during winter it’s raining you are outside. But the civic one, there’s a nice place with TV, seats...”* (Burundian woman, respondent 37).

According to one migrant who had changed his status from asylum seeker to temporary resident (general work permit), and had therefore been served at both offices, clients are also treated differently at the RRO from the way they are treated at the Home Affairs office. At the RRO the officials are inhumane, which is not the case at the DHA office (Congolese migrant, respondent 32). According to him, this difference is because immigration services provided in these offices are not free like they are at the RRO, so migrants are often required to pay for their permits. For some of the services, for example, acquiring a work permit, one has the option of paying an immigration agent or broker to deal with Home Affairs on one’s behalf and hence avoid having to go to Home Affairs in person. On the other hand, the services at the RRO are provided for free (except in cases of corruption where migrants pay officials) and so, according to the migrant, this could be an excuse for Home Affairs to provide them with inferior customer service and an inferior environment. However, another migrant opined

that the DHA office was better because the bulk of its customers were citizens whereas the RRO only caters to foreigners. While there might be some truth in the two respondents' opinions, there should not be such disparities observed within the same government department regardless of the differences in their clients.

Asylum seekers and refugees had common experiences of the sovereign power of DHA officials by virtue of being served in the same office and those with temporary and permanent resident permits also shared similar experiences by virtue of being served in a different office. The former group reported most of the negative experiences. Temporary and permanent residents seem to have had it better at the DHA offices, and this was supported by a key informant who said that "*those who apply for permits are treated differently. Yes, there are hassles here and there but there's no pushing and shoving, there's no verbal abuse*" (Community Liaison Officer at PASSOP, respondent 47). He continued:

Ja, those that apply for permanent residence from the refugee status are also treated differently because they are sent to Barrack Street to do that. Or even when one wants to apply for a refugee ID, they no longer do it at Foreshore, they go to Barrack Street. So that's preferential treatment. (Community Liaison Officer at PASSOP, respondent 47)

This differential treatment suggests a ranking of migrants and that differences in legal migrant categories translate into a hierarchy in practice. Asylum seekers and refugees are viewed as less desirable than so-called economic migrants. So, although refugees have been granted more entitlements in the Refugees Act than asylum seekers and temporary residents, in practice they are viewed more like asylum seekers who are less privileged than temporary and permanent residents. This low perception of refugees in particular could have implications for how they are able to enjoy their rights in practice. They could be the 'critical beings' who, according to Tuitt and Fitzpatrick (2004:xi), are excluded or marginalised by the processes of national affirmation.

The experiences of migrants with DHA officials were also analysed to observe for any differences in terms of nationality as stated in the research question. No pattern was observed. Where there were cases of migrants from the same country reporting both positive and negative experiences, which were in conflict with the already stated differential treatment based on legal category, it came down to the individual official they experienced. As has already been acknowledged, there are some good DHA officials, although they are the exception. On the whole then, migrants were treated differently by DHA officials based on their legal status as opposed to their specific country of origin. Therefore, besides bearing the status of non-citizen, immigration status rather than nationality seems to be the determining factor in how migrants are treated by DHA officials.

5.3.2 South African Police Service officials

The specific details of migrants' experiences with SAPS officials have been described in 5.2.2. Here they are interpreted in terms of legal codification and nationality. Migrants in possession of the following immigration status reported positive experiences with the police: asylum seeker, refugee, temporary resident (visitor, student and worker) and permanent resident. They were from Malawi, Rwanda, DRC, Somalia, Ethiopia, Burundi, Kenya, Zimbabwe, Mozambique and Congo. No positive experience emerged from the category of illegal foreigner. Migrants' experiences differed in terms of the way the police dealt with specific incidents affecting them, such as violence and crime, or how the police interacted with them at street level, such as during spot-checks. Only a few commended the police for responding immediately and successfully investigating their cases.

On the other hand, negative experiences were reported by those belonging to the following legal categories: illegal foreigner, asylum seeker, refugee, temporary resident (work permit) and permanent resident. This represented the following nationalities: Zimbabwe, Malawi, DRC, Nigeria, Uganda, Congo, Somalia, Rwanda, Ethiopia, Burundi and Kenya. It was only migrants from two out of the 13 countries represented who did not have a negative experience with the police – Angola and Mozambique. No negative experiences were reported by temporary residents in possession of a study permit and visitor's visa. This means that they either had positive or no experiences to report.

It is also worth stating that positive experiences were reported at the institutional level by respondents from three of the key informant NGOs – CTRC, PASSOP and Scalabrini. They regarded SAPS as quite receptive to them as migrant organisations and said that they had good relations with SAPS. Some of them had even provided training to the police on the different categories of migrants and their rights because they had recognised that there was a lack of knowledge on the different types of migrant permits as expressed below. This is commendable if the police actually rely on the migrants' immigration documents to determine their status rather than the irrational standards based on physiognomies identified by Morris (1998) and Harris (2001).

For instance we've had police officers ask us, 'what does a refugee permit look like?' They should know. They really should know. 'What's the difference between a refugee and an asylum seeker? What is that maroon book? Is that real?' But they're asking. And so that's been quite good. (Director at CTRC, respondent 41)

Part of the work of these NGOs involves encouraging migrants to report any problems they have with the police to them and they then contact the police on the migrants' behalf. This is because they believe that the SAPS takes organisations more seriously than it does individuals and it knows that these organisations are well versed in the law. As one key informant put it:

I discovered that the police are scared if they find out it's lawyers calling or like a human rights organisation calling because they know that those people know the law, they can sue him, we can lodge a complaint against the police. But as an individual they don't worry about you. Sometimes

they can hit you, so it's just better if we only advice people, ok, if you are having similar difficulties with the police, come and report them to us and we will phone them. (Community Liaison Officer at PASSOP, respondent 47)

This statement implies that as the police exercise their sovereign authority, they have their own preconceptions of the relative power of different segments of society vis-à-vis their sovereign power. Individual migrants are seen as powerless when faced with the sovereign power of the state. At the same time they recognise, or do not underestimate, the power of agency in challenging state power to realise justice. It is worth pointing out that the staff of these NGOs include both South African and non-South Africans. So when the foreign staff interact with the police in their organisational capacity they are likely to be treated better than if they did so in their individual capacity or without any institutional affiliation. The above statement also demonstrates the value of migrant organisations as they assist migrants to access justice by acting as an interface between migrants and the police. It also implies that even though the state is the guarantor of rights in theory that is not necessarily so in practice and that non-state actors, in this instance, NGOs, can be used as a channel to access certain rights and services from the state.

Although the police are expected to be impartial and be of service to all, regardless of nationality, they appear to side with citizens when they are called to deal with issues between migrants and locals. As migrants live among citizens, they are in a position to observe how the police act towards them and towards citizens at the community level. Moreover, they stated that the police are reluctant to intervene in incidents between migrants as the excerpts below demonstrate.

Suppose you have a problem with a South African guy they may not listen. They are coming there and if he's coloured they'll talk their own language and he's leaving. If he's a black they will speak Xhosa then he will not listen what you are saying. You didn't understand what they said, they speak their own language. Then why did I call him? (Ethiopian man, respondent 26)

I was attacked at the Home Affairs by people from my country...and I called the police. I told them where I was and they never came...And I just realised after that maybe because of my foreign accent they're thinking, oh, he's a foreigner, and he's claiming that foreigners like him are doing this to him, so they will finish it amongst themselves. This is what I always think because if they are there to protect they should be able to protect anybody who lives in the country, not only citizens. (Congolese man, respondent 22)

The Director of the CTRC also confirmed the reluctance of SAPS officials to intervene in conflicts between migrants:

If there is ever, let's say, a Congolese issue, so one Congolese faction is causing trouble for another Congolese faction or there are political problems or there's violence of one against the other. Then they say it's not our problem, it's a Congolese problem... You sort yourselves out, which is also frustrating because particularly some of our clients they're refugees, they're

fleeing from their governments and then they have government spies or whatever who are here and they are targeting our clients and our clients should have protection from that. That's what the state is all about. The police should get involved but also it's an international relations issue because there shouldn't be Burundian informants in South Africa. So the police need to escalate that to security services or to foreign relations to sort out that problem but they don't want to. It's a Burundian issue. They don't want to get involved but they should and they don't. (Director at CTRC, respondent 41)

The above implies that SAPS officials do not make a distinction of migrants based on which foreign country they come from; the only line they draw is between citizens and foreigners.

Migrants from all legal categories and nationalities with the exception of Angola, had an encounter, either positive or negative or both, with the police. There was no evidence to suggest that the manner in which they were treated by the police had anything to do with their specific legal status or nationality. Rather the evidence suggests that when police appear to act differently towards migrants it is more likely because they are non-South Africans. Migrant respondents mostly used the terms 'we' or 'us' when they spoke about how they felt they were perceived by the police, as members of the foreign community collectively. Likewise, the key informants who interact with migrants from several countries and with various types of permits spoke in more general terms about African migrants. They were not able to single out any legal category or nationality.

Certain distinct traits and stereotypes associated with African migrants from specific countries might make them either more visible to state officials or more prone to being targeted by state officials. For example, the entrepreneurial spirit of Somalis means that they are active in the informal sector operating tuck shops, street-side and market stalls where they are likely to come into contact with law enforcement and immigration officials. Unfortunately, as will be revealed in answering the next research question, these officials often extract bribes and extort these migrants while going about their law enforcement duties. The majority of Somalis are Cushitic and have distinct physical features from the minority Bantu Somalis and other African Bantus. As a result, many Somalis stand out as foreigners. However, there is also a general assumption that all migrants with these features are from Somalia when in fact Somalis as an ethnic group can be found in four African countries – Ethiopia, Djibouti, Kenya and Somalia. Indeed, two of the migrant respondents were ethnic Somalis but of Kenyan nationality.

Migrants may also experience differential treatment from the police based on their level of education, geographical or residential location and related to the first two, their socio-economic status. In terms of education, the two respondents below suggest that a migrant's familiarity with the law empowers them to demand certain treatment from the police, whereas ignorance of the law can result in the police taking advantage of the migrant.

Another experience was when I travelling to Mozambique by bus from Joburg and there was a misunderstanding between me and the conductor. So the conductor ordered the driver to take us to a police station because things were getting out hand. So we went to Germiston police station and there I was identified as a foreigner by both the driver and conductor who were both South African. I know the South African legal system and I am a practicing lawyer so I started speaking about my rights and what I expected the police to do so I wasn't mishandled. They interviewed me, opened some of my documents and were actually ashamed and released me immediately. It was a conversation in the station but not inside the cell. (Mozambican man, respondent 14)

There's cases where you can see they're just not applying themselves because they're trying to take advantage because the person doesn't know. But it's isolated cases. (Advocacy Officer at Scalabrini, respondent 44)

Migrants noted the difference in police treatment in the Cape Town suburbs versus the townships. For example, in 5.2.2 a comparison was drawn between police stations in richer and poorer areas such as Blouberg and Du Noon, Plumstead and Gugulethu, and Muizenberg and Steinberg. Also, the respondent below experienced different levels of service in two different provinces.

I think it's always a geographical situation. Like Melkbosstrand where I stay, they are very helpful. I went for police clearance. Eastern Cape was a bit tricky. (Zimbabwean man, respondent 3)

The researcher acknowledges that the differential treatment experienced by migrants from the police force mirrors what takes place in the wider South African society. Many poor and uneducated South Africans living in impoverished areas experience inferior services from the police and other state institutions in relation to their richer and educated counterparts living in the suburbs. This inequality in distribution of resources has been attributed to the country's apartheid past as well as capacity constraints and corruption in the post-apartheid state.

5.3.3 City of Cape Town officials

Both positive and negative experiences with CoCT officials were reported by key informants and the following legal categories of migrants: asylum seeker, refugee, temporary resident (work permit holder) and undocumented migrants. Positive experiences were reported by refugees, illegal foreigners and temporary residents (work permit holders) with local government officials at municipal clinics around Cape Town. Migrants, just like South Africans, are entitled to free primary healthcare in local government clinics.

It is worth noting that when clinics face challenges in delivering services, such as poorly administered clinics, these challenges affect both citizens and foreigners alike negatively. However, the focus here is on migrants' perceptions of differential treatment by state officials at the level of interpersonal

interaction. Negative experiences were reported by refugees, asylum seekers and NGOs particularly with health officials and the Metro Police. According to the Community Liaison Officer at PASSOP (respondent 47), migrants have reported to the organisation that they are not treated well especially in clinics in townships. They are called names like *kwerekwere*, told that they are exhausting the medicines and even told to go and die at home. The respondent's observation about township clinics seems to suggest a geographical and socio-economic element. However, of the few migrants who had been to a municipal clinic, those who reported negative experiences with the staff lived in different areas from those who reported positive experiences but these areas were not very different in terms of socio-economic status to suggest any trends. For instance, migrants reported negative experiences in clinics in Belhar, Mitchell's Plain, Mowbray and Retreat while migrants reported positive experiences in clinics in Capricorn, Imizamo Yethu and Kraaifontein.

The researcher concluded that migrants are not treated differently in terms of their legal status or nationality by CoCT officials. Rather African migrants are treated differently either based on the individual official they encounter or because of their status as non-citizens. The former is supported by findings from refugees who reported both positive and negative experiences with local government officials, such as at clinics as pointed out above. Out of the categories of migrants who had experiences with local government officials, only refugees reported both positive and negative experiences. Other categories that reported positive experiences were illegal foreigner and temporary resident (work permit holder). The different experiences of refugees could be due to the individual officials they dealt with or the clinic they went to and not due to their refugee status.

It was also not due to their nationality that all categories that perceived CoCT officials positively did so. This is explained by the fact that the migrants came from countries such as the Democratic Republic of Congo (DRC), Somalia, Angola, Malawi and Zimbabwe and their counterparts from two of these countries (Somalia and DRC) also experienced negative treatment.

The fact that negative experiences came from asylum seekers and refugees from Uganda, Somalia and DRC, and from key informants who interact with different legal categories (although they are predominantly asylum seekers and refugees), is evidence that state officials who treat migrants differently seem to view them homogeneously as outsiders and do not distinguish them by their legal status or nationality.

There was an indication that migrants who run businesses are soft targets for law enforcement officials regardless of where they come from or their legal status. This is informed by the experiences of Somali, Ethiopian and Nigerian migrants who had refugee and asylum seeker status. Their identity as non-South Africans combined with their occupation as informal traders appeared to give them a double disadvantage. Evidence of the vulnerability of migrants who are informal traders can be obtained from reports on the attacks against them such as the one by CorMSA in Appendix B. Not only are they at high risk of xenophobic violence and criminal acts from citizens but they are also soft targets for local government law enforcement officials and the police.

To summarise the findings pertaining to the second research question, an inference must be made from the findings of the previous research question as the research question here is an extension of the first question. Given that the majority of migrants' experiences with state officials were negative, it can be inferred that migrants generally experience poor treatment from state officials. Taking this into account, the second question then is essentially about the extent to which this poor treatment has anything to do with legal status or nationality.

To this end, no patterns were visible in how migrants were treated by SAPS and CoCT officials based on either legal category or nationality. It matters little to SAPS and CoCT officials what legal status migrants hold in South Africa or their country of birth. Their basis for treating migrants poorly is simply their status as non-South Africans. This would be expected to translate into xenophobia on the basis of foreignness as opposed to xenophobia based on nationality. This finding is despite the knowledge that there are negative stereotypes associated with certain nationalities, which single them out for public xenophobia in South Africa. This is what Harris (2001) refers to as xenophobia based on nationality. For example, Nigerians are associated with drugs, Mozambicans with illegal migration and Somalis as shrewd businessmen, which makes people generalise about migrants coming from these countries. According to the researcher, her finding which implies xenophobia based only on foreignness is not necessarily inconsistent with that of other researchers but rather it is a question of a different methodology and research question. The researcher did not ask South Africans for their opinions of different nationalities of migrants, which would likely have been similar to popular stereotypes such as those mentioned. Instead, this research was based on migrants' experiences of state officials.

In addition, although the research did not specifically investigate this by way of a research question, there seems to be a geographic, socio-economic and racial element to how migrants experience SAPS and CoCT officials. This implies that with regards to the police and local government officials, while their status as African migrants might explain their differential treatment, the fact that other factors such as area of residence and class come into play suggests that their experience might also be similar to those of South Africans, where such socio-economic factors determine the quality of services they receive from the government.

In contrast, when it comes to DHA officials there is an apparent difference in the poor treatment they extend to foreigners based on legal category. Migrants that are served at the RRO – asylum seekers and refugees – were treated differently from temporary and permanent residents who are served in DHA offices. Interestingly, administering migrants in different offices based on whether they fall under the Refugees Act or the Immigration Act translates into different treatment of migrants on the ground. Those with asylum seeker and refugee permits are treated worse than those with various categories of temporary residents and permanent residents. This implies that there is a hierarchy of migrants in the eyes of DHA officials with temporary and permanent residents at the top and asylum seekers and refugees at the bottom. This finding is consistent with one of the aims of immigration

policies discussed in Chapter 2, which is to prescribe degrees of membership through the codification of migrants in order to facilitate management and control of foreigners. Immigration policies view so-called economic migrants as more desirable than asylum seekers and refugees. While according to immigration policies not all migrants are equal, in South Africa, they almost are, at least in theory. This is because South Africa has a liberal Constitution and a liberal Refugees Act, which grant all categories of migrants a generous range of rights, with refugees and permanent residents having the most extensive rights. However, the findings show that the treatment of migrants has less to do with the extent of rights they are entitled to and more to do with which DHA office they receive their services from depending on whether they are classified under the Refugees Act or the Immigration Act.

From the two research questions discussed so far, the mostly negative experiences of migrants can be linked to the prevailing negative discourse on African migrants which casts them as a danger to the South African nation. In addition, the diverse experiences with state officials from within the same institution or from a different state institution, already point to inconsistencies between theoretical definitions of the state as a coherent set of institutions and practices and the day-to-day realities. Hence shedding some light on the real politics of how state institutions operate. This is discussed in further detail under the next research question.

Up to this point, the level of data analysis undertaken in relation to the first two research questions, which are interlinked, can be said to be largely descriptive. The nature of the questions lent themselves to broad interpretation. Thus descriptive coding of positive and negative experiences was sufficient. In the subsequent questions, analysis at the descriptive level is not sufficient and abstraction is required in order to analyse the data conceptually. The questions seek to analyse at what point the treatment of migrants can be viewed in terms of the state of exception or as xenophobia.

It is worth noting that while the state of exception has not appeared as a term in the findings of the first two research questions xenophobia has. For the sake of clarification, where the term xenophobia has been used it was because the word had been explicitly used by the respondents themselves due to the familiarity of the term in South Africa. However, in the interview questions the researcher was wary of not initiating the use of the term so as not to pre-empt a specific response. Instead the questions were phrased in terms of the indicators of xenophobia used by the researcher, which included hostility, intolerance and discriminatory attitudes as was done with questions on the state of exception. In cases where respondents described the experiences of migrants in terms of xenophobia, the researcher attempted to get them to unpack it. However, in the final analysis left for section 5.5, their understanding of xenophobia was consistent with that of the researcher.

5.4 Conclusion

This chapter has analysed the results of the primary data collected in Cape Town from African migrants, migrant organisations and state officials with respect to the first two research questions of the qualitative study using Atlas.ti and interpreted them. The key findings are summarised below.

In relation to the first research question, the experiences of migrants with state officials are mixed. Both positive and negative experiences were reported with the migrants saying that their experiences depended on the individual state official. However, on the whole the majority were negative, especially with DHA officials, followed by SAPS officials. It was therefore inferred that migrants generally experienced being treated poorly by state officials. Experiences with DHA officials at the RRO were singled out as being particularly appalling.

With regard to the second research question, the findings indicate that the basis for state officials treating migrants poorly is simply their status as non-South Africans. No patterns along the lines of specific legal category and nationality were observed in how migrants were treated by SAPS and CoCT officials. However, when it comes to DHA officials there is a subtle difference in how they treat foreigners based on legal category which is interpreted as a hierarchy of migrants in the eyes of DHA officials. Migrants who are served at the RRO – asylum seekers and refugees – were treated worse or felt powerless at the hands of officials than temporary and permanent residents who are served in DHA offices. With regard to differential treatment by SAPS and CoCT officials, legal category is not a distinguishing factor. Officials appear to take the categories of migrants for granted seeing them simply as foreigners or *amakwerekwere*. Instead, what matters is the officials' perceptions of migrants either as powerless and rightless individuals or as powerful due to their perceived social standing. This means they are perceived as either empowered or disempowered to challenge abuses of state power. The signs of empowerment that were gleaned from the research include having a good education, living in a suburb as opposed to a township, having local networks or having knowledge of the law or access to human rights NGOs. In this regard, there seems to be a socio-economic, geographic and racial element to how migrants experience state officials although the research question only limited itself to differences based on nationality and legal status. The semi-structured interviews enabled the migrants to expand on their experiences so the researcher was able to derive some trends based on these elements.

Chapter 6: African migrants, the state of exception and xenophobia

6.1 Introduction

This is the second results chapter of the study. It addresses the remaining secondary research questions:

- a) Is the approach of South African state officials towards African migrants evidence of a state of exception?
- b) If so, to what extent has a state of exception in dealing with African migrants shaped xenophobia in South Africa?

The findings of the first research question are presented with respect to the selected institutions starting with DHA officials, then SAPS officials and, lastly, CoCT officials. The findings of the last question are reported broadly as they bring together the concepts of a state of exception and xenophobia.

6.2 Evidence of a state of exception in the three state institutions

Is the approach of South African state officials towards African migrants evidence of a state of exception? This question seeks to find out if Agamben's theory of the state of exception, as outlined in Chapter 3, can shed light on the practices of state officials towards African migrants. The state of exception, in this study, is defined as the implicit authorisation of state officials to operate outside the law in order to protect the state from the 'migrant threat'. The African migrant is marked as a threat to the national identity, security and well-being of the South African state. This declaration of the state of exception endorses practices in which the law itself is either suspended or regarded as an instrument that state officials may enact as a strategy for constraining and monitoring the African migrant population. The state of exception subsequently impacts negatively on the lives of migrants.

Using Atlas.ti, the experiences of African migrants with state officials were coded according to the indicators of the practices of state officials which operationalised the state of exception shown in Table 3.1 in Chapter 3. Thereafter reports were generated of these codes for each institution and the findings are presented below.

6.2.1 Department of Home Affairs officials

The practices below collectively point to the flouting of laws relating to migrants, overstepping the bounds of state authority and abuse of discretionary powers by DHA officials in their dealings with African migrants and in reaching decisions about permit related issues.

6.2.1.1 Unlawful closure of the RRO

The closure of some RROs over the last few years, including the Cape Town RRO and the litigation by advocates of migrants' rights dealt with in greater detail in Chapter 4 were part of recent asylum policy changes announced by the DHA. It is mentioned here as evidence of a state of exception where the state acts with disregard for the law from the researcher's interviews with key informants who are litigating against the DHA. In the case *Scalabrini Centre Cape Town and others vs the Department of Home Affairs and others*, the court ruled that the closure of the RRO in 2012, which was located in Maitland at the time, was unlawful due to "a lack of substantive consultation with the Standing Committee on Refugee Affairs or with affected groups" (African Centre for Migration and Society & Lawyers for Human Rights, 2013:7). The court then ordered the DHA to re-open the office. The RRO was re-opened in a different location in downtown, which is the one visited by the researcher as part of this study. However, when the DHA opened this office they did not resume offering the full range of services a RRO should typically provide, as it said that this was only a temporary office. The Department then later lodged an appeal whose outcome is still being awaited.

The temporary office, which still exists to date, only serves those who had been issued with asylum seeker and refugee permits before the closure of the Maitland office. It has not been processing asylum applications of those who arrived in Cape Town since 2012 when the Maitland office was closed. Such people must apply for asylum in Durban, Musina or Pretoria. To this extent, it is only offering limited services and has only partly complied with the court order. Since it has not resumed the functions of a RRO as legally constituted it is not a RRO technically speaking. However, to avoid getting bogged down by the technicalities brought by the court case, the researcher continues to refer to it as the Cape Town RRO simply referring to the office which serves migrants that fall under the Refugees Act. It is also useful for the reader to have this background on the court case in mind as it should clarify why in some instances reference is made to the RRO as if it still exists and in other instances as if it was closed down.

During interviews with key informant non-governmental organisations (NGOs) that work with asylum seekers and refugees, a number of concerns were raised about the changes in the policy and practice of the asylum system:

It would force refugees and asylum seekers to essentially live at the borders if they have to constantly renew their permits and they can't do so in Cape Town...Or they have to be at Musina because every three months they have to travel there anyway, so why leave? And it will create a system of de facto camps with no thought to the fact that those border towns, they don't have the infrastructure, they don't have water, sanitation, space, schools, anything to

take care of essentially an influx of tens of thousands of people to these small towns, just so that they can go deal with their permits. (Director at CTRC, respondent 41)

It's against everything that South Africa signed on for when they decided to accept refugees... If they want to have camps then they need to put their reservation in at the UN level and say we have a reservation to freedom of movement and we're going to move towards a camp system. If they're going to do that they need to do that but they need to inform UNHCR and go through the proper channels to be able to do that not set up a de facto camp system that just pushes the problems out of the cities and makes the ugly problem go away. (Director at CTRC, respondent 41)

Just imagine the social and economic effect of having asylum seekers and refugees living only in certain areas not being able to integrate, look for a job and look after themselves. Maybe it's an effort to repel people from coming to the country. (Advocacy Officer at Scalabrini Centre, respondent 44)

It is going to create a morass of problems with the people effectively living in camps or shanty towns unable to work, unable to get access to social services ... and one fears that the experienced refugee status determination officers will not want to relocate, so they will have to train a new batch, and one fears that the people will be in increased danger of unlawful refoulement to the countries they came from. (Attorney at LRC, respondent 46)

People will still end up down here but they'll do so without documents and that puts them at risk. (Director at CTRC, respondent 41)

In addition to the closure being unlawful, it was done without any preceding policy documents explaining the policy change. It was also done prior to creating the necessary infrastructure for the new RROs. Both of these conditions created a climate of uncertainty for asylum seekers and refugees who rely on these offices to legalise their stay in South Africa. From the above statements, there are five possible implications of the unlawful closure and relocation of RROs which suggest that this policy measure could have serious consequences for the livelihoods of migrants in South Africa.

Firstly, there is a fear that relocating the RROs to the border will in effect curtail the freedom of movement of asylum seekers provided for in the Refugee Act, again highlighting the disjuncture between law and practise. If asylum seekers are expected to return to these RROs every few weeks or months to renew their permits, this will essentially force many of them to live at the borders to avoid having to regularly travel from the metropolitan cities where most of them currently reside.

Secondly, and flowing from the first, it will hamper the achievement of socio-economic rights by asylum seekers as guaranteed in the Constitution and Refugees Act.⁴⁰ Currently, most asylum seekers are self-sufficient due to the freedom of movement and rights to work and study afforded to them.

⁴⁰ Linked to this is also a proposal to deny asylum seekers the right to work and study while their asylum claim is being considered.

However, opportunities to eke out a living are severely limited in the border areas and this would render many of them reliant on the state or humanitarian organisations for their survival. Moreover, many of these towns do not provide the social services and social amenities that asylum seekers require in order to earn decent livelihoods in South Africa. The DHA needs to avoid a recurrence of the 2009 humanitarian crisis that occurred in Musina, close to the Zimbabwean border, where thousands of asylum seekers were forced to find shelter in the open-air Musina Showground in the absence of other options in the border town (African Centre for Migration and Society & Lawyers for Human Rights, 2013:50).

Thirdly, it is likely to have the unintended consequence of increasing illegal migration which the government aims to reduce. This is already evident in Cape Town where the High Court heard evidence from NGOs in their litigation against Home Affairs in 2013 that there are undocumented asylum seekers in Cape Town as a result of the closure of the RRO. Therefore, asylum seekers will find ways of getting to the main cities where there are more job opportunities and better infrastructure. From the perspective of ‘genuine’ asylum seekers (as opposed to those trying to abuse the asylum system to gain entry into the country for economic reasons), being undocumented puts them at great risk as they do not enjoy state protection. In the cities they will be prone to extortion and exploitation by South Africans who are ready to benefit from their desperation. This will also serve to criminalise migration despite the fact that the primary reason for illegally migrating to the cities will be in search of a better life rather than out of criminal intent. There is already a perception that ‘illegal migrants’ are responsible for the high crime in South Africa, as well as a tendency to conflate the different types of migrants into the category of ‘illegal migrants’.

Fourthly, it will severely limit the ability of asylum seekers to be integrated into South African society, which is the intention of the Refugees Act. By isolating them and casting them as a danger to the security of South Africans, xenophobic sentiments – which are already widespread – are likely to exacerbate.

Finally, it is likely that DHA refugee status determination officers and other key staff will be unwilling to relocate to these border offices. This may affect the DHA’s capacity to make status determinations and worsen existing problems in the asylum system. There is therefore a real fear of unlawful *refoulement* – the return of asylum seekers to the countries they came from or to any other country where their lives or rights may be at risk – which goes against the tenets of international refugee law.

The unlawful closure of the RRO, which the DHA is standing by despite the consequences for migrants outlined above, gives the impression that it is trying to discourage foreigners from seeking asylum here. Thus it can be viewed as an exceptional mechanism in the Agambian sense, in a bigger state security strategy directed at migrants, although it might prove to be counterproductive as explained.

6.2.1.2 Non-compliance with court orders

Two examples of the DHA failing to comply with court orders emerged from the data. The non-compliance has impacted negatively on asylum seekers and refugees. After the DHA was taken to court by civil society groups for the unlawful closure of the Cape Town RRO in 2012, the court ordered the Department to resume issuing asylum seeker permits to new asylum seekers from July 2012. However, it did not comply with the court order and to date the Cape Town RRO is not serving newcomers and has lodged an appeal. One migrant explained the current situation thus:

They are using the appeal process to say no, we are stopping for now to see what the outcome is, but in reality they are not supposed to stop because the original order exists until it is either overturned or maintained. (Rwandan woman, respondent 29)

Asylum seekers and refugees face challenges trying to renew their permits in a different office from the one that issued the initial permit because of the refusal of DHA officials to do it as it entails a transfer of files from one office to the other. This practice has been contested in court a number of times and each time the court has ordered the DHA to extend permits issued at any RRO in the country.⁴¹ In a more recent case, narrated to the researcher by the UNHCR Head of Field Office (respondent 43), the UCT law clinic took the DHA to court on behalf of some refugees who wanted to extend their permits in Cape Town and were sent back to the RROs where they initially applied (Head of field office at UNHCR, respondent 43). The court ruled in their favour and the DHA was compelled to extend these permits in Cape Town regardless of where they were initially issued. However, according to the Advocacy Officer at Scalabrini Centre (respondent 44), it seems that the DHA only applies the court orders to those migrants directly involved in the court cases as it continued to violate the orders when dealing with others.

The non-acceptance of newcomers, which is in contempt of court, is contributing to the presence of illegal migrants, as will be discussed below, while the refusal to renew permits issued elsewhere in the country has adversely affected the freedom of movement of asylum seekers and refugees, a right protected in the Refugees Act. This is because it seeks to confine them to the cities where their original applications were made and it can be quite costly to travel from one city to another each time a permit lapses.

Apparently, the non-compliance of the DHA with court orders is not limited to the two examples provided here, which were mentioned by the research respondents. DHA officials have been found to violate several other court orders and its officers as having acted with flagrant disregard for human rights. It seems that with the DHA there are those for whom the law does not apply. The court orders as well as some of the court judgements mentioned in Chapter 4 relating to migrants' rights show that courts are more sympathetic to foreigners than the government. Thus not all state institutions are enacting a state of exception.

⁴¹ Examples include case numbers 9179/00, 167/01, 16863/08 and 7705/13.

6.2.1.3 Production of illegal migrants

In a departure from the past, the DHA no longer makes provision for new asylum seekers who plan to reside in Cape Town and those whose first port of entry into South Africa is Cape Town to apply for asylum. As already stated, this is in contempt of court. It is also a contravention of the Refugees Act, which allows any foreigner entering South Africa to apply for asylum. The refusal of the RRO to issue new asylum seeker permits has given rise to foreigners living in the country illegally since the RRO stopped receiving new asylum seekers in 2012. The illegality of these migrants is arguably through no fault of their own as one key informant told the researcher.

It's not their fault that they are not documented. It's the fault of the Department of Home Affairs. They have been appealing the court decisions for quite a long time now and so they are still waiting. These people are still waiting. They came here with the intention of applying for asylum only to find Home Affairs is not complying with the court order. So it's not their fault that they are here undocumented. (Community Liaison Officer at PASSOP, respondent 47)

The findings of the research show that the DHA not only contributes to the illegality of migrants who have been in the country since the closure of the Cape Town RRO in 2012, but also to the illegality of migrants who have been in the country prior to that. One Zimbabwean migrant reported how he was still waiting for a quota work permit from Home Affairs three years after applying for it. In the meantime he clutches on to the application slip he received from them after he submitted his application as proof. However, this proof is not considered a legal status in terms of the Immigration Act but it has been generally accepted given the delays within the DHA in processing permits. So he has been able to get a job with that document. However, it is an unskilled job in a supermarket whereas he is a trained teacher and had applied for a quota work permit on the basis of his qualifications and the shortage of teachers facing South Africa.

In another example, one Malawian asylum seeker who has been living in South Africa for nine years explained how she has been undocumented since May 2012 due to the DHA. When she had routinely gone to extend her permit, the officials said they could not find her file and asked her to return at a later date. She then made multiple visits to the RRO and the officials maintained that the file was lost and they were therefore unable to assist her in any way. She remains in the country undocumented as a result. It makes little sense that officials are unable to replace a permit as a result of their own acts of omission. Just as lost passports and national IDs are replaceable so should asylum seeker permits. One would have expected the DHA to explain to the Malawian respondent the procedure for obtaining a new permit and facilitate this. Since they did not do this, it can be construed that they were simply unwilling to regularise her stay and insensitive to the implications this would have for her life in South Africa.

Another asylum seeker who has been in the country legally since 2007 went to renew his asylum seeker permit in May 2013 and it was withdrawn and he was issued with a rejection letter by DHA officials. He claimed that the RRO decision was procedurally flawed as it did not grant him a hearing

or interview and the right to appeal. In other words, the refugee status determination process described in Chapter 4 was not followed in his case. As a result, he is challenging the DHA's decision in court on the grounds that he was denied the right to administrative justice.

Being undocumented has major implications for migrants' lives as they are unable to access various services and opportunities, which threatens their very existence in South Africa. They also live in constant fear of detection as it is an offence to be in the country illegally. The same Malawian migrant explained how it had been impossible for her to obtain a birth certificate for her child who was born in South Africa after her permit had lapsed. While it is legally permissible for an illegal foreigner to become legal while in the country, it is improbable given the examples cited here which point to the DHA itself curtailing rather than enabling the issuance of documentation. The production of illegal migrants as discussed above is one way of 'irregularising' migrants as observed by Klaaren and Ramji (2001:39). The examples go beyond issues of bureaucratic inefficiency to unwillingness of officials to assist, to legal violations of the Refugees Act.

6.2.1.4 Lack of administrative justice

Section 24 of the Refugees Act details the process to be followed in making a decision about an asylum application. In addition, it states that while considering an application a Refugee Status Determination Officer (RSDO) must do so in line with section 33 of the Constitution which provides everyone with a right to just administrative action. The undocumented Congolese asylum seeker whose permit was withdrawn contends that administrative procedures were not followed implying that the officials acted unconstitutionally. In addition, he explained that he was unsure of what the official who received him wrote down in his application when he first arrived in the country because at the time he was struggling to speak English. He recalls that when he explained his grounds for applying for asylum, which were the persecution he faced due to his sexual identity as a homosexual, the official was not prepared to listen and asked him if he knew that being gay was against the Bible, to which he replied that he was explaining his situation and felt that the question was not relevant. So although he had been waiting for his claim to be adjudicated for six years, he was still looking forward to the interview where he would have a chance to defend his claim. He felt that he was not getting the protection provided for in the law and that the decision to withdraw his asylum permit and effectively deny him refugee status was unfair.

A researcher at ACMS argued that experiences such as the one of the Congolese migrant are not unique by stating:

The asylum system isn't really functioning. They're not listening to individual claims and conducting proper assessments and investigations in giving people decisions. They're just issuing rejections. It's just a mechanism for rejecting people and getting them out of the country. (Researcher at ACMS, respondent 42)

The key informant explained that the disregard for administrative procedures stems from an underlying belief in the DHA that asylum seekers are not in the country legitimately and are taking a chance by using the asylum system as a way to gain entry into the country. Indeed, it is possible to enter the country without being a genuine asylum seeker. One of the reasons for this is that corrupt DHA officials fraudulently issue permits in exchange for a bribe. Another reason is that the DHA takes very long to adjudicate claims. Instead of the stipulated six months it could take them up to ten years. Therefore, desperate migrants who do not meet the criteria for being granted refugee status can take advantage of this delay to regularise their stay in the country for a long time even if their asylum claim is bound to be rejected eventually. It is incumbent upon the DHA to speedily issue decisions in order to advance protection to those genuinely in need of it and to deter those seeking to exploit the system rather than abandoning the principles of legality.

6.2.1.5 Barriers to accessing services

Just about every migrant has to visit a DHA office to regularise his/her stay in South Africa or for some other permit related issue. Such visits are much more frequent for asylum seekers as their permits are valid for a limited period of between one month and six months at a time. A visit to a DHA office, especially the Cape Town RRO can be a very stressful experience as described by one migrant. *'A week prior you go for the extension it's a stressful week and you are thinking about your dignity, you are thinking about other issues, you are thinking about losing your humanity, value and ja'* (Congolese man, respondent 32).

The stress is largely as a result of the obstacles to accessing immigration services which exist at the RRO. These include disorder, long queues and bureaucratic indifference. What is more, migrants often had to make multiple visits to the RRO before getting any service. Migrants mentioned that the queues are often so long that one can easily spend the entire day in a queue. Some people have even taken to spending the night outside the RRO in the hope of being guaranteed a good spot in the queue the following morning. During the researcher's visit to the RRO she observed that there is nowhere to sit or take cover from the hot sun or rain while queuing outside, there are only a few portable toilets which are filthy and there is no drinking water available for clients. The inside reception areas are crowded and stuffy with people overflowing onto the corridors and stairways.

Some days can be quite chaotic outside the RRO with migrants being physically assaulted by security guards and fights breaking out, some of which have attracted the attention of the media. Migrants reported that people had fainted due to dehydration and spending long hours exposed to the sun, pregnant women had collapsed and people had even died after having been severely beaten by security guards (Congolese man, respondent 32; Burundian woman, respondent 37). While these incidents had apparently prompted some improvements at the RRO, they were usually short lived and with time things would deteriorate again.

There is no guarantee that one will be served on the day he/she visits the RRO. Often people were turned away after queuing the whole day and told to return the following day to face the same long

queues and uncertainty. Some migrants said that it could even take a week or more of going there before one could get their permit renewed and people's permits had expired while they were trying to renew them. In addition, migrants were more often than not ill-treated by state officials. Migrants gave examples of staff being condescending towards them, abusing their authority and being xenophobic. With the Cape Town RRO not serving new comers, most of its work involves only the extension of asylum seeker permits. Migrants bemoaned the slow pace at which staff work pointing out that the process of extending asylum seeker permits was very simple, yet it takes a very long time. One migrant who had previously worked at the RRO as an interpreter explained the procedure that a DHA official follows to extend a permit:

Just punch a number, system will open it up. You just check the validity, date of expiry – you just check the permit that the person has. Then they scan the permit, the old permit. Then I think when you scan old permit it is going to request to scan the new one. You scan the new one because you are extending. So you put the old one in the box because it is supposed to be wasted away. So then just scan the new one. After they scan they just put in a printer and click print. That's it. That is how extension is. That is the procedure. I have seen while they are interviewing someone... I have never had a training but if they give me to do that, I will do like four, five times more than them. It is very easy and simple thing....You are dealing with PC, just click, click, click, scan, the person has to go. Imagine if that takes five minutes, but it won't take five minutes. If it takes that five minutes, working hours are eight and less the one hour for lunch, one hour for break. But all of them they can't finish it. You see the difference now. (Ethiopian man, respondent 36)

From the above narrative staying legal can be a very time consuming exercise and dehumanising experience at RROs. To the researcher's knowledge, the overall environment at the RRO is unlike that of any other government office in the country's metropolitan areas that regularly receives citizens let alone other DHA offices that provide both civic and immigration services. One cannot help but notice the appalling environment, which happens to be in an office that only serves foreigners. In addition, migrants see these barriers as deliberately aimed at frustrating them and not as the daily expression of the administrative inefficiencies that the DHA has come to be associated with. This is perhaps due to a number of reasons including the unnecessary complication of what the respondent above describes as the uncomplicated task of renewing permits, which does not require any specialised skills and is not time-consuming. The persistence of the barriers to access even after temporary improvements in the RRO following complaints by migrants and their advocates point to other reasons such as a lack of political will. The decreasing numbers of asylum seekers in recent years, and the refusal of the RRO to accept new asylum applications since 2012, which has significantly reduced the number of clients the staff have to deal further point to a lack of political will to improve access to services by migrants.

The physical abuse experienced by migrants at the hands of state officials impinges the right to freedom and security granted by the Constitution. Section 12 affords protection against a range of

abuses such as cruel, inhuman and degrading treatment. While other barriers to accessing immigration services are not explicitly extra-legal, the sloppiness that migrants are subjected to goes against the spirit of the law. Also, their uniqueness to the RRO suggests institutional xenophobia. Taken together, they seem to be aimed at putting their legal identity, which is vital for the realisation of their human rights while in South Africa and integration into society, at risk.

As far as South African immigration statutes are concerned, only illegal foreigners lack a legal identity. Yet the asylum seekers and refugees who have legally guaranteed rights may not be able to experience them due to the barriers that the DHA has erected. Migrants are treated as if they are unworthy of the citizenship rights they are entitled to in the Constitution. This is reminiscent of Agamben's assertion that human beings, in reality, are not equal, a notion that he borrows from Arendt. It seems that the state sees these migrants as less deserving of government services than citizens, as well as temporary and permanent residents who are served in different offices.

6.2.1.6 Delays in permit-related processes

The findings here pertain to delays in adjudicating asylum claims; hearing appeals of rejected asylum applications; verification of asylum and refugee permits; issuing refugee identity documents (IDs) and refugee travel documents; processing permanent resident permits of refugees; and processing temporary residence permits.

According to the Regulations of the Refugees Act (2000) made by the Minister of Home Affairs, the whole process of determining whether an asylum seeker can be granted refugee status takes 180 days. In practice, however, this is rarely the case. Asylum claims can take years to adjudicate due to a backlog in the DHA in processing claims with some taking as long as ten years as already stated elsewhere. During this time the asylum seeker is on a temporary status that is renewable every few months. Although this status comes with rights to work and study it is an unstable status and even after having had this status for years one's claim can still be rejected, which is often the case because of the high rejection rate of applications. For example, out of the 78,142 applications for asylum received in the 2012 to 2013 year, only 3,908 were successful (Department of Home Affairs, 2013:90).

If a claim is rejected as unfounded, the asylum seeker can lodge an appeal with the Refugee Appeal Board within 30 days of rejection. In general administrative law terms an appeal hearing should take place within a reasonable time. However, this is rarely the case as the DHA is said to have built up an enormous backlog over the years. The appeal hearing backlog in 2013 stood at 10,553 (Department of Home Affairs, 2013:90). Some migrants have been waiting for an appeal hearing for between three and four years. They typically wait indefinitely as RSDOs who are required by law to give the applicant an indication of the date of their hearing or when they will receive a decision are unable to do so. However, while waiting for the hearing to take place migrants can renew their asylum seeker permits.

Asylum seekers and refugees have to get their permits verified by the DHA when they apply to open a bank account or to receive social grants (for those refugees who qualify). Because of the existence of fraudulent documents issued by the DHA, the banks and the South African Social Security Agency (SASSA) ask the same department to verify that the permits it issues are genuine. While verification is meant to take 48 hours, it is a very cumbersome process that can sometimes take a very long time thus inconveniencing migrants. It is rather ironic that state officials do not trust the very documents that they are responsible for issuing as reliable and verifiable evidence of legal identity. Yet the culprits who issue fraudulent documents are the state's own corrupt officials.

With regard to refugees, section 30 of the Refugees Act states that a refugee can apply for a refugee ID book after being issued with a refugee permit. These IDs are critical as they are more widely accepted by institutions and employers than the section 24 paper permits. Despite submitting ID applications within the required 30 days of being granted refugee status, some migrants do not receive their IDs during the entire period that their permit is valid for, which initially is two years and thereafter can be anything between one and four years. The ID is valid for the same period as the refugee status even though it is only issued after. Among those migrants who had received IDs, some said they had received them within three to six months of applying while others received them a few days before expiry or even after they had expired.

Refugees are also entitled to apply for travel documents to enable them to travel out of the country. However, this document is only accepted by very few countries. The document is valid for one year and similar to the refugee IDs, the process is fraught with delays. Even though the DHA says it takes three months to issue a travel document, the experience of refugees is that it takes longer, if it is issued at all.

Section 27 of the Refugees Act provides that a refugee who has been in the country for five years can apply for permanent residence if the Standing Committee on Refugee Affairs certifies that he/she is likely to remain a refugee indefinitely. It is not clear what yardstick is used to determine 'indefiniteness', but this is another area in which the DHA has amassed a backlog. The process of certification which is expected to take six months can take up to three years. According to one key informant respondent, these delays can be attributed to the Committee:

The Standing Committee is an extraordinary body which is most reluctant to provide people with that 27 C Certificate... It is difficult for people to get permanent residence through their having been refugees because the Standing Committee is not efficient. There is also a huge backlog there and at present they only have two members, the chairperson and one other member. (Attorney at LRC, respondent 46)

If a refugee is lucky to get certified and apply for permanent residence, his/her application is likely to be delayed indefinitely if the application does not get lost. Although no fixed timeframes are stated in the law for processing permanent resident applications, DHA officials should be guided by the

preamble of the Immigration Act. It strives to ensure that “permanent residence permits are issued as expeditiously as possible and on the basis of simplified procedures and objective, predictable and reasonable requirements and criteria” (Republic of South Africa, 2002). Some migrants have been waiting for four years for their permanent residence permits and within that time some have had to resubmit their applications after finding out in the course of following up that the DHA could not trace their application. The DHA has set a target of processing permanent residence applications within eight months but is far from achieving it (Department of Home Affairs, 2013:102).

It is not only those migrants under the Refugees Act who have to deal with delays. Those with temporary resident permits issued under the Immigration Act also reported waiting for nine months for an exchange permit and three years for a work permit, which the DHA claims takes them eight weeks to process. Those applying for study permits seem to get them faster than any other temporary residence permit. However, it depends on whether they apply for them in South Africa or in their home countries. Interestingly, those who had applied in their home countries said it took an average of one week to get their permit while when they applied here it often took longer. They said it takes about 30 days to get the study permit extended in South Africa but one student stated it can take up to nine months. This is perhaps because the DHA in South Africa deals with a much higher number of applications than an Embassy. However, this in itself is not a good reason as the office capacity should be commensurate to the work load.

It's a bit upsetting as a foreigner to have to travel outside to organise permits whilst you can do it here. It's time consuming and time wasting and then you come back with the same result. So what's the point of not facilitating the process here? I think if the applicant is able to provide all the necessary documents then there must be no delays. I don't see why the process should be delayed to the extent that you have to incur huge expenses to go out and renew permits that could be renewed here in SA. (Mozambican man, respondent 14)

On the surface, the major backlogs in issuing various permits are an indication of serious deficiencies in the DHA's National Immigration Branch, which can be attributed to administrative red tape. However, the researcher believes that at the heart of these deficiencies is a lack of political will to serve migrants better despite being well aware of the damage that such delays and uncertainties can have on a migrant's life as this is the same department that issues IDs and birth certificates to its citizens. Permit delays also violate the Refugees Act and Regulations and the intent of the Immigration Act. They can also be described as unfair because implicit in the notion of a fair procedure is reasonable dispatch (de la Hunt & Kerfoot, 2008:91).

Delays create uncertainty for migrants as they are subjected to living in a state of limbo. They are denied the peace of mind that a stable and predictable status provides. Not only is it difficult for them to plan their lives beyond the duration of their permit but it also disadvantages them in securing housing and jobs, for example. Even when they acquire a more stable status it is never guaranteed when the permit has expired and it is not clear how long it will be renewed for. Permanent residence,

which is the most secure status, is almost impossible to acquire for those refugees who meet the criteria of having lived in the country for more than five years. Delaying tactics by the DHA can be seen as a way of denying migrants access to the rights that come with their status or any entitlements that would be customarily expected after having spent a long period in a foreign country legally. These delays present a barrier to the integration of migrants into South African society and discourage migrants with short term visas from considering staying in South Africa for the long term.

6.2.1.7 Inconsistent procedures for extension of permits

Three issues around extension of asylum seeker and refugee permits emerged from the empirical research. These are the actions of DHA officials when renewing expired permits, the validity period of extended permits, and renewing a permit in a different RRO from where the initial permit was issued.

Migrants with expired permits are liable to an administrative fine. The law provides that an individual must apply for renewal of temporary resident permits not later than 30 days prior to the date of expiry, and for refugees not later than 90 days prior to expiry of the permit. However, it is not clear how many days before expiry an asylum permit can be renewed. This has created a lot of confusion as officials act unreasonably and unpredictably. One migrant said that you can renew it up to two days before expiry. However, another migrant went two days before his permit expired and was told to come back on the actual date of expiry. With the way things work at the RRO there is no guarantee that the permit will be actually be renewed on the day of expiry.

Another migrant (Rwandan woman, respondent 29) explained that she went to renew her permit on the day it was expiring and was not served. When she mentioned that her permit was expiring that day they still refused to give her priority and told her not to argue with them. The next day she went they wanted to fine her and she explained to them what happened the day before and they told her that she can go and explain that in court, but she stood her ground until they relented. Officials are quick to impose fines on those whose permits have expired by a day including those that expire on a weekend when the RRO is closed. Instead of appreciating the efforts of migrants to remain legal and to facilitate this, DHA officials resort to 'power games' probably to remind migrants of the power that state officials wield over them. Some corrupt officials have allegedly also found a way to cash in on fines. Instead of administering a fine of R 2,500 as stipulated in the law, they charge between R 500 and R 1,500 to renew a permit and pocket the money (Ethiopian man, respondent 36).

Another issue with extensions is the validity period of renewed asylum seeker and refugee permits. According to the Refugees Act, the initial permits are issued for a period of six months and two years respectively. There is no consistency or predictability after the first permit lapses and the law is silent in this respect. The researcher found that asylum seekers were getting their permits renewed for anything between 30 days and eight months and refugees for between three months and four years. Short extensions of asylum seeker permits have contributed to the crowds at the RRO as people have to keep going back almost every month. The migrants have to abandon their occupations for the better part of the day and incur transportation costs to make regular visits to the RRO. With some refugees

being eligible to access the government's social grants as a result of a 2012 amendment to the Social Assistance Act 13 of 2004, the DHA has found a way to deny them access as told by one key informant respondent:

The Refugees Act doesn't specify exactly how long a refugee permit needs to be valid for. So now refugees are able to access the SASSA social assistance, child grants, disability grants and elderly grants. You must have at least three months validity on your refugee permit to apply and to be given a grant. So what does the Department of Home Affairs do? They start issuing refugee permits instead of four years, for three months. (Director at Cape Town Refugee Centre, respondent 41)

This example can be viewed as the institution of an extraordinary measure to prevent migrants from accessing their socio-economic rights using the sovereign authority bestowed on state officials to decide. The practice prior to the amendment of the Social Assistance Act was to renew refugee permits for four years. However, because officials now want to prohibit migrants from accessing state welfare programmes, which the law entitles them to, they use their discretion to limit the validity of a refugee permit instead of outrightly violating the Social Assistance Act. This act is insensitive to the fact that only the indigent and needy refugees can qualify for state assistance.

The final issue regarding extensions has to do with not being able to renew asylum and refugee permits in a different office from the one that issued the initial permit. For instance, someone whose permit was initially issued in Musina and is now in Cape Town has to go back to Musina because that is where their file is. As has been stated, this practice has been contested in court a number of times and the court ordered that the DHA should extend permits regardless of which RRO issued them. However, the DHA has only complied selectively.

On the whole then, the practices of DHA officials in issues related to permit extensions make it difficult for migrants to retain their legal status over an extended period of time. They can be construed as a calculated strategy to keep migrants in a continuous state of uncertainty and to deny them access to basic services and other rights.

6.2.1.8 Issuance of fraudulent permits

The data also revealed that DHA officials are fraudulently issuing asylum seeker permits to foreigners. This is said to be increasingly the case since the closure of the fully fledged Cape Town RRO. The act of issuing asylum seeker permits itself is not illegal considering that according to the court; the DHA should never have stopped issuing these permits in Cape Town in the first place. The problem is that it is reportedly happening behind the scenes without following due process and at a cost, which makes it unethical. Two migrants interviewed in this study and who coincidentally had worked as interpreters at the RRO at different periods shed light on how officials are allegedly able to issue permits fraudulently (Somali man, respondent 26; Ethiopian man, respondent 36).

The migrants claimed that corrupt officials do not give the applicants the Eligibility Determination Form for Asylum Seekers to complete, which is a requirement before the permit is issued and also a requirement for examining their claim. They take finger prints of the applicant, enter their details into the computer, print out the permit on the A4 government security paper and then sign it. They omit to save the details entered on the computer before printing, which means that the applicant does not appear in the system. In other words, they capture the applicant's details in order to issue a permit but this information is not stored in the system, so it is not on record. One NGO respondent claimed that some officials take the government security paper and print the permits in their homes. One Zimbabwean migrant (respondent 7) who has been undocumented since she arrived in Cape Town after the closure of the RRO stated that officials had offered to give her a permit if she was prepared to pay R 800 for it.

While by law anyone is allowed to apply for asylum and to remain in the country until his/her claim is processed, DHA officials are allegedly effectively making it possible for people to get asylum papers without actually making a claim and enriching themselves in the process. In so doing, they open up the asylum system to abuse by migrants who probably do not have a legitimate claim and would not be able to qualify for entry into the country through the Immigration Act. Ironically though, such corrupt officials also provide an avenue for genuine asylum seekers who are willing to pay in order to circumvent the barriers to accessing the RRO and gain legal recognition. Violation of the law by corrupt state officials results in unintended consequences that threaten the very sovereign power of the state that these officials are supposed to protect.

The fraudulent issuing of permits exposes the corruption networks in Home Affairs and endangers the state's efforts to manage immigration. Also, because of all the obstacles that make staying legal so difficult, migrants are incentivised to acquire fraudulent documents from corrupt officials.

6.2.1.9 Soliciting bribes

Another corrupt practice observed from state officials by respondents that also undermines sovereignty is bribery. It also violates public service ethos which bind all state officials. The extraction of bribes from migrants by DHA officials and agents at the DHA offices seems to be a regular practice as one NGO that periodically monitors the RRO claims:

So there's an exchange of money from one hand to the next... It's a complicated network of corruption that is going on there, very complicated, but if you go there even a blind person would be able to tell there is corruption here. You will see middlemen scattered all over. They are always on their phones and they are speaking to officials inside and the security guards would facilitate a smooth movement and some of them would get in through gates that are normally reserved for officials only. (Community Liaison Officer at PASSOP, respondent 47)

Some migrants alleged that they had paid bribes of between R 200 and R 500 just to jump the queue and gain access into the RRO. This money was paid to security guards or to migrants who worked in

cahoots with DHA officials stationed inside the offices. One migrant paid R 800 as a fine for an expired permit, which is lower than the R 2,500 stated in DHA Regulations, but it went into the official's pocket. Others paid between R 1,500 and R 4,000 for refugee permits, which together with asylum seeker permits are to be issued at no charge.

The incentive for migrants to pay bribes at the RRO in particular is strong because of the inefficiencies and barriers that the DHA has created to prevent clients from obtaining access and staying legal. Those who are willing to follow legal channels unfortunately have to endure long queues, uncomfortable surroundings, indifferent officials, unpredictable processes and inconsistent treatment for the most part, all of which can be very frustrating. Officials are allegedly cashing in on the misery and desperation of migrants by arguably maintaining poor levels of service and creating loopholes through which those who are not prepared to go through the tedious process of doing things by the book can be served. One migrant explained it thus:

The long queue was for them a strategy to get money from refugees because if the service is quick, there is no way for them to say, look, I will do this but you pay me R100. But if the people spend weeks to renew the papers, you go the first day they will tell you, we're not ready today, come back tomorrow. The following day, no, we are not ready, come tomorrow again. Now in that situation, if you can pay R100 for not coming back tomorrow there is people who just say, ok, I'm going to pay R100 because I don't want to come back tomorrow.
(Angolan man, respondent 34)

Migrants linked the bribes they paid to officials to institutional corruption, which they highlighted as a key institutional problem in the DHA (as quoted below) and which was also noted in Chapter 4. Indeed, corruption in the entire public service in South Africa is an issue of concern (Chipkin, 2013:220).

There has been a lot of reshuffling and firing of people but the corruption is so entrenched that I do not think it is going to be as easy as just firing people or replacing them, because it is a network really. (Rwanda woman, respondent 29)

Corruption in the DHA has led to exploitation of vulnerable migrants and instead of advancing refugee protection opened up the immigration system to abuse. Corruption and the previously discussed fraudulent issuing of permits in the DHA are discretionary acts of exercising state authority which at the same time constitute abuses of power. These practices present a challenge to the state as they fall outside state regulation and thus undermine the state's sovereign power. These law-breaking practices are presented as evidence of a state exception because alongside other practices discussed in this section, they fall outside state regulation and within the non-application of the law. They also occur in a zone where illegality and legality are hard to discern. However, they have generated networks of corruption, which according to Landau (2005a:17), endanger the sovereignty that the state of exception is intended to protect. A rival explanation is that they are symptomatic of the informalisation

of the state where state apparatus are exploited by state officials for their personal gain. This makes it easier for migrants to obtain immigration status through fraudulent and corrupt means rather than by following the legal route.

Based on the above findings, this study is also concerned with “practices that have to do with the securing and undoing of identities” of migrants (Das & Poole, 2004:15). Specifically, these practices include the production of illegal migrants, barriers to accessing services and fraudulent practices surrounding the production and acquisition of documentation. They revolve around the application of residence permits and identity documents by migrants and the processing and issuing of these by the state. Das and Poole (2004:16) note how these state documents, which are supposed to secure identities, often operate in ways that undermine these same identities and assurances.

6.2.2 South African Police Service officials

Evidence of a state of exception among SAPS officials was observed in the overstepping of the boundaries of police powers, the exploitative use of the coercive apparatus of the state, abuse of discretionary powers, and unlawful practices. This was visible in the approach of the police towards African migrants in immigration policing; conducting raids and searches; acts of exploitation, extortion and extraction of bribes; and impunity when dealing with citizens who attack migrants or loot their possessions. These are discussed below.

6.2.2.1 Immigration policing

The police routinely conduct spot checks as part of crime policing and ask people to produce IDs at random. However, there is no legal requirement for migrants or citizens to carry their permits or IDs with them. Nonetheless, should a police officer request a migrant’s ID or permit and the migrant is unable to produce it, the police should allow the migrant time to present it.

It is necessary to point out that most research on the role of SAPS in immigration has been conducted in Johannesburg which has the highest concentration of African migrants.⁴² The researcher’s interviews with the SAPS in Cape Town and with migrants and key informants, suggest that the SAPS in Cape Town operates differently from the police in Johannesburg. In the interview with the Western Cape Deputy Provincial Commissioner in charge of operations, he stated that the SAPS does not have a legal role in immigration enforcement and thus it is not part of their line function or core business (Deputy Provincial Commissioner, respondent 49). He stated that under the Aliens Control Act, which was repealed and replaced with the Immigration Act, a role for the police in immigration existed. However, under the Immigration Act, according to him, the SAPS has no legal basis for immigration enforcement. He was categorical that *“only to the extent that if we incidentally come across a person that in the pursuit of other investigations is an illegal immigrant, then we would arrest that person for*

⁴² See Klaaren & Ramji, 2001; Aglotsson & Klaaren, 2002; Landau, 2005b; Landau *et al.*, 2005; Vigneswaran & Duponchel, 2009; Vigneswaran, 2011; Sutton & Vigneswaran, 2011.

handover to the immigration officials” (Deputy Provincial Commissioner, respondent 49). Such person may not be detained by the police for more than 48 hours. In other words, when the police stop migrants and request to see their permits, it is part of crime policing and not immigration policing.

Although the Deputy Provincial Commissioner stated that the police do not have a legal mandate to conduct immigration policing, there was evidence of this taking place from the field research. The police use racial profiling such as darker complexion and bio-cultural markers such as the inability to speak South African indigenous languages to detect foreigners as mentioned in Chapter 3. Such irrational and exclusionary practices are, as Vigneswaran (2011:151) points out, deeply embedded in the formal procedures, everyday routines and unwritten codes of practice.

The migrants who had been asked for their identification felt that they were targeted because the police thought that they looked different while others saw it as part of the random police checks conducted by the police, which are part of their job description. They all had their documentation with them. In fact, it appears that migrants mostly carry their documentation either as a precautionary measure probably brought about by an awareness that they are soft targets or because they think they are legally required to.

A key informant respondent reported having seen the police stopping people in the streets in Bellville, which has a high concentration of Somalis, asking them for their permits. She said that they were targeting Somalis because they look different (Director at CTCRC, respondent 41). This matched the experiences of the migrants as it is only the Somali migrants who said that they had been asked on more than one occasion by the police to produce their documents whereas those of other nationalities had only been asked once. Other than on the streets, migrants were also stopped by the police at the airport and in train stations and asked to show their IDs. The evidence of immigration policing in Cape Town, although of a much smaller scale than Johannesburg, is an example of the existence of individual police officers who go beyond the bounds of their legal power to target migrants at their own discretion.

Migrants explained the way immigration policing works in Johannesburg where they said that being stopped by the police and being asked to show one’s document is commonplace.

Yes, I think almost every time in Joburg but not here. There are random checks whereby they stop you, search your bag, ask you where you’re from. I think the first thing is the language. The moment you speak English you are not local. That’s a dead giveaway. From there they need proof that you are here legally. (Zimbabwean man, respondent 3)

Every day in Jo’burg when you are walking around you should have your ID. In April this year I went in Jo’burg, so just on my way out from the bus I saw the police coming to me and saying, ‘Hi chief, can I see your Home Affairs?’ So that means can I see your asylum papers. So I just take my ID and then I show them. They look, they say, ‘oh, it’s fine’. (Congolese man, respondent 23)

Only when I was in Joburg they used to ask. I came to Cape Town in 2000 and went to Joburg in 2002 for 8 months and I was asked more than five times for paper. (Congolese man, respondent 21)

Not here, in Johannesburg. It was my first day... On my way to my auntie's they asked. I showed them my passport, they said ok. (Zimbabwean woman, respondent 7)

The experiences of migrants captured in the quotes above show that there is a higher probability of being asked for documentation during police spot checks in Johannesburg than in Cape Town. The Deputy Provincial Commissioner also explained that the SAPS does not conduct operations to find illegal migrants. In other words, it is not involved in immigration policing. However, it will assist any special operations of the DHA in this regard, for instance, by securing the building and providing search warrants. With regard to crime he stated that the Criminal Procedures Act 51 of 1977 is the primary law that governs their work where crimes are committed. According to him, when a foreigner is arrested for crime the police are compelled to inform the DHA and the Embassy of the foreigner in South Africa (Deputy Provincial Commissioner, respondent 49).

The low incidence of immigration policing encounters could be explained by the fact that the SAPS does not engage in immigration enforcement as explained by the Deputy Provincial Commissioner. It would be interesting to explore the reasons for the differences between migrants' experiences with SAPS in Johannesburg and SAPS officials in Cape Town or why the police in Johannesburg engage more actively in immigration policing. It is plausible that the SAPS in Johannesburg uses its discretionary powers to target migrants and its actions have no legal grounding or are not genuinely aimed at immigration enforcement. It appears that some within the police are not really interested in enforcing the law but in breaking it by soliciting money from migrants even when they cannot prove their legal status in the country. According to one migrant, the police in Johannesburg are merely looking to extort migrants pointing to the corruption in the SAPS. The Congolese man said "*in Joburg it's because they now looking after money... If you don't have papers, you don't worry, you must just have R 10, R 20, so when they ask where is your Home Affairs, you just take R 20 and give them. They will leave you*" (Congolese man, respondent 23).

6.2.2.2 Raiding and looting from migrants

Respondents from organisations that work with migrants stated that the police raided the homes or businesses of informal traders and seized their goods or money. While the police are charged with crime prevention and enforcing by-laws, their methods indicate abuse of their discretionary powers and the arbitrary use of authority. This, together with the impunity of their actions and the vulnerability they expose migrants to, qualifies the raiding and looting from migrants as exceptional. It appears that only migrants who are engaged in businesses experienced police raids and looting, which means that it is tied to their occupation, in addition to their being foreign. These practices directly jeopardise the livelihoods of migrants.

One key informant respondent spoke about police operations when they visit informal businesses claiming to be looking for guns. The Advocacy Officer at ARESTA (respondent 45) explained that in the process of conducting these raids, they allegedly take money from the traders because they know that they mostly deal in cash. The traders cannot then go and report to the same police who raid their shops and expect protection.

Another NGO respondent explained that the police use their authority to harass migrants and criminalise their activities even if they are legitimate:

I've often seen police officers raiding foreign nationals who buy and sell TVs or those that repair computers – people who honestly earn a living by doing that. They have a shack where they do these things and yet the police would still raid them, confiscate all these things, accuse them of having stolen some of the equipment when in actual fact the thieves who are local are still wandering freely. So it's that selective application of the justice system. (Community Liaison Officer at PASSOP, respondent 47)

The police must charge or arrest migrants who they find to be violating trading laws while engaging in business. However, when they just raid shops and make away with goods without any arrests or charges, they are abusing their authority and at the same time making arbitrary decisions of when and when not to apply the law. They are also advancing the perception that migrants are involved in criminal or illegal activities. This can have a negative impact on the relationship between foreign nationals and the locals living within them (Community Liaison Officer at PASSOP, respondent 47).

6.2.2.3 Exploitation, extortion and bribery

The police allegedly abuse migrants, regardless of their legal status, in several ways which suggest that they are not so willing to protect and serve those who are not from South Africa. The Director of CTRC summed up how the police take advantage of foreigners:

There is corruption and there's sometimes taking advantage or using your badge and your weapon and your outfit as an excuse to pick up bribes, steal cigarettes, solicit all sorts of things. I mean I have a lot of smaller contacts who have been harassed by the police and all of their stuff taken away by the police even though they have legitimate operating permits. Informal traders who have had everything cleared out and then they only get a third of it back after they've proved that they were a legitimate business. (Director at CTRC, respondent 41)

Another migrant explained how the police use threats to get them to give in to their demands:

A guy come to me and he said to me that I must give him a cool drink. He said to me that if I don't want to give him he will investigate the stuff that I'm selling, whether I have a licence to make a business or not... I said to him, just do whatever you are going to do but I'm not going to give you. Then he ordered me to open the gate. I said no. Then he said that he's going to shoot me. I said, then shoot me. Then my wife come out, then the other guy said (they were two). The other guy come out and he talk to him in his language then he get in the car. And

this guy talk to my wife and he said they are thirsty, they need something to drink... Then my wife gave them 1.5 litre coke and they take it. If police ask you and they realise that you are a Somali and you're foreign, then you should have to pay. Otherwise you know there is a problem. (Somali man, respondent 26)

A Ugandan migrant (respondent 30) who was arrested for being in possession of a fraudulent work permit narrated how she was taken advantage of in the police cells. She said that she would ask the police to buy her food from outside as she did not like the food they were providing in the police station. She claimed that the police would go out and bring the food but not give her back her change. Also when she run out of airtime and wanted to send the police to buy her some they only agreed on condition that she also bought airtime for them leaving her with no choice. A Zimbabwean migrant (respondent 3) claimed that he had paid bribes to the police at a police station and roadblock in Gauteng and at the border in Limpopo. Finally, another migrant explained how migrants get swindled by the police (Ethiopian man, respondent 36). The police had allegedly told a migrant that if he paid them R 5,000 they would find the person who had killed his brother. The migrant should have refused to pay the police to do their job but he paid them and nothing happened.

Continued illegal harassment and abuse of migrants by the police through exploitation, extortion and bribery, creates a category of people who live in a realm that is beyond the law (Landau, 2005a:6). There was also evidence of DHA officials engaging in similar practices, which indicates that they are not limited to one state institution.

6.2.2.4 Impunity in dealing with citizens who attack or steal from migrants

Research respondents accused the police of not intervening when migrants fell victim to crime perpetrated by South Africans or for acting with impunity when they knew the perpetrators. The police were said to be indifferent because the victims were foreign or because they were working in cahoots with criminals to target foreigners. Some examples are cited below:

If you look into the incident last year in Bishop Lavis, Somali shops have been looted and petrol bombed. I think there was one media which took some pictures and they were showing that the police were just standing while the people were looting the shops. (Kenyan man, respondent 39)

They are together with those people, the skollies, ja. (Ugandan woman, respondent 30)

Being a foreigner gives them a feeling to just rob... Even if police came and arrest... Then they just release them. (Ethiopian man, respondent 36)

The above experiences are indicative of migrants having less worth than citizens in the eyes of the police. They also illustrate how state officials exercise their power to decide, in this instance through inaction and renegeing on their duty to protect. These experiences of migrants reflect a culture of impunity with regard to official law-breaking behaviour towards African migrants. It indicates that there is tacit endorsement by the state for citizens to deal with migrants by whatever means they

deem appropriate. According to Mosselson (2010:653), a culture of impunity emphasises migrants' lives as bare. In this way, it has been recognised as enabling xenophobia in South Africa with regard to ordinary citizens who perpetrate xenophobic violence (Misago, 2011). But this study finds that impunity also exists when it comes to general crimes committed against foreigners who escape punishment for their actions. Underlying this treatment is the stigmatisation of African migrants.

6.2.3 City of Cape Town officials

Only one indicator of a state of exception was observed in CoCT officials – extortion. It was specific to Metro Police officials and is similar to the behaviour of SAPS officials described in section 6.2.2.3 above. Both these examples illustrate how officials exploit their mandate to target migrants. Migrants who had operated or were still operating businesses were specifically targeted, which negatively impacts on their source of livelihood. The migrants were ethnic Somalis from Somali and Kenya, and a Nigerian. When viewed in isolation, extortion, which sometimes goes hand in hand with bribery could merely indicate that there are corrupt individuals in the Metro Police/law enforcement. Also since all the migrants who experienced this were informal traders it could be that it is an issue that cuts across informal traders and not just the foreign ones. However, a Kenyan ethnic Somali respondent who also happened to be an official of a Somali migrants association stated that several Somalis often complained to him about being searched by City officials when they were looking for counterfeit goods (Kenyan man, respondent 40). This could imply that Somalis feel that they are particular targets of the Metro Police given that most of them run shops, which sell the kind of goods that the police are suspicious of.

Migrants mentioned having been targeted during raids and searches conducted by the Metro Police and other law enforcement officials in their shops. They stated that while claiming to be searching for counterfeit cigarettes and contraband goods they would extort money and/or goods from foreign traders. While this took place mostly at the business premises, it was also happening at roadside stops as one migrant narrated:

We were driving to my shop and I got stuff in a bakkie then the metro police stopped me. He looked the car then he checked me and he said in Xhosa, 'bring your ID out'. Then when I speak English he realised that I can't speak Xhosa; I must be foreign then. He asked me my permit or my passport then I showed him. Then by that time he bring out paper, something like that, and he say that you are this and this. Then he said to me make a plan. Then I said I do not have the cash. He asked me what I have. I had some items that I was taking to the shop. Then he took two R 29 Vodacom vouchers. Then he released me. (Somali man, respondent 26)

The fact that there was only one indicator for practices that constitute a state of exception with local government officials and that it has to do only with local government officials involved in law enforcement is an interesting finding. This is because firstly it may suggest that the less direct

encounters migrants have with state officials, the less vulnerable they are to abuses by state officials. In this study migrants had the most encounters with DHA officials and the least with the CoCT. Secondly, state officials with an everyday law enforcement responsibility that entails street interaction with people are more likely to harass and abuse migrants. Related to this is that foreigners who are entrepreneurs are particularly vulnerable to arbitrary and unbridled state power from law enforcement officials. Thirdly, it suggests that not all state institutions are complicit in enacting a state of exception but rather those which have more direct and day-to-day interaction with migrants.

To sum up the response to the third research question, there was evidence of a state of exception in the practices of state officials in all three institutions with varying intensity (see Figures 6.1, 6.2 and 6.3). It appears that alongside conventional law, the paradigm according to which African migrants are dealt with by the South African state also includes a realm of practices that fall outside state regulation and within the non-application of the law. Thus, state officials operating at the frontier of state power create and maintain a threshold zone of exception in line with Agamben's argument. This was evident in everyday practices where the law is violated and extraordinary measures are employed by officials to constrain some migrants and not others. Such practices were more common in relation to the DHA compared to the SAPS and the CoCT, which means that such practices are mostly related to the documentation of migrants, which is critical to their stay in South Africa. Furthermore, the measures that constitute a state of exception were more apparent in the RRO than in other DHA offices.

Another way of stating these findings is in terms of the agents, targets and spaces of the exception presented in Figure 3.1 to show the state of exception in operation. The agents of the state of exception are officials from all three state institutions but particularly the DHA and SAPS. The targets of the exception among African migrants are predominantly asylum seekers, refugees and illegal foreigners as the evidence of a state of exception emerged mostly from these categories of migrants in comparison to temporary and permanent residents. Asylum seekers, refugees and illegal foreigners are therefore more vulnerable than temporary and permanent residents to the DHA's sovereign power. In the case of the SAPS and CoCT, the targets are African migrants with different immigration status but particularly those who operate small businesses. This illustrates how distinctions between legal migrants and illegal foreigners are blurred in the state of exception.

In terms of the spaces of the exception, the Cape Town RRO is the most discernible space but the DHA head office in Pretoria is also implicated as a space of exception. This is not only because it has a hand in the operations of the RRO, but also because most permit applications are sent to Pretoria for processing. A more general space of exception observed is the site where migrants collide with law enforcement agents either from the SAPS or CoCT. Indeed, in the case of the CoCT there was no evidence from other municipal officials of practices that are indicative of a state of exception except for the Metro Police. Consequently, while the exception occurs in a few particular places more than others, migrants are generally at risk of being taken outside the law at any moment where the practice of sovereign power occurs and not only in spatially defined zones in the territory as recognised in

some of the literature. This symbolises the ever-present potential for being reduced to bare life that Agamben theorises about. Moreover, because migrants in South Africa live side by side with citizens as opposed to in isolated camps, the state of exception pervades the territory of the state. In other words, the topological structure of the exception can be observed in the entire territory as it is potentially a zone of indistinction between those who are included by virtue of their exclusion and those who are excluded through their inclusion.

Finally, although the findings were determined by the level of interaction migrants had with the three different institutions, they suggest that the state of exception is not legitimised in the entire polity but it is a mechanism that is applied by those state institutions that have more face-to-face interaction with migrants. In this case, the agents of the state of exception are more likely to be from the DHA and the SAPS than the CoCT. Some state institutions by virtue of their mandate and level of direct interaction with migrants are able to exert more power over the lives of migrants than others. Stated differently, the sovereign power that the state has over migrants' lives is more visible in state institutions that interact with them on an everyday basis than in those which do not. This demonstrates how within the state its officials can blur the lines between lawfulness and lawlessness through "everyday practices of avoiding, bending or performing the law" (Hagmann & Korf, 2012:210).

In answering the research question about the evidence of a state of exception, this study demonstrates that although South Africa has firmly committed itself to the rule of law and human rights in its legal system, the practices of some of its state officials depart from this. This highlights the gap between migrants' rights on paper and in practice by demonstrating both the rule of law and at the same time the absence of law in the everyday practices of the state. Obstacles to obtaining immigration status created by DHA officials in particular undermine the liberal character of the South African constitution, which grants migrants the same rights as citizens save for two provisions. Instead of blurring the lines between citizens and non-citizens, these obstacles delineate them in practice. The basis for this delineation is the construction of migrants as a threat. In addition, corruption and fraudulent practices point to informal economies within the state.

South Africa is also regarded as one of only a few comparatively strong states in Africa by Rotberg (2013) and others. However, as recognised in section 4.3, it faces a number of capacity and resource constraints. In addition, this chapter shows that there are those segments of the population (African migrants) who cannot rely on the government for legal protection. It appears that this has less to do with the constraints facing state institutions but it is arguably because of deliberate and strategic measures which allow some officials to step outside of the law in the name of protecting South Africa from the danger of migrants and to deny them their rights and existence in South Africa.

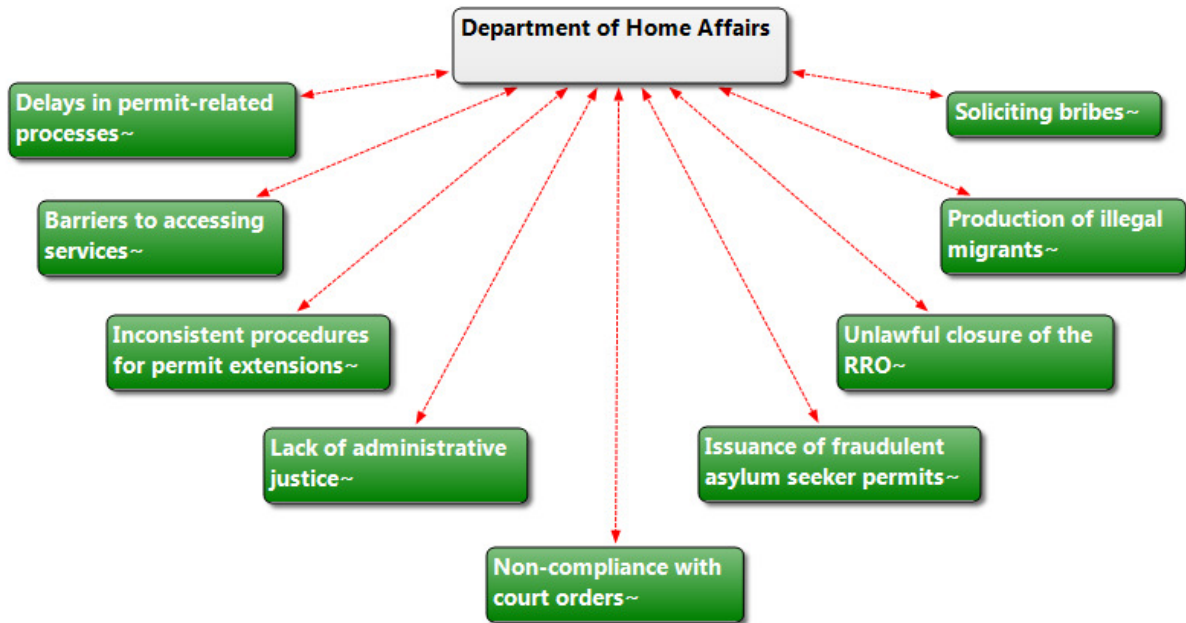


Figure 6.1: Indicators of a state of exception in the practices of DHA officials



Figure 6.2: Indicators of a state of exception in the practices of SAPS officials

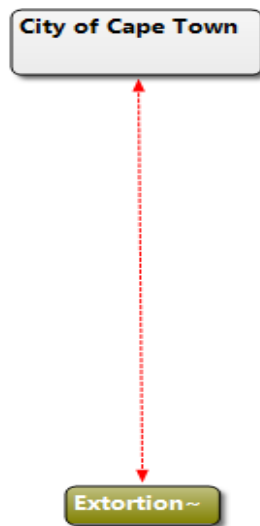


Figure 6.3: Indicators of a state of exception in the practices of CoCT officials

6.3 The state of exception and xenophobia in South Africa

To what extent has a state of exception in dealing with African migrants shaped xenophobia in South Africa? This research question seeks to explore the relationship between the state of exception and xenophobia based on the evidence presented so far and the primary data generally. Given that the previous section dealt with evidence of a state of exception in terms of the exercise of sovereign power, this section revisits the concept from the perspective of bare life. Agamben (1998) conceptualises the state of exception in terms of sovereign power and bare life. For him these are paradoxically two sides of the same coin. The evidence presented in the previous section is slanted towards the sovereign power side of the state of exception with bare life being implicit. Inseparable as these two elements are, this section will give more attention to the bare life aspect of the state of exception.

It is worth recalling that migrants are reduced to bare life because of their exclusion from national citizenship by the state (Agamben, 2000). Although Agamben uses the refugee's exclusion from the state to make this point, it can also include other categories of migrants. In terms of xenophobia, the findings on this thus far are reviewed in terms of the operationalisation of the term in Chapter 2 and in terms of the broader South African social context in which migrants live. This approach aims to tie up the two main concepts used in the study, due to their common exclusionary character, and make final conclusions that address the research question. In terms of the application of Atlas.ti, this section analyses the results related to the codes and categories that operationalised bare life and xenophobia.

6.3.1 Bare life

Das and Poole (2004:13) observe that Agamben conceptualises bare life in two ways; one is by assigning it to specific spaces and figures, such as the concentration camp and the refugee

respectively, and the other is by conceptualising it as a potential threat and condition into which anyone could fall. The concern here is with the latter conceptualisation. However, according to the author's reading of Agamben, he uses the term both philosophically and literally while remaining ambiguous about how it is concretely observed. For Agamben, those reduced to bare life are biologically alive but "lacking almost all the rights and expectations that we customarily attribute to human existence" (Agamben, 1998:159). Therefore, this study borrows from the interpretations of other scholars for the operationalization of bare life. According to Rajaram and Grundy-Warr (2004:50), bare life includes the dependence on the whims of state officials "for full enjoyment of life, livelihood, and personal security and dignity". Kearns (2007:7) interprets bare life as a condition in which some lives are treated as if they were either not worth living or not worth protecting.

Bare life, as a corollary of sovereign power, can be viewed as an outcome of the measures that constitute a state of exception summarised in Figures 6.1, 6.2 and 6.3, which were found to vary in intensity. The vulnerability that many migrants are condemned to has been alluded to in section 6.2. Using the term 'bare life' underscores the potential that the practices of state officials have to threaten the humanity of migrants. To this extent, migrants are at the mercy of state officials in terms of how they interpret and apply their power to decide.

In Chapter 5, the researcher concluded that the poor treatment migrants experienced from officials infringed their dignity and showed the low value attached to migrants lives because they are non-citizens. This was based on the choice of words they used to describe their treatment such as 'dehumanise', 'slave' and 'criminal', among others; the physical abuse they were subjected to by DHA officials; and the inferior environment of the RRO where some migrants are served. In the first part of Chapter 6, the details of the poor treatment were analysed in terms of exceptional bureaucratic practices and showed that these practices, which are outside the law, have serious consequences for the lives of migrants in terms.

Examples of the state of exception pointed out earlier show that bare life may not be immediate or clearly visible from one encounter with a state official but rather that some practices have a longer lasting impact on the lives of migrants and their existence in South Africa, which could relegate them to bare life. These practices apply to DHA officials and relate to documentation, which for migrants is absolutely critical. For example, the generation of illegal migrants through delays in processing permits and loss of files, or reducing the validity of refugee permits to prevent them from accessing social grants deny migrants any legal status in the country and/or access to social services. Other permit-related processes and the barriers to accessing services at the DHA also mean that the status of many migrants in South Africa is unstable. Such practices expose segments of the migrant population to bare life as they struggle to earn sustainable livelihoods and integrate into the community while in the country, which is likely to push them to the periphery. They also have the potential to push many migrants to menial jobs and the informal sector. This includes those with a tertiary education and/or entrepreneurial skills, which would otherwise be expected to give them an advantage in life. Instead,

some find themselves engaging in survivalist occupations even after having spent many years in the country as refugees, for example, and have been unable to acquire permanent residence even when they are eligible for it.

With regard to police practices, examples of bare life were evident in those situations where migrants felt like the underdogs of society who can be trampled upon by the police and citizens, and that their lives were undervalued. In these instances, the police failed to exercise their duty to protect in relation to migrants who were victims of crime even when the police knew who the perpetrators were or when they simply ignored calls for help from migrants. The police also failed to act when foreigners had been killed in alleged hate crimes and did not arrest the perpetrators. Migrants suggested that they probably would have been treated differently if they were South Africans in such circumstances.

State officials seem to disassociate the inalienable human rights that all humans have by virtue of their humanness from migrants thus devaluing their lives. This resonates with Agamben's assertion that in reality human beings are not equal because of their humanness despite the whole notion of human rights (Agamben, 2000). From the quotes below, one of which bears repeating from an earlier section but is used in a different context here, it seems that migrants need more than just their humanity to be taken seriously by state officials.

Some police are very helpful but others are very negative. When it comes to helping the foreigners they have got the very negative perception. Unless if they see you that you are a bit, maybe sometimes educated, or maybe you are going with someone who is a citizen, that time maybe they might help you, but if you go alone in many cases they usually do not, they don't treat you very nicely. (Kenyan man, respondent 39)

I delayed to go and renew my permit by almost a week cause I was sick. I even showed them the doctor's certificate. They told me I had to pay R 2,500 but I told them I don't have money and I am not working. I came to PASSOP and they gave me a white guy to help me who went with me to Home Affairs. When they saw a white guy they were asking what is happening. He questioned them then they started denying and told me to go the next day... I went back again they gave me a letter I took to UCT then I went the next day and they gave me a paper. I don't think they helped me cause of who I am. They helped me cause they assumed that there is a pressure. Other people were telling me, we'll show you someone who you can pay R 1,000 or we'll show you someone you can pay R 500. (Rwandan man, respondent 28)

The above quotes based on experiences with the police and immigration officials show that if a migrant is perceived to be educated, has a South African contact, or has access to an NGO or legal aid they add some kind of worth to their lives which makes state officials pay attention to their issues. The latter excerpt also has additional significance. Firstly, it implies that state officials, who are presumably black in this instance, associate whiteness with power and blackness with powerlessness. African migrants could therefore be exposed to a double exclusion based not only their foreignness but

also based on their race. Secondly, it shows that they are possibly targeted for extortion and exploitation in order to sustain corrupt officials. State officials could be giving them a hard time deliberately in an effort to frustrate them and get them to contemplate parting with money in order to get service.

In line with Kearns (2007:7), the above describes an environment in which some lives are treated as if they were either not worth living or not worth protecting. However, the findings also suggest that the state of exception may not always result in bare life and even when it does; it varies in intensity showing that not all of Agamben's theoretical subtleties apply for three reasons. Firstly, is the acknowledgement in Chapter 5 that not all migrants are treated poorly by state officials and this could be because of what Agamben refers to as the civility and ethical sense of the sovereign official. Secondly, it is because of the individual's own ability to assert themselves based on an awareness of their rights and the law. Migrants who are acquainted with the law are empowered to demand certain treatment from the police, whereas those who are ignorant of the law can be taken advantage of as revealed in Chapter 5. Thirdly, it is due to the ability of migrants to gain access to human rights or migrant organisations that champion their cause. Earlier examples include the willingness of NGOs to assist migrants with police cases that they may have, the assistance they provided to migrants to get their documentation from DHA and the litigation against the DHA mentioned by NGOs in an effort to protect the rights of asylum seekers and refugees. These open up possibilities to mitigate bare life which is characteristic of the state of exception. However, despite the revelation of these possibilities, their success was not always evident and it was not clear under what conditions migrants or NGOs chose to utilise them as they were only mentioned in particular instances and not in others. The findings pertaining to bare life suggest varying degrees of bare life with some examples being more or less harsh than others, which Agamben does not seem to acknowledge in his work. Based on this, the author supports the criticism that Agamben has received for his dualistic theorisation of *homo sacer* or bare life which should instead be regarded as being "less solid and stable" than Agamben submits (Long, in Ek, 2006:371). In Agamben's conceptualisation, one is either *homo sacer* or potentially *homo sacer* with no in-between.

6.3.2 Xenophobia

Examples of migrants describing their poor treatment by state officials as a manifestation of xenophobia were provided in Chapter 5. These examples were in line with the operational definition adopted by the researcher in Chapter 3. Xenophobia was defined and measured in terms of a set of negative attitudes or dispositions towards non-South Africans. Xenophobia includes discriminatory attitudes, hostility and intolerance towards foreigners by citizens and the state. Indeed, all of these are reflected in the findings in sections 5.2 and section 5.3 relating to the first two research questions with. Migrants recognised that the negative treatment they received from state officials stems from the fact

that they are non-South Africans. The research therefore confirmed the existence of institutional and public xenophobia, which other researchers have also observed.

Two issues related to state-level xenophobia can be distilled from the data. Firstly, that asylum seekers and refugees seem to encounter state-level xenophobia more than temporary and permanent residents. This seems to follow naturally in the case of DHA officials given that it was noted in section 5.3.1 that these categories of migrants tend to have more negative experiences with DHA officials due to their legal status, which is perceived as inferior. However, when it comes to SAPS and CoCT officials who do not distinguish based on migrant category, the researcher can only speculate from the data since this was not a research question. It is possible that these categories of migrants operate as informal traders and hence are likely to come into contact with law enforcement officials. Alternatively, they are more likely than so-called economic migrants to live in impoverished areas where violent xenophobia is rife, such as in black townships, and the state officials they encounter there also display similar attitudes to those of the community. It is therefore plausible that the same applies in the context of public xenophobia, whereby asylum seekers and refugees experience more public xenophobia, at least the violent manifestation of it, than temporary and permanent migrants. Even so, temporary and permanent residents who reside in townships seem to be vulnerable to violent xenophobia because of their socio-economic status as opposed to their legal status. To summarise, institutional xenophobia is manifested in discriminatory attitudes, hostility and intolerance towards migrants based on their immigration status, socio-economic status and geographical location.

Secondly, xenophobia at the state-level can be more accurately described as institutional rather than institutionalised. Although the data revealed mostly negative experiences of migrants with state officials, which includes xenophobia, the fact that there were positive experiences suggests that xenophobia exists at the state-level but it is not necessarily part of the institutional culture. In the case of Home Affairs, exclusion could be institutionalised by virtue of its immigration mandate which distinguishes between citizens and foreigners. How this exclusion is expressed, however, is not always anchored in law but rather in a belief that certain categories of non-citizens threaten the security of the state more than others, which can be construed as xenophobic. Different degrees of institutional xenophobia in the DHA, SAPS and CoCT also show that institutional xenophobia has not permeated the entire state.

Beyond state-level xenophobia, migrants also revealed how they had experienced xenophobia as part of life in South Africa fostered by citizens. Their examples spanned violent xenophobic attacks, verbal abuse and threats as portrayed below:

It was 2009 here in Imizamo Yethu. They were just torturing us, stealing our stuff and so on.
(Zimbabwean woman, respondent 6)

They were screaming – no beat her, those foreigner they must go back to their countries, what are they doing here, in Xhosa, and another guy joined in. They kicked me, they beat me like a

thief... yoh! They tore my jacket. I had a golden chain from home. They pulled it. They cut it. They took it. They pulled the earrings so I was screaming until another train came it's when they leave me and they run away. (Burundian woman, respondent 37)

They are saying if Mandela pass away they will loot your shop or take everything that you got...you must go back to your country. (Somali man, respondent 26)

6.3.3 Discussion

In terms of linking the two concepts in this section together, the results of the study indicate that the state of exception and xenophobia produce similar outcomes in their targets; who they view as posing a real or imagined threat to the national order of things. Indeed, the experiences of migrants with state officials show that there is a thin line between a state of exception and xenophobia at the level of the state. The state of exception is defined in this study as a structural condition, which is an attribute of the political system and of the institutional character of the state, and which allows for state officials to discriminate against migrants, regardless of their motivations and to get away with it. Xenophobia is defined as a set of attitudes.

Both concepts possess an exclusionary power that marginalises migrants as it delineates them from citizens by marking them as the 'enemy' within. This is the exclusionary inclusion that structures the state of exception where what is excluded from the juridical order is also included by virtue of its exclusion (Agamben, 2005:35) The manner in which frontline officials, particularly those from the DHA and SAPS, exercise their power results in the exclusion of migrants in the same way that xenophobia results in the social exclusion of migrants. This exclusion as a result of both the state of exception and xenophobia further exposes them to bare life. This is reflected in the challenges that migrants face in the course of trying to make a living in South Africa. For instance, respondents narrated how migrants are excluded from social services and banking services, and how they face discrimination in higher education institutions, private housing and jobs. Examples of the latter two are quoted below from a key informant and migrant:

They have some more struggles with housing than I would say South Africans in terms of gaining access because people are xenophobic and don't want to rent to them. Or they cluster and then they end up 15 people in a one-bedroom apartment. (Director at CTRC, respondent 41)

Even on that permit they wrote you're entitled to study or to work. But when you go on the work place with all the criteria and... you have the experience, you have the knowledge but they said green I.D. So you are stuck. (Burundi woman, respondent 37)

So, while South African immigration policy promotes self-sufficiency and integration into society, the poor perception and treatment of migrants leads to their social exclusion. This means that many of them are prevented from enjoying their rights. It also illustrates the everyday effects of the entrenched negative discourse on migrants.

The final quote from an attorney at the LRC captures the vulnerability that migrants are exposed to when the state of exception and xenophobia combine.

The enormous number of refugees who are desperate to be resettled in other countries and even the number of Somalis... They would rather go back to Mogadishu than to continue to live here being looted and robbed around every turn. But it is really extraordinary the number of people who have been here for some years who are desperately insecure. They cannot rely on the protection of the state and they are very vulnerable, not only in the ordinary sense, but even when they have managed to get their assailants or robbers arrested. They then become even more frightened because there is no system here worth talking about of witness protection and all that happens is the robber or the rapist's friends and family threaten the complainant's family and people come in here crying wanting to be relocated to Australia or Canada or the United States or wherever, and I am forced to tell them that very few people succeed and even if they do it takes forever for the UNHCR to persuade another country to accept refugees from South Africa. (Attorney at LRC, respondent 46)

It is on the basis of the above excerpt and an overall analysis of the data that the researcher asserts that the state of exception and xenophobia both identify migrants as an excludable group and thus makes them vulnerable. However, it is difficult to say with certainty whether a state of exception shapes xenophobia or whether xenophobia contributes to the state of exception. Agamben (1998) argues that various forms of abuse directed at migrants are enabled by an originary distinction between citizen and non-citizen. From the data, it appears that the state of exception creates the space for xenophobia to flourish or exacerbates xenophobia through its differential treatment of migrants from citizens. Therefore, rather than counter xenophobia, the practices of frontline state officials, which are evidence of a state of exception, make them vulnerable to xenophobia. On the other hand, pre-existing xenophobia in state officials could be behind the state of exception to the same effect of marginalising migrants. The data suggest that xenophobic attitudes of state officials lead to practices that constitute a state of exception. Xenophobia gives rise to the idea of the 'migrant threat' and at the same time the political discourse on migrants posing a threat is in itself a xenophobic discourse. In the final analysis, there seems to be a complex relationship between the state of exception and xenophobia. It is not a linear relationship but rather a multi-directional cycle as shown in Figure 6.4. The state of exception and xenophobia therefore seem to reinforce each other.

Mosselson (2010:643) argues that exclusionary practices directed at migrants are a defining feature of the South African state and one of the foundations of citizenship. They have created boundaries between 'us and them'. African migrants caught in the state of exception threaten the oneness of the nation embodied in the sovereign state. Therefore, the state of exception is undertaken with the intent of protecting this order and migrants are marked as dangerous bodies in the context of Agamben's conceptualisation of bare life, which he uses both metaphorically and literally. As migrants become the focus of the state's fears, the exception becomes a day-to-day mechanism of governing expressed

in the practices of state officials presented in this chapter rather than an extraordinary measure during a period of emergency. This is summarised in Figure 6.4. Violations of the Constitution, Refugees Act and Immigration Act are thought to be routine, widespread and systematic rather than idiosyncratic and anecdotal (Human Rights Watch, 2006:3; Landau *et al.*, 2005).

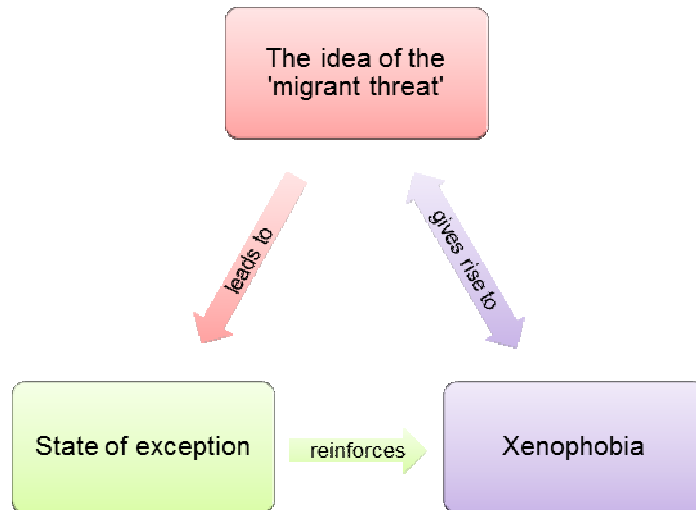


Figure 6.4: Migrants, the state of exception and xenophobia

6.4 Conclusion

This chapter has analysed the results of the latter two secondary research questions of the qualitative study using Atlas.ti and interpreted them. The key findings are summarised below.

The key finding in the third research question is that there is evidence of a state of exception in the practices of state officials in all three institutions. However, the extent of this evidence varies in each institution. In other words, the agents of the state of exception are officials from all three state institutions but particularly the DHA and SAPS. The targets of the exception among African migrants are predominantly asylum seekers, refugees and illegal foreigners as the evidence emerged mostly from these categories of migrants in comparison to temporary and permanent residents. This applies to the migrants targeted by DHA officials. When it comes to the SAPS and CoCT, migrants who are informal traders are targeted more than those in other occupations. In terms of the spaces of the exception, the Cape Town RRO is the most discernible space but the DHA head office in Pretoria is also implicated as a space of exception. A more general space of exception observed is the site at which migrants collide with law enforcement agents either from the SAPS or CoCT. SAPS officials in Johannesburg are notably much more involved in immigration policing than their counterparts in Cape Town. This suggests that the state of exception is not only confined to anomalous spaces as some of the literature suggests but also encompasses other spatiotemporal contexts where the state and migrants interact.

The findings also show that there is no uniformity in the exclusionary bureaucratic practices of the three institutions although they are all part of the state. In fact, the less direct encounters migrants have with state officials, the less vulnerable they are to abuses by state officials. Migrants had the most encounters with DHA officials and the least with the CoCT. Also, state officials with an everyday law enforcement responsibility that brings them into the daily spaces in which migrants operate are more likely to harass and abuse migrants. Related to this is that foreigners who are entrepreneurs are particularly vulnerable to arbitrary and unbridled state power from law enforcement officials, which is potentially damaging to their source of livelihood. Therefore, from the examination of three state institutions, the researcher infers that some state institutions by virtue of their mandate and level of direct interaction with migrants are able to exert more power over the lives of migrants than others. So, not all state institutions are complicit in declaring a state of exception but rather those which have more direct and day-to-day interaction with migrants.

With respect to the fourth research question, the key finding is that the link between the state of exception and xenophobia probably lies in bare life as both concepts identify migrants as an excludable group. The findings pertaining to bare life are in line with those of the state of exception which show varying degrees of intensity. Unlike Agamben's dualistic formulation of bare life, the findings reveal various manifestations of bare life, which Agamben does not seem to acknowledge in his theory. Both the state of exception and xenophobia are intertwined and dialectical resulting in a complex relationship. The state of exception enables xenophobia while at the same time xenophobia leads to a state of exception. In this way, the state of exception and xenophobia reinforce each other. This makes it difficult for the same state officials who use the state of exception mechanism to constrain migrants to counter xenophobia at the same time. However, state officials, key informants and even migrants recognise the potential power of agency to mitigate the state of exception and xenophobia in certain instances. This agency seeks to be used to access the provisions of the same law that is suspended or violated by state officials, a sign that the rule of law still has its place, if only one has the resources to access it and the justice system functions optimally.

Taken together, the findings from Chapters 5 and 6 indicate an affirmative response to the central research question. The practices of state officials towards African migrants reinforce state-level xenophobia in particular and general xenophobia in South Africa.

Chapter 7: Conclusion

This chapter presents the end product of the research endeavour. It begins with a brief discussion of the salient points from each chapter as the building blocks of the dissertation. It then summarises the main findings obtained from the primary research in relation to the research questions presented at the start of the study. This is followed by a summary of the overall conclusions of the study linking them to the literature and the theory, as well as the objectives of the research. It also states the contribution of the dissertation before proposing areas for further research.

7.1 Dissertation overview

Chapter 1 explained the rationale of the study, the problem statement and the methodological approach adopted to address the problem. Proceeding from the assumption that xenophobia holds negative consequences for South Africa's democracy, the study set out to investigate how state power is exercised by frontline officials of selected state institutions when dealing with African migrants and how this relates to widespread xenophobia in South Africa. The study examined the practices of junior bureaucrats from three selected institutions in relation to African migrants. These institutions are the Department of Home Affairs (DHA), the South African Police Service (SAPS) and local government – the City of Cape Town (CoCT). These institutions were selected because their responsibilities lead them to interact directly with migrants compared to other state institutions.

The study was undertaken in Cape Town as an ethnographic field study that drew upon in-depth interviews with a diverse sample of African migrants, key informant organisations and state officials, as well as observation of selected DHA offices. Primary data were gathered from a sample of 40 African migrants, seven key informant organisations and two state officials between July and October 2013. Semi-structured interviews and observations were the data-collection instruments used. Interview transcripts and field notes were analysed using Atlas.ti, a computer-assisted qualitative data analysis software.

The study was guided by the following primary research question: Do the practices of state officials (from the DHA, SAPS and CoCT), as experienced by African migrants, reinforce xenophobia in South Africa? This question was addressed by way of four secondary questions:

- a) How are the practices of South African state officials experienced by African migrants?
- b) To what extent are African migrants treated differently by South African state officials in terms of their legal status or nationality?

- c) Is the approach of South African state officials towards African migrants evidence of a state of exception?
- d) If so, to what extent has a state of exception in dealing with African migrants shaped xenophobia in South Africa?

Chapter 2 contextualised international migration to South Africa, which has a long history. The chapter began by acknowledging that, by definition, non-citizens are excluded from the state and that international migration is an issue that involves state sovereignty. Structurally, the state is characterised by a bias towards its citizens and an implicit alienation of the non-national (Monson, 2012:463). International migrants, therefore, challenge the triad of state-territory-citizen and are thus constructed as a threat to the national order of things. It was recognised that state immigration policies serve to mark the individual as external to the nation-state in order to facilitate identification and control, thus performing the gate-keeping function of enforcing territorial sovereignty (Dauvergne, 2004:86; Tuitt, 2004:48).

The chapter then identified African migrants as forming the bulk of international migrants in post-apartheid South Africa, with most of them originating from neighbouring southern African countries. The chapter also noted the complex nature of African migration to South Africa, which is the consequence of a range of economic, political, socio-cultural and personal factors. It observed that the presence of African migrants in South Africa is largely viewed in negative terms in the country. This is reflected by state responses which have centred on overstating the scale of international migration to suggest an overwhelming problem for the country which threatens citizens' livelihoods. Public discourse has also linked migration to the high crime rate and perceives migrants as takers who plan to settle in South Africa permanently. Migrants are therefore regarded as a danger to the nation.

Chapter 3 critically reviewed the literature on xenophobia and the state of exception. It first defined the terms 'migrant', 'the state', 'xenophobia', 'state of exception' and 'bare life' which are key concepts used in the study. In line with the United Nations (UN) definition a migrant was defined as "an individual who has resided in a foreign country for more than one year irrespective of the causes, voluntary or involuntary, and the means, regular or irregular, used to migrate" (International Organization for Migration, 2011:62). This definition was applied to those of African nationality in South Africa, since the focus was on African migrants as they bear the brunt of xenophobia. The state was defined in terms of its territorial, institutional and central nature in line with dominant scholarly definitions as well as its core function of providing political goods to those living within its borders. Xenophobia was defined and operationalised as discriminatory attitudes, hostility and intolerance towards foreigners by citizens and the state emanating from the construction of African migrants as a threat to the human security of South Africans. The state of exception was defined as the implicit authorisation of state officials to operate outside the law in order to protect the state from the migrant threat. The African migrant is marked as a threat to the national identity, security and well-being of the South African state. This declaration of the state of exception endorses practices in which the law

itself is either suspended or regarded as an instrument that state officials may enact as a strategy for constraining and monitoring the African migrant population. The state of exception impacts negatively on the lives of migrants. It subjugates people to a state of bare life where they are abandoned by the law, stripped of their rights and their lives are treated as not worth living or protecting.

The chapter then presented evidence from the literature of xenophobia as a longstanding and widespread phenomenon which makes for a hostile reception for many foreign nationals in South Africa. It showed that xenophobia ranges from the expression of general attitudes of intolerance to outright violence, and it emanates from the public, the media and the state. In addition, it examined the body of knowledge that seeks to explain why xenophobia exists in the first instance. It juxtaposed 11 explanations showing the complexity of xenophobia as a phenomenon, but also the multiple disciplinary perspectives from which it can be approached. It then highlighted which of the materialist, sociological, socio-cultural and political theories were relevant for the study and why.

The chapter then anchored the study at hand within the state of exception theory of Giorgio Agamben (1998, 2005) by linking xenophobia to legal discrimination as well as withdrawal and non-application of the law when it comes to migrants in the second part of the chapter. Underlying the detailed discussion of Agamben's biopolitical theory of sovereignty is the state's power over life. It also reviewed the literature on Agamben's theory, which has informed research in various country settings on topics such as the condition of refugees, asylum seekers and migrants, and the security situation since the global 'war on terror'.

The state of exception was operationalised in Chapter 3 by taking into account existing research and the researcher's own interpretation of Agamben. In order to find evidence of Agamben's state of exception in South Africa, agents, targets, spaces and indicators of a state of exception were identified. State officials from the DHA, SAPS and CoCT were identified as possible agents, while African migrants were identified as the targets. The spaces where the state of exception would be observed were defined as the locations in which migrants come into contact with the possible agents of the exception. These include government offices, police stations and the streets, among others.

For the purposes of the empirical research, the following 13 practices by state officials were established as indicators of a state of exception: flouting the laws relating to migrants; overstepping the bounds of their authority; abuse of official and discretionary powers; irregular policing of foreigners; perpetration of human rights violations; institution of extraordinary measures to exclude migrants from accessing basic social services; impunity of perpetrators of xenophobic violence; barriers to accessing documentation from Home Affairs; fraudulent practices surrounding the production and acquisition of documentation; production or generation of migrants who are extra-legal by denying them documentation; exploitation and extortion; irregular arrest and detention of migrants; illegal raids and looting of migrants' property; and corrupt behaviour in service provision, for example bribery. Bare life was operationalised by way of a definition that includes the dependence on the whims

of state officials for full enjoyment of migrant rights and the condition in which some lives are treated as if they were either not worth living or not worth protecting.

From the review of the literature, two gaps were identified which this study has attempted to address. The first is that the studies on the prevalence of xenophobia shed insufficient light on what variables determine how migrants experience xenophobia, whether from the state or the general public. Secondly, the reviewed political explanations of xenophobia do not sufficiently go beyond describing certain state practices and discourses as xenophobic to provide supporting empirical evidence of how the state engenders xenophobia on an everyday basis through its practices. This study sought to empirically provide a nuanced understanding of how migrants experience xenophobia based on variables such their legal status and nationality. It also attempted to expand existing statist explanations of xenophobia by bringing in the element of state power to an investigation of the relationship between the state and African migrants.

Chapter 4 provided a contextual background to the regulatory environment within which state officials from the DHA, SAPS and CoCT (as representatives of the state) interact with migrants and vice versa. The chapter began by outlining the legal framework that regulates the rights and obligations of migrants; this includes the Constitution (1996), the Refugees Act (1998) and the Immigration Act (2002) and the Regulations of the last two Acts. With regard to the Constitution, the focus was on the Bill of Rights and the provisions that establish the different tiers of government. The discussion on the Refugees Act and Immigration Act highlighted the legal categories of migrants covered under the respective Acts, i.e. asylum seekers and refugees in the former, and temporary residents, permanent residents and illegal foreigners in the latter. It also underlined the rights and obligations of migrants. This section concluded that the letter of the law, specifically the Constitution and the Refugees Act, grants migrants of different legal status a broad range of rights and protections. As a result, these two pieces of legislation are regarded as among the best in the world.

The chapter also described the legislated functions of the DHA, SAPS and local government both in broad terms and also in relation to the services they need to provide to migrants. It sketched a picture of the context within which these institutions operate and how they are perceived in terms of service delivery. It was pointed out that they all face challenges related to capacity, skills, resources and delivery. In addition, this chapter described the different settings in which state officials from each of the institutions come into contact with migrants. Stated differently, this chapter provided a background to the possible agents, targets and spaces of the state of exception. It laid the basis for an empirical analysis of the experiences of African migrants with state officials and an analysis of instances in which these experiences are evidence of the disjuncture between law and practice.

Chapter 5 and Chapter 6 contain the presentation and analysis of the empirical qualitative data in relation to the research questions, which was done using Atlas.ti. The findings are summarised below according to the research questions.

7.2 Summary of findings

This section summarises the key findings presented in Chapters 5 and 6 in relation to the research questions of the study.

The first research question asked how the practices of state officials from the DHA, SAPS and CoCT are experienced by African migrants. It was found that, firstly, migrants did not encounter all the three state institutions uniformly. While all 40 of them, by virtue of being foreigners, had encountered the DHA, only 28 had experienced the SAPS and 11 the CoCT. Secondly, migrants' experiences with these officials were mixed. Some experienced being treated positively and some negatively. Migrants did not generalise their experiences as they recognised that the individual attributes of the state officials played a part in how they experienced them. However, on the whole, the majority experienced being treated poorly, especially by DHA officials, followed by SAPS officials and, to a lesser degree, CoCT officials. It was therefore inferred that migrants generally experience being treated poorly by state officials. Migrants' experiences with DHA officials at the Refugee Reception Office (RRO) stood out as being particularly appalling.

The second research question sought to establish the extent to which African migrants are treated differently by state officials based on their legal status or nationality. The data reveal that the basis for migrants' mostly negative experiences with state officials is simply their status as non-South Africans. No patterns based on the legal category of migrants or their nationalities were observed in the way that migrants experienced SAPS and CoCT officials. However, when it came to DHA officials, there is an apparent difference in how foreigners are treated. Differential treatment was experienced based on legal category, implying a hierarchy of migrants in the eyes of DHA officials. Migrants who are served at the RRO – asylum seekers and refugees – experienced worse treatment than temporary and permanent residents who are served in DHA offices. Although the research question limited itself to differential treatment on the basis of legal status and nationality, the data suggest that there might be other variables that determine how migrants experience state officials. These include residential area, socio-economic status, level of education and knowledge of the law or access to some form of legal aid or civil society organisation. To some extent this shows that some officials take the categories of migrants for granted seeing them simply as foreigners or *amakwerekwere* and not as legal beings.

The third research question examined whether the approach of state officials towards African migrants was evidence of a state of exception in South Africa. The data indicate an affirmative response to the research question, as the key finding was that there is evidence of a state of exception in the practices of state officials in all three institutions albeit in varying degrees. In other words, the agents of the state of exception are officials from all three state institutions, but more so the DHA and SAPS. The targets of the exception by the DHA among African migrants are predominantly asylum seekers, refugees and illegal foreigners, as the evidence emerged mostly from these categories of migrants in comparison to temporary and permanent residents. Among African migrants targeted by the SAPS and CoCT, those who are informal traders are soft targets compared to those in other occupations.

In terms of the spaces of the exception, the Cape Town RRO is the most discernible space, but the DHA head office in Pretoria is also implicated as a space of exception. A more general space of exception observed is the public space in which migrants collide with law enforcement agents either from the SAPS or CoCT. SAPS officials in Cape Town engage in immigration enforcement to a lesser extent than those in Johannesburg indicating that the practices of SAPS officials differ spatially. Some examples of the state of exception include lack of administrative justice in status determination, inconsistent procedures for permit extensions, and the generation of illegal migrants in the case of DHA officials by denying applicants documentation. Other examples with regard to the SAPS and the CoCT, include exploitation and extortion, and impunity from any form of sanction for those who commit crimes against migrants.

The less direct encounters migrants have with state officials, the less vulnerable they seem to be to abuses by state officials. Migrants had the most encounters with DHA officials owing to its critical role of legalising migrants, and the least with the CoCT. Also, state officials with an everyday law enforcement responsibility that brings them into the daily spaces in which migrants operate are more likely to harass and abuse migrants. Related to this is that foreigners who are entrepreneurs are particularly vulnerable to arbitrary and unbridled state power from law enforcement officials, which is potentially damaging to their source of livelihood.

The fourth research question focused on the extent to which a state of exception has shaped xenophobia in South Africa. It was found that both the state of exception and xenophobia have an exclusionary power which produces similar outcomes in their victims, in this case migrants. In the context of the exception, exclusion is embodied in bare life, which was found in the study to manifest itself in different ways. After having established that there is a link between the two concepts of the state of exception and xenophobia, it is difficult to say with certainty whether a state of exception shapes xenophobia or whether xenophobic tendencies contribute to the state of exception. The data suggest that they have a complex and intertwined relationship with both being a cause and effect of each other. There was evidence of migrants being relegated to a condition of bare life, in which they reside in South Africa with unstable legal status and little legal protection as a result of xenophobia. In addition, there was also evidence suggesting the idea that xenophobia at the institutional level and public xenophobia towards African migrants is conducive to the state of exception.

As the identified agents of exception exercise their sovereign authority, they have their own preconceptions of the relative power of different segments of society vis-à-vis their sovereign power. Individual migrants are generally seen as powerless when faced with the sovereign power of the state. However, these same officials seem to recognise, or not underestimate, the power of agency in challenging state power to realise justice. The data revealed instances of vulnerable migrants turning to non-governmental organisations (NGOs) that promote the rights and interests of migrants to mitigate the state of exception and xenophobia.

Taken together, the findings in response to the four research questions summarised above lead to the overall conclusion that the practices of state officials towards African migrants and xenophobia in South Africa are mutually reinforcing.

7.3 Conclusions

In line with the stated objectives of the study, this research was able to gain an understanding of the way that African migrants experience the sovereign power of the state through their interactions with frontline DHA, SAPS and CoCT bureaucrats. Migrants' individual experiences were both positive and negative. The fact that on the whole they were mostly negative is consistent with the literature that associates state officials with poor treatment of migrants. The findings on bare life show different degrees or experiences of bare life with some interpretations being more or less harsh than others. In terms of state-level xenophobia, the finding that not all migrants experienced the state negatively could be interpreted to mean that *xenophobia at the state level is not institutionalised in the three institutions, although there are elements of it*. The migrants stating that their experiences of state officials depended in part on the individual official could mean that *xenophobia at the level of the state is expressed more by individuals rather than being an expression of organisational culture*.

The study also sought to establish differences and patterns in the differential treatment of Africans based on migrant category and nationality. To this end, it established that *the primary basis for differential treatment of African migrants by state officials is their foreignness, regardless of which African country they come from. Beyond that, subtle differences or patterns in how African migrants experience state officials based on their legal status and personal attributes were observed*. With regard to legal status, differences were observed in the experiences of African migrants with immigration officials. *Temporary and permanent residents seem to have less harsh experiences of state-level xenophobia, while asylum seekers, refugees and undocumented migrants experienced being treated particularly poorly*.

South Africa's Immigration Act favours foreigners that it believes can make an economic contribution through their skills and who are able to meet the battery of conditions to gain entry into the country. Such migrants who are in the country possess different types of temporary resident permits and permanent resident permits. This preference seems to be apparent in the practices of state officials, as those migrants who are accepted into the country on the basis of international law obligations, that is asylum seekers and refugees, seem to be perceived to be low-skilled or of little worth to the country and only reluctantly accepted on humanitarian grounds. This reluctance is also evident in the job market where although refugees, for instance, have rights to work without the need for a work permit, they face difficulties in getting employment merely because of their legal status, even when they possess skills that would enable them to enter the formal job market and contribute towards alleviating the skills shortage in South Africa. Thus, both unskilled and skilled migrants in these categories find themselves confined to the unskilled labour market, which is very competitive in South Africa. This is

because of an oversupply of low-level skills which is a legacy of apartheid and high unemployment rates in post-apartheid South Africa. *The differential treatment based on a codified hierarchy of international migrants could explain why some would experience subtle forms of, or no, xenophobia and bare life in South Africa, while others would experience more stark forms.* The findings on differential treatment highlight the tension raised by Weiner (1996:176) between migration serving the interests of the host state and migration serving the interests of migrants.

In addition, the poor treatment experienced by refugees confirms Agamben's assertion that the refugee, who stands on the threshold of the nation-state, reveals how sovereign power and the state of exception operate to define the life of the state's citizens as apart from that of others (Agamben, 1998:134). Refugees defy conventional and formal notions of citizenship as their belonging in the host countries is thrown into question. They unhinge the state-territory-citizen triad that defines citizenship in their home and host states (Agamben, 2000:22).

While it has been noted that no differential treatment in terms of nationality was observed from the perspective of migrants, it is recognised that perhaps a different methodology would have yielded a different finding – for instance, if South African respondents were asked for their views of African migrants from particular countries. However, the study did discover that *personal attributes, such as the ability to assert one's rights (directly or indirectly), one's occupation, level of education, socio-economic status and residential area play a role in how one is treated by state officials*, something the study had not explicitly set out to investigate. These socio-economic factors are no different from those that tend to determine the quality of services South African citizens receive from the government.

This research also aimed to locate the practices of state officials towards African migrants within political theory. It drew upon political theory on sovereignty and localised this to everyday expressions of state power displayed in the interactions of frontline officials of the state with African migrants. It adopted Agamben's theory of the state of exception and used it to investigate how the law is applied, or not, to African migrants by state officials and how this impacts on the lives of the migrants.

While it is a fact that the legal status of a foreigner inherently means having inferior claims on the state in contrast to citizens (Amisi & Ballard, 2006:321), the legal framework governing migrants in South Africa grants them a generous range of rights and protections. Despite this, *state officials, particularly immigration officials, seem to actively operate from the notion that the state exists only for its citizens irrespective of the progressive ideals reflected in the Constitution and the Refugees Act.* The study infers that this thinking appears to have permeated the approach of the state in dealing with migrants. A clear demonstration of this thinking was reflected in the delaying tactics employed by DHA officials to deny refugees who are eligible to acquire permanent resident status from doing so. It was also demonstrated by the act of issuing of refugee status for a period of only three months in order to prevent eligible refugees from accessing social grants. The study also found that while the law and

enabling institutions place limits on state power, these can be transgressed with tacit acceptance that they are an effort to contain the threat posed by foreigners. This implies that *the everyday decisions of state officials are not always based on the law as such, but rather on what Agamben (2000:42) refers to as the civility and the ethical sense of the official.*

Furthermore, the data show that *the state of exception is best observed as a set of collective practices in a particular context rather than a single practice in isolation.* A number of these practices were observed from DHA and SAPS officials, resulting in clear evidence of a state of exception. However, the researcher is hesitant to identify the actions observed in the CoCT as constituting a state of exception per se, because only one indicator – extortion of migrants – was present and applied to the unique experiences of African migrants who were informal traders. On its own this could simply be viewed as an example of corrupt state officials or something else. However, the presence of this indicator suggests that the site in which African migrants interact with law enforcement agents of the CoCT is potentially a space of exception compared to the other spaces in which migrants interact with state officials without a law enforcement mandate. *While such measures are declared in order to protect the state from the ‘migrant threat’ to the body politic, they are not legitimised across the polity and seem to be prevalent in state institutions that have regular face-to-face interaction with migrants.* Some state institutions by virtue of their mandate and level of direct interaction with migrants are able to exert more power over the lives of migrants than others.

Another possible interpretation touched on in Chapter 3 is that the state is simply incapable of fulfilling its functions and this is reflected in the practices of state officials towards migrants. The state therefore falls short of the classic ideal of sovereignty, or as Jackson (1990) puts it, the state has not achieved empirical statehood. His analysis of sovereignty, which is different from Agamben’s is shaped around the ideas of negative and positive sovereignty. His analysis of African states is that while they possess negative sovereignty, which refers to their juridical recognition as states, they do not possess positive sovereignty; positive sovereignty is what gives substance to negative sovereignty and includes the state’s ability to deliver political goods to its citizens (Jackson, 1990:29). Jackson associates empirical statehood with positive sovereignty and challenges the capabilities of post-colonial states, which in his view lack both empirical statehood and positive sovereignty.

A final objective of the study was to define the relationship between the state of exception, and xenophobia in South Africa. It was found that *the common denominator between the state of exception and xenophobia is their ability to exclude and therefore threaten the humanity of migrants.* In the state of exception, the state is able to act without restraint towards African migrants, under certain conditions, and their capacity to resist is minimised, except if they are able to successfully challenge the abuse of state power or the extra-legal practices of state officials.

In addition, while state-level xenophobia may not be institutionalised, exclusion could be institutionalised in the bureaucracy to the extent that it allows for differential treatment of migrants both in relation to citizens and in relation to other migrants. This exclusion is most entrenched in the

DHA, which is responsible for dealing with immigration, and is used as a way to constrain migrants. However, migrants can protect themselves from unbridled state power by seeking help from NGOs that seek to advance migrants rights. This suggests that the rule of law still applies, if only migrants were able to access it through these NGOs or through their own ability to assert their rights. Indeed, an educated migrant living in the suburbs and empowered about their rights seems to be able to mitigate the state of exception and xenophobia through the resources they possess.

The state of exception and xenophobia reinforce each other in a complex and non-linear relationship. Both the state of exception and xenophobia contribute to the social exclusion of migrants. Xenophobia is likely to flourish in an environment where there is a state of exception, which is supported by research findings that point to more instances of xenophobia from DHA and SAPS officials. The state of exception creates a conducive environment for xenophobia to flourish beyond the state and extend into the public arena, thus the state of exception shapes the broader socio-political environment in which xenophobia takes place. On the other hand, xenophobic attitudes towards migrants are a breeding ground for measures that constitute a state of exception.

7.4 Summary of this study's contributions

The first contribution of this research is to the body of theory, particularly in advancing a political understanding of xenophobia by examining state responses to international migration and the consequences thereof. It systematically applies Agamben's twin concepts of the state of exception and bare life to understanding xenophobia in South Africa, which is directed at black African migrants. In so doing, it moves away from mainstream analyses which attempt to explain the poor treatment of African migrants in South Africa on the basis of a legacy of apartheid, citizens' disillusionment with the socio-economic performance of the ANC led post-apartheid administration and strained relations between African migrants and their host communities due to the contestation of resources. Instead, it deploys Agamben's theory to argue that having construed the unprecedented arrival of African migrants as a national human security threat, the South African state has resorted to extra-legal measures to control and discourage immigration, with serious consequences on the dignity and welfare of African migrants. This has important implications for law and rights in South Africa.

While evidence of Agamben's (1998, 2005) state of exception was observed in this research, it is not a pervasive or permanent state of exception, or 'camp', to use Agamben's term. The camp is Agamben's metaphor for the space that is created when the state of exception starts to become the rule (Agamben, 2000:39). The disjuncture between the letter of the law and its practice is not unique to migration matters or to South Africa. Boone (2003:4) and others have already recognised the gap between the formal rules that define institutional structure and functions, and the real politics of how government agencies work. It is worth recalling that one of the things that sets Agamben's theory apart from other theories that acknowledge the suspension of the law is that he argues that over time the state of exception has ceased to be a provisional measure and has become a working paradigm of governments

or a fact of everyday life in contemporary politics that is difficult to reverse. It is also worth noting that while evidence of bare life was presented in the study, it did not fall into the dualism that Agamben has developed of the concept but instead manifested itself in multiple ways. So, what does this mean for the application of Agamben's theory in the context of this study?

It means that Agamben's theory is not without its limitations as far as the empirical study is concerned. Although there was evidence of the suspension of law this occurs alongside the rule of law. This claim is made on the basis of three research findings. One is that despite there being a state of exception, it did not affect all migrants, with some reporting positive experiences with state officials. Secondly, there was evidence that although the rule of law is suspended or used to constrain African migrants, it can be challenged, thus minimising the production of bare life. Two examples of this from the research are NGOs' litigation against the DHA following the closure of the Cape Town RRO, and the help provided by NGOs to individual migrants to get services from state institutions. Thirdly, not all migrants were reduced to bare life, the form of subjectivity produced by and captured in sovereign power.

The theoretical significance of the study is that its findings did not entirely resonate with Agamben's theoretical subtleties. Stated differently, it is consistent with Agamben's theory of the state of exception, but only up to a point, after which its conclusions differ. The evidence of a state of exception from the practices of DHA and SAPS officials especially, and the revelation that the legal categories of the asylum seeker, refugee and illegal foreigner are the most vulnerable categories compared to others, is consistent with Agamben's theory. The point of divergence from this theory is that the exception has not become the rule or the *nomos* of modern sovereignty and the rule of law still has its place, if one has the resources to access it. However, it still calls into question South Africa's liberal and constitutional democracy when a segment of the population is socially excluded.

While Agamben's claim about 'the camp' precludes the emancipatory possibilities that the state of exception can open up and thus create a check on state power, this research found evidence to suggest that NGOs that work on migrants' issues provide migrants with a way to challenge the state of exception, although the extent to which such NGO efforts are successful has yet to be explored. Indeed, other scholars have criticised Agamben for presenting the state of exception as the *nomos* of modern sovereignty as mentioned in Chapter 3. Laclau (2007:17) argues that countertendencies to the state of exception, such as social movements, point to a more optimistic future while Ong (2006:23) contends that the shifting legal and moral terrain of humanity has become more complex.

While the state by its very nature draws distinctions between citizens and non-citizens, it may also have embraced sovereignty that is rule-based or democratic, which is the case in South Africa. This is expressed in the laws of the state. Relating this to the Constitution and the Refugees Act, which have been identified as relevant to this research, it can be said that these laws counter the effects of the underlying exclusionary character of the state along citizenship lines by guaranteeing migrants who manage to gain entry into South Africa a broad range of rights. It is the mere existence of these laws

that opens up the possibility for migrants to avoid marginalisation, despite the fact that the chances of their accessing social justice appear slim or that these laws are not always upheld.

Furthermore, the findings on bare life suggest varying degrees of it with some interpretations being more or less harsh than others, which Agamben does not seem to acknowledge in his work. Based on this, the author supports the criticism that Agamben has received for his dualistic theorisation of *homo sacer* or bare life where someone is either *homo sacer* or potentially *homo sacer* with no in-between. Instead, *homo sacer*, according to Long (in Ek, 2006:371), should be regarded as being “less solid and stable” than Agamben proposes.

The second contribution of this study is empirical in that it provides a nuanced understanding of xenophobia, thus augmenting the findings of existing studies. In terms of state-level xenophobia from DHA officials, migrants experienced either more subtle or harsh forms of it, depending on their legal status in the country. Immigration status of the migrant matters more than the country of origin in determining their treatment by state institutions. Asylum seekers, refugees and illegal foreigners are the migrant categories most vulnerable to xenophobia from immigration officials. With regard to institutional xenophobia from the SAPS and the CoCT, it seems that legal category is not a distinguishing factor. Rather it is the officials’ own perceptions of the migrants either as powerless and rightless individuals, or as powerful as a result of their perceived social standing. The generalisation that can be made from this, to the extent that the data allow, is that migrants are able to minimise the possibility of xenophobic treatment from these officials when they encounter them if they are relatively well off economically, educated, live in a suburb and have recourse to the law or access to migrants’ organisations.

Empirically, this study also showed the lack of uniformity in the exclusionary bureaucratic practices of the three institutions although they are all part of the state. The conclusion that can be drawn from this is that not all state institutions are complicit in declaring a state of exception but rather those which have more direct and day-to-day interaction with migrants. Furthermore, the less direct encounters migrants have with state officials, the less vulnerable they are to arbitrary and unbridled state power. This reveals the ambivalent position within which migrants find themselves. On one hand, the state defines them as a threat to national belonging and security and on the other hand, they are portrayed as human beings with constitutionally guaranteed rights (Zembylas, 2010:31).

The practical implications of the study lie in the existing approaches that have been embraced by the state to address institutional xenophobia. In so far as the empirical data can be generalised, state-led approaches, which are widely advocated, are unlikely to counter xenophobia. This is not simply due to the state’s stance of denial discussed in earlier chapters but because, firstly, the very configuration of the state distinguishes between citizen and non-citizen. Secondly, the general prevailing attitude of state officials, particularly among immigration officials, is that African migrants are a threat that needs to be contained, even if it is through violation and/or non-application of the law. It is therefore difficult to expect that the same state institution which regards the exclusion of African migrants as a way of

protecting state sovereignty would successfully counter xenophobia. This may explain why the DHA has been unable to successfully fulfil its pledge in the preamble of the Immigration Act to prevent and counter xenophobia within government and society (Republic of South Africa, 2002). The state of exception and state-level xenophobia – though not institutionalised – combine to form a powerful tool of territorial control. Instead, a strategy to counter xenophobia that challenges the state of exception in government institutions and the attitudes of state officials is more likely to have an impact.

7.5 Suggestions for further research

This study was limited in scope to addressing the research questions. It was delimited to address the issue in a particular geographical location and to selected state officials and research respondents. However, from the findings, some which revealed issues beyond the scope of study, two possible areas for further research have been identified. This study has established that the state of exception is not becoming the rule. However, given the delimitation of the study to African migrants it has not explored whether citizens are biopolitical subjects who are also exposed to bare life as Agamben asserts. It would therefore be interesting to test Agamben's hypothesis that for the marginalised and poor, the exception has almost always been the rule by investigating the state of exception in other spheres with respect to such groups in South Africa. Such an investigation could also consider the ramifications of the state of exception to the broader functioning of the South African state and its implications for the rule of law.

Another way of extending this scholarship is to undertake research into how the state of exception can be challenged to prevent it from becoming the norm or from producing bare life. It was noted that power dynamics exist between the sovereign state and the subject with respect to state officials and African migrants in the state of exception. There was evidence from the study that NGOs which champion migrants' rights can challenge the state of exception on behalf of individual migrants. Such research could therefore explore how agency can be developed and used to emancipate migrants from the biopolitical aspect of sovereign power and the conditions under which such agency is likely or unlikely to succeed.

References

- African Centre for Migration and Society & Lawyers for Human Rights. 2013. *Policy shifts in the South African asylum system: Evidence and implications*. Pretoria: Lawyers for Human Rights.
- African National Congress. 2012. Peace and stability policy discussion document. Unpublished. Johannesburg: African National Congress.
- African Union. 2007. *South Africa country review report: Peer Mechanism Report No. 5*. Addis Ababa: African Union.
- Afrobarometer, 2010. *Tolerance in South Africa: Exploring popular attitudes toward foreigners*. Afrobarometer Briefing Paper 82. Legon-Accra: Afrobarometer.
- Agamben, G. 1998. *Homo sacer: Sovereign power and bare life*. Translated by Heller-Roazen, D. Stanford: Stanford University Press.
- Agamben, G. 2000. *Means without end: Notes on politics*. Translated by Binetti, V. & Casarino, C. Minneapolis: University of Minnesota Press.
- Agamben, G. 2005. *State of exception*. Translated by Attell, K. Chicago: University of Chicago Press.
- Aglotsson, E. & Klaaren, J. 2002. *Policing migration: Immigration enforcement and human rights*. Migration policy brief No. 14. Cape Town: Southern African Migration Project.
- Albertyn, C. 2008. Beyond citizenship: Human rights and democracy, in Hassim, S., Kupe, T. & Worby, E. (eds.). *Go home or die here: Violence, xenophobia and the reinvention of difference in South Africa*. Johannesburg: Wits University Press.
- Amisi, B. & Ballard, R. 2006. In the absence of citizenship: Congolese refugee struggle and organisation in South Africa, in Ballard, R., Habib, A. & Valodia, I. (eds.). *Voices of protest: Social movements in post-apartheid South Africa*. Pietermaritzburg: University of KwaZulu-Natal Press.
- Amit, R. 2012. *No way in: Barriers to access, service and administrative justice at South African refugee reception offices*. ACMS Research Report. Johannesburg: African Centre for Migration and Society.
- Apleni, M. 2012. Briefing by the Department of Home Affairs on full report on the state of ports of entry and refugee reception offices [Online]. Available: <http://www.pmg.org.za/report/20120522-briefing-department-home-affairs-full-report-state-ports-entry-and-re> [2013, January 15].

- BBC. 2003. SA immigration service a 'joke'. *BBC News*, 6 November [Online]. Available: <http://news.bbc.co.uk/2/hi/africa/3247767.stm> [2014, July 7].
- BBC. 2012. South Africa apologises to Nigeria over yellow fever row. *BBC News*, 8 March [Online]. Available: <http://m.bbc.co.uk/news/world-africa-17299326> [2013, April 23].
- Beinart, W. & Dubow, S. 1995. Introduction: the historiography of segregation and apartheid, in Beinart, W. & Dubow, S. (eds.). *Segregation and apartheid in twentieth-century South Africa*. London: Routledge.
- Bekker, S. 2010. Explaining violence against foreigners and strangers in urban South Africa: outbursts during May and June 2008, in Yusuf, A.A (ed.). *The African Yearbook of International Law*. Leiden: Brill Publishers.
- Berianne, M. & de Haas, H. 2012. New questions for innovative migration research, in Berianne, M. & de Haas, H. (eds.). *African migrations research: Innovative methods and methodologies*. Trenton: Africa World Press.
- Boone, C. 2003. *Political topographies of the African state: Territorial authority and institutional choice*. Cambridge: Cambridge University Press.
- Brians, C.L., Willnat, L., Manheim, J. B. & Rich, R.C. 2011. *Empirical political analysis*. Eighth edition. Boston: Longman.
- Brophy, S.D. 2009. Lawless sovereignty: Challenging the state of exception. *Social and Legal Studies*, 18 (2): 199-220.
- Bryman, A. 2008. *Social research methods*. Third edition. Oxford: Oxford University Press.
- Butler, A. 2009. *Contemporary South Africa*. Second edition. Houndmills: Palgrave Macmillan.
- Butler, J. 2004. *Precarious life: The powers of mourning and violence*. London: Verso.
- Butunyi, C. 2012. SA moves to placate Nigeria over yellow fever row. *Mail & Guardian*, 8 March [Online]. Available: <http://mg.co.za/article/2012-03-08-sa-moves-to-placate-nigeria-over-yellow-fever-row/> [2012, April 13].
- Castles, S. 2012. Methodology and methods: Conceptual issues, in Berianne, M. & de Haas, H. (eds.). *African migrations research: Innovative methods and methodologies*. Trenton: Africa World Press.
- Castles, S. & Davidson, A. 2000. *Citizenship and migration: Globalization and the politics of belonging*. Houndmills: Macmillan Press.
- Centre for Development and Enterprise. 2008. *Immigrants in Johannesburg: Estimating numbers and assessing impacts*. Johannesburg: Centre for Development and Enterprise.

- Centre for the Study of Violence and Reconciliation. 2009. *Why does South Africa have such high rates of violent crime?: Supplement to the final report of the study on the violent nature of crime in South Africa*. Johannesburg: Centre for the Study of Violence and Reconciliation.
- Chabal, P. & Daloz, J. 1999. *Africa works: Disorder as political instrument*. Oxford: James Currey.
- Charman, A. & Piper, L. 2012. Xenophobia, criminality and violent entrepreneurship: Violence against Somali shopkeepers in Delft South, Cape Town, South Africa. *South African Review of Sociology*, 43 (3): 81-105.
- Chipkin, I. 2013. Whither the state? Corruption, institutions and state-building in South Africa. *Politikon: South African Journal of Political Studies*, 40 (2): 211-231.
- Cloete, F. 2008. Service delivery: Conceptual and practical issues and challenges, in De Villiers, B. (ed.). *Review of provinces and local governments in South Africa: Constitutional foundations and practice*. Occasional Papers. Johannesburg: Konrad Adenauer Stiftung.
- Coplan, D. 2009. Innocent violence: social exclusion, identity and the press in an African democracy. *Critical Arts*, 23 (1): 64-83.
- Consortium for Refugees and Migrants in South Africa. 2011. *Protecting refugees, asylum seekers and immigrants in South Africa during 2010*. Johannesburg: CoRMSA.
- Consortium for Refugees and Migrants in South Africa. 2014. Cases of xenophobic violence recorded in 2011 and 2012. Unpublished report. Johannesburg: CoRMSA.
- Crush, J. 2000a. Migrations past: An historical overview of cross-border movement in southern Africa, in McDonald, D. (ed.). *On borders: Perspectives on international migration in southern Africa*. Cape Town: South African Migration Project.
- Crush, J. 2000b. The dark side of democracy: Migration, xenophobia and human rights in South Africa. *International Migration*, 38 (6): 103-131.
- Crush, J. (ed). 2001. *Immigration, xenophobia and human rights in South Africa*. Southern African Migration Project Series 22. Cape Town: Idasa.
- Crush, J. (ed.). 2008. *The perfect storm: The realities of xenophobia in contemporary South Africa*. Southern African Migration Project Series 50. Cape Town: Idasa.
- Crush, J. & Ramachandran, S. 2010. Xenophobia, international migration and development. *Journal of Human Development and Capabilities: A Multi-Disciplinary Journal for People-Centered Development*, 11 (2): 209-228.
- Crush, J., Ramachandran, S. & Pendleton, W. 2013. *Soft targets: Xenophobia, public violence and changing attitudes to migrants in South Africa after May 2008*. Southern African Migration Project Series 64. Cape Town: Southern African Migration Project.

- Crush, J. & Williams, V. 2001. *Making up the numbers: Measuring “illegal immigration” to South Africa*. Migration Policy Brief No. 3. Cape Town: Southern African Migration Project.
- Crush, J. & Williams, V. (eds.). 2003. *Criminal tendencies: Immigrants and illegality in South Africa*. Southern African Migration Project Series 10. Cape Town: Idasa.
- Das, V. & Poole, D. 2004. State and its margins: comparative ethnographies, in Das, V. & Poole, D. (eds.). *Anthropology in the margins of the state*. Santa Fe: School of American Research Press.
- Dauvergne, C. 2004. Making people illegal, in Fitzpatrick, P. & Tuitt, P. (eds.). *Critical beings: Law, nation and the global subject*. Hampshire: Ashgate.
- Dauvergne, C. 2008. *Making people illegal: What globalization means for migration and law*. Cambridge: Cambridge University Press.
- Davids, Y., Lefko-Everett, K. & Williams, V. 2005. *The quality of migration services delivery in South Africa*. Southern African Migration Project Series 41. Cape Town: Idasa.
- De Boever, A. 2009. Agamben and Marx: Sovereignty, governmentality, economy. *Law Critique*, 20: 259-270.
- DeCaroli, S. 2007. Boundary stones, in Calarco, M. & DeCaroli, S. (eds.). *Giorgio Agamben: Sovereignty and life*. Stanford: Stanford University Press.
- Deegan, H. 2001. *The politics of the new South Africa: Apartheid and after*. Harlow: Pearson.
- De la Durantaye, L. 2005. The exceptional life of the state: Giorgio Agamben’s state of exception. *Genre*, 38: 179-196.
- De la Hunt, L.A. and Kerfoot, W. 2008. Due process in asylum determination in South Africa from a practitioner’s perspective: Difficulties encountered in the interpretation, application and administration of the Refugees Act, in Handmaker, J., de la Hunt, L.A. & Klaaren, J. (eds.). *Advancing refugee protection in South Africa*. New York: Berghahn Books.
- Department of Home Affairs. 2011. *Annual report 2010/2011*. Pretoria: Department of Home Affairs.
- Department of Home Affairs. 2012. *Annual report 2011/12*. Pretoria: Department of Home Affairs.
- Department of Home Affairs. 2013. *Annual report 2012/13*. Pretoria: Department of Home Affairs.
- Desai, A. 2008. Xenophobia and the place of the refugee in the rainbow nation of human rights. *African Sociological Review*, 12(2):49-68.
- De Villiers, B. 2008. Constitutional change: Adapting without losing the roots, in De Villiers, B. (ed.). *Review of provinces and local governments in South Africa: Constitutional foundations and practice*. Occasional Papers. Johannesburg: Konrad Adenauer Stiftung.

- De Visser, J. & Powell, D. 2012. *Service delivery protest barometer 2007-2012*. Cape Town: Community Law Centre.
- De Waal, S. 2011. Complex chemistry of Africa. *Mail & Guardian*, 19 August [Online]. Available: <http://mg.co.za/article/2011-08-19-complex-chemistry-of-africa/> [2012, August 10].
- Dodson, B. 2010. Locating xenophobia: Debate, discourse and everyday experience in Cape Town, South Africa. *Africa Today*, 56 (3): 3-22.
- Dryzek, J.S. & Dunleavy, P. 2009. *Theories of the democratic state*. New York: Palgrave Macmillan.
- Dunn, K.C. 2001. MadLib #32: The (blank) African state: Rethinking the sovereign state in international relations theory, in Dunn, K.C. & Shaw, T.M. (eds.). *Africa's challenge to international relations theory*. New York: Palgrave.
- Du Toit, P. & Kotzé, H. 2011. *Liberal democracy and peace in South Africa*. New York: Palgrave Macmillan.
- Edkins, J. 2007. Whatever politics, in Calarco, M. & DeCaroli, S. (eds.) *Giorgio Agamben: Sovereignty and life*. California: Stanford University Press.
- Ek, R. 2006. Giorgio Agamben and the spatialities of the camp: An introduction. *Geografiska Annaler*, 88 B(4): 363-386.
- Ephraim, A. 2013. Zuma: Don't think like an African – pay up for e-tolls. *Mail & Guardian*, 22 October [Online]. Available: <http://mg.co.za/article/2013-10-22-zuma-dont-think-like-an-african-pay-up-for-e-tolls> [2014, July 8].
- Erlenbusch, V. 2013. The place of sovereignty: Mapping power with Agamben, Butler and Foucault. *Critical Horizons*, 14 (1): 44-69.
- Everatt, D. 2011. Xenophobia, state and society in South Africa, 2008-2010. *Politikon: South African Journal of Political Studies*, 38 (1): 7-36.
- Fauvelle-Aymar, C. & Segatti, A. 2011. People, space and politics: An exploration of factors explaining the 2008 anti-foreigner violence in South Africa, in Landau, L.B. (ed.). *Exorcising the demons within: Xenophobia, violence and statecraft in contemporary South Africa*. Johannesburg: Wits University Press.
- Fetterman, D. 1989. *Ethnography step by step*. California: Sage.
- Fine, J. & Bird, W. 2006. *Shades of prejudice: An investigation into the South African media's coverage of racial violence and xenophobia*. Johannesburg: Centre for the Study of Violence and Reconciliation.
- Friese, S. 2012. *Qualitative data analysis with ATLAS.ti*. London: SAGE.

- Gambari, I.A. 1995. The role of foreign intervention in African reconstruction, in Zartman, I.W. (ed.). *Collapsed states: The disintegration and restoration of legitimate authority*. Colorado: Lynne Rienner Publishers.
- Gauteng City-Region Observatory. 2009. 'Quality of life' survey. GCRO [Online]. Available: http://www.gcro.ac.za/sites/default/files/Projects/GCRO_2009_QoL_survey_Xenophobic_attitudes_final.pdf [2012, October 11].
- Gelb, S. 2008. Behind xenophobia in South Africa: Poverty or inequality?, in Hassim, S., Kupe, T. & Worby, E. (eds.). *Go home or die here: Violence, xenophobia and the reinvention of difference in South Africa*. Johannesburg: Wits University Press.
- Genzuk, M. 2003. *A synthesis of ethnographic research*. Occasional Papers Series. Center for Multilingual, Multicultural Research, Rossier School of Education. Los Angeles: University of Southern California.
- Gerth, H. & Mills, W. 1948. *From Max Weber: Essays in sociology*. London: Kegan Paul, Trench, Trubner & Co. Ltd.
- Gibson, J. & Gouws, A. 2003. *Overcoming intolerance in South Africa*. Cambridge: Cambridge University Press.
- Giddens, A. 1985. *The nation-state and violence: Volume two of a contemporary critique of historical materialism*. Cambridge: Polity Press.
- Gordon, S.L. 2010a. Migrants in a 'state of exception'. *Transcience Journal*, 1(1): 1-21.
- Gordon, S.L. 2010b. Migrants in a 'state of exception': Xenophobia and the role of the post-apartheid state, in Mapadimeng, M.S. & Khan, S. (eds.). *Contemporary social issues in Africa: Cases in Gaborone, Kampala and Durban*. Pretoria: Africa Institute of South Africa.
- Gqola, P.D. 2008. Brutal inheritances: echoes, negrophobia and masculinist violence, in Hassim, S., Kupe, T. & Worby, E. (eds.). *Go home or die here: Violence, xenophobia and the reinvention of difference in South Africa*. Johannesburg: Wits University Press.
- Greenburg, J. 2010. The spatial politics of xenophobia: Everyday practices of Congolese migrants in Johannesburg. *Transformation*, 74 (1): 66-86.
- Gulli, B. 2007. The ontology and politics of exception: Reflections on the work of Giorgio Agamben, in Calarco, M. & DeCaroli, S. (eds.). *Giorgio Agamben: Sovereignty and life*. Stanford: Stanford University Press.
- Guy, J. 2004. Somewhere over the rainbow: The nation-state, democracy and race in globalizing South Africa. *Transformation*, 56 (1): 68-89.
- Hagmann, T. & Korf, B. 2012. Agamben in the Ogaden: Violence and sovereignty in the Ethiopian-Somali frontier. *Political Geography*, 31(2012): 205-214.

- Hammersley, M. & Atkinson, P. 2007. *Ethnography: Principles in practice*. Third edition. London: Routledge.
- Handmaker, J., de la Hunt, L. & Klaaren, J. 2008. Introduction, in Handmaker, J., de la Hunt, L. & Klaaren, J. (eds.). *Advancing refugee protection in South Africa*. New York: Berghahn Books.
- Handmaker, J. & Parsley, J. 2001. Migration, refugees, and racism in South Africa. *Refuge*, 20 (1): 40-51.
- Harris, B. 2001. *A foreign experience: Violence, crime and xenophobia during South Africa's transition*. Johannesburg: Centre for the Study of Violence and Reconciliation.
- Harris, B. 2002. Xenophobia: A new pathology for a new South Africa?, in Hook, D. & Eagle, G. (eds.). *Psychopathology and social prejudice*. Cape Town: UCT Press.
- Herbst, J. 2000. *States and power in Africa: Comparative lessons in authority and control*. Princeton: Princeton University Press.
- Heywood, A. 2007. *Politics*. Third edition. New York: Palgrave Macmillan.
- Hoag, C. 2010. Fear, enervation and the systematisation of disorder: Challenges to reforming the Department of Home Affairs, in Daniel, J., Naidoo, P., Pillay, D. & Southall, R (eds.). *New South African Review 1*. Johannesburg: Wits University Press.
- Hopstock, N. & De Jager, N. 2011. Locals only: Understanding xenophobia in South Africa. *Strategic Review for Southern Africa*, 33 (1): 120-139.
- Horowitz, D. 2001. *The deadly ethnic riot*. Berkeley: University of California Press.
- Human Rights Watch. 1998. *"Prohibited persons": abuse of undocumented migrants, asylum seekers and refugees in South Africa*. New York: Human Rights Watch.
- Human Rights Watch. 2005. *Living on the margins: Inadequate protection for refugees and asylum seekers in Johannesburg*. New York: Human Rights Watch.
- Human Rights Watch. 2006. *Unprotected migrants: Zimbabweans in South Africa's Limpopo Province* [Online]. Available: <http://www.hrw.org/reports/2006/southafrica0806/7.htm> [2013, April 25].
- Human Rights Watch. 2007. *"Keep your head down": Unprotected migrants in South Africa*. New York: Human Rights Watch.
- Human Rights Watch. 2009. *No healing here: Violence, discrimination and barriers to health for migrants in South Africa*. New York: Human Rights Watch.
- Human Sciences Research Council. 2008. *Citizenship, violence and xenophobia in South Africa: Perceptions from South African communities*. Pretoria: HSRC Press.

- Humphreys, S. 2006. Legalizing lawlessness: On Giorgio Agamben's state of exception. *The European Journal of International Law*, 17(3): 677-687.
- Hyndman, J. & Mountz, A. 2007. Refuge or refusal: The geography of exclusion, in Gregory, D. & Pred, A. (eds.). *Violent geographies: fear, terror, and political violence*. New York: Routledge.
- Ibrahim, M. 2005. The securitization of migration: A racial discourse. *International Migration*, 43 (5): 163-186.
- International Organization for Migration. 2009. *Towards tolerance, law and dignity: Addressing violence against foreign nationals in South Africa*. Pretoria: IOM.
- International Organization for Migration. 2011. *Glossary on migration*. International migration law series 25. Second edition. Geneva: IOM.
- Jackson, R.H. 1990. *Quasi-states: Sovereignty, international relations and the Third World*. Cambridge: Cambridge University Press.
- Johnson, J.B. & Reynolds, H.T. 2005. *Political science research methods*. Fifth edition. Washington DC: CQ Press.
- Johnson, P.A. 2001. *On Arendt*. California: Wadsworth.
- Johnson, V.D. 2010. Immigration and domestic politics in South Africa: contradictions of the rainbow nation. *Ethnic Studies Review*, 33(1): 1-35.
- Jones, R. 2009. Agents of exception: Border security and the marginalization of Muslims in India. *Environment and Planning D: Society and Space*, 27(5): 879-897.
- Kabeer, N. 2005. Introduction, in Kabeer, N. (ed.). *Inclusive citizenship: Meanings and expressions*. London: Zed Books.
- Kearns, G. 2007. Bare life, political violence, and the territorial structure of Britain and Ireland, in Gregory, D. & Pred, A. (eds.). *Violent geographies: fear, terror, and political violence*. New York: Routledge.
- Keohane, R. O. 2003. Political authority after intervention: gradations in sovereignty, in Holzgrefe, J.L. & Keohane, R.O. (eds.). *Humanitarian intervention: ethical, legal and political dilemmas*. Cambridge: Cambridge University Press.
- Khadiagala, G.M. 1995. State collapse and reconstruction in Uganda, in Zartman, I.W. (ed.). *Collapsed states: The disintegration and restoration of legitimate authority*. Colorado: Lynne Rienner Publishers.
- Klaaren, J. & Ramji, J. 2001. Inside illegality: Migration policing in South Africa after apartheid. *Africa Today*, 48 (3): 35-47.

- Klotz, A. 2012. South Africa as an immigration state. *Politikon: South African Journal of Political Studies*, 39 (2): 189-208.
- Kyambi, S. 2004. National identity and refugee law, in Fitzpatrick, P. & Tuitt, P. (eds.). *Critical beings: Law, nation and the global subject*. Hampshire: Ashgate.
- Laclau, E. 2007. Bare life or social indeterminacy?, in Calarco, M. & DeCaroli, S. (eds.). *Giorgio Agamben: Sovereignty and life*. Stanford: Stanford University Press.
- Landau, L. B. 2005a. *Immigration and the state of exception: Security and sovereignty in East and Southern Africa*. Forced Migration Working Paper Series 15. Johannesburg: Forced Migration Studies Programme.
- Landau, L. B. 2005b. Urbanisation, nativism, and the rule of law in South Africa's 'forbidden' cities. *Third World Quarterly*, 26 (7): 1115-1134.
- Landau, L.B. 2006. Myth and rationality in southern African responses to migration, displacement and humanitarianism, in Cross, C., Gelderblom, D., Roux, N. & Mafukidze, J. (eds.). *Views on migration in Sub-Saharan Africa*. Pretoria: HSRC Press.
- Landau, L.B. 2008a. Attacks on foreigners in South Africa: More than just xenophobia? Unpublished paper delivered at the Security Conference of the Institute for Strategic Studies, University of Pretoria. 26 August 2008.
- Landau, L.B. 2008b. Violence, condemnation, and the meaning of living in South Africa, in Hassim, S., Kupe, T. & Worby, E. (eds.). *Go home or die here: Violence, xenophobia and the reinvention of difference in South Africa*. Johannesburg: Wits University Press.
- Landau, L.B. 2011. Introducing the demons, in Landau, L.B. (ed.). *Exorcising the demons within: Xenophobia, violence and statecraft in contemporary South Africa*. Johannesburg: Wits University Press.
- Landau, L.B. & Monson, T. 2008. Displacement, estrangement and sovereignty: Reconfiguring state power in urban South Africa. *Government and Opposition*, 43(2): 315-336.
- Landau, L.B, Ramjathan-Keogh, K. & Singh, G. 2005. *Xenophobia in South Africa and problems related to it*. Forced Migration Working Paper Series 13. Johannesburg: Forced Migration Studies Programme.
- Landau, L., Polzer, T. & Wa Kabwe-Segatti, A. 2010. The mobile nation: How migration continues to shape South Africa, in Daniel, J., Naidoo, P., Pillay, D. & Southall, R (eds.). *New South African Review 1*. Johannesburg: Wits University Press.
- Lefko-Everett, K. 2008. Aliens, migrants, refugees and interlopers: Perceptions of foreigners in South Africa. *ePoliticsSA*. Edition 1. Pretoria: Idasa.

- Lekogo, E.R. 2008. The dynamics of Francophone African migration to Cape Town after 1994. Unpublished doctoral thesis. Stellenbosch: Stellenbosch University.
- Mail & Guardian, 2007. Home Affairs looks to experts for turnaround strategy. *Mail & Guardian*, 22 May [Online]. Available: <http://mg.co.za/article/2007-05-22-home-affairs-looks-to-experts-for-turnaround-strategy> [2014, July 7].
- Mail & Guardian, 2009. Corruption an 'entrenched culture' at Home Affairs. *Mail & Guardian*, 15 September [Online]. Available: <http://mg.co.za/article/2009-09-15-corruption-an-entrenched-culture-at-home-affairs> [2014, July 7].
- Mamdani, M. 1996. *Citizen and subject: Contemporary Africa and the legacy of late colonialism*. Princeton: Princeton University Press.
- Manheim, J.B., Rich, R., Willnat, L., Brians, C.L. & Babb, J. 2012. *Empirical political analysis*. Essex: Pearson.
- Matlapeng, A. 2000. Housing in South Africa, in Whitman, J. (ed.). *Migrants, citizens and the state in southern Africa*. Houndmills: Macmillan Press.
- Matshediso, K. 2011. Policing in the streets of South African townships, in Daniel, J., Naidoo, P., Pillay, D. & Southall R. (eds.). *New South African Review 2: New paths, old compromises?* Johannesburg: Wits University Press.
- Matsinhe, D.M. 2011. Africa's fear of itself: The ideology of *makwerekwere* in South Africa. *Third World Quarterly*, 32 (2): 295-313.
- Mattes, R., Taylor, D.M., McDonald, D.A., Poore, A. & Richmond, R. 1999. *Still waiting for the barbarians: SA attitudes to immigrants and immigration*. Southern African Migration Policy Series 14. Cape Town: Idasa.
- Mawadza, A. 2008. *The nexus between migration and human security: Zimbabwean migrants in South Africa*. ISS Paper 162. Pretoria: Institute for Security Studies.
- Mazrui, A. A. 1986. *The Africans: A triple heritage*. London: BBC Publications.
- Mbeki, T. 2008. Address of the president of South Africa, Thabo Mbeki at the national tribute in remembrance of the victims of attacks on foreign nationals, Tshwane [Online]. Available: <http://www.info.gov.za/speeches/2008/08070410451001.htm> [2012, October 13].
- McConnell, C. 2009. Migration and xenophobia in South Africa. *Conflict Trends*.
- McDonald, D. 2000. Towards a better understanding of cross-border migration in southern Africa, in McDonald, D. (ed.). *On borders: Perspectives on international migration in southern Africa*. Cape Town: SAMP.

- McDonald, D., Mashike, L. & Golden, C. 1999. *The lives and times of African migrants and immigrants in post-apartheid South Africa*. Southern African Migration Project Series 13. Cape Town: Idasa.
- McDonald, D. & Jacobs, S. 2005. (Re)writing xenophobia: Understanding press coverage of cross-border migration in southern Africa. *Journal of Contemporary African Studies*, 23 (3): 295-325.
- McKinley, D.T. 2008. Struggle with no borders: Capitalism, nationalism and xenophobia in South Africa. *Pambazuka News*, Issue 399 [Online]. Available: <http://pambazuka.org/en/category/comment/50927> [2012, April 17].
- McKnight, J. 2008. Through the fear: A study of xenophobia in South Africa's refugee system. *Journal of Identity and Migration Studies*, 2 (2): 18-42.
- McLoughlin, D. 2009. In force without significance: Kantian nihilism and Agamben's critique of law. *Law and Critique*, 20 (3): 245-257.
- Media Monitoring Project. 2003. *Representations of xenophobia in the media*. Media Mask, 6 (1). Johannesburg: MMP.
- Mehta, L. & Napier-Moore, R. 2010. Caught between national and global jurisdictions: Displaced people's struggle for rights, in Gaventa, J. & Tandon, R. (eds.). *Globalizing citizens: New dynamics for inclusion and exclusion*. London: Zed Books.
- Mills, C. 2007. Biopolitics, liberal eugenics, and nihilism, in Calarco, M. & DeCaroli, S. (eds.). *Giorgio Agamben: Sovereignty and life*. Stanford: Stanford University Press.
- Minister of Home Affairs. 1997. Introductory speech: Budget debate National Assembly, 17 April 1997 [Online]. Available: <http://www.info.gov.za/speeches/1997/051616997.htm> [2012, April 17].
- Misago, J.P. 2011. Disorder in a changing society: Authority and the micro-politics of violence, in Landau, L.B. (ed.). *Exorcising the demons within: Xenophobia, violence and statecraft in contemporary South Africa*. Johannesburg: Wits University Press.
- Mngxitama, A. 2008. We are not all like that: Race, class and nation after apartheid, in Hassim, S., Kupe, T. & Worby, E. (eds.). *Go home or die here: Violence, xenophobia and the reinvention of difference in South Africa*. Johannesburg: Wits University Press.
- Monson, T. 2012. Alibis for the state? Producing knowledge and reproducing state borders after the May 2008 'xenophobic' attacks in South Africa. *Geopolitics*, 17 (3): 455-481.
- Morris, A. 1998. 'Our fellow Africans make our lives hell': The lives of Congolese and Nigerians living in Johannesburg. *Ethnic and Racial Studies*, 21 (6): 1116-1136.

- Mosselson, A. 2010. 'There is no difference between citizens and non-citizens anymore': Violent xenophobia, citizenship and the politics of belonging in post-apartheid South Africa. *Journal of Southern African Studies*, 36 (3): 641-655.
- Mouton, J. 2001. *How to succeed in your master's and doctoral studies*. Pretoria: Van Schaik.
- Municipal Demarcation Board. 2012. *State municipal capacity assessment 2010/2011 national trends in municipal capacity*. Pretoria: Municipal Demarcation Board.
- Municipal IQ. 2013. Municipal IQ's updated municipal productivity and hotspots monitor results. Press release, 28 November. Johannesburg: Municipal IQ.
- Murray, A. 2010. *Giorgio Agamben*. London: Routledge.
- Neocosmos, M. 2006. *From 'foreign natives' to 'native foreigners': Explaining xenophobia in post-apartheid South Africa: Citizenship and nationalism, identity and politics*. Dakar: CODESRIA.
- Neocosmos, M. 2008. The politics of fear and the fear of politics: Reflections on xenophobic violence in South Africa. *Journal of Asian and African Studies*, 43 (6): 586-594.
- Neocosmos, M. 2010. *From 'foreign natives' to 'native foreigners': Explaining xenophobia in post-apartheid South Africa: Citizenship and nationalism, identity and politics*. Dakar: CODESRIA.
- News 24. 2010. Selebi found guilty. *News 24*, 2 July [Online]. Available: <http://www.news24.com/SouthAfrica/News/Selebi-found-guilty-20100702> [2014, July 7].
- Nieftagodien, N. 2011. Xenophobia's local genesis: Historical constructions of insiders and the politics of exclusion in Alexandra township, in Landau, L.B. (ed.). *Exorcising the demons within: Xenophobia, violence and statecraft in contemporary South Africa*. Johannesburg: Wits University Press.
- Norris, A. 2000. Giorgio Agamben and the politics of the living dead. *Diacritics*, 30(4): 38-58.
- Nyamnjoh, F.B. 2006. *Insiders and outsiders: Citizenship and xenophobia in contemporary southern Africa*. Dakar: CODESRIA.
- Ong, A. 2006. *Neoliberalism as exception: Mutations in citizenship and sovereignty*. Durham: Duke University Press.
- Oucho, J. 2007. *Migration in southern Africa: Migration management initiatives for SADC member states*. ISS Paper 157. Pretoria: Institute for Security Studies.
- Palmary, I. 2002. Refugees, safety and xenophobia in South African cities: The role of local government. Cape Town: Centre for the Study of Violence and Reconciliation.

- Paton, C. 2014. Immigration laws 'need re-think'. *Business Day*, 3 March [Online]. Available: <http://www.bdlive.co.za/national/2014/03/03/immigration-laws-need-rethink> [2014, June 18].
- Peberdy, S. 2001. Imagining immigration: Inclusive identities and exclusive policies in post-1994 South Africa. *Africa Today*, 48 (3): 15-32.
- Peberdy, S. 2009. *Selecting immigrants: National identity and South Africa's immigration policies 1910-2008*. Johannesburg: Wits University Press.
- Peberdy, S. & Jara, M.K. 2011. Humanitarian and social mobilization in Cape Town: Civil society and the May 2008 xenophobic violence. *Politikon: South African Journal of Political Studies*, 38 (1): 37-57.
- Phakathi, B. 2014. Calls for action after video shows apparent Cape police brutality. *Business Day*, 7 March [Online]. Available: <http://www.bdlive.co.za/national/2014/03/07/calls-for-action-after-video-shows-apparent-cape-police-brutality> [2014, June 18].
- Pillay, D. 2008. Relative deprivation, social instability and cultures of entitlement, in Hassim, S., Kupe, T. & Worby, E. (eds.). *Go home or die here: Violence, xenophobia and the reinvention of difference in South Africa*. Johannesburg: Wits University Press.
- Polzer, T. 2010. *Population movements in and to South Africa*. Migration Fact Sheet 1. Johannesburg: Forced Migration Studies Programme.
- Prah, K.K. 1996. *Beyond the colour line: Pan-Africanist disputations*. Florida: Vivlia Publishers.
- Rajaram, P.K. & Grundy-Warr, C. 2004. The irregular migrant as homo sacer: Migration and detention in Australia, Malaysia and Thailand. *International Migration*, 42 (1): 33-63.
- Rambaree, K. 2008. Bringing rigour in qualitative social research: The use of a CAQDAS. *University of Mauritius Research Journal*, 13: 1-16.
- Republic of South Africa. 1996. *Constitution of the Republic of South Africa Act 108 of 1996*. Pretoria: Government Printer.
- Republic of South Africa. 1998. *Refugees Act 130 of 1998*. Pretoria: Government Printer.
- Republic of South Africa. 2002. *Immigration Act 13 of 2002*. Pretoria: Government Printer.
- Richmond, A.H. 1994. *Global apartheid: Refugees, racism and the new world order*. Toronto: Oxford University Press.
- Rotberg, R.I. 2003. Failed states, collapsed states, weak states: causes and indicators, in Rotberg, R.I. (ed.). *State failure and state weakness in a time of terror*. Washington D.C.: Brookings Institution Press.
- Rotberg, R.I. 2004. The failure and collapse of nation-states, in Rotberg, R.I. (ed.). *When states fail: Causes and consequences*. Princeton: Princeton University Press.

- Rotberg, R.I. 2013. *Africa emerges*. Cambridge: Polity Press.
- Sabela, T. 2000. Trans-boundary migrancy in southern Africa: Studies from Mozambique, South Africa and Swaziland, in Whitman J. (ed.). *Migrants, citizens and the state in southern Africa*. Houndmills: Macmillan Press.
- Saldana, J. 2009. *The coding manual for qualitative researchers*. London: SAGE.
- Salter, M.B. 2008. When the exception becomes the rule: Borders, sovereignty and citizenship. *Citizenship Studies*, 12 (4): 365-380.
- Schmitt, C. 1985. *Political theology: Four chapters on the concept of sovereignty*. Translated by Schwab, G. Chicago: University of Chicago Press.
- Schutt, R.K. 2012. *Investigating the social world: The process and practice of research*. London: SAGE.
- Shaffir, W.B. & Stebbins, R.A. (eds.). 1991. *Experiencing fieldwork: An inside view of qualitative research*. New York: Sage.
- Segatti, A. 2011. Reforming South African immigration policy in the postapartheid period, in Segatti, A. & Landau, L.B. (eds.). *Contemporary migration to South Africa: a regional development issue*. Washington DC: The World Bank.
- Segatti, A. 2014. Migration rhetoric is driven by double standards. *Business Day*, 6 June [Online]. Available: <http://www.bdlive.co.za/opinion/2014/06/04/migration-rhetoric-is-driven-by-double-standards> [2014, June 18].
- Silverman, M. & Zack, T. 2008. Housing delivery, the urban crisis and xenophobia, in Hassim, S., Kupe, T. & Worby, E. (eds.). *Go home or die here: Violence, xenophobia and the reinvention of difference in South Africa*. Johannesburg: Wits University Press.
- Simelane, S.E. 1999. Trends in international migration: migration among professionals, semi-professionals and miners in South Africa, 1970-1997. Unpublished paper delivered at the Annual Conference of the Demographic Association of Southern Africa, Saldanha Bay, 5-7 July 1999.
- Smit, B. 2005. Computer assisted qualitative data software: Friend or foe. *South African Computer Journal*, 35: 107-111.
- Solidarity Peace Trust. 2010. *Desperate lives, twilight worlds: How a million Zimbabweans live without official sanction or sanctuary in South Africa*. Johannesburg: Solidarity Peace Trust.
- Solomon, H. 2003. *Of myths and migration: Illegal migration into South Africa*. Pretoria: UNISA Press.
- South African Human Rights Commission. 1998. Braamfontein Statement on Xenophobia, 15 October [Online]. Available:

- <http://www.queensu.ca/samp/migrationresources/xenophobia/responses/sahrc2.htm> [2012, October 13].
- South African Human Rights Commission. 1999. *Report into the arrest and detention of suspected undocumented migrants*. Johannesburg: SAHRC.
- Southall, R. 2013. *Liberation movements in power: Party and state in southern Africa*. Woodbridge: James Currey.
- South African Police Service. 2012. Crime statistics overview RSA 2011/2012. Unpublished presentation. Pretoria: South African Police Service.
- Sosibo, K. 2013. Emidio Macia's death: No way to treat a neighbour. *Mail & Guardian*, 15 March [Online]. Available: <http://www.mg.co.za/print/2013-03-15-00-emidio-macias-death-no-way-to-treat-a-neighbour> [2013, March 15].
- Spradley, J. 1980. *Participant observation*. New York: Holt, Rinehart and Winston.
- Stadler, A. 1987. *The political economy of modern South Africa*. Cape Town: David Philip.
- Statistics South Africa. 2013a. *Documented immigrants in South Africa 2012*. Pretoria: Stats SA
- Statistics South Africa. 2013b. *Mid-year population estimates 2013*. Pretoria: Stats SA.
- Steenkamp, C. 2009. Xenophobia in South Africa: What does it say about trust? *The Round Table*, 98 (403): 439-447.
- Steinberg, J. 2005. *A mixed reception: Mozambican and Congolese refugees in South Africa*. ISS Monograph 117. Pretoria: Institute for Security Studies.
- Steinberg, J. 2008. *South Africa's xenophobic eruption*. ISS Paper 169. Pretoria: Institute for Security Studies.
- Sutton, R. & Vigneswaran, D. 2011. A Kafkaesque state: Deportation and detention in South Africa. *Citizenship Studies*, 15 (5): 627-642.
- Tadjo, V. 2008. Constructing the 'other': Learning from the Ivorian example, in Hassim, S., Kupe, T. & Worby, E. (eds.). *Go home or die here: Violence, xenophobia and the reinvention of difference in South Africa*. Johannesburg: Wits University Press.
- The Guardian. 2013. No end in sight for police brutality in South Africa. *The Guardian*, 21 February [Online]. Available: <http://www.guardian.co.uk/commentisfree/2013/feb/21/south-africa-police-brutality-shooting> [2014, July 7].
- Thompson, L. 2001. *A history of South Africa*. Third edition. New Haven: Yale University Press.
- Thornhill, C. 2008. Local government after 15 years: Issues and challenges, in De Villiers, B. (ed.). *Review of provinces and local governments in South Africa: Constitutional foundations and practice*. Occasional Papers. Johannesburg: Konrad Adenauer Stiftung.

- Torpey, J. 1998. Coming and going: On the state monopolization of the legitimate “means of movement”. *Sociological Theory*, 16 (3): 239-259.
- Trimikliniotis, N., Gordon, S. & Zondo, B. 2008. Globalisation and migrant labour in a ‘rainbow nation’: A fortress South Africa? *Third World Quarterly*, 29 (7): 1323-1339.
- Tsheola, J. 2000. Reconstruction and development in a new South Africa, in Whitman J. (ed.). *Migrants, citizens and the state in southern Africa*. Houndmills: Macmillan Press.
- Tuitt, P. 2004. Refugees, nations, laws and territorialization of violence, in Fitzpatrick, P. & Tuitt, P. (eds.). *Critical beings: Law, nation and the global subject*. Hampshire: Ashgate.
- Tuitt, P. & Fitzpatrick, P. 2004. Introduction, in Fitzpatrick, P. & Tuitt, P. (eds.). *Critical beings: Law, nation and the global subject*. Hampshire: Ashgate.
- UNHCR. 2013. *2012 Global report South Africa*. Geneva: UNHCR.
- United Nations. 2008. *International migrant stock: The 2008 Revision* [Online]. Available: <http://esa.un.org/migration/index.asp?panel=1> [2012, August 10].
- University of Cape Town. No date. Refugee rights booklet. Third edition. Cape Town: University of Cape Town.
- Vale, P. 2002. Migration, xenophobia and security-making in post-apartheid South Africa. *Politikon: South African Journal of Political Studies*, 29 (1): 7-29.
- Vale, P. 2008. Migration and state-making: Explaining xenophobia in South Africa. *e-International Relations* [Online]. Available: <http://www.e-ir.info/2008/07/23/migration-and-state-making-explaining-xenophobia-in-south-africa/> [2012, April 17].
- Valji, N. 2003. Creating the nation: The rise of xenophobia in the new South Africa. Unpublished masters thesis. Toronto: York University.
- Van Hear, N. 2011. *Mixed migration: policy challenges*. Policy primer. Oxford: The Migration Observatory.
- Vigneswaran, D. 2008a. *A foot in the door: Access to asylum in South Africa*. Forced Migration Working Paper Series 40. Johannesburg: Forced Migration Studies Programme.
- Vigneswaran, D. 2008b. Enduring territoriality: South African immigration control. *Political Geography*, (27): 783-801.
- Vigneswaran, D. 2011. Taking out the trash? A ‘garbage can’ model of migration policing, in Landau, L.B. (ed.). *Exorcising the demons within: Xenophobia, violence and statecraft in contemporary South Africa*. Johannesburg: Wits University Press.
- Vigneswaran, D. & Duponchel, M. 2009. *One burden too many? A cost-benefit analysis of immigration policing in Gauteng*. Johannesburg: Forced Migration Studies Programme.

- Weber, M. 1984. Legitimacy, politics and the state, in Connolly, W. (ed.). *Legitimacy and the state*. New York: New York University Press.
- Weiner, M. 1985. On international migration and international relations. *Population and Development Review*, 11 (3): 441-455.
- Weiner, M. 1996. Ethics, national sovereignty and the control of immigration. *International Migration Review*, 30 (1): 171-197.
- Welsh, D. 2009. *The rise and fall of apartheid*. Jeppestown: Jonathan Ball Publishers.
- Whitehead, T.L. 2005. *Basic classical ethnographic research methods*. Ethnographically Informed Community and Cultural Assessment Research Systems Working Paper Series. Maryland: The Cultural Systems Analysis Group.
- Wimmer, A. 1997. Explaining xenophobia and racism: A critical review of current research approaches. *Ethnic and Racial Studies*, 20 (1): 17-41.
- Wolpe, H. 1995. Capitalism and cheap labour power in South Africa: From segregation to apartheid, in Beinart, W. & Dubow, S. (eds.). *Segregation and apartheid in twentieth-century South Africa*. London: Routledge.
- Worby, E., Hassim, S. & Kupe, T. 2008. Introduction, in Hassim, S., Kupe, T. & Worby, E. (eds.). *Go home or die here: Violence, xenophobia and the reinvention of difference in South Africa*. Johannesburg: Wits University Press.
- Xundu, X. 2003. Plan to turnaround 'dysfunctional' home affairs. *Business Day*, 6 November [Online]. Available: <http://allafrica.com/stories/200311060571.html> [2041, July 7].
- Zartman, I.W. 1995. Introduction: Posing the problem of state collapse, in Zartman, I.W. (ed.). *Collapsed states: The disintegration and restoration of legitimate authority*. Colorado: Lynne Rienner Publishers.
- Zembylas, M. 2010. Agamben's theory of biopower and immigrants/refugees/asylum seekers: Discourses of citizenship and the implications for curriculum theorizing. *Journal of Curriculum Theorizing*, 26 (2): 31-45.
- Zvomuya, P. 2013. Mozambicans punished for South Africa's sins. *Mail & Guardian*, 15 March [Online]. Available: <http://www.mg.co.za/print/2013-03-15-00-mozambicans-punished-for-our-sins> [2013, March 15].
- Zybrands, W. 2006. Local government, in Venter, A. & Landsberg, C. (eds.). *Government and politics in the new South Africa*. Pretoria: Van Schaik.

Appendices

Appendix A: Interview themes and questions for respondents

I. Migrant respondents

General

1. How long have you been in South Africa?
2. What is your country of origin?
3. What was your reason for coming to South Africa?
4. What is your legal status?
5. How much longer do you intend to stay in SA? Do you want to become a permanent resident/citizen?
6. What South African languages do you speak?
7. Where do you live?
8. What do you do for a living?
9. How do you think people identify you as a foreigner?
10. Have you ever experienced any form of discrimination and/or hostility in South Africa? If yes, please give details.
11. Do you feel that you have ever been treated differently from a South African citizen by a state official? If yes, how?
12. Have you ever been a victim of crime? If yes, please describe.
13. Have you ever been a victim of public violence? If yes, please describe.

Department of Home Affairs

14. What have been your reasons for visiting the DHA?
15. How were you treated at DHA offices or by immigration officials at your port of entry or?
16. Have you ever had to renew your permit or change your legal status? If yes, please describe the process and your encounter with the DHA.
17. Have you ever had to unlawfully give money to a DHA official? If yes, for what reason(s) and how much?
18. Have you ever been harassed or threatened by a DHA official? If yes, please give details.

South African Police Service

19. Have you ever been in a situation where you required assistance from the police? If yes, please give details of the situation, the assistance provided and how you were treated.
20. Have you ever been asked by the police to produce your permit/ evidence of your legal status?
21. Have you ever been detained or arrested by the police? If yes, please describe the alleged offence.
22. Have you ever had to unlawfully give money to the police? If yes, for what reason(s) and how much?
23. Have you ever been harassed or threatened by the police? If yes, please give details.
24. Have you ever been verbally or physically abused by the police? If yes, please give details.

Local municipality

25. What services do you receive from your local municipality?
26. Have you had any personal encounter with municipal officials regarding the above services? If yes, please give details of how you were treated and the assistance provided.
27. Are there any services that you are not entitled to from your municipality because you are not a South African?

II. NGO respondents

1. What is the mandate of your organisation?
2. What types of migrants do you work with?
3. What issues do they come to you with relating to DHA, SAPS and local government officials?
4. How are they treated by DHA, SAPS and local government officials?
5. Does the way they are treated have anything to do with their nationality or legal status in South Africa?
6. Do you know of instances of extra-legal practices by the above state officials towards African migrants?
7. Have any migrants been unfairly targeted by the above state officials?

III. State respondents

Department of Home Affairs

1. How would you describe South Africa's immigration policy?
2. How many foreigners are living in South Africa (both legally and illegally)? Please provide the statistics of African migrants living in South Africa.
3. What challenges does your department face in implementing the Immigration Act and Refugees Act?
4. How many permit applications has the department received and processed in 2012 and 2013 nationally/from the Western Cape?
5. How many appeals have you received for rejected applications in 2012 and 2013 and what is the result of these appeals?
6. What is the current backlog in processing the various types of permits and what do you attribute the delay to?
7. Please provide statistics of immigration offenses committed by African migrants?
8. How are any discretionary powers given to DHA officials by the above legislation exercised?
9. What is the role of the SAPS in immigration enforcement and what is its legal basis?
10. Are there instances in which staff have contravened the Immigration Act and the Refugees Act? How has this been dealt with?
11. Do you receive complaints from migrants about how they are treated by your staff? Please give examples.
12. To what extent is xenophobia an issue within the department?

South African Police Service

1. What is the role of the SAPS in immigration enforcement?
2. What is the legal basis for SAPS involvement in immigration enforcement?
3. How does the SAPS go about identifying foreigners?
4. What challenges does your department face in policing that have to do with foreigners?
5. How many migrants have been arrested for immigration offences in the Western Cape in 2012 and 2013?
6. What procedure is followed once an illegal foreigner is apprehended?
7. How many migrants have been arrested for crime in the Western Cape in 2012 and 2013?
8. How many African migrants have reported cases where they have been victims of crime?
9. To what extent is xenophobia an issue within the department?

City of Cape Town

1. What is the population of non-South Africans living in your municipality?
2. What is their profile in terms of nationality, legal status, gender, occupation etc?
3. What is the role of local government in providing services to non-South Africans living in your municipality?
4. What challenges do you face in providing these services?

5. What public services are migrants living in South Africa entitled to?
6. What municipal services are free of charge to migrants and which ones are charged?
7. Does your municipality provide targeted services to vulnerable migrants?
8. What is your relationship with the DHA & SAPS?
9. To what extent is xenophobia an issue in your municipality?

Appendix B: Cases of xenophobic violence recorded in 2011 and 2012

Month	Year	Province	Place	Description
Dec	2012	Western Cape		The Somali Board of South Africa reports that at least a total of 45 Somali nationals were murdered following robberies and xenophobic attacks.
Nov	2011	Western Cape		The Somali Board of South Africa reports that over 60 Somali nationals were killed in 2011.
Oct	2012	North West	Rustenburg	In three days, five foreign- owned shops and 10 cars are destroyed by a gang.
Aug	2012	Gauteng	Mayfair	A group calling themselves the South African Blacks Association terrorises foreign nationals. The group threatens foreign national business owners and residents, organises raids against foreign nationals and spreads hate speech.
Aug	2012	Limpopo	Northern Limpopo Province	Police shut down hundreds of shops run by refugees and asylum seekers during an operation to enforce trading laws that observers said were "selectively enforced" to target foreign nationals.
Jul	2012	Western Cape	Beacon Valley (Cape Town)	Four Spaza shops are petrol- bombed within minutes of each other.
Jul	2012	Western cape	Bishop Lavis	Four spaza shops owned by foreign nationals are petrol- bombed.
Jul/ Jun	2012	Free State	Botshabelo	More than 500 foreign nationals are displaced after attacks against their businesses.
Jun	2012	Gauteng	Johannesburg Lindela Repatriation Centre	Riot by various NGO and foreign nationals against the inhuman conditions at the Johannesburg Lindela Repatriation Centre.
May	2012	Eastern Cape	Khayelisha	Fifteen Somali owned shops are closed after Zanokhanyo Retailers Association threaten to burn down and destroy foreign owned tuck- shops. Residents in Khayelisha come to the defence of the Somali traders.
May	2012	Limpopo	Modimole	One hundred and six protesters are arrested with 23 being minors for vandalising and looting foreign owned shops in the area. They are all later released on warnings and the case is postponed to 31 August for further investigations.
Feb	2012	Gauteng	Orange Farm, Johannesburg	Thirteen nationals are attacked, beaten and left in critical conditions in the shacks of Orange Farm.
Feb	2012	Free State	Thabong, Welkom, Odendaalsrus	A number of shops owned by foreigners are broke into, set alight, and looted. 43 residents are arrested for public violence and looting.
Feb	2012	Free State	Thabong	More than 250 Bangladeshi's are left displaced after unemployed youth vandalise and loot shops owned by foreign nationals in the township.
Feb	2012	Gauteng	Diepsloot	Two Zimbabwean men, Nkululeko Mathwasa and Blessing Tshuma are murdered by a mob after allegations that they committed theft in the community.

Feb	2012	Gauteng	Doornhill	Eight foreign nationals from Zimbabwe and Malawi are beaten by men at night in their shacks. All are critically wounded and are taken by ambulance to Chris Hani Baragwanath Hospital.
Jan	2012	Western Cape	Maitland Refugee Reception Office	Maitland police refuse to help a Zimbabwean man who was beaten by security guards at a refugee reception office (Maitland Refugee Reception Office). They refuse him the right to open a case because his identification document has expired.
Jan	2012	Gauteng	Thokoza (East Rand)	A shop co- owned by two Bangladeshi men is petrol-bombed after a few locals demand that foreign shop owners close down. The two shop co-owners suffer severe burns and later die in hospital. Two cases of murder are opened.
Nov	2011	Gauteng	Ekurhuleni, Johannesburg	Hundreds of Ekurhuleni residents take to the streets of Johannesburg demanding that the Gauteng government shut down shops owned by foreign nationals in their area. They march to the Gauteng Premier Nomvula Mokonyane's office to hand over a memorandum demanding that local government support businesses owned by local citizens, stop rezoning processes, halt malls from operating in townships and evict foreigners staying in RDP houses.
Nov	2011	Gauteng	Ekurhuleni, Johannesburg	Small business owners from Ekurhuleni warn of xenophobic violence if the Gauteng government does not act to its call following their march to their Gauteng Premier.
Oct	2011	Gauteng	Alexandra Township	Increased xenophobic tension. Residents of the township warn of an uprising over foreigners living in RDP houses.
Oct	2011	Gauteng	Alexandra	Foreign residents of the Alexandra township (north of Johannesburg) are intimidated by the Alexandra Bonafides Movement (ABM) — a resident's group accusing foreigners of taking part in corrupt practices to secure Reconstruction Development Programme (RDP) housing.
Oct	2011	Gauteng	Itereleng informal settlement near Laudium	Foreign nationals were evicted from their houses and businesses by locals. More than 60 foreign nationals were displaced.
Oct	2011	Gauteng	Atteridgeville	Several businesses owned by foreign nationals are broken into and looted.
Aug	2011	Eastern Cape	East London	Armed gang shoots and kills a prominent Somali cleric, who is also a businessman. Major manhunt to arrest those behind the killing.
Aug	2011	Limpopo	Dennilton, Polokwane	A Bangladeshi shop owner is robbed and set on fire. The 35-year-old was robbed of his money, groceries and cellphone and was then doused with paraffin and set alight. The man sustains serious burn injuries and is hospitalized.
Aug	2011	Limpopo	Musina	Two armed men and another with an axe entered a couple's house at 02:00. The Zimbabwean couple is robbed and two of the men rape the woman. They chopped off the man's right. They also take the couple's passports and money.

Aug	2011	Gauteng	Lenesia	Two men rape and stone a Zimbabwean to death. Another victim (also Zimbabwean) is also raped and stoned but survives. The men are found two days later and are arrested and appear in the Vereeniging Magistrate's Court.
Jul	2011	KwaZulu-Natal	Durban	A Somali businessman dies and another is seriously injured after armed gangsters raided their shop.
Jun	2011	Western Cape	Cape Town	Two Somali shop owners are murdered.
Jun	2011	Limpopo	Seshego, Limpopo	A Zimbabwean man is stoned and beaten to death. Twelve men are arrested, including a ward councillor.
Jun	2011	Limpopo	Seshego, Limpopo	Twenty eight Zimbabwean xenophobia victims are sheltered at Seshego police station outside Polokwane after losing their homes and belongings in xenophobic attacks in Seshego.
Jun	2011	Limpopo	Polokwane	More than 3000 Zimbabweans fled to hide in bushes after they were attacked by residents of Extensions 71, 72, 75 and 76 near Polokwane last week. Six houses belonging to the Zimbabweans have been torched during the attacks.
Jun	2011	Gauteng	Diepsloot	Community members are angry and blame foreign nationals in the community for the increasing housebreaking in their area. One person thought to be a foreigner is beaten to death. It is later found out that the murdered man was from Limpopo.
Jun	2011	Gauteng	Diepsloot	Two Zimbabweans are kicked and beaten to death after being accused of robbery.
Jun	2011	Gauteng	Diepsloot	A suspected thief narrowly escapes with his life when police arrive just in time to prevent a mob from killing him.
Jun	2011	Gauteng	Diepsloot	26 year old Farai Kujirichita is brutally murdered by a mob. This is video taped and months later receives international coverage. Kujirichita's "crime" was that he was a Zimbabwean in the wrong place at the wrong time.
Jun	2011	Gauteng	Germiston	Police hold back a crowd of more than 100 – including members of the Greater Gauteng Business Forum (GGBF) – in Ramaphosa informal settlement near Germiston, east of Johannesburg, as they attempt to forcibly close foreign-owned businesses there.
Jun	2011	Gauteng	Ramaphosa	A crowd march through an informal settlement in Johannesburg chanting: "We want the Somalis to stay." The march is intended to counter a protest by local businessmen demanding the closure of foreign-owned shops.
May	2011	Eastern Cape	Motherwell, Port Elizabeth	More than 50 Somali-owned shops are attacked and looted. About twenty Somali shop owners find shelter at the Motherwell shelter.
May	2011	Eastern Cape	Kwadwesi, Port Elizabeth	Three shops are looted and one is burnt down in Kwadwesi.

May	2011	Limpopo	Leppelle-Nkumpi	A number of Pakistanis are attacked. This follows after a young girl is allegedly raped by a Pakistani in his house. About three shops are set alight and more than 15 Pakistanis are temporarily housed at a police station in Lebowakgomo, Polokwane.
Mar	2011	Gauteng	Katlehong	Seventy-one people are arrested for sending intimidating letters to foreign-owned businesses. The letters from "Greater Gauteng Business Forum" threatened drastic action against business owners who did not comply.
Mar	2011	Gauteng	Pretoria	Woman mocked and denied access to a Putco bus by the bus driver because of her foreign nationality and an inability to speak South African ethnic languages.
Feb	2011	Western Cape	Delft	A shopkeeper is killed and another injured in a botched robbery at their shop.
Feb	2011	Mpumalanga	Ermelo	Somali shop owners fall victim to the violent service delivery protests outside Ermelo. Shops are looted and goods are taken and destroyed.
Feb	2011	Gauteng	Ramaphosa	Renewed threats from locals against foreign shop owners. Shop owners were threatened by locals demanding that they immediately shut down their businesses and leave the area.
Jan	2011	Gauteng	Randfontein, Johannesburg	71 foreign nationals face eviction from a temporary refugee shelter in Randfontein. The occupiers are all people displaced from their communities during the xenophobic attacks of May 2008. They were taken to the Reit Shelter and promised they would receive assistance to re-integrate into South African society or to resettle outside South Africa. The shelter failed to provide the assistance promised.
Jan	2011	Gauteng	Freedom Park	56 shops belonging to foreign nationals are closed while police investigations continue after local residents attack business owners in the area.
Jan	2011	North West	Madibogo	An attack on a 23-year-old resident in the area has outraged residents, who are targeting Chinese people in the area they believe are responsible for the assault. A Chinese group allegedly targeted the individual for shoplifting from one of their tuck shops in the area. The attack leaves the injured person in hospital. Residents demand that police arrest those responsible for the attack. They also threaten Chinese people operating businesses in the area, who have since abandoned their premises.

Source: Consortium for Refugees and Migrants in South Africa (2014)

Appendix C: List of interview respondents

I. Migrants

Respondent ID	Nationality and gender	Legal status	Date of interview
1	Zimbabwean man	Work permit	16 August 2013
2	Zimbabwean woman	Study permit	10 October 2013
3	Zimbabwean man	Permanent resident permit	19 October 2013
4	Zimbabwean man	Work permit	27 July 2013
5	Zimbabwean man	Illegal foreigner	27 July 2013
6	Zimbabwean woman	Work permit	27 July 2013
7	Zimbabwean woman	Illegal foreigner	8 August 2013
8	Zimbabwean woman	Asylum seeker permit	7 September 2013
9	Malawian man	Asylum seeker permit	6 September 2013
10	Malawian woman	Illegal foreigner	7 September 2013
11	Malawian woman	Illegal foreigner	7 September 2013
12	Mozambican man	Study permit	8 October 2013
13	Mozambican man	Study permit	8 October 2013
14	Mozambican man	Study permit	8 October 2013
15	Mozambican man	Visitor's visa ⁴³	8 October 2013
16	Nigerian man	Study permit	8 August 2013
17	Nigerian man	Asylum seeker permit	8 August 2013
18	Congolese ⁴⁴ woman	Refugee permit	17 August 2013
19	Congolese man	Asylum seeker permit	17 August 2013
20	Congolese woman	Asylum seeker permit	29 August 2013
21	Congolese man	Refugee permit	29 August 2013
22	Congolese man	Illegal foreigner	2 August 2013

⁴³ This migrant has been in South Africa since 2001 mostly on a study permit. His study permit expired but he had applied for permanent residence before it expired and he is using a visitor's visa while his permanent residence application is being processed.

⁴⁴ Note that Congolese refers to both migrants originally from the DRC and Congo. Respondents 18 to 24 are from the DRC and respondents 32 and 33 are from Congo.

23	Congolese man	Refugee permit	16 August 2013
24	Congolese man	Refugee permit	17 August 2013
25	Somali woman	Refugee permit	7 August 2013
26	Somali man	Refugee permit	27 August 2013
27	Somali woman	Refugee permit	30 August 2013
28	Rwandan man	Asylum seeker permit	13 September 2013
29	Rwandan woman	Refugee permit	25 September 2013
30	Ugandan woman	Asylum seeker permit	2 August 2013
31	Ugandan woman	Refugee permit	5 September 2013
32	Congolese man	Work permit	14 August 2013
33	Congolese man	Asylum seeker permit	7 September 2013
34	Angolan man	Refugee permit	17 August 2013
35	Ethiopian man	Refugee permit	6 September 2013
36	Ethiopian man	Refugee permit	9 September 2013
37	Burundi woman	Refugee permit	31 July 2013
38	Burundi man	Asylum seeker permit	16 September 2013
39	Kenyan man	Refugee permit	26 July 2013
40	Kenyan man	Refugee permit	30 September 2013

II. Key informants and state institutions

Respondent ID	Designation	Institution	Date of interview
41	Director	Cape Town Refugee Centre (CTRC)	19 July 2013
42	Researcher	African Centre for Migration and Society (ACMS)	29 October 2013
43	Head of Field Office	United Nations Refugee Agency (UNHCR)	9 September 2013
44	Advocacy Officer	Scalabrini Centre	16 July 2013
45	Advocacy Officer	Agency for Refugee Education, Skills Training and Advocacy (ARESTA)	18 July 2013

46	Attorney	Legal Resources Centre (LRC)	20 September 2013
47	Community Liaison Officer	People Against Suffering Oppression and Poverty (PASSOP)	19 July 2013
48	City Manager	City of Cape Town	23 July 2013
49	Deputy Provincial Commissioner	South African Police Service	6 August 2013

Appendix D: Code list

Abuse of asylum system
 ACCESS TO OTHER SERVICES
 access_Banking services
 access_Other
 access_Social services
 Asylum seeker numbers
 Certification process for refugees
 BARE LIFE
 CRIME VICTIM
 crime_Assault
 crime_Business burglary
 crime_House burglary
 crime_Mugging
 crime_Public violence
 crime_Shooting
 crime_Unknown
 crime_Xenophobic
 D_DISCRIMINATION
 d_Higher education
 d_Homophobia
 d_Housing
 d_In customer service
 d_Inability to speak local language
 d_Job
 d_Racism
 DHA_+TREATMENT
 DHA_ACCESS
 dha_access_Chaotic environment
 dha_access_Long queues
 dha_access_Multiple visits before being served
 dha_access_Sleeping outside
 dha_access_Stressful
 DHA_ASYLUM SEEKER TRANSIT PERMIT
 DHA_BRIBE (agent)
 DHA_CONTRIBUTION TO UNDOCUMENTED MIGRANTS
 dha_contribution_Delay in processing permit
 dha_contribution_Lost files
 dha_contribution_Not accepting newcomers
 dha_contribution_Not accepting those who lodged their claims in other RROs
 dha_contribution_Unprocedural
 DHA_COURT ORDERS
 DHA_DELAYS IN PROCESSING PERMITS
 dha_delays_Adjudicating asylum claim
 dha_delays_Appeal hearings
 dha_delays_Certification
 dha_delays_PR permits
 dha_delays_Refugee IDs
 dha_delays_Refugee travel documents
 dha_delays_Study permits
 dha_delays_Verification of permits
 dha_delays_Volunteer permit
 dha_delays_Work permits
 DHA_DIFFS BASED ON STATUS & NATIONALITY
 dha_diffs_Nationality & race
 dha_diffs_Status
 DHA_EXP GETTING PERMIT NEG
 DHA_EXP GETTING PERMIT POS
 dha_exp_pos_Asylum permit

- dha_exp_pos_Refugee status
- dha_exp_pos_Study permit
- dha_exp_pos_Work permit
- DHA_EXTENSIONS
 - dha_extn_Expired permits
 - dha_extn_Length
 - dha_extn_Procedures
 - dha_extn_Renewing in a diff RRO from where first permit was issued
- DHA_IMMIGRATION
 - dha_immigration enforcement
 - dha_immigration raids
- DHA_INTERNAL ISSUES
 - dha_internal_Changes from 1 day to the next
 - dha_internal_Corruption
 - dha_internal_Facilities
 - dha_internal_Fraudulent asylum seeker permits
 - dha_internal_High absenteeism
 - dha_internal_Huge backlogs
 - dha_internal_Lack of capacity
 - dha_internal_Lack of political will
 - dha_internal_No admin justice
 - dha_internal_Non-responsiveness to researchers
 - dha_internal_Poor mgmt
 - dha_internal_Poor staff supervision
 - dha_internal_Poor working conditions
 - dha_internal_Reasons for shortlived recent imprvmnts & good ol' days
- DHA_INTERVIEW PROCESS
- DHA_LINDELA
- DHA_NEWCOMERS
- DHA_OTHER SERVICES
 - dha_other_Corrections
 - dha_other_Family reunification
- DHA_PERMIT ISSUED OUTSIDE SA
- DHA_RRO CLOSURE & RELOC
- DHA_RRO CLOSURE COURT CASE
- DHA_STAFF
 - dha_Staff homophobic
 - dha_Staff unhelpful
 - dha_Staff unproductive
 - dha_Staff unqualified
- DHA_TREATMENT
- DHA_TREATMENT INCONSISTENT
 - dha_trmt_Bad
 - dha_trmt_Don't believe u
 - dha_trmt_Don't care
 - dha_trmt_Harassment
 - dha_trmt_Inhuman/slave
 - dha_trmt_Insulting
 - dha_trmt_Physically abusive/violent
 - dha_trmt_Rude
 - dha_trmt_Throw their weight around
 - dha_trmt_Unfair
 - dha_trmt_Xenophobic
- DHA_UNLAWFUL ARREST
- DHA_ZIM-SA BORDER IMMIGRATION PROCEDURE
- Experience of exploitation & extortion
- EXPERIENCES WITH CITIZENS BY RACE
- F_FUTURE PLANS
 - fp_Go back to home country
 - fp_Go back to home country or other country

- fp_Go back to home country or stay depending
- fp_Go to another country
- fp_Stay in SA
- fp_Stay in SA or go to another country
- Fraudulent work permit & arrested
- HOSTILITY
- HR violated
- Identified as a foreigner
- Identified as a foreigner sometimes & as a local sometimes
- Illegal foreigners
- LG_+VE EXPERIENCE
 - LG_Better services in SA than home country
 - LG_CT rezoning
 - LG_No experience
 - LG_Not promoting integration
 - LG_Promotes coexistence btwn foreigners & citizens
 - LG_Protests & xenophobia
 - LG_Reason for no interaction
- LG_-VE EXPERIENCE
 - lg_-xp_Business licence
 - lg_-xp_Clinic_Discrimination
 - lg_-xp_Clinic_No translator
 - lg_-xp_Clinic_Poor services
 - lg_-xp_Clinic_Waited the whole day to be served
 - lg_-xp_MP_Business raids/searches
 - lg_-xp_MP_Extortion
 - lg_-xp_MP_Xenophobia
- Life in SA
- Migrant producing countries
- Migrants as soft targets
- Nice SAns
- Organisational mandate
- Perceptions of migration in SA
- PERSONAL INFO
 - pi_Change of status
 - pi_Migrant category
 - pi_Nationality
 - pi_Occupation
 - pi_Reason for coming to SA
 - pi_Residential area
 - pi_SA languages spoken
 - pi_Time in SA
- Premeditated nature of xenophobic attacks
- Reason for govt denial of xenophobia
- Reason for not applying for PR
- Reason for state officials actions towards migrants
- Reasons why SA is a refugee destination
- Refugee applied for certification
- SA immigration policy
- SAPS_+VE EXPERIENCE
- SAPS_ASKED TO SHOW PERMIT
 - saps_Asked to show permit in CT
 - saps_Asked to show permit in East London
 - saps_Asked to show permit in Joburg
 - saps_Asked to show permit in Rustenburg
- SAPS_EXPLANATION FOR VARIATIONS
- SAPS_IMMIGRATION POLICING
 - saps_IP diffs btwn CT & Joburg
 - saps_IP in CT
 - saps_IP in Joburg

SAPS_Reluctance to get involved in migrants against migrants conflicts

SAPS_-VE EXPERIENCE

- saps_-ve experience_Because of being a foreigner
- saps_-ve experience_Nothing to do with being a foreigner
- saps_-xp_Bad treatment
- saps_-xp_Bribe
- saps_-xp_Came when it was too late
- saps_-xp_Exploitation & extortion
- saps_-xp_Let locals get away with stealing from/attacking migrants
- saps_-xp_Let locals loot migrant's business
- saps_-xp_Looted/Raided migrant's business
- saps_-xp_Never came when I called them
- saps_-xp_Nothing happens after reporting/opening a case
- saps_-xp_Raided migrant's hse
- saps_-xp_Refused to do affidavits
- saps_-xp_Threatened migrant

Section 22 rights

STEREOTYPING

Time it took to get permit

Undocumented but using paper from lawyer

Undocumented but using proof of permit application

Unfounded & manifestly unfounded

XENOPHOBIA

- xic_Attitudes
- xic_Services inaccessible
- xic_Threats
- xic_Verbal
- xic_Violence/crime

XTRA INFO