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Southern African Migration Project

Migration, Urbanisation and Sustainable Livelihoods in South Africa

Migration Policy Brief No. 15

Loren Landau

2005

Series Editors: Jonathan Crush and Vincent Williams

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Editorial Note:

Loren Landau is Director of the Forced Migration Studies Programme at the University of the Witwatersrand in Johannesburg, South Africa. SAMP wishes to thank the author for making this paper available for the Policy Briefs Series. The paper raises important policy questions about the local government response to refugees and migrants in South Africa. The views expressed in the paper are, however, those of the author and are not necessarily endorsed by SAMP or its funders.

Migration, Urbanisation, and Sustainable Urban Livelihoods

1.0 Introduction

- 1.1 Crises present both opportunities and dangers. When facing turmoil in the 1980s, South Africa embraced an aggressive agenda of social, economic, and political transformation. The results are imperfect, but few question the underlying wisdom of this approach. Many of the country's local and provincial governments now feel they are facing new crises. On one hand, they are empowered to create inclusive, secure, and prosperous cities. On the other, HIV/AIDS and an apparent influx of 'surplus' people from around the country and the continent presents the possibility of further economic and political fragmentation (see Tomlinson, *et al*, 2003; *xiii*; Landau and Jacobsen 2004). Although migration and HIV/AIDS are dramatically influencing the country's socio-economic and political configurations, pro-active response may minimise their negative effects. Given the nature of migration and urbanisation in South Africa, a reasoned approach to human mobility may ultimately promote the welfare of all urban residents, regardless of origins.

- 1.2 In a context of migration and continued social fragmentation, governing for sustainable livelihoods means overcoming divisions by promoting a sense of a shared future and common rules of economic and social engagement (see Evans 2002a; Davis 1998; Logan, Whaley, and Crowder 1997; Logan and Molotch 1987). Indeed, Stoker (2001) argues that throughout the world, local government's are augmenting their conventional responsibilities for service delivery with ever greater emphasis on building public-private partnerships and encouraging popular participation (see also, Tomlinson, *et al*, 2003: *xi*; Simone 2004:12). Fostering mutually beneficial interactions among all urbanites—whether within public institutions or on city streets—can transform cities into what Logan and Molotch (1987) term 'growth machines': agglutinations of private and public initiatives and institutions that promote economic gains and their equitable distribution. This paper explores how exclusion based on nationality or community of origin effects, to borrow from the Gauteng's *Growth and Development Strategy* (2005: 3), initiatives "to achieve a shared vision, amongst all sectors of our society, for the achievement of our goal of improving the quality of life for all citizens."

- 1.3 While each city and province has its own priorities, they share a fundamental interest in overcoming fragmentation in pursuit of equity, wealth, and security. Further examining Gauteng Province's *Development Strategy* provides an entrée into current thinking about urban governance and development throughout South Africa. In this document, Gauteng places considerable value on building institutions that facilitate interactions among and service provision to all city residents. That its first objective is "provision of social and economic infrastructure and services that will build sustainable communities and contribute to halving poverty" (2005: 16) reflects the indivisibility of inclusivity and long-term planning. The means outlined to achieve this object similarly echo an effort to shape a common destiny from cities characterised by fragmentation and exclusion. These include (*op cit*: 16-17), *inter alia*:

- Building relationships and partnerships between all sectors of society;
- Ensuring that the benefits of economic growth extend to all our people;
- Strengthening co-operative and intergovernmental relations in a manner that reduces competition and reinforces combined efforts towards our national goal of creating a better life for all people;
- Strengthening sub-continental and continental partnerships and relationships towards meeting the goals and objectives of NEPAD.

1.4 Unfortunately, as elsewhere in the world, “the desire to construct policies that will advantage cities in global markets leads those in power to ignore problems of liveability and sustainability” (Evans 2002b: 141). Although urban elites and the poor in South Africa’s townships, inner cities, and informal settlements share an interest in promoting their communities’ welfare, these groups rarely share strategies for realising such ends. To date, there has been a strong emphasis on improving South Africa’s ability to compete in the global market place. This is most evident in documents like *Joburg 2030*, a strategic plan that all but ignores the citizenry’s heterogeneous backgrounds, aspirations, and limitations. Elsewhere in the country, cities have also been swayed by promises of a clean, high-tech economy without adequately considering the prerequisites for and consequences of such priorities. This has translated into concerted efforts to promote formal business and trade that, as President Mbeki (2003) and others argue, provide the poor with no guarantee of improved welfare (see also Castells 1998:162; Sassen 1997; Douglass 1998). Due to apartheid’s legacy, this means a small number of relatively wealthy whites, together with a select few from other groups, are improving their economic standing while historically disadvantaged groups remain equally—if not further—marginalised.

1.5 This paper argues that previously disadvantaged groups (i.e., those disenfranchised and marginalised during Apartheid) are not the only ones facing exclusion in contemporary South Africa. Discrimination based on nationality or community of origins also risks fostering significant forms of social fragmentation. *Recognising that marginalising any group undermines cities’ ability to improve all residents’ safety and welfare, effective leaders must actively combat discrimination even when legally, politically, or socially mandated. In an era of migration, that means finding creative and pragmatic ways of preventing migrants—from South Africa and elsewhere—from actively participating in the communities in which they live.*

1.6 Although the need to address issues of both domestic and international migration is evident, local and provincial authorities have typically reacted to the presence of foreign migrants by implicitly denying their presence, excluding them from developmental plans, or allowing discrimination throughout the government bureaucracy and police (Vawda 1999; Landau, *et al*, 2004).¹ There are, however, few reasons to believe that vociferously denouncing foreigners or denying their

¹ It should be noted that the Johannesburg metropolitan government has slowly begun to consider migrants as a vulnerable group although it is unclear whether efforts to include migrants in local decision-making priorities.

rights will discourage international migration. Regional inequalities of wealth and threats to human security, combined with South Africa's ever more prominent economic profile, auger for increasing numbers of non-nationals coming to and passing through the country. Similarly, the death of many rural industries and small-scale farming—together with the breakdown of family structures due to HIV/AIDS—will see many South Africans moving to cities and peri-urban settlements. We must accept the observation made by Johannesburg city councillor that “as much as we might not want them here, we can not simply wish people away” (Personal Communication, 13 July 2005). International migrants—refugees, asylum seekers, job seekers, and others—together with newly urbanised South Africans are now part of the country's urban population. As these movements continue, discrimination based on nationality or community of origin threatens to create a new socially, economically, and politically excluded ‘underclass’ (see Wilson 2002[1987]) with the potential to undermine the welfare of all urban residents.

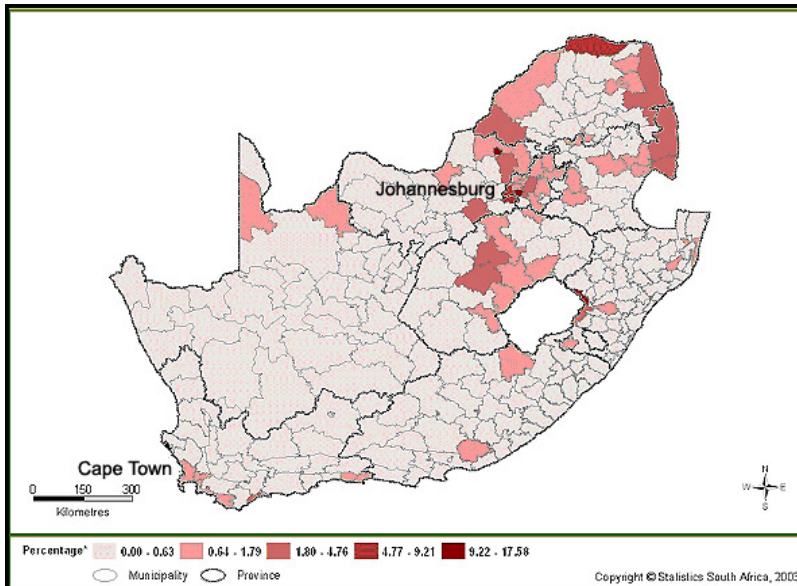
- 1.7 Rather than serving as a definitive statement of migration and the challenges it raises for South Africa's cities, the points raised here are intended as provocations: to promote dialogue and critical thinking about South African cities' social dynamics. Although drawing much of its evidence from Gauteng Province (and Johannesburg in particular), this paper raises issues relevant to many cities throughout South Africa. Given its scope, it in no way represents the full diversity of cities' experiences or the specific challenges facing individual communities. It does, however, make an effort to draw on national studies or representative data. Given the lack of good information on migration, it supplements this with personal accounts, news reports, and policy documents. Specific examples of discrimination and exploitation are included here for illustrative purposes, but only when they reflect widespread, if not typically, experiences.

2.0 *Migration and Xenophobia in South Africa*

- 2.1 Since 1994, South Africa has entrenched its position as a regional focal point for trade and travel. In doing so, it has also become a primary node in regional migration flows. Although there are few reliable statistics, the 1996 and 2001 censuses show the foreign-born population of the country steadily climbing although the numbers are likely to be far less than many believe. While there are undoubtedly more refugees and asylum seekers in the country than in years past, they still number under 150,000. In a country of around 44 million people, that is a tiny number. While there are many more non-nationals in South Africa who are neither refugees nor asylum seekers, even these numbers are modest. Accepting estimates at the high end of the spectrum—850 000 – 1 million people, for example—means that less than 2% of the country's residents are foreign born. In cities like Toronto, Canada, over 40% of the population is foreign born. In some parts of Tanzania, almost a quarter of the population are non-nationals. The numbers in South Africa may be climbing, but we should be wary of accepting claims that there are millions of non-nationals inundating the country and we must keep these numbers in perspective. Recent claims that there are 2-3 million Zimbabweans in the country, for example, are simply implausible. Although the

number of Zimbabweans here has grown since 2000, a figure of 2-3 million represents more than 20% of that country's population.

Figure One:
Distribution of Non-Nationals in South Africa (2001)



2.2 Although immigration and urbanisation effects all of South Africa, it has noteworthy spatial characteristics (see Figure One). As the most recent *State of the Cities* report suggests, many cities are effectively shrinking while once sleepy semi-rural settlements like Nelspruit and White River are growing. In Gauteng Province, the primary destination for many international migrants, cities are growing as a result of both international and domestic migration. Although urbanisation accounts for most growth, its foreign born population has (according to the 1996 and 2001 census) increased from 4.8% of the total population to 5.4%, reflecting a jump from 66 205 to 102 326 people. These figures inadequately demonstrate the uneven distribution of foreigners throughout the province (most are in Johannesburg and in mining areas) and severely undercount the total numbers of non-nationals who may have reason to hide their origins or may live in conditions that frustrate enumerators. A recent survey (n=1,100) in central Johannesburg, suggests that close to a quarter of inner-city residents were born outside South Africa (Leggett 2003). The exact figures are, however, less important than the fact that many South Africans perceive a foreign invasion. Such perceptions are making immigration a central focus of popular and political discourse although migration has yet to take on the electoral significance it has elsewhere in the world (see Whitaker 2005; Landau, *et al*, 2004; Handmaker and Parsley 2001; Crush 2000). Were the ruling party's political dominance threatened, one would expect migration (particularly immigration and asylum policy) to become a central issue in both local and national elections.

- 2.3 As indicated above, foreigners are not the only ones moving to the cities. Leggett's (2003) study found that 68% of inner-city Johannesburg residents reported moving to their present household in the last five years. Although shifts within the city partially explains this, at least 11% of the city's South African residents counted in the 2002 census had been in Johannesburg for less than five years. This translates into an increase of about 300 000 people between 1996 and 2001, a figure far overshadowing the number of immigrants. While figures for the country's other primary cities are less striking, they too have climbed.² As black South Africans claim space in the cities from which they were previously excluded, they are confronting non-nationals also seeking safety or livelihoods in the country's urban centres.
- 2.4 Despite the country's ambitions to overcome past patterns of exclusion based on arbitrary social categories, discrimination based on nationality contrasts starkly with commitments to tolerance and social inclusion. West Africans (particularly Nigerians) are the archetypical antagonists, but South Africans include almost all poor, blacks from elsewhere among the undesirables. A national 1998 survey conducted by the Southern African Migration Project (SAMP), for example, revealed that 87% of South Africans believed that the country was letting in too many foreigners (in Segale, 2004: 50). These numbers may have declined somewhat as people grow accustomed to living among foreigners, although a 2003 study in Johannesburg found that 64.8% of South Africans living in the inner-city thought it would be good if most of the refugees and immigrants left the country. Many respondents openly supported drastic measures towards this end.³ Reflecting global trends, justifications for such sentiments include perceived connections between a non-national presence and the country's most visible social pathologies: crime, HIV/AIDS, and unemployment (Crush and Williams 2003). In Johannesburg—the country's crime capital—among the 85% of South African respondents in a Wits-Tufts survey who thought crime had increased in recent years, almost three-quarters identified immigrants as a primary reason (see Footnote 3; also Legget 2003).
- 2.5 These exclusionary attitudes do not only stem from street-level tensions, but have also been shaped and legitimised by politicians and bureaucrats. The famously xenophobic (former) Minister of Home Affairs Mangosuthu Buthelezi (1994-2004) is among the most accomplished on this front, although he is not alone. In addressing a 1997 meeting about migration in the region, Buthelezi outlined a series of crises facing the country and then argued that, "South Africa is faced with another threat, and that is the SADC ideology of free movement of people, free trade and freedom to choose where you live or work. Free movement of persons spells disaster for our

² See South African Cities Network, *State of the Cities Report*, 2003, p 36. (http://www.sacities.net/2004/may30_nation.stm).

³ The survey was conducted by the University of the Witwatersrand (Wits) in collaboration with Tufts University in Boston and was administered in February and March 2003 in seven central Johannesburg neighbourhoods with high densities of African immigrants and included 737 respondents, 53% South Africans and 47% non-nationals. The survey was conducted in Berea, Bertrams, Bezuidenhout Valley, Fordsburg, Mayfair, Rosettenville, and Yeoville. Fourteen percent of the total sample was from the Democratic Republic of Congo; 12% from Angola; 9% from Ethiopia; 8% from Somalia; 2% from the Republic of Congo; and 1% from Burundi. For additional details on the survey and the methods employed, see Jacobsen and Landau (2003).

country.”⁴ Somewhat more subtly, Johannesburg’s Executive Mayor reflected a widely held sentiment in his ‘State of the City 2004’ speech when reporting that, “While migrancy contributes to the rich tapestry of the cosmopolitan city, it also places a severe strain on employment levels, housing, and public services.” Given the lack of sound data, it is impossible to calculate international migrants’ contribution to these strains, but they are likely to be nominal given the scope of the problems facing the country’s cities. Nevertheless, many citizens and officials remain convinced that international migrants are responsible for shortcomings in public service delivery and sub-optimal economic conditions.

3.0 *Dividing the Urban Poor*

- 3.1 The discriminatory sentiments outlined above are leading to fragmentation in urban centres struggling to build common institutions and unity among their heterogeneous populations. Patterns of social, economic, and political exclusion are evident in a range of areas critical to sustainable urban livelihoods. Among others, these include: access to identity documents and social services; access to markets and financial services; and interactions with the police and other regulatory bodies. The consequences of these—discussed further below—include immediate economic losses together with threats to security and health. They also hinder the formation of stable communities by promoting a sense of impermanence and undermining the legitimacy of public institutions. Rather than ensuring that all city residents participate in planning processes and have access markets, accommodation, and critical social services, discriminatory practices are creating an underclass comprised of non-citizens from throughout the continent and domestic migrants who may be similarly excluded. As Beal, *et al* note, “For the most part, refugees and migrants are a silent group, never engaging with the authorities or drawing attention to themselves for fear of incurring official sanction or social wrath” (2002: 125). The following paragraphs outline the parameters of this exclusion.
- 3.2 Documentation can not prevent discrimination or ensure social inclusion, but official identity papers are valuable in finding work, accessing social services, and preventing arbitrary arrest, detention, and deportation. Conversely, something as innocuous as petty-trade to walking in the street becomes illegal in the state’s eyes without the requisite papers. There are two key factors working against non-nationals acquiring the documents needed to help regularise their stay in South Africa. The first is the lack of any mechanism through which job seekers can apply for rights to reside and work in the country. Instead, those coming to the country without an employment offer or study permit must enter on a tourist or study visa, enter through irregular border crossings or, as tens of thousands have done, apply for asylum once they have entered South Africa.⁵ The August 2005 endorsement of the SADC protocol for ‘The Free Movement of Goods and People’ may eventually ease entry for those with passports, but will not significantly

⁴ Full text of the speech, delivered 20 June 1999, is available through the Southern African Migration Project website at <<http://www.queensu.ca/samp/sampresources/migrationdocuments/speeches/mgb/200697.htm>>.

⁵ Asylum seekers who identify themselves at the country’s land borders are given a temporary visa requiring that they report to one of the five Refugee Reception Offices (Johannesburg, Cape Town, Pretoria, Durban, and Port Elizabeth) ensuring that all asylum seekers at least temporarily settle in the country’s primary cities.

alter the country's immigration regime as it only effectively applies to a small minority of the region's residents (i.e., those with passports).

- 3.3 The second obstacle to acquiring documentation is the Department of Home Affairs, the government branch responsible for registering residents and issuing documents to both citizens and non-nationals. One of the most corrupt departments during the Apartheid period, administrative incompetence and irregularities flourished between 1994 and 2004. Recent efforts to counter corruption within the department are laudable (part of the DHA's 'Turnaround Strategy'), but considerable problems remain. While South Africans regularly (and justifiably) express frustration with the department, its immigrant-related activities go beyond mere administrative incompetence and often operate outside official mandates and regulations. One of the most obvious examples is that even would-be asylum seekers—who have rights to be in South Africa under international and domestic law—must often pay a series of unofficial 'fees' simply to file an asylum claim (Segale 2004; Belvedere 2003). Those who refuse to pay may not get access to the buildings or may suffer beatings and other violent means intended to keep people in line (both figuratively and literally) (see Landau, *et al*, 2004). Without legal status in the country, those subject to such tactics are effectively unable to lodge formal complaints. Not surprisingly given their general hostility to foreigners, few South Africans object to such treatment.
- 3.4 Extortion and exploitation follow asylum seekers into the offices. Here, applicants are often obliged to pay for 'translators' (even when they speak English) or additional fees simply to file asylum claims, a process that is meant to be without cost. Those unable to cover the costs of the process either drop their claims—frequently remaining in the country illegally—or find ways to pay, including sexual favours. Apart from their illegality and the threats they present to human dignity, these practices generate shadow economies within the DHA in which 'front-line' staff jockey and bid for the most profitable posts, sometimes refusing promotion for decades to avoid conceding their minor, if remarkably profitable, fiefdoms (Chesang 2005).
- 3.5 After filing a claim, asylum seekers face further obstacles while their cases are considered. Under the 1998 Refugees Act, the government is expected to adjudicate a claim within six months. Until recently, the initial six-month period was coupled with a prohibition on asylum seekers working or studying.⁶ Although these prohibitions were typically lifted after this initial interval, the adjudication process often takes much longer. During a period often extending for months or years (the Wits-Tufts found almost one third of respondents reported waiting at least eighteen months for a decision) non-nationals remain in a semi-permanent state of limbo during which they may remain in the country, but receive almost no official or private assistance in the form of direct aid or assistance in finding employment and can effectively access few social services.

⁶ This regulation was recently overturned by a case in the Cape Town High Court (*Watchenuka v Minister of Home Affairs* 2003 (1) SA 619 (C)).

- 3.6 Delays in adjudicating asylum claims have also opened the process to widespread abuse. Without other means to emigrate, and because asylum seekers can legalise (albeit imperfectly) their stay in the country for extended periods, many non-nationals exploit the system's inefficiencies by applying for asylum.⁷ By the time their claims are rejected, migrants will either be ready to return or will have found other means of staying in the country. Such opportunities have subsequently led to increased numbers of applicants, further overloading an already feeble system in ways that heighten delays, limit protection for 'legitimate' asylum seekers, and expand space for graft and exploitation.⁸ By raising the cash value of official documents (a scarce commodity), these delays provide significant disincentives for officials to reform or otherwise expedite the process.
- 3.7 Even those able to apply for asylum or lucky enough to be granted refugee status continue to face difficulties in acquiring suitable identity documents. The physical form of asylum seekers' documentation itself contributes to irregular and illegal practices. Asylum seekers, for instance, have been issued with a single piece of paper (the "Section 22" permit), often with hand-written amendments and conditions. Few employers or government agents, including the police and many health care workers, recognise this document's legitimacy. Moreover, after a few months in a coat or trouser pocket, the document itself can become worn and illegible. It is also easily lost or destroyed. Even those granted refugee status face difficulties: A recent national study found that only 11% of those granted asylum have been issued a 'refugee identity documents' (Belvedere 2003: 6). Among those in the Wits-Tufts survey who acquired documents, almost one third (29.2%) reported paying fees as compared to under 10% of South Africans.
- 3.8 The installation of a new Director General of Home Affairs in 2003, and a new Minister following the 2004 elections, has accelerated the process of issuing identity documents—most refugees now receive their documents within a month—but problems persist. New efforts to institute a 'smart card' system should improve recognition of non-nationals' documents, although change will come slowly. Apart from a small group of activists, few South Africans protest these delays, leaving tens of thousands of legally recognised refugees without the documents necessary to access employment, social services, or defend themselves against arbitrary arrest, extortion, and deportation.
- 3.9 Ready access to informal and formal markets for exchanging goods and services is critical to successful urban economies. Conversely, obstacles preventing people from maximising their economic potential denies all city residents jobs and opportunities for trade. Unfortunately, non-nationals are often systematically excluded from employment and income generating opportunities through both formal and informal mechanisms. Many without the right to work—but

⁷ Representatives from the United Nations High Commissioner for Refugees (UNHCR) estimate that less than 20% of applicants are 'genuine' refugees.

⁸ The Department of Home Affairs periodically promises to address the backlog of asylum cases, but there remain close to 100,000 claims that have yet to be processed. The current 'backlog project' is intended to address these concerns, although few cases have yet to be addressed.

with the skills and a willingness to do so—end up with jobs where they are paid below the minimum wage or work in inhumane conditions. Even those with employment rights report being turned away by employers who do not recognise their papers or their professional qualifications. Without money to have their qualifications recognised by the South African Qualifications Agency, they have little choice but to seek other ways to generate income. While South Africa faces an acute nursing shortage, for example, there are certified refugee nurses in South Africa who can not find work.

- 3.10 Patterns of exclusion are also evident in private sector industries with poor foreigners typically unable to access even the most rudimentary banking services. Although current banking legislation technically prevents anyone except permanent residents and citizens from opening bank accounts, this policy may be waived on a discretionary level, something often done for those in South Africa on temporary contracts. Under pressure from lobbying groups, some banks have now begun extending services to refugees, but are still unwilling to open accounts for most other African immigrants who are unlikely to have the requisite thirteen-digit identity number, foreign passport, or a formal employment contract. Elsewhere in the world, banks have recognised the profits to be made from providing foreigners access to financial services; not only because they typically save at a higher rate than more secure local populations, but also because they frequently transfer money to and from other countries. At present, only wire-transfer services and informal moneychangers are collecting the considerable profits from such transactions.
- 3.11 A cocktail of inadequate documentation, ignorance, and outright discrimination, ensures that many of the non-nationals who are legally in South Africa can not access to critical social services. Section 5(1) of the South African Schools Act 84 of 1996, for example, declares that, “a public school must admit learners and serve their educational requirements without unfairly discriminating in any way.” Importantly, this provision does not distinguish between citizens and immigrants. Moreover, Article 27(g) of the Refugees Act (130 of 1998) states that: “Refugees as well as refugee children are entitled to the same basic health services and basic primary education which the inhabitants of the republic receive from time to time” (cited in Stone and Winterstein 2003). Despite these provisions, asylum seekers and refugees face significant obstacles in accessing the educational services to which they are entitled. Other non-nationals, especially those without documents, face similar or more acute challenges. The *de facto* requirement that migrants pay school fees is the most obvious barrier to education and contradicts a prohibition on refusing admission to public schools based on parents’ inability to pay.⁹ Those without the right or opportunity to work often have difficulty making these payments, denying their children right to education. Costs for transportation, books, and uniforms further exclude the often semi-destitute non-nationals who find their way to South Africa’s cities. A 2000 study on the Somali refugee community in Johannesburg, for example, found that 70% of Somali refugee children of school-going age were not in school (Peberdy and Majodina 2000). Although few data exist on other groups, there are reasons to believe that this pattern appears in other

⁹ Department of Education, Admission Policy for Ordinary Public Schools (October 1998).

national communities. Given that refugees have explicitly protected rights to services, other non-nationals may face challenges that are even more acute.

- 3.12 A similar pattern of exclusion is reflected in access to health service. Section 27(1) of The Constitution states that everyone has the right to health care services, including reproductive health care. This clause is followed by Section 27(2) binding the state to make reasonable measures towards realising these rights. Under law, refugees are entitled to have access to the same basic health care as South African citizens, although other migrants are required to pay additional fees.¹⁰ Section 27(3) of the South African Constitution clearly states, however, that no one—regardless of nationality, documentation, or residency status—may be refused emergency medical treatment.
- 3.13 The inability or unwillingness of many hospital staff members to distinguish between different classes of migrants (coupled with xenophobia) often means that migrants, including refugees, are denied access to basic health services or that they are all charged the fees intended for foreigners.¹¹ Non-nationals may not only be refused services outright, but foreigners—even those paying additional fees—report being made to wait longer than South Africans before being seen and are subject to other forms of discrimination. While waiting, one refugee overheard nurses talking about “foreigners taking government money and having too many babies,” for example, and another reports a hospital staff member describing the hospital as “infested” with foreigners. There are also accounts indicating that non-nationals are often denied full courses of prescribed medicines (see Nkosi 2004; Pursell 2005).
- 3.14 Failure to overcome these obstacles often has dire consequences. A recent national study of refugees and asylum seekers found that 17% of all respondents were denied emergency medical care, often because of improper documentation or ignorance on the part of the admitting nurses (Belvedere 2003). If one could calculate this as a percentage of those that actually sought such care (a figure not included in the survey report), the figure would be much higher. In one particularly dramatic incident, a pregnant Somali woman was refused service on the grounds that (a) delivery, unless problematic, did not constitute an emergency and (b), she could not pay the additional fee levied on foreigners (which, as a refugee, she is not required to pay). She consequently delivered the child on the pavement outside the hospital, only to have it die a few weeks later. This is an extreme, but not exceptional example. Given their tenuous status in the country—often aggravated by a lack of proper identification—and their relative ignorance of their rights, many foreigners simply accept these violations. Indeed, only 1% of refugees who were refused health services lodged a complaint and 24% report doing nothing, largely because they did not know what to do. Only 41% reported trying another facility after being refused service, although it is not clear if all of these were successful in accessing health care (*op cit*).

¹⁰ Section 27 (g) of the Refugees Act 130 of 1998 (see also s 27 (b)).

¹¹ In terms of s 27(g) of the Refugees Act, refugees have a legal right not to be charged health care rates applicable to foreigners.

- 3.15 Throughout the country, police officers are exploiting poor oversight, xenophobic discourses, and immigrants' vulnerabilities to supplement their income and address what many incorrectly assume to be the root cause of crime. Non-South Africans living or working in Johannesburg, for example, consequently report having been stopped by the police far more frequently than South Africans (71% versus 47% in the Wit-Tufts University survey) despite having generally lived in the city for a shorter period. Although legally mandated to respect non-nationals' rights, police often refuse to recognise work permits or refugee identity cards. Some respondents even report having their identity papers confiscated or destroyed in order to justify an arrest. Furthermore, there are numerous assertions that police elicit bribes from apprehended persons (documented and undocumented) in exchange for freedom (see Palmary, *et al.* 2003:113).
- 3.16 We must recognise the strong incentives for targeting foreigners, a relatively easy, and socially acceptable, means of supplementing officers' income. Denied access to almost all formal banking service, poor immigrants must either stash cash in their residences or carry it on their bodies (Jacobsen and Bailey 2004). Combined with their tenuous legal status, (often) poor documentation, and tendency to trade on the street (hawking or informal business), some police officers have come to see foreigners as 'mobile-ATMs' (Private Communication: 7 May 2004). In the words of one Eritrean living in South Africa, "as foreign students we are not required to pay taxes to the government. But when we walk down these streets, we pay."
- 3.17 A study conducted in late 2000 indicates that asylum seekers are reportedly arrested and detained for failure to carry identity documents; on the basis of a particular physical appearance; for the inability to speak any of the main national languages; or simply for fitting an undocumented migrant 'profile' (Algotsson 2000). In practice, the burden of proof is on asylum seekers to establish their legal status in the country. There have been allegations that neither the police nor the DHA affords arrestees the opportunity to retrieve identification documents or to make free phone calls to contact friends or family. Asylum seekers, refugees and South African citizens may, consequently, be detained for days while their right to remain in the country is confirmed.
- 3.18 There are additional deviations from the law oriented at regulating or extracting resources from non-nationals.¹² The 2002 Immigration Act, for example, effectively authorises the DHA to conduct searches, arrests, and deportations outside of constitutional or other legal limitations.¹² Without muscle of their own, immigration officers rely on the South African Police Services (SAPS) and, occasionally, the National Defence Forces (SANDF), to make arrests. More importantly, SAPS has exploited this law to legalise what would otherwise be illegal raids on buildings inhabited by suspected criminals and, potentially, illegal immigrants. Often conducted at night and away from oversight, police officers force entry, demand identity documents, and arrest both non-nationals and South Africans without respect for normal legal provisions.

¹² See Section 3 (Powers of *Department*) in the Immigration Act (2002).

3.19 Illustrating the practices legitimised by such extra-constitutional legislation, a joint operation launched by the City of Johannesburg and the Department of Home Affairs in September 2003 deployed helicopters and almost 1 000 private security officers in a thinly disguised effort to rid the city of unwanted foreigners in the name of crime prevention and urban renewal. After sealing a Hillbrow apartment block, officials managed to confiscate four illegal firearms—modest by Johannesburg standards—and arrest 198 illegal immigrants. As unpalatable as these operations may seem, Yakoob Makda, the Director of Johannesburg's 'Region Eight' (i.e., the inner city) proudly (and without irony) reported their anti-crime *cum* anti-immigrant achievements to a public meeting called to help combat social exclusion.¹³ This is not the only effort to rid the city of foreigners. Soon after South Africa's first democratic election, Alexandra Township north of the city centre organised a campaign entitled 'Operation Buyelekhaya' (Operation Go Back Home) in an effort to rid the township of all foreigners (Palmary, *et al* 2003: 112). Nor are these efforts limited to Johannesburg. In 2002, Du Noon Township outside Cape Town also passed a resolution expelling all foreigners and prohibiting them from returning.¹⁴

4.0 *Implications for Sustainable Urban Livelihoods*

4.1 The forms of exclusion outlined above are not only disturbing to those concerned human rights and dignity, but negatively effect South Africa's development trajectory. Accepting that common, accountable institutions and fluid interactions among all groups are prerequisites for equitable and sustained growth, paints any source of social fragmentation as a threat. In this regard, difficulty accessing housing, markets, financial, and social services together with consistent targeting from criminals and the police are immediately problematic. The remainder of this paper outlines a number of the current and potential consequences of marginalising non-nationals and other migrants.

4.2 *Economic exclusion:* South Africa has a substantial skills gap that the government hopes to fill by spending millions of Rands on skills training. However, few employers (including the government) have attempted to capitalise on the economic potential of those already in their cities or who are likely to come in the near future including international migrants, many of whom have secondary or tertiary training and experience. Instead of positively exploiting their presence, criminalising migrants has driven processes of informalisation and illegality. In efforts to protect the rights and livelihoods of citizens, immigration policy has *de facto* promoted the illegal hiring of non-nationals in ways that continue to undermine the unions and suppress the wages paid to all workers. Moreover, by encouraging non-nationals (and those who hire them) to work in the informal sector or shadow economy, the government deprives itself of an important source of revenue and helps create networks of corruption and illegality that will be difficult to eradicate.

¹³ This statement was made during a poverty alleviation work Workshop Organised by the Joburg Development Agency (JDA): 'Poverty and Exclusion in the Inner City' Held in Johannesburg, 14 May 2003.

¹⁴ Palmary, *et al*, 2003, p 112. See also V Southwell, 'Protecting Human Rights: Recent Cases – Du Noon Expulsion of Foreign Nationals,' Online report from South African Human Rights Commission. http://www.sahrc.org.za/protecting_human_rights_vol3no1.htm, 2002 (accessed 1 October 2004).

4.3 Whatever the reasons, migrants' inability to access secure banking has manifold consequences that extend beyond those excluded from service. Perhaps most obviously, lacking access to financial services (particularly credit) discourages migrants from investing in the cities in which they live (see Leggett 2004; Jacobsen and Bailey 2004; Simone 2004: 10). Such disincentives to invest will likely contribute to infrastructural decay and, since migrants will be less likely to start formal businesses, limit the creation of new South African jobs (although in the Wits-Tufts Johannesburg, international migrants still create jobs faster than South Africans).¹⁵ For a country hoping to expand its transnational connections, alienating foreigners is evidently counter-productive. Keeping migrants and those they hire from moving into the informal economy also denies the government a source of direct revenues (from taxes and licensing fees) and means that much of the business that takes place is, to a greater or lesser degree, illegal, weakening the law's (and the state's) legitimacy and regulatory power. Non-nationals' inability to access financial services also means that they become primary targets for petty criminals and police extortion, providing expanded scope and motivation for corruption and challenging efforts to create urban economies shaped by law. Anything that limits the possibility for productive engagements—or encourages dysfunctional interactions—limits the ability of cities to grow and distribute wealth among their residents.

4.4 *Access to social services:* Education and health care are central to any population's economic and physical health. In the words of the UN Secretary General, Koffi Annan, "education is a human right with immense power to transform. On its foundation rest the cornerstone of freedom, democracy, and sustainable human development" (Annan 1999:4). In transforming urban settings, education serves a dual role. The first is to provide children and youth with the technical and analytical training they need to compete and contribute to a specialised, skills based economy. Obstacles to any group acquiring those skills will, consequently, project existing inequalities into future generations and limit the country's ability to adapt to new economic opportunities. Education serves a second, but no less critical role: forging communities from strangers. Through the sustained interactions within the classroom, diverse groups learn common sets of rules, how to exercise civil rights, and mutual respect. Exclusion from education, therefore, will create a subset of the population without the knowledge or skills to interact productively within the country's cities. It will also shape a sub-population that feels marginalised and is far less likely to show respect for South Africa's principles of universal rights and the rule of law.

¹⁵ In the Wits survey, only 20% of South Africans reported having paid someone to do work for them in the past year. Despite the various obstacles they face, 34% of the migrants in the sample report that they had. Even more significantly, 67% of the people hired by the forced migrants were South Africans. It is also worth drawing attention to a recent study of street vendors in Durban illustrates this by showing that South African traders favour non-nationals' involvement because it brings new products and new business into the market. See also Hunter and Skinner (2003).

- 4.5 While the inability to access to education may have delayed effects, denying migrants access to health services has both immediate and long-term consequences. In the short term, denying migrants emergency care puts them at physical risk and endangers the welfare of those who depend on them. Where the denial of services contravenes published legislation, it also exposes public institutions to potentially costly legal action. Furthermore, denying basic health services—particularly access to health education and preventive care—raises the spectre of public health crises. While medical staff may discriminate between citizens and non-nationals, infectious agents are far less discerning. As long as migrants and South Africans continue to share urban space—often living in close proximity—those unable to access treatment become a danger to all those around them. A work force already weakened by the scourge of HIV/AIDS, is in no position to accept such an additional threat.
- 4.6 *Crime and Insecurity:* Although many South Africans support the police’s strategy of targeting foreigners on assumptions that they are behind most of the country’s criminal activity, such actions are largely ineffective in establishing order or security. For one, there is no evidence showing foreigners are disproportionately prone to criminal activity. An obsession with them consequently distracts police from where they are needed (Palmary 2002). Even where foreigners may be undertaking illegal activities (e.g., hawking, hijacking buildings), there are often root causes that arrests for by-law infractions will not address. Moreover, their general ineffectiveness is leading citizens to accept criminal activity as part of their social landscape in which they must seek alternative means to manage crime. In cases, this means turning to groups like *Mapogo a Mathamaga*, a national investigation and ‘goods recovery’ company, or other vigilante groups, that work largely outside the law, but regularly draw on police information and backup.¹⁶ As Mbembe writes, “Helped by the prevailing lack of discipline, bridges have been built between the soldiery [and police] and the worlds of crime and fraud” (Mbembe 2002: 58). These linkages ‘delegalise’ the criminal justice system, robbing the state of one of its most primitive functions and placing all of South Africa’s urbanites at risk. The *Special Assignment* episodes aired on 6 and 13 September 2005 graphically illustrate these dangers.
- 4.7 The arrest of people trading on the street—whether South African or foreign—or conducting other small business also affects the livelihoods of those arrested and their dependents. Cities must promote entry into trading markets rather than close this avenue to those who have few other options, a category of people well represented in South Africa’s inner-cities and townships. For migrants who lack the documentation or capital to find work in the formal sector—despite many having skills to make contributions in this area—regularly targeting this subset of the population for by-law infractions only drives trade further underground and increases the likelihood that they will turn to irregular, illegal, or dangerous economic activities.

¹⁶ Interview with Cecil van Schalwyk, Director of Midrand office of *Mapogo a Mathamaga*, 25 July 2003.

- 4.8 *Community*: To reiterate a point made above, overcoming racialised fragmentation and avoiding new forms of exclusion means bringing together people from all sectors of the urban environment in ways that promote investments in a shared future. Marginalising significant migrant communities limits the ability to achieve this objective. Instead, migrants often feel a sense of permanent dislocation fostered by the violence, abuse, and discrimination they experience in new residential communities. Rather than striving to integrate or assimilate, foreigners instead cling to their outsider status. A number of studies have found that foreigners make conscious efforts to avoid close personal relationships with South Africans and many spend their time in South Africa planning to move elsewhere (Amisi and Ballard 2005; Mang'ana 2004; Araia 2005). Indeed, only 40% of the non-South Africans in the Wits-Tufts Johannesburg survey predicted being in South Africa in two years and more than three quarters (76%) felt it important for migrants' to retain their distinct during their stay in the country. Similarly, when questioned about where they hoped to raise their children, just over a quarter (26.8%) identified South Africa, while the rest were almost evenly divided between the respondent's country of origin (30.3%) or a third country (32.1%). Critically, journeys home or onwards often remain practically elusive for reasons of money, safety, or social status. This leaves almost two-thirds of Johannesburg's non-national population effectively marooned in the city, but not wishing to take root or invest in it. Although many do not wish to become a permanent part of South African society, many undoubtedly would if the option were available. There is little available evidence on newly urbanised South Africans, although anecdotal accounts suggest many also see cities as temporary residences or transit points: spaces to earn money before an eventual return to a rural home or movement elsewhere.
- 4.9 When viewed from the objective of building inclusive cities, this sense of isolation and transience is problematic for at least two reasons. First, self-alienation—adopted as a defence against discrimination—creates division and fragmentation that may serve to justify further discrimination. Second, a sense of impermanence limits immigrants' interest in investing in the cities in which they live. People preparing for onward journeys will not dedicate themselves to acquiring fixed assets and may maximise immediate profits at the expense of long-term planning. Such exclusion also limits cities' ability to capitalise on immigrants' valuable transnational connections. While Hunter and Skinner (2003) found that the immigrants' exotic products boosted overall sales in at least one Durban marketplace, the tendency to limit such sales represents lost opportunities. Similarly, studies have found that African tourists spend more in South Africa than their European and North American counterparts (SAMP, undated). Nelspruit, for one, is prospering as a shopping centre for wealthy Mozambicans. Discouraging citizens from neighbouring countries from visiting may, consequently, result in considerable losses to the South African economy. Although domestic migrants may bring fewer skills and resources, their exclusion may have similar effects in terms of fostering trade, investment, and a sense of community.
- 4.10 *Accountability and Planning*: South Africa recognises that sustainable urban livelihoods can only be achieved when supported by accountable institutions that promote to a set of overlapping goals among city residents. Discrimination based on national or community origins, like other

arbitrary forms of exclusion, undermines this objective in two primary ways. First, for reasons discussed above, populations that do not feel welcome in South Africa's urban society are unlikely to respect the rules and institutions dedicated to governing it. Indeed, they may actively subvert regulatory agencies they feel are more likely to prey on than promote their interests. Such efforts become visible in efforts to dodge taxes regulations, or to avoid census takers. When not given the rights to work or documents needed to secure housing, it may also result in building hijackings, criminal activity, or other undesirable behaviours. Those who feel excluded are also unlikely to participate in participatory planning exercises (e.g., the integrated development planning process (IDP)). Such self-exclusion makes government policies all the less likely to address city residents' priorities and needs and may, in time, harm public institutions' efficacy and legitimacy.

- 4.11 Anti-foreigner sentiments and scapegoating has a second, more insidious effect on realising accountable and responsive public institutions. In the words of an immigrant living in Johannesburg, "rumours . . . are continuously spread by everyone that foreigners are responsible for whatever is wrong. It is like, 'Thank you, foreigners, that you are here, now we can blame you for everything'. South Africans do not look at their own – they just ignore their own problems and pretend that foreigners cause all their problems' (in Beal, Crankshaw, and Parnell 2002: 124). Although such attitudes are by no means universal, the presence of a convenient scapegoat prevents South Africans from holding their public institutions responsible for their shortcomings and failed promises. The willingness to accept that foreigners are responsible for children not finding places in school or for continued insecurity and unemployment distracts people from the fundamental structural and institutional issues behind these pressing social concerns. Removing foreigners from South Africa's cities will not solve these acute social challenges—and may heighten them—but as long as such expulsion remains a preferred solution, real progress is unlikely to be made.

5.0 Conclusions: Towards Sustainable Cities in an Era of Migration

- 5.1 South Africa's cities—like cities across Africa—are anomalous frontier lands: at once the heart of state power and economic production while also unknown and unknowable spaces where existing social and institutional configurations are being reshaped and complemented by novel forms of organisation. Such constant transformation presents tremendous risks, but also considerable opportunities. As Montesquieu's notes, "At the dawning of a new politics, politicians make institutions. After this, institutions make politicians." Fortunately, South African politics is still an emergent politics providing considerable scope for creative policymaking and statecraft.
- 5.2 To achieve sustainable growth, communities desperately need capable and accountable institutions. Recognising that people born outside of South Africa will be a permanent feature of South Africa's cities means that such actions must at least be partially dedicated to fighting exclusion based on nationality or origins. Similarly, cities must begin to understand how South Africans move and live in the country's urban centres. Documents like *Gauteng 2014* recognise

the challenges all levels of government face in ensuring that migration benefits all South Africans and migrants. Failing to respond to these challenges may condemn the country's cities to a future of ghettos rather than ethnic enclaves (See Jurgens, Gnad, and Bahr 2002); social fragmentation and economic polarization rather than creative tensions and dynamism; protection rackets and hijackings rather than investment and an expanding tax base. There is now a choice between allowing government planners to be caught flat-footed or fostering leaders who can help shape social dynamics for the benefits of all urban residents.

- 5.3 To develop this new class of leaders, we must recognise that *de facto* political decentralization and devolution (see Beal, *et al*, 2002) has effectively transferred responsibility for responding to migration to local and provincial governments, bodies already charged with overseeing and spearheading the development of their communities. Formally, however, responsibility for the immigration and asylum regime remains almost exclusively within the bailiwick of the national government. While citizenship and asylum laws must remain national, there is a heightened need for sub-national actors to assert their influence on the country's immigration and asylum regime. Cities and Provinces need to recognise that they can, and indeed must, actively advocate for an immigration regime that helps legalise—rather than marginalise—their residents. South Africa need not open its borders to develop pragmatic, affordable, and effective responses to those who find their way into the country and into its cities. Countering exclusion based on individuals' community of origin will not ensure secure and sustainable livelihoods, accountable institutions, and unified communities. It can, however, make achieving these objectives a possibility.

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