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No. 22: South African Government and Civil Society Responses to Zimbabwean Migration

Tara Poizer

University of the Witwatersrand, Johannesburg

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Southern African Migration Project

**South African Government and Civil Society Responses to
Zimbabwean Migration**

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Tara Polzer

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Editorial Note

Tara Polzer is a Senior Researcher with the Forced Migration Studies Programme at the University of the Witwatersrand. The views expressed in this paper are those of the author and do not necessarily represent those of SAMP or its partners and funders.

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1.0 Introduction

- 1.1 This policy brief discusses a key paradox in relation to Zimbabwean migration into South Africa. While Zimbabwean migration since 2000 has been the largest concentrated flow in South African history, South Africa's reaction to this movement has been characterised by the attempt to continue with 'business as usual' and 'no crisis' responses.¹ Compared with most other developed and developing countries, where an inflow of tens or hundreds of thousands of people is usually treated as a political crisis, such a non-response to over a million immigrants requires explanation.
- 1.2 The lack of commensurate responses is especially noticeable within the various departments of the South African government, but also within much of organised civil society. The scale and range of responses has addressed neither the scale nor the specific nature of Zimbabwean migration.² In practice, therefore, addressing migrant needs and migration impacts is left to social networks among Zimbabweans, (often poor) South African citizens and local level public service providers such as local clinics. As a result of this fragmented and inadequate set of responses there are two major gaps:
- firstly between the needs of Zimbabwean migrants and the formal institutional frameworks and services provided to them, and
 - secondly between the impacts of Zimbabwean migration on South African society and its ability to manage these impacts.
- 1.3 There has been increasing documentation of Zimbabwean migrants' welfare needs in South Africa (Bloch 2005; Zimbabwe Torture Victims Project 2005; Makina 2007; CoRMSA 2008; Human Rights Watch 2008). However, in parallel to the lack of coherent government and civil society responses to Zimbabwean migration, there has been a relative dearth of academic or think-tank documentation or analysis of these responses, and indeed of the implications of non-response for South Africa (Polzer 2008). Crucially, there has been no serious research on the dispersed and privatised responses by Zimbabwean networks and South African citizens, even though the aggregate impact of these actors is likely to be at least as significant, if not more so, than formal responses.
- 1.4 This brief cannot comprehensively address this last knowledge gap, as more empirical work is required to characterise and quantify informal responses, but it will briefly set out the range of both informal and formal responses to Zimbabwean migration by key governmental and civil society actors. These responses are evaluated using three different perspectives: (a) law and rights-centred; (b) developmental and migrant needs-centred; and (c) politics and institution-centred. Each of these perspectives asks a different central question,

¹ Zimbabwean migration to South Africa since 2000, even if estimated conservatively at 1 to 1.5 million Zimbabweans in the country, is c. three times larger than the estimated movement of Mozambican refugees into South Africa in the 1980s during the Mozambican civil war, which previously constituted South Africa's largest migration volume in recent history.

² Due to the 'mixed' nature of Zimbabwean migration, the term "migrant" is used here to describe all people of Zimbabwean origin who have entered or are staying in South Africa, including those who are eligible for, have applied for, or received asylum or refugee status.

and each highlights the roles of different actors within the heterogeneous categories of 'government' and 'civil society'.

- 1.5 The legal and rights-based perspective looks at the international and domestic legal responsibilities of the government towards Zimbabwean migrants and therefore asks what government responses *should* be and how existing responses compare with these responsibilities. Key actors are governmental departments such as Home Affairs, the police and the social welfare departments of Health, Education, Social Development and Labour, as well as local municipalities. Civil society's role, from this perspective, is either to monitor government actions and advocate with government to fulfil its obligations, or else to partially fill service gaps by providing parallel services.
- 1.6 In contrast, a migrant-centred and developmental perspective focuses on the question of what Zimbabwean migrants actually do and need and how governmental and civil society responses support or undermine these needs, whether or not these needs or responses are enshrined in law as rights or obligations. An example is the need of most Zimbabweans in South Africa to earn and remit money and goods to family members remaining in Zimbabwe, which is a key developmental issue but not one clearly defined as a right in either domestic or international law. From this perspective, Zimbabweans themselves are key actors in their own right, both as individuals and as more or less formal associations, and informal practices, relations and structures within governmental and non-governmental spheres in South Africa are as important as formal policies.
- 1.7 Finally, a political and institutional perspective asks *why* South African institutions have responded to Zimbabwean migration in the ways they have done. It is necessary to explain the overall lack of an 'emergency' atmosphere - the 'business as usual' approach - as well as explaining why particular responses have been taken while others have been rejected or ignored, and why the responses by different actors remain essentially fragmented rather than coordinated. In addition to the governmental and non-governmental actors considered in our first legal/rights perspective, this political perspective brings in actors not otherwise directly involved in providing services to or making policies about Zimbabweans in South Africa but who have important impacts on the context in which such policies are made, such as the Office of the Presidency and Parliament.
- 1.8 Considered together, these perspectives allow the following conclusions regarding our central paradox. The South African government has not fulfilled its international or domestic legal obligations towards Zimbabwean migrants, leading to significant abuses of Zimbabweans' rights. Civil society has been largely ineffective in putting pressure on the government to change its policies and practices in relation to Zimbabweans and has also not been able to mobilise and coordinate a sufficient parallel welfare support and protection system. Responses to welfare and protection needs have instead been located mainly among Zimbabwean networks and in poor South African communities and have therefore been decentralised, localised and informal. With rising numbers and the increasing vulnerability of Zimbabweans coming into South

Africa since 2005, these informal networks and localised responses are increasingly unable to fulfil basic welfare and livelihood needs.

- 1.9 Political reasons for the seeming paralysis within government concerning Zimbabweans in South Africa include a combination of domestic pressures for service delivery to poor citizens and South Africa's 'quiet diplomacy' foreign policy stance towards the Government of Zimbabwe. Humanitarian (shelter and food) and refugee rights (blanket legal recognition) approaches are domestically sensitive, while refugee rights and security-based (control and segregate) approaches would sit uncomfortably with South Africa's role as 'neutral arbiter' in Zimbabwe. The key characteristic of 'business as usual' approaches is that they do not require the government to make an open policy statement to either its domestic or regional constituencies. Many mainstream civil society organisations, including a number of social movements (with some notable exceptions), also see service provision to and advocacy on behalf of Zimbabweans as incompatible with their domestic poverty alleviation mandates and the 'South Africans first' expectations of their members. Furthermore, there has been an antagonistic relationship between government and civil society on Zimbabwean issues generally, counteracting the possibility of joint interventions.
- 1.10 Finally, institutional factors have played an important role in delaying and undermining effective coordinated responses. South Africa's general policy of urban self-sufficiency and self-settlement for refugees means that there are no institutions in place to provide large-scale shelter and welfare assistance. There has also not been a previous comparable large-scale migration flow in democratic South Africa's institutional experience. Other factors include a lack of leadership willing or able to galvanise the required multi-departmental commitments within government; and a fragmented civil society with limited capacity to scale-up localised welfare interventions or to coordinate a unified position on Zimbabwean migration.

2.0 Post-2000 Zimbabwean Migration to South Africa

- 2.1 The nature of a specific migration situation determines not only which responses are necessary and appropriate, but also how decision-makers come to perceive and understand the migration flow and how they therefore react to it. Zimbabwean migration to South Africa since 2000 has had several characteristics which have objectively and subjectively complicated responses. These include volumes and 'mixed' motivations for migration, the latter in turn leading to specific timing and phasing of flows, demographics and dispersion.
- 2.2 The issue of volumes and numbers has multiple facets. On the one hand, while there are no empirically reliable statistics on the number of Zimbabweans who have entered South Africa since 2000 (estimates range from 1 million to 5 million and vary so greatly because of the high percentage of undocumented border crossings, as discussed below) even conservative estimates clearly make it by far the largest national group of migrants in South Africa.³ While

³ For a discussion of estimates of Zimbabwean numbers see Landau, L. B. (2007). Drowning in Numbers: Interrogating New Patterns of Zimbabwean Migration to South Africa. Johannesburg, briefing prepared for

such large numbers could be expected to trigger a concerted government response, perceptions about the numbers, on the other hand, have served to delay action. Government officials (especially at national level) argue that they cannot plan without more exact statistics, while officials at municipal level and in service delivery departments have such inflated perceptions of numbers that they feel completely paralysed. For example, city officials in Johannesburg believe there are 2.5 million foreigners in the city, mostly Zimbabwean, which would be over half of the total city population (Centre for Development and Enterprise 2008:8).

- 2.3 Mixed motivations are the norm for most migration, but Zimbabwe is an extreme case where there is political repression without outright civil war and where progressive economic collapse has reached deadly proportions. There are therefore many different 'types' of Zimbabwean migrants and many individuals who are motivated by multiple factors. These 'types' include politically persecuted refugees, economic migrants (from professionals to unskilled persons), humanitarian migrants (including unaccompanied children), traders, shoppers and transit migrants.
- 2.4 The implications of this 'mixed migration' for host country responses include the following: different kinds of migrant need different services; different legal frameworks apply; and different kinds of governmental and civil society institutions are required. Crucially, since there are as yet no international or domestic legal frameworks for dealing with mixed migration holistically, the fragmented legal instruments dealing separately with politically, economically and humanitarian motivated migration (e.g. the Refugee Act, the Immigration Act and the Disaster Management Act, respectively) have been applied without adaptation or coherence.⁴ Furthermore, since the South African government has considered most of the 'economic' migration from Zimbabwe essentially illegitimate and illegal, this further undermined the possibility of constructing a coordinated response for all (different kinds of) Zimbabweans in South Africa. Finally, because of the variety of 'push factors', the intensity, demographics and dispersion of Zimbabwean migration, and the range of migrant needs, have affected the development of coherent responses.
- 2.5 Concerning the intensity of the flow of Zimbabweans into South Africa, there has been a continuous and continuously growing daily (or nightly) 'trickle' of Zimbabweans across the border. This stands in contrast to a single large-scale flow of tens or hundreds of thousands of people crossing the border at one time or within weeks or months, as was the case with Mozambicans refugees in the 1980s or Congolese refugees fleeing into Uganda today. South African emergency plans prepared in advance of the 2002, 2005 and 2008 Zimbabwean elections all set the trigger for action as a 'mass influx', defined as a thousand people crossing the border in a day (del Valle and Polzer 2002:11).

Centre for Development and Enterprise, Vigneswaran, D. (2007). Fact or Fiction: Examining Zimbabwean Cross-border Migration into South Africa. Migrant Rights Monitoring Project Occasional Report, 2007/B. Johannesburg FMSP.

⁴ The Office of the United Nations High Commissioner for Refugees has started discussions on mixed migration, but these have not yet been translated into generally accepted models for legal or humanitarian response (UNHCR (2007). Refugee Protection and Mixed Migration: a 10-Point Plan of Action. Geneva.

Even though cumulative numbers had already long surpassed this in 2002, an emergency response was never initiated because there was no recognisable 'mass influx.' Perceptions about how large scale migration 'should' look hindered concerted institutional action.

- 2.6 The nature of Zimbabwean migration has changed over time. Until 2000, the majority of Zimbabweans were young job seekers, often motivated by the humanitarian needs of their families in Zimbabwe but mostly migrating alone (McDonald et al 2000; Tevera and Zinyama 2002). In the last 2-3 years, there has been an increase in humanitarian migrants in search of basic food and health care, including larger percentages of women, children and elderly.⁵ Levels of malnutrition and illness of new arrivals have increased greatly. The implications of this demographic shift is that Zimbabwean migrants initially fit the established pattern of labour migrants and were to some extent self-sufficient in terms of basic welfare due to their ability and desire to work. This removed the necessity for either government or civil society to plan large-scale welfare interventions initially. When the humanitarian needs of new arrivals and those already in the country rose gradually, there was again no clear trigger for the establishment of new welfare interventions until needs reached crisis point in specific locations (such as the border area since mid-2008).
- 2.7 The motivation to earn money to send home and the presence of existing networks led to Zimbabweans dispersing throughout the country and especially to urban areas rather than remaining concentrated in the rural border area. This means that the initial impact of the large numbers was also dispersed, delaying the perceived pressure for national responses. It also means that legal and welfare responses have to be dispersed or accessible across the country, involving a wide range of governmental and civil society actors in different provinces and cities. This means a more complex and easily fragmented response scenario than if, for example, resources and institutional response capacity were concentrated in one part of the country.
- 2.8 Finally, mixed migration motivations and circumstances mean that migrants have a wide range of needs against which the effectiveness of responses (and the choices of response institutions) can be evaluated. These needs include immediate humanitarian needs for food, shelter and health care; longer term social welfare needs for the same things, as well as education for children; livelihood needs for income opportunities, labour rights, and access to remittance methods, etc.; and finally, protection, including physical safety, legal security and non-refoulement.⁶ This wide range of needs implicates an equally wide range of institutions within government and civil society to respond and requires a level of coordination among these generally very different actors (e.g. between the police providing protection and a faith-based organisations providing shelter).

3.0 Government Responses

⁵ Persons fleeing political persecution have arrived throughout, but with massive increases in asylum applications since 2005.

⁶ Refoulement is a key concept in international (and South African domestic law) referring to the return of a refugee to a country in which he or she would be endangered. See 1998 Refugee Act, Section 2.

In this complex mixed migration context, how have the various arms of the South African government responded in practice? We can divide government responses into three types: migration management and socio-economic rights, livelihood support, and leadership and coordination. These correspond to the three perspectives of law, needs and politics.

3.1 *Migration Management and Socio-Economic Rights*

- 3.1.1 This section looks first at the government's approach to migration management and the legal right to protection in relation to Zimbabweans, and then looks at its responses in relation to the socio-economic rights enshrined in the Constitution. It must be recognised that South Africa's current policy and institutional framework was not set up to deal with large-scale migration flows, and that it has never had to deal with such a situation before. In contrast to countries where large numbers of refugees have been housed in camps for many years, South Africa's general policy of urban self-sufficiency and self-settlement for refugees means that there are no institutions in place to provide large-scale shelter and welfare assistance. It is precisely this discrepancy between need and response infrastructure which makes it necessary to explain South Africa's "business as usual" approach.
- 3.1.2 This approach has been most pronounced in the migration management field, where the Department of Home Affairs (DHA) is the lead actor. South African migration frameworks have been applied to Zimbabweans in the same way as to other nationalities without any adaptation to their specific circumstances or numbers. These frameworks include visa regulations, the 2002 Immigration Act and the 1998 Refugee Act. The desire by the South African government not to introduce policy changes in relation to Zimbabweans is exemplified by the visa policy. While visas have been progressively liberalised and abolished for other neighbouring countries since the mid-2000s, as envisioned for the entire region by the SADC Protocol for the Facilitation of Movement of Persons, Zimbabwe is the only neighbouring country for which there is still a visa policy (Oucho and Crush 2002). Zimbabweans require a valid passport, an expensive visa from the South African Embassy in Harare, a letter of invitation, proof of sufficient hard currency for their stay in South Africa and similar conditions which are impossible for all but a very few well-off Zimbabweans to meet. So onerous are these pre-conditions, that they have forced the majority of Zimbabweans to cross into South Africa informally and without proper documentation.
- 3.1.3 Once they are in the country, the dominant government response to date has been the arrest and deportation of undocumented Zimbabweans on the basis of the Immigration Act. Deportation numbers for Zimbabweans have been rising steadily since 2000, reaching over 150,000 in 2005 and continuing to rise since then. Since 2005, Zimbabweans have been by far the largest national group deported, and have fuelled a massive overall increase in annual deportation numbers.⁷ The primacy of deportation as a response shows clearly that the DHA, and the South African Police Services which assist DHA in Immigration

⁷ Exact Zimbabwean deportation numbers are not publically available, since the DHA stopped breaking down their deportation statistics by nationality in 2005.

Act enforcement, continue to see Zimbabweans primarily as economic migrants rather than as people in need of humanitarian assistance or asylum. Some skilled Zimbabweans continue to apply for and receive normal work and study permits, as was the case before the escalation of the Zimbabwean crisis, and the South African Qualifications Authority (SAQA) has reported a steep rise in applications by professional Zimbabweans.⁸ No measures have been put in place to facilitate or expedite Zimbabwean work or study permits or qualifications approvals beyond normal (expensive and slow) processes.

- 3.1.4 Zimbabweans have been able to access the asylum system, although again this has been implemented by DHA in a conservative and 'business as usual' manner. There have been some indications of attempts at exclusion, such as the 2002 'white listing' of Zimbabwean asylum applicants in some Refugee Reception Offices and several 'manifestly unfounded' asylum rejections in 2007. These were challenged in court by legal NGOs and now do not seem to be more widespread for Zimbabweans than for other nationalities.⁹ However, even in its 'normal' operations, the asylum system has taken a narrow interpretation of the Refugee Act which makes it less responsive to the particularities of Zimbabwean migration than it could be. While the Refugee Act includes provision for granting *a priori* refugee status to a group of persons, or for granting individual asylum to persons fleeing 'events seriously disturbing or disrupting public order.'¹⁰ DHA has largely limited its status determination to persons fleeing individual persecution, thereby excluding the majority of Zimbabweans. In addition, the urban locations of Refugee Reception Offices and administrative inefficiencies in the asylum application process severely curtail access to the system, even for those individuals who have experienced personal political persecution. Even though asylum applications from Zimbabweans rose steadily after 2004 but had cumulatively still only reached 44,000 by the end of 2007. At that time, only 1,000 had been approved, 9,000 were rejected and 34,000 were still pending. In 2007 itself, 17,667 Zimbabweans applied for asylum but only 271 were approved and 1,628 rejected.¹¹ This only represents a small proportion of the overall Zimbabweans in South Africa.
- 3.1.5 The use of different legal frameworks for migration management could be interpreted as a sign that the government recognises the diverse motivations for Zimbabwean migration. In practice, however, none of the standard migration management instruments are able to fulfil their functions in relation to different groups of Zimbabweans because they are applied indiscriminately and are not

⁸ Alet Rademeyer, "Zimbabweans keen to work in SA", 27 May 2008. SAQA website <http://www.saga.org.za/show.asp?include=news/work.html> (accessed 23 January 2009)

⁹ These legal challenges were conducted by Lawyers for Human Rights and the Wits Law Clinic.

¹⁰ South African Refugees Act, No. 130 of 1998, Section 3(b). There is a debate whether the 'events disturbing public order' refugee definition (based on the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa) could be applied to all Zimbabweans. The Jesuit Refugee Services is advocating that all Zimbabweans should qualify for asylum under the OAU Convention definition on the basis that the economic crisis which is driving many Zimbabweans to emigrate in search of work and food is in fact a politically created crisis. On the other hand, the UNHCR states that most Zimbabweans would not qualify under the OAU refugee definition.

¹¹ Department of Home Affairs Refugee Directorate, *Annual Report on Asylum Statistics* (Department of Home Affairs, 2007)

adapted to the mixed nature of Zimbabwean migration. The deportation system, even if one could argue for the legitimacy of returning 'illegal economic migrants' to starvation and disease on strict legal lines, has also been leading to the refoulement of political asylum seekers who have not been able to access to asylum system. The asylum system, due to the lack of other documentation alternatives, is being used by people predominantly seeking humanitarian and livelihood support. Since September 2008, the DHA has now in effect legitimised this by setting up a refugee reception centre in Musina, near the Zimbabwean border crossing, and issuing asylum seeker permits to virtually all Zimbabweans coming to the centre, without attempting to judge the validity of their asylum claims. Even though this could be seen as an appropriate expansion of the asylum definition, as discussed in the last paragraph, in fact the asylum seeker permits are being used as a temporary stop-gap measure, without consideration of how DHA will later deal with the need to renew these permits or to confirm or reject them through a formal refugee status determination process.

- 3.1.6 It is important to note several possible migration management responses which were discussed but not taken up by the Department of Home Affairs. The Immigration Act provides for a Ministerial exemption from standard permit requirements. Granting a temporary permit to all Zimbabweans, including the right to be in the country legally and the right to work, in terms of Section 31(2)b of the 2002 Immigration Act was debated within the DHA to the extent that the Minister made a media announcement concerning the possibility of introducing such a permit in July 2008. This was, however, never implemented. The Section 31(2)b discussion took place in the context of widespread violence against foreigners, including many Zimbabweans, in May 2008 and in the same context there were discussions of putting a moratorium on the deportation of Zimbabweans.¹² However, again, this was not implemented consistently and arrests and deportations continue.
- 3.1.7 Compared with migration management and protection responses, the government's responses in terms of socio-economic rights are based on a different legal basis (the Constitution and the Disaster Management Act) and located in different departments (Health, Education, Housing, Social Development, Labour, and Provincial and Local Government) and levels of government (municipalities). As with migration management responses, however, these actors have generally, with a few small exceptions, continued with 'business as usual' and have not instituted any special or expanded interventions in relation to Zimbabweans.
- 3.1.8 The South African Constitution sets out basic socio-economic (in addition to civil) rights for 'everyone', without discrimination by nationality or legal status. These include the right to basic health care, basic education, adequate housing, sufficient food and water, and social security. It also includes the right to fair

¹² Starting on 11 May 2008 in Alexandra informal settlement in Johannesburg and spreading to several other informal settlements in Gauteng and Western Cape Province (and a few other areas around the country), hundreds of thousands of foreign nationals were attacked and displaced over the space of a month. Over sixty persons were killed and thousands of foreign-owned and run homes and businesses were looted and burnt.

labour practices, although not the right to work. The respective government departments are responsible for upholding these rights in their public service provision.

- 3.1.9 On the one hand, Zimbabweans experience the same kinds of discrimination and exclusion from public services to which they have a right (especially basic health care and education) as other non-citizens (CoRMSA 2008). This does not mean absolute exclusion: for example, a recent survey of non-citizens who access assistance through NGOs suggests that over 70% of Zimbabweans have been able to access basic public health care when they need it and that 55% of school-age Zimbabweans children are attending school (CoRMSA 2008:42;46). However, this also means that almost a third are having difficulties accessing health care and half of school-age children are not accessing education to which they have a basic right.
- 3.1.10 In addition to the obligation to uphold Constitutional rights for 'everyone', Zimbabweans pose a particular and large-scale service challenge to South Africa, beyond that of other non-national groups, as I have been arguing. However, this has not resulted in any significant dedicated responses, nor in concerted and coordinated efforts to integrate Zimbabweans into mainstream social welfare service provision. The Department of Health has instituted a directive that antiretroviral treatment for HIV and AIDS should be made available to 'refugees and asylum seekers irrespective of whether they hold documents' (Department of Health 2007), which in practice includes most Zimbabweans. However, there has been no process, for example, for evaluating in which locations local clinics and hospitals are under additional pressure from Zimbabwean settlement (such as in certain inner-city neighbourhoods of Johannesburg or some rural areas of Limpopo Province) and providing additional funding and staff to those health services. There have been no directives or resource allocation initiatives by the Departments of Education, Housing or Social Development. In the case of the latter, one of the Department's standard social welfare grants - the Social Relief of Distress grant - is not limited to citizens and could be applied as an emergency humanitarian relief mechanism, but has not consistently been promoted in this way. The Department of Social Development is also mandated to provide services to unaccompanied minors but has not implemented a sufficiently large-scale programme for the increasing numbers of Zimbabwean unaccompanied minors.
- 3.1.11 While Constitutional provisions obligate the government to protect socio-economic rights in every-day life, the 2002 Disaster Management Act provides the government with a legal framework for providing welfare and protection in emergency situations. Managed through the Department of Provincial and Local Government, where the National Disaster Management Centre is located, the Act pertains to situations where Zimbabwean settlement "causes or threatens to cause: (i) death, injury or disease; (ii) damage to property, infrastructure or the environment; or (iii) disruption of the life of a community; and (b) is of a magnitude that exceeds the ability of those affected by the disaster to cope with its effects using only their own resources."¹³ The Disaster Management

¹³ Disaster Management Act, No. 57 of 2002, Section 1

framework has been used to prepare a national disaster management contingency plan as well as a Limpopo provincial plan and a municipal-level plan in the Musina border area, yet to date no disaster has been declared at national, provincial or municipal level in relation to Zimbabweans immigration and none of these plans have been implemented (nor, indeed, are they regularly updated, except in advance of Zimbabwean elections). The option of opening a 'camp' or some kind of centralised welfare centre for Zimbabweans under the Disaster Management legislation, while mooted briefly by the opposition Democratic Alliance in 2007,¹⁴ was rejected by the Department of Home Affairs and has not been publically debated since, although this may change with the current (December 2008) outbreak of cholera in Zimbabwe and its spread into South Africa. Indeed, the spread of cholera from Zimbabwe into South Africa, and possibly from settlements of Zimbabweans in the Musina area who do not have appropriate shelter, water or sanitation, is a stark illustration of the lack of effective disaster planning and management.

- 3.1.12 Finally, local governments are often not considered as actors able to respond to migration issues, but they can apply their discretion in providing various localised services (or implementing localised migration control measures) to migrants based on their own resources and by-laws. For example, in 2007 the Johannesburg City Council has debated allocating a municipal building as accommodation for Zimbabweans in the city, although this has not yet been implemented. Although such initiatives could potentially contribute significantly to the overall combination of government responses, they have as yet not done so, partly because of the lack of overall policy leadership (as discussed below).
- 3.1.13 Ironically, therefore, for both migration management and socio-economic rights protection, by attempting to use only existing legal instruments to address an exceptional migration situation, the South African government has failed in its legal obligations, including its obligation to prevent refoulement and to uphold basic Constitutional rights. Another effect of applying only existing instruments with existing institutional capacity is that these systems have been completely overloaded, making them less effective at performing their mandated tasks, even for citizens. It requires police and DHA resources to arrest and deport so many people, and the asylum system overall has been brought virtually to a standstill because of the high number of Zimbabwean applicants. Unsupported clinics in inner-city areas with high immigration rates are overcrowded.

3.2 *Livelihood Support*

- 3.2.1 Looking at governmental responses in terms of the actual needs of Zimbabweans, rather than from the perspective of legal obligations, there are even greater gaps. In a 2007 survey of over 4,654 Zimbabweans conducted in Johannesburg by the University of South Africa (UNISA), respondents noted the following priority needs (Makina 2007:5).

Table 1: Requirements of Migrant Zimbabweans in South Africa

¹⁴ Department of Home Affairs (2007). Statement on Transit Shelter for Refugees. [Media release](#). 5 October.

Assistance Requirements	Cited Frequency %¹⁵
Securing Refugee Status	57%
Setting up own small business	46%
Work permit	37%
Employment commensurate with qualifications	35%
UN assistance to be repatriated back home	4%
HIV Counselling and Treatment in Government Hospitals	4%
Legal Counselling	3%

- 3.2.2 Apart from refugee documentation, the primacy of employment and income-related priorities is clear. Not mentioned in the list, but clear from the UNISA finding that 90% of their respondents send money, goods or both to Zimbabwe monthly, is the need for safe and effective remittance transfers. Only 2% of respondents reported using formal banking channels with the rest using private and informal channels (Makina 2007:7).
- 3.2.3 In terms of addressing questions of employment, the skills crisis in South Africa and the relatively high levels of skills among Zimbabwean migrants could have opened opportunities for public sector employers to enable preferential or targeted recruitment of Zimbabweans (including fast track work permits). However, only the Department of Education has introduced a (badly advertised) initiative to facilitate the employment of qualified Zimbabwean teachers, while other Departments have made no moves to recruit badly needed qualified doctors, nurses, engineers, etc. The Departments of Trade and Industry, Social Development and other government bodies tasked with supporting small business development have also not introduced any measures to incorporate Zimbabweans into their programmes – either as beneficiaries or partners, given their often greater entrepreneurial experience than among South Africans.
- 3.2.4 While South Africa's asylum system allows recognised asylum seekers and refugees to work and set up businesses, the majority of Zimbabweans have not been able to access documentation, as discussed above. Even with this documentation, private employers often do not recognise or know about the right of asylum seekers and refugees to work, and there has been no initiative from the Department of Labour to educate employers in this regard (which is an issue relevant to all asylum seekers and refugees, regardless of nationality).
- 3.2.5 A key employment and remittance related concern is migrant access to the banking system (again complicated by the lack of documentation). There has also been no governmental directive or advisory to banks in this regard, nor has there been any initiative to develop or support remittance systems.

3.3 *Leadership and Coordination*

- 3.3.1 The most significant, but also in many ways the least discussed, area of governmental (non)response to Zimbabwean migration has been in providing

¹⁵ Multiple answers were possible.

leadership and coordination towards an overall policy position. The only public statement on Zimbabwean migration has been President Mbeki's much quoted proclamation in Parliament that "as to this... inflow of illegal people, I personally think that it's something we have to live with... it's difficult; you can't put a Great Wall of China between South Africa and Zimbabwe to stop people walking across."¹⁶ Under Mbeki's Presidency and since his replacement by Kgalema Motlante, there has also been no public policy statement on Zimbabwean migration from either the Presidency, Parliament, Cabinet, or the National Executive Committee of the ruling African National Congress. There has not even been a dedicated debate on Zimbabwean migration in either the Parliamentary Committee on Home Affairs or Parliament's plenary sessions. None of the opposition parties have made Zimbabwean migration a major part of their political platform – although whether this remains so during the run-up to the 2009 national elections remains to be seen.

- 3.3.2 Apart from public policy statements, there is also no operational framework in place for coordinating government interventions regarding Zimbabweans. There is, for example, no inter-departmental task team. The Disaster Management framework is relatively new and untested, and responsibility is located within a politically and institutionally weak ministry which cannot effectively provide leadership to departments even though it would have a mandate to do so in emergency situations.
- 3.3.3 The fragmentation and timidity of responses by various departments as discussed so far all hinge on the lack of central direction on how Zimbabwean migrants should be understood and what the government's position should be. The lack of political leadership and government coordination mechanisms also leads to the ad hoc and weak nature of municipal level responses, since they are not embedded within a wider national policy framework in relation to Zimbabweans. Government has also not provided any guidance to domestic civil society, as discussed further below. Finally, international organisations, including UN agencies as well as international NGOs, have not been able to intervene effectively, even though they have experience with different aspects of large-scale migration movements, because they require an explicit invitation or permission from a host government to operate.
- 3.3.4 What is striking about governmental and party political responses is not only that they have not taken a coordinated stance to protect Zimbabweans in the country, but that there have also not been any strong voices for greater control or restriction. In the heat of the xenophobic violence in May 2008, several politicians and government officials called for tighter border controls, but this was not given political priority before then, and renewed discussions have only arisen in December 2008 in reaction to the cholera outbreak. Political discussion of migration policy, therefore, has been happening mainly in response to sudden and media-profiled deadly emergencies, rather than in response to an ongoing large-scale movement of people. Concerning that, there has been almost eerie silence.

¹⁶ Speech to National Assembly, Parliament, 17 May 2007.

- 3.3.5 The reasons for this political silence are complex and not yet well documented. Further research is needed on the impact of different voices within government and especially within the ruling ANC and its coalition partners, including pro- and anti-Mbeki factions, the ANC Youth League, the COSATU trade unions and the South African Communist Party (the latter two being on record as criticising President Mbeki's 'quiet diplomacy' strategy in Zimbabwe). In addition to links between South Africa's foreign policy towards Zimbabwe and its domestic policy towards Zimbabweans, there are political pressures from domestic constituencies suspicious of the use of public resources for foreigners. The strength of public (and potential electoral) disaffection with government on service provision issues and migration management was evidenced by the widespread violence against foreigners in May 2008 in informal settlements.
- 3.3.6 In summary, government has provided no leadership in responding to Zimbabwean migration, its legal responses have been inadequate, and its ability to address and support the livelihood needs of Zimbabweans virtually non-existent. In this context, how has civil society responded?

4.0 Civil Society Responses

While there have been a wide range of civil society-based interventions to assist Zimbabweans – including from established and formal South African NGOs, more or less formalised faith-based organisations, and 'Zimbabwean' organisations, including Zimbabwean self-help organisations as well as organisations set up specifically in order to assist Zimbabweans – the cumulative impact in relation to Zimbabwean numbers and needs has been relatively small. We can categorise civil society responses in similar terms as with government: relating to migration law and socio-economic rights, livelihood support, and leadership and coordination.

4.1 *Migration Law and Socio-Economic Rights*

- 4.1.1 As in government, there is a division in civil society between those actors dealing with legal and protection issues, and those providing social welfare. Most of the longest-established and most institutionally stable organisations at the core of the 'migrant and refugee rights sector' in civil society are focused on legal work, training, monitoring and advocacy – all of which aim at holding the government to account in relation to its legal obligations to migrants, rather than providing direct protection or welfare services by civil society. Since democratisation in 1994, legal organisations have been successful in expanding the scope of migrant rights through strategic litigation and have played an important part in monitoring the implementation of existing rights by government through representing migrants whose rights have been abused. In the case of Zimbabweans, this includes overturning the categorical exclusion of Zimbabweans from the asylum system in 2002 (see above), and closing down a detention centre established for Zimbabwean deportees in Musina in 2007 which contravened basic conditions of dignity and administrative justice. Most of the work by legal organisations has been on an individual basis, however, and there have as yet been no broad legal challenges to the government's

deportation policy, its lack of comprehensive legal status provision for Zimbabweans, or its lack of socio-economic rights enforcement, for example.

- 4.1.2 Another key limitation of legal NGOs has been their dual mandate constraint in assisting Zimbabweans primarily motivated by economic and humanitarian needs. On the one hand, most legal organisations dealing with migrants are funded by UNHCR which until 2007 required them only to assist asylum seekers and refugees. On the other hand, they are limited by the provisions of domestic law, which provides few options for undocumented migrants who do not have a strong claim of fleeing persecution. Finally, the effectiveness of legal organisations is constrained by the ability and will of government actors to implement legal directives. Judgements requiring the Department of Home Affairs to expedite its asylum adjudication process have simply been ignored by a Department institutionally unable to fulfil its duty.
- 4.1.3 Another civil society approach has been to offer information as a means of facilitating and improving the interaction between Zimbabweans and the government. Such information is provided to government actors in the form of training on migrant rights, or to migrants and other NGOs concerning means of accessing services from government. NGOs also act as intermediaries between migrants and government (or private) service providers by advocating with specific, often local, actors to improve their service provision. This includes convincing schools to admit Zimbabweans children, clinics to treat Zimbabweans, police stations to respect asylum permits, and landlords not to discriminate against Zimbabweans. While these local initiatives are often quite successful in smoothing relations between specific schools, clinics and police stations with migrant groups in that location, they generally remain localised, are not documented or maintained systematically over time, and are not coordinated beyond the local level.
- 4.1.4 There are some higher level advocacy initiatives, notable through the Consortium for Refugees and Migrants in South Africa (CoRMSA) which acts as an umbrella body for the sector with member organisations. CoRMSA and its partners have advocated with local government in Musina and with city governments in Johannesburg and Cape Town, for example, on the need for more coherent policies regarding Zimbabweans, yet with only marginal effect. Attempts to access and advocate with national government decision-makers have not been successful. The South African Human Rights Commission, a governmental body but one tasked with independent monitoring of government, could potentially play a major role in high-level migrant rights monitoring and advocacy. In practice, however, its role has been ambivalent, with CoRMSA openly criticising its lack of forceful action on issues such as xenophobic attacks on foreigners, including Zimbabweans, and its incapacity to act consistently in pushing for better conditions within the asylum system (CoRMSA 2007; 2008).
- 4.1.5 Despite a growing capacity within the civil society advocacy sector, significant problems remain. Migrant and refugee rights advocacy organisations remain 'ghettoised' from other large South African civil society institutions which focus on issues of civil and socio-economic rights more broadly. Where Zimbabwean issues have brought together a wider range of South African civil society

institutions, including labour unions and social movements, this has mainly focussed on advocacy regarding the situation within Zimbabwe, rather than concerning Zimbabweans in South Africa.

- 4.1.6 Other advocacy weaknesses in the sector have been the continuation of a historical focus on refugee rights (especially access to the asylum system and refugee documentation) to the exclusion of undocumented economic migrants, including many Zimbabweans. Most significantly, organisations lack the capacity for effective high-level advocacy and the advocacy that takes place, as mentioned, is often local, *ad hoc* or insufficient.¹⁷ The lack of access to government and the frequently confrontational relationship with the Department of Home Affairs has been a particular problem in the sector.
- 4.1.7 Rather than putting pressure on government to provide services, several civil society organisations provide direct welfare services, including the provision of shelter or accommodation, food, clothes, school fees for children, and trauma counselling. The UNISA study found that Zimbabwean organisations (including churches) were cited as providing the most welfare assistance (to 26% of their sample), followed by South African NGOs (5%), the South African government (3%) and South African churches (2%) (Makina 2007). It is significant that this work is mostly (although not entirely) conducted by Zimbabweans themselves or by faith-based organisations. This means that most of the funding for these activities comes from the communities in which they are located rather than from donors.
- 4.1.8 Since the government does not provide food or shelter, such civil society-based welfare provision does not amount to parallel service provision. However, this is an issue in relation to health care. A study of anti-retroviral provision to non-citizens in Johannesburg found that governmental clinics were consistently referring non-citizen patients to non-governmental clinics and private hospitals for medication and care, in effect abrogating their public duty to provide health care (Veary and Palmary 2008).
- 4.1.9 There are several weaknesses in the non-governmental welfare service provision sector. Firstly, NGO welfare services already only cover a very small percentage of migrant needs and migrant welfare NGOs are struggling to find the capacity and funds to support the growing numbers of Zimbabweans. According to the above mentioned UNISA study, even for Zimbabweans based in inner city Johannesburg, where most services are located, 60% of respondents reported receiving no assistance from any organisation (Makina 2007). There are virtually no organised welfare (or legal) services outside the inner cities of the major urban areas. Second, while there are many small organisations offering movable welfare goods (e.g. regular soup kitchens, clothes donations, etc.), the great need for accommodation is addressed by very few. Third, some of the organisations, including churches which have been offering accommodation, do not have the experience, structures and capacity to

¹⁷ The need for more professional and advocacy was also identified as a key sectoral weakness in Palmary's (2006) review of the migrant rights sector.

professionally manage the service, so that there are reported abuses and violence within such ad hoc shelters.¹⁸

- 4.1.10 A further concern is that many mainstream South African welfare providers, including shelters for the homeless, home based care providers, small income generation NGOs, etc. explicitly exclude non-citizens from their services. A related point, similar to the above mentioned advocacy ghettoisation, is that while many of the migrant and refugee-focussed welfare service providers are networked with each other throughout the country (for example, through membership in CoRMSA), they are often not networked with the mainstream South African service organisations working on housing, food provision, basic health care provision, etc.
- 4.1.11 A significant but badly understood welfare source for Zimbabweans are the services which community-based church groups (especially Pentecostal denominations) provide to their Zimbabwean members. Such welfare services are often not 'organised' and work more as informal social networks, but they probably (there is as yet no concrete study of this) contribute greatly, along with family and community networks, to the welfare needs of recently arrived Zimbabweans.
- 4.1.12 As in government, there is virtually no non-governmental institutional capacity or experience in providing emergency response services in South Africa (e.g. emergency housing, water and sanitation, health care, logistics, management). This is illustrated most strongly by the fact that the National Disaster Management Centre (NDMC) does not have any local NGOs, apart from the South African Red Cross Society, with which it works. The South African Red Cross Society has a national network of branches and can draw on the international expertise and support of the International Committee of the Red Cross (ICRC) and the International Federation of Red Cross and Red Crescent Societies (IFRC), but its response to the displacement caused by the May 2008 violence against foreigners demonstrated the limitations of its local operational capacity.
- 4.1.13 Furthermore, the NDMC has only recently started drawing international humanitarian NGOs with offices in South Africa into its consultations and plans. These include Oxfam, CARE, World Vision, and MSF, all of which have limited operations in South Africa and have until recently used the country mainly as an administrative base for regional work.

4.2 *Livelihood Support*

- 4.2.1 Since formal and legal livelihoods are so strongly dependent on documentation, civil society does not have the mandate or power (except through advocacy, as discussed above) to intervene in the improvement of livelihood conditions. There are NGOs which offer small-scale skills training and income generation projects for the migrants they assist, but this is mostly limited to documented Zimbabweans. The dominant livelihood support systems, therefore remain

¹⁸ Of course, it is likely that levels of abuse would be higher if such church-based accommodation were not available.

informal Zimbabwean networks, and the actions of many individual South African citizens. For the 60% of (urban) Zimbabweans who report not receiving any assistance from organised groups in the UNISA study, as noted above, these are the only sources of assistance, and the percentages of Zimbabweans overall who primarily depend on these sources is probably much higher (Makina 2007).

- 4.2.2 Zimbabwean networks play a key role in providing initial accommodation, information about accessing documentation and introduction to various forms of employment. The starting point of Zimbabwean networks are people who have been living and working in South Africa for many years, since before the current political and economic crisis, or who arrived relatively early on in the crisis. There are indications, however, that these networks have reached saturation point in that the more established Zimbabweans, with legal status, accommodation and employment, have already assisted so many family members and others that they no longer have any resources.
- 4.2.3 Such networks are usually not considered in analyses of host country responses to migration, because they are informal and because, perhaps, they are not 'legible' to bureaucratic institutions in either government or formal civil society. However, if the purpose of a response analysis is to identify 'vulnerable groups' in need of assistance, and to identify turning points when humanitarian needs reach a critical point for both migrants and the host society; or even if the purpose of the analysis, as here, is to understand why and when formal institutions respond or not; then understanding how these networks function is crucial. Key questions which impact on the more formal response mechanisms include whether some ethnic or regional groups have stronger networks than others; whether such networks lead to greater dispersion or concentration of new arrivals in the parts of the country; what impact such networks have on the ability of Zimbabweans to become self-supporting (both positively for those receiving assistance and negatively for those giving assistance); and when the resources in such networks become exhausted. The volume of resources and assistance costs which the government and formal civil society save because of these networks should not be underestimated.
- 4.2.4 A second commonly ignored livelihood resource for Zimbabweans are interactions with individual South African citizens. South Africans, in the form of employers, landlords, church-goers, neighbours, taxi drivers, etc. provide what we might call radically decentralised responses to Zimbabwean migration. While this is the case with all migrants, there are several issues specific to Zimbabweans in South Africa. The first is the linguistic and cultural affinity of Zimbabwean Ndebele speakers with South African Ndebele and Zulu speakers, allowing many Zimbabweans to 'pass' as South Africans in everyday interactions. The second is Zimbabweans' generally good command of English and relatively high education levels, which enable them to enter into service sectors such as the hospitality industry more easily than many other migrant groups. Radically decentralised individual responses range from charity to xenophobic violence, including casual or full-time employment (whether within labour standards or exploitatively), the provision or denial of accommodation, protection or identification to immigration policing, etc.

4.2.5 Many commentators in South Africa have understood the May 2008 violence against foreigners essentially as a public response to Zimbabwean migration. The belief that the presence of large numbers of Zimbabweans in townships and informal settlements was an immediate trigger of the violence is false, however. Research by the Wits Forced Migration Studies Programme in nine of the locations where violence broke out shows that perpetrators of the violence were not reacting to the mere fact of rising numbers of Zimbabweans (or other foreigners) in their areas, but rather to specific local power struggles, augmented by the feeling of abandonment by government and political parties, including on issues relating to migration management (Misago, Landau et al. 2008).

4.2.6 As with formalised civil society, the leadership role of government therefore impacts on the general citizenry. Without a clearly articulated policy on the position of Zimbabweans in South Africa, the general public, who had only been told by former President Mbeki to 'live with' it, act on the basis of individual opinions (often without an understanding of either immigration law or the Constitution) of what rights Zimbabweans have in the country. Furthermore, the way in which formal government and civil society responses are portrayed (as hand-outs, crime prevention, upholding the Constitution, neighbourly solidarity, etc.) impact on the willingness of the general citizenry to contribute or constrain their own responses.

4.3 *Leadership and Coordination*

4.3.1 Civil society has experienced many of the same leadership and coordination gaps concerning Zimbabwean migration as has the government. These include the lack of a single organisation or coalition of organisations to champion and coordinate Zimbabwean migration issues; political divisions among different sectors of civil society regarding Zimbabwe and Zimbabweans in South Africa; and institutional and operational differences which affect coordination and cooperation.

4.3.2 As mentioned above, Zimbabwean migration, in spite of the volumes, has not become a mainstream priority for South Africa's large and established social justice, democratisation or development NGOs, the faith-based response is fragmented, and migrant and refugee rights organisations are relatively ghettoised. While coalitions among these different civil society sectors emerged around the May 2008 xenophobic violence, there was no similar coalition around Zimbabwean migration before then and the collaborations started in May died down or vanished soon afterwards. Where there have been broad civil society coalitions around Zimbabwean issues in the past, such as the Zimbabwe Solidarity and Consultation Forum, these have focussed mainly on advocacy regarding the situation within Zimbabwe, rather than concerning Zimbabweans in South Africa.

4.3.3 Particularly social movements with broad-based membership among poor South Africans have struggled to develop a clear stance on Zimbabwean migration. There is a strong popular and media rhetoric in the country that

delays in public service delivery to poor South Africans, especially in terms of housing and employment creating, is due to the influx of foreigners. Openly advocating for the welfare and legal protection of Zimbabweans is therefore seen by many as incompatible with the struggle of poor South Africans to access services and employment. It is also notable, however, that like with the political parties, no major South African social movement or civil society grouping has openly advocated for the encampment or expulsion of Zimbabweans.

- 4.3.4 Institutionally, the funding base, capacity and sustainability of organisations in the civil society sector varies greatly. Some receive only donations of food, clothing etc. from members of the community. Others have annual budgets in excess of R5,000,000 (c. USD 500,000) for their work. A significant number of the organisations, particularly those providing for the basic needs of refugees, have no donor funding and do not have the accounting structures in place to manage such funds (Palmary 2006). Several of the Zimbabwean organisations do not have formal offices or are constantly in danger of losing their rented spaces due to lack of funding. Most run on volunteer time as with other refugee-run organisations in the country. This also contributes to the tensions between newer, less stable organisations and more established, professional South African and Zimbabwean organisations.
- 4.3.5 Organisations run by Zimbabweans in South Africa are also divided and politicised, reducing their potential for a coordinated advocacy position, or for galvanising a joint position together with South African organisations. Divisions include between long-term, largely professional, Zimbabwean residents (such as the Zimbabwean Doctors' Association, Nurses' Association, Lawyers' Association, etc.) and more recent arrivals; between Ndebele and Shona speakers; and according to party political affiliation. Furthermore, Zimbabwean advocacy organisations generally represent urban-based, educated and politically-motivated refugees rather than the larger group of Zimbabweans spread around the country and mainly concerned with their families' economic survival.
- 4.3.6 The Ndebele-Shona divide and a general transfer of conflict and distrust from within Zimbabwe to South Africa is a feature of Zimbabwean organisations, which impacts on their service provision. A related problem is that Zimbabwean and other organisations face difficulties in gaining the trust of potential Zimbabwean clients. For example, the Zimbabwean Torture Victims Project reported in 2005 that "many (actual and potential) respondents [for their survey] were reluctant to participate, suspicious of the motives of the interviewers, and uncomfortable to disclose information that they felt might be used 'against them'." (Zimbabwe Torture Victims Project 2005:2). Finally, those Zimbabweans who have been able to integrate into townships and work places as Zulu-speaking South Africans and have acquired South African identity documents are often reluctant to come forward to NGOs, especially Zimbabwean NGOs, for services, for fear of 'outing' themselves as non-South African (Polzer 2007).
- 4.3.7 In sum, and strangely parallel to government, civil society has not been able to impact significantly on the legal framework used by government nor on

government's interpretation and use of existing legal frameworks; it has not been able to put in place a parallel welfare system remotely approximating the need; there have been only very limited attempts to understand and support informal welfare and livelihood support structures for Zimbabweans; and no leadership has emerged from civil society to challenge government's silence or to provide an alternative forum for response coordination.

5.0 Conclusions

- 5.1 This analysis of South Africa's responses to Zimbabwean migration has highlighted two characteristics of South African institutions across government and civil society which are not unique to migration management issues: political silences and institutional fragmentation. For regular observers of how states deal with migration in the twenty-first century, the most puzzling political characteristic of South Africa's responses to Zimbabwean migration has been the silence: the lack of public rhetoric and policy debate. It is particularly notable that this silence has stretched across sectors, from government to opposition parties, organised civil society and the media. An analysis of the reasons for this silence would require a different article, but the tendency to avoid rather than engage in open debate on controversial issues must be understood as a reflection of wider South African political processes and traditions. Similarly, the institutional fragmentation which has underpinned the inability of both government and civil society to develop political or operational cohesion on Zimbabwean migration is a general characteristic of the current South African polity.
- 5.2 Political silences and institutional fragmentation exist in South Africa beyond the specific issue of managing Zimbabwean migration. They have, in the past and currently, also impacted on the management of HIV/AIDS, land reform and unemployment, as a few examples. While the management of complex mixed migrations remains an important area for the development of international, regional and domestic legal and policy frameworks, understanding South Africa's (and other countries') responses to large-scale mixed migration is primarily about understanding specific domestic political contexts.

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