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LETTERS

Have your say in the next issue of *Crossings* by writing to the Editor, *Crossings*, at the above address.

COVER PAGE

THE REVOLVING DOOR

Luis Covane, Julio Macaringe and Jonathan Crush, Crossings, 2(2) June 1998

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*South Africa has a "Mozambican problem" not an "illegal alien" problem.
LUIS COVANE, JULIO MACARINGE and JONATHAN CRUSH
examine the results of a SAMP survey of deportees conducted by Arpac in Mozambique.*

SINCE the 1994 election, the Department of Home Affairs has deported nearly 500,000 Mozambicans. Mozambique has become the primary target of the government's efforts to control undocumented migration to South Africa.

Over 80 percent of deportees are from Mozambique, and the proportion has actually increased since 1994. South Africa does not have an "illegal alien" problem so much as a "Mozambican problem". The sooner this reality is faced, the sooner can creative solutions be devised which address the case specific causes of Mozambican migration and are in the interests of both countries.

Stories about the poor treatment of Mozambicans at work, at the time of arrest, at the Lindela Detention Centre and on the train home are legion in the media and amongst non-governmental organizations. Questions have also been raised about how widespread and pervasive the reported abuses actually are.

A disturbing new report by Human Rights Watch argues that there is widespread and systemic official abuse of refugees, asylum-seekers and undocumented migrants in South Africa. However, government has questioned the report's methodology and the extent of the abuse.

A 1997 SAMP survey of a representative sample of Mozambican deportees, interviewed in Mozambique, provides important insights into their treatment in South Africa. The survey also sheds light on who the migrants are and why they are going to South Africa.

The SAMP survey provided an interesting social profile of recent migrants from Mozambique. The majority of the deportees are young, unmarried adults. Some 56% of the total sample (and 61% of the men) were aged between 19 and 25 years old. Three-quarters of the men and 81% of the women were unmarried. The migrants include many youths with few formal qualifications and limited job opportunities at home. Some 30% of the sample had less than 5 years' education.

Over half of the deportees gave the lack of employment opportunities in Mozambique as the reason for migrating. Amongst male migrants, the figure was as high as 58%. Amongst women, only 27% as women go as much to trade as to work. Many of the other deportees appear to be longer-term residents of South Africa, including ex-refugees who left Mozambique in the 1980s and early 1990s.

Rather than going to South Africa to sponge off health, education and social welfare services, the majority of deportees went for work and, indeed, most had found jobs in South Africa. Only 4% of the sample were unemployed at the time of arrest. Male Mozambicans are predominantly employed in the construction industry. Over 30% had been working in construction as labourers, stone-masons, carpenters, decorators and electricians. Farm work, car-repairs and domestic and shop service (for women) each accounted for about 10% of the jobs.

Were they taking jobs from South Africans? The migrants themselves don't believe so. The main reasons, they say, are that they have skills that South Africans lack and that South Africans won't work for the wages on offer.

The question therefore needs to be put to South African workers. Would they be prepared to displace the 42% of migrants who earn less than R15 a day? Or the additional 30% who still earn less than R25 a day?

Despite the poverty wages, 40% of the Mozambicans said they were happy with what they earned. When the alternative is destitution in Mozambique, perhaps there is little choice. Spending priorities included a house at home, equipment to start a business and remittances to support families in Mozambique.

DEPORTATIONS OF MOZAMBICANS		
Year	No. Deported	Percentage of Total Deported
1990	42 330	79
1991	47 074	77
1992	61 210	74
1993	80 926	84
1994	71 279	79
1995	131 689	84
1996	157 425	87
1997	146 285	83
TOTAL	738 218	82

The deportees were asked about their experience at the hands of the South African police and immigration officials. About 37% of the deportees were picked up off the street and another 8% at work. This was consistent with the next two findings:

- Only 2% of the deportees were allowed to get their personal belongings before being deported.
- More than half (54%) did not get their last salary payment before deportation. Some of these were undoubtedly turned in by employers before payday.

As many as 28% of deportees said that they had suffered physical violence during the arrest and deportation process. Nearly a third (30%) reported that they had been asked to pay bribes by officials. The human rights abuses reported by Human Rights Watch would therefore appear to be uncomfortably widespread.

Are the mass deportations of Mozambicans having a dampening effect on migration? The common wisdom is that they are not and that Mozambicans, once deported, immediately turn around and come back again (revolving-door migration).

Another aspect of the common wisdom is that Mozambicans are immigrants who wish to stay, not migrants who wish to work and then go home. The survey shows that nearly half of the deportees (48%) had gone to South Africa in the last two years; 22% between 1991 and 1994; and only 8% before 1990 (with 22% no answers).

This confirms that most deportees are recent migrants not long-term immigrants. The survey found no evidence that Mozambicans wish to abandon their war-ravaged country permanently. Only 5% of those interviewed would like to settle in South Africa. The vast majority simply want to work, earn money and go home.

Many have questioned the cost-effectiveness of South Africa's approach to Mozambican migrants. Some say that the government should get even tougher.

Others say that this would just be oiling the revolving door and that a new approach is needed which recognizes the value of hard-working Mozambicans to the South African and regional economy.

Certainly something needs to be done to break the endless, costly and ineffective cycle of arrest, deportation and return.

Luis Covane is Director-General of Arpac, Julio Macaringue is an Arpac researcher and Jonathan Crush is project director of Samp.

Sources: The Human Rights Watch Report is available on the internet at <http://www.hrw.org>

Another relevant study is N. Johnston and C. Simbine, "The Usual Victims: The Voices of Mozambicans in South Africa" In J. Crush, ed., Beyond Control (Idasa, 1998). The SAMP research will be reported on in a forthcoming Migration Policy Series paper.

GREEN PAPER

LABOUR LAWS MUST PROTECT ALL WORKERS

Leon Pretorius, Crossings, 2(2) June 1998

and

WEAKNESSES IN EMPLOYER SYSTEM

Vincent Williams, Crossings 2(2) June 1998

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Labour Laws Must Protect All Workers Leon Pretorius

Many employers hire undocumented migrants to avoid paying decent wages, but how does a system of employer sanctions contribute to the curbing of illegal labour migration? LEON PRETORIUS reports.



Henner Frankendorf/PictureNET (Africa)

THE failure of border controls to keep undocumented immigrants out of South Africa has prompted the Department of Home Affairs to adopt stricter internal measures. One of these measures, introduced as part of the 1995 Amendments to the Aliens Control Act, is increased punishment for employers who knowingly hire undocumented immigrants.

Employer sanctions usually involve fines or prison sentences. They could also include withdrawing trading licenses and denying business contracts with government. Seen from this perspective employer sanctions is meant to keep undocumented immigrants out by discouraging employers from providing jobs for them.

The government's renewed effort to enforce employer sanctions comes at a time when immigrant networks have already entrenched themselves. For example, *The Star* (6/6/97) reports that a number of covert groupings smuggle hundreds of people a day from the Mozambican frontier town of Ressano Garcia to South Africa.

These networks are also used as a channel through which immigrants and employers organize their recruitment. Immigrants employ other immigrants, immigrants are used by employers to recruit more immigrants. Labour brokers also tap into immigrant networks to ensure a cheap supply of labour for their clients.

Undocumented immigrants are usually employed to do difficult, dirty and dangerous work; they work very long hours for very little pay. Some employers also make use of child labour. This abuse of undocumented immigrants is not restricted to one industrial sector and for this reason the Congress of South African Trade

Unions (Cosatu) have called for stricter employer sanctions. The Chamber of Mines, some construction companies and farmers regard employers sanctions as a constraint on their right to determine wages, conditions of employment and enjoy bigger profits.

It should be recognized that employer sanctions are not effective to prevent immigrants from entering and finding jobs for as long as there are employers who are willing to provide jobs because they are able to exploit the illegal status of these immigrants. The employment of illegal migrants is a contravention of immigration law. More significantly, however, it is also a means used by employers to circumvent labour law which protects workers from the kind of exploitation that illegal migrants are subjected to. Perhaps a better approach will be to ensure that all workers, undocumented or not, are protected from exploitation. This shifts the responsibility of employer sanctions from the Department of Home Affairs to the Department of Labour.

The Green Paper on International Migration proposes the removal of many obstacles to obtaining permission for entry into South Africa. This will provide an incentive for people to seek official permission and enter through legal channels. The Green Paper also advocates employer sanctions in order to encourage employers to use legal channels when hiring temporary irregular workers. We need to add to this labour legislation which gives all workers, irrespective of nationality and status the same rights and protection.

This would make it more difficult for employers to undermine labour standards, as foreign workers would have the right to organize and report abusive employers. The best way of developing the capacity to monitor labour standards is to develop a legislative framework which empowers workers and their organizations to do so. This is relatively inexpensive and would complement the work of inspectors at the Department of Labour. The main task then becomes the monitoring of the employers who contravene labour standards and not those who hire undocumented immigrants. It also shifts the burden of blame from the illegal immigrant to the employer who is in fact guilty of breaking the law and perpetuating illegal migration.

Some have criticized the Green Paper proposals as further bureaucratizing the implementation process and that South Africa does not have the capacity to enforce employer sanctions. But a lack of capacity is no excuse for not addressing the continued abuse of undocumented immigrants by employers. The enforcement of the employer sanctions and the protection of the rights of immigrants is not only constrained by the lack of financial resources and the need to maintain fiscal discipline but also compromised by the reluctance to honestly and openly deal with employers.

Immigration controls invariably generate undocumented immigration. Employer sanctions cannot keep undocumented workers from entering the country. But neither can employer sanctions protect the labour standards of undocumented immigrants if they are deported. As long as the distinction between the rights of legal and illegal foreign workers remains, undocumented immigrants continue to be vulnerable to exploitation and unscrupulous employers will take advantage of them. This is the inescapable dilemma of immigration policy. A system of employer sanctions which does incorporate these issues will be very limited in either curbing illegal labour migration or encouraging employers to follow legal channels.

Leon Pretorius is a research fellow at the Centre for Southern African Studies (CSAS) at the University of the Western Cape.

Weaknesses in Employer System

Vincent Williams

Employer sanctions as a tool to curb illegal immigration is used internationally with varying degrees of success. VINCENT WILLIAMS reports on the US experience.

In 1986, the US Congress passed the Immigration Reform and Control Act (IRCA) which:

- made it unlawful to hire undocumented workers and imposing penalties for doing so;
- increased border enforcement;
- provided for the legalization of undocumented foreigners who had resided continuously in the US since before January 1, 1982.

It was hoped that employer sanctions, combined with enhanced border enforcement, would reduce the incentives for undocumented workers to enter the US and for employers to hire them. This, in turn, would benefit legal workers in terms of wages, working conditions and employment opportunities. Put simply, legal immigration status and the authorization to work in the US would become one of the labour standards that all employers would be required to uphold at the risk of being penalized for failure to do so.

While in principle, employer sanctions seemed to be an effective mechanism to address illegal immigration, in practice a number of factors emerged pointing to weaknesses in the system. These weaknesses were reported in a report by the US Commission on Immigration Reform published in 1994.

First of these weakness was the verification system. The IRCA stipulates that all employers are required to verify the identity and work authorization of all potential employees. Under these provisions, potential employees could use a combination of more than 29 different documents to prove identity and work eligibility. This placed a huge burden on employers in terms of paperwork, to determine whether the documents were genuine.

It also meant that employers had to verify the immigration status of each potential employee. While this may not have been an insurmountable problem for larger companies, the process may have been too cumbersome and costly for others and they chose not to comply.

The second problem, which also emerges from the verification system, is that it had the potential to increase discrimination against foreign-looking and foreign-sounding workers, whether they were legally authorized to work or not.

Employers could demand that such employees submit additional or different documentation or that verification procedures were used in relation to such employees only and not in relation to employees who were obviously US citizens.

Interestingly, the IRCA stipulates that it is unlawful to discriminate against employees on the basis of national origin or citizenship status yet the prescribed procedures can lead to this.

The third problem had to do with the fact that the enforcement of employer sanctions were often focused on paperwork violations. However, the worst offenders were employers who knowingly hired unauthorized workers. Also, serious penalties for such unlawful employment was not imposed, which meant that employers regarded such penalties as merely a cost of doing business, and it posed no significant deterrent.

The introduction of employer sanctions also added a new challenge to the Immigration and Naturalization Services (INS) mission. In the enforcement of employer sanctions, it was necessary for the INS investigations unit to change its mindset from being a police unit, conducting raids and apprehending illegals, to a regulatory agency responsible for modifying employer behaviour.

This has not been an easy shift, particularly where investigators saw the apprehension and deportation of illegals as their principal mission, even when this impeded their ability to successfully prosecute employers for violating labour standards.

In an attempt to address these problems and to ensure the successful implementation of employer sanctions, it was recommended that the verification procedure be simplified by the introduction of a computer registry.

The successful implementation of such a system would eliminate the cumbersome process involved in checking papers and would also free employers from the burden of verifying the immigration status of a person. Significantly, such a system would apply to all employees and not just non-citizens, thus decreasing the potential for discrimination.

To effectively enforce employer sanctions, it was further recommended that investigations into violations should be targeted to industries that have a history of hiring illegal workers. These would include agriculture, construction, manufacturing and the service industries. It was argued that employers who violate one labour standard (employing illegal workers) are also more likely to violate others and that the very presence of illegal workers permits these employers to violate these other standards

The conclusion reached by the report is that employer sanctions alone will not effectively deter unlawful employment practices or illegal immigration. Better enforcement of labour standards must complement the enforcement of employer sanctions and be an integral part of the strategy to reduce illegal immigration.

The requirement that all employers should adhere to a set of labour standards which applies to all workers, takes away the economic incentive that employers may have in hiring illegal workers. Simultaneously, employment opportunities will significantly discourage individuals who may have otherwise considered crossing the border illegally in search of employment.

EDITORIAL

MIGRATION A CHALLENGE TO WHOLE OF GOVERNMENT

Vincent Williams, Crossings, 2(2) June 1998

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South Africa's Ministry of Home Affairs recently announced that it has started to draft refugee and immigration policy and legislation, and intends to table these during the current parliamentary year.

This announcement is welcomed since it begins to address two important issues.

Firstly, an active policy process would help to circumscribe the extent to which political parties can use anti-foreigner sentiments to gain votes in the forthcoming national and local elections.

Secondly, the rising tide of xenophobia can in part be ascribed to the orientation of our existing legislation (the Aliens Control Amendment Act of 1995) towards exclusion and control. This is despite the fact that the Green Paper on International Migration, which proposes that we move away from these practices, was published nearly a year ago.

Immigration and migration policy and legislation governs, for the most part, entries into and exits from South Africa and the activities foreign nationals may engage in while resident in the country. It does not define the rights of foreign nationals in terms of access to welfare, health, education and other social services and benefits. The impact and influence of immigrants and migrants in South Africa is not limited to the border, but extends into almost all parts of South Africa's social, economic and cultural life. It therefore makes sense that other departments and ministries take this into consideration when they draft policies and legislation.

Should migrants and immigrants be entitled to the limited free medical care that South African citizens are entitled to? Would this extend to undocumented and illegal immigrants and migrants as well? Is this a question that should be answered by the Department of Home Affairs or should it be incorporated into the policies and legislation prepared by the Department of Health?

Similar questions can be asked about the access that immigrants and migrants have to housing, welfare,

education and the labour market. Clearly, this has budgetary implications for the departments and ministries concerned. A cursory investigation into policies drafted by various departments suggests that the potential impact of immigrants and migrants has not been considered.

Immigration and migration matters are seen by government officials as being the responsibility of Home Affairs and Home Affairs alone. Nothing could be further from the truth. What is needed is a co-ordinated effort on the part of all the relevant government departments and ministries to develop policies which are cohesive and do not contradict each other, so that there is a common approach to where and how immigrants and migrants fit into South African society.

In 1994, the Cabinet established an Interdepartmental Committee on Illegal Aliens. Its role, however, was primarily based on the provisions of the Aliens Control Act and, therefore, it tended to be oriented towards controlling (in a negative sense) immigration and migration.

The idea of having such a structure is good, but it is only workable if it focuses on the development and implementation of policies and legislation pertaining to immigrants and migrants, based on the Constitution and Bill of Rights. Such a committee could also derive enormous benefit from the input of non-governmental organizations and research institutions in this field.

The development of sound policy in the field of immigration and migration is a challenge which faces the whole of government, and not only the Ministry and Department of Home Affairs.

Vincent Williams is the project manager of SAMP.

REFUGEES

HUMANE APPROACH TO REFUGEES

Interview between Carola Eyber and James Hathaway, Crossings, 2(2) June 1998

and

INCLUDE US IN POLICY-MAKING

Carola Eyber, Crossings, 2(2) June 1998

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The Green Paper on International Migration makes a number of important proposals on refugee protection. JAMES HATHAWAY, an advisor to the Task Team that drafted the Green Paper, explains these to CAROLA EYBER.



Humane Approach to Refugees

Carola Eyber and James Hathaway

CAROLA EYBER: What are the Green Paper's proposals on refugees trying to achieve?

JAMES HATHAWAY: The proposals in this Green Paper give South Africa an opportunity to do what governments around the world have been aspiring to do for some time, which is to reconcile their duties to refugees and the legitimate expectations of their own people. You can do both. You can protect refugees and your own population and that's what this Green Paper tries to do.

What is the Green Paper's proposed model for dealing with refugees based on?

Firstly, there is a perception that refugee procedures amount to an uncontrolled backdoor route to permanent immigration. Secondly, the real costs associated with the arrival of refugees aren't fairly shared out among governments.

The Green Paper clearly makes the point that refugee protection is not about immigration. Refugee protection is a human rights system. The Green Paper tries to anchor the South African system to the basic commitment of international refugee law. This means that anyone who travels to South Africa, and

meets the definition of being a refugee, is protected in dignity as long as the problems in their own country continue.

The Green Paper also tries to share refugee protection responsibilities, particularly with the partner states in SADC. The intention is to make it possible for the South African government to do what needs to be done for refugees without sacrificing the legitimate expectations of South African citizens in their own pursuit of socio-economic rights and opportunities.

What is "temporary protection" referred to in the Green Paper? What about the argument that some refugees may need permanent protection?

For many years, temporary protection was something that happened predominantly in Africa. The states in the northern hemisphere often tended to equate refugee status to permanent residency. Virtually no African government ever agreed to treat refugees as permanent immigrants.

Unfortunately, however, in the last few years, particularly European states confronted with refugees from Bosnia, decided to take temporary protection and turn it into something quite awful. It became an excuse to marginalize refugees economically, to deny them family reunification and other basic rights.

However, the Task Team thought that it made sense in South Africa to return to the African tradition of protection for the duration of the risk, in other words temporary protection. All the basic human rights of refugees will be unequivocally protected by what is proposed in the Green Paper.

One of the critical features of the Green Paper is a commitment that if, after five years, it is still not possible for refugees to return to their own country, South Africa will guarantee individual permanent residency. In addition, the Green Paper also suggests that there are some groups -- for example, torture victims and unaccompanied minors -- who require an immediate solution and it has committed itself to provide that to these groups.

Refugees are concerned that, after the five-year period of protection specified by the Green Paper, they will be repatriated involuntarily.

This is absolutely false. The premise of the Green Paper is the basic rule in international law which says, if and when things are safe, refugee status comes to an end. If after the five-year point, it still isn't safe to go back, there would be not only no forced repatriation, but an automatic right to receive permanent residency in South Africa. That is an extraordinary commitment and I think it strikes exactly the right balance between being practical and being fair.

The Green Paper, however, does refer to "mandated repatriation". In contrast, the OAU Convention specifies that repatriation should always be voluntary. How do you respond to this?

The OAU Convention stipulates that, as long as a person is a refugee, there can be no mandated

repatriation. It always has to be voluntary. That is the basic rule under international law as well, known as the principle of non-refoulement.

However, if the human rights abuse or war that caused them to flee has ended, and the situation in the home state is durable and safe then the person ceases to be a refugee and no longer has rights under either the UN Convention or under the OAU Convention.

What about the concept of collectivized protection and burden-sharing?

The Refugee Convention of 1951 starts off by proclaiming how good and important it is that states around the world share responsibility to protect refugees. Then, when you read the fine print, it says "oh, and by the way, whatever state the refugee arrives at, is completely legally responsible for all of that person's protection needs and no one else owes that person or that community of refugees anything."

What we are trying to do is to provide governments with a system of sharing out both the burdens in financial terms, and the responsibilities in human terms, of refugee protection. This will allow them to say "yes" when a refugee arrives at the border, knowing that even if the numbers are too great or the costs are too high there is a guarantee, not a promise, that they will be helped.

Aren't refugees' rights going to be compromised through "collectivized protection" because the different states will only agree on the most basic rights rather than on giving refugees the maximum benefit of rights?

The system being proposed here starts from the premise that all of the rights codified in international law form the bedrock of the system and cannot be bargained away. In addition, decisions about which groups qualify for refugee status and the extent to which refugee status can, when it is safe, be withdrawn, would no longer be made behind closed doors in government bureaucracies. These would be made around the table of states that are sharing protection responsibilities, and would include the United Nations High Commission for Refugees and non-governmental organizations in the field.

The Green Paper does not commit South Africa to doing refugee protection on a collectivized basis. It simply says that this is something we should attempt to negotiate both with SADC states and with other international partners. That's a dialogue that's going to have to be worked through over a number of years.

"Collectivized protection" and "temporary protection" seem to be referring to situations of mass influx of refugees. Is this applicable in a country like South Africa, where we have not had a mass influx of refugees in the few past years?

What is a mass influx? If states see it as more than they are able to cope with --whether the number is 1,000, 10,000, 100,000 or a million - they should have access to a forum where they can, within a matter of hours, come to an understanding about sharing responsibility, rather than slamming the door shut. I

think it makes sense to be prepared for the possibility that powder kegs in a variety of countries in various parts of this continent may indeed give rise to significant refugee flows in the future.

Professor James Hathaway teaches international and refugee law at the Osgoode Hall Law School in Toronto. Carola Eyber is a SAMP project co-ordinator.

Include Us in Policy-Making Carola Eyber

There is no clarity about refugees' rights, which makes their position even more difficult. CAROLA EYBER speaks to two refugees about their feelings about being in South Africa.

Refugees do not feel safe and protected in South Africa. A number of factors contribute to the feeling of insecurity.

Firstly, the South African government and United Nations High Commission for Refugees (UNHCR) do not provide refugees with material and practical help. This exposes refugees to situations of extreme physical hardship and suffering. Most refugees struggle each day simply to find food and accommodation.

Secondly, it is almost impossible to get work with the Section 41 permit which is issued to refugees by Home Affairs when they apply for asylum. This is mainly because the permit classifies a refugee as a "prohibited person".

Xenophobia and violent attacks from South Africans are a third reason why refugees feel unsafe and unprotected. In Cape Town, some refugees have been thrown off trains solely because they are foreigners. Refugees even sometimes fear the police, as they often do not provide any protection against harassment and assault, and may also sometimes be involved in perpetuating acts of violence.

The absence of clear legislation on refugees means that the Department of Home Affairs has no clear guidelines or policies. As a result, some officials are erratic and unpredictable when dealing with refugees.

For example, recently some refugees in Cape Town went to the department to have their refugee status renewed. Instead, without explanation, this was withdrawn and they were issued with the Section 41 asylum-seekers' permits again.

Status determination takes a long time. Simon Simbizeye from Burundi has been in South Africa for over two years, while Zoe Nkongolo, from the Democratic Republic of Congo has been in the country for almost four years.

Yet neither has been granted refugee status and cannot be at ease until they have received asylum and know that they will not be deported home where their lives are in danger.

Instead they are living in limbo. They cannot plan for their future, or establish a life here in South Africa while their status has not been determined.

Simbizeye argues that repatriation must be voluntary and should depend on conditions in the home country. He also says refugees should be helped to reintegrate into the home community once repatriated, as most refugees leave all their belongings behind and have to start from scratch. Others who choose not to go back have to be integrated into the host society.

Simbizeye and Nkongolo say that making repatriation voluntary does not mean that most refugees will choose to stay in South Africa once conditions in their own countries improve.

Simbizeye points out that he, like all other refugees, did not choose to leave Burundi, but was forced to flee. "Wherever you go, whatever you do, you always think of your home country," he says. "On my side, I will never be happy outside of my home country."

Both Simbizeye and Nkongolo feel strongly that refugees should be involved in the policy process in South Africa: "It's good to talk about refugees, but to be a refugee is something else. We can't talk about policies without refugees themselves explaining exactly what is going on," says Nkongolo.

They also expressed concern with the perception that refugees are uneducated, unskilled and unthinking people who will not be able to contribute to policy debates. The Refugee Committee in Cape Town, for example, made a submission to the Green Paper section on Refugees. Simbizeye says they would like to continue to contribute to the policy-making process.

It is thus clear that, in order for refugees to feel more secure in South Africa, three things could be done:

- Refugee legislation which defines their rights and the role and responsibilities of the Department of Home Affairs could be passed.
- Social and material assistance needs to be considered if South Africa is to provide protection for refugees. This would include facilitating access to basic services such as education and health.
- Refugees could be involved in the policy process to enrich decision-making.

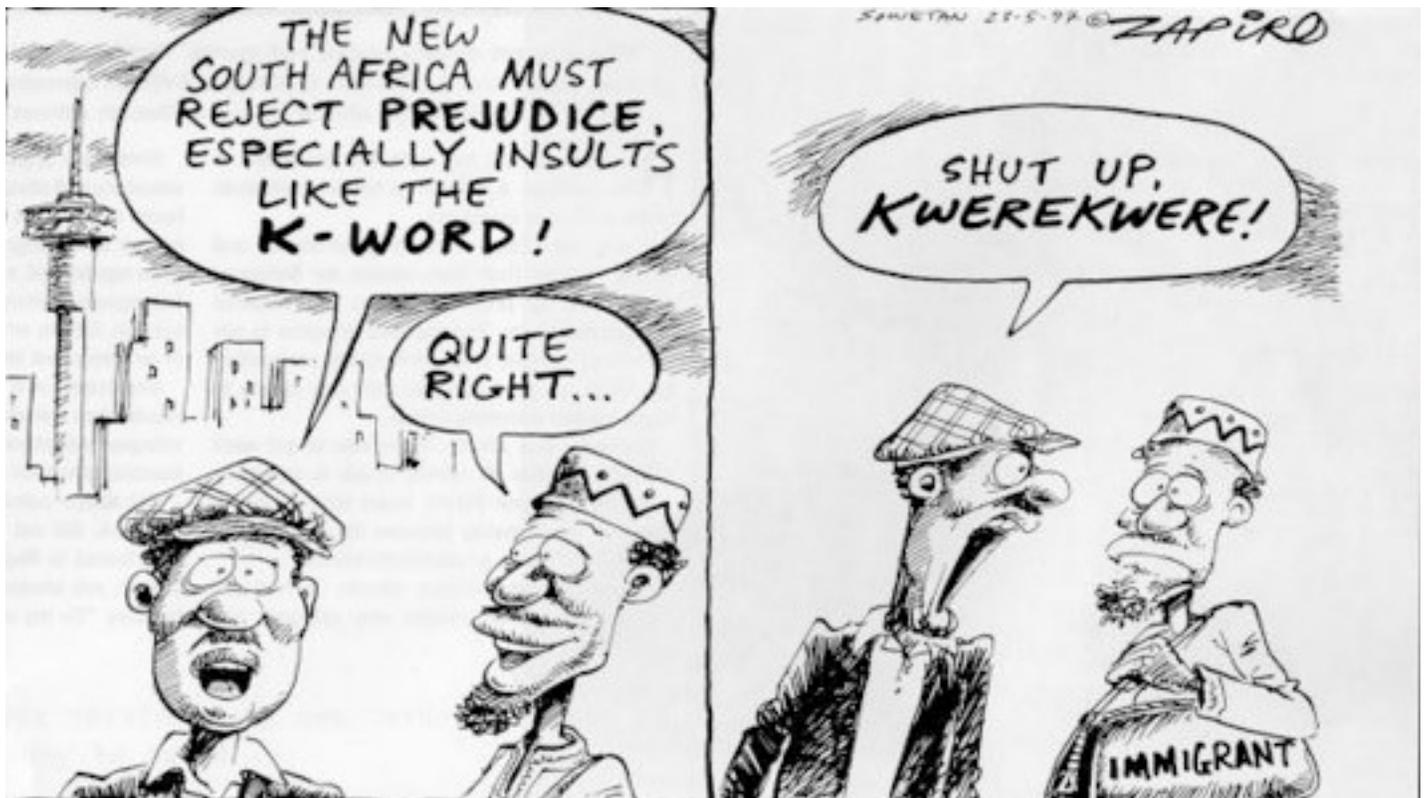
Carola Eyber is a SAMP project co-ordinator.

LANGUAGE

NAME-CALLING ALIENATES FOREIGNERS

Carola Eyber, Crossings, 2(2) June 1998

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Words like 'aliens' and 'amakwerekwere' dehumanize foreigners, argues CAROLA EYBER

A new vocabulary is developing in South Africa. Words such as aliens, illegals and *amakwerekwere* (referring to persons with strange accents) are being used to refer to people who are not South African citizens.

These terms are used negatively and form part of a consistent discourse about immigrants contributing to crime, unemployment and other social problems. Where does this way of talking about immigrants come from, what does it signify and how does it relate to the attitudes that South Africans hold towards foreigners, particularly black foreigners?

In a media briefing earlier this year, the Minister of Home Affairs, Mangosutho Buthelezi, referred to the "alarming numbers of illegals aliens" and "reports of positive correlation between illegal migration and crime". He then added that "...it is not surprising that there is, in the country, growing resentment to most foreigners".

When political leaders and other influential people voice such opinions, they contribute to a process of "scape-goating" of foreigners -- holding them responsible for the difficulties faced by South Africans.

The image of an "other" -- foreign nationals, who are illegal, criminal, exploitative and devious -- is created. It is implied that they can only be dealt with by stricter security and control measures.

Language and discourse have direct, physical effects. Words like the above dehumanize foreigners in much the same way that the apartheid regime dehumanized black South Africans.

Stereotyping foreign nationals leads to their marginalization, exclusion and the denial of rights which are due to them in terms of our Constitution and Bill of Rights. Not only are migrants talked about in negative ways, but they are also denied opportunities to express their views and opinions through channels where they will be heard and taken seriously.

We need to recognize that the language we use and the statements we make about foreigners contribute to, and perpetuate, the negative attitudes that South Africans hold. Facts, and not myths and stereotypes about foreigners, need to be communicated to all levels of public and political life. Our political leaders, government officials and other influential people must take some responsibility for this.

Carola Eyber is a SAMP project co-ordinator.

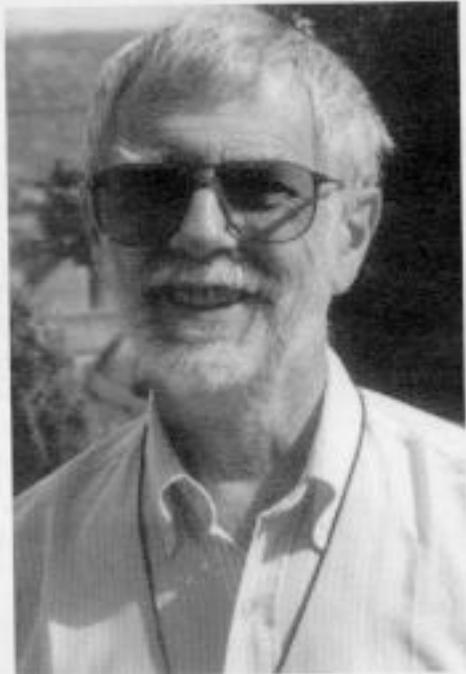
LESOTHO

A NECESSARY INCONVENIENCE?

John Gay, Crossings, 2(2) June 1998

PLEASE NOTE: Readers are welcome to reproduce and reference this article as long as appropriate acknowledgements are given

Perhaps it is time for a new immigration compact between South Africa and Lesotho, argues JOHN GAY.



Recently I went to the South African border post just across the Caledon River to have my six-months' border pass renewed. Ever since the end of apartheid, this pass has allowed me to enter South Africa for tourism, shopping, medical appointments, church services and visits to friends without having to wait in the queue for my passport to be stamped.

Border controls were very stringent for everyone during the bad old days, but now they are much relaxed. One result, of course, is that Basotho are crossing in increasingly large numbers for the same purposes as myself.

A recent SAMP survey found that 81 percent of Basotho interviewed had visited South Africa 28 times in their lives. In addition, 41 percent of Basotho want Lesotho and South Africa to simply join together and form one country.

But old customs die hard. Those Basotho who are unable to get six-month passes must still line up to have their passports stamped.

I saw two queues, each about 150 metres long, with about 1,000 people waiting to be served. While I waited for an hour in my queue of about 100, almost all Basotho, to get border passes renewed, the main queue did not visibly shorten but was continually augmented from the Lesotho side. I would estimate that during that morning probably 5,000 people were processed in the main queue, and another 400 had their border passes renewed.

In addition, a long line of cars was waiting to cross the border, using their six-month border passes. I saw about 20 cars in line when I arrived, and there were more than 20 cars still in the line when I left an hour later. It takes about 20 seconds for a car to be passed through the border, since the formality consists of giving the border guard the passport, which is usually not even looked at, plus a sheet of paper on which

the date is stamped. At least 150 cars go through each hour, with roughly two persons per car, bringing the total crossing the border that morning to more than 6,000.

For the Basotho, the border is a necessary inconvenience, now not as humiliating as it was in the apartheid years, but still a nuisance. They visit family on both sides of the border, go shopping, use medical services in Ladybrand or even closer, they have business to transact, they have jobs to perform. If they can get the privilege of a border pass, which in most cases depends on access to a motor vehicle, life is easier. If not, they wait patiently.

Perhaps it is time for a new, and perhaps special, immigration compact between South Africa and Lesotho.

Dr. John Gay is a researcher with Sechaba Consultants in Lesotho.

PROFILE

'DOCUMENTING THE CULTURAL DIMENSION'

Kerry Cullinan, Crossings, 2(2) June 1998

PLEASE NOTE: Readers are welcome to reproduce and reference this article as long as appropriate acknowledgements are given

Migration to South Africa is an important part of Mozambican life. Luis Covane, Director-General of Mozambique's cultural think-tank, Arpac, speaks to KERRY CULLINAN about his organisation's work.



Luis Covane, Director-General of Mozambique's cultural think-tank, Arpac.

"Mozambique historically was a most important supply of labour on the mines and in agriculture in South Africa. Mozambicans have been going to South Africa to work since the mid-19th century."

There are "very positive indications" that the many Mozambicans coming illegally into South Africa in search of jobs will slow down as the Maputo Corridor and other job-creating initiatives take off.

So says Luis Covane, the director-general of the Arquivo do Património Cultural (Arpac). Arpac, loosely translated as the archive of cultural heritage, is a research institute attached to the Mozambican Ministry of Culture.

Although it is a statutory body, Covane says Arpac is "free to decide our own research priorities, based

on what is in the national interest". He says that, in a country as poor as his, it is a distinct advantage to be linked to the government. "It stabilizes staff, we are given space in government buildings to work and we have access to top government officials."

A key area of Arpac's work focuses on migrants, as their income is very important to Mozambique's economy, especially in the south. It is for this reason that Arpac is the Mozambican partner of the Southern African Migration Project (SAMP).

"Mozambique historically was a most important supply of labour on the mines and in agriculture in South Africa. Mozambicans have been going to South Africa to work since the mid-19th century," says Covane. "Going to South Africa is not just important economically, but also culturally."

Unemployment in Mozambique has been exacerbated by the fact that, after its people won their liberation in 1975, the Portuguese colonialists destroyed the country's infrastructure before fleeing. The civil war that followed - fuelled by the apartheid government's support for the rebel Renamo movement - further destroyed the economy.

But Covane says people hope that the Maputo corridor, which will link Mpumalanga and Maputo and provide northern South Africa with access to a closer port, will help to stop the country's "brain drain". In addition, people hope that the *mozagris*, or presence of South African farmers in the country, will provide jobs and help to stabilize the rural economy. In addition, Alusaf is building an aluminum smelting works which is also expected to create jobs.

"We are also seeing joint ventures between South Africans and local businesspeople. All these things will help to bring migrancy to an acceptable level."

Arpac has a fascinating history. It was set up as a state project in 1978, staffed mainly by young people without academic qualifications and concentrated on data collection.

"The knowledge of the old people, who were and still are viewed as authentic libraries - especially as around 90 percent of the country was illiterate at the time of independence - were the top priority," says Covane.

"It was urgent to save the contents of these 'libraries', which were disappearing day after day with the death of the repositories - the old people."

In 1993, Arpac's status was upgraded from that of a project to a statutory public institution. This allowed Arpac the financial stability to expand its staff and improve the quality of its work.

Today, it has a staff of 72 distributed in provincial delegations in Nampula, Sofala, Cabo Delgado, Maputo, Manica and Gaza. Delegations are soon to be set up in Tete and Niassa. The main fields covered by Arpac are history, anthropology, sociology, economics and ethno-musicology.

"The current level of technical and scientific training of Arpac's staff is relatively high, and it allows for the promotion of new and relatively demanding initiatives," says Covane. These include the publication of analytical papers, running libraries and a film and photographic archive. In addition, its ethnomusicology component has produced three compact discs of traditional Mozambican music and a number of audiocassettes.

Arpac has also been conducting a range of research and training projects in collaboration with a number of other ministries, institutions and the Eduardo Mondlane University aimed at "documenting the cultural dimension of development".

"For us, researchers and technicians of Arpac, culture should not be viewed as a marginal element in the programmes for the global development of the country. We are determined to conduct research activities that contribute in an effective way so that decision-makers can benefit from scientifically correct and reliable measurement of the cultural dimension of development projects."

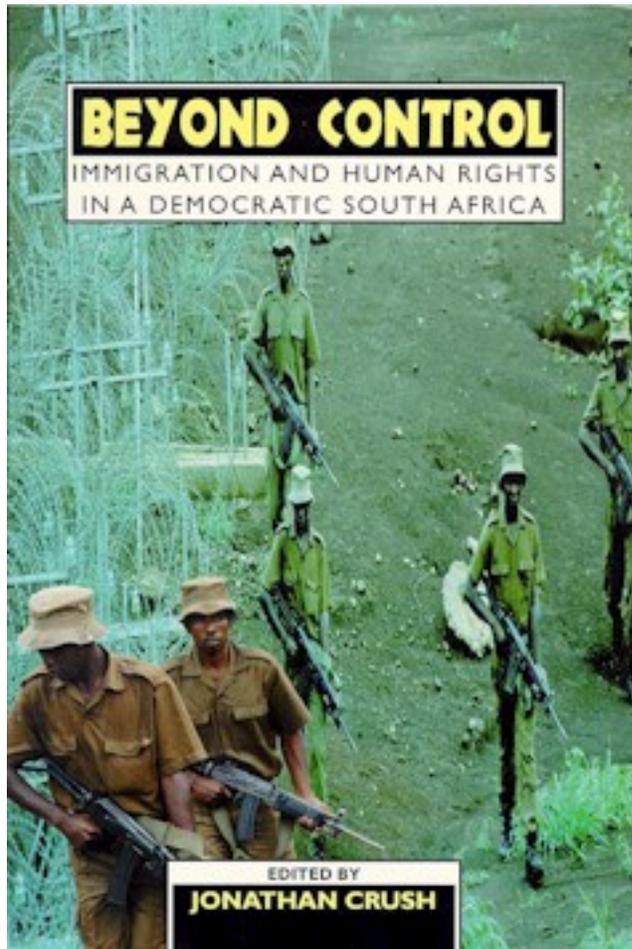
Kerry Cullinan is an Idasa-based journalist.

REVIEW

TIMELY CONTRIBUTION TO DEBATE

Jody Kollapen, Crossings, 2(2) June 1998

PLEASE NOTE: Readers are welcome to reproduce and reference this article as long as appropriate acknowledgements are given



Beyond Control: Immigration and Human Rights in South Africa

edited by Jonathan Crush

Reviewed by Jody Kollapen

As we enter the fifth year of a new democratic order, we continue to be challenged to translate the promise of equality, justice and human rights into reality.

Nowhere is this challenge as great as in the area of the policy, law and practice dealing with migration. The debates around migrants and refugees are often emotional, ill informed and understandably, the conclusions reached alarmist.

There has been little attempt by those involved in the debate to locate it, as it should be within a legal and constitutional context as well as to consider the ideological and political history of our existing legislation and approach to migration.

The publication *Beyond Control: Immigration and Human Rights in South Africa* edited by Jonathan Crush is an attempt to locate that debate in the proper context.

As we enter a year which may well see the development of new policy and possibly legislation dealing with migration including refugees, the publication is both welcome and timely. It is really a compilation of various contributions (eight in all), each focussing on a different aspect of migration, essentially from a legal and constitutional perspective.

The contributors are an interesting mix of legal academics and human rights activists. They include

Sheena Duncan (Black Sash), Wits academic Jonathan Klaaren and international immigration expert Melvin Weigel.

The compelling and well argued introduction by the editor sets the tone for a series of well researched presentations which all point to a predictable conclusion: that our existing immigration policy and law is ideologically, legally and constitutionally unsound and in need of a total overhaul.

Some of the issues tackled include:

- the racist roots of the Aliens Control Act;
- the human rights issues involved in migration, and in particular the view that everyone within the state (immigrants included) possesses rights;
- immigration and the Constitution, which subjects the present immigration regime to constitutional scrutiny and convincingly concludes that there are major failings;
- the courts and immigration, which illustrates through case studies and international comparison how our courts appear to be out of touch with the requirements and spirit of the new constitutional order.

The book concludes with a chapter of excerpts from interviews with migrants, perhaps to emphasize the fact that we are dealing with people, their future and their destiny.

There is little doubt that this publication will impact on the unfolding debate on how we shape migration policy for a new and democratic order.

Jody Kollapen is a Human Rights Commissioner.

LEGAL WATCH

Jonathan Klaaren, Crossings, 2(2) June 1998

PLEASE NOTE: Readers are welcome to reproduce and reference this article as long as appropriate acknowledgements are given

Hear the other side, minister told

The Minister of Home Affairs lost another court case recently. The case continues the trend of extending procedural protection to non-South African citizens. Yuen v Minister of Home Affairs concerned Hong Kong citizen who was deported to his country of origin in April of 1996 but later turned up back in South Africa. The home affairs department believed that he had submitted a false work offer and was wanted by the Hong Kong police for failure to appear in court. However, neither of these factors had been disclosed to Yuen before his permanent residence permit was taken away and he was deported. The court found that the legal principle of hearing the other side applied to the department's decision to deport Yuen and to take away his permit. This meant that the department should have informed Yuen of the case they had against him. As the department had not given him a chance to respond effectively, the court overturned his deportation and gave him his permit back.

Refugee Generals?

Three senior military officials from Mobutu Sese-Seko's regime found themselves fending off arrest and detention orders from the South African government recently. Without formally applying for political asylum, the generals sought a court order declaring them to be refugees and thus entitled to asylum. The court refused to grant such an order as they had not followed proper administrative procedures.

Two aspects of the case (Baramoto v Minister of Home Affairs) are interesting. The is qualified judicial support for the present refugee determination procedures. The generals raised as a concern the lack of independence of the department's Standing Committee for Refugee Affairs. This attack was based on constitutional grounds. But the court said it had "no reason to hold that a hearing before the relevant tribunals would not be fair", and that the generals could ask for a court review of the administrative decision.

The second important aspect was an apparent acceptance of the international law of refugees into South African law. Part of the reason why the court was prepared to accept the present procedures was the fact

that South Africa has international obligations in terms of the 1951 UN Convention, the 1967 Protocol, and the 1969 OAU Convention.

Employer punished

The first large employer sanctions case against an employer who hired undocumented migrants has been concluded in the Western Cape. The guilty party, a building contractor, ended up with a fine of R120 000. In addition to the fines, the employer will be responsible for the costs of detaining and repatriating his erstwhile employees. Those costs may be considerable since the employees were detained in order to serve as witnesses at the trial. In a related legal development, this case was also one of the few where the department used section 55(5) of the Act which requires the permission of a judge for detaining non-citizens pending removal for longer than 30 days.

Fee adjustment

From the 1 April, 1998, the fees for various permits, certificates and visas were adjusted. A visitor's permit, formerly R138, is now free. Not all changes are to the benefit of the applicant, however. The fee charged to the holder of an immigration permit to change occupation went from R460 to a whopping R5 000.

Sexual orientation irrelevant

In April, a High Court judge in Namibia ordered the Immigration Selection Board to grant permanent residence to a woman who, other than being in a same-sex relationship, fulfilled all other qualifications for permanent residence. The woman had previously been denied permanent residence twice without reasons being given. The Namibian government did not oppose her court application.

Jonathan Klaaren works for the Centre for Applied Legal Studies and Faculty of Law, University of the Witwatersrand.

IN MEMORIAM

MARK "RASTA" KWEKU

Crossings, 2(2) June 1998

PLEASE NOTE: Readers are welcome to reproduce and reference this article as long as appropriate acknowledgements are given

MARK "Rasta" Kweku came to Cape Town from Ghana at the age of 21 in 1991 (via Nigeria, Benin and Ivory Coast). He operated a small shoe-repair shop from a ship container in the informal settlement of Marconi Beam and was well known by everyone in the community.

In 1996, Mark worked as a SAMP research assistant doing interviews with non-citizens in Marconi Beam on access to housing and housing subsidies for foreigners. Because of his connections in the community, we were able to interview every non-citizen in Marconi Beam.

Mark was stabbed to death on November 15, 1997, shortly after moving into the new housing development in Joe Slovo Park. He will be sadly missed.
