
From Control to Deterrence

Assessing Border Enforcement in South Africa

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1 Introduction

Prior to 1994, South Africa was infamous for its racialized policies and seemingly limitless measures of social control and internal movement through a regime of apartheid, or racialized separation. Despite much pressure from the international community, the government was stubbornly resistant to change, reinforcing its control through police and security forces that were “always in the front line in the enforcement of apartheid ... (and) ensured that black South Africans were kept in their places in segregated and inferior institutions.”¹

South Africa’s racialized control over movement extended to how the state controlled migrants at its external borders.² An essential feature of these measures has been – and to a significant extent continues to be – how South Africa maintains bilateral agreements with neighboring governments, which is the first of the country’s *two-gates* system, the other being individualized entry through a border post.³

Those who have managed to cross the border and enter South Africa in an unregulated manner, whether through a border post or a gap in the fence, particularly from Mozambique and Zimbabwe, have often been confronted with a hostile reception.⁴ While typical of the realities of

¹ Cawthra, *Policing South Africa*, p. 1.

² Handmaker and Singh, “Crossing Borders.”

³ As observed by Crush, “Covert Operations,” long before South Africa’s democratic elections in 1994, entry into the country was through what Crush termed “two gates,” namely formal entry into the country by way of the Aliens Control Act, and various bi-lateral treaties between South Africa and neighboring countries to govern the mobility of temporary migrant workers in the country’s highly profitable mining and agricultural industries.

⁴ Seda, *Border Governance in Mozambique*, p. 62; Johnstone and Simbine, “The Usual Victims,” p. 170.

(forced) migration globally, and the desperation of those who would do anything to cross the border for a perceived improvement of their lives, these particular experiences have shattered the idealistic vision that many migrants had of South Africa when it became a liberal democracy, following the country's first democratic elections in 1994.

From the very beginning of this democratic transition, scholars cultivated a perception, that was shared by policymakers, politicians, and the general public, of South Africa being inundated with (African) migrants that they were undesirable.⁵ As in many parts of the world, antiforeigner sentiment spawned an aggressive enforcement of the Aliens Control Act based on the general misperception that South Africa was faced with a *flood* of migrants, especially from neighboring countries.⁶ Migrants in general have largely been seen to be coming for reasons that are perceived as harmful to South African society. There was particular concern raised by international organizations such as the UN High Commissioner for Refugees (UNHCR) and International Organization for Migration (IOM) that economic migrants, in an attempt to regularize their status, would overwhelm the country's otherwise liberal asylum system. The South African government reinforced this perception of being inundated by migrants with the development of a so-called white list for handling asylum applications that implicitly assumed certain countries from where asylum seekers were coming were "safe."⁷

To date, with some exceptions, most of the scholarship on migration in South Africa, including by the current authors, has been in relation to legal and policy developments and especially compliance with international law, demographic surveys, and studies of civil society responses to migrants.⁸ In this chapter, we focus on the emergence of post-1994 migration policies and enforcement practices, arguing that several aspects of what Valverde refers to as forms of "everyday legal governance," including governance through uses (rather than persons or rights), are visible

⁵ Minnaar and Hough, *Who Goes There?*

⁶ Crush, "The Discourse and Dimensions of Irregularity."

⁷ Handmaker, "No Easy Walk," p. 94.

⁸ The first of two large research projects on migration in South(ern) Africa has been the Southern African Migration Project, a joint project between Queens University in Canada and the Institute for Democracy in South Africa, which produced a large number of qualitative surveys from the mid-1990s. Later, from the 2000s, the African Centre for Migration and Society (based at the University of the Witwatersrand) produced methodologically driven, larger-sample surveys and analyses, including with regard to xenophobia in the country.

in South Africa's postapartheid migration and border control regime, whereby past practices of racialized control over the mobility of non-white persons have been reproduced in the postdemocratic order following elections in 1994.⁹ This provides a different and important perspective on more than two decades of migrant and border policy development and enforcement and sheds light on why, despite considerable efforts at reform, migration policy, and its enforcement in South Africa remain stubbornly resistant to change.

To illustrate this, we show how everyday legal governance is present in three salient features of South Africa's migration and border control regime. The first salient feature that we discuss in Section 2 concerns the racialized underpinnings of this regime, with origins in South Africa's apartheid-era policies of influx control. The contemporary manifestations of this racialized regime are marked by xenophobia and especially Afrophobia. We highlight detention and deportation policies that have not only victimized foreigners in general, mainly though not exclusively from other African countries but have also victimized black South Africans. The fact that it has not been possible to orient the country's migration and border control regime around a culture of accountability and rights-based principles is even more noteworthy, in light of the sustained efforts of various legal mobilization actors, from NGOs to the South African Human Rights Commission, through reports, public advocacy, and court-based litigation. In Section 3, we discuss how efforts to cultivate a rights-based enforcement culture have been further hindered by the transplantation of ideas from abroad, and in particular from the United States. These policies were not only based on failed models of deterring perceived economic migrants, but they were also manifestly ill-suited to the South African context. These transplanted policies reinforced South Africa's already racialized everyday forms of legal governance of migration. Moreover, these policies were disjointed in relation to the multiple actors involved in migration and border control. Despite this patchy and racialized enforcement, we show that the transplantation of problematic ideas around migration and border control never fully lost their appeal and can still be traced to the 2020 Border Management Authority Act. Finally, in Section 4, we discuss a third salient feature of the everyday governance of migration in South Africa, which is a prevalence of official corruption that has further mired South Africa's regime of migration and

⁹ Valverde, "Taking Land Use Seriously."

border control. Legal governance efforts to combat the systemic problem of bribe-taking, which also has resonance in South Africa's policies of influx control, have remained elusive.

To explicate how these three salient forms of everyday forms of migration governance have operated in South Africa and why the country's border and migration regime has reproduced earlier approaches to enforcement and resisted rights-based approaches, we draw on Mariana Valverde's notions of everyday governance, which operate across what she has termed different and overlapping *scales of governance* in relation to space and time.¹⁰ This involves a specific mode of thinking in "understanding how legal tools have changed," and in particular the bases for arresting and detaining migrants, and for determining their potential legal status as refugees.

In the course of analyzing these legal tools of border enforcement, we highlight features of South Africa's predemocratic and more recent history of racialized migration and border control, and in particular two "formative events"¹¹ that have affected how this history of regulating cross-border movement is regarded by policymakers and by South Africans. We argue that border enforcement practices have ultimately been guided less by national and international standards and more by national policies and systemic enforcement practices (and especially corruption) that have not changed very much from the previous, pre-1994 democratic dispensations. Accordingly, in relation to the three salient features we have described previously, we highlight three spaces where the everyday governance of migration is especially visible: first, in the concentrated local spaces of South Africa's land borders and urban centres; second, in South Africa's migrant detention centers – in particular the notorious Lindela Center; and third, in the refugee reception offices that have faced ever-greater pressures as the number of offices has increasingly been reduced. These land borders have historically been flashpoints of armed conflict while Lindela Detention Center and refugee reception offices have been notorious for the widespread prevalence of corruption, also at its sea and air borders, which in this particular contribution we pay less attention to.

We argue that South Africa's policies and practices of migration and border control are consistent with Valverde's conceptualization of everyday legal governance as largely taking the form of local enforcement,

¹⁰ Valverde, "Practices of Citizenship and Scales of Governance."

¹¹ *Ibid.*, p. 231.

whereby “struggles around constitutional rights” need to be primarily understood in relation to “local struggles in which the legal ‘funnel’ for political and social disputes is local law.”¹² More specifically, we show how the everyday enforcement of migration and border control is only to a very limited extent regulated by judicial oversight and is much more the product of local norms and structures of authority.

We conclude that South Africa’s efforts to deter immigrants have been a policy of arbitrary enforcement that in its highly localized enforcement of migration and border controls has been “deployed in everyday legal governance.”¹³ This enables us to fundamentally question whether a succession of changes to South Africa’s migration policy and enforcement have truly marked a historic break from the country’s apartheid past.

2 Racialized Underpinnings in Detention and Deportation

Having emerged from a history of racialized control of both internal and external mobility, South Africa’s postcolonial, postapartheid migration regime in 1994 was firmly oriented around an unreconstructed approach of controlling the admission into, residence in, and departure from South Africa. Under the auspices of the ominously named Aliens Control Act of 1991, the latest iteration of decades of racialized legislation, and consistent with other apartheid-era policies, South Africa’s approach was essentially one of zero tolerance, whereby the policy regime categorized most spontaneous arrivals of migrants as *prohibited persons*. This official policy of zero tolerance was accompanied by a range of nebulous exceptions that were mostly at the discretion of locally placed immigration officials, mostly operating at the country’s many border posts.

2.1 Post-1994 Enforcement Saw Little Change

As Crush observed, in principle, the racialized nature of this policy meant that things had not moved on very much following democratic elections, and the formal introduction of a liberal-constitutional, rights-based system of governance in 1994.¹⁴ In other words, while other aspects of South Africa’s governance system gradually transformed by way of legislation, rights-based

¹² Valverde, “Taking Land Use Seriously,” p. 35.

¹³ *Ibid.*, p. 55.

¹⁴ Crush, “The Discourse and Dimensions of Irregularity.”

guidelines, and training, the Aliens Control Act of 1991 transmitted most racialized aspects of the apartheid migration and border control regime into the post-1994 democratic regime in South Africa.¹⁵ In practice, those who spontaneously presented themselves at the border during this period had little formal guarantee that they would be allowed in, although already corruption was endemic, and many people who could afford a bribe did get through.¹⁶ Further, as was the case prior to 1994, the majority of migrants bypassed the border post altogether. Reinforcing these spaces of local governance, an electric border fence, colloquially known as *the snake* that had been constructed in the 1980s at the border with Mozambique by the South African apartheid regime and that had once been set at lethal mode, ostensibly to deter militant groups, remained in place, albeit at a nonlethal voltage in detection mode.¹⁷ By the late 1990s, border controls and migration policies in South Africa were brought into effect through external measures (at the border) and internal measures (primarily in urban areas), which in practice were based on racial categories that, once again, were essentially unchanged from the predemocratic apartheid era.

As was the case prior to 1994, these policies did not necessarily target migrants from particular countries. Apart from asylum seekers who generally presented themselves to the authorities with travel documents and appeared on the white list referred to earlier, a generalized profiling of (suspected) undocumented migrants has been in place on the basis of racialized criteria. This led to a number of persons being apprehended and taken into detention when they possessed a valid visa or permit to reside.¹⁸ There has been a robust policy basis for this as well; particularly under the Aliens Control Act, but also incorporated into subsequent legislation, such as the 2002 Immigration Act, it has been, administratively speaking, a straightforward measure to detain and deport any suspected undocumented migrant.

2.2 *Unreliable Statistical Data and Emergence of a "White List"*

Statistics on migration have been anything but reliable.¹⁹ Nevertheless, based on the figures that were made available, there was an apparent

¹⁵ Crush, "Apartheid's Last Act?"

¹⁶ Perbedy and Crush, "Invisible Trade, Invisible Travellers."

¹⁷ Kotzé and Hill, "Emergent Migration Policy," p. 20.

¹⁸ South African Human Rights Commission, "Illegal," Handmaker and Parsley, "Migration, Refugees and Racism."

¹⁹ Danso and McDonald, "Writing Xenophobia," p. 124.

trend that migrants from neighboring countries were the most heavily represented in the migration landscape, albeit moving mostly in a circular pattern.²⁰ Some of the migrants from neighboring countries sought asylum in postapartheid South Africa, namely Angolans in the 1990s and the Zimbabweans in the late 2000s. In addition, asylum seekers in South Africa have come, sometimes in their thousands, from Ethiopia, Nigeria, DRC, Bangladesh, Pakistan, Malawi, Somalia, India, and Ghana.²¹

On the basis of this unreliable data, the “white list” emerged; this was reflected, statistically speaking, in the government rejecting, more than 90% of asylum applications; it was claimed that most of these applications were from economic migrants.²² In turn, this situation reinforced a widespread view among post-1994 migration scholars that the South African government’s migration policy had “given rise to a costly yet ineffective asylum system that does not achieve its intended goals and attracts individuals better suited to other forms of regularization.”²³

As a consequence of the high asylum rejection rates and lack of alternative regularization pathways, the number of “undocumented migrants” in South Africa has remained a matter of great speculation.²⁴ Meanwhile, the government response has comprised a sequence of migration, asylum, and border control policies and practices, many of which have been subject to legal challenge.

2.3 *Efforts at Legal Reform*

It has already been mentioned that the policy framework governing migration remained largely unchanged since the period prior to elections in 1994. In fact, it was only after Amendments were made to the Aliens Control Act in 1995 that detention could even be reviewed by a judge, the so-called ouster clauses.²⁵ The amendment introduced was the first of

²⁰ Crush, “The Discourse and Dimensions of Irregularity.”

²¹ Statistics South Africa, “Documented Immigrants in South Africa.”

²² Government of South Africa, White Paper on International Migration, p. 27.

²³ Mthembu-Salter et al., “Counting the Cost of Securitising South Africa’s Immigration Regime,” p. 6.

²⁴ Ibid.

²⁵ As Hlophe, “Ouster Clauses: Meaning and Effect” explains on p. 371, the justification for legal provisions that disallowed a judge from reviewing the reasonableness of a decision taken by a government official – including an immigration official – was that to do so “would require the executive to disclose confidential information that might endanger national security,” a provision that was broadly interpreted by the judges at the time who routinely gave deference to the executive.

many subsequent legal and policy reforms, which in this case referred specifically to section 55 of the Aliens Control Act, allowing, for the first time, judicial review of a decision by an immigration officer to detain a migrant; this provision was later also provided for in respect of asylum seekers when it was incorporated into section 29 of the Refugees Act. However, in practice, such reviews have rarely taken place.²⁶

Eventually, upon the enactment of the new Immigration Act (IA 2002), which reproduced the xenophobic language of the Aliens Control Act, and particularly the term *prohibited person*, the Department of Home Affairs (DHA) gained the power to apprehend, detain, and deport any “illegal foreigner.” An illegal foreigner/prohibited person was described as any foreigner found to be in South Africa in contravention of the Act.²⁷ Prohibited persons were described as including those carrying infectious or communicable diseases, persons wanted for the commission of serious crimes such as genocide, terrorism, anyone previously deported and not rehabilitated, a member of a group advocating for racial hatred, or utilizing crime and terrorism, and anyone found with a fraudulent visa, passport permit or identification document.²⁸ Additionally, the IA empowered the Minister and Director-General to declare persons as “undesirable” if they were

likely to become a public charge, are identified as such by the Minister, have been judicially declared incompetent, have been ordered to depart in terms of the Act, are a fugitive from justice, they have a previous criminal conviction without the option of a fine, or have overstayed the prescribed number of times.²⁹

In any event, either category of person could be subject to detention and eventually deportation.³⁰ Some measures in the IA were even more rigid than before. For example, the IA ignored the 1995 Amendments to the Aliens Control Act that allowed one to request that his or her detention be confirmed by the court upon apprehension. Furthermore, under the IA 2002, a detained foreigner could be detained for 30 days without recourse to court. The Constitutional Court eventually held these provisions to be unconstitutional and ordered an amendment in compliance therewith.³¹

²⁶ South African Human Rights Commission, “Illegal,” p. 14.

²⁷ Immigration Act, 2002: sections 3(1)(g) & 1 (xviii).

²⁸ *Ibid.*, section 29.

²⁹ *Ibid.*, section 30(1).

³⁰ Mfubu, “Prohibited and Undesirable Persons,” p. 182.

³¹ *Lawyers for Human Rights v Minister of Home Affairs & Others* (CCT38/16) [2017] ZACC 22.

2.4 *Clinging to Long-Established Norms of Enforcement, Particularly Regarding Detention*

Despite court decisions declaring border policies to be unconstitutional, particularly in relation to arbitrary detention practices as well as prescreening procedures and long decision-making periods for asylum seeker determinations,³² South African police and DHA officials have clung to long-established, local norms of enforcement. From the mid to late 1990s, this included detaining asylum seekers who were still awaiting decisions on their applications, whether or not they were holding up-to-date permits. It had seemed irrelevant to the authorities that a failure to obtain timely renewals or obtaining of relevant permits might be due to structural and administrative obstacles.

This was especially problematic for asylum seekers and refugees following the closure of several regional refugee reception offices that had served as a third space of local governance.³³ The closures of these offices were contested by both NGOs and refugees' associations who mounted successful court challenges.³⁴ A number of positive court judgements notwithstanding, and further reinforcing our contention that local norms guided by the arbitrariness of officials whose decision to detain, delay, or otherwise hinder access to due process procedures (including by way of bribe-taking) have a much stronger hold in practice than judicial pronouncements, the DHA has been slow to comply with the court orders, if it has complied at all.³⁵

Detentions and deportations of those deemed to be "prohibited persons," "illegal foreigners," or "undocumented persons" in South Africa have raised significant concerns among scholars and human rights activists, with one scholar referring to South Africa as a "prolific deporter."³⁶ The level of deportations peaked at 113,554 in 2013.³⁷ Deportations dropped to 24,266 deportations during 2018–2019.³⁸ After 2013, the number

³² Handmaker, "Who Determines Policy?" and Amit, "Winning Isn't Everything."

³³ Lawyers for Human Rights, *Monitoring Policy*, 31–38.

³⁴ *Scalabrini Centre, Cape Town and Others v Minister of Home Affairs and Others* [2017] 1107/2016, ZASCA; *The Minister of Home Affairs and Others v Scalabrini Centre, Cape Town and Others* [2017] 279/17, ZACCT; *Minister of Home Affairs and Others v Somali Association of South Africa and Another* [2015] 831/13, ZASCA; *Minister of Home Affairs and Others v Somali Association of South Africa and Another* [2015] 67/2015, ZACCT.

³⁵ Johnson, "Constructing and Contesting State-urban Borders."

³⁶ Vigneswaran, "The Complex Sources of Immigration Control," p. 8.

³⁷ Department of Home Affairs, "Annual Report 2018–19," p. 104.

³⁸ *Ibid.*

of deportations went down, following a so-called Special Dispensation for Zimbabweans.³⁹ This was in response to the perceived high inflow of Zimbabweans at the time.⁴⁰ However, nationals of other African countries still constituted 99% of all deportations.⁴¹ Roni Amit revealed that the DHA had been violating both the Immigration Act and the Constitution by detaining persons beyond the acceptable 48 hours before they could ascertain their immigration status and detaining persons that are protected under the Refugees Act.⁴² The situation did not seem to have improved in the years that followed, according to an open letter by Lawyers for Human Rights (LHR), a local NGO, to the President of the Republic on World Refugee Day in 2018:

... it appears that the immigration system does not now operate as it should. It has come to the attention of the public that people are wrongfully and unlawfully detained under the current immigration legislation; that the process of arrest and detention of would-be immigrants is arbitrary and, therefore, violates the rights of citizens and other residents; that corruption and bribery are rife; that those detained in cells in South Africa's main awaiting-repatriation detention facility are often subjected to inhumane treatment and indignity; [i]f the composition of the population at the Lindela repatriation facility is anything to go by, it would suggest that only people of African origin are arrested and deported as illegal aliens ...⁴³

Once again, there is resonance with South Africa's past. In her research on the practices of citizenship and the growing criminalization of border control measures, Valverde has argued that the temporal dimension of governance, particularly in relation to prolific use of detention, is not disconnected from the racist policing of migrants and other cultural minorities.⁴⁴ Indeed, as discussed in Section 2.5, the racialized character of South Africa's migration policy has been reflected quite broadly in xenophobic attitudes, in official governance, in the media and in most other aspects of daily life, mainly to the detriment of low-skilled migrants.⁴⁵

³⁹ Government of South Africa, White Paper on International Migration, p. 30.

⁴⁰ Van Lennep, "Migration III: Interpreting the Data."

⁴¹ Government of South Africa, White Paper on International Migration.

⁴² Amit, "Breaking the Law: Breaking the Bank", pp. 27–39.

⁴³ Lawyers for Human Rights, "Open Letter to President Ramaphosa on World Refugee Day," 20 June 2018; Lawyers for Human Rights, Monitoring Policy pp. 11, 31.

⁴⁴ Valverde, "Practices of Citizenship and Scales of Governance," p. 226.

⁴⁵ Handmaker and Parsley, "Migration, Refugees & Racism in South Africa."

2.5 *Growing Xenophobia*

Through a combination of unfocused, though racialized targeting of (suspected) foreigners, unclear statistical data (that nevertheless suggested an influx of foreigners from particular countries), an arbitrary policy regime broadly allowing for the stopping and detaining of persons and numerous media reports and scholarly articles that suggested a *flood* of foreigners in the country, xenophobia quickly took hold within the police and other border enforcement officials as well as among the general public, following democratic elections in 1994. This xenophobia has been directed at not just foreigners in the country but also South Africans who were considered to be “too dark” or have a “strange manner of dressing”; they have been subject to being apprehended, detained and even deported.⁴⁶ Violence has also been widespread. Aggressive police enforcement of border control laws has been conducted in a manner that has resembled the previous government’s earlier, apartheid-style enforcement of racialized pass laws as part of a policy of influx control, which regulated the internal mobility and residence of persons in South Africa on the basis of legally defined, racial categories.⁴⁷ A particularly disturbing example that took place in 2000 was recorded on video and leaked to the public – something rather unique in its time – confirmed the South African Police’s use of detained, Mozambican immigrants as live targets during training exercises with dogs.⁴⁸ Such attitudes toward African migrants were not exceptional; as Handmaker observed during multiple police trainings that he conducted in the late 1990s, racialized attitudes toward foreigners, as well as South Africans who *looked like* foreigners, was deeply embedded in the local norms of border enforcement officials whose careers had extended well into the pre-1994 period.⁴⁹

Xenophobia has also been reinforced by an institutional continuity. Not long after elections in 1994, suspected undocumented persons were sent to Lindela Repatriation Center, as a precursor to their deportation. Located in the municipality of Krugersdorp, to the west of Johannesburg, Lindela Center is a former residential hostel. Here, Valverde’s temporal dimension of governance is important to note. The facilities at Lindela

⁴⁶ South African Human Rights Commission, “Illegal”; *The Star*, “Police Assault South African Mistaken for Illegal Immigrant,” 11 March 2001.

⁴⁷ Handmaker, “Stop Treating People Unjustly”; Human Rights Watch, *Prohibited Persons*; Handmaker and Parsley, “Migration, Refugees and Racism.”

⁴⁸ Handmaker and Parsley, “Migration, Refugees and Racism,” p. 40.

⁴⁹ Handmaker, “Stop Treating People Unjustly.”

had originally been used to house migrants from neighboring countries who had been recruited as migrant laborers for the mining industry; it was part and parcel of South Africa's elaborate migration system. Rail links existed between Lindela Center and neighboring Mozambique. In 1996, Lindela, became a privately run holding center procured under the authority of the DHA.

Although detention facilities have existed in each of South Africa's nine provinces, from police cells to prison wings and former detention facilities that were used for suspected pass law offenders, virtually all persons who were suspected to be without legal residence in the country and marked for deportation have been sent to Lindela.⁵⁰ As an example of everyday legal governance, there has been coordination with local police forces for the purpose of apprehension and detention (also in local police cells), but the enforcement of migrant detention at Lindela has been a particularly unaccountable space of local governance, run through private contractors on behalf of the DHA, which established a permanent presence in the facility.

Not surprisingly, the lawfulness of detentions in, and deportations from Lindela have on numerous occasions been called into question by human rights lawyers. For instance, lawyers have argued that asylum seekers who entered the country without documentation were often detained pending a decision on their asylum application, even though the stated policy of the DHA was not to hold such persons if it appeared that the application would take "unreasonably long to process."⁵¹

Yet, xenophobia in South Africa has been featured as more than a specific form of stigmatization. Rather than being directed at people on the basis of individual criteria, it can be regarded as a consequence of long-standing policies of racialized, socio-spatial separation, with clear origins in the country's previous apartheid regime.⁵² As a vivid and deeply unsettling illustration of this point, from the late 1990s, in scenes reminiscent of apartheid-era forms of enforcement (and the treatment of black persons generally, where violence was commonplace), South Africa began experiencing an exponential rise in attacks against foreigners, both by officials and the general public.⁵³

Some have argued that the rise in attacks against mainly African foreigners have been fueled by various myths regarding migrants and

⁵⁰ Lawyers for Human Rights, *Monitoring Policy*.

⁵¹ Handmaker, "Who Determines Policy," p. 295.

⁵² Landau, "Loving the Alien"; Tewolde, "Am I Black, Am I Coloured, Am I Indian?."

⁵³ Handmaker and Parsley, "Migration, Refugees and Racism."

reproduced in sensationalist media reports that have affirmed an increasingly widespread belief that strong controls were needed to counter a perceived threat of uncontrolled migration of millions of people.⁵⁴ Yet, actual evidence based on South African census results indicated that there were estimated to be 423,000 foreigners in 1996, a number that increased only slightly to 463,000 in 2001.⁵⁵ By 2011, the overall number of foreigners in the country increased more significantly and reported at 2,173,409, or a mere 4.2% of the entire South African population.⁵⁶ Therefore, while it could not be denied that there had been an increase in migration to South Africa since the dismantling of apartheid, as mentioned earlier, much of this migration has been temporary and circular. In any event, there was scant evidence to suggest that the levels of migration were anywhere near the scale claimed by politicians and reported in the media.

Increasingly frequent attacks on foreigners culminated in the first *formative event* that we highlight in this chapter, in this case, the 2008 wave of xenophobic violence that resulted in the deaths of more than sixty people and the displacement of hundreds of thousands. These attacks drew the world's attention to the scale of xenophobia in South Africa. The attacks were also widely reported in the media, although notwithstanding the xenophobic views expressed by the media, doubts have been raised whether or not the media was directly *complicit* in the violence.⁵⁷ Since the 2008 wave, there have been smaller, though still serious incidents occurring almost every year, targeting mainly self-employed and low-income foreign workers. Indeed, it is clear that the systemic fear of and hatred toward foreigners in South Africa has not abated from the late 1990s until the present day.⁵⁸

2.6 *Government Responses to Xenophobia and Racialized Enforcement*

Whatever the underlying causes or triggers, the government's response to xenophobia and racialized enforcement has been underwhelming.

⁵⁴ See Freedom of Expression Institute, "Is the Media Contributing to South African Xenophobia?" and Danso and McDonald, "Writing Xenophobia."

⁵⁵ Statistics South Africa, "Census 2011," p. 16.

⁵⁶ *Ibid.*, p. 128.

⁵⁷ Smith, "Violence, Xenophobia and the Media."

⁵⁸ Landau et al., "Xenophobia in South Africa"; Dodson, "Locating Xenophobia"; Everatt, "Xenophobia, State and Society"; Crush and Ramchandaran, "Migrant Entrepreneurship"; Oatway and Skuy, "Documenting Violence Against Migrants in South Africa."

Rather than acknowledging the underlying causes of xenophobia as systemic and embedded in local norms of enforcement, which has manifested in racialized hatred, discrimination, and violence, directed toward migrants and South Africans alike, the government has persistently taken a position of denial, maintaining that it does what it can do address xenophobia. Moreover, the government insists that its migration policy framework is perfectly in line with its international and regional commitments. As Landau argues in relation to the government's limited efforts to break the cycle of racialized violence, "such objectives and responsibilities are not supported by the legal and administrative mechanisms" that ought to give concrete effect to those commitments.⁵⁹ To the contrary, South Africa's post-1994 migration and asylum policies and laws over the ensuing years have explicitly aimed to discourage the migration of particularly low-skilled workers and others who are (falsely) deemed to be a drain on the public purse, and in particular to demonize asylum seekers and refugees.⁶⁰

For instance, in 2011, an amendment to the Immigration Act reduced the validity period of asylum transit permits, which were renamed as *visas*, that were obtained at a border post from fourteen to five days; this was ostensibly done in order to facilitate entry, though in practice the limited period of legalized travel, coupled with long waiting times at refugee reception centers, made it much more difficult for asylum seekers to regularize their status in the country. Measures like this that purported to be based on good intentions (in this case to encourage asylum seekers to apply in a timely manner), but in fact made things more difficult for them, represent vivid illustrations of the temporal dimension of governance, whereby, according to Valverde an "old scale" of governance is:

sometimes put on the shelf, but the complex apparatus of overlapping and multiple scales of governance that has developed (within and intertwined with law) continues to exist even when only a particular, perhaps new technique or scale is being used.⁶¹

In this case, despite referring to the new permit as a visa, the change placed asylum seekers in just as precarious a position as they were before, if not

⁵⁹ Landau, "Introducing the Demons," p. 8.

⁶⁰ Ibid. For a detailed discussion on policy and legislative changes, see Handmaker and Nalule, "Border Enforcement Policies and Reforms."

⁶¹ Valverde, "Practices of Citizenship and Scales of Governance," p. 235.

more so, rendering them highly susceptible to detention and deportation if they were subsequently found with expired permits had they not managed to reach a refugee processing center in time, located in just a few locations in South Africa's urban areas.⁶² Additionally, the Act repealed an earlier provision on cross border permits, which, previously, the DHA could issue to citizens or residents of countries sharing a border with South Africa.⁶³ These persons also happened to be the majority of its arriving migrants. This clawback to the country's earlier migration regime based on bilateral agreements contradicted South Africa's official position on regional free movement of persons, contained in a Protocol that South Africa had ratified in 2005.⁶⁴

From a temporal perspective of everyday forms of governance, such a bilateral approach to regularizing immigration status of SADC citizens, as a visible historical remnant of its *two gates* migration policy, was most visible in relation to Zimbabwean, Angolan and Lesotho nationals who were resident in South Africa. These nationals have been given the opportunity to apply for Special Dispensations to study, work or operate a business in South Africa for a stipulated period, and these Dispensations have been periodically reviewed.⁶⁵ However, only few nationals of these countries have met the strict criteria for receiving this dispensation, excluding low-skilled and low-income earners. Additionally, the beneficiaries of these dispensations have not been eligible for permanent residence or citizenship status.

South Africa's postapartheid general policies on immigration and border control and forms of everyday governance have undoubtedly been motivated by security concerns that can be regarded as echoes of the previous regime.⁶⁶ The securitized and racialized character of South Africa's border control policies is not only traceable to pre-1994 forms of apartheid-era border enforcement. As discussed in Section 3, the extensive involvement of US government and reliance on advisors seeking to transplant US migration policy and border control mechanisms has also played a role in reinforcing these older patterns of racialized border enforcement.

⁶² Immigration Amendment Act, 2011, section 23.

⁶³ Ibid., section 16.

⁶⁴ Southern African Development Cooperation, Protocol on the Facilitation of Free Movement of Persons.

⁶⁵ Immigration Act, 2002, section 31(2)(b).

⁶⁶ Crush and Tshitereke, "Contesting Migrancy."

3 Transplantation of US-Styled Policy Approaches to Immigration and Border Control

US government officials became actively involved in conducting surveys of South African border control mechanisms, making recommendations, training South African officials and even participating in government task teams developing policy since at least 1996/97. In what became another *formative event*, the United States sent over a team of border control officials to review South Africa's air, land, and seaports and to make policy- and practice-based recommendations. This was notwithstanding the fact that border management systems in the United States had not only consistently failed to achieve their stated objectives but had raised a number of serious human rights concerns as well.⁶⁷

Soon afterwards, the United States established an office in Johannesburg, joining officials of the United Kingdom who had been investigating cargo operations in Durban.⁶⁸ In 1997, a report by an Inspection Team from the US Immigration and Naturalization Service (INS) was released, "pursuant to a request from the South African Government to the United States Department of State."⁶⁹ According to the report, the request was in relation to the South African Government's efforts "to assist that government combat the growing crime problem."⁷⁰ The INS Inspection Team, which was composed of border control and inspections officials from various sea, air and land border posts in the United States, was split into four teams, making assessments of selected land borders, seaports and airports in South Africa. Its aim was (in part) to "provide a working methodology by which other problems can be identified and attacked."⁷¹ The report strongly encouraged the South African government to prioritize "control of illegal immigration (as) one of its top priorities."⁷²

Without specification, and with an unexpected reference to recognizing the role of local norms, the US INS Report recommended that "the community" be more involved in border policing, based on a claim that "the community has a vested interest in border control."⁷³ Emphasis in the

⁶⁷ Human Rights Watch, "Crossing the Line," and Human Rights Watch, *Slipping Through the Cracks*.

⁶⁸ Sunday Independent, "US to Lend a Hand in SA's Fight Against Illegal Aliens."

⁶⁹ Immigration and Naturalization Service, South African Border Assessment, p. 2.

⁷⁰ *Ibid.*, p. 2.

⁷¹ *Ibid.*, p. 12.

⁷² *Ibid.*, p. 4.

⁷³ *Ibid.*, p. 7.

1997 US INS report was placed on holding train, ship and airline companies accountable for border control, through a comprehensive system of fines, based on a contention that this would be a “force multiplier to border control.”⁷⁴ Moreover, the report claimed that “numerous intelligence documents, both national and international, had concluded that the illegal alien situation in South Africa (was) out of control”; the “tremendous pressure” the authorities in South Africa were facing was acknowledged, ranging from increasing air traffic to porous land borders. These pressures, the report argued in an especially nebulous manner, arose from “(p)eople (who had) become refugees by weather changes that affect agricultural production and political changes that affect human rights.”⁷⁵

3.1 *Collective Approach to Border Control*

The 1997 report by the US INS became the basis of a National Inter-departmental Policy called the Collective Approach to Border Control (CABC).⁷⁶ The CABC policy became the core document regulating the coordination of border control between the four South African agencies responsible for immigration and border control: South African Defence Force (Military), Revenue Service (Customs), and Police Service and Home Affairs, with Home Affairs as *de facto* the lead agency. Additional role players in the National Inter-departmental Structure (NIDS) with complementary functions included the National Intelligence Agency, South African Secret Service, and the Departments of Trade and Industry, Health, Agriculture, Foreign Affairs, Environmental Affairs & Tourism, Correctional Service, Transport, Public Works, Justice, and Welfare.

According to Piet Grobler, then Provincial Commander (Western Cape) in the Border Police section of the South African Police Services (SAPs), and a former member of the NIDS, the CABC sought to get beyond a previously disjointed approach and create a “unified and accountable command structure for border control.”⁷⁷ The CABC addressed the various aims and functions of various levels of border control officials, from the national level to the port of entry level.⁷⁸ It recommended a phased

⁷⁴ Ibid., p. 8.

⁷⁵ Ibid., p. 12.

⁷⁶ Operational Working Team on Border Control, *Border Control Collective Approach*.

⁷⁷ Grobler, “Collective Approach to Border Control: Policing and Refugees,” p. 73.

⁷⁸ Operational Working Team on Border Control, *Border Control Collective Approach*, pp. 10–11.

program of action, planned to take place over a one-and-a-half-year period, from mid-1997 until the end of 1998, in order to bring the three main agencies (Customs, Immigration and Police) “under one roof,” allocating existing staff to new positions and assigning new roles rather than hiring additional staff.⁷⁹

The Report was to be followed by a Business Plan, to be drawn up by an Inter-Agency Structure. It was communicated in 1997 to Handmaker by a well-placed source who requested to remain anonymous that there were other proposals submitted to the NIDS Task Team for consideration, in addition to the US-led NIDS report. These proposals, which were not made publicly available, included a National Intelligence Coordinating Committee Report to the Cabinet committee on Safety and Intelligence; the Customs Law Enforcement Task Group document for the Executive Head for SA Revenue Services and a draft document prepared by Mr. I Lambinon, who was the then Director-General for the Department of Home Affairs.

It became clear that the US-styled NIDS report was the most influential, and unsurprisingly, its rigid approach to border control did not adequately take into account constitutional and human rights ramifications. Moreover, despite the introduction of the CABC policy, South Africa continued to grapple with the coordination or joint-institutional approach to border control and management. To this day, the three agencies responsible for border control – SAPS, Department of Home Affairs and South African Military – have unclear mandates and overlapping functions.

3.2 *The Spaces Filled by Agencies Responsible for Border Control*

SAPS has always been primarily responsible for enforcing internal controls, in comparison with other key border enforcement agencies, enforcing internal control measures (detecting, apprehending, and temporarily detaining suspected undocumented migrants) and also managing several of the land border posts. This has included highly concentrated spaces of local governance such as the Lebombo border post, one of South Africa’s most important land border crossings, located in what is known as the *Maputo corridor*, and where high levels of bribery have been reported, although migrants (mostly small-scale entrepreneurs) report to have

⁷⁹ Ibid., p. 15.

otherwise been treated favorably.⁸⁰ In addition to their role in the everyday governance of persons moving through these concentrated spaces that have long-cultivated local norms of enforcement, the police have also been responsible for detecting illegal smuggling of goods and prohibited items (drugs, weapons, etc.) and, together with the South African Revenue Services (SARS), regulating the transport of legal goods.

The DHA has not only been primarily responsible for policy making, but it also fulfils a key role exercising formal control over the country's external borders as well as internal enforcement. It regulates the entry and exit of people through the borders and handles more complicated determinations on residential status (temporary permits and permanent residence permits). Moreover, the DHA manages dedicated migrant detention centers (to which the police refer migrants in lieu of deportation), and it makes determinations of refugee status through designated refugee reception offices. Hence, in all three of these spaces of local governance, the DHA exercises its control over both policy and enforcement.

The role of the military, the third key border enforcement agency, the South Africa National Defence Forces (SANDF) has broadly been to secure South Africa's land borders. Initially, there was hesitation, given the violent border conflicts of the 1980s. In fact, from 2003, President Thabo Mbeki issued an order to actually *remove* the SANDF from operating at the borders. However, by 2009, as South Africa was preparing to host the 2010 World Cup, the then President Jacob Zuma rescinded this decision as the police services on whom the function had been deployed reportedly lacked the capacity to execute it.⁸¹

While the SAPS and DHA manage the formal border posts, the role of the SANDF has largely been confined to patrolling the difficult-to-govern spaces around the perimeter fence that separates South Africa from neighboring Mozambique and Zimbabwe; this includes the monitoring of US-supplied electronic detection systems. However, as Handmaker personally observed during a field visit in January 2001 at Lebombo border post, in practice, the majority of unauthorized detections are never followed up on, due to a lack of personnel. Twenty years later, the situation appears not to have altered much as the SANDF has maintained that, in its border management function, it still operates at less than optimum capacity.⁸²

⁸⁰ Perbedy and Crush, "Invisible Trade, Invisible Travellers," p. 121.

⁸¹ McMichael, "The Re-militarisation of South Africa's Borders."

⁸² Heitman, "SANDF Personnel Strength."

The SANDF has specified its role in border management to the Parliamentary Monitoring Group thus:

patrolling the land borders by foot and mobile patrols, establishing observation and listening posts, operating vehicle control points, providing a reaction force and follow-up operations which would include the extended border area, conducting roadblocks 20 kilometers to the rear of the borderline in conjunction with the South African Police Service, and collecting information by conducting intelligence operations.⁸³

Beyond the formal roles of US officials in these local spaces of migration control and border enforcement, specific forms of (racialized) everyday migration governance in South Africa have drawn significant inspiration from the US-style proposals recommended by INS officials, both in reports and through participation in policy task teams. Furthermore, these forms of racialized migration governance have been reinforced by several, US-sponsored field trips to visit US border control installations, including the South African government's preoccupation with securitization and control. While direct empirical evidence is lacking as to what extent these policy transplants and field visits to US border posts has actually influenced South African border enforcement practices, there are strong correlations between South African border enforcement practices and a legacy of racism in the treatment of immigrants in the United States.⁸⁴ These correlations include a South African police culture with roots in the country's apartheid past with the US border control culture, both of which have been highly militarized.

3.3 *Racist Correlations in Governing through Uses*

Apartheid-era policing of migration and border control is an example of what Valverde refers to as governing through uses; as she observes, "uses, unlike persons, are not rights bearers at all."⁸⁵ By prioritizing the use (of borders) over the persons (border crossers), border officials have reinforced a highly managerial, arbitrary, and ultimately futile approach to border crossing and internal border enforcement. Both in policy and practice, migrants have been persons who are regarded to have little to no rights (e.g., to remain resident in the country). Moreover, there is an

⁸³ Parliamentary Monitoring Group, *Border Control: Briefing by Chief of Joint Operations*.

⁸⁴ Murdza and Ewing, *The Legacy of Racism within the U.S. Border Patrol*.

⁸⁵ Valverde, "Taking Land Use Seriously," p. 38.

important temporal dimension, namely that the very same institutional structures that were set up to enforce South Africa's notorious policy of *influx control* were later utilized by the immigration authorities, from an institutional culture that cultivated unaccountable administrative procedures akin to the treatment of criminal suspects (e.g., fingerprinting and detention) to the use of the very same detention cells that had once held pass law violators. Strikingly, this approach to everyday migration governance was reproduced in the 1990s and into the 2000s, with efforts on the part of the police during high-profile, large-scale operations such as Sword and Shield (1996), Operation Passport (1998), Operation Crackdown (1999, 2002, and 2011), and Operation Fiela (2015), some of which were ostensibly meant to fight crime, acting as a cover for border control.

Immigrants not only formed a significant proportion of those who were arrested in these *crime-fighting operations*, they were not afforded the basic protections that criminal suspects were. Moreover, the lack of regard for migrants as rights holders cultivated a situation of impunity and widespread abuse of power by border control officials. Sometimes, the approach to border control governance was explicit; for example, during Operation Crackdown, which resulted in the arrests of more than 7,000 people (a large proportion of whom were migrants), the police tore up persons' valid identity documents and utilized other illegal tactics in order to "make immigrants illegal."⁸⁶

This treatment of foreigners, which has been accompanied by a popular characterization of them being "drug dealers" and "thieves,"⁸⁷ reinforces South Africa's racialized, everyday governance of border control, whereby "the processes of border control ... have become more security- and crime-oriented."⁸⁸ Moreover, South African border officials' approaches resonate with Valverde's observations on how governments have "deliberately blurred the lines" separating "state officials who govern citizenship and immigration from police forces."⁸⁹ The behavior of immigration officers toward foreigners in South Africa also resonates Graham Hudson's observations in his contribution to this book, which evaluates

⁸⁶ Klaaren and Ramji, "Inside Illegality," pp. 36–37.

⁸⁷ Alfaro-Velcamp and Shaw, "Criminalising Immigrants in South Africa."

⁸⁸ Valverde, "Practices of Citizenship and Scales of Governance," p. 217. Other authors, such as Stumpf, "The Crimmigration Crisis" and Hernández, Crimmigration Law have characterized the criminalization of immigration control as crimmigration.

⁸⁹ Valverde, "Practices of Citizenship and Scales of Governance," p. 217.

how security networks operate at different levels of governance, rendering as illusory any notion of *sanctuary* for foreigners.

South Africa's racialized approach to the everyday governance of migration and border control has persisted throughout the 2000s and 2010s. According to Vigneswaran, these operations were initiated by the police, at times without the prior approval of the DHA, and it was only after the police had made their arrests, totaling 54,373 during Operation Crackdown (2002), that they requested "DHA assistance to check the documents of suspected 'illegals' and take responsibility for detention and deportation."⁹⁰ Hence, the "SAPS officials, while never formally adopting a policy on illegal migration, have intermittently ... described the enforcement of immigration laws as a potentially useful method of dealing with certain categories of criminals."⁹¹

Vigneswaran further argues that the DHA appears to have surrendered street-level migration enforcement to the SAPS who have conducted most of the crackdowns and raids on migrants, usually under the guise of fighting crime.⁹² It is no surprise, therefore, that police detention facilities contain a higher number of "illegal immigrants" than the Lindela Repatriation Center where in fact they should be held. Apparently in 2019, Lindela was "operating at 30% of its full capacity," while the SAPS was complaining of the burden of detaining immigrants in jails.⁹³ What also tends to happen in practice is that crime crackdown operations are concentrated in areas with high populations of immigrants (both documented and undocumented), such as Hillbrow and Yeoville in Johannesburg.⁹⁴

Consequently, the police have emerged as the lead agency in everyday migration enforcement, with the DHA only coming on board to verify the status of those arrested. Studies have concluded that "beat policing is responsible for the largest proportion of arrests of undocumented migrants."⁹⁵ What then would have been the lead agency in migration control has had to follow the lead of others, buttressing the lack of coordination among the various agencies that have a role in border management. Following his study on South African immigration control and

⁹⁰ Vigneswaran, "Enduring Territoriality," p. 797.

⁹¹ Ibid.

⁹² Vigneswaran, "The Complex Sources of Immigration Control."

⁹³ Van Lennep, "Lindela and South Africa's Defective Deportation Regime."

⁹⁴ Vigneswaran et al., "Criminality or Monopoly?" p. 477–479; Smith, "South Africa Faces Human Rights Backlash"; Brock, "In South Africa, Immigration Feeds Corrupt Officials."

⁹⁵ Steinberg in Vigneswaran, "Enduring Territoriality," p. 798.

enforcement, Vigneswaran concludes that “the DHA not only failed to bring other departments into line, and transform itself, its own enforcement activities were routinely driven by the other actors’ ongoing performance of immigration enforcement functions.”⁹⁶

4 Official Corruption

In addition to well-documented allegations of the mishandling of migrants, the extent of official corruption in the everyday enforcement of South Africa’s post-1994 migration regime has been endemic, similarly illustrating both the temporal and spatial features of Valverde’s scales of governance.

In the South African context, official corruption is a well-established phenomenon. A number of studies, media reports, and reports by both government and independent institutions have highlighted the prevalence of corrupt practices within South Africa’s post-1994 immigration regime.⁹⁷ Moreover, the paying of bribes in exchange for not being arrested reaches back in history to apartheid-era enforcement of influx control, which governed overtly racialized spaces where white and non-white residents were permitted to live, work, and recreate. These spaces were regulated on the basis of so-called pass laws. If one didn’t have a pass to be in a particular area, there were vulnerable to arrest, a fine, and detention. Finally, as in the past, suspected pass law offenders were often subject to bribes, not only by white but also by black police officers.⁹⁸

Just as Valverde’s temporal dimension of governance is evident here, as with the three main border enforcement agencies’ jostling for control over particular spaces of migration enforcement, the spatial dimension also clearly applies. In addition to the fact that the practice of corruption in South Africa has not changed substantially over time since the country’s enforcement of influx control, the very same spaces that had previously been used to govern pass law offences – including facilities for the interrogation and detention of suspected offenders – have continued to be used to control migrants.

Tom Lodge has observed that the prevalence of corruption, prior to 1994 was not regarded as “endemic” across all levels of bureaucracy in South Africa; rather, “it tended to be concentrated in those areas in which

⁹⁶ Vigneswaran, “Enduring Territoriality,” p. 796.

⁹⁷ Amit, “Queue Here for Corruption.”

⁹⁸ Frankel, “The Politics of Police Control,” p. 487.

officials encountered people who were particularly rightless and defenseless.⁹⁹ By the same token, post-1994, the existence of corruption in South Africa has not only been endemic at the country's land borders but also in refugee status determination/reception centers where applications for asylum have been processed.¹⁰⁰

4.1 *Prevalence of Corruption in the Post-1994 Immigration Enforcement Regime*

In their research on immigration enforcement at Beitbridge and in Johannesburg, Vigneswaran and colleagues identified a “loosely-bound network of transport operators, negotiators, hawkers, guides, and (to a lesser extent) officials that run the human smuggling industry” and “have created a parallel border management system to the official border post.”¹⁰¹ This network, it is further revealed, acts in collusion with some SAPS officials at the Beitbridge border post.¹⁰² One researcher anecdotally narrated some of his observations at the Beitbridge border as follows:

Because of the high volumes of people moving on a regular basis, border officials often use their authority to undermine immigration processes such as the ones related to the granting of days for Zimbabweans who need to get their passports stamped for a visitors visa (sic). While they are supposed to evaluate immigrants on a cases by case basis (travel purpose, resources one has etc.) to determine how many days to grant one to stay in the country (According to law, Zimbabweans can get as many as 90 days a year), border officials often impose 30 days as the maximum. They then communicate with bus drivers and *malayitshas* so that they can inform their passengers to have some money ready for them to “buy more day” if they intend on staying in the country longer.¹⁰³

Away from the border, and into the metropolitan areas where police frequently arrest foreigners, as mentioned earlier, the police were said to “routinely engage in intimidation and extortion of, and simple theft from, Zimbabweans and migrants of other nationalities.”¹⁰⁴

⁹⁹ Lodge, “Political Corruption in South Africa,” p. 171.

¹⁰⁰ Amit, “Queue Here for Corruption.”

¹⁰¹ Vigneswaran et al., “Criminality or Monopoly?,” p. 471.

¹⁰² Ibid., p. 472.

¹⁰³ This information was contained in an email exchange dated 2 December 2020 between Nalule and an ethnographic doctoral researcher whose research was conducted at the Beitbridge border, and nearby Musina town in South Africa.

¹⁰⁴ Vigneswaran et al., “Criminality or Monopoly,” p. 472.

The police are not the only authorities that engage in corrupt activities, Amit's research has revealed that a significant number of asylum seekers and refugees experienced corruption at various stages right from the border through gaining access into a refugee reception office, and in the office itself.¹⁰⁵ These findings have been further substantiated by two reports of independent organizations: Corruption Watch and Lawyers for Human Rights.¹⁰⁶ So what has been done to try and combat it through legal governance?

4.2 *Legal Governance to Combat Corruption Remains Elusive*

While South Africa has a well-developed legal framework aimed at combating corruption in public and private sectors, its capacity to penetrate the spaces of local migration governance – whether at the border posts, at detention centers or in refugee reception offices – has proven to be very elusive.

The major piece of legislation that has sought to accomplish this is the Prevention and Combating of Corrupt Activities Act of 2004. The enforcement of this legislation is in part overseen by the Office of the Public Protector, among other public bodies that can equally investigate allegations of corruption. Moreover, the DHA established a Counter Corruption and Security unit that has sought to work together with other law enforcement agencies. In the White Paper on Home Affairs, the DHA acknowledged that “the poor quality of services and high levels of corruption at the DHA” has provided the impetus for its “Turnaround program” in 2007.¹⁰⁷ It is to this program that the DHA accredited the improvement of services within the DHA to the citizens of South Africa. However, noticeable changes in the civic services have not been experienced at a comparable level in the immigration services, which falls under the same Ministerial body.

The prevalence of corruption in the local spaces of migration governance appears to be part of a long, institutional history that seems very difficult to break with. It has already been mentioned earlier how the practices at border posts, such as Lebombo have reproduced pre-1994 practices and where the payment of bribes is endemic. A similar situation

¹⁰⁵ Amit, “Queue Here for Corruption.”

¹⁰⁶ Corruption Watch, *Asylum at a Price*; Lawyers for Human Rights, *Costly Protection*.

¹⁰⁷ Department of Home Affairs, “White Paper on Home Affairs.”

exists at the Beitbridge border post with Zimbabwe.¹⁰⁸ At Lindela Center too, extortion and bribery have long been documented by the South African Human Rights Commission and NGOs.¹⁰⁹ Following revelations of a Commission of Inquiry, in 2019 it was reported that African Global Operation, a facilities management company that had previously operated as Bosasa, had not only paid millions of South African Rands to politicians, government officials and even journalists but had also managed to secure over 12 billion Rands in government contracts, reportedly also based on bribes.¹¹⁰ Finally, at Refugee Reception Offices, across the country, bribery, and corruption is endemic.¹¹¹

The 2017 White Paper on International Migration acknowledged this systemic corruption and accordingly sought to establish a new paradigm that might deter the “unacceptable levels of corruption.”¹¹² However, it did not explicitly set out any strategy on how the government plans to deal with corruption in the management of international migration.

The government has expressed its hope that streamlining border management under the Border Management Authority Act will help in its fight against systemic corruption, although based on the experiences so far, it is not so clear how this will be accomplished. This has reinforced skepticism among critics of the Border Management Authority Act who argue that the DHA is generally ill-suited to be the lead agency in the Border Management Authority Act and its failure to manage internal corruption will only spread to the new Authority.¹¹³

Even within Parliament, widespread skepticism over DHA’s competence persists. In a 2021 meeting between DHA officials and the Parliament’s select committee on security and justice, one member was concerned over the “litany of issues of corruption and money irregularities that the department is embroiled in,” in addition to personnel shortages and budgetary constraints.¹¹⁴ Accordingly, a number of members “agreed that until the department was able to overcome its current structural and systematic problems, it would not be ready to implement the authority.”¹¹⁵

¹⁰⁸ Peyper, “Tempers Flare as Bribes Block Border Crossing Between SA and Zimbabwe.”

¹⁰⁹ South African Human Rights Commission, “Illegal.”

¹¹⁰ Bornman, “How Lindela Became Bosasa’s Meal Ticket.”

¹¹¹ Amit, “Queue Here for Corruption.”

¹¹² Government of South Africa, White Paper on International Migration, p. 72.

¹¹³ Maunganidze and Mboyizo, “South Africa’s Border Management Authority Dream Could Be a Nightmare.”

¹¹⁴ Gilili, “Home Affairs Vows to Speed up Border Management Authority.”

¹¹⁵ Ibid.

While it may be premature to cast judgement on the effectiveness of the Border Management Authority Act, serious concerns remain as to whether this new intervention will be effective in curbing corruption that is prevalent in South Africa's migration and border control practices.

5 Conclusion

In reflecting on Valverde's temporal and spatial scales in relation to the governance of migration policy and border control in South Africa, it is striking to us how the past and present governance of mobility has reproduced apartheid-era forms of arbitrary control as well as the very spaces where South Africa's highly securitized policies have been enforced for many decades. This is particularly evident in the two formative events highlighted in this chapter, namely, the 2008 wave of xenophobic violence that mirrored racialized violence during the apartheid era and misguided interventions by US government officials that only served to reinforce the racialized culture of enforcement that South Africa has been struggling to rid itself of in its post-1994 liberal constitutional order.

Despite persistent efforts at policy reform, the country's migration and border control policies not only fall short of South Africa's constitutional values but also make clear how everyday forms of local governance have far greater traction. The approach of the South African government to migration has reflected a persistent preoccupation with security and control, while failing to tackle widespread xenophobia and endemic corruption. Furthermore, the everyday, racialized forms of governance that persist in local spaces of migration governance – in particular the border posts, Lindela deportation center and refugee reception offices – are systemic and deeply embedded in local norms that were established long ago during the country's predemocratic period of racialized apartheid policies. Hence, rather than make serious reforms that would represent a true break from its ignominious past, South Africa has been widely criticized for maintaining a border enforcement policy that is outright abusive. Even from a pragmatic standpoint of governance, its policies and everyday forms of governance are evidently counterproductive, not only in light of the country's profound labor and economic needs but also in relation to South Africa's aspirations to be a pathbreaker in rights-based governance.

Among the prolific literature that has been produced on this topic over the past twenty years, some have explained South Africa's restrictive policy, and rising xenophobia as a result of continuities from the previous

regime.¹¹⁶ Others have specifically pointed to xenophobia in the country as “a stratagem for the retaining of hegemony at a moment marked by fierce labor struggles and an insurgent citizenship of the poor, beyond the reach of neoliberal governance.”¹¹⁷

Our analysis not only affirms these earlier analyses but has also taken a different vantage point. Observing how everyday governance operates in both its temporal and spatial dimensions is an unsettling reminder of South Africa’s apartheid past revealing that migration policies and border control practices are very much stuck in the past, with little to no resonance with rights-based principles.

What we can conclude from this analysis of South Africa’s migration and border control enforcement over roughly a twenty-year period is that, unlike other economic blocks where free movement of labor has been encouraged and even a pillar of intergovernmental relations, South Africa has experienced a migration system that is just as rigid and arbitrary than prior to 1994 when there was a *two-gates* system. In other words, through local measures of everyday legal governance, and despite its extensive constitutional and international human rights commitments, the country has maintained a system of racialized migration governance that is not unlike the forms of racialized labor control of the pre-1994 past.

There is certainly more research to be done. For example, an earlier study by Patrick Bond and others has argued how economic policies in South Africa are directly connected with serious challenges faced in the areas of “migration, and devastating xenophobia against black foreign nationals in South Africa.”¹¹⁸ Moreover, as a matter of pragmatism, it is important to critically interrogate how South Africa’s unforgiving approach reveals an unfathomably strong hold to the liberal notions of a nation-state, which in the unreconstructed setting of migration governance, maintains a system characterized by mistreatment and inequalities. More specifically, South Africa’s unreconstructed system of migration enforcement constrains the opportunities that migrants and South Africans alike have to participate in South Africa’s economy. Finally, so far as the current models of migration policy and everyday legal governance are concerned, it is unsettling to see that, at the time of writing, the political party making the greatest progress in South Africa is Action SA, which has been pushing for a radical

¹¹⁶ Klotz, “Migration after Apartheid.”

¹¹⁷ Schierup, “Under the Rainbow,” p. 1052.

¹¹⁸ Bond and Ruiters, “Uneven Development and Scale Politics in Southern Africa,” p. 178.

anti-immigrant agenda.¹¹⁹ As a rights-based party, it is hoped that the still-dominant African National Congress party will take the lead in pushing for a truly alternative approach to the migration policies and enforcement that have been experienced since 1994 (and before), governing through *persons* (with rights) rather than through its current approach of governing through *uses*. Our contention is that this is likely to lead to more productive outcomes, both socially and economically. Along a similar line, as Landau argues, while steering away from antifoignier rhetoric, there could be a more deliberate push for local governance solutions “where citizens or ‘locals’ have direct interests.”¹²⁰

Changing the systemic nature of these practices that reflects a pattern of dysfunctionality also requires a fundamental, strategic rethink for migration advocacy organizations. To be more specific, organizations need to not merely mobilize international law in order to amplify the rights of migrants and refugees. Organizations must also disrupt the systemic nature of the current system and find ways of reversing the rigidity of arbitrary and racialized migration and border control policies that are deeply embedded in local norms, yet are having a deeply corrosive impact on both South Africa’s domestic economy and the economy of the sub-region.

¹¹⁹ Felix, “The Enemy Is Not Foreigners.”

¹²⁰ Landau, “Wither Policy?”