

Countering Xenophobia In South Africa:

*A guide for strengthening the role of journalists
and new media practitioners*



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The Migration Unit

The Migration Unit is a thematically specialised unit of the Centre for Human Rights that conducts research, advocacy, and training on the rights of migrants, including refugees and asylum seekers. It works to promote the rights of forcibly displaced persons, to empower displaced persons, and positively impact on decision- and policy-making on issues that have a bearing on migrants in the African region.

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1. BACKGROUND

1.1 Who and what is this document for?

The purpose of this document is to offer guidance to journalists, new media practitioners, social media influencers, and artists, so they can use the media to counter xenophobia in South Africa. It offers guidelines for transmitting accurate and factual information that is based on evidence when reporting on or covering migration-related issues. This document does this in two ways.

First, this it provides up to date content and information that can equip journalists and new media practitioners to understand migration issues in South Africa. This includes but is not limited to easy-to-read definitions of key terms, overview of the rights of migrants, refugees and asylum seekers as well as laws governing them, key migration facts and statistics and histories and geographies of labour migration and xenophobia.

Second, this document establishes ethical reporting guidelines on migrants and a checklist for covering xenophobia in light of the disinformation provided by fake news and hashtags. This is complemented by case studies and examples of scenarios used to reveal how to frame an effective and comprehensive story.

This careful balance allows the user to gain a better understanding of both the evidence base around migration concerns and the guiding principles that can guide responsible journalism that are rooted in strategies and methodologies for reporting that have been tried and tested in practice.

This guidance is based on a comprehensive review of a selection of literature, resources, and guidelines on topics like media reporting, labour migration, xenophobia and the rights of migrants, asylum seekers and refugees.

1.2 Why should you use this document?

South Africa's attempts at realising social cohesion have been undermined by hate crimes that target people based on their nationality.¹ This xenophobia often turns violent, which is a widespread and growing concern in South African society.² The media are an important institution in countering xenophobia. As a social institution, they play a significant role in influencing immigration policies that have an impact on

¹ LB Landau 'South Africa has a plan to fight prejudice. But it's full of holes' *The Conversation* (1 April 2019). Available at <http://theconversation.com/south-africa-has-a-plan-to-fight-prejudice-but-its-full-of-holes-114444> (accessed 22 April 2023).

² C Adjai & G Lazaridis 'Migration, xenophobia and new racism in post-apartheid South Africa' (2013) 1 *International Journal of Social Science Studies* 192-205. Available at <https://doi.org/10.11114/ijsss.v1i1.102> (accessed 22 April 2023); S Bekker 'Violent xenophobic episodes in South Africa, 2008 and 2015' (2015) 1 *African Human Mobility Review* 229; J Crush *The perfect storm: The realities of xenophobia in contemporary South Africa* Migration Policy Series 50, Southern African Migration Programme (SAMP) (2008) 1-67. Available at <https://samponline.org/wp-content/uploads/2016/10/Acrobat50.pdf> (accessed 6 February 2022); JP Misago & S Mlilo 'Xenowatch factsheet 2: Incidents of xenophobic violence in South Africa: 1994-April 2021' African Centre for Migration & Society (2021) 1-6. Available at http://www.xenowatch.ac.za/wp-content/uploads/2021/04/Factsheet2-22-April-2021_Final.pdf (accessed 6 October 2022).

these issues.

This means that journalists as well as social media influencers have a key role to play in violence prevention and the protection of vulnerable groups such as migrants. Human beings are involved in issues of migration and forced displacement; thus knowledge and awareness of precise facts, trustworthy sources, ethical reporting, and good practices are necessary for journalists.³

However, it is merely impossible to establish direct causal relationships between anti-immigrant media coverage and anti-immigrant policymaking and xenophobia in South Africa.⁴ What is clear though is that South Africa has several media (radio, television, print, social media) that can serve as platforms to address xenophobic violence and discrimination. The main challenge that remains is that these media do not always provide the necessary coverage to sufficiently address these issues.

Notwithstanding that there are other factors, this is also sometimes the result of limited guidance on how to cover migration issues in the media. But, there is still an opportunity for those interested in contributing positively to the narrative about migration in South Africa in such a way that it can help realise the rights of refugees and asylum seekers enshrined under the United Nations (UN) Convention Relating to the Status of Refugees and its Protocol of 1967, and the Organisation for African Unity (OAU) Convention on the Specific Aspects of Refugee Problems in Africa, and protect these and migrants rights enshrined in South Africa's domestic law.

This guide is particularly useful for:

- 1) Journalists and other new media practitioners, social media influencers, and artists in need of increasing their capacities to understand the policies, data and existing knowledge on migration and xenophobic violence in South Africa;
- 2) Journalists and other new media practitioners looking to streamline the prevention of xenophobic violence in their coverage and social media activities; and
- 3) Journalists looking for best practices in responding to xenophobic violence through the mainstream and social media.

1.3 Why is the media important in countering xenophobia?

If you fall under one of these three categories, you should read this document and use it in your day-to-day practice. But you could probably still be wondering why you have been identified as an important actor in countering xenophobia in South Africa. Indeed,

³ 'Reporting on migrants and refugees: Handbook for journalism educators' UNESCO Series on Journalism Education (2021). Available at <https://unesdoc.unesco.org/ark:/48223/pf0000377890.locale=en> (accessed 22 April 2023).

⁴ SH Chiumbu & D Moyo "'South Africa belongs to all who live in it': Deconstructing media discourses of migrants during times of xenophobic attacks, from 2008 to 2017' (2008) 37 *Communicare: Journal for Communication Studies in Africa* 136-52. Available at <https://doi.org/10.10520/EJC-10575901b5> (accessed 22 April 2023); DA McDonald & S Jacobs '(Re)writing xenophobia: Understanding press coverage of cross-border migration in Southern Africa' (2005) 23 *Journal of Contemporary African Studies* 295-325. Available at <https://doi.org/10.1080/02589000500274050> (accessed 22 April 2023); MJ Smith 'Violence, xenophobia and the media: A review of the South African media's coverage of xenophobia and the xenophobic violence prior to and including the events of 2008' (2011) 38 *Politikon* 111-129. Available at <https://doi.org/10.1080/02589346.2011.548673> (accessed 22 April 2023).

this role can be seen by not only being wary of the negative and deadly results of anti-immigrant media portrayal, but also appreciating the positive ones when media reporting and coverage is done in a responsible way.

Not all reporting is negative, and newspaper coverage would appear to be improving over time.⁵ For example, the media in South Africa has been crucial in raising public awareness of the issue of xenophobia.⁶ Also, the state and its failure to adequately respond to both COVID19 and migration are now being explicitly stated by media, as opposed to migrants serving as the focal point of blame, which has previously been done when migrants have been portrayed as vectors of disease.⁷

However, it is also as important to acknowledge that South African news coverage of international migration has not been the best as it has mostly been uncritical and anti-immigrant.⁸ Using primarily 'neutral' terminology in the media to describe migrants and other outsiders does not detract from the use of phrases like 'illegal immigrant' and other erroneous descriptions of migrants.⁹ A concept of insiders and outsiders, citizens and non-citizens, has been ingrained in society as a result of the media's intentional or unintentional employment of 'narrative frames' that justify the exclusion of foreigners.¹⁰ Such messages reinforce the public's concerns about a foreign 'other' taking over the country.¹¹

We have also seen the rise of social media hashtags and fake news. This is where it is important to underscore the role of social media influencers, political leaders, and artists who are active on social media platforms like Twitter and attract a significant following. Social media's rapid growth has led to an increasing number of South Africans using them as substitute mainstream news sources. With little to no information verification systems or training, this rise accounts for the spread of fake news, which is a major contributor to South Africa's current xenophobia problem that fuels socioeconomic and political tensions.¹²

Higher levels of perceived misinformation exposure and lower levels of media trust are strongly linked in South Africa.¹³ Here, cyberspace serves as both a xenophobic theatre and a venue for xenophobic campaigning through 'promo Twitter'.¹⁴ This has

⁵ McDonald & Jacobs (n 4 above).

⁶ Chiumbu & Moyo (n 4 above).

⁷ T De Gruchy et al 'Framing migration during the Covid-19 pandemic in South Africa: A 12-month media monitoring project' (2022) 10 *Media and Communication* 253–64.

⁸ McDonald & Jacobs '(Re)writing xenophobia'.

⁹ A Lerner, S Roberts, & C Matlala 'Race and migration in the community media: Local stories, common stereotypes' *Media Monitoring Africa* (2009).

¹⁰ Chiumbu & Moyo "South Africa belongs to all who live in it".

¹¹ As above.

¹² V Chenzi 'Fake news, social media and xenophobia in South Africa' *African Identities* (2 October 2021): 502-521. Available at <https://doi.org/10.1080/14725843.2020.1804321> (accessed 22 April 2023).

¹³ H Wasserman & D Madrid-Morales 'An exploratory study of "fake news" and media trust in Kenya, Nigeria and South Africa' (2019) 40 *African Journalism Studies* 107-23. Available at <https://doi.org/10.1080/23743670.2019.1627230> (accessed 21 April 2023).

¹⁴ Users can use this feature to purchase inactive accounts or pay people to distribute xenophobic content, making it simple to conceal their identity and goals and enabling dialogue manipulation over a longer period of time CABC, 'Interim Report on Xenophobia on South African Social Media', *The Centre for Analytics & Behavioural Change* (blog) (17 August 2020). Available at

resulted in 'cyberspace xenophobia'.¹⁵ Fake news and hashtags like #PutSouthAfricaFirst have made it difficult to separate the virtual from the physical. The hashtag is being utilised as a vehicle for xenophobic action mobilisation on the ground as well as to fuel new public engagements, establishing a circle of mutually reinforcing relationships between the physical and virtual worlds.¹⁶ Another trend that has not quelled the situation has been the relatively low number of tweets posted by the traditional media during times of xenophobic violence.¹⁷

In this context, it is counter-productive to separate mainstream from social media. In fact, the production and consumption of news characterised by resource-constrained newsrooms influence and govern the spread of fake news and 'cyber-propaganda' in sub-Saharan Africa.¹⁸ Because of this restriction, the mainstream media have been unable to respond to the localised breakdown in communication that exists in South Africa between communities and the state as well as within communities, which is the cause of a great deal of anger and violence, and to fulfil the liberal imperative of giving 'voice to the voiceless'.¹⁹ This all reveals that partly, the expansion of fake news on social media platforms is an indictment on the news media production process and the challenging context within which it occurs.

This is unlikely to go away soon, and we are likely to see new media practitioners like social media influencers and artists playing an even more pronounced role in addressing xenophobia. While some guidance on reporting migration in ways that can counter xenophobia exists, it does not address the role of social media and 'influencers', who often rely on their own perceptions to inform their content. Interventions in South Africa that would improve the capacity of the media to respond to xenophobic violence have not moved beyond the mainstream media. A great deal of work and proactive, practical steps is therefore still needed to address whether professional journalism ethics and regulation should apply to social media. This document fills this void.

1.4 Definition of key terms

A clear knowledge of terms is one of the biggest obstacles facing individuals attempting to report ethically on migration issues in South Africa, no least social media influencers and artists. Understanding these concepts is crucial to preventing the conflation of various migrant experiences and categories. These distinctions are significant to migrants because they are frequently utilised in ways that undermine

<https://cabac.org.za/2020/08/17/interim-report-on-xenophobia-on-south-african-social-media/> (accessed 21 April 2023).

¹⁵ EM Isike, Z Olaitan, & C Isike 'Cyberspace xenophobia in South Africa' in C Isike & EM Isike (eds) *Conflict and concord: The ambivalence of African migrant/host relations in South Africa* (2022) 85-108. Available at https://doi.org/10.1007/978-981-19-1033-3_5 (accessed 21 April 2023).

¹⁶ Isike, Olaitan, and Isike (n 15 above).

¹⁷ A van der Vyver 'An analysis of Twitter discourse on xenophobia in South Africa' (2019) Paper presented at Pattaya International Conference on 'Advances in Engineering and Technology', Thailand.

¹⁸ A Mare, HM Mabweazara, & D Moyo "Fake news" and cyber-propaganda in Sub-Saharan Africa: Recentering the research agenda' (2019) 40 *African Journalism Studies* 1-12. Available at <https://doi.org/10.1080/23743670.2020.1788295> (accessed 22 April 2023).

¹⁹ A Hadland 'Shooting the messenger: Mediating the public and the role of the media in South Africa's xenophobic violence' (2010) 35 *Africa Development* 119-43. Available at <https://doi.org/10.4314/ad.v35i3.70210> (accessed 21 April 2023).

their rights and inflict more harm. People who are moving fall into different categories from an analytical standpoint, and things are getting a little complicated here, so journalists need to pay attention to the details. They need to learn about migrants and refugees to effectively inform their audiences and facilitate the public discourse.²⁰

1.4.1 Asylum

The provision of protection on a state's territory to people who are not citizens of or normally residing in that state who are escaping persecution, serious harm, or other reasons. Protection against refoulement, authorisation to stay on the territory of the asylum country, humanitarian standards of treatment, and access to a durable solution are only a few of the components that make up asylum.²¹

1.4.2 Asylum seeker

A catchall phrase for anyone looking for safety abroad. It is a phrase that is used legally in some countries to describe someone who has sought for refugee status or a comparable international protection status but has not yet heard a decision about their application. It can also be used to describe someone who has not yet applied but may do so in the future or who may require international protection.

Every refugee starts out as an asylum seeker, even if not every asylum seeker will ultimately be accepted as a refugee. However, a person seeking asylum may not be deported before their asylum application has been reviewed fairly and they are entitled to certain minimal standards of care while their status is being decided.²²

This person will be granted an asylum seeker's permit (Section 22) by the Department of Home Affairs which allows them to stay in the country whilst waiting for their refugee status to be confirmed.²³

1.4.3 Country of destination

Regardless of whether they move regularly or irregularly, a country that is the destination for an individual or group of people.²⁴

1.4.4 Country of origin

A country of nationality or former place of residence of a person or group of people who have migrated abroad, whether regularly or irregularly.²⁵

²⁰ 'Reporting on Migrants and Refugees: Handbook for Journalism Educators'.

²¹ UNHCR 'UNHCR master glossary' (2006). Available at <https://www.unhcr.org/glossary/> (accessed 22 April 2023) (accessed 22 April 2023).

²² UNHCR.

²³ CoRMSA 'Defining the health rights of refugees & asylum seekers (2).Pdf. Available at <https://acrobat.adobe.com/link/track?uri=urn%3Aaaid%3Aascds%3AUS%3Afe8ceb9-9e04-45e2-875d-c40eed7dd07a&viewer%21megaVerb=group-discover> (accessed 21 November 2022).

²⁴ IOM 'Glossary on migration' (2019) https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf.

²⁵ As above.

1.4.5 Country of transit

The country through which a migrant, refugee, or asylum seeker passes while traveling legally or illegally to, from, or back to their country of origin or usual residence. Transit country is a word that is frequently used.²⁶

1.4.6 Child

Every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.²⁷

1.4.7 Diaspora

Those who have migrated or are descendants of migrants, whose past and experience with migration have had an impact on their identity and sense of belonging, whether they are real or symbolic. Based on a shared sense of history, identity, or shared experiences in the destination country, they continue to preserve ties to their native countries as well as to one another.²⁸

1.4.8 Deportation

Forced physical evacuation of a person to their native country or a third country by the host country's government.²⁹

1.4.9 Displaced persons

People or groups of people who have had to flee or leave their homes or places of habitual residence, whether across an international border or within a State, especially due to or to avoid the effects of armed conflict, situations of generalized violence, violations of human rights, or natural or man-made disasters.³⁰

1.4.10 Documented migrant

A migrant who is in possession of the paperwork required to demonstrate his or her regular status in the country and is entitled to enter and remain under the laws of that State or under international accords to which that State is a party.³¹

1.4.11 Documented migrant worker

A migrant worker or members of their family who are permitted to enter, remain, and engage in a profitable activity in the country where they are employed by virtue of that country's laws and the international accords to which that country is a party.³²

²⁶ UNHCR 'UNHCR Master Glossary'.

²⁷ Convention on the Rights of the Child *United Nations*, art 1..

²⁸ IOM 'Glossary on Migration'.

²⁹ UNHCR 'UNHCR Master Glossary'.

³⁰ FM Deng 'Guiding Principles on Internal Displacement' (1999) 33 *International Migration Review* 484–93; IOM 'Glossary on Migration'.

³¹ FC Mena, AH El-Borai, & A El Jamri 'International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families' (2011); IOM 'Glossary on Migration'.

³² As above.

1.4.12 Refugee

Anyone who satisfies the requirements of an appropriate refugee definition as set forth in international or regional refugee agreements, the mission of the United Nations High Commissioner for Refugees (UNHCR), or national law. According to international law and the mandate of UNHCR, refugees are outside of their countries of origin and require international protection due to a serious threat to their life, physical integrity, or freedom in their countries of origin as a result of persecution, armed conflict, violence, or serious public disorder.³³

A section 24 permit will be issued to a refugee which will validate his/her status in South Africa.³⁴

1.4.13 Internally displaced person (IDP)

A person who has been compelled to leave their home or place of habitual residence due to or to escape an armed conflict, an environment of widespread violence, a violation of one's human rights, a natural disaster, or another person's actions, and who has not crossed an internationally recognized State border.³⁵

1.4.14 Internal migration

The movement of people within a State involving the establishment of a new temporary or permanent residence.³⁶

1.4.15 Stateless people

People who are not considered as nationals by any state.³⁷

1.4.16 Trafficking in persons

The recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.³⁸

³³ IOM 'Glossary on Migration'.

³⁴ CoRMSA 'Defining the health rights of refugees & asylum seekers (2).Pdf (accessed 22 April 2023).

³⁵ African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention). Available at <https://au.int/en/treaties/african-union-convention-protection-and-assistance-internally-displaced-persons-africa> (accessed 22 April 2023).

³⁶ IOM 'Glossary on Migration'.

³⁷ 'Reporting on Migrants and Refugees: Handbook for Journalism Educators'.

³⁸ J Allain '2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children: Supplementing the United Nations Convention against Transnational Organized Crime' in J Allain *Slavery in international law* (2013) 410-21; IOM 'Glossary on Migration'.

1.4.17 Xenophobia

Attitudes, prejudices, and behavior that reject, exclude and often vilify persons, based on the perception that they are outsiders or foreigners to the community, society or national identity.³⁹

³⁹ UN 'World Conference on Racism' (2001). Available at <https://www.un.org/WCAR/> (accessed 22 April 2023).

2. INTRODUCTION

2.1 South Africa's long history of labour migration

Contributing to negative sentiment towards migrants in South Africa is the perception that migration is an exception, not the norm. However, labour migration to South Africa has historical precedent. It was first stimulated by mining, which formed the cornerstone of South Africa's economy after the discovery of gold in the Witwatersrand and diamonds in Kimberley 1886 and 1887 respectively, complemented by manufacturing. The insatiable demand for cheap black male labour fuelled by these economic changes and based in systemic racial segregation, which was aided by high levels of foreign direct investment (FDI), led to coercive colonial labour recruitment methods. Through legislation, taxation, and restricted access to land and other modes of production, the apartheid state was able to drive black males to migrate from rural to urban areas in search of work. Simultaneously, the apartheid regime enacted racial pass laws to regulate permanent urban settlement and ensure that black Africans, particularly women, remained in their 'homelands.'

To satisfy rising demand, internal labour migration was supplemented by importing Africans to the South African mines through an organised labour migration regime made up of a series of bilateral agreements and managed by a regional employment bureau. Mineworkers were imported to work on South African mines under bilateral labour agreements (BLAs) with five neighbouring SADC nations: Botswana, ESwatini (Swaziland), Lesotho, Malawi, and Mozambique.⁴⁰ Due to their unilateral nature and insufficient protection of mineworkers' rights, these agreements presented numerous difficulties, especially post-1994.⁴¹ Farmers in the North began to also rely on the same simple, unrestricted transit across the Limpopo that the government was trying to prevent with an electronic fence while relying to some extent on its porosity.⁴² State officials purposefully placed barriers at the front entrance while leaving the back door open. They were aware that some immigrants were coming in through the back door, but they did nothing to stop it.⁴³ This 'two-gate policy' is the bedrock of South Africa's immigration policy, even to this day.⁴⁴

This all shows that South Africa's borders are colonial constructs, instead of being natural. Part of the reason migration remains a problem to be dealt with is that when South Africa had its first non-racial, democratic elections on April 27, 1994, the apartheid regime's restrictive immigration rules were repealed, but apartheid-era immigration laws such as the Aliens Control Act (1973; Aliens Act 1937) remained in place. The Aliens Control Act was amended in the Amendment Act (1995) that still revealed a reluctance to allow migrants. This accounts for the disparity today between the overall legal framework grounded in one of the world's most progressive constitutions that provides migrants, asylum seekers and refugees with more rights and assurances than ever before, and their actual access to economic and social

⁴⁰ ILO 'Draft national labour migration policy for South Africa' (2022).

⁴¹ ILO (n 40 above).

⁴² M Bolt *Zimbabwe's Migrants and South Africa's Border Farms: The Roots of Impermanence* (2016) 71.

⁴³ F Musoni *Border jumping and migration control in Southern Africa* (2020).

⁴⁴ S Peberdy *Selecting immigrants: National identity and South Africa's immigration policies, 1910-2008* (2009).

rights. The South African state is increasingly sceptical of migration and consequently engages in a range of policies and practices that do not facilitate easy movement or permanent settlement, especially for low-skilled migrant workers. Immigration has become a politicised and even emotionally charged issue since the government has also failed to deliver on its promises to the black majority who are its citizens. At the same time, the country also requires certain skills that its local labour force does not fully possess. The prejudice against migrants persists and looks further from going away.

2.2 Key migration facts and figures

One of the problems South Africa faces is that while data shows that international migration is clearly insignificant relative to the population, it is for the most part, portrayed by politicians in a negative, scapegoated narrative. There is often misrepresentation of the numbers and outcomes of immigration.⁴⁵ This is seen, for example, in the lack of appreciation or knowledge about the documented economic contributions of migrants such as foreign entrepreneurs.⁴⁶ South Africa lacks sufficient data to calculate accurate estimates of the stocks and movements of foreign labour in the country.⁴⁷ Hence, partly, the limited data about the impact of migration on the South African labour market also contributes to the situation. Here is some of what we know about migration in South Africa.

2.2.1 Migration statistics

2.2.1.1 Migration profile

South Africa is the most prominent migrant destination in the region as international migrants who used to make up 2.8 percent of South Africa's population in 2005 had, by 2019, climbed to 7 percent.⁴⁸ This figure amounts to over 4 million international migrants (4, 036,696 mixed migration flows) staying in the country. It comprises those who are seeking asylum and economic migrants, out of a total of 7,481, 000 migrants in the Southern Africa Development Community (SADC) area, excluding undocumented migrants.⁴⁹

⁴⁵ KP Vanyoro 'Pragmatic pathways: Critical perspectives on research uptake in the Global South' Migrating out of Poverty RPC Working Paper No. 30 (Brighton, UK: Migrating out of Poverty Consortium, University of Sussex, 2015) 28. Available at <<https://www.gov.uk/dfid-research-outputs/pragmatic-pathways-critical-perspectives-on-research-uptake-in-the-global-south-migrating-out-of-poverty-rpc-working-paper-no-30#citation>> (accessed 22 April 2023).

⁴⁶ R Amit & V Jastrow 'Lawless regulation: Government and civil society attempts at regulating Somali informal trade' (2015) ACMS Research Report. Available at <<http://www.migration.org.za/wp-content/uploads/2017/08/lawless-regulation.pdf>> (accessed 22 April 2023).

⁴⁷ D Budlender & B Hartman-Pickerill 'Migration and employment in South Africa: Statistical analysis of the Migration Module in the Quarterly Labour Force Survey, Third Quarter 2012' (2014). Available at <http://www.miworc.org.za/docs/MiWORC-Report-5.pdf> (accessed 22 April 2023).

⁴⁸ IOM 'World Migration Report 2020' (Geneva: IOM, 2019). Available at https://publications.iom.int/system/files/pdf/wmr_2020.pdf (accessed 22 April 2023).

⁴⁹ United Nations Department of Economic and Social Affairs (UN DESA), Population Division 'International migrant stock: The 2017 revision' (New York: UN DESA, 2017). Available at <https://www.un.org/en/development/desa/population/migration/data/estimates2017/estimates17.asp> (accessed 22 April 2023).

2.2.1.2 Undocumented migrants

It is impossible to identify and provide a precise number of undocumented migrants in South Africa.⁵⁰ No matter their citizenship or immigration status, every person living within the borders of South Africa is counted in the population census.⁵¹ The province/country of birth, the date of arrival to South Africa, and the country of citizenship are all asked in the census migration module, which does not inquire about a person's legal status.⁵² This makes it hard to estimate the number of undocumented migrants in the country.

2.2.1.3 Migrant women

There are no reliable estimates of how many migrants are women, as gender-disaggregated migration data are largely unavailable. However, women are migrating more than ever as both the proportion of total migrants that are women and the actual numbers of migrant women have increased.⁵³ The United Nations Department of Economic and Social Affairs (UNDESA) 2017 mid-year data show that women constituted 44.4 per cent of total migrants in South Africa in 2017.⁵⁴

2.2.1.4 Refugees and asylum seekers

There are an estimated 266 946 refugees and asylum-seekers living in South Africa.⁵⁵ Of these, an estimated 89 588 people hold refugee status.⁵⁶

2.2.1.5 Unaccompanied minors and separated children

More than 642,000 migrant or displaced children are currently residing in South Africa, making it the continent's country with the largest child migrant population.⁵⁷

2.2.1.6 Internal migration

Interestingly South Africans are also mobile. Standing at 7 percent of the total South

⁵⁰ Scalabrini Centre of Cape Town 'Asylum, refugee and migration statistics South Africa' *Scalabrini* (blog) (13 October 2020). Available at <https://www.scalabrini.org.za/migration-statistics/> (accessed 22 April 2023).

⁵¹ Statistics South Africa 'Erroneous reporting of undocumented migrants in SA | Statistics South Africa' (5 August 202). Available at <https://www.statssa.gov.za/?p=14569> (accessed 22 April 2023).

⁵² Statistics South Africa.

⁵³ AN Mbiyozo 'Gender and migration in South Africa: Talking to women migrants' *ISS Southern Africa Report* (2018) 1-36.

⁵⁴ United Nations Department of Economic and Social Affairs (UN DESA) Population Division, 'International migrant stock: The 2017 revision'.

⁵⁵ UNHCR 'UNHCR and the government pledge to clear the asylum backlog by 2024' (17 July 2021). Available at <https://southafrica.un.org/en/136315-unhcr-and-government-pledge-clear-asylum-backlog-2024>; <https://southafrica.un.org/en/136315-unhcr-and-government-pledge-clear-asylum-backlog-2024> (accessed 22 April 2023).

⁵⁶ Scalabrini Centre of Cape Town 'Asylum, refugee and migration statistics South Africa'.

⁵⁷ UNICEF 'Data snapshot of migrant and displaced children in Africa' (New York: UNICEF 8 February 2019). Available at <https://data.unicef.org/resources/data-snapshot-of-migrant-and-displaced-children-in-africa/> (accessed 22 April 2023).

African population, internal migration is far more significant than international migration.⁵⁸

2.3 Common myths and stereotypes

Xenophobia is perpetrated by myths and stereotypes that are unsubstantiated by empirical evidence. Here are a few examples:

2.3.1 Migrants 'steal' jobs from South Africans

This is not a factual statement. Migrants have been found to contribute positively to economic development⁵⁹ in countries they go (host countries).⁶⁰ When allowed and accorded similar rights as locals, they can create jobs and contribute to improved Gross Domestic Product (GDP) per capita.⁶¹ In fact, the challenge is more that governments are not able to harness these benefits adequately.⁶²

Employment is not a zero-sum game. Certain low-skilled sectors create jobs by sustaining businesses. In the informal economy, the percentage of foreign-born migrants working there is nearly twice as high as that of non-migrants born locally.⁶³ Dominated by male refugee entrepreneurs who are relatively young and source their goods locally, the industry contributes to the growth of the local economy. The majority of enterprises in the informal sector purchase their goods from establishments in the formal sector, such as wholesalers, factories, supermarkets, and the Johannesburg Fresh Produce Market.⁶⁴

⁵⁸ Statistics South Africa 'Census 2011: Census in brief' (2011).

⁵⁹ According to the IMF, in industrialised countries, immigration boosts output and productivity over the short- and long-term. By the fifth year, a 1 percentage point increase in immigration relative to total employment boosts output by almost 1%. This is because both native-born and immigrant workers contribute to the labor market a variety of talents that complement one another and boost productivity. The average income of natives benefits from even modest productivity increases brought on by immigration.

⁶⁰ IMF 'Migration to advanced economies can raise growth' (19 June 2020). Available at <https://www.imf.org/en/Blogs/Articles/2020/06/19/blog-weo-chapter4-migration-to-advanced-economies-can-raise-growth> (accessed 22 April 2023).

⁶¹ S Peberdy 'Competition or co-operation? South African and migrant entrepreneurs in Johannesburg' (Southern African Migration Programme (2017). Available at <https://samponline.org/wp-content/uploads/2016/10/SAMP75.pdf> (accessed 22 April 2023).

⁶² JP Misago 'Migration and socio-economic development in African cities: The dual challenge to the Aerotropolis Project of South Africa's Ekurhuleni Metropolitan Municipality' (1 May 2016). Available at <https://opendocs.ids.ac.uk/opendocs/handle/20.500.12413/14849> (accessed 22 April 2023); Y Estifanos, T Zack, & KP Vanyoro 'Challenges of the migration and integration of Ethiopian entrepreneurs to South Africa' (July 2019). Available at <https://opendocs.ids.ac.uk/opendocs/handle/20.500.12413/14940> (accessed 22 April 2023).

⁶³ D Budlender & C Fauvelle-Aymar 'Migration and employment in South Africa: Statistical and econometric analyses of internal and international migrants in Statistics South Africa's Labour Market Data' African Centre for Migration & Society (2014). Available at https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_379445.pdf (accessed 22 April 2023).

⁶⁴ S Peberdy 'Competition or co-operation? South African and migrant entrepreneurs in Johannesburg' *Southern African Migration Programme* (2017). Available at <https://samponline.org/wp-content/uploads/2016/10/SAMP75.pdf> (accessed 22 April 2023).

Spaza stores make up 2.7 percent of the retail market and are worth R8 billion.⁶⁵ A significant portion of migrant entrepreneurs source their goods locally from wholesalers (63 percent), small shops and retailers (20 percent), supermarkets (15 percent), and factories (15 percent).⁶⁶ Wholesalers, supermarkets, fresh produce markets, retailers, and manufacturers all benefit economically from the formation and expansion of refugee enterprises. Because they are charged VAT in these exchanges, migrant entrepreneurs benefit local economies if they have sourced their goods locally.⁶⁷ By doing this, they are increasing both the tax base and the profitability of the formal sector.

Migrants also create jobs in the informal economy. Additionally, they assist in creating local employment at the wholesalers and shops where they purchase their products.

2.3.2 Migrants overburden the South African public health care system

It is true that South Africa's public healthcare system is overburdened⁶⁸ but this is not because of migrants. It is not possible that a population that constitutes no more than 8 percent of the total population⁶⁹ can have such a toll on healthcare services.

The challenges within the public healthcare system relate to the general shortages of medical personnel, state facilities lacking beds, staff facing high workloads and low morale among nurses in public facilities. Providing primary healthcare has undoubtedly been complicated by the post-apartheid era's shortcomings in the governance of the health system, mismanagement of funds and state resources, corruption and underfunding.⁷⁰ A report by civil society group Corruption Watch highlights how corruption prevents a vast section of the population from accessing their right to decent healthcare.⁷¹

The blame on migrants is therefore misplaced as these are health system management and governance issues. This should not be a debate about individuals in a country which continues to feel the effects of health inequalities embedded by apartheid.

A higher concentration of non-nationals is likely in areas of high mobility and transit like border towns and metropolitan cities. But this is also not significant enough to mount pressure on the public healthcare system. For example, most people who move to South Africa from within the region are moving for work. This suggests that there is

⁶⁵ F Basardien et al 'Entrepreneurial orientation of spaza shop entrepreneurs evidence from a study of South African and Somali owned spaza shop entrepreneurs in Khayelitsha' (2014) 2 *Singaporean Journal of Business Economics and Management Studies* 45-61.

⁶⁶ G Tawodzera & A Chikanda *International migrants and refugees in Cape Town's informal economy* OSSREA (2016).

⁶⁷ Tawodzera & Chikanda.

⁶⁸ J Vearey, M Modisenyane, & J Hunter-Adams 'Towards migration-aware responses to health in South Africa: An opportunity to address inequity in health' (2017) *South African Health Review* 89-98.

⁶⁹ IOM 'World Migration Report 2020'.

⁷⁰ H Coovadia et al 'The health and health system of South Africa: Historical roots of current public health challenges' *The Lancet* (5 September 2009) 17-34. Available at [https://doi.org/10.1016/S0140-6736\(09\)60951-X](https://doi.org/10.1016/S0140-6736(09)60951-X) (accessed 22 April 2023).

⁷¹ Corruption Watch 'X-ray: The critical state of the health care centre in SA archives' Corruption Watch (22 July 2020). Available at <https://www.corruptionwatch.org.za/tag/x-ray-the-critical-state-of-the-health-care-centre-in-sa/> (accessed 22 April 2023).

no relation between high mobility and seeking health services. Even if there was, as reported in the media, cases of women crossing the border to give birth, the public healthcare system is guided by the Uniform Patient Fee Schedule, which sets out who must pay for certain services at any South African health facility.⁷² And, where there are pressures, these can be buffered if the proper systems are put in place to respond to challenges related to documentation, language and poor referral systems.

2.3.3 Migrants bring crime to South Africa

The police minister and commissioner asserted that foreigners are a big source of criminality in 2015, which ran the risk of escalating anti-immigrant sentiment in a country where xenophobic violence is endemic. However, the number of non-nationals living in the country (including documented and undocumented migrants, naturalised citizens, South Africans born in exile, as well as refugees and asylum seekers) has only been rising slowly over the past two decades with no evidence of a massive spike. But while these numbers have been relatively stable, serious crime has increased substantially. The third quarter crime statistics reveal a significant improvement in crimes discovered as a result of police intervention, despite increases in contact crimes including murder, assault, and robberies. Crimes like bank robberies and thefts of cash in transit, which have decreased during the reporting period, show signals of improvement.⁷³ Given the small percentage of the population that is foreign born, there would need to be a large number of super-criminals to account for a significant percentage of the country's crime.⁷⁴ Some may fit that bill, but global studies indicate that first-generation immigrants commit crimes at much lower rates than 'native born' people.⁷⁵ There is no reason to think South Africa deviates from this pattern.⁷⁶

In spite of deportations, major violent crime and organised crime really continue to rise in South Africa. In any case, those migrants who are accountable should be charged with a crime and brought before the court, not the mob.

2.3.4 Migrant workers are not covered by South Africa labour law

There are different labour laws that provide protection and rights to migrant workers (see next section of this document).

⁷² Scalabrini Centre of Cape Town 'Migrant and refugee access to public healthcare in South Africa' *Scalabrini* (blog) (25 September 2019). Available at <https://www.scalabrini.org.za/migrant-and-refugee-access-to-public-healthcare-in-south-africa/> (accessed 22 April 2023).

⁷³ SAPS 'Services | SAPS (South African Police Service)' 17 February 2023. Available at <https://www.saps.gov.za/newsroom/msspeechdetail.php?nid=44808> (accessed 22 April 2023).

⁷⁴ L Landau & A Hiropoulos 'Op-ed: Fighting crime or sing Immigrants as Scapegoats?', *Daily Maverick*, 2 October 2015. Available at <https://www.dailymaverick.co.za/article/2015-10-02-op-ed-fighting-crime-or-using-immigrants-as-scapegoats/> (accessed 22 April 2023).

⁷⁵ MT Light, J He, & JP Robey 'Comparing crime rates between undocumented immigrants, legal immigrants, and native-born US citizens in Texas' (2020) 117 *Proceedings of the National Academy of Sciences* (22 December 2020) 40-47. Available at <https://doi.org/10.1073/pnas.2014704117> (accessed 22 April 2023).

⁷⁶ L Landau & A Hiropoulos 'Op-ed: Fighting crime or using immigrants as scapegoats?' *Daily Maverick* (2 October 2015). Available at <https://www.dailymaverick.co.za/article/2015-10-02-op-ed-fighting-crime-or-using-immigrants-as-scapegoats/> (accessed 22 April 2023).

2.4 Chapter Summary

The idea that migration is an exception rather than the norm adds to the unfavourable opinion toward migrants in South Africa. However, there is history of labour migration to South Africa. This chapter provides the reader with a brief overview of migration to South Africa as well as important facts and numbers related to migration, such as the profile of migration in the nation, the number of undocumented migrants, migrant women, internal migrants, refugees and asylum seekers. In this context, prevalent beliefs and stereotypes are given and debunked.

3. DOMESTIC AND INTERNATIONAL LAW GOVERNING THE RIGHTS OF MIGRANTS AND REFUGEES

3.1 Domestic laws governing migrants and refugees in South Africa

Migrants and refugees are governed by several laws including the below:

- The Constitution
- The Refugees Act of 1998
- The National Health Act
- The Immigration Act
- The Uniform Fee Patient Schedule
- Refugees Amendment Act (December 27, 2019)
- White Paper on the Management of International Migration
- Draft National Labour Migration Policy Framework (2022)
- Unemployment Insurance Amendment Act No. 32 of 2003
- Unemployment Insurance Contributions Act No. 4 of 2002
- Skills Development Act No. 97 of 1998
- Skills Development Levies Act No. 9 of 1999
- Compensation for Occupational Injuries and Diseases Act (COIDA) No. 130 of 1993 (as amended)
- Occupational Diseases in Mines and Works Act (ODMWA) No. 78 of 1973
- Labour Relations Act (LRA) No. 66 of 1995 (as amended)
- National Minimum Wage Act (NMWA) No. 9 of 2018
- Employment Services Act No. 4 of 2014
- Draft Regulations on the Employment of Foreign Nationals of 2018.
- Social Assistance Act of 2004
- Road Accident Fund Act
- COVID-19 Temporary Employee/Employer Relief Scheme (C19TERS) 2020

Most of these laws and the rights they govern are discussed below.

3.1.1 Laws governing the right to health care

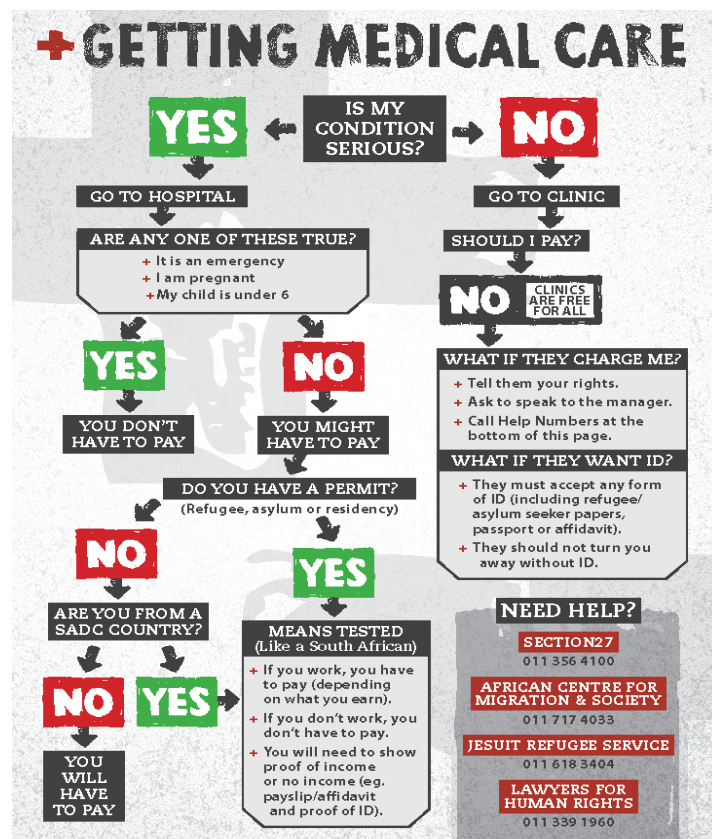
The right to health care for migrants and refugees is governed by several laws hence it cannot be limited to any one piece of legislation. The Constitution says everyone has the right to have access to health care services regardless of nationality or legal status. According to South Africa's National Health Act, primary healthcare facilities run by the state must provide free care to everyone, except for people covered by private medical aid schemes.⁷⁷ The country's Refugee Act of 1998 also stipulates that refugees are entitled to the same access to treatment and 'basic healthcare services' as citizens in public healthcare facilities.⁷⁸

⁷⁷ SAHPRA 'National Health Act, 2003 (Act No. 61 Of 2003)' *SAHPRA* (blog) (accessed 21 November 2022). Available at <https://www.sahpra.org.za/document/national-health-act-2003-act-no-61-of-2003/> (accessed 21 November 2022).

⁷⁸ South African Government 'Refugees Act 130 of 1998 | South African Government' (1998) Available at <https://www.gov.za/documents/refugees-act> (accessed 22 April 2023).

For higher levels of care, refugees and migrants must pass a means test. In some situations, irregular migrants must pay the whole cost of medical services. The only real differentiation between documented and undocumented migrants is made in two instances: Section 44 of the Immigration Act which suggests that health care providers must report undocumented nationals to the Director General. However, institutions such as hospitals or clinics may not refuse care because a person is undocumented.

The Uniform Patient Fee Schedule setting out who must pay for certain services at a South African health facility, which states that in hospitals, undocumented migrants from Southern African Development Community (SADC) member states should be means tested like any other South African. Those in similar legal status from outside SADC and migrants on a tourist visa should pay full fees.



Graphic by Johannesburg Migrant Health Forum

3.1.2 Laws governing migration

There are two sections of legislation governing migration in South Africa:

3.1.2.1 Refugee Act

Asylum seekers and refugees' rights to enter and settle in South Africa are governed by the Refugee Act (1998). The Refugee Act of 1998 became a domestication of international legal instruments such as the UN Refugee Convention, the UN Protocol

Relating to the Status of Refugees (1967), the OAU Convention, and the Universal Declaration of Human Rights as adopted by the general Assembly of the UN. Drawing on international and regional law, Section 3 of the Refugees Act defines three categories of persons qualifying for refugee status:

- 1) a person forced to flee his country of origin because of a well-founded fear of persecution based on race, tribe, religion, nationality, political opinion, or membership in a particular social group and who is unable or unwilling to seek the protection of his or her country of origin;
- 2) a person who is compelled to leave his or her place of habitual residence as a result of external aggression, occupation, foreign domination, or events seriously disturbing or disrupting public order in either a part or the whole of his or her country or origin;
- 3) a dependant of a person described in the above two categories.⁷⁹

A person who enters the Republic of South Africa through a port of entry (a land border post, airport or harbour) and claims to be an asylum seeker is issued with a section 23 Permit which is a non-renewable 'asylum transit permit' of the Immigration Act. The permit is valid for a period of 14 days only and authorises the person to report to the nearest Refugee Reception Office (RRO) in order to apply for asylum in terms of section 21 of the Refugee Act.

Upon successful reporting to the nearest RRO and submission of an application, an asylum seekers permit, also known as a Section 22 permit (Refugees Act No. 130 of 2008), is granted. It then permits asylum seekers to work or study in South Africa while their claim for refugee status is processed.

There is no state-funded support available for asylum seekers because of South Africa's non-encampment policy. The Refugees Act Section 24 does however permit the formal recognition of an asylum applicant as a refugee in South Africa. The Section 24 permit is good for two years and must be renewed at least three months before its expiration date.

A refugee identity paper and a travel document are available to all Section 24 permit holders. Refugees have access to most of the same rights as South African citizens (except the right to vote). A person with refugee status is protected by the South African government and cannot be forced to return home until it is deemed safe to do so.

3.1.2.2 Immigration Act

Different sorts of 'voluntary' migrants are regulated and regularised by the Immigration Act 13 of 2002 and the Immigration Regulations to the Act (2014).⁸⁰

⁷⁹ R Amit 'No refuge: Flawed status determination and the failures of South Africa's refugee system to provide protection' (2011) 23 *International Journal of Refugee Law* 462-63.

⁸⁰ The Act 'provides for the regulation of admission of persons to, their residence in, and their departure from the Republic'.

Those who are not refugees, or who are not deemed refugees by the state, must apply for one of the permits listed in the Immigration Act before entering the country (for example, Study, Business, Work, Critical Skills, Spousal), which are usually referred to as temporary residency permits (TRPs). It is not easy to get a work permit in South Africa because any person who employs a foreign national to work within the country must ensure that there are no persons in the Republic, other than foreign nationals, with the requisite skills to fill the vacancy according to labour law in the Employment Services Act.⁸¹ Administrative barriers can also lead to a migrant becoming undocumented. This applies to migrants residing in South Africa who are renewing their visas or permits in the republic.

South Africa also has bilateral arrangements with some countries that allow people to come into the country as visitors and receive up to 90 days at the port of entry.

3.1.3 The National Labour Migration Policy Framework

Department of Employment and Labour and Department of Home Affairs in consultation with ILO South Africa drafted a National Labour Migration Policy Framework in 2022. The policy seeks to equip South Africa with 'a technically sound policy instrument, which will strengthen the country's approach to labour migration, in a coordinated manner across key ministries, notably but not exclusively between the DEL and DHA' (ILO, 2022: 26). Prior, South Africa had no stand-alone labour migration policy which means that The Immigration Act of 2002, together with a number of other provisions spread across many legislative corpuses, would govern labour migration.

Quotas for the employment of people in South Africa who are regarded legally as 'foreign nationals' are proposed to be implemented under the Employment Services Amendment Bill (2021), which can be read along with the new draft migration policy. If passed, the Bill would provide the South African Minister of Employment and Labour the authority to establish by notice a maximum quota for the hiring of foreign workers by companies in any industry.

3.1.4 Special permits like the Dispensation Zimbabweans Project (DZP)

South Africa also has also resorted to special permit (visa) regimes (in particular with Lesotho, Angola and Zimbabwe) in instances where a significant cohort of migrants are not adequately covered by immigration or asylum regime.⁸² The most comprehensive and longstanding of these was introduced in 2009 when South Africa DHA introduced Dispensation Zimbabweans Project (DZP) as a way of creating a record of Zimbabweans who had been living illegally in South Africa, and of providing amnesty to those in possession of fraudulent South African identity documents. Department of Home Affairs waived some permit requirements and applications fees. This was succeeded by the Zimbabwe Documentation Process (ZDP) in September

⁸¹ Section (8)(2)(a).

⁸² The permit is limited in that it does not make provision for permanent residence based upon length of stay. Section 31(2)(b) of the Immigration Act states that upon application, 'the Minister may under terms and conditions determined by him or her grant a foreigner or category of foreigners the rights of permanent residence for a specified or unspecified period when special circumstances exist which would justify such a decision'.

2010 to temporarily regularise the status of a large portion of the Zimbabwean population – those who were working, studying, or operating their own businesses. The ZDP relaxed the normal permitting requirements for these categories of Zimbabwean migrants. This was succeeded by the Zimbabwe Special Dispensation permits (ZSP).

3.1.5 Labour laws

In principle, all migrants are protected by all South African labour laws because of the principle of equality enshrined in the constitution. All employees are to be protected by the Unemployment Insurance Fund (UIF), which offers temporary financial aid to those who lose their jobs or are unable to work due to illness, maternity leave, or adoption leave. All employers and employees, including part-time and full-time workers, are subject to UIF, which is governed by the Unemployment Insurance Amendment Act No. 32 of 2003 and the Unemployment Insurance Contributions Act No. 4 of 2002. It states that it is the employer's responsibility to make sure workers are registered with the UIF. A registered employee who has paid their contributions is eligible to make a claim from the fund. According to Section 3(d) of the Unemployment Insurance Act, No. 63 of 2001, UIF eligibility does not apply to persons who enter the Republic for the purpose of carrying out a contract of service. Additionally, employers in sectors like domestic work are hesitant to follow the law's mandate that they register their employees with the Department of Employment and Labour for unemployment insurance.⁸³

The institutional processes for resolving labour disputes and claims for migrant workers' rights were established by the Commission for Conciliation, Mediation, and Arbitration (CCMA) in 2008 when it included 'foreigners' working unlawfully in South Africa under its purview.⁸⁴ The lack of information prevents marginalised groups like undocumented migrants from exercising their legal redress because this clause has not been extensively publicised.

Other related labour laws include Skills Development Act No. 97 of 1998 and Skills Development Levies Act No. 9 of 1999; Compensation for Occupational Injuries and Diseases Act (COIDA) No. 130 of 1993 (as amended); Occupational Diseases in Mines and Works Act (ODMWA) No. 78 of 1973; Labour Relations Act (LRA) No. 66 of 1995 (as amended); National Minimum Wage Act (NMWA) No. 9 of 2018 and Employment Services Act No. 4 of 2014 and draft Regulations on the Employment of Foreign Nationals of 2018.

3.1.6 Social protection mechanisms

Most social assistance benefits in South Africa are accessed through South African citizenship or permanent residence.⁸⁵ Despite the fact that South Africa's informal

⁸³ FB Nyamnjoh *Insiders and outsiders: Citizenship and xenophobia in contemporary Southern Africa* (2006).

⁸⁴ L Griffin 'Unravelling rights: 'Illegal' migrant domestic workers in South Africa' (2011) 42 *South African Review of Sociology* 83-101.

⁸⁵ B Deacon, MP Olivier, & R Beremauro *Social security and social protection of migrants in South Africa and SADC* (2014). Available at <<https://www.worldcat.org/title/social-security-and-social-protection-of-migrants-in-south-africa-and-sadc/oclc/936316326>> (accessed 6 February 2022).

sector is modest in comparison to other Sub-Saharan African nations they receive significantly fewer benefits, as these are also jobs with lower levels of benefits, such as UIF, medical aid, or a pension system.⁸⁶ Social protection is the main intervention from the South African state to support refugees to help cushion them from risks and vulnerabilities, consequently enhancing their social status and rights.

South Africa's Constitution guarantees (qualified) socio-economic rights (basic health care and basic education, the right to adequate housing, sufficient food and water and social security, including, appropriate social assistance if they are unable to support themselves and their dependants), to 'everyone' residing in the country, regardless of citizenship or even legal status. However, most of the social welfare grants provided through the 2004 Social Assistance Act, including the old age pension, the child support grant, and the war veterans grant, are explicitly restricted to citizens, refugees and permanent residents. Non-nationals generally are also excluded from social security, except in the case of the Road Accident Fund Act.⁸⁷

The South African government has implemented several relief programmes, including the Special Covid-19 Social Relief of Distress (SRD) grant of R350 per month, to alleviate the burden caused by the lockdown on civilians.⁸⁸ The grant is intended for unemployed adults over the age of 18 who are not receiving any form of social assistance. It is meant for South African citizens, refugees, asylum seekers and special permit holders 'who are between the ages of 18 and 60 years, who have insufficient means, who do not receive social grants on behalf of herself/ himself or who are not contributing to or eligible for UIF payment, and have no financial support from any other source'.⁸⁹ It also includes a temporary increase in existing social assistance programmes such as Child Support and Disability Assistance, as well as the introduction of a caregiver grant for a limited time. Several stimulus initiatives were also announced to help South African businesses cope with the lockdown's devastating economic impact. The modified COVID-19 Temporary Employee/Employer Relief Scheme (C19TERS) 2020 provides relief to both employers and employees.

When claiming COVID-19 TERS, however, foreign employees were treated differently from their South African counterparts, and not all foreign employees received the relief.⁹⁰ Asylum seekers and people with special permits were initially not eligible for the COVID-19 SRD grant, which was only available to citizens, permanent residents, and refugees who were unemployed and not receiving any other social grants or UIF benefits. The court ruled that asylum seekers and holders of special dispensation permits who were already in the country were entitled for the grant and might petition for this relief in *Scalabrini Centre and another v. Minister of Social Development and*

⁸⁶ Budlender & Fauvelle-Aymar 'Migration and employment in South Africa: Statistical and econometric analyses of internal and international migrants in Statistics South Africa's Labour Market Data'.

⁸⁷ D Millard 'Migration and the portability of social security benefits: The position of non-citizens in the Southern African Development Community' (2008) *African Human Rights Law Journal* 37-59.

⁸⁸ CJ Onukogu 'Unemployment insurance claims during COVID-19 pandemic: The experiences of migrants employed in South Africa's formal economy' (2021) Reconfiguring labour and welfare in emerging economies of the Global South Conference, University of Bielefeld, Germany.

⁸⁹ SASSA 'The social relief of distress grant' (2020). Available at <https://srd.sassa.gov.za/> (accessed 22 April 2023).

⁹⁰ CJ Onukogu (n 88 above).

others.⁹¹

3.2 International and regional laws governing the rights of migrants and refugees

Various legal frameworks provide guidelines on the issue of migrant workers at international, regional and national level. There are specific fundamental conventions and universal rights stipulated by the International Labour Organisation (ILO) which are binding to all member states including those outside of the United Nations or who have not ratified the treaties. The section below lists and presents some of the key international instruments.

- UN Convention relating to the Status of Refugees (Refugee Convention) (1951)
- OAU Convention Governing Specific Aspects of Refugee Problems in Africa (OAU Convention) (1969)
- UN Global Compact on Migration (GCM)
- Global Compact on Refugees (GCR)
- Freedom of association (ILO Convention No. 87) and the right to organize and bargain collectively (ILO Convention No. 98):
- The elimination of all forms of forced or compulsory labour (ILO Convention No. 29 and 105);
- The abolition of child labour (ILO Convention No. 138), and
- Equal remuneration (ILO Convention No. 100) and non-discrimination in employment (ILO Convention No. 111).
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- UN Sustainable Development Goals
- Facilitation of Movement of Persons (2005)
- The SADC Portability of Accrued Social Security Benefits Draft Policy Framework (2016)
- SADC Labour Migration Action Plan (2020-2025)
- SADC Common Regional Policy Framework on Refugees and Asylum Seekers (2019)
- SADC Guidelines on Coordinated Border Management (2011)
- The Regional Strategy to Combat Illegal Migration, Smuggling of Migrants and Trafficking in Persons (2016-2020),
- The SADC-United Nations High Commissioner for Refugees (UNHCR) Action Plan (2020-2024).
- 2006 AU Migration Policy Framework for Africa (MPFA)
- AU MPFA Plan of Action (2018 – 2030)
- AU Free Movement of Persons Protocol
- Equality of Treatment (Accident Compensation) Convention, 1925 (No.19)
- Migration for Employment Convention (Revised), 1949 (No. 97)
- Social Security (Minimum Standards) Convention, 1952 (No. 102)
- Equality of Treatment (Social Security) Convention, 1962 (No. 118)
- Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)

⁹¹ ILO 'Draft national labour migration policy for South Africa'.

- Maintenance of Social Security Rights Convention, 1982 (No. 157)
- Domestic Workers Convention, 2011 (No. 189)
- Convention on the Rights of the Child, 1966
- International Covenant of Economic, Social and Cultural Rights
- International
- Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live.
- Article 4.3 of the World Health Organisation (WHO) Global Code of Practice on the International Recruitment of Health Personnel
- Employment Relationship Recommendation, 2006 (No. 198)
- Private Employment Agencies Convention, 1997 (No. 181)
- Equal Remuneration Convention, 1951 (No. 100)
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- Protection of Wages Convention, 1949 (No. 95)

South Africa signed the Convention relating to the Status of Refugees (Refugee Convention) in 1996. Article 1(A)(2) of the Refugee Convention provides a definition of a refugee. South Africa also signed the 1969 OAU Convention Governing Specific Aspects of Refugee Problems in Africa (OAU Convention) in 1995. In addition to the definition enshrined under the 1951 Refugee Convention, in its article 1(2) it includes people fleeing external aggression, occupation, foreign domination or events seriously disturbing public order.⁹² The Convention recognises the limited utility of the current, narrowly defined refugee definition and the need for a more broadly defined category.⁹³

The Global Compacts on Migration and Refugees are soft law because they are considered non-binding. GCM is the first agreement encompassing a broad range of migration issues to be negotiated at the intergovernmental level on a global scale. It is clear from the outset about the fact that migrants and refugees are two different populations that are governed by two different legal systems. It clearly recognises that the unique international protection that is outlined in international refugee law is only available to refugees so it uses the term 'migrants' and presents a cooperative framework to address migration in all of its forms. The GCM also sets out, among others, 'shared responsibilities' and unity of purpose regarding migration, making it work for all. The Global Compact on Migration is devoted to eradicating all types of prejudice, condemning and combating utterances, acts, and manifestations of racism, racial discrimination, violence, xenophobia, and related intolerance towards all migrants.⁹⁴

The GCR is a response to 'an urgent need for more equitable sharing of the burden and responsibility for hosting and supporting the world's refugees'.⁹⁵ It recognises that

⁹² A Pijenburg & C Rijken 'Moving beyond refugees and migrants: Reconceptualising the rights of people on the move' (2021) 23 *Interventions* 273-93. Available at <https://doi.org/10.1080/1369801X.2020.1854107> (accessed 22 April 2023).

⁹³ AC Helton & E Jacobs 'What is forced migration' (1998) 13 *Georgetown Immigration Law Journal* 521.

⁹⁴ UN General Assembly 'Global Compact on Safe, Orderly and Regular Migration: Final draft' (2018). (https://refugeesmigrants.un.org/sites/default/files/180711_final_draft_0.pdf (accessed 22 April 2023)).

⁹⁵ United Nations 'Global Compact on Refugees' (2018) 1. Available at

without international cooperation, a durable solution to refugee crises cannot be accomplished, so it provides a framework for more equal and predictable responsibility-sharing.⁹⁶ With the help of other pertinent stakeholders and all United Nations Member States, it aims to provide a foundation for predictable and equitable burden and responsibility sharing. The GCR recognises that without international cooperation, it will be impossible to adequately address refugee issues because granting asylum could cost some nations excessively.

Under international law migrants have a right to ethical international recruitment practices that provide workers with the opportunity to assess the benefits and risks associated with employment positions and to make timely and informed decisions (Article 4.3 of the World Health Organisation (WHO) Global Code of Practice on the International Recruitment of Health Personnel). They have a right to fair and just recruitment and contractual practices in their employment as migrant workers (Employment Relationship Recommendation, 2006 (No. 198); Private Employment Agencies Convention, 1997 (No. 181)). Their right to employment, promotion and remuneration that is based on objective criteria, such as levels of qualification, years of experience and degrees of professional responsibility on the basis of equality of treatment local workforce (Equal Remuneration Convention, 1951 (No. 100); Discrimination (Employment and Occupation) Convention, 1958 (No. 111); Protection of Wages Convention, 1949 (No. 95)).

SDG goal target 1.4 commits to ensuring that ‘men and women, in particular the poor and the vulnerable, have equal rights to economic resources, as well as access to basic services, ownership and control over land and other forms of property, inheritance, natural resources, appropriate new technology and financial services, including microfinance’.⁹⁷ This applies to migrants as migration is especially shaped by limited access to economic resources such as land or other property.⁹⁸

On its part, SADC has developed a range of regional immigration policies and strategies the main ones of which include the Protocol on the Facilitation of Movement of Persons (2005); The SADC Portability of Accrued Social Security Benefits Draft Policy Framework (2016); Labour Migration Action Plan (2020- 2025); SADC Common Regional Policy Framework on Refugees and Asylum Seekers (2019); SADC Guidelines on Coordinated Border Management (2011); the Regional Strategy to Combat Illegal Migration, Smuggling of Migrants and Trafficking in Persons (2016-2020), and the SADC-United Nations High Commissioner for Refugees (UNHCR) Action Plan (2020-2024).

3.3 Chapter Summary

When it comes to the rights of migrants in South Africa, the issues of labour and health are two of the most misunderstood. Regardless of nationality or legal status, everyone

<https://www.unhcr.org/5c658aed4.pdf> (accessed 22 April 2023).

⁹⁶ United Nations ‘Global Compact on Refugees’.

⁹⁷ United Nations ‘The Sustainable Development Goals report’ (2021). Available at <https://unstats.un.org/sdgs/report/2021/The-Sustainable-Development-Goals-Report-2021.pdf> (accessed 22 April 2023).

⁹⁸ KP Vanyoro & J Musyoka ‘Migration and xenophobia in the Southern Africa region: Focus on social protection, social cohesion and integration’ (IOM Southern Africa Regional Office: IOM, unpublished).

has the right to obtain health care services, according to the Constitution. The issue of migrant workers is also governed by several legal frameworks at the international, regional, and state levels. This section lists some of the most important international dealing with migrant workers' rights and national laws pertaining their access to health care. The legal system in South Africa that regulates migration is split into two parts, one of which deals with refugees and asylum seekers and the other with voluntary migrants. International, regional, and national laws pertaining to these two groups are also discussed in this chapter. It also outlines additional the limits of these approaches and offers other legal and rights frameworks put in place by the state to address these shortcomings.

4. XENOPHOBIC VIOLENCE POST-1994

4.1 What are the different manifestations of xenophobia in South Africa?

Xenophobia in South Africa is both institutional and violent. Undocumented migrants face challenges accessing health care services; migrants experience discrimination in social relations and institutional interactions in various banks, hospitals, the Department of Home Affairs, police, and social service providers; politicians talk negatively about migrants or refer to xenophobic violence as criminality; the police do not record xenophobia as a crime and offer little in the way of physical protection;⁹⁹ foreign traders shops are scapegoated, routinely targeted and attacked; and migrants struggle or are unable to access social safety nets such as Unemployment Insurance Fund (UIF), COVID-19 relief grants, medical insurance or pension schemes.

Wave 6 of the World Values Survey (2010-2014) found that South Africa had the most negative attitudes towards immigration of all Global South countries.¹⁰⁰ Migrants are routinely targeted for violent xenophobic attacks at various moments. Such instances can be traced to as far back as the 1980s and the period of the early 1990s .

Furthermore, in 2008 62 people lost their lives, a third of whom were local inhabitants, whereas at least 670 were wounded while dozens were raped and more than 100 000 were displaced. Subsequently, there were attacks in 2009 where thousands of foreigners in Western Cape were forced to abandon their shacks and 2015 in which seven people were killed in the violence, three of which were South Africans, while a thousand more were displaced (over 5000 foreigners were displaced in the KwaZulu-Natal province alone).¹⁰¹

Attacks have also taken place in 2016 and 2017, with those on truck drivers becoming more pronounced over the last three years. Altogether, Xenowatch has recorded 796 incidents of xenophobic violence that resulted in at least 588 deaths, at least 121 945 displaced and an estimation of at least 4 693 shops looted in the period of 1994 to 21 April 2021.¹⁰² COVID-19 has also increased levels of xenophobia in the country because of a deteriorating economy and attendant negative perceptions that place the blame on migrants.

4.2 Variations across the socio-economic spectrum

While xenophobia is a very serious problem in South Africa, these attitudes are not uniform across South Africa. Economic drivers of anti-immigrant sentiment do not

⁹⁹ The government and the SAPS choose not to officially record crimes targeting foreign nationals and there is, therefore, no official data on the extent of 'xenophobic' violence in the country or what groups face the greatest risk. To develop effective crime prevention strategies, there is an urgent need for more reliable crime data, including on anti-foreigner violence.

¹⁰⁰ J Crush 'Deadly denial: Xenophobia governance and the Global Compact for Migration in South Africa' (2021) Southern African Migration Programme (SAMP). Available at <https://www.africaportal.org/publications/deadly-denial-xenophobia-governance-and-global-compact-migration-south-africa/> (accessed 22 April 2023).

¹⁰¹ C Naicker 'The languages of xenophobia in post-apartheid South Africa: Reviewing migrancy, foreignness, and solidarity' (2016) *Agenda* 30, 46-60.

¹⁰² Misago & Mlilo 'Xenowatch factsheet 2: Incidents of xenophobic violence in South Africa: 1994- April 2021'.

follow the simple predictive path that lower socio-economic status (associated with race) will increase hostility towards international migrants.¹⁰³ This relationship is more complicated as expressed in different spheres of the society.

There are distinct trends in who tends to be more positive or negative towards immigration, but these to be more about personality types.¹⁰⁴ For example, people who lack community support and are in fragile economic conditions are more likely to be against immigration just as much as authoritarian personalities are more likely to be against immigrants, whereas sociological liberal personalities are more likely to be welcoming of them. It is not angry, poor, young uneducated men who are most likely to perpetrate the violence by looting shops during protests as there is no significant correlation with age, household-income level, education and poverty and the propensity or disposition to loot from foreigners.¹⁰⁵ Conditions of real or perceived socio-economic and political deprivation alone cannot explain the outbreak of violence in specific locations in specific times (and not others).¹⁰⁶ Therefore, this shows, the concept of relative deprivation, which suggests that negative public attitude towards immigrants is sharper in poorer, urban segments, is not a sufficient explanation on its own.

In the case of access to public health care, medical xenophobia has also been recorded. Medical xenophobia is a term that scholars use to describe negative attitudes, perceptions and practices of healthcare providers towards non-national patients on the basis of their national origin.¹⁰⁷ Also, health care providers' attitudes towards migrants differ according to geographic context and the kind of treatment a migrant is seeking.¹⁰⁸ For example, discrimination may be more widespread in metropolitan spaces like Johannesburg where there is increased political scapegoating of migrants; a context where health simply becomes an extended site for these tensions. Meanwhile undocumented non-national patients seeking to use primary healthcare services in towns on the border of neighbouring countries such as Zimbabwe may access healthcare services with relative ease, partly because of cross-border, intergenerational kinship, which lends a different political meaning to the issue of migration that results in less negative attitudes.¹⁰⁹

¹⁰³ S Gordon et al 'Size does matter: The relationship between perceived immigrant group size and attitudes towards foreign nationals' (2020) 20 *Southern African Journal of Demography* 32-66. Available at <https://doi.org/10.2307/27027853> (accessed 22 April 2023).

¹⁰⁴ D Ruedin 'Attitudes to immigrants in South Africa: Personality and vulnerability' 5 November 2019. Available at <https://doi.org/10/14995> (accessed 22 April 2023).

¹⁰⁵ KP Vanyoro & L Ncube '[Re]-presenting knowledge: The coverage of xenophobia research in selected South African newspapers, 2008-2013' (2018) 10 *Journal of Communication and Media Research*.

¹⁰⁶ C Fauvelle-Aymar & Aurelia Segatti, 'People, Space and Politics: An Exploration of Factors Explaining the 2008 Anti-Foreigner Violence in South Africa', 2012, 56–88.

¹⁰⁷ K Vanyoro 'Migrants in South Africa have access to healthcare: Why it's kicking up a storm' *The Conversation* (30 August 2022). Available at <http://theconversation.com/migrants-in-south-africa-have-access-to-healthcare-why-its-kicking-up-a-storm-189574> (accessed 22 April 2023).

¹⁰⁸ K Vanyoro 'Suspicious bodies: Anti-citizens and biomedical anarchists in South Africa's public health care system' (2022) 45 *Anthropology Southern Africa* (2 January 2022) 30-43. Available at <https://doi.org/10.1080/23323256.2022.2044360> (accessed 22 April 2023).

¹⁰⁹ KP Vanyoro "'When they come, we don't send them back": Counter-narratives of "medical xenophobia" in South Africa's public health care system' (2019) 5 *Palgrave Communications* (3 September 2019) 1-12. Available at <https://doi.org/10.1057/s41599-019-0309-7> (accessed 22 April 2023).

4.3 What drives xenophobia in South Africa?

Several scholars have tried to explain the causes of xenophobic violence differently. The May 2008 violence cannot be understood nor investigated in isolation from the general history of violence in informal settlements and townships.¹¹⁰ Structural violence by the state through repression and resource, opportunity inequalities during apartheid created a climate where housing, education, jobs, wages and service delivery are today politicized. The violence against foreign nationals speaks in part to the history of tensions between local urban residents and internal migrants in townships.

Xenophobia can partly be explained by relative deprivation. In other words, xenophobia manifests itself as a spill over of citizen opposition to migration and a by-product of political scapegoating which blames migrants for the country's unemployment woes. Foreigners are seen as taking jobs away from locals and there is a perception among locals that they fare better economically as a result.

However, conditions of real or perceived socio-economic and political deprivation alone cannot explain the outbreak of violence in specific locations in specific times (and not others). Therefore, the concept of relative deprivation is not a sufficient explanation on its own. Outsiders are also scapegoated and attacked as a way of empowering political factions, addressing disaffection or resolving local political competition. Most typically, violence has been found to occur where formal governance structures are weak or considered illegitimate by the local community.¹¹¹ The role of politicians is worth mentioning here, in particular incitement by political leadership in the form of elected officials and others who hold public office in responding to both the violence and brewing sentiment and tensions.¹¹² For example, in responding to the 2015 xenophobic violence, a government official representing the Gauteng province lamented that 'the recent attacks are because township entrepreneurs feel demoralised, frustrated, and they feel they cannot thrive as business owners in their own communities'.¹¹³ Others such as the then National Small Business Development Minister Lindiwe Zulu observed that there were underlying issues and that 'our people are being squeezed out by these foreign shop owners'.¹¹⁴

The messaging of these kinds of rumours and stereotypes is channelled through social media, print media and word of mouth. Lately, xenophobic social media accounts such as a South African one belonging to a Lerato Pillay have been at the centre of a

¹¹⁰ JP Misago 'Migration, governance and violent exclusion: Exploring the determinants of xenophobic violence in post-apartheid South Africa' (PHD thesis, Johannesburg, University of the Witwatersrand, 2016) available at <https://wiredspace.wits.ac.za/handle/10539/22240> (accessed 22 April 2023).

¹¹¹ JP Misago 'Political mobilisation as the trigger of xenophobic violence in post-apartheid South Africa' (2019) 13 *International Journal of Conflict and Violence (IJCIV)* 646 available at <https://doi.org/10.4119/UNIBI/ijcv> (accessed 22 April 2023).

¹¹² Misago (n 110 above).

¹¹³ T Zwane, K Sosibo, & P De Wet 'Township politics fuel the attaches on outsiders' (2015) *Mail & Guardian* 2 <https://mg.co.za/article/2015-01-29-township-politics-fuel-the-attacks-on-outsiders/>.

¹¹⁴ Zwane, Sosibo, & De Wet (n 113 above).

network of xenophobic hashtags and inciting statements that have stirred xenophobic violence against migrants.¹¹⁵ Also, the mass media portrayal of displacements by environmental disasters and political conflicts, linking these with poverty and starvation pre-disposes the public to stereotypes of imminent threat from immigration crisis.¹¹⁶

The Department of Home Affairs is also culpable in driving xenophobia. A clip of Home Affairs Minister Aaron Motsoaledi making a scathing attack on undocumented foreigners went viral on social media in April 2022. According to the minister, South Africa is the only nation in the world that welcomes 'rascals' and 'low-lives,' as heard in the video.¹¹⁷ The Department also strengthens impressions that migrants are major sources of crime and unemployment as reflected in the White Paper on Migration, which strongly connects migration to security risks, trafficking and corruption without providing any data to confirm this.

4.4 Where does xenophobia mostly occur?

Gauteng, Western Cape and KwaZulu Natal have the most reported incidents and have been identified as the hot spot provinces. Xenophobic violence is spread across the country but it occurs primarily in the country's major cities of Johannesburg, Cape Town, Durban and Ekurhuleni. While Gauteng, Western Cape and KwaZulu Natal provinces remain the most affected, xenophobic violence is increasingly spreading across all the country's nine provinces. Violence now regularly occurs in major cities, towns, townships, informal settlements and rural areas across the country.

As the Table.1 below shows, by the end of 2018, Xenowatch had recorded 529 xenophobic violence incidents. Of these, 42 occurred in 2018 alone. These attacks resulted in 309 deaths, tens of thousands displaced and thousands of businesses looted. Due to the nature of xenophobic violence, which frequently includes multiple incidents, underreporting, and a lack of detailed information, the figures presented in this report are underestimations of the true extent of victimisation.

¹¹⁵ CABC 'Interim report on xenophobia on South African Social Media' (2020) *The Centre for Analytics & Behavioural Change* (blog) 17 August 2020 <https://cabac.org.za/2020/08/17/interim-report-on-xenophobia-on-south-african-social-media/>.

¹¹⁶ ML Flahaux & H De Haas 'African migration: Trends, patterns, drivers' (2016) 4 *Comparative Migration Studies* 1-25; KP Vanyoro & J Musyoka 'Migration and xenophobia in the Southern Africa region: Focus on social protection, social cohesion and integration' (IOM Southern Africa Regional Office: IOM, Unpublished).

¹¹⁷ C Kavuro 'Refrain from name-calling - it fuels xenophobic violence' News24 23 June 2022 available at <https://www.news24.com/news24/opinions/columnists/guestcolumn/opinion-callixte-kavuro-refrain-from-name-calling-it-fuels-xenophobic-violence-20220623> (accessed 22 April 2023).

Xenophobic violence incidents and types of victimization: 1994-2018

Victimisation	Total (1994-2018)	2018 (Alone)
Total number of incidents	529	42
Deaths	309	12
Physical assaults	901	29
Displaced	100 000+	1 145
Shops looted	2 193	139
Threats to safety or property	257	23

Table.1 Source: Xenowatch

4.5 Chapter Summary

After 1994, xenophobia became a significant issue in South Africa, and if the media is not attentive, they may even contribute to it. Recognizing its traits, trends, patterns, and motivations is a crucial first step. This chapter discusses the various manifestations of xenophobia, along with some examples, variations, causes, and locations that are most impacted.

5. RESPONSIBLE JOURNALISM

Journalists have a responsibility to report on migration, refugee, and human trafficking concerns in a truthful, balanced, humane, and ethical manner as these are intricate stories that could easily trigger xenophobic violence.¹¹⁸

5.1 Reporting checklist

The checklist below provides useful tips and things to remember when reporting on migration.¹¹⁹

- **DO** ask yourself: Is it xenophobic? It is important to understand whether xenophobia is the key issue to the story you are reporting on.
- **DO** ask yourself if 'foreignness' is the issue. When reporting on a non-national, ask yourself if their nationality is key to the article. For example: 'Congolese man arrested on suspicion of Wynberg heist'. Is it vital that readers know he is Congolese – or is this about the Wynberg heist?
- **DO** ensure that those directly affected are included and given the space to speak on the issue.
- **DO** speak to a diversity of sources. Don't focus solely on police, legal or perpetrators' voices.
- **DO** include up to date, reliable statistics and interrogate the validity of these within your article. You may want to use popular statistics that add shock value, but these are often incorrect.
- **DO** provide context. Position your article and interview within the broader context of migration highlighting the complexities and nuances thereof.
- **DO** provide information on local support services in your article for the reader to access.
- **DO** consider and reflect on your own position as interviewer and journalist relative to the identity of the people whose stories you are telling. For example: A white cis-gendered South African writing about black LGBTQIA asylum seekers.
- **DO** use trigger warnings appropriately. Only use these if the content of your article is explicit in nature and may potentially trigger secondary traumatising in another.
- **DO** cross-check your facts and information in research and other documents.

5.2 Identification and assessment of information sources

The characteristics below are important to consider when evaluating information sources.¹²⁰

¹¹⁸ M Abu-Fadil *Migration and media: A journalist's handbook* (2017).

¹¹⁹ All adapted from the report: Scalabrini Centre of Cape Town 'Reporting on migration in South Africa: A journalist's guide' (27 January 2020) available at <https://www.scalabrini.org.za/staging/resources/reporting-on-migration-in-south-africa-a-journalists-guide/> (accessed 22 April 2023).

¹²⁰ All adapted from the guides: I Kingsley 'Guides: Instruction: Evaluating information resources' <https://library.uaf.edu/instruction/readings/evaluation>; Centre for Public Issues Education, 'Evaluating

1. **Authority:** What are the qualifications of the author or creator (the person in charge of the intellectual content)? Are the author's credentials, past works, affiliations with any organizations, and experience mentioned anywhere? Is there a sentence or comment outlining the author's qualifications? Are the author's phone, postal, or email addresses listed? Has the author's work been referenced in other works? Similar queries about these bodies' authority must be made in the case of Web content produced by committees, organizations, companies, or governments, as opposed to individuals. Be sure to take into account whether the material offered by corporate or government bodies is likely to be impartial, factual, and thoroughly researched or whether it is skewed toward the causes, movements, or agendas supported by those bodies.
2. **Currency/timeliness:** Look for the publication date and decide if the subject you are researching requires the most recent data. In some circumstances, even 50 to 100 years later, older sources of knowledge can still be reliable. As fresh research is undertaken, sources that have just been published typically have higher levels of credibility.
3. **Accuracy/Quality:** Is the information provided specific? All information must always be able to be verified. Are conclusions supported by data that can be verified in other sources or by research? Are references or bibliographies used to list the sources of information? How trustworthy are the sources cited? Verify the sentence's punctuation, spelling, and grammar. Check to see if the material is clear, logical, and structured.
4. **Relevance/Coverage:** Analyse the information source to see if it adequately addresses the subject. Documents might only cover a portion of the subject; therefore you might require additional sources to have a deeper knowledge. Ask the 'five W's and H' to see whether the information source leaves any questions unanswered: who, what, when, where, why, and how.
5. **Objectivity/Bias:** Authors frequently have their own goals in mind, such as influencing legislation, gaining converts, or selling items. There is probably no absolute objectivity that all parties could agree upon. You must determine whether the information is biased or sufficiently objective for your purpose before accessing any information resource. In scholarly study, a highly biased presentation is certainly acceptable if it is acknowledged and evaluated in comparison to other points of view. Is the source affiliated with any advertising or donation requests? This financial backing could influence how the publication covers the topic. Does the author present multiple viewpoints? Is there inflammatory or prejudiced language in the writing? Verify the author's claims and conclusions are backed up by reliable, cited sources.

5.3 Ways of monitoring media, political statements and local sentiment

There are several online resources that can be useful in monitoring media, political

Information Sources' available at <http://www.piecenter.com/wp-content/uploads/2014/08/evaluateinfo.pdf> (accessed 25 November 2022).

statements and local sentiment against migrants:

- Xenowatch: Developed by the African Centre for Migration & Society (ACMS) at the University of Witwatersrand, Xenowatch is a tool to monitor xenophobic discrimination across South Africa. It is an open-source system for information collection and sharing. A non-proprietary platform, it collates, visualizes, and makes publicly available data (collected through media reports, original research, and crowdsourcing) on xenophobic discrimination incidents in the country. Activists, victims, and observers can report xenophobic threats and attacks using our reporting channels: email, mobile app, WhatsApp/Call and the website.
- SA Media: The SA Media database has more than 4 million articles. This means that every word in every article is fully searchable, thereby greatly increasing the possibility of finding relevant information. The database is now completely current and daily updates are being loaded on the Sabinet Reference platform, ensuring that the database remains completely up-to-date. The SA Media database covers more than 120 South African periodicals and newspapers from 1977 onwards, and in addition to the full-text searching available, index terms are also assigned to news articles. A link takes the user directly to the PDF version of the original newspaper article.
- Twitter hashtags: Social media monitoring of trend lists can reveal when Fake news and hashtags like #PutSouthAfricaFirst are at their peak
- Afrobarometer: Afrobarometer provides reliable, timely data on the views of ordinary Africans to inform development and policy decision making.
- The Centre for Analytics and Behavioral Change: The Centre for Analytics and Behavioral Change (CABC) is a non-profit company. It was established to track and counter mis and disinformation, fake news, and divisive rhetoric that is promulgated online to undermine social cohesion, democratic integrity, and the stability of nation-states.

5.4 Principles of ethical reporting

The principles below provide useful tips and things for you to remember when reporting on migration.¹²¹

- ❖ Know the law: Knowing the law will be useful when journalists need to refute claims made by political figures and activists since it informs readers, viewers, and listeners. A journalist who is knowledgeable about the law will be able to accurately inform and provocatively challenge.¹²²
- ❖ Humanize the story: Transforming numbers and statistics into real people with fears, hopes, failures, accomplishments, and resilience in the face of overwhelming adversity is the key to humanizing the narrative. The idea is to focus on the human-interest component of what one sees, hears, and records rather than editorializing, dramatizing, or romanticizing the news narrative.

¹²¹ This mostly comes from the report Abu-Fadil *Migration and media: A journalist's handbook*.

¹²² Internews 'Changing the narrative on migration in South Africa Development Community: A newsroom manual' Information Saves Lives (2021) available at <https://internews.org/resource/changing-the-narrative-on-migration-in-south-africa-development-community-a-newsroom-manual/> (accessed 22 April 2023).

- ❖ Change the narrative, avoid hate speech and stereotyping: Journalists are trained in the finer elements of defining and altering the frequently unfavorable stereotyped narrative as well as in identifying hate speech to do this. Most of the hate speech in recent years appears to have been expressed (and is still being expressed) online via social media, blogs, and other platforms, as well as through traditional mainstream media that supports one group or ideology or another. Some of its forms are sneaky and hidden, while others are overtly racist and xenophobic.¹²³
- ❖ Pay attention to how you shoot pictures and videos and record audio of migrants, refugees, human trafficking victims/survivors, notably of minors, and how to disseminate them across multiple platforms.
- ❖ Verify your sources, detect and avoid disinformation: It is the responsibility of journalists to diligently verify multiple sources, identify and steer clear of disinformation, and account for the increasingly toxic and contentious environment surrounding the migrant story in many parts of the world. This is especially true given attacks on the media as purveyors of ‘fake news’ and the existence of misinformation from various actors. This can be achieved by investigating and locating the information’s source through In person on assignment and through interviews, by email, through social media, from other media, using official references and other sources and using different digital applications (apps) to track down falsehoods in text, audio and video content (The ‘Verification Handbook’ is a good resource in English <http://verificationhandbook.com/book2/>).¹²⁴
- ❖ Use context and background information to explain stories: While journalists reporting on migration in South Africa are encouraged to use specific statistics,¹²⁵ without context, numbers can be particularly challenging, and news that omits historical, geographic, and other information may become useless. If done on purpose, these omissions are likewise unethical. If presented incorrectly, selecting only a portion of a quote or inflating data concerning migrants’ employment in one’s country to suggest they are replacing locals can be deceptive at best and fearmongering at worst. So, giving a story a balanced structure will help clarify misconceptions about immigrants and refugees. In much coverage that may appear neutral, there is a tendency by so-called ‘statistics-happy’ journalists and editors to catalogue statistics and other data on migration and so this apparent neutrality does not necessarily constitute good reportage or a lack of bias.¹²⁶
- ❖ Obtain consent to disseminate interviews, photos, documents, videos.

¹²³ The Press Council of South Africa and the Interactive Advertising Bureau South Africa in 2019 adopted a Code for print and online media. Section 5.1. states that media should ‘avoid discriminatory or denigratory references to people’s race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth or other status, and not refer to such status in a prejudicial or pejorative context – and shall refer to the above only where it is strictly relevant to the matter reported, and if it is in the public interest’. Section 5.2 encourages media in South Africa to ‘balance their right and duty to report and comment on all matters of legitimate public interest against the obligation not to publish material that amounts to propaganda for war, incitement of imminent violence or hate speech – that is, advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm’.

¹²⁴ In South Africa, Stats SA and AfricaCheck offer reliable statistics.

¹²⁵ See Scalabrini Centre of Cape Town (n 119 above) 11.

¹²⁶ R Danso & DA McDonald ‘Writing xenophobia: Immigration and the print media in post-apartheid South Africa’ *Africa Today* (2001) 115-37.

5.5 Be careful of these common pitfalls!

5.5.1 Do not assume that development in sending countries will reduce migration

One of the popular sentiments on social media is that development in migrant sending countries like Zimbabwe will reduce migration to South Africa. However, this is not supported by empirical evidence. According to some studies, the number of migrants leaving a country rises in tandem with rising affluence and improved educational opportunities, and only declines once a country has attained a GDP that is comparatively high.¹²⁷ Because social and economic growth encourages and permits movement, it follows that development - at least initially - coincides with sharp rises in migration rates. According to this theory, increased migration may result from development cooperation with low-income nations.

5.5.2 Do not call people 'illegal' migrants

Don't use the word 'illegal immigrant' as a person cannot be 'illegal'; they are simply not documented in terms of that country's immigration laws.¹²⁸ Similar to how defining what is 'normal' or 'abnormal' frames people's choices and behaviors, defining what is/who is 'legal' or 'illegal' is a political act that enable effective distinctions between good citizens and undesirable non-citizens to be made via the illegality discourse.¹²⁹ In other words, by portraying migrants without documentation as undesirable 'others' who should be deported, the discourse on illegal immigration exercises authority.¹³⁰ No one is illegal. Instead, migrants are undocumented or irregular.

5.5.3 Do not refer to people on the move as hoards, human floods or swarms

Do not use words such as 'swarms' or 'floods' of migrants as this evokes negative images of uncontrollable and innumerable people.¹³¹ The media frequently focuses on dramatic events that occur throughout the migration process, but they don't have to stop there because there are narratives that offer the audience a wider perspective beyond the catastrophe: What caused the victims to flee their home country? What conditions and realities do immigrants encounter in their destinations? What occurs when traveling?¹³² Words such as people 'migrating' or 'moving' to South Africa are more realistic.¹³³

5.5.4 Do not forget to distinguish between migrants and refugees

You must exercise caution when selecting your words. The words 'migrants,' 'refugees,' 'illegal migrants,' 'IDPs,' etc. are sometimes used interchangeably in the

¹²⁷ DS Massey 'Economic development and international migration in comparative perspective' (1998) 14 *Population and Development Review* 383-413 available at <https://doi.org/10.2307/1972195> (accessed 22 April 2023).

¹²⁸ Scalabrini Centre of Cape Town (n 119 above).

¹²⁹ M Douglas *Purity and danger: An analysis of the concepts of pollution and taboo* (1966).

¹³⁰ T Seppälä "'No one is illegal' As a reverse discourse against deportability' (2022) 36 *Global Society* 391-408. Available at <https://doi.org/10.1080/13600826.2022.2052023> (accessed 22 April 2023).

¹³¹ Scalabrini Centre of Cape Town (n 119 above).

¹³² 'Reporting on migrants and refugees: Handbook for journalism educators'.

¹³³ Scalabrini Centre of Cape Town (n 119 above).

media, with a tendency to mix up movements of refugees and migrants.¹³⁴ When journalists use the terminology for migrants, expatriates, refugees, displaced individuals, and those who have been sold into slavery or forced into situations against their will interchangeably, a lot of misunderstanding results. This false or misleading information may be done thus on purpose or accidentally due to ignorance. To help give news consumers across various media platforms a clear image, it must be fixed, and inaccuracies must be prevented.¹³⁵

In contrast to refugees, who are compelled to flee war, violence, conflict, or persecution and have crossed an international border to find protection in another country, migrants typically leave their native nations in quest of better life chances. On one hand, separating migrants from refugees is a delicate political matter, but on the other, there is little doubt that international law clearly distinguishes between the two groups.¹³⁶ International and regional refugee law defines refugees, and the international community has legal obligations to them (the 1951 Refugee Convention and its 1967 Protocol determine the obligations of signatory states). However, both immigrants and refugees have rights because of their humanity.¹³⁷

5.6 Chapter Summary

This chapter aims to arm the reader with knowledge by offering a checklist of helpful hints and things to keep in mind when reporting on migration, important information to take into account when evaluating information sources, several online resources that can be helpful in monitoring media, political statements and local sentiment against migrants, principles on ethical reporting, as well as a glossary of key terms in the field.

¹³⁴ 'Reporting on Migrants and Refugees: Handbook for Journalism Educators'.

¹³⁵ Abu-Fadil *Migration and media: A journalist's handbook*.

¹³⁶ A Pijnenburg & C Rijken 'Moving beyond refugees and migrants: Reconceptualising the rights of people on the move' (2021) *Interventions* 273-93 available at <https://doi.org/10.1080/1369801X.2020.1854107> (accessed 22 April 2023).

¹³⁷ Adapted from 'Reporting on migrants and refugees: Handbook for journalism educators' 15.

6. CASE STUDIES AND EXAMPLES OF GOOD STORIES

This final part provides examples of scenarios to reveal how to frame an effective and comprehensive story.

6.1 Case studies of unanalytical and unbalanced stories

6.1.1 Case Study 1: Copy-cat ethnic cleansing

Xenophobia may have been the spark that set Alex alight this week, but joblessness, crime, a lack of service delivery and soaring prices provided the kindling. Loren Landau of the Forced Migration Studies programme at the University of the Witwatersrand points out that “in some instances, leaders have blamed foreigners to deflect criticism around the lack of jobs and service delivery”. Lashing out at foreigners is rather like domestic violence, he says: “A man who loses his job may go home and beat his wife. He’ll feel better for five minutes, but in the morning his wife is bruised and he still doesn’t have a job.”¹³⁸

This part of the story makes reference to information about xenophobia against the journalist’s pre-existing premise. The ‘source’ validates the journalist’s viewpoint that ‘joblessness, crime, a lack of service delivery and soaring prices provided the kindling’, with little consideration of the broader context. The journalist has already established a lead so the reference to a source is made within the ‘parameters’ of the journalist’s biases.

The facts that are lost in the lack of contextual detail:

Economic factors alone cannot adequately explain the occurrence of xenophobia. It also takes political mobilisation and poor leadership.

6.1.2 Case study 2: Putting out fire next time

In this article the writer presents evidence from the Forced Migration Studies Programme (FMSP) at Wits University, which argued that, ‘immigrants, even at the bottom of the heap’ help to create employment opportunities for South Africans ‘rather than taking away their jobs’. But this argument does not sit well with an 18-year-old South African, also featured in the article. This ‘indigenous local’: ‘[...] expresses the sentiment: “They must go back to their countries. They do not belong in South Africa”’.¹³⁹ One lady in that same article is also quoted as saying: ‘These foreign people come to South Africa with nothing, but tomorrow he has cash, third day he owns a shop and fourth day he has a car. Where do these foreign people get this money?’.¹⁴⁰

In all fairness, given the huge disparity of inequality in South Africa, it is to be expected that locals will be suspicious of foreigners who generally tend to work harder to climb the social ladder, and have been found to sometimes accept lower wages in sectors like hospitality because of their precarity and poor monitoring of employer minimum standards by the Department of Employment and Labour. But, the writer could have

¹³⁸ Mail & Guardian (22 May 2008) 4.

¹³⁹ Mail & Guardian (25 February 2010) 40.

¹⁴⁰ As above.

done more analysis. The writer states that perhaps ‘this makes perfect sense’ for people who have just come out of apartheid expecting a better life.

The facts: Unemployment has deeper multifaceted causes, and ignoring this sanitises xenophobia by giving it a moral and rational foothold. Migrants contribute to development by creating jobs for South Africans in the informal sector. Ultimately, such reporting inadvertently gives salience to the discourse of migrant apathy and feeds into xenophobic discourse.

6.1.3 Case study 3: Two claims about the rights of foreign nationals in South Africa: the citizenship of their children, and working in government.¹⁴¹

We are coming for those who work in chapter 9 institutions. We are coming for those who are holding key positions in gov. The law says for anyone to serve at any gov spheres, they must be born in SA & both parents must be South African. [@NalediChirwa](#) we are coming.¹⁴²

Facts: South Africa is not obliged to grant citizenship to immigrants’ children born in South Africa, but there are exceptions. And people can work in many spheres of government even if they are not South Africans born to South Africans.

6.1.4 Case study 4: Three claims about the number of Zimbabweans employed by South Africa’s electricity utility and by a major telecoms company, and foreign nationals with jobs in government departments.¹⁴³

Eskom: over 1000 Zimbabwean employees.

Vodacom: over 5000 Zimbabwean employees.

Government Departments: over 10,000 foreign nationals.

The level of hate the SA government has for its citizens is not surprising.¹⁴⁴

The facts: According to ACMS analysis of data from 2012 to 2017, foreign nationals are less likely to be unemployed than South Africans, which is an unusual situation compared to other countries. Much of this employment is precarious. Foreign nationals are more likely to be employed in the informal sector, meaning they are not protected by labour laws and have few rights as workers.

¹⁴¹ Adapted from N Mashishi ‘Foreign nationals’ Kids born in South Africa can be denied citizenship, but foreigners may work in Government’ Africa Check (2022) available at <http://africacheck.org/fact-checks/reports/foreign-nationals-kids-born-south-africa-can-be-denied-citizenship-foreigners> (accessed 22 April 2023).

¹⁴² Victoria Africa (@VictoriaAfrica9) (26 January 2022). Available at <https://t.co/4kyWsFB0vt> (accessed 22 April 2023).

¹⁴³ Adapted from K Cosser ‘Thousands of migrants have jobs in Eskom, Vodacom and South Africa’s Government? No, viral message plain wrong’ Africa Check (2022) available at <http://africacheck.org/fact-checks/reports/thousands-migrants-have-jobs-eskom-vodacom-and-south-africas-government-no> (accessed 22 April 2023).

¹⁴⁴ M Khumalo (@MarioKhumalo) (3 September 2022).

6.2 Case study of comprehensive and balanced story

6.2.1 Case study 1: Xenophobia deepening

Thabo Mbeki, then South African president, strongly denied that the 2008 violent attacks were xenophobic, arguing instead that they were criminal. In a clear ring of denial, he was quoted as saying: 'When I heard some accuse my people of xenophobia, of hatred of foreigners, I wondered what the accusers knew of my people, which I did not know'.¹⁴⁵

This excerpt portrays tensions between research showing that the violence is xenophobic and not criminal with popular government discourse. Mbeki uses inclusive and exclusive phrases like 'my people', to disregard the existence of xenophobia in the country. Implicitly, his speech suggests that there were such categories as 'his people' and 'others', revolving around the 'dangerous' nationalist binaries of insider-outsider that cause xenophobia in the first place.

The facts: The same article cited research conducted by the Human Sciences Research Council (HSRC) and the Institute for Security Studies (ISS) in 1996 and 1997 that showed that South Africans were becoming more xenophobic in their attitudes towards migrants generally and irregular immigrants in particular. This research counters Mbeki's denialist claims.

6.3 Chapter Summary

The examples of scenarios in this final section demonstrate how to structure a compelling and all-encompassing story. A diagnosis of the issue based on facts is provided along with case examples of uncritical and imbalanced articles and tweets. An illustration of a thorough and impartial story is provided.

¹⁴⁵ Sowetan (4 August 2008) 13.



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