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What has been the impact of government attempts to deter asylum applications? A comparative study of the UK and South Africa

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Introduction

What has been the impact of government attempts to deter asylum applications? A comparative study of the UK and South Africa

According to Kant each one of us by "virtue of their communal possession of the earth's surface…" has the right to hospitality, temporary stay and protection. The social construct of 'asylum' has created a category for those most deserving of this hospitality and protection. It is for this reason that their treatment is the focus of this study as it is an important indicator of the moral health of a state. "It seems to me that the reception given to those applying for asylum is an illuminating indicator of the state of the society's health"[1].

The aim of the 1951 United Nations Convention Relating to the Status of Refugees was to protect asylum seekers and guarantee their 'hospitality' across the world. This prestigious treaty should guarantee the equitable treatment of asylum seekers throughout each of the 147 signatory states. This research will put forward the view that government in both South Africa and the United Kingdom (UK) have implemented successive attempts to dissuade asylum seekers from 'choosing' their nation as an asylum destination. These actions have not only had limited success but have had a significant and often negative impact upon those claiming asylum. Since the initial liberal legislation that incorporated the Convention into domestic law both governments have introduced a variety of inventive means, attempted to dissuade asylum seekers in order to keep their application numbers under 'control'. The vast majority of measures implemented since the Convention have make it harder to claim asylum or have made life harder for asylum seekers once they are 'in country'.

In the past there was some political capital to be gained by offering protection to asylum seekers, this is no longer the case and asylum seekers are increasingly viewed as a burden on already overstretched state resources. I will demonstrate

[1] Sir Basil Hume quoted in, Louise Pirouet, *Whatever Happened to Asylum in Britain; a Tale of Two Walls. (*Berghau Books, 2001), 1.

that deterrence measures have been implemented to appease public opinion and that there is no longer enough sympathy towards asylum seekers to gain electoral support from the liberalisation of asylum policies. Governments in the UK and South Africa have stated that they are only willing to offer protection for asylum seekers as long as it is not to the detriment of their own citizens. Jack Straw the British Home Secretary 2001, stated that "there is a limit on the number of applicants, however genuine; that you can take"[2]. The use of inflammatory language and over exaggerated figures on irregular migration has further helped create a 'problem' which is in need of a solution. To solve this 'problem', the South African and British government have set targets on controlling the number of asylum applications and time limits on the time it takes to make a decision on each case. Although often meaningless and often beyond the reach of government, these measures have become a key indicator of the effectiveness of the asylum system[3].

Changes within the asylum system have made it much more difficult for asylum seekers to place their application in the host country. The number of pre-entry controls has increased dramatically in the UK and within South Africa. It is now virtually impossible for asylum seekers to gain legal entry into either country without large sums of money. As UK Home Secretary David Blunkett stated in 2004 the aim of extending the number of countries requiring entry visas was to 'screen people before they reach British soil'[4]. Stopping potential claimants from ever reaching the shores of Britain has been one of the most effective means of deterrence used by the British government. South Africa has been less successful in deterring in this way due to difficulties in monitoring their 7000 kilometres of porous borders.

Undermining and limiting the rights of asylum seekers once they are 'in country' has also been used to deter potential asylum seekers from coming to South Africa and the United Kingdom. Welfare provisions have been viewed by the British

[2] Louise Pirouet, *What ever Happened to Asylum in Britain; A Tale of Two* Walls (Berghau Books 2001), 130.

[3] Gareth Mulvey, "When Policy Creates Politics: the Problematizing of Immigration and the Consequences for Refugee Integration in the UK." *Journal of Refugee Studies* 23, no. 4 (November 2010): 439.

[4] Ibid 441.

government as a 'pull' factor attracting asylum seekers. That has led to limitations being placed on over stretched public resources and a 'hierarchy of provision' which treats asylum seekers as second class citizens and aims to deter future applicants.[5] These policies are justified by governments claiming they must target state provisions at times of economic hardship.[6] These limitations on provisions have not successfully 'targeted' resources, as all asylum seekers are affected whether they are 'genuine' or 'bogus.' In South Africa the 'hierarchy of provision' still occurs even though welfare provision is much more limited, asylum seekers face difficulty in claiming even the most basic access to education and health care provisions.

Hospitality and protection of asylum seekers is under threat not only from legislative changes. Government actions have also included bureaucratic reform and attempts to use the media to shape the debate on asylum. In the UK there has been a period of 'legislative activism' as 'New Labour' amended and added to the volume of legislation that applied to and affected asylum seekers[7]. The number of government actions increased as asylum moved up the political agenda. In South Africa legislation has played a less important role but government actions in the form of shaping the bureaucracy and an active policy of deportations have been the focus of attempts to deter asylum seekers.

The West despite its economic 'health' appears to be leading the world in ensuring a "shrinking circle of generosity" towards asylum seekers[8]. It is often the developed world with the strongest economies and fewest asylum applicants that makes entry most difficult and life hardest for asylum seekers. Asylum burdens throughout the world are not evenly distributed, the "African continent has accounted for 88 per cent of the overall number of asylum seekers in contrast to

[5] Alice Bloch and Liza Schuster, "Asylum and Welfare: Contemporary Issues." *Critical Social Policy*, 22, (2002): 394. doi: 10.1177/02610183020220030239 4

[6] Ibid

[7] Gareth Mulvey, "When Policy Creates Politics: the Problematizing of Immigration and the Consequences for Refugee Integration in the UK." *Journal of Refugee Studies* 23, no. 4 (November 2010): 439.

[8] Cohen 1994, quoted in, Sarah Gibson, "Accommodating strangers: British hospitality and the asylum hotel debate." *Journal for Cultural Research* 7, no. 4 (2003): 370.

the 12 per cent for the rest of the world"[9]. With the huge increase in the number of asylum seekers in South Africa this research will examine to what extent this has led to governmental activism in order to deter asylum seekers from 'choosing' South Africa and following the lead of 'Fortress Europe'. I will examine which country has been most successful in deterring asylum seekers and which government actions have been most important in achieving this aim.

The issue of asylum has proved a complex one and offers government with an often contradictory set of aims. They must balance their moral obligations to respond to humanitarian problems yet prioritize the needs of a self-interested state and its citizens. They must implement and maintain policies on diversity and inclusion to ensure social cohesion, yet must also respond to public concerns on immigration. They must lead and educate the public, yet maintain populist support to gain legitimacy for their policies. They must respond to the needs of industry and the labour market, yet balance demands for scarce resources. They must ensure national security yet not become involved in exclusionary politics.

With these many conflicting demands it is not surprising that government policies and responses so often fail. The methods at the disposal of the state to manage asylum often seem to be blunt tools to cope with such complex problems. Failure in this context is not achieving the original goal of policy making i.e. deterring asylum applications by creating negative perceptions that alter destination choices as well as restricting access to the asylum destination. To measure the desirability of specific destinations, I have examined the number of asylum applications a country receives, although this is by no means a perfect way to measure the desirability of a destination it is the most appropriate and accessible for this study. Individual choices and reasons may also impact upon these decisions but as the focus of this study is government rather than individual actions I will use the actual application figures. Within this study failure of government actions will also be measured by the negative impact policies have on those in the asylum system, such as their ability to be self-sufficient, maintaining basic rights; such as

[9] "Number of asylum seekers in South Africa rises sharply in the first quarter." UNHCR, last modified May 19, 2006. http://www.unhcr.org/446dd6dc4.html

work and education, or having a basic standard of living comparable to other members of that particular society.

The next section will examine the relevant literature on asylum destination of choice and also important literature that examines critically governmental actions in the area of asylum. Having outlined key studies, I identify key writers who have been most influential within this research. I will then set out the focus of the research posing the key question that I will address throughout the research; I explain why I have chosen this particular question and how I intend to answer the question posed. I will also offer a justification as to why I chose a case study comparative approach. Finally I will summarize how the research is structured and organised

The Existing Literature

The literature that has been most influential to this study falls into two categories the literature on destinations of choice or why asylum seekers 'choose' particular destinations was used to create a theoretical background for the study. It enabled me to identify which factors influenced asylum seekers in their selection of an asylum destination. From these I selected structural influences which were created by government actions. This gave me a broader theoretical understanding of the issues connected to policy making in this area, such as the huge impact of economic theory and the importance of economic considerations in the formulation of asylum and migration policies. The multi-variant approach used by many of the more recent studies enabled me to understand the diverse influences that can impact on decision making. Although I have chosen to focus on government actions I have an understanding of the broader influences that make up this complex decision making process.

The second source of literature examined government actions and specific deterrent policies and legislation implemented in South African and the United Kingdom. Most of this literature was country specific. From this literature I was able to identify relevant government actions and policies in the area of asylum and evaluate the impact both intended and unintended that this had, had. Much of this literature on the UK and the South African asylum systems was highly critical of

the system itself and the changes made it was this evidence that enabled me to draw the conclusion that the aim of these actions was predominately to deter asylum applicants.

Much of the literature I examined that was influential in my research project was not specifically concerned with asylum but was also concerned with the broader category of migration. Asylum seekers may have less 'choice' of destination but there is still considerable evidence that factors that influence migrants are still of considerable importance to asylum seekers[10]. Migration legislation and border restrictions have had a massive impact deterred all migrants including asylum seekers. The final reason is that there is a nexus between asylum and migration; this has been created by a lack of understanding regarding the two issues amongst the public which has been perpetuated by the press and at times, even by government ministers. Terms such as 'illegal' immigrant, economic immigrant,' bogus' asylum seeker and 'foreigner' are often used incorrectly and interchangeably which has caused a confusion around the two issues. This nexus has impacted not only on government actions on asylum but also in political rhetoric. In the section on public opinion actions aimed at 'illegal' migration have impacted dramatically on asylum seekers, governments have often failed to show sufficient leadership in clearly separating the two issues and in many cases have even linked the two perpetuating the nexus.

Early studies on migration were dominated by typologies with asylum seekers being dealt with as a sub category within the more general picture of migration. The goal of these typologies was to categorised migrants into different 'types' or groups based on their different reasons for migrating. Fairchild developed the first such typology in 1925, when he provided three important factors that influenced forced migration; colonialism, conquest and invasion.[11] This typology examined groups forced to migrate due to government actions in the asylum creating country and not the 'host country' and therefore is of limited use within my research as I am focussing on the actions of the 'host country.' Explanatory

[10] Anthony. H. Richmond, "Sociological Theories of International Migration: The Case of Refugees," *Current Sociology* 36, no.2 (June 1988):9, doi: 10.1177/001139288036002004.
[11] Ibid, 7.

models became increasingly more complex, as they not only looked at push factors but also at individual motivations for migratory movements. Peterson's typology developed in 1958 looked at the complex relationship that each individual has with nature, those around him and finally with the state and how this creates the 'social momentum' to migrate[12]. It is the relationship with the state that is of particular interest within this study and whether this factor can actually be strong enough to deter applications. Peterson's typology only examined government actions as a small part of his theory his work on individual 'choices' was not as relevant to this research. With the passage of time, classificatory typologies moved beyond the purely descriptive and began to offer a framework for attempting to predict migratory patterns and related variations between migrant destinations. Typologies have been useful in gaining an understanding of the range of influences that shape migratory movements and have offered useful insights into the role of the state; they did not however offer explanations that explained the reactions of specific countries to asylum claims.

Theorists such as those who developed typologies offered a macro-historical perspective offering societal reasons for migration. Society not the individual created push factors that encouraged migratory patterns. The most common societal factors quoted in the literature were created by economic needs and political factors. Economic reasons were the main societal reason offered for explaining voluntarily migration and there is growing evidence that this is also relevant to involuntary migration[13]. Economic developments, technological advancement and industrialisation increased the demand for migrant workers and were a powerful pull factor for migrants. The consensus within economic theory is that a countries wealth influences migratory patterns but the exact impact of specific indicators is not agreed upon; Douglas Massey states that rich countries with high economic growth, low unemployment and generous welfare systems attract migrants including asylum seekers as a high economic growth rate makes it easier to find a job.[14]

[12] Anthony. H. Richmond, "Sociological Theories of International Migration: The Case of Refugees," *Current Sociology* 36, no.2 (June 1988):9, doi: 10.1177/001139288036002004.

[13] Ibid, 3.

[14] Eric Neumayer, "Asylum Destination Choice. What makes some West European Countries more attractive than others?" London: LSE Research Online (2004): 11.

Massey's study helps to identify the rationale behind government actions and policies towards migrants. Economic needs have been a strongly influential in the formulation of migration policies and actions and have had a strong impact upon asylum seekers not only pushing economic migrants into the asylum system but also affecting border restrictions. Many of the policies and actions in this area are based on the assumption that destination is a 'choice' and that applicants pick a destination that provides them with the maximum benefits and the best possible opportunities. Much economic theory states that asylum seekers also make a 'choice' selecting a destination with high economic growth, low unemployment and generous welfare systems[15].

I will show that economic factors may be a strong motivation for migration policies but have only a limited connection to the number of asylum applicants. Economically motivated migration policies do however impact heavily upon the asylum system, one such example would be the number of economic migrants entering the asylum system in South Africa. Economic factors may not be the main motivation in the selection of an asylum destination but they still impact heavily upon asylum seekers who cannot be thought of in isolation of the global economy, as refugees are often responding to economic repression so the 'distinction between political and economic migrants can become meaningless'[16].

I do not agree with Massey that welfare payments and benefits act as a 'magnet' to asylum seekers. I found no evidence that welfare cuts bore any relation to asylum 'choice'. The work of Alice Bloch and Liza Schuster study "Asylum and Welfare: Contemporary Issues" provided strong evidence which refuted the idea that welfare was an asylum 'magnet'. Asylum seekers had little detailed knowledge about the asylum system or welfare provisions of the host country before their arrival[17]. This study examines how governments and particularly governments within Europe have limited access to the welfare system as a means

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http://eprints.lse.ac.uk/archive/00000610

[15] Anthony. H. Richmond, "Sociological Theories of International Migration: The Case of Refugees," *Current Sociology* 36, no.2 (June 1988):13, doi: 10.1177/001139288036002004.

[16] Ibid

[17] Heaven Crawley, "Chance or choice? Understanding why asylum seekers come to the UK." University of Swansea, Refugee Council (Jan 2010):5. www.refugeecouncil.org.uk

to deter asylum seekers using a reduction in statutory provision as a means to create a hierarchy of the 'deserving'[18]. I follow Bloch and Schuster in seeking to demonstrate that limiting welfare provision has little impact on deterring asylum seekers but has a detrimental impact on the lives of asylum seekers in country.

Economic theory is based on the assumption that asylum seekers make a rational 'choice' in their destination selection, later studies have been very critical of this idea of 'choice.' Helen Crawley in her research for the UK Refugee Council states that government actions have had only a limited impact upon asylum destination decisions. She states other factors such as the influence of agents, travel arrangements and financial assets may be more important and 'choice' in asylum destination should be more accurately described as 'chance.' This is such a central theme in Crawley's work the study takes this title 'Choice or Chance.' My research is not as comprehensive as Crawley as it focusses primarily on government actions, yet my conclusions in this area were however strongly influenced by Crawley's work. I was particularly influenced by her work on the impact of government actions limiting employment and social welfare benefits and the impact these had on the human rights of asylum seekers[19]. The human cost of government actions is an important theme within this research. Crawley concluded that the biggest impact of pre-entry controls has not been in deterring applications but in preventing them[20]. This is also a conclusion I have sought to test.

There have been specific authors and works that have been influential in assessing different areas of legislation or assessing the impact of particular government actions. The work of Sally Perbedy was particularly helpful in understanding the history and formulation of South African migration and asylum policies. From Perbedy's work I was able to identify relevant government legislation in order to assess its impact upon asylum seekers in South Africa. Like Perbedy I conclude that South Africa has some of the most liberal asylum legislation in the world but

[18] Alice Bloch and Liza Schuster, "Asylum and Welfare: Contemporary Issues." *Critical Social Policy*, 22, (2002): 408. DOI: 10.1177/026101830202200302

[19] Heaven Crawley, "Chance or choice? Understanding why asylum seekers come to the UK." University of Swansea, Refugee Council (Jan 2010):40. www.refugeecouncil.org.uk

[20] Ibid, 4.

its impact is limited by its application. In assessing the impact of government actions as opposed to legislation the work of Lauren Landau and Roni Amit was very influential, both authors are highly critical of the South African asylum system. Amit examines the work of the asylum bureaucracy and identifies gaps in training knowledge, application of the Convention as well as describing the huge case loads of the Refugee Status Determination Officers (RSDO)[21]. Landau is also critical of the application of South African legislation and specifically highlights government actions which heavily impact upon the lives of asylum seekers. Policies such as detention, deportation and the criminalisation of asylum seekers have had a much greater impact on asylum seekers in South Africa than the legislation that is meant to protect their rights. This work has been particularly important in assessing the impact of government actions particularly in South Africa where sometimes government actions have been far more important that the legislative framework. The ability or willingness of the government to implement legislation can sometimes be more important that the legislation itself.

Similarly in the UK the work of Louise Pirouet has been particularly important in both the identification of changes made to the asylum system and in the assessment of their impact. Pirouet outlines the deteriorating situation for asylum seekers in Britain, including the negative impact of the migration / asylum nexus on the public debate and the view that British politicians pander to public opinion and are reactive not proactive in their policy decisions. She also outlines changes in the asylum systems which have prioritised the speed at which decisions are taken over good decision making. Pirouet's work has been useful in assessing the intended and unintended consequences of government actions in the UK.

Gareth Mulvey's article was another importance source of information helping identify deterrent policies which had been implemented and in assessing their impact. His work also describes how politics often shapes policy on the issue of asylum. He concluded that deterrent policies were focussed on what he calls the British governments 'twin aims' which are to make it difficult to enter the UK and

[21] Amit, Roni. "Flawed Status Determination and the Failures of South Africa's Refugee System to Provide Protection."*International Journal of Refugee Law* 23 no. 3 (June 2011): 458–488. doi:10.1093/ijrl/eer01

to make life more difficult once you get here[22]. These twin aims were influential throughout the project but particularly examining the UKs domestic legislation.

Other specific authors were used for particular sections of this research. The work of the Migration Observatory at Oxford University was particularly important when looking at the role of public opinion and the media in shaping policy and government actions[23]. It concluded that British public opinion is predominately negative and often ill-informed on the subject of asylum. Jef Huysmans work was also important in understanding why public opinion was so negative; this gave me an understanding of how asylum has been labelled as a 'threat' and the impact this has had on the criminalisation and securitization of the issue.

Chain migration theories offer reasons as to why migration continued after the initial economic reasons no longer existed. These theories which dominated in the 1960's were developed to explain why migration continued after the initial need for workers ceased. Migrants continue to use kinship networks; the existence of a successful pioneer group is a strong pull factor for future migrants. A 'family village' is created, such as a well-established Somalian community in the UK or a longstanding Algerian community in France. These communities and family members help with both the economic and cultural transition and integration into the host community. Migration continues as family members and dependents joined those that originally migrated for work purposes. In terms of asylum, these theories may be used to explain why desirable destinations continue to receive asylum seekers from the same asylum creating countries. Tetty Havinga and Anita Bockers in their study give the example of Sikh's from the Punjab region of India

[22] Gareth Mulvey, "When Policy Creates Politics: the Problematizing of Immigration and the Consequences for Refugee Integration in the UK." *Journal of Refugee Studies* 23, no. 4 (November 2010): 440.

[23] The Migration Observatory at the University of Oxford. "Public Opinion and Public Policy: Complexities of the Democratic Mandate."Last modified March 29, 2011. http://migrationobservatory.ox.ac.uk/sites/files/migobs/Public%20Opinion%20Policy%20Primer.pdf

who continued to join family members in the Sint Truiden region of Belgium, after the initial reasons for migration had disappeared[24].

In the 1970's and 1980's social network theory developed and built upon chain theory examining migration as a social action rather than one dominated purely by economic and political pressures. Migrants were drawn to destination countries not only for economic reasons and kinship ties, but as a choice or 'social action' in order to take advantage of wider social networks that were developing. These were not only made up of kin but also included friends, charities and community organisations. These networks were to prove attractive to new migrants as they provided a means of 'easing the passage' for future migrants creating a means of minimizing the social and economic cost of migration. Often new migrant would spatially cluster with existing communities from their origin countries in order to minimize migration costs[25]. Asylum seekers and refugees will use social networks for all the reasons above but may also have additional reasons for seeking out support networks. Restrictive policies and border restrictions may make social networks even more important for asylum seekers and refugees. Often they are unable to work and need to complete forms and follow complex procedures to gain recognition within the host country; therefore social networks will offer not only financial assistance but also help and offer advice on the asylum system. In London in the United Kingdom communities of asylum seekers including Turks, Somalians, Ethiopians and Iraqi's are growing as social networks and communities.

Social network theory has made a huge contribution to the study of migratory patterns and contributed greatly to the understanding of asylum seekers in destination choice. Its use within this study is to examine whether government actions have limited the usefulness of social network theory. Recent literature has questioned whether social network theories can still explain migratory patterns 'a

[24]Tetty Havinga and Anita Boker, "Country of Asylum by choice or by chance: asylum seekers in Belgium, the Netherlands and the UK," *Journal of Ethnic and Migration Studies* 12, no. 1(1999): 51.

[25] Neumayer, Eric, "Asylum Destination Choice. What makes some West European Countries more attractive than others?" London: LSE Research Online (2004): 11. http://eprints.lse.ac.uk/archive/00000610

significant minority cannot be explained away this way'[26]. Michael Collyer argues that border control policies aimed at deterring asylum seekers have had an impact on the importance of social networks in determining migratory patterns; Massy agrees that "Nothing invalidates traditional approaches to migration as effectively as border control policies"[27]. This key finding is one of the key premises behind this project that government actions may or may not deter asylum seekers but they are definitely having an impact on their lives. A 'migration industry' has developed in response to ever more restrictive entry requirements and policies[28]. Government attempts at deterring asylum applications have not had the intended consequences but instead have created a new role for agents who are shaping and limiting the 'choices' made by asylum seekers. Social networks still play a role in migration, but they are being utilised in different ways. 'Controls reduce the possibility of taking advantage of social capital inherent in these networks'[29]. Migrants may be less willing to ask for help and social networks may be less able and willing to help migrants, as they are seen as a greater economic burden due to 'in country' restrictions that limit opportunities to work and receive welfare support. Therefore attempts to deter asylum seekers have not worked in the intended way of reducing the number of applications but have changed the role of social networks, 'Families become a source of information and finance rather than a physical attraction"[30].

Collyer's study focusses on Algerian asylum seekers in the UK, his interviews proved a significant minority of asylum seekers move in ways which cannot be explained by existing sociological theories on migration. Many did not choose the UK but ended up there because of ease of travel, agent's decisions or simply

[26] Michael Collyer, "When Do Social Networks Fail to Explain Migration? Accounting for the Movement of Algerian Asylum- Seekers to the UK" *Journal of Ethnic and Migration Studies* no. 4 (2005): 699.

[27] Ibid, 705.

[28] Heaven Crawley, "Chance or choice? Understanding why asylum seekers come to the UK." University of Swansea, Refugee Council (Jan 2010):6. www.refugeecouncil.org.uk

[29] Ibid, 30.

[30] Michael Collyer, "When Do Social Networks Fail to Explain Migration? Accounting for the Movement of Algerian Asylum- Seekers to the UK" Journal of Ethnic and Migration Studies no. 4 (2005): 711.

because of events or incidents that occurred within their journey or flight[31]. Many of those interviewed expressed a desire to reach Europe and had no specific destination requirement. What is more, few had any meaningful or detailed knowledge of specific European destinations[32]. More important was the view that these were liberal democracies countries that offered protection; it is difficult to see whether government could alter or would want to alter this widely held perception.

Working from a micro perspective other theorists have focussed upon individual reasons for migration destination. These theorists built upon the work of economic theories and examined individual motivations for migratory movements. Pull factors that motivate these 'rational' choices include economic benefits; social mobility and family reunification[33]. Place utility theories are based on migrants weighing up the 'net advantages' of particular destinations[34]. I have chosen not to use these theories for two reasons. The first is they tend to assume decisions on asylum destinations are based upon adequate information. Information regarding the asylum system and conditions when 'in country' are rarely accurate, or available. Even if adequate information is available, these theories do not take into account the many and varied influences on decision making, especially in a media saturated world[35]. I do not believe that selection of an asylum destination is a rational choice. Empirical studies have only at best offered limited support for these place utility theories. The second reason I have not used these theories is they focus on individual decisions which are based upon 'voluntaristic actions' only some of which are structural constraints such as transport, agents and even social class[36]. Fewer still are government actions such as restrictive border entry requirements and policies which mean place utility theory focussing on the individual choices was of limited value to my research.

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[31] Tetty Havinga and Anita Boker, "Country of Asylum by choice or by chance: asylum seekers in Belgium, the Netherlands and the UK," Journal of Ethnic and Migration Studies 12, no. 1(1999): 44.

[32] Heaven Crawley, "Chance or choice? Understanding why asylum seekers come to the UK." University of Swansea, Refugee Council (Jan 2010):6. www.refugeecouncil.org.uk

[33] Anthony. H. Richmond, "Sociological Theories of International Migration: The Case of Refugees," Current Sociology 36, no.2 (June 1988):7, doi: 10.1177/001139288036002004.

[34] Ibid.

[35] Ibid, 8.

[36] Ibid, 9.

Recent large scale studies including the one by Heaven Crawley mentioned previously and the study by Vaughan Robinson and Jeremy Segrott of examined both voluntaristic actions by conducting individual interviews as well as examining structural constraints on asylum destinations. These studies look at a multitude of variants that influence asylum seekers destination of 'choice'. Both studies questioned the idea that refugees have much 'choice' at all in the decisions they make, chance is a more accurate description[37]. Only migrants with sufficient resources and/or luck may be offered any kind of 'choice' in their ultimate destination, asylum seekers will have even less 'choice' as they are often fleeing quickly, with little time or money[38]. These studies examine the multiple variables contribute to the 'chance' selection of an asylum destination, but their scope and the number of variables was beyond the scope of this research and therefore I was influenced by their work on specific variables but would be unable due to time and resources to replicate these studies. Crawley concludes push factors are more important than pull factors in deciding the choice of destination, this conclusion would be impossible to reach without conducting individual interviews with asylum claimants.

Eiko Thielemann also employed a multi-variant approach to examine which factors were most influential in determining the number of asylum applications made in 20 OECD countries 1985-1999. Unlike Massey he does not believe that economic factors are important in deciding on an asylum destination. He found a negative association between the number of asylum applications and the unemployment rate and deterrent policies. There was also no association between the number of asylum applications and the geographical proximity of the asylum producing country or the Gross Domestic Product (GDP)[39]. Although I will not agree with all of Thielmann's conclusions the variables he examined were very influential in selecting the government actions I will examine within this research.

[37] Heaven Crawley, "Chance or choice? Understanding why asylum seekers come to the UK." University of Swansea, Refugee Council (Jan 2010):1-57. www.refugeecouncil.org.uk Title of study by Refugee council

[38] Ibid, 19.

[39] Neumayer, Eric, "Asylum Destination Choice. What makes some West European Countries more attractive than others?" London: LSE Research Online (2004): 1. http://eprints.lse.ac.uk/archive/00000610.

The factors Thielmann identified as having the greatest impact on asylum destination decisions were the percentage of GDP given in aid and the number of nationals from the top five asylum producing countries within the host countries population. Thielemann interpreted aid contributions as an indication of a countries 'liberalness.'

Eric Neumayers study is one of the few quantitative empirical studies examining destination countries of choice. He examines the 'fundamental determinates' which influence the choice of destination country[40]. These include economic growth rate, unemployment rate, colonial ties, language, distance, numbers of asylum seekers received in the past, percentage of asylum seekers recognised, membership of the Schengen agreement, social welfare and the political leanings of the cabinet i.e. left or right wing. In conclusion, Neumayer found that historical and colonial links were the most important determinant followed by language and geographical proximity. Economic indicators such as unemployment and growth rates were not seen as important as decisions were often made on crude and simplistic views of the destination country. A generalised view that the country was 'rich' was more important than specific economic indicators[41]. For asylum seekers an established community from the asylum seeking country can be a strong attraction; colonial links also make integration, transport and language less of an issue. Neumayers multi-variant approach is useful in its analysis of government actions but offers a broader and more comprehensive analysis which is beyond the scope of this research. I have drawn upon some of the conclusions for example; Neumayer and Thielemann agree that restrictive government policies could have an impact on inflows of asylum seekers. European Union initiates such as the Dublin Convention may be particularly important as they stop 'asylum shopping' within the European Union, by forcing asylum seekers to claim asylum in the first European Union country they arrive. Although both Neumayer and Thielemann stated that government actions were by no means the most important factor influencing decision making and their impact should not be over- estimated.

[40] Neumayer, Eric, "Asylum Destination Choice. What makes some West European Countries more attractive than others?" London: LSE Research Online (2004): 1. http://eprints.lse.ac.uk/archive/00000610.

[41] Ibid, 22.

The key areas of importance to emerge from the existing literature are that deterrents often have an impact other than those originally intended. Policies designed to deter potential applicants such as changes of citizenship rights and restrictive accesses to welfare provision appear to have little impact on the number of asylum applications. They do however have a strong and negative impact on the lives and human rights of asylum seekers. Economic factors such as employment, Gross Domestic Product (GDP) only have a limited impact on asylum destination choice. Many asylum seekers end up in a host country not through 'choice' but by 'chance.' Other factors such as colonial past and social networks may well be a more important influence on individual decisions. Legislation alone is not the only government action that determines the impact of the system on asylum seekers, the practical day to day running of the system is an equally important factor. This is particularly true in South Africa which has not implemented the plethora of legislative changes the UK has.

Research Focus

Thilemann noted that governments' ability to shape asylum seekers decisions were limited by historical, economic and reputational factors, as these factors are beyond policy makers. Thielmann devised a 'deterrence index' which was used to measure the importance of factors influencing asylum destination. He found there to be a weak correlation between asylum applications and policy related deterrence measures. This weak correlation is of crucial importance and is central to my study. Do deterrence measures work and if not, what impact are they having on asylum seekers? Instead of focussing on individual choices, I wanted to find out if the decision to claim asylum in a particular place, could be swayed by government actions and policies. If, as Thilemann states, the ability to shape asylum seekers decision is beyond policy makers this has not stopped them making numerous attempts to alter perceptions of their country as a potential destination. These include measures to deter asylum seekers by creating a negative view of the asylum system and the conditions once an asylum seeker is in country. It is for this reason I believe this is an important area of study as these attempts to change perceptions may have an unintended impact on the emotional,

physical and social wellbeing of a 'deserving' group within society who may already be vulnerable and in need of protection.

Politics appears to be playing a large part in policy making which is often based on assumptions not sound research. In no other area of policy making is politics shaping policies in such a dramatic and detrimental way. "Assumptions about the reasons why asylum seekers come to the UK permeate political and public discourse"[42].

Research Design

To answer my question I needed to pick asylum destinations that were perceived as desirable to asylum seekers. I chose to do a comparative study to see if similar attempts to alter this perception of desirability had a similar impact in different countries. I chose to compare two countries to gain an in depth knowledge about measures taken in each country and to compare and contrast their impact. The most important issue in selection of case study countries was that they were to be desirable asylum destinations. One of the main ways of evaluating 'desirability' was through the volume of asylum applications each country received. The main complicating factor here was the geographical location of each country and its proximity to refugee creating countries. I have examined this factor and looked at application numbers and compared them not only to each other but in relation to the countries own pattern of applications. The destinations needed to be similar enough to make the comparison possible and yet different enough to make the comparison a worthwhile and interesting one.

South Africa seemed the most attractive choice as an asylum destination as it is by far the country that has received the most asylum applications since 2006. In 2010 it received a fifth of the world's asylum applications, more than three times more than any other country[43]. South Africa is a desirable asylum destination as it is the new economic powerhouse within Africa and has a strong constitutional democracy in a region plagued by political instability, civil unrest and poverty. In

[42] Heaven Crawley, "Chance or choice? Understanding why asylum seekers come to the UK." University of Swansea, Refugee Council (Jan 2010):7. www.refugeecouncil.org.uk

[43] UNHCR "Statistical Yearbook 2010" http://www.unhcr.org/pages/4a02afce6.htmlp42

comparison to its neighbours the quickly developing South Africa is an attractive prospect. For example for those coming from Mozambique the average wage in South Africa is 36 times greater than the wage they could expect at home.[44] For those fleeing persecution the new liberal laws of South Africa and the increasing levels of economic development are an important factor in selecting a destinations of choice. For example refugees from the Democratic Republic of Congo do not in large number seek asylum in neighbouring countries but instead choose to make the longer journey to South Africa.

A member of 'fortress Europe' was selected for comparative purposes as it is perhaps here that attempts to dissuade asylum applications have been most visible. The countries within the European Union that receive the most asylum applications are Germany, France, the Netherland and the United Kingdom. These countries all had high GDPs stable economies and are the most populous. I selected the United Kingdom from amongst these four countries as it has a long standing reputation as being a tolerant democratic nation which may be particularly attractive to those seeking asylum from political persecution[45]. It also has strong colonial links and a history of migrations which also make it a desirable destination. The number of asylum applications in the United Kingdom peaked in 2002 when 103,000 asylum applications were received. In 2004, the United Kingdom received the third most asylum applications in the world, which at this time was more than South Africa. The United Kingdom has consistently throughout the last ten years remained in the top ten asylum receiving destinations. In 2005 and 2007 the United Kingdom was the fifth biggest asylum receiving country, and came fourth in 2008 and 2009. More recently, the UK has fallen down the list of 'chosen' destinations, one additional reason I selected the UK was to see if government actions to make it a less desirable destination were working.

The two countries were different enough in their burdens, locations and stages of development to create an interesting comparison, yet they also shared a number of

[44] Zonke Majodina, *The Challenge of Forced Migration in Southern Africa*. (African Institute of South Africa, 2001), 4.

[45] Heaven Crawley, "Chance or choice? Understanding why asylum seekers come to the UK." University of Swansea, Refugee Council (Jan 2010):16. www.refugeecouncil.org.uk

underlying similarities. Both are democratic and their populations are comparable in size. There are historical and cultural ties and their constitutions and laws have much in common. Both South Africa and the United Kingdom have signed the 1951 United Nations Convention Relating to the Status of Refugees and the 1967 Protocol on the Status of Refugees. Both classify their 'populations of concern' as asylum seekers or refugees. Many other African countries have a considerable number of Internationally Displaced Persons (IDPs) and returned refugees. The UK does not have these distinct groups and this would have made a comparison more difficult. Both the UK and South Africa have rights based systems which are government (rather than Non-Governmental Organisation, NGO) administered and funded. Also thus far, South Africa and the United Kingdom allow 'self-settlement' and have avoided mass detention of asylum applicants. This distinguishes them from other states such as Kenya, Tanzania, Botswana and Mozambique.

So although societal differences were numerous there were enough common features to enable a comparison to examine whether deterrence measures that 'worked' in the United Kingdom were the ones later tried within South Africa. Or was 'South Africa instead of learning from Britain's mistakes deemed to repeat them?' by implementing actions that did not deter applicants but still had a detrimental effect on the lives of asylum seekers. It was counterintuitive to say that South Africa in recent years was a more desirable destination of 'choice' than the United Kingdom. Is this purely a matter of geography or is this the result of restrictive measures implemented to dissuaded asylum seekers from 'choosing' the United Kingdom as an asylum destination. If this is the result as Massy states of border control policies that are indeed having a strong impact on migration patterns.[46] I will argue that very few of the restrictive measures implemented have 'deterred' asylum applications. I will outline that the impact has in fact been to implement numerous limitations and restrictions on asylum seekers which limit their ability to live and work within the host communities.

[46] Michael Collyer, "When Do Social Networks Fail to Explain Migration? Accounting for the Movement of Algerian Asylum- Seekers to the UK" Journal of Ethnic and Migration Studies no. 4 (2005): 705.

I will focus on the time period 1997-2010; the reason for this selection was that it was a time of great change in both countries. In the United Kingdom it was the year 'New Labour' won the general election after 18 years of Conservative government they began a period of 'legislative activism' to tackle the issue of asylum[47]. In South Africa this was the year after the new constitution had been signed and the new ANC government began to draft the new Refugee Act.

I will focus on what types of deterrence policies and actions have been implemented in South Africa and the United Kingdom. I will outline the key similarities in the actions of the two governments such as the implementation of increased border controls and the focus on skilled migrants. I will then examine the key differences such as the United Kingdom's legislation legislative activism and contrast this with the lack of new legislation in South Africa. I will seek to explain why policies have differed in the two countries and why specific policies may have been used. Key differences such as the South African government's policy of deportation may be explained by examining its specific political and historical past. I will then evaluate the impact of deterrence policies in each country intended or otherwise and compare them to see if there are any similarities. In conclusion I will see which country has been most successful in their actions and policies to deter asylum seekers and will examine why this is the case.

Research Plan

Having selected the case studies, I have focussed on the main ways governments have attempted to change perceptions of their country and deter asylum applications. I have then examined the impact of these actions. The first section therefore examines legislation as this is perhaps the most obvious and visible way governments have attempted to deter asylum seekers. Chapter one looks at the protection offered to asylum seekers by the United Nations Convention Relating to the Status of Refugees (Convention), in theory each signatory country offers the same protection to asylum seekers. I then examine the extent to which South

[47]Gareth Mulvey, "When Policy Creates Politics: the Problematizing of Immigration and the Consequences for Refugee Integration in the UK." *Journal of Refugee Studies* 23, no. 4 (November 2010): 439.

Africa and Britain have implemented, reinterpreted or have manipulated the Convention in order to deter potential asylum seekers. I will argue that even with strong legislation such as the Convention, this does not and will not always guarantee the acceptance and positive treatment of asylum seekers once a claim is made or if indeed it is possible to make the claim in the first place.

Chapter two examines domestic legislation aimed directly at asylum seekers this includes legislation that has increase border restrictions, reduced procedural protection and has limited the rights of asylum seekers once they are in the host country. I will examine the impact of such legislation on asylum seekers evaluating whether they have had the intended impact of deterrence and also the impact these measures have had on the day to day lives of asylum seekers. I will argue that Britain has led the way and in this period of legislative activism, and legislation has prevented rather than deterred asylum applications in the UK. Finally chapter three examines economic measures that have been implemented to deter asylum applications; these include the withholding of services and the implementation of immigration legislation which has had a particularly devastating impact on the lives of asylum seekers in both countries.

The next section includes two chapters that deal with how governments have shaped and manipulate public opinion in order to create hostility towards asylum seekers. Chapter four will examine the creation of an asylum / immigration nexus and chapter five will examine the securitization and criminalization of asylum as a political issue. I examine the role played by public opinion in deterring asylum seekers and analyse the extent to which this has had unintended consequences, such as the breakdown in social cohesion. I argue in chapter 5 that the criminalisation of asylum seekers has been particularly important in South Africa and has played a part in the formation of xenophobic attitudes. Deportations have been heavily relied upon by the South African Police Service (SAPS) to ‘deter’ those entering South Africa illegally. In the United Kingdom the link created between asylum seekers and securitization has been of great importance and has created the second nexus examined within this research. The media has been used to great effect to link asylum seekers with migration and security issues.

The final section and chapter six deal with the implementation of legislation and the impact of changes to the bureaucracy. Measures aimed at reducing access to and reducing the appeal of various locations, these include changes to the bureaucracy and limitations placed on asylum seekers rights. I will argue that it is often not the legislation that governs the treatment of asylum seekers but the interaction with the asylum system and its bureaucracy. Bureaucratic changes and inadequacies throughout this period have had a significant impact upon the lives of asylum applicants and upon the quality of the decisions made. These changes have also led to an increased number of economic migrants entering and 'abusing' the asylum system which has not only increased the asylum/ migration nexus but has undermined faith in the asylum system, and had a negative impact upon the decision making process. This has been particularly important in South Africa.

This research will examine the three major ways that governments have attempted to deter asylum seekers through legislation, through shaping and manipulating public opinion and finally through the asylum system. Throughout these chapters I will examine each of the changes that have been implemented by government and the impact they have had upon asylum seekers both on their ability to claim asylum in the first place and the impact on their lives once they have entered the asylum system.

SECTION 1 DETERING ASYLUM APPLICATIONS THROUGH LEGISLATION

Chapter 1

International Law: Ensuring refugee protection?

The United Nations Convention Relating to the Status of Refugees (Convention) is the starting point for any discussion on asylum applications. It sets out the international standards for the 'hospitality' of refugees. The parameters set by the Convention are the basis for all domestic law on refugee protection and South Africa and the United Kingdom have their own laws which bring the Convention into domestic legislation.

In this chapter I will outline the aims of the Convention and critically examine the definitions it contains. I will then examine and evaluate other international agreements and treaties which also provide refugee protection. The reason for doing so is to understand the limitations placed on governments when they implement attempts to deter asylum applications I will look at these limitations and evaluate how effective they are in guaranteeing refugee protection. Examining specific ways the Convention has been undermined. Some of these examples are not from the United Kingdom (although many have been implemented here) or South Africa but they are of relevance as they set a precedent about what is possible or acceptable in the interpretation of the Convention and may be followed by other countries in the future.

Having established why the Convention was created I will outline how it defines the key concepts it contains including; asylum seeker, refugee, persecution and non-refoulement. I will then examine the key aims of the Convention. I will outline some of the many challenges faced by the Convention including the changing refugee situations and the ways in which governments have sought to limit their responsibilities and deter asylum seekers from reaching their shores.

The Aims of the United Nations Convention Relating to the Status of Refugees (Convention)

Since the French revolution it has been considered a natural right that individuals may leave and return to the state in which they have citizenship[48]. The United Nations Universal Declaration of Human Rights (Declaration) 1948 Article 13 incorporates this right into international law. There is however no equivalent right that another state must accept an individual into their territory. Sovereignty dictates that states have the right to protect their citizens and borders and decide who to admit and exclude. This right must however be reconciled with the ethical obligation of 'hospitality' to help those in need, such as refugees seeking protection from persecution. If these two, often conflicting 'rights' and obligations were represented by opposite sides of a scale, the use of deterrence measures have shifted the balance toward the protection of the rights of citizens. Examples of the human rights of refugees taking precedence are rarer one such example would be a humanitarian crisis that requires an international response. This shift in balance proves Bentham's view that a belief in natural rights is 'nonsense on stilts'[49]. Rights are not 'natural' but can be enforced or eroded by the state, as can the 'rights' of asylum seekers. The first key aim of the Convention was to balance the right to state sovereignty with the rights of refugees to protection.

The obligation to aid the weak alone was not enough to inspire the creation and implementation of legislation to ensure refugee rights. As is often the case in history a pivotal event created the impetus for change. World War Two created a mass exodus of refugees of an unprecedented scale across Western Europe. Governments feared they would be unable to cope and were unwilling to take large numbers of refugees due to the economic pressures they were under. The aim of the Convention was to create a system of international co-operation between sovereign states to provide a predictable response to an unpredictable situation. The Conventions very existence in part was due to individual states wishing to deter 'mass' influxes of refugees. The 1967 Protocol on the Status of

[48] Anthony Messina, Anthony, ed. And GallyaLahav, ed. *The Immigration Reader; Exploring Politics and Policies.*(Lynne Rienner Publications 2006), 107.

[49]Seyla Benhabib, *The Rights of Others: Aliens, Residents, and Citizens* (Cambridge: University Press, 2004), 129.

Refugees (Protocol) which is an independent statutory instrument rather than an amendment increased refugee protection by widened the definition of a refugee and removing the temporal and geographical limits contained within the Convention.

It is the duty of a sovereign state to draw up laws for protecting its own citizens. The Conventions aims to do the same for refugees, offering a comprehensive set of standards for international cooperation on the rights and goals for refugee protection. The Convention does not however, set out a framework for states to tell them how to achieve these standards. The Convention must be brought into domestic legislation and states are given the discretion to establish a suitable framework that implements, determines and administers refugee rights. This autonomy to decide how to provide refugee protection along with the protection of the sovereign right to limit, control and manage their own borders has been one of the reasons for the Conventions longevity and without this it is unlikely that any state would have ratified this treaty.

The Convention is one of the most legitimate and authoritative international treaties, two thirds of all countries in the world adhere to it. Currently 147 countries have signed the Convention or the Protocol and 142 have signed both[50]. Each signatory state has taken the decision freely to ratify the treaty and in doing so becomes obligated to incorporate it into domestic legislation. The principle of *Pacta sunt servanda* ensures the Convention is respected and implemented, by all those that have chosen to ratify it.The Convention is underpinned by a number of fundamental principles, most notably non-discrimination, non-penalization and non-refoulement'[51]. Although signatory states including the United Kingdom may have at times been critical of the Conventions none have ever withdrawn from it. One reason it has been successful is due to the ever changing interpretation of the definitions it includes.

[50] James Hathaway, The Law of Refugee Status (Toronto : Butterworths, 1991), 232.
[51] http://www.unhcr.org/3b66c2aa10.html , p4/ p5

Definitions;

Asylum Seeker

The Convention 'recognizes the right of persons to seek asylum from persecution' although at no point does the Convention define the term; 'asylum seeker.' It is up to individual states to create a working definition. For example Ireland defines anyone who has fled persecution as an asylum seeker. The United Kingdom, South Africa and this study all define an 'asylum seeker' as a person who has filed an asylum application through the legal system.

Refugee

The 1951 Convention and the 1967 Protocol, outline the ideals for 'refugee' protection and thus defines a 'refugee' as a person "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country"[52]. In the United Kingdom and South Africa a refugee is an asylum seeker who has gone through the legal process and has been granted refugee status.

Non-refoulement

Non-refoulement is perhaps the most important underlying principle contained within the Convention, which ensures refugee protection. Article 33 of the 1951 Convention provides that: "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened"[53]. If adhered to the principle of non-refoulement ensures that individuals cannot be returned to a dangerous or perilous situation regardless of their legal status; asylum seeker, irregular immigrant (those that do not have a legal status within a country), or refugee. This principle more than any other has ensured the safety of 'irregular' migrants, including those that do not

[52]"Convention and Protocol relating to the Status of Refugees," last modified December 2010, www.unhcr.org/3b66c2aa10.html.

[53]"Human Rights and Refugee Protection (RLD 5)," UNHCR, last modified October, 1995, http://protection.unsudanig.org/data/general/UNHCR-Human%20Rights%20and%20Refugee%20Protection%20(1995).pdf, 115.

achieve refugee status or gain protection. It offers protection against the arbitrary power of the state and limits their ability to reject asylum seekers at will.

The Application and Interpretation of the Definitions

Although in many respects these definitions are unambiguous there is still some room for interpretation. Determining what constitutes a 'well founded' fear of 'persecution' will necessitate an investigation into individual asylum seekers circumstances and will involve a subjective judgement to be made by state authorities. Differing interpretations of the definitions within the Convention alter the eligibility criteria set within each state. The reasons for persecution are clearly stated, although there is still room for interpretation for example 'membership of a particular social group' what constitutes a social group will need to be defined. Case law can play a powerful role in limiting government actions in denying certain 'social groups' protection as the definition is evolving and is constantly being redefining. For example the United Nations High Commissioner for Refugees (UNHCR) an international independent organisation which overseas refugee protection, offered guidance on the issue of gender, while "Gender is not specifically referenced to in the refugee definition, it is widely accepted that it can influence, or dictate, the type of persecution or harm"[54]. When asylum cases based on gender persecution on have faced legal challenges it has become more likely that rejections will be overturned. Although governments may attempt to resist the broadening of the definition and therefore additional applications this may attract, case law can offer some protection here. It has therefore becoming more common that gender based persecution is recognised. On occasion's protection has been offered in cases of genital mutilation, rape and forced marriage. This is much more common in the United Kingdom which has a more developed and better funded legal system than South Africa. Asylum applications are rarely accepted in South Africa on the basis of gender based persecution and no cases as yet have been challenged legally to create relevant case law.

In 2002 the UNHCR added further clarity on the issue of what constitutes a 'social group'; gender and homosexuality could both be legitimate reasons for

[54]"Guidelines on International Protection," UNHCR, last modified 7th May 2002, http://www.unhcr.org/3d58ddef4.pdf

persecution. However unlike gender it is very rare in either South Africa or the UK that homosexuality has been recognised as a legitimate reason for claiming asylum, even though discrimination on the grounds of sexual orientation is prohibited within both constitutions. In the cases of Binbasi 96 and Goldin 91 the United Kingdom government successfully won both these cases and status was denied. It was ruled that homosexuality was "an avoidable or self-inflicted form of persecution"[55]. The United Kingdom government was successful in its attempt to deter further asylum applications from those seeking asylum on the grounds of persecution on the basis of their sexuality and it is unlikely that asylum would be granted on this basis in the United Kingdom and even less so in South Africa,

Academic writers have disagreed on whether the Convention definition is adequate, some state the definition is too narrow to cope with modern refugee flows and should be broadened to include those fleeing generalised situations of violence and environmental disasters. Governments would however be unwilling to broaden the definition as it would encourage more asylum applications. They would agree with Weiner's defence of the current definition, warning of the danger of broadening the current definition to include discrimination as well as persecution. If this were to happen, half the world population may well qualify for refugee status, a most undesirable outcome[56].

Limitations on the Conventions ability to stop deterrence measures

Critics argue that the Conventions definition of a refugee is Eurocentric and focuses simply on a civil and political definition; this is especially true of its application within South Africa. Critics argue this is outdated and not relevant to today's refugee situation. It was, after all, written in response to the specific need of regulating the refugee situation in Europe following World War Two[57]. Today there are many additional causes for the world's refugee movements these including foreign occupation, environmental disasters and those fleeing crippling

[55] Derek McGhee, "Persecution and Social Group Status: Homosexual Refugees in the 1990's," *Journal of Refugee Studies* 14, no.1(2001):24, http://jrs.oxfordjournals.org/content/14/1/20.full.pdf

[56] Solomon Hussein, *Of Myths and Migration: Illegal Immigration into South Africa* (UNISA, 2003), 9.

[57] "Convention and Protocol relating to the Status of Refugees." UNHCR, last modified December 2010. www.unhcr.org/3b66c2aa10.html.

poverty and hardship. These people may be equally worthy of protection but are not included in the Convention's definition and are denied refugee status. Examples include those fleeing Mozambican floods in 2000[58] and the growing number of stateless persons, estimated at about 10 million in 2010. Many may fall outside of the Convention definition as they cannot prove 'their state' has failed to protect them, as they are without citizenship[59]. To change the definition would mean a vast increase in the number of asylum application received and therefore it is unlikely that any modern state that views asylum seekers as an economic burden would support this bold change of definition.

Other academics disagree with Weiner's assessment that the Conventions definition is adequate. Pirouet for example argues that many who are denied refugee status are not necessarily 'bogus' they simply do not meet the criteria set. They may well be deserving and have suffered, just not enough, or in the way determined and deemed necessary to gain protection[60]. Although it is of course important to be aware of the limitations of the definition, international law currently does not define these groups as 'refugees' and therefore for the purposes of this research neither will I. Instead I will use the Convention's definition for the United Kingdom and South Africa. Although the African Union definition is distinct, it is rarely utilised in reality within South Africa. Therefore I will use the definition closest to reality and the one used for decisions making[61].

1 Lack of Enforcement

Dualism theory states that municipal courts cannot directly apply international law; it must be transferred into domestic legislation before it can be applied and enforced[62]. By signing the Convention each state agrees to bring the Convention into their own domestic legislation and municipal courts play the role of enforcers

[58] Sally Peberdy, *Selecting Immigrants; National Identity and South Africa's Immigration Policies 1910- 2008* (Johannesburg:WITS University Press, 2009), 147.

[59] "Stateless People Figures" UNHCR http://www.unhcr.org/pages/49c3646c26.html

[60] Louise Pirouet, *Whatever Happened to Asylum in Britain; a Tale of Two Walls* (Berghau Books, 2001), 46.

[61] Amit, Roni. "Flawed Status Determination and the Failures of South Africa's Refugee System to Provide Protection."*International Journal of Refugee Law* 23 no. 3 (June 2011): 473. doi:10.1093/ijrl/eer01

[62] Richard Falk, ed. and Rajagopal Balakrishnan ed. and Jacqueline Stevens, ed. *International Law and the Third World. Reshaping Justice* (London: Routledge, Cavendish, 2008), 61.

in the absence of an international court, this is the case with all international treaties and laws. Without an independent international court to hold governments to account when attempts are made to deter asylum applications it falls to domestic courts to uphold the principles of the Convention. This system relies on a strong independent judiciary within South Africa and the United Kingdom. Many argue that the judiciary (although in isolated cases have protected the rights of asylum seekers) have done little to limit the actions of governments and advance the Convention.

The UNHCR is a non-profit organisation that overseas and monitors refugee protection worldwide. It is currently caring for the well-being of 17 million refugees; this is a far cry from the one million refugees it cared for in 1951 when the Convention was written[63]. It also undertakes status determination in some states, not however in the United Kingdom or South Africa. The funding comes only in part from the United Nations the bulk of their funding comes from voluntary government donations, $862.5 million in 1991[64]. As a massive organisation employing over 2500 people its capacity and ability to check and monitor individual decisions is limited, by the sheer scope of its ever expanding remit. The organisation seeks to be non-political however its ability to uphold this ideal may be limited not only their dependence on governments for funding but also their work in refugee determination with specific states. Despite these numerous challenges the UNHCR has proved a strong advocate of asylum seekers rights and although it has no formal means of enforcing its findings, its opinion is well respected and it would be very difficult to ignore. In the United Kingdom and South Africa although the UNHCR is prestigious and offers advice and guidance they have little direct involvement in the asylum process and have had limited impact on the government's attempts to deter applications.

[63] "Human Rights and Refugees" UNHCR, *Fact Sheet No. 20* (July 1993), last modified 21 June 2012, 1. http://www.unhcr.org/refworld/docid/4794773f0.html.

[64] Ibid

Human Rights Law

The right to seek asylum can be found in the Universal Declaration of Human Rights (Declaration), Article 14, which provides that: "Everyone has the right to seek and to enjoy in other countries asylum from persecution"[65].

Human rights legislation is important as it offers protection against persecution within each state. It is only when the state refuses or cannot offer this protection and the individual crosses an international border that refugee protection can be claimed. It may prove easier for an individual to claim non refoulement under Human rights legislation than it is to go through the lengthy process of crossing a border and gaining refugee status. For example the Human Rights Act 1998 in the UK gave asylum seekers who do not qualify for refugee status the right to claim leave to remain, if return to their country of origin would infringe their Human rights[66]. Although this did limit the British government's actions it did not lead to refugee status or any other durable status, the individual remained in a state of limbo unable to return home, but unable to build a new life due to the temporary nature of their position.

In the area of non-refoulement the International Covenant on Civil and Political Rights has been used successfully to limit control measures aiming to deter asylum applications. In the 1996 case Amuur versus France, the European Court of Human Rights ruled that airport transit zones must be treated as within state borders and therefore refugees should be given the same rights and liberties there as they would in the rest of the state's territory.

"Some people believe that the international 'law' of human rights is not really law at all but simply a set of noble aspirations describing an ideal world which has little relation to reality"[67]. While it is true to say the Declaration does not stop

[65] "Human Rights and Refugee Protection (RLD 5)" UNHCR, last modified October, 1995. http://protection.unsudanig.org/data/general/UNHCR-Human%20Rights%20and%20Refugee%20Protection%20(1995).pdf, 116.

[66] Gareth Mulvey, "When Policy Creates Politics: the Problematizing of Immigration and the Consequences for Refugee Integration in the UK." *Journal of Refugee Studies* 23, no. 4 (November 2010): 460.

[67] "Human Rights and Refugee Protection (RLD 5)" UNHCR Last modified October, 1995.

human rights abuses it does offer another form of protection against discrimination as well as persecution. Human rights legislation has been extended whereas 'refugee law has been curtailed[68]'. Governments have done their utmost to separate the issue of Human rights from refugee rights; making the distinction that not all abuse will be a symptom of persecution. The motivation for this distinction is to shift the burden of responsibility from the country of asylum to the country of origin in order to deter asylum applications, "this distinction has not served refugees well"[69].

The African Union Convention

The African Union Convention Governing the Specific Aspects of Refugee Problems in Africa, signed by South Africa in 1995 adds to the Conventions definition, those "who, owing to external aggression, occupation, foreign domination" are fleeing persecution[70]. This broader definition includes those fleeing generalized situations of violence for example that occurring in the Democratic Republic of Congo. In theory this definition is used throughout the 52 members of the African Union and its aim is to deal predictably with large scale displacements while maintaining state cooperation and security while addressing some of the specific factors which have impacted upon refugee flows within this region in the post-colonial period[71]. Unfortunately this broader definition which includes those fleeing "external aggression, occupation, foreign domination" is rarely adhered to in South Africa and therefore its impact has been limited[72].

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http://protection.unsudanig.org/data/general/UNHCR-Human%20Rights%20and%20Refugee%20Protection%20(1995).pdf, 120.

[68]Catherine Dauvergne, *Making People Illegal: What Globalization Means for Migration and Law* (Cambridge University Press, 2008), 60.

[69]Ibid,63.

[70] "Convention Governing the specific aspects of Refugee Problems in Africa," African Union, last modified September 10, 1969, www.africaunion.org/Official_documents/Treaties_%20Conventions_%20Protocols/Refugee_Convention.pdf.

[71] Jeff Crisp, "Forced Displacement in Africa: Dimension, difficulties and Policy Directions" *Refugee Survey Quarterly* 29, no. 3, (2010): 9.

[72] "Convention Governing the specific aspects of Refugee Problems in Africa," African Union, last modified September 10, 1969, www.africaunion.org/Official_documents/Treaties_%20Conventions_%20Protocols/Refugee_Convention.pdf.

Deterring Asylum Applications Challenges to the Convention

1 The Increased Use of Border Security

Border security is aimed at deterring all 'illegal immigrants' including asylum applicants. It has had a huge impact on the lives of those requiring 'hospitality' and refuge from persecution. To follow are some of the ways increased border security and international agreements have stopped asylum applicants ever reaching the borders or shores of the host country. The impact of such practices can been serious and can contribute to the creation of humanitarian disaster.

2 The Increase in Internally Displaced Persons (IDPs)

One major impact of border security has been the massive increase in the numbers of IDPs. This has dramatically increased over recent years and is now estimated at 25 million[73]. These people are not included in the Conventions definition as they have not crossed an international border. Deterrence measures aimed to stop all 'illegal' immigrants including those seeking asylum have heightened border security and control measures and have made crossing borders more difficult and expensive. Many IDP's unable to cross borders may be displaced because of political, ethnic or religious reasons or due to government use of intentional counter insurgency techniques to move groups in order to gain political advantage.

Due to border controls those most vulnerable and in need of 'hospitality' will not be able to make an asylum application. IDP's are unable to seek help from their own government for the reasons stated above and will not receive resources aimed at refugees. These people do however have similar and complex needs to refugees and are equally worthy of international assistance. For example in Uganda the IDP population has a HIV/AIDS infection rate six times higher than the general population[74]. The Convention does not recognise the difficulty in crossing international borders as controls have been increased. It may be that those who are able to flee group tyranny to a neighbouring territory are actually often not those most in need of international help and 'refuge'. Those without the

[73] "Human Rights and Refugees" UNHCR, *Fact Sheet No. 20* (July 1993), last modified 21 June 2012, 3. http://www.unhcr.org/refworld/docid/4794773f0.html

[74]Jeff Crisp, "Forced Displacement in Africa: Dimension, difficulties and Policy Directions" *Refugee Survey Quarterly* 29, no. 3, (2010): 21.

means to cross borders such as the elderly and children may be even more vulnerable to persecution. This is a particular issue if there is a generalised condition of insecurity and violence within a country, such as that in Democratic Republic of Congo. The only way of crossing an international border may be through perilous and illegal means such as smuggling or trafficking. The UNHCR have recognised these issues and have suggested that future humanitarian solutions become less exile oriented and more homelands oriented[75]. However without international cooperation the UNHCR have no power to make this happen. It is unlikely the Conventions definition will change to recognise IDPs, unless there is international pressure created by a huge humanitarian crisis that acts as another pivotal moment. More stringent border restrictions have vastly increased the number of IDPs which has become a global humanitarian issue.

3 Politicising refugees

The acceptance or not of 'mass influxes' of refugees has become politicised and this can best be illustrated with the example of the 1.7 million Kurdish refugees who tried to flee from Iraq across the border into neighbouring Turkey for three weeks in 1991[76]. Turkey did not offer the Kurds refugee protection and closed its borders. Those fleeing almost certain death in Iraq met the Conventions definition of a 'refugee' and yet were refused entry. "Many died caught in between Iraqi aggression and Turkish Intransigence"[77]. The reaction of Turkey, who signed the Convention in 1962, was determined by their fear of the sheer number of asylum seekers attempting to cross their borders. It was also a political decision; the Turkish government had long term fears about their own Kurdish separatist movement and feared a mass influx of Kurds could inflame their own volatile political situation[78].

For the first time in history the United Nations Security Council declared the sheer number of refugees and Turkey's refusal to offer protection a threat to international peace and security. Resolution 688 was drafted and implemented,

[75]Sarah Spencer, *The Politics of Migration, managing Opportunity, Conflict and Change* (Blackwell publishing, 2003), 77.

[76]Doris M. Meissner et al., *Migration Challenges in a New Era, A Report to the Trilateral Commission: 44*. (New York: Library of Congress, 1993), 76.

[77]Ibid,44.. New York: Library of Congress, 1993: 76.

[78] James Hathaway, *The Law of Refugee Status* (Toronto :Butterworths, 1991), 76.

although in this case the delay may well have cost lives. Safety zones were established near Iraqi borders and were used as a pragmatic crisis management solution to this humanitarian crisis. This began a new trend of 'in country' management of mass influxes of refugees created by conflict. If sufficient protection can be offered within the state (even if it is by humanitarian agencies) it is not necessary to grant refugee status[79]. It is unlikely any country would now allow a mass influx of asylum seekers across their border now an alternative means of crisis management has been established, 'safety zones' have been used in Bosnia, Iraq and Rwanda. This growing trend offers cheaper, weaker and more temporary 'in country' forms of protection, if the situation is labelled a humanitarian crisis the international community and aid agencies will have to take responsibility for the situation.

The situation in South Africa's neighbour Zimbabwe has created millions of refugees. The economic and social decline has however occurred over a number of years. This has not created a sudden influx of refugees but a steady large number of refugees over a period of time. It is unlikely 'safety zones' which are a short term crisis management solution could be used in this situation as its long term political problem. South Africa has neither the political will nor is logistical capability to close its borders to Zimbabwe.

Those fleeing the ex-Yugoslavian war clearly met the Conventions criteria for protection as they were victims of ethnic cleansing and were being persecuted on the basis of their religious/ national origin[80]. Many countries including the United Kingdom refused to allow asylum claims to be made and did not permit entry over their borders. Huge international pressure eventually influenced government actions and policies were changed to allow applications to be accepted. This demonstrates that the decision of whether to accept applications from mass influxes will ultimately be determined not only by moral reasons, but also by the political interests of the host country.

[79]James Hathaway, *The Law of Refugee Status* (Toronto :Butterworths, 1991), vii.

[80]Doris M. Meissner et al., *Migration Challenges in a New Era, A Report to the Trilateral Commission: 44* (New York: Library of Congress, 1993), 63.

The tightening of border restrictions and the unwillingness to accept mass influxes of asylum applications may have had another serious effect; mass expulsions have increasingly been used as a 'weapon of war.' Dispelling enemies is used as a tactic to ensure that the population are "co ethnics or political allies" this happened in Bosnia, Herzegovina and Rwanda[81]. The UNHCRs involvement changed from one of refugee protection to humanitarian action. The main priority was sustaining life; this was often in temporary 'safety zones' within the country of conflict. This causes two major difficulties; the first is that humanitarian agencies and the UNHCR are put in an almost impossible position, as they are duty bound to put the lives of civilians as their primary concern, yet by doing so they are being indirectly used to aid and abet ethnic cleansing. The second issue is that "relief agencies should not be requested to operate in a milieu of life threatening conditions"[82]. This politicisation of the role of aid agencies may see them working in extreme and dangerous situations. The situation in Sudan in 2009 demonstrated that the role of humanitarian organisations is becoming increasingly political. President Omal al-Bashir (the first sitting Head of State to be charged with genocide by the International Criminal Court) drew Non-Governmental Organisations (NGOs) into the political conflict. He expelled a number of them claiming they were not abiding by state regulations and laws and accused them of being 'tools of Western governments'[83].

International, Regional and Bilateral agreements that deter asylum applications

1 Bilateral Agreements

In theory the Convention provides clear guidelines for refugee protection. However, MacNamara states that "Non-compliance with international treaty obligations for refugees is becoming something of a global norm"[84]. Jack Straw the British Home Secretary said in 2001; "The Convention is no longer working as its framers intended. The environment in which it is applied today is one that

[81] Sarah Spencer, *The Politics of Migration, managing Opportunity, Conflict and Change* (Blackwell publishing, 2003), 77.

[82] James Hathaway, *The Law of Refugee Status* (Toronto :Butterworths, 1991), 82.

[83] "Khartoum expels foreign aid workers from eastern Sudan" *BBC*, last modified, June 1, 2012. http://www.bbc.co.uk/news/world-africa-18296430

[84] Zonke Majodina, The Challenge of Forced Migration in Southern Africa. (African Institute of South Africa, 2001), 57.

has changed almost out of all recognition from that of 1951. Numbers of asylum seekers have vastly increased[85]". As a result the British have led the way in actions to deter asylum applications. One such example was the 'vision paper' presented by the United Kingdom to the European Union in 2003; it suggested that all European Union claims be streamlined, by screening and processing all claims in Albania and Croatia. This would undermine an individual's right to seek asylum and replace it with a European Union quota system. If the British government had had its way the only refugees it would have accepted are those whose cases had already been determined as valid elsewhere in the European Union. The UNHCR did on this occasion prove successful in spearheading the campaign against the proposals which were eventually shelved[86]. This does however demonstrate just how far the British governments were prepared to go to deter and limit the number of asylum applications.

Individual states within the European Union have also implemented a number of initiatives and bilateral agreements to deter asylum applications. One of the most worrying was initiated by Italy in 2003. Libya was being financially compensated by Italy for past colonial war crimes and in return Libya committed to intercepting boat people trying to reach Italian shores to claim asylum. In 2003 Libya (which had not signed the Convention) was thought to have 20 secret detention camps. The UNHCR monitored the situation with local NGO's but the European Commission has been critical of the situation. This agreement is by no means an isolated incident; similar agreements have been made between "France, Spain, and Germany with Tunisia, Morocco, and Algeria"[87]. It seems as though were possible European Union members were willing to buy their way out of refugee protection.

[85] Jack Straw, Speech to IPPR, 6 February 2001 quoted in Gareth Mulvey, "When Policy Creates Politics: the Problematizing of Immigration and the Consequences for Refugee Integration in the UK." *Journal of Refugee Studies* 23, no. 4 (November 2010): 440.

[86] Levy, Carl, "Refugees, Europe, Camps/State of Exception: "Into the Zone", the European Union and Extraterritorial Processing of Migrant, Refugees, and Asylum-Seekers (Theories and Practice)" *Refugee Survey Quarterly* 29, no. 1 (2010):110. doi:10.1093/rsq/hdq013.

[87] Ibid, 113.

2 European Union Law

Britain joined what was then the European Economic Community in 1973 as a means to enjoy the economic benefits of the common market. With a generally Eurosceptic public the British government have been wary of any moves towards further social or political integration within the European Union. The Common Asylum and Refugee Policy were supported by Britain as its aims were compatible with theirs. The Common European Asylum System (CEAS) which was part of the 1992 Maastricht Treaty, on the other hand was not. To ensure the Maastricht treaty's difficult passage through parliament, Prime Minister John Major negotiated a number of 'opt outs' for Britain; the CEAS was one of them. The CEAS would have moved sovereignty on asylum to the European Union with the creation of a harmonised system, an undesirable outcome for the UK. While the British government have been sceptical about the CEAS there are particular directives which have been enthusiastically adopted and implemented. The 1990 Dublin Convention introduced 'the first safe country' principle. This states that an asylum seeker must place their claim in the first European Union country they arrive, being an island and not on the borders of the European Union this was an attractive proposition for the British government. The implementation of the Dublin Convention has been one of the most effective deterrents used by the British government as it stops applicants ever reaching British shores.

The 1992 'London Resolutions' were another European Union directive adopted enthusiastically by Britain. These resolutions, allowed for refoulement of asylum seekers if a "safe third country" could be found. Furthermore, asylum seekers could be deported without examining their claim if they come from what was classed as a "safe country of origin". This deterrent has been hugely successful in deterring applications from 'safe' countries such as Ghana and Pakistan, as it effectively rejected automatically all claims from that country. The major impact has been that all claims from 'safe' countries are rejected; even those who would meet the Convention definition of persecution. The impact is some in genuine need of 'hospitality' are prevented from claiming asylum in Britain.

This idea of first safe country principle although it has no basis in International law has been practiced by; all those in the European Union who signed the Dublin

Convention, Canada and Australia. It has gained customary law status in these countries, although many believe it seriously undermines the principles of the Convention. In South Africa Home Affairs have also publicly supporting the principle and are hoping in the future to implement instruments to incorporate this into South African asylum policy[88].

3 Southern African Development Community (SADC) and the African Union

SADC does not have a common asylum policy but does seek a regional approach to the treatment of refugees. A number of protocols on refugee protection have been agreed but unlike the European Union, these do not have any legal status and are often weak. Many of the agreements within SADC are informal and bilateral, dealing with issues such as repatriation, resettlement or extradition. The control SADC has over the South African government is moral rather than political, many countries in the region having played a significant and essential role in the countries struggle against apartheid.

The 2005 Protocol on the Facilitated Movement of Persons and the Memorandum of Movement was signed by South Africa but it now seems unlikely that it will be ratified[89]. It would allow freer movement between the nine signatory SADC states abolishing visitor's visas and would allow citizens temporary rights to work and reside. In a region of relatively poor neighbours and political instability it is likely South African's protectionism may make it unlikely they will ever ratify this treaty. If it were to be implemented it would be similar to the Schengen Agreement within the European Union, this abolished internal border controls and enabled citizens of 26 countries to movement freely without a passport across borders. The UK was the only member of the European Union not to sign up mainly due to issues of sovereignty and a wish to control its own borders. South Africa is one of the richest members of SADC, further co-operation economically and on border issues may not meet with protectionist aims for redevelopment. This has played a huge part in the failure to further evolve the community.

[88]Roni Amit, "The First Safe Country Principle in Law and Practice" *Migration Issue Brief 7*. African Centre for Migration and Society (June 2011): 6.

[89]Jonathan Crush and Vincent William, " Labour Migration Trends and Policies in Southern Africa" *South Africa Migration Project*, policy briefing no. 23 (March 2010): 62.

Interdiction Programmes

Interdiction programmes intercept potential asylum seekers (particularly at sea), before they get the chance to cross an international border. A strong case can be made that such programmes undermine the Conventions key principle of non-refoulement. This is not just occurring within the European Union the United States has been a strong supporter of interception at sea turning potential asylum seekers back before they enter the state territory[90].

One of the worst examples happened in Australia in 2001. The MV Tampa was a Norwegian fishing vessel that had rescued 439, mainly Afghan refugees and was refused permission to dock in Australia. The refugees included in their number, two pregnant women and several others suffering from diseases including scabies and dysentery[91]. Due to public pressure the ship was eventually allowed to dock in Nauru an island in the Pacific Ocean and the 'Pacific solution' was created whereby applications were considered on the island instead of in Australia. This 'solution' was to be the inspiration for later extraterritorial solutions within the European Union. This example is important as it signifies a turning point in the undermining of refugee protection and the spirit of the Convention.[92] Prime Minister Howard's hard line response was based on his right to defend Australia's sovereignty "to decide who comes here and the circumstances in which they come"[93]. He won an increased majority in the 2001 general election and many admirers across the world, having the overall impact of 'reducing asylum flows to a mere trickle'[94].

The success of interdiction programmes is related to the scope and strength of a countries navy capacity. As an island and with a greater military capacity and budget it is likely these programmes are of more importance to the United Kingdom. However these programmes rarely receive publicity unless it is a high

[90]David Weissbrodt, *The human Rights of non-citizen* (Oxford University Press, 2008), 114.

[91] Ibid, 113.

[92] Catherine Dauvergne, *Making People Illegal: What Globalization Means for Migration and Law* (Cambridge University Press, 2008), 50.

[93] "Asylum Debate" BBC, Nick Bryant, http://www.bbc.co.uk/blogs/thereporters/nickbryant/2008/07/.

[94] Catherine Dauvergne, *Making People Illegal: What Globalization Means for Migration and Law* (Cambridge University Press, 2008), 55.

profile case or there are casualties and it is difficult to assess how extensively they are used and just how many asylum applicants have been deterred in this way.

Conclusion; The manipulation of International law to deterring asylum seekers

The Convention does indeed have many flaws including definitions which were written over 60 years ago, the key to its survival has been the changing and evolving interpretation of its content. Although governments have stretched and adapted the Conventions definitions in new and inventive ways in order to deter asylum applications, it is clear that without the Convention there would be little to limit the actions of governments and 'hospitality' would be severely threatened. The Convention has been abused and its principles undermined, as some of the examples above illustrate. It may well have been criticised extensively, especially by the British government over the last 20 years, but is unlikely that any government would withdraw from the Convention. Removing themselves from their humanitarian responsibilities would be not only morally reprehensible would also lead to a loss of international support.

The key challenges to the Convention that have successfully deterred asylum applicants have been those that have stopped asylum seekers reaching the borders of host countries. Britain has by far been more successful in achieving this aim than South Africa. Most of the deterrence measures outlined in this chapter have been used successfully by Britain but very few have been implemented by South Africa. This is in part due to its geographical location and the difficulty it has protecting its land borders. This however is not the only reason for Britain's success; membership of European Union has enabled Britain to make changes that have limited access to its borders. The social and political co-operation within the European Union which has been so feared by the British has actually been an important factor in protecting its borders. The Dublin Convention has stopped asylum 'shopping' or 'choosing' a destination, asylum must be claimed in the first country in which the asylum seeker lands. The safe country principles implemented as part of the London Resolutions have also enabled Britain to automatically reject huge numbers of asylum applicants or has deterred those from these countries on 'safe' lists from ever 'choosing' Britain in the first place.

The European Union has indeed enabled its members to work together to create a 'fortress' around Europe, Britain has successfully been able to 'cherry pick' those elements of European initiatives that control its borders in order to deter asylum claims. SADC has currently neither the economic power nor the political will to implement such policies to co-operatively deter applicants. In fact several members of SADC have in the past been asylum creating countries.

The impact upon those with genuine asylum claims is the major impact of these changes. The politicisation of the mass influxes of refugees is a worrying trend. It is likely that the humanitarian response to mass influxes will continue to grow and become the most favoured solution. 'In country' camps will continue to be used and poorer nations and NGO's may be forced to shoulder a greater burden in the future. These camps have their own difficulties, with funding being limited and security remaining a constant issue. Other worrying trends include the use of exterritorial agreements which bypass a state's responsibilities for refugee protection, creating a situation whereby the poorest nations are 'paid' to shoulder the burden of refugee protection. Majodina went so far as stating these new arrangements were "condoning global apartheid"[95].

It is not purely the Convention that guarantees the rights of refugees, protection to mass influxes of refugees has been offered even in countries that not signed the Convention. Informal regulatory schemes, refugee protection arrangements and bilateral agreements have ensured refugees have been offered asylum. These cases, although rare, offer some hope that states will continue to feel a moral obligation to protect asylum seekers. The West and the UK on rare occasions decide to accept refugees for moral reasons, such as the belated acceptance of Bosnian asylum seekers. It is more likely that international affairs will remain a struggle for power amongst self-interested states, this is the opinion of Walt from a realist perspective; protection will be offered as long as the domestic situation allows it[96]. If this is in fact the case, the Conventions survival may depend on

[95] Zonke Majodina, *The Challenge of Forced Migration in Southern Africa*. (African Institute of South Africa, 2001), 32.

[96] Gareth Mulvey, "When Policy Creates Politics: the Problematizing of Immigration and the Consequences for Refugee Integration in the UK." Journal of Refugee Studies 23, no. 4 (November 2010): 1263.

whether the mutual co-operation it offers continues to be seen as beneficial to its signatories. “It may ultimately prove impossible to define access to asylum more generously than as we know it today.”[97] Despite some evidence of continuing moral obligations it is doubtful that ethical and moral benefits alone will be enough to ensure the Conventions enduring power of survival, but the wish for economic co-operation and free trade may well do so.

While Straw amongst others may have called for a redraft of the Convention it is unlikely that any state would make the huge symbolic move of actually withdrawing from the Convention. Its existence remains safe for the time being but ‘Fortress Europe’ has led the way in new and inventive ways to deter asylum seekers and avoid refugee protection. For those asylum seekers that manage to gain access across international borders the Convention supported by the UNHCR, still ensures that their case will be heard, although the quality of these decisions is beyond its scope.

[97] James Hathaway, *The Law of Refugee Status* (Toronto :Butterworths, 1991), 233.

Chapter 2 How Domestic Legislation has been used to deter asylum applications

Introduction

The Convention's liberal principles of refugee protection were brought into domestic legislation in the UK in the 1993 Asylum and Immigration Appeals Act and in South Africa in the 1998 Refugees Act. Since 1993 domestic legislation has played a significant role within the UK asylum system, as numerous new acts and amendments have been implemented. In South Africa the government have made changes to the asylum system but have done so predominately within the existing legislative framework, although many of the same control measures have been implemented, they are not enshrined in law. In South Africa it is often bureaucratic practices, inefficiencies and police tactics that have proved more important than domestic legislation in impacting on asylum seekers lives.

Any immigration, terrorism and asylum legislation with the aim of improving border security, can have a huge impact on asylum seekers. The vast majority of legislation throughout this period "is geared towards prevention of abuse of the system, discouragement for potential asylum seekers, rather than providing protection for those seeking asylum"[98]. Border security is important to all governments. While hospitality may be given, it is unlikely any government would ever say; we welcome asylum seekers and we would be happy to accommodate more. A much more common sentiment is one expressed by Jack Straw in 2001 "there is a limit on the number of applicants, however genuine; that you can take" [99].

The UK has led the way in legislation to deter asylum seekers "Industrialised states, rather than those in Africa, have taken the lead in eroding the right to asylum and undermining the principles in refugee protection"[100]. Crisp believes the West is influencing African asylum policies, and this has led to Africa's declining 'support and solidarity' for asylum seekers and a retreat from their

[98]Parekh 2000:213 quoted in Sarah Gibson, "Accommodating strangers: British Hospitality and asylum hotel debate" *Journal for Cultural Research* 7, no. 4 (2003): 371.

[99] Louise Pirouet, *Whatever Happened to Asylum in Britain; a Tale of Two Walls* (Berghau Books, 2001), 130.

[100] Jeff Crisp, "Forced Displacement in Africa: Dimension, difficulties and Policy Directions" *Refugee Survey Quarterly* 29, no. 3, (2010): 5.

traditional hospitality[101]. This may be especially true of South Africa's attitude towards neighbouring Southern Africa Development Community (SADC) members.

In this chapter I will outline a brief history of immigration legislation in South Africa and UK, as a means to understand some of the key influences on present day policy making. I will then examine how the UK and South Africa have used the three broad categories to control the number of asylum applicants; first the implementation of border controls and entry restrictions, second the reduction of procedural protection and finally by making life more difficult for asylum seekers once they are 'in country'. I will then evaluate the impact they have had on asylum seekers.

South African legislation; a brief history

South African has a history of segregation, apartheid and ethnic nationalism. Immigration legislation before 1994 reflects this and was generally created with the purpose of exclusion rather than inclusion. 'Non desirable' groups such as Indians, Jews, certain Europeans and Black Africans were prohibited entry into South Africa. Legislation was politically motivated and had to be compatible with British law until 1961. Immigrants had to assimilate to 'European' culture; this measure was to limit black immigration which it was feared would encroach on the domain of white South Africans. The word 'European' was only eventually removed from legislation in 1986 this was not however to create more equality, the purpose was to benefit from the 'brain drain' experienced by neighbouring (newly independent) African states[102]. In 1991 as the Apartheid system was dismantled and the UNHCR were allowed to establish their first office in South Africa. Its purpose at this time was predominately to oversee and monitor the return of South African political refugees.

Prior to the implementation of specialist legislation it was the Aliens Control Act 1991 "a draconian apartheid throwback" that was used for migration and asylum

[101] Jeff Crisp, "Forced Displacement in Africa: Dimension, difficulties and Policy Directions" *Refugee Survey Quarterly* 29, no. 3, (2010): 5.

[102] Jonathan Crush, ed. *Beyond Control: Immigration and Human Rights in a Democratic South Africa* (South African Migration Project, 1998), 33.

alike[103]. It did not distinguish between the two and its application was haphazard and discriminatory[104]. Random arrests were often used to seek out 'irregular migrants', these were based on skin colour, vaccination markings or accent[105]. Its application was far from transparent and the Minister for Home Affairs was given huge discretionary powers. The aim of the Aliens Control Amendment Act (1995) was 'to provide for the control of the admission of persons to, their residence in, and their departure from, the Republic'. The Act implemented restrictions on those that contravened it, such as section 22 which removed the right to reside, work and undertake training. Section 32 which made it much more difficult to employ foreign labour, as employers was required to provide Home Affairs with lists of such workers.

The 1996 Constitution and the Bill of Rights included a comprehensive set of rights for all those who resided in South Africa. It highlighted clauses within the Aliens Control Act that were unconstitutional as they discriminated on the basis of disability and gender. 'New' South Africa signed the Convention and Protocol in 1996 and pressure for specialist legislation increased. The result was the Refugee Act 1998 was produced in consultation with Civil Society Organisations (CSOs) and promoted values of equality. South Africa wished to put its discriminatory past behind it and compete with the rest of the world on human rights[106]. "Persons applying for refugee status were issued an asylum seeker permit under section 22 of the 1998 Refugee Act, which gives them full freedom of movement within the country and a panoply of other rights"[107]. This is one of the most liberal pieces of refugee legislation in the world. The difficulties encountered in South Africa have not been due to the lack of adequate legislation but the difficulties in implementing it.

[103]Ibid, 2.

[104]Louise Pirouet, Whatever Happened to Asylum in Britain; a Tale of Two Walls (Berghau Books, 2001), 149.

[105] David Everatt, ed, "Xenophobia, Civil Society and South Africa." *Politikon* 38, no. 1 (2011): 13.

[106]Sally Peberdy, *Selecting Immigrants; National Identity and South Africa's Immigration Policies 1910-2008* (Johannesburg:WITS University Press, 2009), 154.

[107] UNHCR Statistical Yearbook "Trends in Displacement, Protection and Solutions" 2009. http://www.unhcr.org/pages/4a02afce6.html

Immigration legislation was slower to change, after eight years of negotiations the Immigration Act 2002 finally replaced the Aliens Control Act. One reason for this delay was the appointment of Dr Buthelezi as the Minister for Home Affairs. This crucial government job was given to the leader of the Inkatha Freedom Party to demonstrate the inclusive nature of the new South Africa. Dr Buthelezi perceived immigration as a threat to the implementation of the reconstruction and development programme[108]. Often he linked immigration to rising levels of crime and unemployment; he proposed tough new immigration laws to tackle the 'problem'[109]. His relationship was so acrimonious with President Mbeki that Buthelezi took Mbeki to court for refusing to sign his new immigration legislation. After its difficult passage, the 2002 Immigration Act along with the 1998 Refugee Act now in theory governs the treatment of asylum seekers in South Africa.

British legislation; a brief history

The British attitude towards asylum seekers seems to be a little mixed "a strong liberal tradition masking a private panic"[110]. Fears about immigration in the UK have historically been closely related to race; "asylum has become a language for airing grievances against British minorities"[111]. A brief history of British immigration may explain why.

The British Nationality Act 1948 entitled Commonwealth citizens to work and live in the UK. The first major waves of non-white immigrants were invited to Britain to assist with post war reconstruction work. In 1948 the first ships containing Caribbean immigrants arrived on British shores to a reception of flag waving and celebrations. The jubilation was not however to last, as unemployment rose, recession hit and racial tension started to mount. The far right may have provided the spark that ignited civil unrest on the streets of Britain but

[108]Jonathan Crush, ed. *Beyond Control: Immigration and Human Rights in a Democratic South Africa* (South Africa Migration Project, 1998), 37.

[109]Anthony Minaar and Mike Hough. *Who goes there? Perspectives on clandestine migration and illegal aliens in southern Africa* (Human Sciences Research Council Publications, 1996), 127.

[110]Vicki Squire, Zig Layton-Henry, gen ed. and Daniele Joly, gen ed. *The Exclusionary Politics of Asylum; Migration Minorities and Citizenship* (Palgrave Macmillan, 2009), 48.

[111]Sarah Spencer, *The Politics of Migration, managing Opportunity, Conflict and Change* (Blackwell publishing, 2003), 173.

they gained little widespread political support. Immigration was however to move up the political agenda and support for tighter immigration controls increased. The Government responded with the Commonwealth Immigration Act 1962 which withdrew Commonwealth citizen's right to live and work in the UK and restricted entry to those with work permits which were only given to skilled workers.

In 1968 Enoch Powell made his infamous 'rivers of blood speech' foreboding that mass migration would lead to division and violence on the streets of Britain. He may have been sacked from the Conservative shadow cabinet but he did spark a fierce debate about immigration in the UK. The liberal establishment may have labelled him a 'racist' 'scaremonger' but there was much popular support for this sentiment.[112] Powell's political career was however over having broken the political elite's unwritten rule that immigration discussions should remain within a 'closed arena.'[113] The increasing public concern about immigration played a part in the government's decision in 1971 to further restrict Commonwealth citizen's right to live and work in the UK.

The legislation that perhaps had the biggest impact on immigration in British history was the 1986 Single European Act. Prime Minister Thatcher signed the Act to improve trade by removing economic barriers within the European Union. It did however opened up migration routes as free trade required free movement for workers within the European Union. The implications on further European integration and immigration were to be far reaching in the decades to follow.

The New Labour government elected in 1997 embarked upon a period of 'legislative activism'[114] on immigration and produced a plethora of legislation, six acts in 13 years, plus a raft of secondary legislation. The aim of which was to implement new control measures deter asylum seekers and make their lives more

[112] "Rivers of Blood; The White Season" BBC, March 2008. http://www.youtube.com/watch?v=vFo1xOSlGgg.

[113] Sarah Spencer, *The Politics of Migration, managing Opportunity, Conflict and Change (*Blackwell publishing, 2003),168.

[114] Gareth Mulvey, "When Policy Creates Politics: the Problematizing of Immigration and the Consequences for Refugee Integration in the UK." *Journal of Refugee Studies* 23, no. 4 (November 2010): 439.

difficult, for example; "The overall result of 1999 Act is that anyone seeking asylum in the UK is going to have a much tougher time."[115]

Control Measures

With immigration firmly on the political agenda in the UK and South Africa and with initial refugee legislation offering strong protection, South Africa and the UK has both sought to control their borders and deter asylum seekers. The following measures have been implemented;

(i) Border control and Entry Restrictions

The UK has worked hard to tighten border security. The aim of control measures has been to deter asylum seekers by creating a 'Fortress' around Western Europe. This has created an inequitable application of the so called 'international' Convention, as some countries have not been able to afford such measures. For South Africa border security is still a major problem, it may well have improved but it still has 7000km of porous borders. Rather than adding legislation South Africa has used alternative security measures to control its borders, these have included army patrols and the use of a lethal electric fence which was nicknamed 'the snake' which was eventually switched from a lethal voltage in 1992.

(ii) Visas and Entry Restrictions

In 2004 David Blunkett the British Home Secretary stated honestly that the reason for extending the number of countries requiring visas was to 'screen people before they reach British soil'[116]. In both South Africa and the UK the number of countries requiring visas has dramatically increased, the fact that citizens of most asylum creating countries now require visas is no coincidence. According to the Home Office website there are currently 121 countries that do require visas to come to the UK[117] and 47 (plus a special arrangement for the 54 members of the African Union) countries that do not need visas for South African entry[118].

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[115]Louise Pirouet, *Whatever Happened to Asylum in Britain; a Tale of Two Walls.*(Berghau Books, 2001), 87.

[116]David Blunkett quoted in, Gareth Mulvey, "When Policy Creates Politics: the Problematizing of Immigration and the Consequences for Refugee Integration in the UK." Journal of Refugee Studies 23, no. 4 (November 2010): 441

[117] UK Border Agency. http://www.ukba.homeoffice.gov.uk/visas-immigration/do-you-need-a-visa/.

[118] Home Affairs. http://www.home-affairs.gov.za/Counties%20Exempy%20from%20SA%20Visaa.html

Visas are one method of pre-entry control that heavily impact upon asylum seekers, they invariably cost money and the process of gaining one to enter the UK and South Africa is complex and difficult. Documentation required includes; police and medical reports, financial information and employment references. Those fleeing persecution may not have the time, money or the means to gain the necessary documentation for visas; they may also be fleeing the very authorities that are issue them. This restriction may well push genuine asylum seekers into illegal means of entry. Those unable to afford the large amounts of money required by forgers and traffickers will be prevented from seeking asylum which amounts to "constructive refoulement"[119].

The countries whose citizens require visas have been constantly updated and increased to include those that have recently become asylum creating countries[120]. Examining the UNHCR statistics of the top five asylum creating countries 2001-2011, there are only two on the list that would not have required visas to come to the UK or South Africa, Romania who appeared on the list in 2002 and Myanmar (formally Burma) who appeared on the list in 2005 and 2009[121]. The reason Myanmar has not been added to the list is its geographical location. The number of asylum seekers who are likely to make it as far as the UK or SA is negligible, due to the cost and distance involved. Neighbouring Thailand accommodated a massive 47,300 refugees from Myanmar (mainly within camps) in 2005, only 225 claimants made it to the UK[122]. Romanians also did not have to gain visas; the UK received 7,785 Romanian asylum seekers between 1998- 2002[123]. Unsurprisingly Romanians now need visas to travel to the UK. The UK Government went one step further in the 2004 Asylum and Immigration Act tightening regulations which made it a criminal offence to enter the UK without valid visas and other travel documents without a 'reasonable excuse'.

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[119]Louise Pirouet, *Whatever Happened to Asylum in Britain; a Tale of Two Walls* (Berghau Books, 2001), 143.

[120]Alice Bloch, "A New Era or More of the Same? Asylum Policy in the UK" *Journal of Refugee Studies* 13, no. 1, (2000): 39.

[121]See fig.1

[122] UNHCR Statistical Yearbook 2005 "Trends in Displacement, Protection and Solutions" 2005. http://www.unhcr.org/pages/4a02afce6.html.

[123]UNHCR Statistical Yearbooks 2001-2011 "Trends in Displacement, Protection and Solutions" 2009. http://www.unhcr.org/pages/4a02afce6.html.

Additional personnel have also been employed to try to stop those without valid documentation entering South Africa or the UK. In the UK immigration personnel were employed as 'airline liaison officers' their job is to ensure travellers have the correct documentation, the numbers of these officers continues to increase. Immigration officers were also given additional powers including the power of arrest. The UK Borders agency (UKBA) also employs a network of "Immigration Liaison Managers who were stationed overseas in a number of locations that have been identified as major sources or transit points for inadequately documented passengers arriving in the UK." The map provided on the UKBA website contains information of at least 50 international destinations that are covered[124]. In South Africa there is no equivalent to the UKBA but they do have Airline Liaison Officers who according to the Home Affairs website prevented 118 illegal immigrants entering South Africa. The UKBA have been more successful than the South African authorities in deterring those without official documentation as they have more personnel and resources at their disposal. Those without documentation are more likely to be caught in the UK than in South Africa.

(iii) Courier and Employer Fines

Courier fines were introduced in the UK 1987 Immigration Carriers Liability Act and in South Africa's 1995 Alien Amendment Act, these fines penalised airlines and other companies that allowed passengers to travel without documents, or with fraudulent documents. By imposing fines government ensured that passenger documentation was checked prior to boarding. Private companies therefore aided in the prevention of undocumented asylum seekers entering state territory. It could again be argued this is "constructive refoulement"[125]. The UK and were further extended these fines in the 1999 Immigration Act in which courier liability was also extended to include train and truck travel and the size of the fines imposed were also increased considerably.

[124]UKBA International Group "International Liason and Intelligence Directorate "Risk and Liason Overseas Network" (November 2009) http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/transportindustry/rlon_network_map.pdf

[125]Louise Pirouet, *Whatever Happened to Asylum in Britain; a Tale of Two Walls* (Berghau Books, 2001), 143.

Fines have also been imposed on employers who knowingly employ someone without or with false documentation. The Asylum and Immigration Act 1996 in the UK made this a criminal offence. The Aliens Control Act in South Africa also imposed penalties for those that employed irregular migrants. Although the impact of legislation in South Africa is limited, from the 69,009 visits made to employers in 1996 only 23 were charged and sentenced for employing irregular migrants[126]. These numbers show that the legislation was not fulfilling its purpose or that detection processes were severely lacking. Although legislation is similar in both countries the UK seems to have a far greater capacity to enforce legislation.

(iv) Databases

The South African Movement Control system has grown since it was introduced in 1994. This database aims to share information about those entering South Africa, to aid with the policing of borders. The original office for co-ordination was opened in Pretoria but subsequent offices were opened in Maputo and Harare reflecting South Africa's main border concerns. The system was further extended in 2004 to include all major international ports of entry and land borders. The final extension happened in 2010 to deal with those that entered for the South Africa Football World Cup.

The European Union introduced the EURODAC data base in 2001, as a means to implement the Dublin Convention. It holds biometric data including fingerprints. Information is held about asylum seekers, criminals, terrorists and illegal immigrants alike[127]. The aim has been to increase the sharing of information on security, crime and asylum to increase cross border cooperation. No similar initiative is yet to be established in the African Union the biggest reason is one of cost.

[126] Lyndith Waller, "Irregular Migration to South Africa During the First 10 years of Democracy." Migration Policy Brief Number 19, *Southern African Migration Project* (2006):9.

[127] Gareth Mulvey, "When Policy Creates Politics: the Problematizing of Immigration and the Consequences for Refugee Integration in the UK." *Journal of Refugee Studies* 23, no. 4 (November 2010): 440-441.

The impact of such databases has been more effective in the UK mainly due to their extensive use and comprehensive nature EURODAC which has enabled the UK to share and gain information from other European Union countries. The UK is an island which also aids the monitoring and control of its borders. While the South African database will help monitor those crossing legal borders and has some information shared information with other SADC members it is unlikely to have any impact on the large number of irregular migrants who may eventually claim asylum having crossed into South Africa illegally at places other than official border crossings.

2 Reducing Procedural Protection

The second set of control measures implemented throughout this period led to fewer legal and political rights for asylum seekers.

(i) Lodging Asylum Claims

In South Africa the 2002 Immigration Act led to the opening of five centres at which asylum could be claimed, there are now seven centres. In 2011 the regulations were changed so that asylum must be claimed within five days of arrival instead of the 14 days it had previously been. The impact has been it has made life very difficult for new arrivals as often queues at these centres are were very long and can dangerous[128].

In the UK the 2002 Nationality, Immigration and Asylum Act introduced the infamous section 55, which removed any form of financial support from those who did not file their asylum claim, "as soon as reasonably practicable". This meant that anyone who did not claim asylum at the point of entry had to provide a sound and 'valid' reason why not[129]. In both countries time limits have punished those who are unaware of the time regulations imposed by governments and implemented in the asylum system.

[128] Alexander Prezanti, "Xenophobia Institutionalised" *Mail and Guardian*, Nov 7, 2008. http://www.mg.co.za/article/2008-11-07-xenophobia-institutionalised/.

[129] Clements L.M. "Asylum in Crisis, An assessment of UK Asylum law and policy since 2002: Fear of Terrorism or Economic Efficiency*?" Web Journal of Current Legal Issues*. http://webjcli.ncl.ac.uk/2007/issue3/clements3.html.

(ii) Fast track applications

In the UK the 1996 Asylum and Immigration Act introduced 'safe country' lists, the so called 'white' list. The Home Office treated asylum claims from these countries as having no substance and almost 100% were rejected. New Labour promised to abolish 'safe' lists once they came to power. The system may have been 'abolished' publically but in reality applications from specific countries were still being fast tracked and rejected and only limited access to the right to appeal was offered. Safe lists were officially reintroduced in the 2002 Nationality and Asylum Act, the only difference was the European Union now produced the list. 'Safe country' lists are now commonly used throughout the world, including extensive use in South Africa. The impact has been that those from 'safe' countries have been automatically rejected; this is problematic for two reasons the first is that lists may not be accurate and up to date; ensuring adequate information this has proved difficult to achieve as the situation within a country can change rapidly. The second is that if such lists are used to make decisions about individual asylum claims this uses general observations and judgements about a whole country which might not be accurate for all regions this undermines the individual's right to have their asylum claim assessed.

The 2002 Nationality and Asylum Act in the UK also created a new category of those whose claims were 'clearly unfounded' these claims were also fast tracked. Those rejected under these terms were offered help through the UK governments Voluntary Assisted Programme, which offered financial help and incentives to assistance those willing to return to their country of origin. This effectively paid people to return home, this policy is unlikely at the current time to be implemented in South Africa due to the cost implications.

(iii)The Right to Appeal

In the UK the right to appeal against decisions in the UK has been attacked by numerous pieces of legislation the 1988 Immigration Act restricted appeals and the 1993 Asylum and Immigration Appeals Act set strict time limits on when appeals must be made. Appeals were further limited in 2002 and again in the 2004 Asylum and Immigration Act and finally in the 2006 Immigration, Asylum and Nationality Act which again limited the right to appeal against all Home Office

decisions. For those whose claims are fast tracked and rejected they were forced to appeal within as little as two days, it is difficult to see how an effective appeal could be mounted within this time frame. The major impact here has been that because asylum seekers do not hold the same legal rights as British citizens their rights to appeal have created an inferior and less rigorous legal process for asylum seekers.

The right to appeal in South Africa is not limited by legislation but more practical constraints. The lack of information about appeals procedures, lack of representation and most importantly the lack of financial means to gain representation, severely restricts the right to appeal in South Africa. There are a number of NGOs who work with asylum seekers on appeals but their scope is limited. Legislation does not restrict appeals but practical considerations are even more prohibitive.

3 Making Life Difficult for Asylum Seekers in Country

The last sets of control measures were implemented as a means to deter fraudulent asylum claims.

(i) Dual Citizenship

In the UK here has been an attempt to create an intermediary form of citizenship for asylum seekers withholding rights until claims are determined. For example the 2002 Nationality, Immigration and Asylum Act removed the automatic right to work, a major change in UK legislation. This economic right was to have a huge impact on asylum seekers and their ability to be self- sufficient. Citizenship was no longer a right but something to be earned; the UK territorial vision was upheld with 'new' policies on citizenship, this included an English proficiency and citizenship test. The Borders, Citizenship and Immigration Act 2009 went further and intruded a 'Probationary Citizenship' stage before full citizenship could be gained. Committing a crime or taking part in certain types of demonstrations could prevent citizenship being granted. Asylum seekers had their basic freedoms of expression and association limited. In both the UK and South

Africa full residency (not citizenship) can only be applied for after five years of continuous residency[130].

In South Africa asylum seekers are issued with a section 22 permit which allows them to stay and work legally in South Africa. These permits are valid for one to three months and must be continually renewed until the claim is determined. In reality many employers do not understand the system and are unsure about asylum seekers rights or are simply unwilling to give 'foreigners' work.

Sally Peberdy states that the South African Constitution does not any longer use ethnicity to determine South African identity but has replaced this with citizenship. This is the new dividing factor, indicating 'belonging'. The Bill of Rights does on several occasions guarantee the rights of citizens, as asylum seekers are not citizens this does not apply to them. Peberdy goes so far as to say that "national identity based on citizenship appears to feed, not challenge, xenophobic tendencies.[131]

(ii) Temporary rather than permanent protection

Another trend has been and unwillingness by the British government to grant full refugee status to asylum seekers, even if their claim is upheld. The UK government is increasingly using forms of intermediary citizenship that only offer temporary leave to remain. Numbers granted 'leave to remain' are in recent years have been consistently higher than those granted refugee status[132]. The impact has been that refugees with temporary status have fewer rights and less ability to integrate as full members of their host communities. The 2005 Controlling Our Borders went further and changed the provision of all protection in the UK from permanent to temporary The conditions in the claimant's country were to be regularly reviewed for five years to monitor if the situation had improved, should this be the case the asylum seeker should return home. This created a new uncertainty for those now living in a five year limbo. This 'cessation clause'

[130] Jeff Handmaker, "Who determines policy? The Right of asylum in South Africa." *International Journal of Refugee Law* 11, no.2 (1999): 97.

[131] Sally Peberdy, "Imagining Immigration: Inclusive Identities and Exclusive Policies in Post 1994 South Africa" *Africa Today* (?)28.

[132] See fig. 5

further hindering already traumatised members of society from being able to integrate and get on with their lives[133].

Prior to 1994 temporary protection was the norm in South Africa and was always easier to justify to the public; repatriation was always the preferable option. 'Leave to remain' is currently not used within South Africa since the 1998 Refugee Act. However this uncertainty is still present in the system as it is often the case that the huge backlog of claims means that asylum seekers may wait for years in uncertainty before their claims are determined.

(iii) Monitoring

In South Africa the 2002 Immigration Act introduced new strict procedures for monitoring asylum seekers which included the taking of finger prints. Section 22 permits were to be renewed every few months; if these regulations were not followed the asylum seeker could be detained.

In the same year in the UK the 2002 Nationality and Asylum Act, raised the bar on monitoring control measures. Compulsory reporting and the carrying of biometric registration cards were introduced for asylum seekers. These were the first, and to date the only identification cards used in the UK. Monitoring increased for new asylum seekers and included a compulsory induction programme and accommodation. The aim of which was to process claims in six months and throughout this time claimants were to be monitored and ideally detained. The 2007 UK Borders Act introduced further monitoring restrictions on those granted leave to remain and a failure to register on the requested date could lead to automatic detention.

The impact of these monitoring measures in both the UK and South Africa has been the criminalisation of asylum seekers. Until claims are decided they are registered, monitored, fingerprinted and must abide by additional rules that do not

[133] Gareth Mulvey, "When Policy Creates Politics: the Problematizing of Immigration and the Consequences for Refugee Integration in the UK." *Journal of Refugee Studies* 23, no. 4 (November 2010): 454.

apply to citizens. If they do not abide by these regulations they are now likely to be detained.

Conclusions; The impact of domestic legislation

The UK has with its plethora of legislation and amendments has led the way in 'closing its borders' to asylum seekers. The 2002 Nationality, Immigration and Asylum Act in the UK was a tough piece of legislation which made it much more difficult for asylum seekers to enter the UK and life much more difficult once their claim was made. In fact this legislations greatest impact has been stopping asylum seekers ever reaching British shores in the first place. This legislation was in part a reaction to the terrorist attacks in New York on 9/11, and therefore security was an important influence on why it was implemented[134]. This legislation did have a huge impact on the number of asylum applications which decreased by 67%, 2001- 2004[135]. There was a worldwide drop in applications in 2003 of 15% but this is not sufficient to explain this huge drop in the number of applications in the UK[136].

In South Africa domestic legislation offers strong refugee protection but often fails to deliver due to practical constraints and inefficiencies. Control measures have also had a very limited impact due to the sheer volume of applications. In 2006, 2008 and 2009 South Africa received the most asylum claims in the world[137]. In these years the number of applications grew because the top four asylum creating countries in the world were in Africa.[138] Although many of the control measures used in the UK have been tried in South Africa, they have not been as extensive in scope and have made little impact on the huge number of Zimbabwean asylum seekers in the South African system. In South Africa's case control measures may well introduce more barriers for asylum seekers but they have not stopped them finding other means to cross the border to claim asylum.

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[134] Clements L.M. "Asylum in Crisis, An assessment of UK Asylum law and policy since 2002: Fear of Terrorism or Economic Efficiency*?" Web Journal of Current Legal Issues*. http://webjcli.ncl.ac.uk/2007/issue3/clements3.html.

[135] See fig. 7.

[136] UNHCR Statistical Yearbook "Trends in Displacement, Protection and Solutions" 2003 http://www.unhcr.org/pages/4a02afce6.html.

[137] See fig. 6.

[138]See fig. 8.

The main reasons difficulties that have impeded the implementing of control measures have been; the policing of land borders, lack of funding and finally the lack of political and financial cooperation with neighbouring SADC countries.

Within both countries there have been a number of serious consequences created by the deterrence measures introduced. The first has been the extension of crimes committed to evade border controls; these include the forgery and theft of passports, fake visas, bribery, corruption and human trafficking[139]. Government actions have actually created more crime and forced many asylum seekers to cross borders illegally. Another consequence has been the deteriorating treatment of all asylum seekers who no longer enjoy the same rights and access to services as other citizens within South Africa or the UK. Control measures aimed at targeting resources at the 'deserving' do not just affect those who abuse the asylum system but equally those who have suffered persecution and are in need of hospitality. Decreasing procedural protection and deprivation of services will make life increasingly difficult for all, until claims are determined, which for some has taken years.

The increased use of temporary protection in the UK and the length of time taken to determine claims in South Africa have had a damaging psychological effect on many asylum seekers who are forced to live in 'limbo'. Until their claims are determined they are forced to live in uncertainty unable to rebuild their lives within their host country. The final consequence has been the criminalisation of asylum seekers, they are registered, fingerprinted and monitored this has not only had an impact on their day to day lives but has also had a detrimental effect upon public opinion, creating the view that asylum seekers are 'undeserving others'.

While the UK undoubtedly has more control measures many have been implemented in South Africa. I would suggest that were the funds available or the bureaucracy able to cope, others such as increased monitoring and extended use of biometric databases would also be used. Only on the issue of permanent protection does South Africa lead the way in allowing refugees to carry on with

[139]Louise Pirouet, *Whatever Happened to Asylum in Britain; a Tale of Two Walls* (Berghau Books, 2001): 143.

their lives (although some rights are still limited) perhaps it is only a matter of time before South Africa returns to offering temporary protection and reintroduces ‘leave to remain’. Although in effect the slow processing and huge backlog of claims has in effect had the same impact as temporary protection.

Chapter 3 Economic measures to deter asylum applications

Introduction

The economy influences all government decision making. A strong economy is a vote winner and therefore crucial to all democratic governments. At times of economic hardship asylum seekers may be viewed as a 'threat'. Scarcity of economic resources may lead to less 'hospitality' and negative public opinion towards 'others,' including asylum seekers who are perceived as less 'deserving'. Kant's often quoted principle of 'hospitality' is based upon a state's moral obligation, especially those in need. This particularly 'deserving' group are, after all fleeing persecution and are in need of protection. The aims of refugee protection as set out by the Convention 'should' have nothing to do financial loss and gain. Unfortunately this has not been the case and governments have used the targeting and limited of resources as well as access to benefits as a means of deterring asylum seekers.

If 'outsiders' are seen as abusing the states hospitality and asylum system, governments are put under pressure from the public and press to strengthen immigration and asylum controls. Governments have increasingly sought to curtail their 'hospitality' and have prioritized their own 'citizens'. P.W. Botha said in 1994, we 'feel sorry for irregular migrants but we cannot and will not care for them at the expense of our own citizens.[140] This quote may come from the President of the 'old' South Africa but this sentiment is one shared by Tony Blair, Mandela and Mbeki alike. We care but not to the detriment of our 'own'.

In this chapter I will examine why economic influences have led to a decline in 'hospitality' and the realigning of state policies to prioritize their own citizens. Firstly I will look at why South Africa and the UK are attractive to asylum seekers and assess to what extend they are indeed 'asylum magnets'. I will examine if welfare provision is a 'magnet' for asylum seekers and look at the effects of government actions that have limited access to benefits and services. Looking at immigration policies throughout the period, I will examine how the increased

[140] Jeff Handmaker, "No Easy Walk: Advancing Refugee Protection in South Africa, Evaluating South African Immigration Policy after Apartheid." *Africa Today* 48, no. 3 (Autumn 2001): 2.

control measures along with the targeting of skilled workers, has virtually shut down legal migration routes for unskilled and semi-skilled migrants. I will then discuss why this has led to the masse entry of economic migrants into the asylum system and its politicisation. I will finally look at how much asylum seekers cost the state and to what extend they create competition and threaten scarce resources.

Asylum and Welfare 'Magnets'

Access to Services

Limiting welfare provision has been a much more important control measure in the UK simply because there is more welfare provision than in South Africa. The Welfare State is a universal system that is open to all. There is very little free, state provision in South Africa and even where it does exist, it is often under resourced and of a poor quality. Due to the very different welfare models I will examine the UK and South Africa separately.

Access to Services UK

Britain has one of the most comprehensive welfare state systems in the world. Health care and education are free at the point of use and the social security system acts as a safety net for those most in need. With an ageing population Britain's universal provision is under threat. New Labour and the Conservative government before them have attempted to target resources at the most 'deserving'. Asylum seekers have not considered 'deserving' and measures have been implemented to limit their access to welfare provisions with the aim of deterring future asylum applications. However "the assumption that welfare acts as a magnet for asylum seekers is without empirical justification. The curtailment of welfare in northern Europe has not had a significant impact on the numbers seeking asylum"[141]. The British government have limited access to welfare provisions to stop frivolous 'bogus' claims and to encourage people to return home[142]. There is little evidence to suggest this has been the case, yet the British government have persisted and led the way with control measures. Along with other European nations the UK has engaged in what Noll calls a 'race to the

[141]Alice Bloch and Liza Schuster, "Asylum and Welfare: Contemporary Issues." *Critical Social Policy*, 22, (2002): 401. DOI: 10.1177/026101830202200302

[142]David Weissbrodt, *The Human Rights of Non-Citizens*, (Oxford 2008),144.

bottom' with states seeking to adopt ever more 'restrictionist policies' to avoid becoming 'asylum magnets'[143]. David Winnick MP stated, at a Home Affairs Select Committee meeting, that the British government were by restricting benefits to asylum seekers attempting to 'starve them out'[144].

Legislation throughout the period has created a two tier welfare system the first for the 'deserving' and a second tier of inadequate provision for the 'undeserving.' Control measures have ensured "Asylum seekers - have been at the receiving end of a concerted effort to exclude them since the early 1990s"[145]. Indeed without the strong opposition from Parliament and from civil society groups it is likely that the limits placed on welfare provision would have been even more far reaching and devastating than they have been.

Negative public opinion about asylum seekers has been perpetuated by the migration asylum nexus and has enabled control legislation to be implemented. These restrictions date back as far as the 1988 Immigration Act which restricted the right of asylum seekers dependents to claim benefits and has also restricted their access to public housing. Further restrictions were added in the 1993 Asylum and Immigration Appeals Act which limited access to social security entitlement and to child and housing benefits.

The National Asylum Support Service (NASS) was established in 2000 with the aim of taking asylum seekers out of the social security system altogether. This agency now oversees all social security payments to asylum seekers. The aim initially was to create an entirely cashless system whereby asylum seekers were given vouchers to redeem at specifically designated supermarkets. This move was however unpopular and controversial, back bench Labour MP's threatened a rebellion and the government were forced to compromise. British Home Secretary Jack Straw was forced to introduce a cash element to the system; £10 plus the

[143]Giovanni Facchini, Oliver Lorz and Gerald Willmann. "Asylum seekers in Europe: the warm glow of a hot potato." *Journal for Population Economics* 19 (2006):411-430.

[144]Gareth Mulvey, "When Policy Creates Politics: the Problematizing of Immigration and the Consequences for Refugee Integration in the UK." *Journal of Refugee Studies* 23, no. 4 (November 2010): 442

[145] Alice Bloch and Liza Schuster, Asylum and Welfare: Contemporary Issues, *Critical Social Policy* 22 (2002): 395. doi: 10.1177/026101830202200302.

vouchers; even with this change asylum seekers were receiving only 70% of current benefit levels[146].

The 2002 the Nationality, Immigration and Asylum Act attempted to withdraw support entirely from failed asylum seekers, although this failed there were further restrictions placed on child benefits, housing and other social security benefits. The major impact is asylum applicants in the UK have been forced to live in poverty with less access to benefits, often receiving far less than British citizens.

Despite control measures welfare may still have a small part to play in attracting asylum seekers. Countries with strong provision such as Germany and the UK may well be more desirable than those with minimal provisions such as Spain and Greece. However it is unlikely to be a major factor in determining which country asylum seekers make their claim, the 1990 Dublin Convention aimed to stop 'asylum shopping' within the European Union. The first safe country principle has also had a significant impact in changing many transit countries into 'asylum' receiving countries. For example Spain, Greece and many other Mediterranean countries have received an increasing number of asylum applications in recent years which has further undermined the idea that welfare acts as a 'magnet' to asylum seekers.

Access to Services South Africa

The constitution states that "South Africa belongs to all who live in it, united by our diversity." As a result refugees and asylum seekers should have equal access to welfare provisions. South African law guarantees access to some social services and the right to compete in the housing market, Section 84 of 1996 Schools Act, declares that, 'a public school must admit learners and serve their educational requirements without unfairly discriminating in any way.' One of the major issues for asylum seekers is the inability to convert these constitutional rights and legal entitlements into reality.

[146]Alice Bloch and Liza Schuster, "Asylum and Welfare: Contemporary Issues." *Critical Social Policy*, 22, (2002): 401. doi: 10.1177/026101830202200302

Civil servants often hold attitudes that asylum seekers are 'outsiders,' and are not deserving or entitled to help[147]. These gatekeepers restrict access to public services as they are often ill informed and have not been educated about the rights of asylum seekers. Employers fail to recognise the legitimacy of documentation allowing asylum seekers to work and public health workers and head teachers demand fees from asylum seekers to access services. Through ignorance, prejudice or misinformation services are denied. The general shortages in the stock of public housing, often leads to non-citizens being excluded from housing programmes. Even with liberal legislation; a cocktail of inadequate documentation, ignorance, and outright discrimination, prevents many non-nationals who are legally in South Africa from accessing critical social services[148]. Access and provision of services is a major issue for the South African government and even though asylums seekers are protected by legislation they often have difficulty accessing even the most basic state provisions.

Withholding of services as an asylum deterrent

Welfare is not a significant pull factor in South Africa and it is unlikely ever to be considered a 'welfare magnet'. Resources and provisions are severely limited and there are difficulties claiming welfare assistance. It is more likely that the jobs provide the most powerful pull factor.

Asylum seekers are fleeing 'persecution' and therefore will have limited time and resources to carefully plan, 'choose' or 'shop' for the country which provides them with the best civil, political and economic advantages. This common assumption that rich countries become 'asylum magnets' is questioned by research that states it is far more likely pull factors include similarities in language and culture[149], geographical location, trade flows, availability of transport, kinship

[147] Landau, Loren, "Protection and Dignity in Johannesburg: Shortcomings of South Africa's Urban Refugee Policy" *Journal of Refugee Studies* 19, no.3 (2006):309. doi:10/1093/jrs/fel012

[148] Aureila Segatti and Loren B. Landau, "Contemporary Migration to South Africa. A Regional Development Issue*" The World Bank* and Agence Francaise de Developpement (2011):1-182.

[149] Hussein Solomon, *Of Myths and Migration: Illegal Immigration into South Africa* (UNISA 2003), 18.

ties, the establishment of a successful pioneer group[150], colonial heritage as well as ease of entry. These factors have been proven to be far more important than welfare benefits and economic prosperity[151].

Immigration Policies

According to Peberdy immigration policies along with asylum control measures have promoted an exclusionary national protectionist and territorial vision by providing stronger barriers for legal immigrants, at the same time responsive to the needs of industry and commerce while addressing the skills shortage[152]. Although she was discussing post-apartheid South Africa, the same is equally true of the UK. In both countries skilled migrants are equally desirable for commerce, business and industry. The key aim of both the South African and the UK Immigration Acts of 2002 was to focus on migrants with skills in order to address the skills shortage in the UK or the 'brain drain' in South Africa.

From 2002 both South Africa and the UK publish lists of 'core jobs' inclusion on the list would allow fast track work permits for skilled workers, who were also eligible for temporary resident permits. South Africa also implemented an 'extraordinary skills' category and anyone who fulfilled these requirements was able to obtain temporary residence status without a job offer. In the UK, New Labour quadrupled the numbers of immigrant skilled workers 1997-2003, and 90% of these applications from skilled migrants were approved within 24 hours[153].

Legal Migration in the UK

Legal migration has been a much more important factor in the UK; figures for legal migration dwarf those for asylum[154]. The UK has a comparatively low unemployment rate compared to South Africa. The figures 2002-2009 were

[150]Zonke Majodina, *The Challenge of Forced Migration in Southern Africa*. (African Institute of South Africa, 2001)

[151] Alice Bloch and Liza Schuster, "Asylum and Welfare: Contemporary Issues." *Critical Social Policy* 22, (2002): 393-414. doi: 10.1177/026101830202200302.

[152]Sally Peberdy, *Selecting Immigrants; National Identity and South Africa's Immigration Policies 1910-2008* (Johannesburg:WITS University Press, 2009), 148.

[153]Sarah Spencer, *The Politics of Migration, managing Opportunity, Conflict and Change* (Blackwell publishing, 2003), 3.

[154] See fig.7.

between five to seven per cent. The UK's ageing population means there are a number of unskilled and semi-skilled positions that do need to be filled. As a member of the European Union the free market allows European Union citizens to reside and work anywhere within the community, including the UK. Ever increasing numbers of European Union migrants especially those from Eastern Europe have filled these jobs. By 2006, 380,000 or 94% of migrants were part of the European Union workers registration scheme or had work permits. In the same year there were 23,610 asylum claims this amounts to six per cent of all immigrants[155]. The increasing numbers of European Union migrants did lead to concerns and when eight new member states joined in 2004 as part of their entry requirements they accepted restricted limits on migration. This however has had little impact on the figures. Although legal migration has far greater impact on British society it is less often labelled as an economic 'threat'.

Legal Immigration in South Africa

South Africa is the new economic powerhouse within Africa and is an attractive prospect for economic migrants. For example for those coming from Mozambique the average wage in South Africa is 36 times greater than the wage they could expect at home[156]. Job opportunities attract irregular migrants and for those that make it to South Africa unemployment rates are extremely low[157]. Powerful pull factors exist for immigrants trying to flee extreme poverty. The political instability in the region has also meant that South Africa is closer to more asylum creating countries including Zimbabwe and the Horn of Africa, these factors have led to South Africa being the largest asylum receiving country in the world.

In South Africa asylum claims far outweigh legal migration. Of those entering in 2004 33% were legal immigrants and 63% claimed asylum. The relatively low levels of legal migration may best be understood in terms of South Africa's position as a newly developing country with high domestic unemployment. Protectionist policies were introduced to try to get citizens into work. "The

[155] See fig.7.

[156] Zonke Majodina, *The Challenge of Forced Migration in Southern Africa*. (African Institute of South Africa, 2001), 4.

[157] Jonathan Crush and Vincent William, "Making Up the Numbers: Measuring 'Illegal Immigration' to South Africa" *South African Migration Project*, policy briefing no. 3 (2001): 1-5.

participation of low income countries in global trade is crucial for their growth and poverty reduction endeavours" Jacob Zuma[158]

Economic growth has been central to the ANC's reconstruction and development programme as economic growth brings with it employment opportunities. Employment policies have been protectionist in nature and unskilled and semi-skilled jobs are much more likely in 'new' South Africa to go to citizens. This is due to high unemployment figures, which are consistently over 25%. Policies have been implemented to make it much more difficult for South African employers to employ foreign workers. They must provide proof that they have advertised adequately in order to attract suitable South African candidates, they must justify why they have employed a foreigner and finally they must provide a list of foreign workers to Home Affairs. The South African government got tough with foreign workers during 1994-97 the number of rejected visas was two and a half times higher than the figures for the 1990-92[159]. Even migrant labour contracts within South Africa's mines have decreased dramatically, between 1987 and 2001 the number of migrant workers halved[160]. For the first time in 2003 South African miners' outnumbered migrant workers, this has continued to be the case ever since[161]. Legal immigration reached a low of 3,053 in 2000[162]. Even after the 2002 Immigration Act increased the possibilities for skilled workers entering South Africa the number of legal immigrants entering only increased to approximately 10,000 in 2003-04[163]. This is a relatively small figure in comparison to the number of asylum claims which since 2008 has consistently been over 150,000 per year[164].

[158]Jacob Zuma speaking to the G20 summit conference 2011. South African Government News Agency. http://www.buanews.gov.za/rss/12/12041910351001

[159]Sally Peberdy, *Selecting Immigrants; National Identity and South Africa's Immigration Policies 1910-2008* (Johannesburg:WITS University Press, 2009), 149.

[160]Sarah Spencer, *The Politics of Migration, managing Opportunity, Conflict and Change* (Blackwell publishing, 2003), 10.

[161] Ibid,9.

[162] See fig. 4.

[163]See fig.4.

[164]See fig. 2.

Economic Migrants in the Asylum System

Immigration policies have made it virtually impossible for unskilled economic immigrants to gain legal access to South Africa or the UK (unless they are European Union citizens). Ever increasing numbers have turned to the asylum system as the only possible means of gaining entry. Although it is difficult to determine how economic migrants are in the asylum system this appears to be less of a problem in the UK. Recognition rates seem to bear little relationship to the number of applicants, which may be an indicator that more economic migrants are entering the system. For South Africa the number of economic immigrants in the asylum system is a very real problem since 2008 when huge numbers of applicants entered the system. The backlog in applications also is an indication of its inability to cope with the increased volume of applications[165].

As the numbers of claimants entering the asylum system has increased so have perceptions that the bureaucracy is inefficient and the buckling under the weight of applications. For the UK the number of claims peaked in 2002 and seems to have been brought under control since then. In South Africa the long delays in processing claims have had the impact of actually incentivising 'fraudulent' claims as it is a means of gaining temporary legal entry while claims are being processed. The only other means of gaining entry may be criminal and dangerous but these too are on the increase.

Support for the asylum system is most at risk when there are large numbers of what are believed to be non-genuine claimants, in the system[166]. This creates a crisis in credibility, and a politicisation of the system. If this is to happen the once noble aim of refugee protection is viewed by the vast majority of the public as corrupt, political and not fulfilling its original purpose. It is those that break the rules and abuse the hospitality that create resentment and mistrust of the system, and therefore "the most reviled of asylum seekers of the global era is the

[165] See fig.2.

[166] Van Kessel, Gerry. "Global migration and Asylum."Forced Migration Review10, (April 2001): 10-10.

economic refugee' under suspicion of fleeing poverty and poor prospects in search of a better life"[167].

In South Africa it is estimated that as many as 95% of claims in the asylum system are in fact from economic migrants[168]. In 2005, 37% of claims came from countries on Home Affairs 'safe country' lists these included 10,300 from Kenya, 9,700 from Nigeria, 9,800 from Pakistan, 6,200 from Bangladesh and India and 3000 from Malawi. This is not to say there were no incidents of persecution within these countries; however it is highly unlikely that the 45,200 claims from these countries were all legitimate asylum claims. If the asylum system is overwhelmed the problem then becomes self-perpetuating and leads to a politicization of the system and the public gain the opinion that there are 'floods' of asylum seekers 'swamping' the country.

The Cost of Asylum

The Expense of the Processing System

The increasing number of asylum seekers entering the system will of course have cost implications. The link between the economic situation in the country and asylum is underpinned by the normalisation of the assumption that asylum seekers cost money and are a drain on economic and social resources, "The existing data….seems to support the widely held view that accommodating asylum seekers …. is expensive"[169]. The BBC quoted the amount spent on the asylum processing system in the UK as £2 billion in 2000[170]. The cost of processing applications and other services throughout the world was estimated at $6 billion in 1991 this was at least five times the budget of the UNHCR who cares for 17 million refugees across the world[171].

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[167] Catherine Dauvergne, *Making People Illegal: What Globalization Means for Migration and Law* (Cambridge University Press, 2008): 65.

[168]Zonke Majodina, *The Challenge of Forced Migration in Southern Africa* (African Institute of South Africa, 2001):128.

[169] Ibid, 142.

[170] Ibid

[171]Doris Meissner, Robert D. Hormats, Antonio Garriges Walker and Shirjuro Ogata. *International Migration Challenges in a New Era, A Report to the Trilateral Commission: 44*. (New York: Library of Congress, 1993), 49.

There are also additional costs for social resources which are already under considerable pressures, for example housing in South Africa or healthcare in the UK, the governments must therefore set priorities. In the UK the government has sought to restrict asylum seekers access to welfare benefits and in South Africa the government provides very little and only the most basic welfare provision. In both countries the role of NGO's, churches and charities has become more important in welfare provision for refugees in recent years.

Limiting Asylum Seekers Access to Work

Government actions have assumed that asylum seekers are expensive this is not necessarily the case. Processing claims is no doubt costly the overall impact of asylum seekers on the economy cannot be assumed to be a negative one. Many of those who manage to leave perilous situations and claim asylum, despite the many barriers put in their way, are likely to bring an 'entrepreneurial spirit' which may benefit the economy of the host society. Entrepreneurial refugees may start businesses in the local community and generate wealth[172]. They bring new skills and talents as well as a new means of foreign exchange[173]. Those that make it as far as Europe are likely to be young and male and could be of benefit to the job market[174]. In South Africa many asylum seekers are generally educated; half have some tertiary education, many were privately wealthy and two thirds spoke English[175]. Not allowing these people access to the work will created more dependency instead of adding valuable skills to the workplace.

Placing additional barriers on the access that asylum seekers have to the services enjoyed by all 'citizens,' has not deterred asylum applications but has created an increased burden upon the state. Hindering the ability to work stops self-sufficiency and stops them being able to contribute to the economy of the host community. This creates a self-fulfilling prophecy for asylum seekers, they are

[172]Karen Jacobsen, "Can Refugees Benefit the State? Refugee Resources and South African State building." *Journal of Modern African Studies* 40, no. 4 (2002): 577-596.

[173]David Everatt, ed, "Xenophobia, Civil Society and South Africa." *Politikon* 38, no. 1 (2011): 22.

[174]Sarah Spencer, *The Politics of Migration, managing Opportunity, Conflict and Change* (Blackwell publishing, 2003), 35.

[175]Jeff Handmaker, "No Easy Walk: Advancing Refugee Protection in South Africa, Evaluating South African Immigration Policy after Apartheid." *Africa Today* 48, no. 3,(Autumn 2001): 34.

indeed a drain on the state, but the state has imposed regulations that ensure this is perpetuated. Care and maintenance programmes are very costly and are therefore an extra burden. A joint report commissioned by the Ugandan government and the UNHCR in 1999 offered a solution to this problem. It is more cost efficient to make asylum seekers self-sufficient and allow them to participate in the labour market[176]. This releases government from the economic burden of asylum.

Allowing irregular migrants temporary work permits, could prove to be a solution to many of the problems caused by irregular migration. By recognising bona fide economic migrants from SADC countries, those who have no intention of settling in South Africa permanently could have increased opportunities for legal participation in our labour market[177]. There is a large amount of evidence to support the fact that most economic migrants do not wish to permanently settle in South Africa. The South African Migration Project conducted research amongst migrants from Mozambique, Zimbabwe and Lesotho that supported the idea that many migrants do not wish to migrate permanently[178].

Removal of economic migrants from the asylum system would bring down the volume of applicants, removing fraudulent claims and depoliticise the system. A similar idea was put into practice as a temporary measure to deal with the huge number of Zimbabwean economic migrants in the asylum system in South Africa; it was however only a temporary measure to manage the backlog of applications. Another more radical solution is one proposed by Moses and Letnew, by lifting all global immigration restrictions economic growth and efficiency gains of between 15-40% could be achieved, a controversial claim indeed.

Asylum seekers a 'threat' to Economic resources

'Outsiders' are often scapegoated and blamed for wider economic issues even if there is no real connection in reality. If jobs are plentiful, services are not

[176] Karen Jacobsen, "Can Refugees Benefit the State? Refugee Resources and South African State building."*Journal of Modern African Studies* 40, no. 4 (2002): 593

[177] Waller Lyndith, "Irregular Migration to South Africa During the First 10 years of Democracy." Migration Policy Brief Number 19, Southern African Migration Project (2006):?.

[178] Jonathan Crush and Vincent William, "Making Up the Numbers: Measuring 'Illegal Immigration' to South Africa" South African Migration Project, policy briefing no. 3 (2001): 1-5.

overstretched and cultural diversity is common place this resentment does not occur, even if immigration figures are high[179]. The perceived link between 'threats' to economic resources and asylum is one that is the basis for many government actions but is not however born out of evidence. Within poverty ridden communities, whether this is, in the sink estates of the UK or the townships of South Africa, 'outsiders' are seen as a threat. In times of economic hardship people neither understand, nor care if the 'outsider' is an asylum seeker or an economic immigrant, 'deserving' or 'undeserving'[180].

Scarcity of resources including inadequate public housing, inequality, and high unemployment and over stretched welfare services are often cited as reasons for tightening immigration and asylum policies. Governments on one hand are committed to capitalism and do not wish to squeeze immigration which they believe is essential for economic growth. Yet on the other hand they must appease the "wider electorate who are far from convinced that the economic benefits for immigration are clear cut or significant"[181]. To appeal to the public's concerns governments must be seen to be talking tough on immigration, reacting often is used that targets 'bogus' asylum seekers as scapegoats. This is easier than turning around the economic woes of the country, which are the real route of the problem. This rhetoric does however have a detrimental effect on asylum seekers and has a negative impact on public opinion.

Poverty and Inequality in South Africa

Asylum seekers are seen as an economic 'threat' more often in South Africa; one reason is that levels of absolute poverty are much greater than in the UK, which has the safety net of the welfare state. According to its GINI coefficient South Africa is the second most unequal country in the world (Brazil was first). In 1994, 12 million people still did not have access to clean drinking water, 21 million

[179]Sarah Spencer, *The Politics of Migration, managing Opportunity, Conflict and Change* (Blackwell publishing, 2003), 30.

[180] Bloch Alice and Liza Schuster, "Asylum and Welfare: Contemporary Issues." *Critical Social Policy*, 22, (2002): 407. doi: 10.1177/026101830202200302

[181]"Public Opinion and Public Policy: Complexities of the Democratic Mandate." The Migration Observatory at the University of Oxford. (Last modified March 29, 2011)

lacked adequate sanitation and 36% had no access to electricity.[182] For those living in poverty their day to day economic survival is more important than hospitality.

"For many South African's the distinction between refugees and illegal aliens is immaterial, since foreigners are often perceived to be taking away houses and jobs while bringing crime and drugs to the country"[183]. In recent years large numbers of asylum seekers have joined communities already suffering severe economic hardship. When resources are scarce tensions are already high any additional threat or perceived threat from 'outsiders' can cause conflict. There are deep levels of dissatisfaction with the provision of services as many people continue to go without clean drinking water, electricity or adequate housing, service delivery is a major issue in South Africa and protests are common.

Crisis point within communities is reached when "Competition over jobs, business opportunities, public services and housing give rise to tension among refugees, asylum-seekers, migrants and host communities. Xenophobic violence continues to occur"[184]. Police tactics including large scale use of deportation have played a role in the targeting of 'others', these frustrations have led to frequent conflicts and violence against foreigners. One of the worse cases occurred in Johannesburg in 2008 when xenophobic violence led to 62 deaths.

Economic Competition in the UK

In the UK inequalities are growing faster than in any other 'rich' country creating relative poverty within society[185]. Asylum seekers may enter society at the bottom rung of the socio-economic strata with few rights, little stability and this leaves them open to exploitation, yet still they are resented by local labour. The added

[182]Sally Peberdy, Selecting Immigrants; National Identity and South Africa's Immigration Policies 1910-2008 (Johannesburg:WITS University Press, 2009), 158.

[183]Minaar, Anthony and Mike Hough. *Who goes there? Perspectives on clandestine migration and illegal aliens in southern Africa* (Human Sciences Research Council Publications, 1996).

[184] UNHCR "2012 UNHCR country operations profile – South Africa" http://www.unhcr.org/pages/49e485aa6.html.

[185]Randeep Ramesh, "Income inequality growing faster in UK than any other rich country, says OECD." *The Guardian, December 5, 2001.* http://www.guardian.co.uk/society/2011/dec/05/income-inequality-growing-faster-uk.

competition is viewed as a threat to local job opportunities and it is presumed that immigrants will undercut local labour's pay and conditions. This competition may be more about perception than a reality. If 'outsiders' are in the workplace it is much more likely they are legal economic immigrants, from the European Union. However due to the asylum / immigration nexus the public do not understand or care about the difference and call for tighter immigration and asylum controls.

Recent British governments have responded with strong rhetoric to address these growing concerns; Gordon Brown spoke of 'British jobs for British workers' at the Labour Party conference in Sept 2007[186]. This is a common reaction to increased competition at a time of economic difficulty. To manage the situation "Governments halt or even reverse immigration during times of economic recession" in order to prevent social unrest and preventing a 'crisis in capitalism'[187]. Legal migration did drop in 2009 perhaps as a result of this strong rhetoric or perhaps due to the impending general election in 2010[188]. Even though legal migration figures dropped figures still remain considerably higher than asylum figures.

Conclusions; The impact of economic measure to deter asylum applications

Many government actions and public opinion is based on the assumption that asylum seekers make "decisions about where to seek asylum based on information about asylum systems, opportunities for employment and access to welfare benefits"[189]. While it would be naive to think that economic factors and job opportunities played no part in the decision making process it is clear that limiting access to welfare provision and to the world of work has little real impact other than to diminish the standard of living for those waiting for their asylum application to be determined. Deterrence policies have had no real impact in the

[186]Gordon Brown's "British Jobs" speech 2007 http://www.youtube.com/watch?v=E6J2QUw0A-0

[187]Eytan Meyers. "Theories of International Immigration Policy – A Comparative Analysis. *International Migration Review* 34, no. 4 (winter 2000): 1248.

[188] See fig. 7.

[189] Heaven Crawley, "Chance or choice? Understanding why asylum seekers come to the UK." University of Swansea, Refugee Council (Jan 2010):8. www.refugeecouncil.org.uk

number of applications because asylum seekers have little "meaningful knowledge" of the asylum system[190].

There appears to be little direct relationship between the state of the economy and the number of asylum applications. There is (especially in the UK) however a relationship between the economy and immigration. Although the public often perceive this as a negative relationship the reality is that immigration can be beneficial to economic growth. The number of European Union citizens and skilled migrants in the UK has been substantial since the enlargement of the European Union in 2004; this has had a positive impact on the economy. In South Africa economic growth and the gross domestic product continue to rise although figures for legal immigration are still relatively modest in comparison to those of the UK. Increasing skilled immigration in South Africa could have a positive impact on the economy; this however would be particularly hard to sell to the South African public when social inequalities and unemployment remain so high.

In South Africa and the UK there is a popular perception that huge numbers of asylum seekers are 'flooding' the country and are having a negative impact upon the economy. This opinion is not necessarily based upon reality as there is little proof in either country that asylum seekers are having a negative impact upon economic conditions. In South Africa mass inequalities and poverty mixed with the huge increase in number of asylum applications (and economic migrants) have created tension that has led to a growth in these sentiments. However in the UK the number of asylum seekers is small in comparison to the large numbers of European Union legal immigrants entering the UK. Therefore in the UK it appears that the immigration/ asylum nexus has helped create the negative public perception that asylum seekers are an economic threat.

The public often make little distinction between asylum seekers and immigrants the 'threat' is perceived as real and asylum has become a 'security' threat to scarce economic resources. The elite may perpetuate this belief as it is easier to

[190] Heaven Crawley, "Chance or choice? Understanding why asylum seekers come to the UK." University of Swansea, Refugee Council (Jan 2010):6. www.refugeecouncil.org.uk

‘blame’ and tackle immigration than it is to solve the real economic difficulties and inequalities. Asylum deterrence policies have limited the assistance given to claimants and reduced hospitality the asylum system is viewed as an expense the state can ill afford. It is however ironic that government action has actually exacerbated the problem and has stopped asylum seekers from becoming self-sufficient. The situation is self-perpetuating and asylum will continue to be costly and be perceived as an economic threat as long as they are deprived full rights to work and the benefits enjoyed by other citizens.

SECTION 2 DETERING ASYLUM APPLICATIONS THROUGH THE SHAPING OF PUBLIC OPINION

Chapter 4 Shaping Public Opinion

Introduction

Negative public opinion does not deter asylum applications. It does however have an impact upon the day to day lives of asylum seekers. Shaping opinions has instead been used as a means to justify the deterrent actions undertaken by governments. Opinion is formed according to Pluralists such as Freeman, by many diverse centers of power from the bottom up in a democratic way. This study will argue as elitists such as Faist do, that public opinion is formed through the controlling, shaping and molding of information through education, from the top down. An example is provided within the book produced by the University of the Witwatersrand about the xenophobic attacks in Johannesburg in 2008. Daryl Glaser believed the attacks were the result of a racist public shaped by their socialization and history. The attacks were distinctly 'democratic' in their nature. Whereas Loren Landau believes the xenophobia was led and created by the elite, the discourse was shaped not only by rhetoric but the huge number of deportations occurring and the labeling of 'foreigners' as a problem[191.] It is the elite who shape public perceptions of the issue. The views of the public are shaped by observations, anecdotal evidence, and fear of the unknown and to a large extent, media reporting[192]. Personal experience has little impact on most people's views, as most have never even met an asylum seeker. Many of the sources used to gain knowledge contain inaccurate information and an incomplete picture of the issue. By controlling the flow of information the elite are shaping the agenda.

It is also clear from literature that the vast majority of public opinion on asylum seekers is negative and that it was often characterized by confusion, misunderstandings are common. There is much written on the impact of the press and had I had more time this is definitely would be an area that I would have liked to develop within this research. Opinion is divided as to whether the news cycle

[191] Hassim, Shireen, ed.Tawana Kupe ed. and Eric Worby. *Go Home or Die Here Violence, Xenophobia and the Reinvention of Difference in South Africa.* Johannesburg: Wits University Press, 2008.

[192]Lyndith Waller, "Irregular Migration to South Africa During the First 10 years of Democracy." Migration Policy Brief Number 19, *Southern African Migration Project* (2006):9.

shapes or reflects the public's view on asylum. The majority of the literature and this research put forward the view that the role of the press is more than a passive one. Those that control the media are powerful and play an important part in setting the political agenda and shaping public views. Unfortunately this often causes misconceptions and ultimately influences government actions.

Although the elite play an important role in shaping the debate, politicians have often failed, perhaps intentionally to do this effectively. Asylum and perceptions of it are shaped by a larger set of agendas including; immigration, security and the economy. The elite face contradictory pressures which may prove just too difficult to manage with the blunt tools available to them. They must address the public's concerns and fears and yet not reinforce them. Discuss and manage immigration while maintaining a diversity agenda without getting into exclusionary politics. Maintain the rights of citizens and the rights of 'others'. Gain votes and win elections while providing leadership and not pandering to popular opinion. Asylum does seem to have been an almost impossible issue to manage effectively which is probably why it has proved so controversial.

In this chapter I will outline how and why the nexus between immigration and asylum has been created and the inflammatory and inaccurate language often used to describe it. I will then look at how this has affected public opinion by examining opinion polls in South Africa and in the UK. I will then look at the elite's role by examining how and why politicians shape and form public opinion the way they do, while also discussing the dangers of popularism and reactive policy making. I will then look at the role of the press in shaping the debate and deciding what is 'newsworthy' and finally I will examine to what extent Civil Society Organisations may influence the debate.

The Creation of the Immigration / Asylum Nexus

The two issues of immigration and asylum are linked and connected in the mind of the public and this has rarely worked in the favour of asylum seekers as more often than not this has led to negative public opinions. "Fear about supposed floods of refugees in industrial countries is being vastly overblown or mistakenly

conflated with issues of migration"[193]. Factors that have led to the creation of this Nexus include the ever more complex irregular migration patterns and the confusing language used to discuss asylum. Even when the difference is clearly understood there is still an overlap in the form of legislation, at times this has been due to the lack of distinction made by government. For example in South Africa there was no specialist legislation for refugee protection until 1998. Up until this point the 1991 Aliens Control Act was used, which made no distinction between immigrants and refugees. Even if the distinction is clearly made immigration legislation can often have profound consequences on asylum seekers. For example in the UK the 2002 Immigration Act could have proved a huge threat to refugee protection, had it succeeded in stopping benefits to failed asylum seekers[194]. Asylum and immigration are interconnected and closely related, many members of the public are unable to distinguish and define the terms and therefore the nexus has been created. It is therefore an important factor to consider when examining public opinion. It is clear from the literature that immigration has a great deal of influence on the asylum debate although it is less likely that visa versa is true.

The language commonly used by the media, politicians and the public is often incorrect and misleading. Governments have shown little leadership on this issue as it has suited their aims of creating a climate for further deterrence measures. The term 'bogus' asylum seekers is often used in the UK's popular press, to create negative opinions about people 'cheating' the system, for example "Up to 80,000 bogus asylum seekers granted 'amnesty'"[195]. If the claimants were granted leave to remain they are wrongly labelled here as 'bogus' as they have applied under the correct procedure and been accepted. This is just one way the right wing press in the UK seem to naturalise the association between asylum and illegal

[193]Antonio Guterres, United Nations High Commissioner for Refugees quoted "Poor countries bear world's refugee burden" *Mail and Guardian.* Last modified June 20, 2011. http://mg.co.za/article/2011-06-20-poor-countries-bear-worlds-refugee-burden/

[194]Jeff Handmaker, "No Easy Walk: Advancing Refugee Protection in South Africa, Evaluating South African Immigration Policy after Apartheid." *Africa Today* 48, no. 3 (Autumn 2001): 55.

[195] Fran Abrams "Tighter rules to deport illegal asylum-seekers," *The Independent,* June 17, 1997. http://www.independent.co.uk/news/uk/politics/tighter-rules-to-deport-illegal-asylumseekers-face-tighter-1256389.html.

immigration[196]. On occasions members of the British government have also used this term and have reinforced these misconceptions. Home Secretary Jack Straw apparently tried to stop the term 'bogus' asylum seeker from being used in the Home Office[197], his attempts were deemed fruitless when Prime Minister Tony Blair continued to publically use it[198]. The term 'illegal' is another which is often misused to label asylum seekers and is a term more commonly used in South Africa[199]. Under the Convention it is not possible for an asylum seeker to be illegal "The Contracting States shall not impose penalties, on account of their illegal entry or presence"[200]. Once an application for asylum has been made the method and port of entry should become irrelevant. These terms are often used interchangeably and cause confusion. Often it is illegal immigrants or the 'dark figure' of irregular migration which is being referred to this is a separate issue from asylum, yet it becomes linked in the public's perception contributing to fears of a 'crisis' or 'flood' of undocumented migrants.

Public Opinion on Asylum

Views towards immigration within South Africa and the UK are overwhelming negative. This is relevant due the central importance of the immigration, asylum nexus. Data taken from a large IPSO poll with a sample 17,601 taken in 2011 shows that 72% of Belgium's had the negative views towards immigrants but this was closely followed by 70% of South Africans and 64% of the British public[201]. This data demonstrates the two countries have some of the most negative opinions in the world towards immigrants. According to Crawley immigration is a 'touchstone' issue which demonstrates a wider dissatisfaction within society or

[196]Anne Karpf. "We've been here before" *The Guardian*. Last modified, June 8, 2002. http://www.guardian.co.uk/uk/2002/jun/08/immigration.immigrationandpublicservices.

[197] Guardian June 25, 1999 quoted in, Gareth Mulvey, "When Policy Creates Politics: the Problematizing of Immigration and the Consequences for Refugee Integration in the UK." *Journal of Refugee Studies* 23, no. 4 (November 2010):443.

[198]Hansard 2 Feb 2000 quoted in Gareth Mulvey, "When Policy Creates Politics: the Problematizing of Immigration and the Consequences for Refugee Integration in the UK." *Journal of Refugee Studies* 23, no. 4 (November 2010):443.

[199]Fran Abrams "Tighter rules to deport illegal asylum-seekers," *The Independent,* June 17, 1997. http://www.independent.co.uk/news/uk/politics/tighter-rules-to-deport-illegal-asylumseekers-face-tighter-1256389.html.

[200] UNHCR "Convention and Protocol Relating to the Status of refugees" www.unhcr.org/3b66c2aa10.html.

[201] IPSO poll, "Jun – Jul 2011," IPSO (sample size 17,601). http://www.ipsos.fr/sites/default/files/attachments/globaladvisor_immigration.pdf.

may be an indicator of wider societal change[202]. South Africa and the UK in recent years have shown evidence of this wider dissatisfaction and the number of public protests has increased. In South Africa there are on average 15 service delivery protests per day[203]. Economic conditions lead to social activism and are one contributing factor that creates public unease about asylum.

This negativity about immigration leads to negative opinions about asylum seekers; in 2001 44% of those polled by IPSOs in the UK said "Britain should not accept any more asylum seekers"[204]. Even though it may well be the case that many of these respondents do not know what an asylum seeker is or understand their plight. These negative opinions are experienced daily by asylum seekers and are a harsh reality.

Immigration as an electoral issue cannot be ignored; in the UK it is thought to have played an important part in the general elections of 1979, 1997 and 2010[205]. It was quoted as one of the top three concerns for 25% of the electorate in 2011[206]. The debate about asylum is a controversial one and often becomes polarized. Support for firm immigration controls is widespread, 75-80% of those polled in the UK were heavily in favour of decreasing migration[207]. This is a view that is

[202] Gareth Mulvey, "When Policy Creates Politics: the Problematizing of Immigration and the Consequences for Refugee Integration in the UK."*Journal of Refugee Studies*23, no. 4 (November 2010): 450.

[203] Delaney 2007 quoted in, Reddy Thiven, "ANC Decline, Social Mobilization and Political Society: Understanding South Africa's Evolving Political Culture," *Politikon* 37, no. 2/3 (December 2010): 188.

[204] "Public Opinion and Public Policy: Complexities of the Democratic Mandate." The Migration Observatory at the University of Oxford. (Last modified March 29, 2011):2. http://migrationobservatory.ox.ac.uk/sites/files/migobs/Public%20Opinion%20Policy%20Primer.pdf

[205]The Migration Observatory at the University of Oxford. (Last modified March 29, 2011):6 http://migrationobservatory.ox.ac.uk/sites/files/migobs/Public%20Opinion%20Policy%20Primer.pdf

[206]Economist /Ipsos/ MORI poll 2011 quoted The Migration Observatory at the University of Oxford. (Last modified March 29, 2011):2 http://migrationobservatory.ox.ac.uk/sites/files/migobs/Public%20Opinion%20Policy%20Primer.pdf

[207] Government commissioned 2009 – 2011 Citizenship Survey quoted in The Migration Observatory at the University of Oxford. (Last modified March 29, 2011):2. http://migrationobservatory.ox.ac.uk/sites/files/migobs/Public%20Opinion%20Policy%20Primer.pdf

consistently demonstrated in opinion polls[208]. Immigration and race relations did not even poll as a major issue for voters in 1997, were as in 2001 14% said it was a 'top 10' issue, this figure rose again to 34% in 2005[209]. This demonstrates how immigration and asylum have moved up the political agenda. As an electoral issue it cannot be ignored and governments need to be seen to be taking action.

While opinion poll data specifically on asylum seekers is not so readily available in South Africa there is considerable data demonstrating negative views on 'irregular migrants.' In South Africa there have been massive issues with the collapsing bureaucracy and the misuse of the asylum system, so many South Africans make little distinction between the two groups. "For many South African's the distinction between refugees and illegal aliens is immaterial"[210]. An opinion poll taken by the South African Migration Project found that 25% of South Africans polled called for a complete ban on migration[211]. In this same survey it was interesting to see that 50% of respondents had had no contact whatsoever with people from other African countries and therefore many are forming their negative opinions through means other than personal experience of immigrants and asylum seekers. South Africans are also generally supportive of control measures for irregular migration 80% agree with tighter border controls and 65% with increasing the use of forced deportations[212].

Anti-immigration feelings are not necessarily related to personal experience, or knowledge about the issues, or even 'increased numbers of migrants'[213]. It is rather the nexus shaping the public's perception of the number of asylum seekers;

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[208]Sarah Spencer, *The Politics of Migration, managing Opportunity, Conflict and Change* (Blackwell publishing, 2003):171.

[209]Gareth Mulvey, "When Policy Creates Politics: the Problematizing of Immigration and the Consequences for Refugee Integration in the UK."*Journal of Refugee Studies*23, no. 4 (November 2010): 450.

[210]Anthony Minaar, Anthony and Mike Hough.*Who goes there? Perspectives on clandestine migration and illegal aliens in southern Africa* (Human Sciences Research Council Publications, 1996): 18.

[211] Ransford Danso and David A. McDonald, "Writing Xenophobia: Immigration and the Print Media in Post-apartheid South Africa" *Africa Today* (Indiana University Press): 116.

[212]Lyndith Waller, "Irregular Migration to South Africa During the First 10 years of Democracy." Migration Policy Brief Number 19, *Southern African Migration Project* (2006):10.

[213]The MigrationObservatory at the University of Oxford. (Last modified March 29, 2011):6 http://migrationobservatory.ox.ac.uk/sites/files/migobs/Public%20Opinion%20Policy%20Primer.pdf

in fact the public often have a distorted idea of the number of immigrants. In the UK; when asked to estimate the number of migrants the average guess was double the actual figure[214]. Although the number of asylum applications has grown considerably in South Africa, the figures are regularly misquoted in the media, by Home Affairs and SAPS. This has increased the public perception of a problem of 'epidemic' proportions. Dr Buthelezi, Home Affairs Minister repeatedly used the estimate of two million (four per cent of the population of South Africa) as an estimate of the 'illegal' immigrant problem[215]. The South African census 2001 put figure of all 'non SA citizens' at 1,025,000 which is nearer one per cent, this figure includes all legal migrants and although there are of course issues with the validity of census data it is likely the figures quoted are hugely exaggerated and create misconceptions[216].

Xenophobia continues to be a concern in South Africa and has been the focus of many initiatives. For example the South African Human Rights Commission 2001 campaign to rollback xenophobia. The government's actions have however created mixed messages to the public. On the one hand they have encouraged diversity and strong constitutional values and on the other hand they have created initiatives to encourage members of the public to report irregular migrants and continued with huge numbers of forced deportations, 266,067 in 2006 alone[217]. In democratic nations such as South Africa and the UK politicians ignore at their peril public concerns and sentiments; they are after all only in power due to the electoral support of the public. "Public opinion thus acts as something of an over-arching constraint on policy and political discretion"[218].

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[214]The MigrationObservatory at the University of Oxford. (Last modified March 29, 2011):2 http://migrationobservatory.ox.ac.uk/sites/files/migobs/Public%20Opinion%20Policy%20Primer.pdf

[215]Anthony Minaar and Mike Hough, *Who goes there? Perspectives on clandestine migration and illegal aliens in southern Africa*, (Human Sciences Research Council Publications, 1996),127.

[216] Jonathan Crush, "Complex Movements, Confused Responses: Labour Migration in South Africa" *South African Migration Project*, policy briefing no. 25 (Aug 2011):4

[217] Landau, Loren B. and Aurelia Segatti, "Human Development Impacts of Migration: South Africa Case Study." *MPRA Paper No. 19182*, 11 December 2009 : 17:51, last updated 1 April 2009. http://mpra.ub.uni-muenchen.de/19182/:11.

[218]Shamit, Saggar, "What do Voters want from leaders on immigration" Policy network, last modified June 13, 2010, 184. http://www.policy-

Creating a Crisis; Elitism

The days when asylum seekers can provide political capital for governments are over. Asylum in the past was used for political gain, for example offering 'refuge' from communist opponents within the cold war. In modern day politics offering asylum is more likely to be viewed as a 'burden' for modern governments. It may still offer an opportunity to demonstrate moral responsibility and humanitarian principles but is more likely than not, the offer to help will often go hand in hand with governments political aims. It may be the aim of government policies in this area is to "restore the credibility of the institution of asylum," rather than improve refugee protection[219]. The public's perception is everything in ensuring public support for policy. Politicians must after all maintain legitimacy in order to gain votes.

The elite do have the power to shape the political discourse, according to Edelman the public simply respond to the use of populist language, the use of symbols and the rhetoric they are presented with. Politicians regularly use inflammatory language and quote scary statistics[220]. This is presented to the public rather than facts and figures as symbolic language is more likely to make a lasting impression. Politicians fail to educate the public, the critical faculties of the public are dulled and 'fear' is created enabling governments to gain legitimate support for their control policies[221]. The previous example of Home Affairs Minister Dr Buthelezi demonstrates the normalisation of unsubstantiated statistics which almost certainly appeal to the populist sentiment. This shapes the public perception of the 'problem' and has led to a creation of a crisis, justifying deterrence measures as a necessary reaction.

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network.net/pno_detail.aspx?ID=3932&title=What+do+voters+want+from+leaders+on+immigration%3f++

[219] Jeff Handmaker, "No Easy Walk: Advancing Refugee Protection in South Africa, Evaluating South African Immigration Policy after Apartheid." *Africa Today* 48, no. 3 (Autumn 2001): 102.

[220] Jonathan Crush, ed. *Beyond Control: Immigration and Human Rights in a Democratic South Africa* (South African Migration Project, 1998), 151.

[221] Gareth Mulvey, "When Policy Creates Politics: the Problematizing of Immigration and the Consequences for Refugee Integration in the UK."*Journal of Refugee Studies* 23, no. 4 (November 2010): 437.

Faist argues that political entrepreneurs shape the discourse by politicising asylum policies. Symbolic politics is used to create a 'social problem' by raising fears of cultural threats and foreign aliens. 'Others', 'aliens' and 'bogus asylum seekers' are used as scapegoats and are blamed for other social problems. "Excluding 'foreigners' is one of the main recurrent methods involved in strategies for conquering or preserving political power,"[222] a 'racist public' is created and used to justify deterrence policies as control measures are a reaction to the popular will[223]. A cycle of panic and reactionary politics is therefore created, building a widespread suspicion that can quickly be transformed into 'loud, ugly opposition'[224]. Examples of this include the xenophobic attacks in South Africa in 2008 and the race riots that occurred in the UK in 2001.

Symbolic politics diverts the public's attention from the real 'issues' such as unemployment, poverty and inequality. After all solving society's ills is difficult, it has on occasions proved easier to promote nationalist and xenophobic sentiments in order to blame these problems on scapegoats such as asylum seekers and illegal immigrants, even if this is not true[225].

Examples may be rare, but it is possible for politicians to take a lead in educating and shaping public opinion in order to gain sympathy and support for refugees, for example those fleeing the Bosnian crisis and in 1972 for the Asian Ugandans fleeing Idi Amin's regime[226]. The Wall Street Journal stated that G. W. Bush had showed surprising leadership in steering the 'United States out of an Immigration cul-de-sac'[227]. He reminded the electorate that immigration is a tradition that the United States was built upon and that it was essential to the success of free market

[222]Veronique Tadjo, "Constructing the 'Other' :Learning from the Ivorian Example," in *Go Home or Die Here*, ed. Shireen Hassim, Tawana Kupe and Eric Worby (Johannesburg: Wits University
Press, 2008), 231.

[223]Sarah Spencer, *The Politics of Migration, managing Opportunity, Conflict and Change* (Blackwell publishing, 2003),168.

[224]Ibid, 31.

[225]Gareth Mulvey, "When Policy Creates Politics: the Problematizing of Immigration and the
Consequences for Refugee Integration in the UK," *Journal of Refugee Studies* 23, no. 4 (2010): 440.

[226] Louise Pirouet, *Whatever Happened to Asylum in Britain; a Tale of Two Wall* (Berghau Books, 2001), 31.

[227] Sarah Spencer, *The Politics of Migration, managing Opportunity, Conflict and Change* (Blackwell publishing, 2003),187.

economics. Therefore it is possible for politicians to lead on this issue but often advocating for the weak does not bring political capital and therefore it is rare.

Realists such as Walt believe that it is more common for politicians to lead on this issue in the interest of the states, economic and political interests. For example Blair's government proposed some of the most radical proposals for deterrence measures. The first was the use of processing transit centres for all asylum applications within the European Union; he helpfully suggested Albania and Croatia as possible locations for the centres. This would have shifted the determination process away from British shores altogether. The next proposal involved the use of aid and trade to 'encourage' origin countries to control population movement[228]. These proposals would have been the ultimately deterrence policies stopping all individual applicants from ever reaching British shores and while they may have been in the domestic interest they were rejected by other members of the European Union.

Shaping the political agenda is a two way process and politicians do face difficulties shaping the public debate on immigration. They must maintain a balance between talking tough on immigration and being sensitive to issues of diversity. In Britain "immigration is no longer an electoral albatross simply and solely for the left" politicians of all hues have grappled with this issue[229]. Michael Howard understood these difficulties after his thumping electoral defeat in 2005 when he stated he feared race riots if immigration was not controlled[230]. Gordon Brown also suffered electorally in 2010 when he was asked a question about immigration by Gillian Duffy an elderly voter. He later (not realising his microphone was still on) called her a bigoted women, much the joy of the on looking media, who later accused of him of being out of touch with ordinary voters. Polarization of the debate often makes it difficult to discuss immigration without the debate being high jacked by those wishing to talk the politics of

[228]Gareth Mulvey, "When Policy Creates Politics: the Problematizing of Immigration and the Consequences for Refugee Integration in the UK." *Journal of Refugee Studies* 23, no. 4 (November 2010):440.

[229]Sarah Spencer, *The Politics of Migration, managing Opportunity, Conflict and Change (*Blackwell publishing, 2003),193.

[230]Ibid,187.

exclusion. This is perhaps one reason why governments have been unwilling to lead on this issue.

There are limits on the power of the elite to shape the political agenda. At times they have lost control of the asylum debate[231]. Populist promises are often difficult to keep and may lead to reactionary policy making. Being truthful and transparent may well enable them to recapture control of the policy area from 'demagogues' but is not always possible or feasible in modern 'image' politics[232]. Talking tough on law and order can be a vote winner and no politician wishes to appear soft on issues of border control or 'illegal immigration'.

The elite do have the ability to shape the debate but often choose not to due to the difficult nature of the debate and the fact there are conflicting agendas in this policy area. Instead "State policies about refugees are self-regarding: politicians for the most part pander to popular opinion rather than leading it, unless necessity forces them to do otherwise"[233]. The hostility created may well be self-perpetuating and difficult to control, reactionary policy making which is common in the area of asylum is rarely effective.

The Press

Those in control of the press and particularly the print media have played an important part in shaping the political discourse; some major players within this field hold considerable power both financially and politically. The plight of individual asylum seekers and their personal stories have rarely been seen as newsworthy. The vast majority of stories focus on linking asylum to crime, terrorism and cheating the system. The rest are critical of the system that implements the decisions, although they are never critical of the deterrence measures themselves. Stories of a sympathetic nature tend to focus on tragedies such as deaths caused by trafficking. In South Africa and the UK violence and

[231] Gareth Mulvey, "When Policy Creates Politics: the Problematizing of Immigration and the Consequences for Refugee Integration in the UK," *Journal of Refugee Studies* 23, no. 4 (2010): 456.

[232]Sarah Spencer, The Politics of Migration, managing Opportunity, Conflict and Change (Blackwell publishing, 2003):56.

[233]Louise Pirouet, *Whatever Happened to Asylum in Britain; a Tale of Two Walls* (Berghau Books 2001):126.

crime against refugees and asylum seekers is common place, this is however rarely seen as newsworthy and are seldom reported upon.

The media may be instrumental in educating the public with misinformation and the misrepresentations that characterise the public debate. In the UK the Daily Mail printed 200 stories in 2000 about asylum seekers; many of these sensationalist stories create a dominant approach to the issue[234]. The language used in the popular press is often emotive, for example with the use of metaphors about contamination and disease[235] as well as those of an aquatic nature; swamp, flood, waves[236]. These metaphors create strong feelings creating a moral panic about the scale and seriousness of the 'problem.' In South Africa when asked, 48% believed that immigrants posed a criminal threat, and 29% believed they bring diseases[237]. A crisis is created which leads to more reporting and further panic as the problem appears to be out of control, a deviancy amplification spiral is created. The "default position of public opinion is hysteria, ignorance and prejudice"[238]. "The newspapers, with only occasional partial lapses into decency, have acted upon a very simple principle: identify a fairly widespread prejudice, pander to it, inflame it, in the process misleading, actually lying to readers as far as can safely be done"[239]. Newspapers after all are business enterprises sensational stories relating to crime and terrorism sell newspapers and will make a profit.

It is within the government's power to legislate on this issue "to halt the dissemination of propaganda which is intended to provoke hatred and violence"[240]. It is however unlikely that any government would do so. Politicians

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[234] Gareth Mulvey, "When Policy Creates Politics: the Problematizing of Immigration and the Consequences for Refugee Integration in the UK." *Journal of Refugee Studies* 23, no. 4 (November 2010): 443.

[235] Sally Peberdy, *Selecting Immigrants; National Identity and South Africa's Immigration Policies 1910-2008* (Johannesburg:WITS University Press, 2009), 158.

[236]Bleich quoted in, Gareth Mulvey, "When Policy Creates Politics: the Problematizing of Immigration and the Consequences for Refugee Integration in the UK. "*Journal of Refugee Studies* 23, no. 4 (November 2010): 445.

[237] Ransford Danso and David A. McDonald "Writing Xenophobia: Immigration and the Print Media in Post-apartheid South Africa" *Africa Today* :116.

[238]Randal and Hanson quoted in, Sarah Spencer, *The Politics of Migration, managing Opportunity, Conflict and Change (*Blackwell publishing, 2003), 31.

[239]Michael Dummett, *On Migration and Refugees; Thinking in Action* (Routledge, 2001),3.

[240] Jeff Crisp, "Forced Displacement in Africa: Dimension, difficulties and Policy Directions" Refugee Survey Quarterly 29, no. 3, (2010): 11

have been equally involved in the 'creation of this crisis' and many have close ties and alliances within the press. Even where this is not the case it may still be in their interests on this particular issue not to become involved. It is also seen as a fundamental freedom in a democratic country such as South Africa and the UK to have a press free from government control and intervention. Governments may well play a central role in controlling information but they do not wish to be seen to be doing so.

Civil Society Organisations

Freeman believes immigration policy is based on 'client politics'[241]. Key civil society organisations have been instrumental in shaping and influencing the asylum system, key players in this policy area including business representatives and groups who represent powerful ethnic minorities. These have a considerable interest in maintaining and protecting immigrant workers and sources of cheap labour. These insiders have the 'ear of the government' and excerpt considerable influence over decision makers due to their key strategic position in the economy. Immigration policies are kept liberal which protects their self-interest. These groups are well organised and funded and are therefore able to lobby government effectively. Their opinions and ideas hold more weight than those of mass, disorganised working class.

While this link between powerful interest groups may serve legal economic immigrants well it is unlikely that these powerful interest groups will be particularly interested in the fate of asylum seekers. If there was an obvious threat to their economic interests or a political motivation for protecting their assets that might lead to them acting as advocates for asylum seekers? It is however rare that the interests of this vulnerable group will coincide with those of big business.

Pluralists would state that CSOs have been influential in other ways. CSO's organisations were heavily involved in the framing of the Refugee Act 98 in South Africa and again were instrumental in the show of strength and support for

[241]Sarah Spencer, T*he Politics of Migration, managing Opportunity, Conflict and Change* (Blackwell publishing, 2003), 68.

civil society after the 2008 xenophobic attacks[242]. Organisations such as Amnesty, UNHCR, the Refugee Council, Lawyers for Human Rights and Black Sash play a central role in informing and educating the debate and ensuring the public maintains an interest in refugee protection this demonstrates the true nature of a pluralist society. If business maintains pressure for labour migration it is difficult for government to impose further restrictions on asylum when CSOs continue to highlight their plight. While CSOs almost certainly do not frame the debate on asylum they do play an important role in highlighting the plight of asylum seekers and publicising injustices and problems with the system and with potential government actions and proposals.

It can be argued that dominant party system of South Africa ensures the ANC government has control of the state is suffocating civil society, by "reducing the democratic space and blurring the line between the party and the state"[243]. Thus reducing accountability and increasing corruption. It can be argued that in the UK pluralism does not exist either as it is those pressure groups controlled by the political elite that dominate the political system, those that represent the rich and the powerful, for example the CBI are the ones with real political and economic clout. "British policy is shaped by 'racist public' not civil society, these in turn sanctioned by state and exec actors"[244].

Conclusions; Manipulating Public Opinion

Information on asylum is important as the majority of South African and British citizens have never met an asylum seeker and their opinions are informed by television, radio, the press and hearsay. While excellent information is available from charities and NGO's this is rarely seen as newsworthy. Sensational and often unrepresentative stories connecting asylum to crime and terrorism often are what hits the headlines and informs the public debate. The use and misuse of language is confusing and often incorrect. The resulting nexus between

[242] David Everatt, ed, "Xenophobia, Civil Society and South Africa." *Politikon* 38, no. 1 (2011): 2.

[243]Southall 1998, Adam 1999 , Lodge 1999, quoted in, Reddy Thiven, "ANC Decline, Social Mobilization and Political Society: Understanding South Africa's Evolving Political Culture," *Politikon* 37, no. 2/3 (December 2010): 194.

[244]Sarah Spencer, *The Politics of Migration, managing Opportunity, Conflict and* Change (Blackwell publishing, 2003),59.

immigration and asylum has created confusion and has led to negative public opinion that views asylum as a problem.

This nexus in the UK has also caused confusion as to the scale of this 'problem'. The public may perceive asylum as a problem but have little idea as to how many asylum seekers are entering the country. Estimates are generally hugely inflated and are fuelled by the inaccurate statistics given within the media. The numbers of legal migrants in the UK since 2005 far outweighs the number of asylum seekers since 2005. It is not possible for the 23,610 asylum seekers that filed claims in 2006 to 'flood' a nation of 60 million[245]. Although the number of legal migrants is much more significant there has been less of a public debate as to the merits of European Union migration. This may be a strong indication that the elite are indeed shaping the debate as these migrants are seen as essential for economic growth.

In South Africa the messages delivered by the ANC are indeed confusing, publically they denounce xenophobia and condemn violence yet at the same time they wish to be seen to be taking action against the 'problem' of irregular migration. This action is the massive number of visible deportations within impoverished communities. Their actions are helping to define 'foreigners' as the problem they are tackling. The relationship between government actions and public opinion is a complex one and one that given time I would have liked to have examined further.

Policy in the area of asylum is not purely aimed at solving a 'problem' or addressing a specific issue but is shaped by the politics surrounding the issue. Governments actions are therefore not based on rational choice motivations and the consequences are often different from those intended. One good example of this would be the use of 'targets' in reducing the number of asylum applications. Setting limits is symbolic action and is a reaction to public pressure for action; it will not solve nor address the issue. Targets are not only against many of the

[245] See fig. 6.

humanitarian commitments made by governments, they are also "…ludicrous. It is something over which we have no control"[246].

[246] Neil Gerrard member of Home Affairs Select committee discussing immigration policies from 1993 -2008 (Hansard 26 February 2003 Col 82WH) quoted in Gareth Mulvey, "When Policy Creates Politics: the Problematizing of Immigration and the Consequences for Refugee Integration in the UK." *Journal of Refugee Studies* 23, no. 4 (November 2010): 439.

Chapter 5 The 'threat' posed by asylum: the Criminalisation and Securitization of the debate

Introduction

Classical international relations theory viewed a 'threat' as something that threatened state sovereignty. These 'threats' were tackled using intelligence and military action. More modern theorists such as Jef Huysmans have broadened the definition of a 'threat' to adapt to a world with new challenges such as mass migration, globalisation, urbanisation, a deterioration of life in cities, growing inequalities and growing xenophobia and racist movements[247].

The changing nature of what is a 'threat' illustrates that security is a social construct; it changes over time and from place to place. The 'threats' in the UK are different to those in South Africa. In both South Africa and the UK asylum has been labelled a 'threat' and has moved up the political agenda, tackling the 'problem' or being seen to tackle the 'problem' has been important to both governments. Deterrence measures aimed at stopping immigration, monitoring immigrants and increasing security at borders have been linked with the issue of asylum and have had a significant impact upon the lives asylum seekers. Asylum has moved up the political agenda. In both countries asylum seekers have been criminalised, however this has been far more apparent in South Africa with the heavy involvement of SAPS in the policing of asylum system. More important in the UK has been the connections made between security and asylum. Unjustified to a large extent the link between asylum and terrorism has had a dramatic impact on the lives of many asylum seekers in the UK. Common in both countries has been the negative impact of the security / immigration nexus on social cohesion.

Having defined securitization I will look at how the security / immigration nexus has been created and how the 'illegal' entry of asylum seekers has helped label them as a security issue. I will look at the impact of terrorism and specifically the so called 'Global War on Terror' and deterrence measures that were implemented because of it. I will then look at the criminalisation of asylum and specifically at

[247]Jef, Huysmans, "The European Union and the Securitization of Migration" *Journal of Common Market Studies* 38, no.5 (2000):753.

the how the police tactics in South Africa have aimed to deter irregular migrants but have in fact threatened social cohesion and contributed to the rise in xenophobia. Finally I will examine the criminalisation of asylum claimants and their treatment by looking at the three D's, dispersal, detention and deportation.

The Creation of the Security / Immigration Nexus

The creation of a nexus links two issues together; I have already discussed the asylum / immigration nexus, but another exists; the securitization/ immigration nexus. This nexus has been particularly damaging to asylum seekers.

Major 'threats' to security such as crime and terrorism are most effectively tackled by covert government actions, such as surveillance and the gathering of intelligence. These measures do not however serve to reassure the public that something is being done. The public must be reassured and the government must be seen to take action. A comparison can be made to visible policing; this is not the best means to catch criminals and detect crime, this is not in fact its purpose. The aim of this tactic is to alter the public's perception. Although it has little real impact on levels of crime it has a real impact on 'fear of crime'. Symbolic highly visible actions are used in a similar way to reassure the public about 'threats.'

The creation of asylum as a security threat has been aided by fact they are often forced to cross borders illegally. Legal means of entry have virtually disappeared for all but the rich, skilled and privileged. The Convention does offer protection for asylum seekers even if their entry was 'illegal.' The view of government has been to treat illegal entry as a threat to national security, and therefore politicians would rather label asylum seekers as criminals than admit their fault in non-securing of the state borders. "Politicians can ill afford to concede their impotence by disabusing their citizenry of the illusion of control"[248]. To win elections governments must be seen as effective in maintaining strong state borders and eliminating 'threats'.

[248] Audrey Macklin, Audrey "The securitisation of dual citizenship; protecting security and human rights the case of migration in Canada" *Paper presented to the IRPP Symposium*, University of Toronto (2007):3.

"Whosoever has right to the end has the right to the means"[249]. Governments have used security as a means to gain legitimacy for tough legislation to control borders. National security is in fact the only limitation on the Conventions principle of non-refoulement, 'claw backs' exist which allow national governments to refuse entry to an asylum seeker, if they believe they will pose a significant risk to national security.

"Something is a security problem when the elite declare it to be so"[250]. The securitization of asylum has occurred by labelling asylum seekers as a 'threat' and creating a 'security' issue. Tony Blair the British Prime Minister on 4th October 2001, planted the seeds of fear that the asylum system was being abused and used by terrorists and stated new terrorism legislation "will increase our ability to exclude and remove those whom we suspect of terrorism and who are seeking to abuse our asylum procedures"[251]. Tony Blair's speech at the European Union in Brussels further linked the issues;" Many of the issues faced by government today such as terrorism, asylum, immigration and organised crime can be tackled most effectively….."[252] By sandwiching asylum in-between terrorism and organised crime it shows it is labelled as a problem in need of tackling! To tackle it may however come at a cost to individual civil liberties and freedoms. Asylum seekers and refugees, perhaps more than any other group have felt their 'rights' slipping away in the name of security.

The term 'asylum seeker' has become associated with a 'threats' the press have played a role in this but so have the political elite, one example comes from John Reid the UK Home Secretary in 2006, he claimed his department was not fit for purpose because of the individuals they deal with 'They are dysfunctional individuals many of them—criminals, asylum seekers, people who do not wish to

[249] Thomas Hobbes "Leviathan" Middlesex: Pelican, 1968, 32.

[250] Ole Waever, "Securitization and Desecuritization" in *On Security*, Ronnie D. Lipschultz, Ronnie D. (Columbia University Press, 1995), 50.

[251] Jef, Huysmans, "The European Union and the Securitization of Migration" *Journal of Common Market Studies* 38, no.5 (2000):768.

[252] Vicki Squire, Zig Layton-Henry, gen ed. and Daniele Joly, gen ed. *The Exclusionary Politics of Asylum; Migration Minorities and Citizenship* (Palgrave Macmillan, 2009), 63.

be subject to social control'[253]. Reid does not directly call asylum seekers criminals but the close association is made and he certainly labels them dysfunctional, this creates 'asylum seeker' as a symbolic term that reinforces negative connotations.

In South Africa the term 'foreigner' is often used in the same symbolic way and this alters the public's perception of the word, it no longer means a person from any territory outside South Africa. The term 'foreigner' is often used to lump together all immigrants and it is rarely used in a positive way. "Foreigners are often perceived to be taking away houses and jobs while bringing crime and drugs" the distinction between refugees and illegal immigrants is often seen as irrelevant when this is the prevailing view.

Terms such as 'foreigner' in South Africa and 'asylum seeker' in the UK become 'politically powerful signifiers' which have created immigration as a 'meta-issue' that is threatening the security of social cohesion, cultural and racial identity and the welfare state[254]. The terms gain meaning beyond their original purpose and are associated with 'threats' and the need for further security.

Terrorism

The 'threat' of terrorism has been the key factor in the securitization debate in the UK throughout the period studied. The nexus outlined above has linked asylum with this security issue, again to the detriment of refugee protection.

Global War on Terror (GWOT)

After the terrorist attacks on 9/11, asylum seekers in the United States and the UK have been viewed as potential terrorists. The attacks did not entirely create this link, but they definitely exacerbated it and led to a further securitization of the debate. Even though the bombers did not enter the United States as asylum seekers but on study visas, the 'threat' was linked to border security and the nexus linking immigration and asylum helped create this damaging association.

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[253]Gareth Mulvey, "When Policy Creates Politics: the Problematizing of Immigration and the Consequences for Refugee Integration in the UK." *Journal of Refugee Studies* 23, no. 4 (November 2010): 445.

[254]Huysmans, Jef. "The European Union and the Securitization of Migration" *Journal of Common Market Studies* 38, no.5 (2000):761.

The bombings that took place on 7th July 2005 in London killed 52 people and injured a further 770, this again "gave an extra impetus to the securitization of migration policy discourse"[255]. This example even more than the 9/11 attacks shows the real disconnection between security and asylum. Those responsible for the London bombings were not asylum seekers, immigrants or even foreign nations but were 'home grown' British terrorists. They were raised in the north of England as UK citizens. So although this case heightened worries about the strength of British borders there was actually no real connection with the issue of asylum or even immigration. This example demonstrates the strength of the nexus and that security depends on the controlling of 'others' within society.

One visible way of controlling the threat from 'others' is tackling asylum, this symbolic action is a visible sign that action is being taken by government. Politicians have done little to sever this link between security, crime and asylum. Despite the positive rhetoric about immigration contained in the manifestos of the Conservative Party in 2010 and the ANC in 2009. Statements maintaining the link between the issues, including previously stated examples from Blair and Reid and Buthelezi clearly demonstrate this, the message that asylum seekers are to be feared is reinforced. The message given is "criminals are aliens, aliens are criminals and that if we could just get rid of the foreigners among us we will resolve the crime wave[256].

The problem with this link is there is no real evidence that asylum seekers are any more likely to be terrorists. In fact the opposite may be true; asylum seekers by filing a claim automatically put themselves on the authorities system. Being consistently monitored and having their stories checked is unlikely to be a desirable outcome for a potential terrorist.

Although terrorism has a bigger impact on the securitization debate in the UK, it has still been a factor in South Africa. International terrorism was seen as a real

[255] Hampshire and Shamit Saggar 2006

[256] Jonathan Crush, ed. *Beyond Control: Immigration and Human Rights in a Democratic Sa* (San Migration Project, 1998), 151.

danger before and during the Football World Cup in 2010. The movement control system was one example of an added security measure put in place to ensure the global event ran smoothly. Terrorism does exist in South Africa, in 1998 in the Western Cape there were 567 attacks. These domestic attacks were linked to crime and were labelled 'urban' terrorism[257]. Many of the reasons given for the attacks were linked to poverty, crime, gangs and drugs and the solutions implemented were crime rather than terrorist prevention measures. South Africa does have an 'arsenal' of terrorist legislation, but it has not tended to impact on asylum seekers and immigrants in the same way as UK legislation.

The link between asylum seekers and terrorism does not exist in the same way in South Africa as it does in the UK. Mbeki compared the invasion of Iraq to force feeding someone on hunger strike[258]. He consistently distanced himself from the 'Global war on terror' and this stand has perhaps meant South Africa is not a 'target' for international terrorism in the same way the UK has been.

Securitization threatens Social Cohesion and the breakdown of Multiculturalism in the UK

The creation of 'others' and the contamination discourse of exclusionary politics around immigration have been impossible to reconcile with the Human Rights, diversity and inclusively agendas[259]. The securitization of immigration has had an impact on the traditionally liberal democracy in the UK. Multiculturalism has long been heralded as a system that enables and encourages cultural distinctions and promotes the values of equality and encourages diversity and tolerance of different cultures. Its merits have been questioned in light of these new 'threats'.

The nexus created by the press and politicians strengthened the link between immigration and security. The 2001 Cantle Report, questioned the premise of Multiculturalism, stating it leads to segregated communities. It was particularly

[257] Martin Schönteich. "South Africa's arsenal of terrorism legislation" *African Security Review* 9, no.2 (2000) http://www.iss.co.za/pubs/ASR/9No2/Schonteich.html

[258] "A Nation at War: South Africa; Iraq War Sets Bad Precedent, Mbeki Warns" *New York Times*, last modified April 8, 2003. http://www.nytimes.com/2003/04/08/world/a-nation-at-war-south-africa-iraq-war-sets-bad-precedent-mbeki-warns.html.

[259] Sally Peberdy, *Selecting Immigrants; National Identity and South Africa's Immigration Policies 1910- 2008* (Johannesburg:WITS University Press, 2009), 162.

British Muslim communities that were accused of this lack of integration and of holding different 'values' from mainstream British society. Rioting in Burnley, Bradford and Oldham in this same year also increased fears and led to further discussions about the breakdown of social cohesion.

Those traditionally supportive of the concept of multiculturalism began to question its value. In 2004 Trevor Philips the Chair of the Equality and Human Rights Commission stated that Britain must move on from its '80's style multiculturalists policies.' His words 'unleashed a passionate argument both at home and abroad'[260]. Even left wing columnists such as Polly Toynbee and Hugo Young in the Guardian started to question multiculturalism as a concept. Toynbee stating that certain immigrant cultures did not support 'British' values and they must be challenged, "the most dangerous divide now is in culture - and that means Muslim"[261]. She was also quite specific which culture she was talking about, Britain's 1.6 million Muslims[262]. David Blunkett said that non-integration of minority groups had led to Britain being a 'coiled spring'[263], the elite feared social disintegration.

As a means to promote 'British values' and social cohesion citizenship education was introduced onto the national curriculum in 2002, this included elements of 'Britishness,' British teachers (including myself) struggled to interpret what this meant. The issue of integration remained on the political agenda as in 2006 Jack Straw (previous Home Secretary) made comments about young British Asians unwillingness to 'integrate' into British society, describing the wearing of the veil as a 'barrier'[264].

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[260]"*Multiculturalism's legacy is 'have a nice day' racism*" *The Guardian*, last modified May 28, 2004. http://www.guardian.co.uk/society/2004/may/28/equality.raceintheuk

[261]"Why Trevor is right" *The Guardian*, last modified April 7, 2004. http://www.guardian.co.uk/politics/2004/apr/07/society.immigration.

[262] "Muslims in Europe; Country Guide" *BBC*, http://news.bbc.co.uk/2/hi/europe/4385768.stm.

[263]New Statesman , January 27, 2003 quoted in, Gareth Mulvey, "When Policy Creates Politics: the Problematizing of Immigration and the Consequences for Refugee Integration in the UK." *Journal of Refugee Studies* 23, no. 4 (November 2010): 448.

[264]"Straw's veil comments spark anger" *BBC*, last modified October 5, 2006. http://news.bbc.co.uk/2/hi/5410472.stm.

British Prime Minister David Cameron joined this debate and launching a devastating attack on 30 years of multiculturalism in Britain[265]. It would be difficult to separate Cameron's open attack on the values of multiculturalism from the issues of immigration and asylum. Much of the debate on the 'failure' of multiculturalism has been on how Britain's immigrant populations have failed to assimilate and integrate into mainstream British culture and pose a 'threat' to British identity.

The backlash against multiculturalism was taken up by the right wing who did not just demand integration but assimilation. The extreme right including the British Nationalist Party did have some success in council elections especially in the north of England, for example in Halifax in 2003. The targeting of British Muslims as a threat was reinforced by the popular press, which often printed stories linking Muslims to the terrorist threat[266]. Islamaphobia is an increasing problem in the UK, perhaps this increased suspicion is evident in police stop and search figures for young Asian males which are six times higher than those of white British males[267].

From 2005 onwards large numbers of European immigrants were entering the UK in 2006, 235,000 compared to a mere 23,610 asylum seekers. There has been in the UK an Europeanization of migration policies. Differences between member states have been played down, language and history proving to be less important than ethnicity and race. Asylum seekers although they were are only six per cent of those entering the UK are culturally and often ethnically different. The Single European Act made movement within the European Union much easier and created 'us' as Europeans and 'them' are others[268].

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[265]Oliver Wright and Jerome Taylor, "Cameron; My war on Multiculturalism," *The Independent*, February, 5, 2011. http://www.independent.co.uk/news/uk/politics/cameron-my-war-on-multiculturalism-2205074.html.

[266]Matthew Hickley,"Most Britons feel threatened by Islam" *Daily Mail*, August 25, 2006. http://www.dailymail.co.uk/news/article-402234/Most-Britons-feel-threatened-Islam.html.

[267] Mark Townsend "Black people are 26 times more likely than whites to face stop and search" *The Guardian* October 17, 2010. http://www.guardian.co.uk/uk/2010/oct/17/stop-and-search-race-figures

[268] See fig.7.

Criminalisation how Policing in South Africa led to the breakdown of social cohesion and the increase of xenophobia

The 'policing' of asylum is the responsibility of the specialised United Kingdom Border Agency (UKBA) and Immigration Officers who are under the remit of the Home Office. There is no equivalent in South Africa. SAPS are responsible for the detection and removal of those who enter the country illegally or those who cannot produce the correct paperwork, through their involvement and tactics they have been instrumental in the creation of asylum seekers and 'foreigners' as a security 'threat'. Landau suggests that the huge number of deportations and the hours spent questioning, arresting and detaining foreigners shows "more than a mild interest in immigration control." The police have played a huge part in the criminalisation of asylum in South Africa[269].

The new constitution of 1996 united South Africa in its diversity, the so called 'rainbow nation'. In the creation of a new South African identity and race was no longer to be the main identifying factor but was to be replaced by 'citizenship,' South Africa is for all that live there. The 'threat' was perceived as 'outsiders' who had not been part of the long road to freedom and were not equally deserving of the 'better life for all' promised by the ANC government[270].

In the early years of the ANC government the National Crime Strategy was created and designed to see policing move away from the military style tactics used by the Apartheid regime. A multi- agency approach was envisioned to help tackle the causes of crime across government departments. Welfare, health, housing and transport, were all to be involved in crime detection. The strategy proved to be 'stillborn,' as departments struggled to deliver their primary remits, let alone begin the new task of tackling crime[271]. The task fell to SAPS whose remit grew to include tackling the causes of crime and community policing. This increase in powers, inadequate funding and training led to endemic corruption in

[269]Loren Landau, ed. *Exercising the Demons Within; Xenophobia, Violence and Statecraft in Contemporary South Africa* (Johannesburg, 2011), 3.

[270] Jonny Steinberg, "Security and Disappointment; Policing, Freedom and Xenophobia in South Africa" *British Journal of Criminology* (24 Aug 2011):355. doi:10.1093/bjc/azr069.

[271] Ibid.359.

SAPS. This in turn led to a growing deep distrust of the police service which is already to be found in South Africa's sociological, historical and political past[272].

In crime ridden communities it was often felt that the police were not doing enough, due to poor community relations police officers were often unwilling to intervene if they were outnumbered. High visibility and high density policing were again used as a visible sign that the police were doing something to manage the 'threats' to the community this was a return to military style policing. This involved tackling 'criminal elements,' tactics such as cordoning off areas and searching them often led to large numbers of undocumented migrants being led away. Operation Crackdown was one such example, launched in 2000 by SAPS and National Intelligence Agency it was a three year crime blitz. Areas predominately inhabited by black foreigners were raided and 5,800 irregular migrants were taken to a secure holding facility[273]. There are numerous other examples such as Operation Go Back Home which happened in Alexandra Township in 2002. Streets were cordoned off in order to check documents and police asked questions such as 'yini le?!'—'what is this?!' while pointing, to a part body part this was to check the origin and language of a person. People were also examined for visible immunisation marks, which were another indication that the person was a 'foreigner,' these were all familiar practices to settlement and township dwellers. These military style police tactics aimed at deterring irregular migrants have severely damaged social cohesion within these communities.

These same techniques of checking for 'foreigners' were evident in the xenophobic attacks of 2008, the reasons for the attacks are complex but it is clear that the rhetoric used by politicians and the police tactics went a long way to label 'foreigners' as the problem. Threatening poverty ridden communities frustrated by promises of 'a better life for all'[274]. At a community meeting in Alexandra in 2008 residents decided that the police were not doing enough tackle the 'threats.' Some took matters into their own hands, using the states language and singing anti-

[272]Jonny Steinberg, "Security and Disappointment; Policing, Freedom and Xenophobia in South Africa" *British Journal of Criminology* (24 Aug 2011):359. doi:10.1093/bjc/azr069..

[273] G. Burton Joseph, "The Refugee Regime in South Africa," in Zonke Majodina, *The Challenge of Forced Migration in Southern Africa*. (African Institute of South Africa, 2001)

[274]Jonny Steinberg, "Security and Disappointment; Policing, Freedom and Xenophobia in South Africa" *British Journal of Criminology* (24 Aug 2011):355. doi:10.1093/bjc/azr069.

apartheid songs replacing anti-government lyrics with those of hatred towards 'foreigners.' This was to be the start of the xenophobic attacks of 2008, President Mbeki called the attacks 'naked criminal activity' but the targeting of foreigners points to xenophobia, in part fuelled by his own government's actions.

Despite some of the most liberal legislation in the world discrimination and police corruption is still a major issue in South Africa, the stop and search of 'foreigners' and the confiscation of documents, arrest and deportation without reference to constitutional rights is well documented and widespread.

The Criminalisation of Asylum Seekers

The criminalisation of asylum has occurred in the UK and more prominently in South Africa. It would be naïve to believe that asylum seekers do not commit crime, but there is little real evidence to link a raise in crime to increased numbers of refugees, nor has the huge number or deportations in South Africa had any impact on the crime statistics. There are of course well publicised incidents where war criminals have successfully managed to claim asylum, for example war criminals from Uganda and Sudan[275]. Those who have committed crimes against humanity or war crimes must not be allowed to seek asylum and must be pursued and tried. Although rare these cases are considered 'newsworthy' and gain high levels of media exposure. It is far more likely and there is more evidence to suggest that asylum seekers due to their vulnerable position within society are far more likely to be the victims of crimes, this however is not newsworthy[276].

The impact of government control measures meant to deter illegal migrants such as limitations on accessing services and restrictions on working may in actually lead to more asylum seekers getting involved in the 'black market' and other criminal activities such as begging and prostitution. Control measures have

[275]Louise Pirouet, *Whatever Happened to Asylum in Britain; a Tale of Two Walls* (Berghau Books, 2001), 46.

[276] Waller Lyndith, "Irregular Migration to South Africa During the First 10 years of Democracy." *Migration Policy Brief Number 19*, Southern African Migration Project (2006):7

hindered asylum seekers ability to be self-sufficient and have led to a self-fulfilling prophecy as some become involved in crime to prevent destitution[277].

Measures such as finger printing, form filling, being checked and entered on databases, being interviewed and questioned on arrival and being constantly monitored may not make someone feel they have reached 'asylum'. In addition to these measures Bloch and Schuster (2005) stated that the criminalisation process took the form of a three pronged attack, detention, dispersal and deportation[278].

Dispersal

In South Africa asylum seekers are free to live where they wish, however the asylum reception centres where all asylum seekers must register are located in only seven locations throughout the country thereby limiting dispersal.

In the UK the Immigration and Asylum Act 1999 enforced dispersal of asylum seekers throughout the country, this was done by only offering social housing in particular areas. They were often sent to socially deprived and poverty ridden areas with little or no prior experience of living with asylum seekers. The impact has been a number of cases of racial attacks and even murders occurred in Glasgow, Southampton and Norwich. NIMBY (not in my back yard) groups grew up around respective asylum centres that were to be built around the country including the one in Throckmorton, Worcestershire. Not only did dispersal cause tension and undermine social cohesion it also removed asylum seekers from support networks they may have had elsewhere within the country again encouraged state dependency.

Detention

The extensive use of detention and later removal has been used as a deterrent for those entering South Africa illegally. Lindela just outside Johannesburg is the largest deportation centre of its kind in South Africa where undocumented immigrants await deportation. The institution is privately run and came under

[277] Sarah Spencer, *The Politics of Migration, managing Opportunity, Conflict and Change* (Blackwell publishing, 2003)

[278] Alice Bloch and Liza Schuster, "Asylum and Welfare: Contemporary Issues." *Critical Social Policy*, 22, (2002): 393-414. doi: 10.1177/026101830202200302.

heavy criticism after a government report in 2000. Detention was often arbitrary and was based on discriminatory practices, on what it calls the misplaced 'human deterrent policy'[279]. The 1998 Human Rights Watch report stated that 20% of the detainees in Lindela were actually South African citizens[280]. Levels of xenophobia were high and many officials had 'callous' attitudes towards detainees. The overall picture of overcrowding, mistreatment and miscarriages of justice demonstrates the criminalisation of asylum seekers within this institution. While the report was made public and highlighted the appalling conditions little seems to have changed since according to Lawyers for Human Rights, who regularly visit the centre, they say the institute operates "in secrecy and with impunity"[281]. Little progress has been made with the widespread "failure to adhere to laws, and to implement court orders, upholding the rights of detainees in accordance with these laws, has set the stage for abuse"[282]. Again in South Africa the reality if a far cry from law on refugee protection.

In the UK numbers of asylum seekers detained has increased from 1,000 in 1998 to almost 4,000 by 2009. The government have sought to detain from end to end, from the asylum application being filed until the decision is made and asylum is granted or declined. The impact of this has been to denying those asylum seekers awaiting decisions liberty. Although this detention is illegal under the Convention, the government have bypassed this by calling them 'reception' centres. There have also been a number of high profile disturbances and riots at detention centres within the UK "In 2002, the detention centre at Yarl's Wood in Bedfordshire was burned down within three months of opening, costing the government £80,000,000. In July 2004 Britain's biggest detention centre, Harmondsworth, near Heathrow, suffered a riot which caused a fire that created £5,000,000 worth

[279]"Lindela at the Crossroads for Detention and Repatriation, an assessment of the conditions of detention" *South African Human Rights Commission* (Dec 2000):2. www.info.gov.za/view/DownloadFileAction?id=70338

[280]Lawyers for Human Rights "Monitoring Immigration Detention in South Africa" (Sept 2010):42. http://www.lHuman rights.org.za/sites/lHuman rights.org.za/files/LHUMAN RIGHTS_2010_Detention_Report.pdf.

[281] "Groups want answers on rights abuse claims" *News24*. http://www.news24.com/SouthAfrica/News/Groups-want-answers-on-rights-abuse-claims-20120612

[282] Lawyers for Human Rights "Monitoring Immigration Detention in South Africa" (Sept 2010):26. http://www.lHuman rights.org.za/sites/lHuman rights.org.za/files/LHUMAN RIGHTS_2010_Detention_Report.pdf

of damage[283]. The UK is also one of the only countries in the world that detains children; a high profile campaign does however seem likely to succeed in ending this practice.

Deportation

Deportation is a significant migration management tool used to deter illegal immigrants used extensively by the South African government. The numbers of deportations far outweighs the number of asylum claims and dwarfs the number of legal immigrants entering South Africa[284]. These ever increasing and large numbers of deportations show that while legislation may be liberal, police tactics are not. Since 1994, South Africa has deported 1.7 million undocumented migrants to neighbouring states such as Mozambique, Zimbabwe, and Lesotho. In 2007 alone, 300,000 migrants were arrested and deported[285].

Deportations allow the government to 'act like a state' often creating theatrical displays of impressive power[286]. There is however no evidence to suggest there is a connection between the number of deportations and crime statistics, as a security measure deportation is wholly unsuccessful. Its purpose may well be to appease public opinion but the result may be to damage social cohesion. Deportation in South Africa may well be more of a political tool than a real way to tackle irregular migration. "When the police round up foreign nationals before an audience of the urban poor, what they are essentially doing is managing disappointment"[287].

Deportations in the UK are much less significant and numbers are relatively small. The UKBA has recently carried out a number of enforced returns, these have proved to be controversial and have including Iraqi asylum seekers, who

[283] Clements L.M. "Asylum in Crisis, An assessment of UK Asylum law and policy since 2002: Fear of Terrorism or Economic Efficiency*?" Web Journal of Current Legal Issues*. http://webjcli.ncl.ac.uk/2007/issue3/clements3.html.

[284] Comparing fig.2 and fig.4.

[285] Loren Landau, ed. *Exercising the Demons Within; Xenophobia, Violence and Statecraft in Contemporary South Africa* (Johannesburg, 2011), 3.

[286] Jonny Steinberg, "Security and Disappointment; Policing, Freedom and Xenophobia in South Africa" British Journal of Criminology (Aug 24, 2011):356. doi:10.1093/bjc/azr069.

[287] Jonny Steinberg, "Security and Disappointment; Policing, Freedom and Xenophobia in South African" *British Journal of Criminology*(Aug 24, 2011):357. doi:10.1093/bjc/azr069.

have been flown back to Baghdad despite the UNHCR's view that it was not sufficiently safe[288]. The impact of this refoulment could be placing a life in danger.

Conclusions; The impact of the securitization of the asylum

In this chapter more than any other South Africa and the United Kingdom appear to be very different. While this is true there a number of key similarities in the treatment of asylum seekers in both countries. The first is the creation of a security/ immigration nexus which has labelled illegal immigrants as a 'threat'. Governments have failed to distinguish asylum seekers from illegal immigrants and at times they have perpetuated this link within the public's perception. Securitization has negatively affected public opinion in both the UK and South Africa and the impact upon the treatment of asylum seekers has also been huge. The connection and fears created around asylum have led to reactive symbolic actions from governments wishing to be seen to tackle 'threats', even if there is no real evidence to directly link asylum to terrorism or crime. If anything the symbolic actions of government may actually push asylum seekers into crime and this may further perpetuate this link.

Asylum seekers and foreigners have often been blamed and scapegoated for criminal and terrorist activities as well as wider societal problems. To eliminate 'threats' such as crime, unemployment, education failures, healthcare provision and housing is costly and complex, governments cannot solve them quickly and easily. It is no wonder Crawley views immigration is a 'touchstone' issue which demonstrates a wider dissatisfaction within society[289]. If scapegoats are blamed for these issues governments feel more able to show their strength in tackling the 'threat' they pose, rather than tackling the real economic and development issues at the core of the problem.

[288]"Public Opinion and Public Policy: Complexities of the Democratic Mandate." The Migration Observatory at the University of Oxford, last modified March 29, 2011, 2.

[289] Gareth Mulvey, "When Policy Creates Politics: the Problematizing of Immigration and the Consequences for Refugee Integration in the UK." *Journal of Refugee Studies* 23, no. 4 (November 2010): 450.

The fear of 'others' and suspicion created cannot lead to integration and good community relations, the two are incompatible. In both South Africa and the UK social cohesion has been damaged by the security / immigration nexus. In South Africa the actions and involvement of SAPS in immigration control is distinct from the UK in its impact scale and violence. Police tactics of stop and search and rounding up irregular migrants has perpetuated the idea that 'foreigners' threaten society. The 'threat' of crime and competition for scarce resources is very real for those living in poverty in townships and settlements. The link between economic factors and securitization is particularly strong in South Africa where economic growth through reconstruction and development has been the key government focus. Suspicion, anger and fears that 'foreigners' are 'threatening' this aim can quickly turn to violence if governments are not seen to be acting on public concerns. The public may 'take the law into their own hands' and xenophobic violence may follow, as it did in the Johannesburg xenophobic attacks in 2008[290].

The nexus has been created linking terrorism to asylum and has impacted upon public opinion. In the UK security involves maintaining sovereignty and securing borders. Threats have taken on a new dimension with the emergence of global terrorism and the UK involvement in the GWOT. Advancements in communications and technology have increased fears of the ever more devastating attack, as witnessed on 9/11 and on July 7th 2005 in London. The nexus created has impacted on the debate about social cohesion, culture, identity, multiculturalism and British Muslims. The 2002 Nationality Immigration and Asylum Act was in large part a reactive piece of legislation and has had a massive impact upon the treatment of on asylum seekers and public opinion about them. When governments use immigration policies as a means to tackle terrorism, it feeds populist public fears. David Blunkett spoke of his fears "I'm worried about

[290] Jonny Steinberg, "Security and Disappointment; Policing, Freedom and Xenophobia in South Africa" *British Journal of Criminology* (24 Aug 2011):347. doi:10.1093/bjc/azr069.

tension and frustration spilling over into the disintegration of community relations"[291].

[291] Clements L.M. "Asylum in Crisis, An assessment of UK Asylum law and policy since 2002: Fear of Terrorism or Economic Efficiency*?" Web Journal of Current Legal Issues*. http://webjcli.ncl.ac.uk/2007/issue3/clements3.html.

SECTION 3 DETERING ASYLUM APPLICATIONS THROUGH THE BUREAUCRACTIC PROCESS

Chapter 6 Managing the Bureaucracy; The Asylum System

Introduction

"Adequate legislation is not enough if there is neither the will nor the capacity to implement it correctly"[292]. There is a huge difference between the statute book and reality. Government actions have created and shaped the asylum system of the UK and South Africa. In the case of asylum the lofty ideals of the Convention at times bear little relationship to the decisions being made by bureaucrats and the difficulties faced by a system that is overwhelmed and ill equipped to cope with the sheer volume and diversity of applications.

An effective asylum system is one that is 'fit for purpose' the purpose being, the delivery of refugee protection and hospitality to the 'deserving' and the deterrence of unfounded claims. The system should be accessible, transparent, adequately funded, provide administrative justice and ensure adequate appeals procedures under which mistakes can be rectified. To measure whether the asylum system is fit for purpose, I will need to look at whether the applicants understand and can access the system and whether decisions are made within a reasonable time frame. The decisions must be just and fair and asylum seekers should receive administrative justice while those who make unfounded claims should be deterred and removed.

Government actions are not able to determine the number of asylum applications, global events including conflict, invasion, revolution, terrorist attacks and environmental disasters can create huge numbers of refugees and will impact dramatically upon the number of asylum claims made. The situation in Zimbabwe for example has had a major impact on the South African asylum system in recent years, creating huge numbers of asylum seekers, 149,500 in 2009 alone[293]. Government actions may seek to deter asylum applicants and set targets for the number of applications but this is beyond their control the bureaucracy will have

[292] Jeff Handmaker, Jeff, ed., Lee Anne, de la Hunt, ed., and Johathan, Klaaren, ed. *Human Rights in Context Volume 2: Advancing Refugee Protection in South Africa (*Berghanan Books, 2008), 89.

[293] See fig.1

little impact if there is a sudden influx of asylum seekers. In Zimbabwe the political, economic and social situation have deteriorated due to disputed elections, hyperinflation, and political violence and forced land reform. Many thousands have tried to flee poverty and political persecution. Often these people have little knowledge of the asylum system in South Africa and changes will have little impact on the actions of these desperate people fleeing intolerable circumstances.

The impact of government actions implemented through the asylum system can have the most serious impact on asylum seekers if administrative justice is not delivered. Bad decisions may lead to refoulement and claimants being returned to persecution and life threatening situations, if this were to happen an institutionalised humanitarian catastrophe would occur[294].

I will briefly examine the number of applications made to both the UK and South Africa and then examine how the two different bureaucracies are coping with the applications. I will argue that the British bureaucracy has been shaped by government actions and has played a part in the deterrence of applications. Whereas the system in South Africa has been unable to fulfil this role due to the sheer volume of applications it is trying to deal with.

The Volume of Applications

South Africa[295]

Prior to 2005 South Africa received the most asylum applications anywhere in the developing world. In 2005 South Africa becomes the "the main destination for new asylum seekers" in the world[296]. Only in 2007 did the United States receive more applications and have a bigger backlog of undecided claims than South Africa. Since 2007 South Africa has consistently had the most claims and the

[294] Gerry Simpson "Time for South Africa to help its Zimbabwean neighbours" *Mail and Guardian*. Last modified June 20, 2008. http://mg.co.za/article/2008-06-20-time-for-Southafrica-to-help-its-zimbabwean-neighbours/.

[295] See fig. 2.

[296] UNHCR Statistical Yearbook "Trends in Displacement, Protection and Solutions" 2005. http://www.unhcr.org/pages/4a02afce6.html

greatest backlog of undecided cases[297]. By 2009 South Africa's asylum burden has far outweighed any other nations, having received almost as many applications as all 27 countries in the European Union put together, and five times as many applications as the second biggest receiving nation the United States[298]. The huge increase in the number of Zimbabwean's claiming asylum accounts for this dramatic rise as nine tenths of Zimbabwean asylum seekers lodge claims in South Africa. Of the claims made in 2009 two thirds came from Zimbabweans.

Recognition rates or those granted refugee status in South Africa have decreased dramatically, the figure in 2011 is two and a half times less than it was in 1994-1997[299]. Recognition rates peaked at 79%, in 2004 and then steadily decreased until 2006 rising again in 2007 and have remained consistently low since 2008[300]. In South Africa when asylum applications are high, recognition rates are low. Recognition rates appear to have been used as a method of deterring applications.

United Kingdom

The number of applications reached a high of 103,000 in 2002, and since this point have been in a steady decline until 2010 when the figures rose again for the first time in this decade. In 2004 the UK received the third most asylum applications in the world, at this time more than South Africa; the backlog of undecided cases did however decrease by -59%. In 2005 and 2007 the UK was the fifth biggest asylum receiving country back up to forth in 2008 and 2009 and down to sixth in 2010 and seventh in 2011. The backlog of cases reached a peak in 1999 when it exceeded the number of applications but since this point has been well below the number of applications and has been falling along with the application numbers.

In the UK there appears to be little relationship between the recognition rate and the number of applications, as the rate has fluxuated despite a declining number of

[297] UNHCR Statistical Yearbook "Trends in Displacement, Protection and Solutions" 2007-2009. http://www.unhcr.org/pages/4a02afce6.html

[298] UNHCR Statistical Yearbook "Trends in Displacement, Protection and Solutions" 2009. http://www.unhcr.org/pages/4a02afce6.html.

[299] Sally Peberdy, *Selecting Immigrants; National Identity and South Africa's Immigration Policies 1910- 2008* (Johannesburg: WITS University Press, 2009), 148.

[300] See fig. 6.

applications since 2003. In 2002 when the number of applications peaked, the UK dealt with this by granting more claimants, humanitarian leave to remain 41%, only approximately 12% were granted refugee status. More applicants are granted humanitarian leave to remain than refugee status, from 2004 there appears to be a consistent difference of 10% between the figures.

The Bureaucracy

According to proponents of the bureaucratic politics model bureaucracies are not neutral they often have their own political agenda. For example Birrell stated that the Australian Department of Immigration "has never been just a passive arm of Government, faithfully implementing Government policy"[301]. The implementation and application of legislation is often one of the most important factors in its impact and success. The bureaucrats are those at the 'coal face' making decisions and shaping the asylum system. In recent years this is an accurate description of theUKBA, and the UK asylum system. As the number of applications it receives has decreased and the backlog has been brought under control there has been more scope for them to have more autonomy in the decision making process.

Roni Amit believes that far from shaping the asylum system bureaucrats in the South African system are in actual fact overwhelmed by the sheer volume of decisions and their immense workload. Formulaic decision making, lack of funding and training plus the ever increasing pressure to meet targets leads to bureaucrats reacting to rather than shaping the asylum process.

The bureaucracies of South Africa and the UK have been heavily criticised and at times both have proved to be 'ineffective'. Application of the system has at times been criticised as being haphazard, ad hoc and arbitrary and by no means transparent[302]. The South African system has faced huge additional pressures, as South Africa is still a developing nation the system has not been adequately funded and has been unable to deal effectively with the huge volume of applications. Challenging bad decisions has also been virtually impossible, as

[301]Birrel, 1981, quoted in Eytan Meyers, "Theories of International Immigration Policy – A Comparative Analysis." *International Migration Review* 34, no. 4 (winter 2000): 1261.

[302]Jonathan Crush, ed. Beyond Control: Immigration and Human Rights in a Democratic South Africa *South African Migration Project*, (1998), 149.

free legal representation is not available in South Africa (although on rare occasions this may be possible with the help of UNHCR or other NGOs). The UK system is by no means perfect but does have more funding and less applications and the fact it is older means that some of the same difficulties now faced by South Africa have had to be dealt with already in the UK; this is not to say many of the same problems do not still arise. The next section will assess whether both systems are fit for purpose.

Accessibility;

Within both the UK and South Africa claims must be filed within a strict time period, five days in South Africa. The impact of this has been potential claimants have been excluded from the system. The UK has added additional consequences such as the loss of benefit entitlements. Potential claimants may also be unaware of their rights, the content of the Convention and of any help that may be available to them. In many cases asylum seekers know little of the system and rely on charities, government agencies and NGO's to help and assist them. There are also a number of practical matters that make life difficult for asylum seekers such as the filling in of complex forms and communicating in a language which is not their own. This accessibility and lack of knowledge of the system may put some off entering the system in the first place.

Even registering a claim is difficult in South Africa as asylum seekers have to register their claim at designated centres; there are only seven of these within South Africa. Many will have to travel for miles to queue outside these centres, at the Marabastad office the average time spent in the queue is 22 days. This process can be a traumatic not only waiting for days but also they may be subject to threats and intimidation or may even be the victim of robberies[303].

The Backlog

The number of undecided cases or 'backlog' may be a key indicator of an effective system if it is able to deal with a large increase in the volume of applications. A large backlog and an inefficient system may actually encourage

[303] Alexander Prezanti, "Xenophobia Institutionalised" *Mail and Guardian*, Nov 7, 2008. http://www.mg.co.za/article/2008-11-07-xenophobia-institutionalised/.

more false claims, as those awaiting decisions are allowed to legally remain in South Africa. Waiting for a decision can have a damaging effect; living in limbo can be psychologically and emotionally difficult. In South Africa the numbers of asylum claims rose from 4292 in 2001 to 55,400 in 2002, this massive increase in applications led to a huge backlog which rose by 980%[304]. This led to a "paralysis of the decision making system not equipped to adjudicate the large numbers of cases rapidly"[305].

Having the highest number of registered asylum seekers in the world has impacted upon the backlog in South Africa; in 2008 there were 207,000 individual asylum applications and a further 222,300 in 2009, representing nearly a four-fold rise in both years over the levels seen in 2007[306]. The numbers of claims made in South Africa have far outweighed any other country in the world, for example, 2007-2008 their number of applications rose by 354%. In the same time period worldwide claims rose by 32%, if the rise in South African applications (predominately Zimbabwean) were not added to this total the rise would have been a mere eight per cent. By 2008 South Africa's asylum burden was quadruple that of United States, which also has a population four times bigger. By 2009 South Africa led the world in pending asylum applications, which numbered more than 300,000 in 2009[307].

The sheer volume of claims in South Africa made processing and determining claims time consuming and inefficient, determination of some claims taking many years[308]. The situation was so bad that the South African government introduced special measures in the form of a Ministerial Initiative in 2009. One measure involved taking Zimbabwean applications out of the system and dealing with them separately in order to clear the backlog. Economic immigrants were offered the right to a temporary work permit; this was however only a temporary measure

[304] UNHCR Statistical Yearbook "Trends in Displacement, Protection and Solutions" 2002. http://www.unhcr.org/pages/4a02afce6.html.

[305] Anthony Messina, ed. and Gallya Lahav, ed. *The Immigration Reader; Exploring Politics and Policies* (Lynne Rienner Publications, 2006),169.

[306] See fig. 2.

[307] Loren Landau and Aurelia Segatti, "Contemporary Migration to South Africa .A Regional Development Issue." *African Development Forum* (World Bank,2011):16.

[308] Niren Tolsi "Refugees in Backlog Limbo," *Mail and Guardian*, last modified June 5, 2008. http://mg.co.za/article/2008-06-05-refugees-in-backlog-limbo/.

that was repealed in 2010. The figures for 2010 show there was a drop in applications, and this measure that did have some success, but only time will tell if this will continue[309].

In the UK the backlog of undecided cases peaked at 119,200 in 1999 the figure has consistently been under 20,000 since 2004[310]. One method used by British government was a backlog clearance programme for example in 1999-2000. In 2002 when the UK received 103,000 a large number of applications the British system did seem able to cope and actually managed to decrease the backlog by two per cent in this year. In 2010 the UKBA website claims that 60% of all asylum cases are now decided within 30 days[311]. The backlog of applications does seem to have been brought under control since 2002 and has been consistently lower than the number of applications. Although how it has been dealt with has been open to criticism. Members of the Home Affairs select committee in November 2011 were heavily critical of the UKBA, they accused them of 'dumping' 124,000 asylum claims. The Shadow Home Affairs Minister stated that political pressure was applied to the agency to ensure political targets could be met[312]. So although the raw figures are better in the UK this does not mean that the decisions being made are good ones, just quicker!

The South African bureaucracy had taken so long to process some claims that special measures were implemented in the 1999 Immigration and Asylum Act. Those who had waited over 5 years were granted indefinite leave to remain and for those who had been waiting between three and five years were given four years leave to remain. This measure helped clear the 52,000 backlog that occurred in 1998. This was not a humanitarian decision but a means to tackle the inefficiencies. These special programmes or initiatives have been implemented to cope with the backlog and have been used to clear large numbers of claims.

[309] UNHCR Statistical Yearbook "Trends in Displacement, Protection and Solutions" 2006. http://www.unhcr.org/pages/4a02afce6.html.

[310] See fig.6.

[311] Home Office UKBA Office "Asylum Improvement Project; Report on Progress" May 2010. http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/reports/asylum-improvement-project/aip.pdf?view=Binary

[312] http://www.bbc.co.uk/news/uk-politics-15581877

Rarely will this lead to improvements in the quality of decision making, but will make the statistics look better, politically what is required.

Amnesties

Between 1995 and 1999, South Africa implemented three amnesties. The aim of which was to "recognise the heritage of our past" and to regularise the status of 'irregular' immigrants[313]. The first in 1995 was for contracted mineworkers who had been in the country since 1981; the result was 50,000 foreign nationals were granted permanent residence. The next was in 1996 which offered SADC nationals who had been resident since July 1991 residency, a further 125,000 had their status regularised. The final amnesty was for Mozambicans who arrived during the civil war, a further 90,000 exemptions, were granted[314]. These figures who sought to regularise their status was fairly modest compared to some of the scary figures about irregular migrants suggested by politicians and the popular press at the time. The reactions to these amnesties was distinctly underwhelming, this government action to take control of the system proved the government's inability to communicate their intentions and/or the unwillingness and mistrust irregular migrants had to engage with the authorities.

Administrative Justice

Home Affairs and the UKBA are both under extreme pressure to meet political targets and process claims quickly. The impact of changes has been to affect the administrative justice asylum seekers receive. The UK and South African governments have supported and aimed to obtain the "six month processing dream," in both cases this proved to be unobtainable and unrealistic[315]. New computerised systems were also established to speed up the process of dealing with claims, this was badly planned and a disaster in both cases. For example in 1999 the Home Office and its website was in total 'chaos'[316]. It may be that the meeting of political targets through speedy decisions is just incompatible with the thorough investigation of individual claims that ensures refugee protection.

[313]Lyndith Waller, "Irregular Migration to South Africa; During the First 10 years of Democracy." Migration Policy Brief Number 19, *Southern African Migration Project* (2006):9.

[314]Ibid.

[315]Louise Pirouet, *Whatever Happened to Asylum in Britain; a Tale of Two Walls* (Berghau Books, 200), 155.

[316]Ibid

In South Africa Refugee Status Determination Officers (RSDO) are expected to make approximately ten decisions a day, this means that each interview will lasts about 20 to 30 minutes[317]. This is hardly enough time to gain basic information let alone assess individual asylum claims. More and more applicants in both countries are being interviewed upon arrival in order to speed up the process. Reliance on this information can be problematic as interviewees may be frightened, tired and confused. To some these "political asylum hearings are an interrogation process"[318]. If this is the case claimants may omit information, change details or later contradict their original 'stories'. These anomalies may lead to the claim being judged as 'manifestly unfounded' if so it can be processed quicker. The justification officers need to provide to accept an application is often much more than to reject it therefore any of these reasons may be given as evidence. RSDO's and Immigration officers are making these arbitrary decisions as to whether the claim lacks personal detail, or the officer feels the story is too fantastical they have heard the story before, this is a "doubtful and dangerous way to speed up the process"[319]. It has been asylum seekers who have suffered as a result.

There may be valid reasons why claimants leave out information, memories after all are notoriously bad and may be especially unreliable when recounting traumatic experiences that may be difficult to disclose. One such example quoted in the literature is the omission of crimes such as rape which may often be omitted from the original interview. The sensitivity nature of this crime and the social stigma often attached to it may make it particularly difficult to discuss with an often male stranger.

There is also an assumption that bona fide cases with will be picked up by the Refugee Appeals Board in South Africa or the appeals procedure in the UK.

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[317]Amit, Roni. "Flawed Status Determination and the Failures of South Africa's Refugee System to Provide Protection." *International Journal of Refugee Law* 23 no. 3 (June 2011): 459. doi:10.1093/ijrl/eer01

[318]C. Bohmer and A. Shuman, Producing Epistemologies of Ignorance in the Political Asylum Application Process, *Identities: Global Studies in Culture and Power*, 14 (2007):606.

[319]Louise Pirouet, *Whatever Happened to Asylum in Britain; a Tale of Two Walls* (Berghau Books, 2001),135.

However claimants are often unsure as to how and when they must appeal and often the time limits attached. For example an appeal must occur within 30 days in South Africa. For the appeals system to work effectively adequate information, representation and help must be provided. This is rarely the case in South Africa and time limits often prevent it occurring within the UK. An appeal after all can only be successful should it be instigated.

Country Reports

More applications are being determined with the use of 'safe country' reports. These decisions are called prima facia (group) decisions as they are made on the basis of the country of origin of the asylum seeker. In 2005, 65% of asylum applications were decided this way[320]. If the claim comes from a recognised 'refugee producing country' there is an increased likelihood they will be granted refugee status. The use of 'safe country' reports has been widespread since a successful pilot in the UK in 1995. The list was drawn up of non-refugee creating countries, these included, Ghana, India, Pakistan, Poland, Romania and Uganda. Applications from these countries were fast tracked and almost all were rejected, a limited appeals process gave applicants five days to appeal[321]. The 'safe country' lists are now used throughout the world and their effectiveness is determined by the accuracy of the reports used.

Country reports have received heavy criticism in both countries. The Convention definition of a refugee is one that is based on individual persecution, and therefore it can be argued it is impossible to make a judgement based upon information about an entire country. For this to be possible the report would need to be comprehensive and show diversity and reflect changing situations, this has not always been the case, for example the UK's country report on Turkey 1999 came under heavy criticism as it contained "a wholly inadequate account of human rights violations"[322]. The UK reports on Kenya and Uganda in the same year contained historical and geographical inaccuracies and were widely thought by

[320] David Weissbrodt, *The human Rights of non-citizen, (*Oxford University Press, 2008), 119.

[321] Ibid,116.

[322]Louise Pirouet, *Whatever Happened to Asylum in Britain; a Tale of Two Walls* (Berghau Books, 2001),52.

influential NGOs and charities, to have a bias though out[323]. In the UK the Country Information and Policy Unit was established in 1998, its aim was to increase consultation with NGOs and charities to improve country information, the cases above show that it has not alleviated the problem.

With the huge pressures that the South African asylum system has been under the over reliance on country reports has had disastrous consequences. Roni Amit in her research undertaken in 2011 stated that RSDOs often used out of date country reports and cherry pick information from reports to support a decision they have already made when other contrary evidence may well be ignored[324]. It is compulsory that written reasons for rejection be given in both countries; Amit's article states that these rejection letters in South Africa are often produced by cutting and pasting from old country reports and other letters. Many of the letters were nearly identical which shows a disregard for individual circumstances.

Funding and Training

In order to make these important decisions and to achieve satisfactory standards of administrative justice, staff should receive adequate training. Staff, themselves have argued that they felt unprepared and have insufficient training to make these difficult decisions in the UK[325] and South Africa[326].

This situation is worse in South Africa due to the extreme pressure RSDOs are under. One example of a lack of staff training is the widespread failure to understand refugee law[327]. Asylum officers have often demanded more evidence

[323] Louise Pirouet, *Whatever Happened to Asylum in Britain; a Tale of Two Walls* (Berghau Books, 2001),52.

[324]Amit, Roni. "Flawed Status Determination and the Failures of South Africa's Refugee System to Provide Protection." *International Journal of Refugee Law* 23 no. 3 (June 2011): 483. doi:10.1093/ijrl/eer01

[325] Louise Pirouet, *Whatever Happened to Asylum in Britain; a Tale of Two Walls* (Berghau Books, 2001), 47.

[326]Handmaker, Jeff. "No Easy Walk: Advancing Refugee Protection in South Africa, Evaluating South African Immigration Policy after Apartheid." *Africa Today* 48, no. 3 (Autumn 2001): 92.

[327] Louise Pirouet, *Whatever Happened to Asylum in Britain; a Tale of Two* Walls (Berghau Books, 2001),48.

and documentation than refugee law requires[328]. The term 'persecution' has also been used with a very narrow interpretation, the Convention gives five different reasons for persecution yet RSDOs have focussed on political persecution and in particularly recognised only those with high ranking political party membership[329]. Officers have therefore failed to recognise other types of persecution within the Convention let alone the wider African Union definition.

Language barriers may also prohibit administrative justice. In a developed country such as the UK there are resources available for interpreters. In South Africa although the 1998 Refugee Act does state that 'where practical and reasonable' individuals must be informed of their rights in a language they understand. In many centres they have failed to provide adequate translators and the onus has fallen upon the asylum seeker to provide their own interpreter[330].

The Politics of Decision Making

Decisions about asylum applications are neither neutral nor free from political influence. With the increased use of 'safe country' reports this is perhaps one area where government actions have deterred asylum seekers from specific countries. Realists such as Loescher and Scanlan concluded that in the United States in the last four decades, foreign policy choices have played the key role in determining which refugees will be permitted to enter the United States[331]. Countries may have their own reasons for including or indeed not including countries on their 'safe country' list. There may be an unwillingness to include or antagonise countries which have strong trade links and political alliances. The list used in the UK is now drawn up by the European Union which has its own political agenda.

The politics of recognition rates can be demonstrated by looking at the example of Iraqi asylum-seekers. Germany opposed the Iraq war and roughly two thirds of

[328]Amit, Roni. "Flawed Status Determination and the Failures of South Africa's Refugee System to Provide Protection." *International Journal of Refugee Law* 23 no. 3 (June 2011): 462. doi:10.1093/ijrl/eer01

[329] Ibid

[330]Louise Pirouet, *Whatever Happened to Asylum in Britain; a Tale of Two Walls* (Berghau Books, 2001)

[331]Gareth Mulvey, "When Policy Creates Politics: the Problematizing of Immigration and the Consequences for Refugee Integration in the UK." *Journal of Refugee Studies* 23, no. 4 (November 2010):16.

Iraqis asylum-seekers were recognized as refugees, which support the realist view of the importance of foreign policy position. However the behaviour of Greece demonstrates that foreign policy will always come second if the domestic situation is deemed more important. The route through Turkey into Greece was the main refugee route from Iraq into the European Union. Despite Greece's public opposition to the war in Iraq, and the UNHCR's declaration that these Iraqi asylum seekers did meet the Conventions criteria, Greece refused to accept any Iraqi asylum seekers fearing this would lead to further influx of refugees, which terrified the Greek authorities[332]. In the case of Greece the 'potential' volume of applications outweighed any other factor in determining success of applications. Governments after all must seek re-election domestically.

Only 14% of Iraqi asylum seekers were offered refugee protection in the UK. This may reflect their involvement in the GWOT and their preference for 'in country' solutions. Sweden on the other hand was never part of the 'coalition of the willing' and was deeply opposed to the war. They offered a massive 98% a complementary form of protection[333]. This made Sweden a desirable destination for Iraqi asylum seekers[334], perhaps if it were not so difficult and costly to get to Sweden from Iraq, the Swedish government may not have been quite so hospitable faced with huge volumes of applications.

The recognition rate is a political decision and can be used to deter applicants. Prior to 1993; three quarters of all applications were accepted in the UK, after 1993, three quarters off all applications were rejected[335]. The quality of applications could not have changed this much and therefore it must be the result in a change in bureaucratic process created by a political decision. Recognition rates also are dependent on different countries attitudes towards the Convention. In 2009 Finland and Malta had the highest recognition rates for asylum seekers on

[332] Andrew Harper, "Iraq's refugees: ignored and unwanted" *International Review of the Red Cross*,Volume 90 Number 869(March 2008):183. http://www.icrc.org/eng/assets/files/other/irrc-869_harper.pdf.

[333] David Wright "Iraq War Refugees Turn to Sweden, Not U.S" abc news, last modified, March 15 2007. http://abcnews.go.com/WNT/IraqCoverage/story?id=2954702&page=1.

[334] UNHCR Statistical Yearbook "Trends in Displacement, Protection and Solutions" 2007. http://www.unhcr.org/pages/4a02afce6.html.

[335] Louise Pirouet, *Whatever Happened to Asylum in Britain; a Tale of Two Walls* (Berghau Books, 2001), 47.

first application 78% and 65%, respectively[336]. South Africa has seen a definite trend towards lower acceptance rates since the high levels of 2002-2004, the recognition rate dropped sharply 2004-2006 since then rates have continued to be more modest[337]. The rates in the UK have been inconsistent over the last decade fluxuating from year to year from initially high acceptance rates in 2002.

Tony Blair showed his willingness to link the issue of asylum to politics by suggesting the "withdrawal of aid from countries who do not take effective steps to stem the flow of illegal emigrants"[338]. Members of his own government, including Clare Short the Development Minister were heavily critical of this proposal which was eventually dropped. This proposal does show a politicisation of the issue and a willingness to apportion blame to 'refugee creating' countries.

Ethnicity and Decisions

Deterrence measure may well be aimed at specific ethnic groups, there are many white illegal immigrants; Europeans, Australians and North Americans, who have outstayed their legal visas in both countries. There is an assumption that they are there by right and this group rarely receive bad publicity or are deported. In South Africa between 1990 and 1997 deportations of those from the Southern African Development Community constituted 99.7% of total[339]. SAPS involvement in deportations may well mean that black Africans are still the most likely to be arrested and detained. Caucasians and oriental people are never seen stood in the queues outside the asylum centres in South Africa.

Differences in language, ethnicity and culture of asylum seekers are highly visible and contribute to the creation of 'otherness.' In South Africa, a feature of the xenophobic attacks in 2008 was a questioning to find out the origin and language a person spoke. In the UK the British Nationalist Party's primary concern is not

[336] UNHCR Statistical Yearbook "Trends in Displacement, Protection and Solutions" 2009. http://www.unhcr.org/pages/4a02afce6.html

[337] See fig. 5.

[338] Meissner, Doris .M, Robert D. Hormats, Antonio Garriges Walker and Shirjuro Ogata. *International Migration Challenges in a New Era, A Report to the Trilateral Commission: 44* (New York: Library of Congress, 1993), 552.

[339] Waller Lyndith, "Irregular Migration to South Africa; During the First 10 years of Democracy." Migration Policy Brief Number 19, Southern African Migration Project (2006):3.

the numbers of asylum seekers but their ethnicity, much of their rhetoric centres on 'threats' to the 'British way of life'.

Political bias in determining applications may stretch beyond those countries that appear on 'safe country' lists. For example refugees fleeing similar situations may receive differing levels of 'hospitality' depending where they claim asylum, for example those fleeing Sri Lanka in 1996, of those that claimed asylum in Canada 82% were accepted in same year only 0.2% were accepted in the UK[340]. In the literature about South Africa there is a general acceptance that immigrants from Mozambique, and more recently Zimbabwe are those most commonly targeted for deportation[341]. Majodina claims there are elements of racism in the South African system; why else she claims would Congolese and Angolans be treated differently to Yugoslavians and Bulgarians[342]. It would be simplistic and wrong to conclude that in South Africa the reason that 80% of Indian and Pakistani were rejected and almost all Somali applications were accepted was racism[343]. However the asylum countries attitude towards the country of origin may be an influential factor in determining the likelihood their success.

Appeals

As previously stated an effective asylum system gives adequate opportunities to challenge poor decisions. Having more appeals is not necessarily better, and does not lead to better decision making as it may well only be an indication of an inefficient system. The UK system has been criticised for being too over reliant on the appeals process which is making it "expensive, inefficient and inhumane"[344]. In South Africa the RSDO's have relied on the Refugee Appeals Board to pick up and rectify the problems created by poor decision making. It is impossible to know how many bad decisions are being made in South Africa and the UK. One

[340] Michael Dummett, *On Migration and Refugees; Thinking in Action* (Routledge, 2001),37.

[341] Jonathan Crush, ed. *Beyond Control: Immigration and Human Rights in a Democratic South Africa* (South African Migration Project, 1998), 56.

[342]Zonke Majodina, *The Challenge of Forced Migration in Southern Africa* (African Institute of South Africa, 2001),?

[343] Jeff, Handmaker, "No Easy Walk: Advancing Refugee Protection in South Africa, Evaluating South African Immigration Policy after Apartheid." *Africa Today* 48, no. 3 (Autumn 2001): 94.

[344]Caroline Slocock, "*End this 'inhumane and expensive' asylum system*" The Guardian (June 3, 2010) http://www.guardian.co.uk/law/2010/jun/03/inhumane-expensive-asylum-system.

indication may be the result of the UNHCR appeals from Jan 1995- Oct 1995, 75% of cases were successfully challenged, and this gives an indication as to the scale of the problem[345]. Access to appeals whether it be through ever tightening domestic legislation and time limits in the UK. Or lack of funding, knowledge and representation in South Africa will of course limit their effectiveness.

Removals

The public's faith in the asylum systems efficiency will be undermined if those whose claims are rejected are not removed. Only 5% of those that apply for asylum in Europe have their claims accepted[346]. In the UK of the 65,000 rejected applicants (1998-1999) only 7600, a mere 12%, actually left the country. It is thought that many of these actually left of their own accord[347]. This failure of the system brings it into disrepute and creates negative public opinion. The rejection of an asylum claim no longer is a deterrent and their appears to be no consequence for misuse of the system as there is no punishment for abuse, which further politicises the system[348]. The only real way to ensure that those rejected are removed is through forced removals and although these are increasing in the UK they are still controversial. The debate has become politicised, David Davis states there are "a quarter of a million failed asylum seekers in Britain which (will never be removed because of [Britain's] Human Rights Act and European Convention on Human Rights"[349].

The situation in South Africa is somewhat different, with the number of removals consistently over 150,000 and continuing to increase[350]. SAPS have been active in removing 'irregular migrants' and those without valid section 22 permits. Support for deportations is stronger in South Africa and they have long been used migration management tool.

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[345] Louise Pirouet, *Whatever Happened to Asylum in Britain; a Tale of Two Walls* (Berghau Books, 2001),135.

[346] Doris M. Meissner et al., *Migration Challenges in a New Era, A Report to the Trilateral Commission: 44*. (New York: Library of Congress, 1993), 10.

[347]David Weissbrodt, *The human Rights of non-citizen*, (Oxford University Press, 2008), 140.

[348]Doris M. Meissner et al., *Migration Challenges in a New Era, A Report to the Trilateral Commission: 44*. (New York: Library of Congress, 1993), 50.

[349]David Weissbrodt, *The human Rights of non-citizen*, (Oxford University Press, 2008), 141.

[350] See fig.8.

Conclusions: The Bureaucracy

Government actions and inefficiencies in the South African asylum bureaucracy are not deterring applications they have actually had the opposite effect. Many economic migrants have entered the asylum system knowing that their claims will be caught up in the huge backlog of undecided claims and this will allow them to legally remain in South Africa until their claim is decided. The large numbers of abusing the asylum system has led to its politicisation, commonly held views include; the system cannot cope, the decisions it makes are wrong and decisions are irrelevant as failed claimants are allowed to stay anyway.

Many of the difficulties encountered by the asylum system in South Africa were to a lesser extent those challenges faced by the UK almost a decade ago. While the UK certainly has not eliminated these problems they do seem to have instigated measures that most of the time ensure the bureaucracy appears to be in control. Decisions are made quicker; however the quality of these decisions is open to debate. One change that has dramatically increased the speed of decision making has been the use of 'safe' country lists. The growing number of prima facia decisions will act as a huge deterrent for asylum seekers from those countries on such lists, as the rejection of asylum claims from these countries is virtually guaranteed. The impact upon genuine asylum seekers is worrying if the lists are not accurate and also a danger is individual cases will no longer be investigated. Many argue it is not possible to provide reliable up to date data on a whole country, this information is not detailed enough to make these life altering decisions. In the UK these lists have been used throughout this period and in South Africa there is now a growing reliance on these documents.

The South African system is currently dealing with more than twice the number of claims the UK system did when claims peaked in 2002. It is buckling under the pressure and has been unable to cope with the sheer number of asylum claims[351]. It is experiencing huge difficulties with corruption and the added pressures of funding. However many of the same measures that have been used in the UK are

[351]Roni Amit, "Flawed Status Determination and the Failures of South Africa's Refugee System to Provide Protection." *International Journal of Refugee* Law 23 no. 3 (June 2011): 459.

now being utilised in South Africa, their purpose is not to deter unfounded claims nor provide administrative justice their sole purpose is decreasing the backlog. For example the use of amnesties when the backlog is just too unmanageable provides quicker decisions and more use of formulaic criteria for decision making. The danger of these practices is they are blunt tools with which to make complex and life changing decisions. If gaining refugee status becomes a box ticking exercise it may become those with knowledge of the system with well-rehearsed and practiced stories that are more likely to be accepted rather than genuine asylum seekers in real need.

Conclusion

Do deterrence measures deter asylum applicants?

Since 1997 the South African and UK governments have prioritizing their own citizens over their moral responsibilities of 'hospitality'. There has been a shift away from refugee rights and a refocused on the rights of citizens. Throughout this period it has become more difficult to claim asylum and life has become a lot more difficult for asylum seekers within both of these countries. Having examined the deterrence measures that have been implemented I am in agreement with much of the literature that is critical of government actions throughout this period and find that there is little to feel positive about in the field of refugee protection. The impact of measures to deter asylum applications has been damaging and has had serious implications upon the lives of asylum seekers.

The UK has indeed led the way with the scale of control measures it has implemented within this time period. One major logistical benefit the UK has had is its ability to control its borders; it is an island which limits the possibilities of gaining access. The UK has also experienced relative 'success' in deterring applications, its ability to spend resources on control measures and its close co-operation with the European Union has enabled it to effectively control its borders.

Although many of the same deterrence measures have been tried in South Africa they have not had the same impact upon the number of asylum applicants. One reason for this is the difficulty South Africa faces protecting its 7000 km of porous land borders, even with increased border controls and stricter regulations around immigration it has been unable to effectively stop irregular migrants from illegally crossing into South Africa. Funding has been another major issue; Home Affairs is simply one of many government departments seeking additional funding. The key aim for the 'new' South African government has been economic growth, without this none of the other problems can be tackled. The state is under massive amounts of pressure from local government and its own departments who are all competing for valuable resources. Therefore Home Affairs has not always

been able to secure the funding it would have liked to extend and fund additional control measures.

The UK has proved that deterrence measures can indeed dramatically decrease the number of asylum applications. In 2002 the number of asylum applications peaked at 103,000. The applications came from a variety of asylum creating countries the top three in this year being Somalia, Afghanistan and Iraq. These countries are all geographically distant from the UK and therefore unlike South Africa these were not sudden influxes of refugees generated by crisis situations in neighbouring countries. After 2002 the number of applications received in the UK decreased dramatically to only 33,960 in 2004[352]. This was not due to improvements in the asylum creating countries but instead the impact of control legislation. The 2002 Nationality Immigration and Asylum Act was a significant change in immigration legislation, it made it much more difficult for potential asylum seekers to cross the border into the UK. I therefore do not agree with Thielemann's conclusion that decisions on asylum destination are beyond the reach of policy makers as clearly legislation here has had a real impact upon the number of asylum applications.

A key difference between the UK and South Africa is not only the volume of legislation on asylum but more importantly its ability to enforce this legislation. New Labour showed considerable 'legislative activism'[353] on this issue, in an effort to demonstrate to the public their real commitment to deterring applications. They have used a mixture of new legislation, numerous amendments to existing legislation as well as 'cherry picking' elements of European Union initiatives. These changes have effectively placed 'no entry signs' around Britain. The British government have been open about their aim to deter asylum seekers from 'choosing' Britain as an asylum destination and as a result fewer asylum seekers have been able to reach British shores, in order to claim asylum.

[352] See fig. 15.

[353] Gareth Mulvey, "When Policy Creates Politics: the Problematizing of Immigration and the Consequences for Refugee Integration in the UK." *Journal of Refugee Studies* 23, no. 4 (November 2010): 439.

Legislation has not been the most important factor determining the treatment of asylum seekers in South Africa. As Peberdy concluded the effect of liberal legislation is limited by the bureaucracy, government actions are more important in South Africa than the legislative framework. Control measures may have been implemented in South Africa's but they seem to have no impact on the numbers claiming asylum. The number of applications grew from 32,565 in 2004 to 207,206 in 2008.

Another key difference between the UK and South Africa which has enabled the UK to deter applications has been its membership of the European Union. I conclude as Neumayer and Thielemann did that European Union initiatives have had an impact on inflows of asylum seekers. Initiatives such as the Dublin Convention have created systems for sharing information and have created effective cross border mechanisms for controlling migratory movements. The Dublin Convention and its first safe country principle have stopped asylum seekers ever reaching Britain's shores. Although South Africa may admire this principle SADC and its members have neither the financial means nor the political will to implement a similar initiative. It is unlikely South Africa would wish for, or benefit from, further integration within SADC. As its most powerful and richest member it would probably have the most to lose from further integration as many of its neighbours are financially unstable and have in the past been asylum producing countries.

The Creation of the Asylum 'Crisis'

Public opinion does not deter asylum seekers, it is highly unlikely that those fleeing persecution will have any detailed knowledge about the reception they are likely to receive in different asylum destinations. What makes public opinion crucial in the discussion of deterrence policies is that the Nexus between asylum and immigration has created a climate conducive to the implementation of additional deterrence measures. Politics has played a large part in policy making on this issue, at times it has been reactive and ill conceived. Opinion polls show that public opinion is hostile towards asylum seekers and in both countries it has been supportive of the implementation of tough control measures. As Pirouet

states the nexus has shaped public and opinion and this has enabled the justification of tough actions.

In both the UK and South Africa asylum seekers have been viewed as an economic and security 'threat'. Migrants in both countries have been scapegoated for wider societal problems. For example in South Africa the public had such high expectations of the new ANC government and perhaps it was inevitable that there would be disappointment from those expecting to see real improvements and a 'better life for all.' Tackling these huge economic and social problems can be an insurmountable task. Governments have at time been willing to support if not lead on the idea that migration was to blame and was a 'threat' to economic security and growth.

Economic pressures are felt directly by individuals every day in South Africa these people seek and expect help from government. For those that live in townships and squatter camps the problems with lack of adequate housing, unemployment, lack of clean drinking water and electricity are very real. It is not economic growth they seek but somewhere clean and safe to live. Social cohesion has been threatened when they perceive there is a threat from 'others' to their economic survival and they seek to defend what little they have.

The elite have led the way in the creation of the asylum 'crisis.' The crisis does not in reality exist, for example the response to asylum in the UK is shaped by false perceptions of the situation. In 2005 the number of European Union workers that entered the UK was almost ten times greater than the number of asylum applications[354], yet the outrage and newspaper column inches given over to this issue was not comparable. The asylum / immigration nexus has created confusion between these two issues and the public often confuse the two and believe that it is asylum that is out of control.

Often government have embarked upon symbolic measures to tackle the problem of asylum. In South Africa SAPS involvement in migration management has led to the criminalisation of asylum seekers. Huge numbers of deportations and the

[354] See fig 7.

use of detention have been used, rather than legislation as a means to manage 'irregular' migration. This has had a strong impact upon public perceptions and has led to the belief that asylum seekers are a 'threat' to impoverished communities. Social cohesion has been damaged and communities have become less hospitable of 'outsiders'.

Refugee Protection is denied

The most successful deterrence measures are those that have prevented claims being made; unfortunately these are also the measures that have had the most serious impact upon the lives of asylum seekers. Stopping those with legitimate claims from crossing borders is refoulment and has led to a humanitarian disaster. As Crawley concludes the evidence suggests that pre-entry controls have been the most important of all the deterrence measures implemented, they have not only succeeded in deterring claims in the UK but have actually prevented them. "Nothing invalidates traditional approaches to migration as effectively as border control policies"[355]. While the UK and South Africa have both implemented control measures there are two considerable differences; those measures implemented in South Africa have not been as well funded and as comprehensive as those used in the UK and secondly South Africa has struggled to enforce legislation and protect its land borders.

While the deterrent policies may have been 'successful' in deterring applications (in the UK) they have also had a huge impact on the lives of asylum seekers in both countries. Changes that include the extension of countries that require visas, the increased use of data bases, courier fines and border officials as well as the tightening of legal migration has made it virtually impossible for asylum seekers to cross borders legally. Only those with money and time to plan will have this privilege. The impact has been that often the most deserving, including the elderly and children may be unable to cross borders in order to make a claim and gain the protection they need. The other serious impact has been the creation of the 'migration industry' which has increased the role of agents and illegal practices that exploit and make money from an already vulnerable group.

[355] Michael Collyer, "When Do Social Networks Fail to Explain Migration? Accounting for the Movement of Algerian Asylum- Seekers to the UK" Journal of Ethnic and Migration Studies no. 4 (2005): 705.

The increased use of 'safe' country reports has also had a serious impact upon asylum seekers in both countries, this undermining the right of asylum seekers to have their claim individually examined. If the reports used were up to date, comprehensive and utilized correctly this wouldn't be an issue, but there is considerable evidence to suggest that this is not the case. Geographical diversity within asylum creating countries along with on-going, ever changing political situations make it virtually impossible to produce up to date reliable information on which to base decisions. The use of country reports seriously undermines refugee protection as they effectively reject all claims from a specific country on a prima facia basis this is a worrying trend.

Economic Migrants in the Asylum system;

Immigration controls have made it virtually impossible for semi-skilled and non skilled workers to gain access to work visas in either country. In South Africa legal immigration regulations along with the increased border controls may have had the unintended consequence of actually increasing the number of applicants. This is due to the South African bureaucracies' inability to cope with the sheer number of claims it has received. The backlog of undecided claims has been greater than the number of claims 2002-2010. It peaked in 2009 when it reached a massive 309,800[356]. The problem has been self-perpetuating as inefficiency has actually incentivised the placing of false claims, as those whose claims are in the process of being determined can legally stay and work within South Africa. The entry of large numbers of economic immigrants into the asylum system has damaged the public perceptions of the system. It is widely believed that the system is in 'chaos' and that it is too open to abuse. Recognition rates which have fallen from 79% in 2004 to 10.2% in 2009 may also be an indication that wide spread abuse of the system is a reality[357].

[356] See fig.2
[357] See fig. 3

The Undermining of Administrative Justice

Legislation is ultimately meaningless unless the bureaucracy that makes decisions on the merit of individual asylum cases can deliver administrative justice. I agree with Pirouet's conclusion that the UKBA has prioritized the speed at which decisions are made, over good decision making. This finding is equally true of decisions made by the South African asylum system. The impact of bad decisions can be devastating if refoulment returns an asylum seeker to a potentially life threatening situation. Politically often what is required from governments is the appearance that they are in control of the asylum system. Clearing the backlog has taken priority over the quality of decision making; one example would be the use of targets for processing claims. Both systems have tried to implement a six month processing target; this has proved impossible in both cases. Amnesties and administrative procedures have also been used as a means to clear the backlog of cases. The use of such procedures has damaged the bureaucracies' ability to deliver administrative justice and also proves just how important it is for governments to keep the figures for pending asylum applications as low as possible. This maintains the appearance that they are in control of the system.

The increase in the number of prima facia decision based on 'safe' country reports is another worrying trend which impacts heavily upon asylum seekers. Claims decided this way deliver fast formulaic decisions but administrative justice may again be threatened, as the reliability of such reports has been widely questioned. Amit's findings about the South African asylum system show that a lack of training means many RDSOs have little knowledge about 'in country' conditions in many asylum creating countries and simply 'cherry pick' appropriate phrases from country report in order to justify their decisions. RDSO's struggled to deliver administrative justice due to huge overloads, lack of training and pressure to deliver decisions quicker[358]. Administrative justice has also been limited by the curtailment of the right to appeal, an adequate appeals procedure identifies bad decisions and provides the opportunity for these to be rectified. In the UK limiting these opportunities has been a conscious move by the British government as

[358] Amit, Roni. "Flawed Status Determination and the Failures of South Africa's Refugee System to Provide Protection."*International Journal of Refugee Law* 23 no. 3 (June 2011): 458–488. doi:10.1093/ijrl/eer01

legislation throughout the period has steadily chipped away at the right to appeal. The South African government have not limited the right to appeal but there are still few opportunities to overturn bad decisions, this is mainly due to the lack of free or cheap legal representation.

Deterrence measures make asylum claimants lives much more difficult

Deterrence measures have had a serious impact on the emotional, physical and social well-being of an already vulnerable group within society, those most in need of protection and 'hospitality'. In both countries a dual citizenship has been created this has denied asylum seekers the rights of citizens. Until claims are decided claimants have been treated as 'undeserving others', even once their claim has been accepted full citizenship status can only be applied for after five years of continual residency. The biggest deterioration in living standards over this period has been in the UK. In South Africa asylum seekers have and continue to be some of the poorest members of society, only having limited access to the most basic state provisions.

Limiting Welfare Provisions

The UK has one of the most generous and comprehensive welfare models in the world and the British government actions have assumed that this acts as a welfare 'magnet' for potential asylum seekers. Like Bloch and Schuster I argue there is little evidence to support this claim, government actions have been based upon "Assumptions about the reasons why asylum seekers come to the UK which permeate political and public discourse"[359].The creation of a "hierarchy of welfare benefits" has had no serious impact on the number of asylum applications in the UK. As Crawley states few claimants have any detailed knowledge of the asylum or welfare systems prior to their arrival in the host country. The major impact of these deterrent measures has been on the quality of life of many asylum claimants. In the UK not only do asylum seekers receiving significantly less state benefit than citizens they are often given the worst housing in areas with high levels and hostile public opinion. In South Africa levels of state provision have and continue

[359] Heaven Crawley, "Chance or choice? Understanding why asylum seekers come to the UK." University of Swansea, Refugee Council (Jan 2010):7. www.refugeecouncil.org.uk

to be minimal and many asylum seekers live in informal settlements and townships.

Awaiting Decisions

Another impact of deterrence measures has been on the emotional welfare of asylum seekers, due to government actions in both countries they have been forced to face a growing uncertainty about their future. In South Africa this has been an unintended consequence of an inefficient bureaucracy unable to cope with the number of applications, often claimants have waiting up to two years for a decision to be made. In the UK the consequence of uncertainty has been the same but again this has been the result of government policy, in 2005 it was decided that all protection should be temporary and reviewed regularly. Even once this period of temporary protection is over the percentage of asylum seekers granted humanitarian leave has remained consistently higher than those granted refugee status. This period of 'limbo' can psychologically damage asylum seekers who are not only separated from their communities, friends and families but have this added uncertainty about their future and are unable to get on with rebuilding their lives.

The Criminalisation of Asylum Seekers

The creation of an asylum /security nexus has enabled and encouraged government actions that have dealt with asylums seekers as a 'threat' to society. Until claims are determined the asylum system treats all claimants as if they were abusing the system and increasing it has treated them like criminals. Asylum seekers have been criminalised by practices such as fingerprinting, being forced to carry ID cards and documentation and being constantly monitored. These practices have increased in both countries although they have been better funded and more comprehensive in the UK, where the government have endeavoured to detain applicants from arrival to determination if at all possible. Asylum seekers are on a probationary period and must continually be monitored and register with the relevant authorities, failure to do so can lead to imprisonment or deportation.

Final Conclusions

The UK as a member of 'Fortress Europe' does appear to be leading the way in the number and range of deterrent policies implemented. Many changes that have been used successfully in the UK to prevent applications have also been used in South Africa. Some of the measures implemented in both countries include the refocusing of legal migration to attract only the most skilled workers and the increase in border control measures such as the use of visas, databases, and courier fines. In the status determination system common measures include the increased use of 'safe' country reports and the use of backlog removal initiatives. 'In country' measures include the introduction of dual citizenship programmes, and the increased monitoring and criminalisation of asylum seekers. These have been more successful in deterring applications in the UK as the actions are generally more comprehensive, better funded and EU co-operation; the UK has been more successful in securing its borders.

South Africa has had additional issues to contend with such as the huge number of applications due to the political and economic situation in neighbouring Zimbabwe, unsecure borders and lack of adequate funding. Many of the additional control measures the South African government have implemented have been unsuccessful in the face of the sheer volume of applications they have received.

Politics is shaping government actions on asylum. Blunt tools are used by governments to deter asylum seekers in the UK these are preventing applications in the UK and are having unintended consequences in both countries. The most important and most dangerous consequence is that the aims of the Convention are no longer being achieved and refoulment is denying many genuine asylum seekers hospitality and protection. The other major impact has been that deterrence measures that appear to have no real impact on the number of claims are punishing those already within the system, awaiting decisions. The quality of life of asylum seekers throughout this period has decreased not only financially but also socially and even psychologically. If as Sir Basil Hume states, the treatment

of asylum seekers is a key indicator of the moral health of a nation then the prognosis for South Africa and the United Kingdom does not look good.

2010

Zimbabwe 149,400, Somalia 37,500, DRC 35,600, Afghanistan 33,500, Columbia 32,300

2009

Zimbabwe 158 400, Myanmar 48 600, Eritrea 43,400, Ethiopia 42,500, Columbia 39,200

2008

Zimbabwe 118,500, Eritrea 62,700, Somalia 51,900, Iraq 43,900, DRC 32,700

2007

Iraq 52,000, Somalia 48,200, Eritrea 36,000, Columbia 23,200, Russian Federation 21,800

2006

Somalia 45,800, Iraq 34,300, Zimbabwe 22,200, Eritrea 21,700, China 19,400

2005

Myanmar 55,800, Somalia 36,400, Serbia and Montenegro 32,000, Russian Federation 27,900, DRC 25,500

2004

Russian Federation 35,530, Serbia and Montenegro 31,210, China 29,090, DRC 28,800, Turkey 27,120

2003

Russian Federation 39,200, Serbia and Montenegro 38,300, China 37,400, DRC 36,000, Turkey 34,200

2002

Afghanistan 54, 400, Iraq 50,700, Turkey 32, 400, Serbia and Montenegro 28, 400, China 20,200

2001
Afghanistan 66,800, Iraq 60,800, Turkey 41,300, Former Yugoslavia 40,800, China 33,500

Fig. 1 Top Five Asylum Creating Countries 2001 - 2011

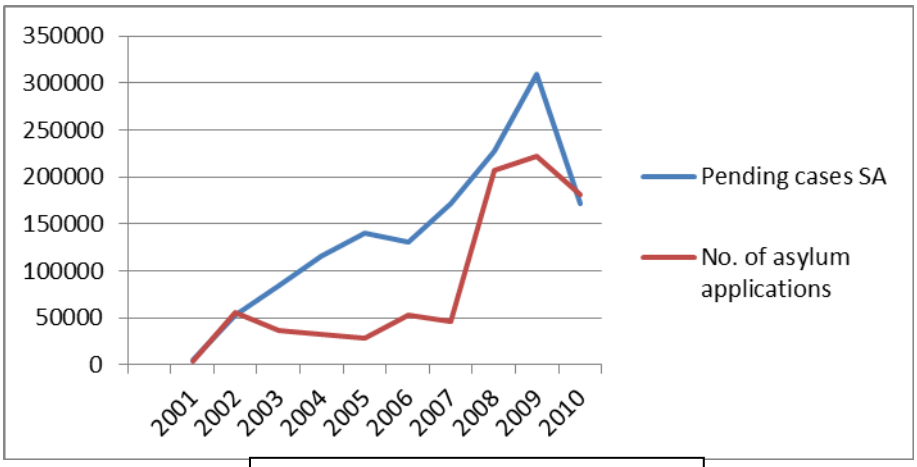


Fig. 2 Number of Pending Cases compared to Number of Asylum Applications SA

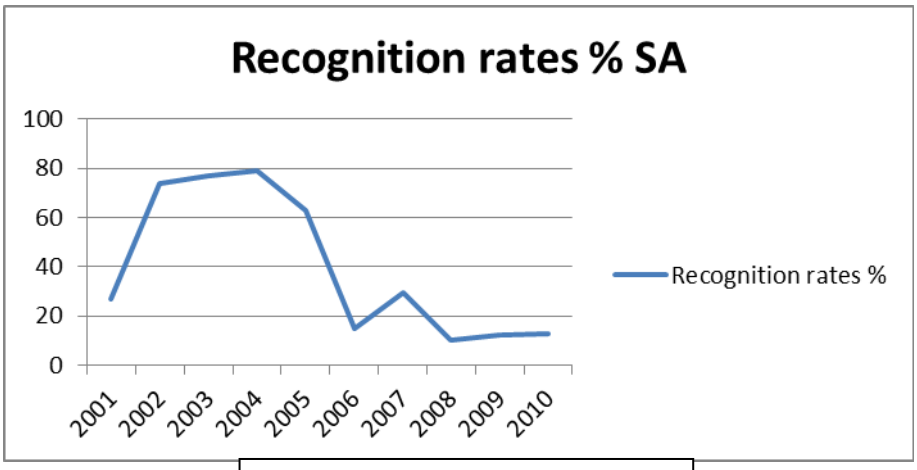


Fig.3 % Granted Refugee Status SA

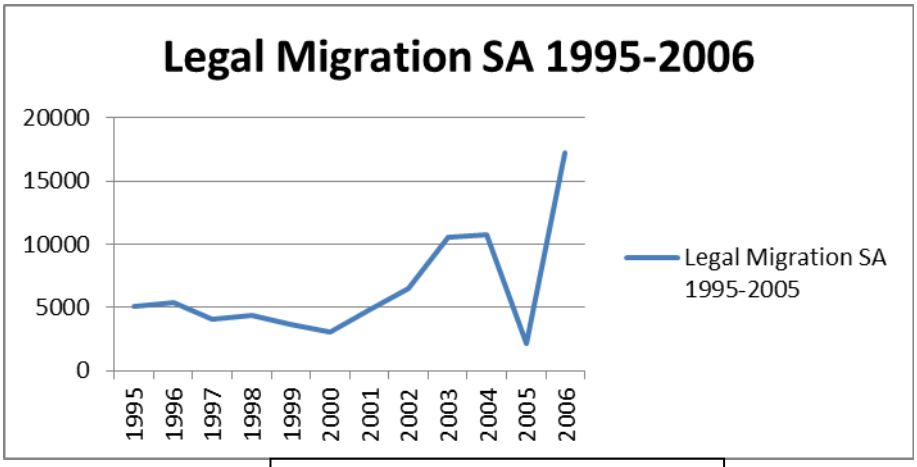


Fig. 4 Legal Immigration SA 1995-2005

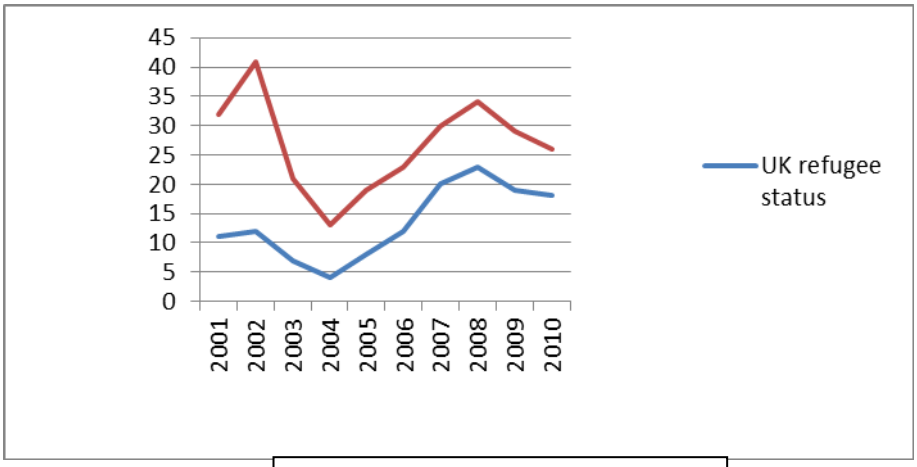


Fig. 5 Comparing those Granted Refugee Status or Humanitarian Leave to Remain UK %

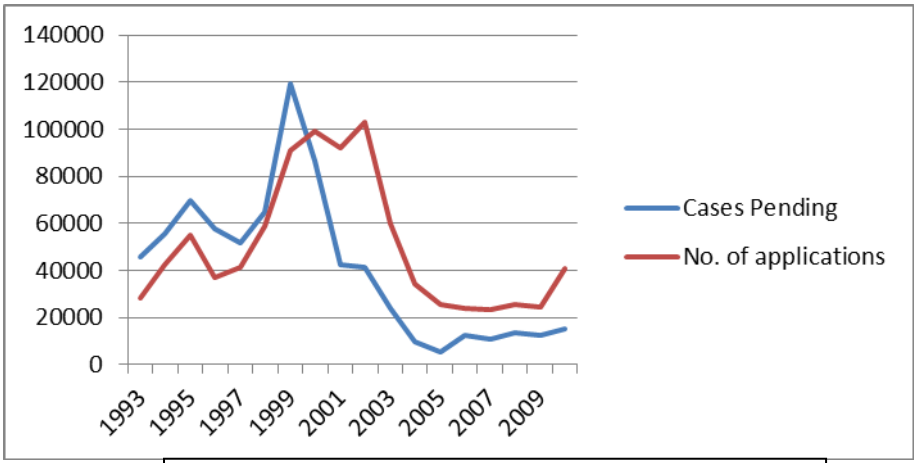


Fig. 6 Comparing the Cases Pending with the Total Number of Applications made per Year in the UK

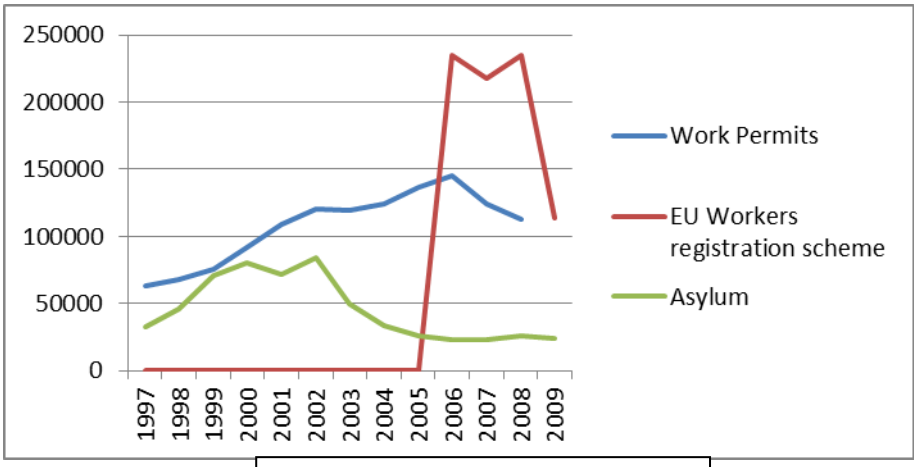


Fig. 7 Comparing Legal Migration and Asylum UK

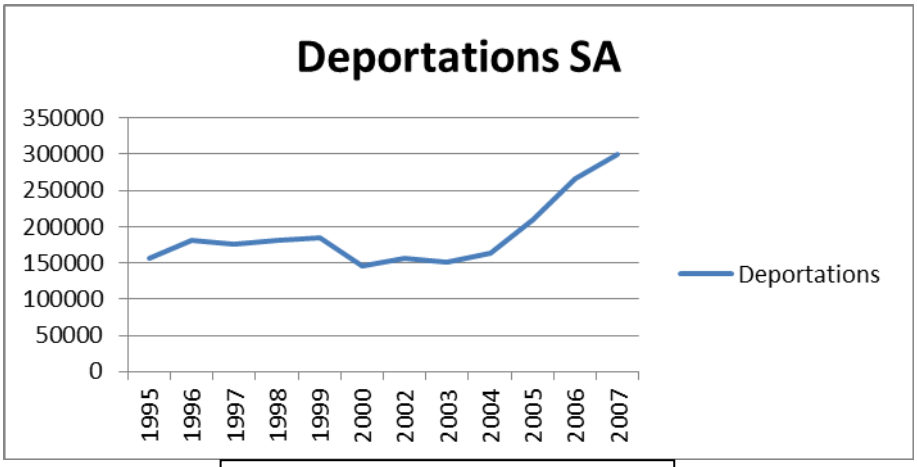


Fig. 8 Deportations from SA

1990-2006

Fig.1-7. All statistic taken from, UNHCR "Statistical Yearbooks 1999-2010" http://www.unhcr.org/pages/4a02afce6.html

Fig. 8. Landau, Loren B. and Aurelia Segatti, "Human Development Impacts of Migration: SA Case Study." *MPRA Paper No. 19182*, 11 December 2009 : 17:51, last updated 1 April 2009. http://mpra.ub.uni-muenchen.de/19182/.11.

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