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THE POLICY OF THE AFRICAN NATIONAL CONGRESS TOWARD AFRICAN FOREIGNERS IN SOUTH AFRICA, 1990 – 2002.

By

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A research report submitted to the Faculty of Humanities, University of the Witwatersrand, Johannesburg, in fulfilment of the requirements for the degree of Master of Arts.

Johannesburg, 2009

ABSTRACT

This paper explores policy changes of the African National Congress toward African foreigners in South Africa. There are five phases of interaction that coincide with major South African events: the Freedom Charter, the banning of the ANC, life in exile, the negotiations table and majority party in government. The ANC's relationship with African foreigners moves from rhetorical support, to physical reliance, to indebtedness, regional development and finally a return to the rhetorical. These interactions are then juxtaposed against legislation and offered as cause for a change in policy. This discussion is explored through a narrative structure and analysis of documents penned by the party. Included in the paper are two minor themes – an exploration of identity and what the ANC believed constitutes being South African, as well as an explanation for growing xenophobia.

DECLARATION

I declare that this research report is my own unaided work. It is submitted for the degree of Master of Arts in the University of the Witwatersrand, Johannesburg. It has not been submitted before for any other degree or examination in any other university.



Nicholas James Skudder Gutteridge

18th day of February, 2009

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GLOSSARY

ACA – Aliens Control Act

ANC – African National Congress

ANCWL – African National Congress Women's League

ANCYL – African National Congress Youth League

AU – African Union

CPS – Centre for Policy Studies

CODESA – Convention for a Democratic South Africa

COSATU – Congress of South African Trade Unions

DHA – Department of Home Affairs

FRELIMO – Frente de Libertação de Moçambique (Liberation Front of Mozambique)

GDP – Gross Domestic Product

GEAR – Growth Employment and Redistribution strategy

HRCSA – Human Rights Commission of South Africa

HRW – Human Right Watch

IMF – International Monetary Fund

IS – Immigration Service

IDASA – Institute for Democracy in South Africa

IFP – Inkatha Freedom Party

ILO – International Labour Organization

LHR – Lawyers for Human Rights

MPLA – Movimento Popular de Libertação de Angola (Popular Movement for the Liberation of Angola)

NCRA – National Consortium of Refugee Affairs

NDR – National Democratic Revolution

NEC – National Executive Committee of the ANC

NEDLAC – National Economic Development and Labour Council

NEPAD – New Economic Partnership for African Development

NGO – Non Governmental Organisation

NWC – National Working Committee of the ANC

NP – National Party

OAU – Organisation for African Unity

OAU CSA – OAU ad-hoc Committee on Southern Africa

PAC – Pan African Congress

PTA – Preferential Trade Area for Southern and Eastern Africa

RDP – Reconstruction and Development Programme

SACP – South Africa Communist Party

SADC – Southern African Development Community

SAMP – South African Migration Project

SANDF – South African National Defence Force

SAPS – South African Police Service

SWAPO – South West Africa People's Organisation

TANU – Tanganyika African National Union

TEBA – The Employment Bureau of Africa

UDF – United Democratic Front

UN – United Nations

UNHCR – United Nations High Commission on Refugees

ZAPU – Zimbabwe African People's Union

INTRODUCTION

> [W]ell-managed migration has the potential to yield significant benefits to origin and destination States… However, mismanaged or unmanaged migration can have serious consequences for States' and migrants well-being, including potential destabilising effects on national and regional security, and jeopardising inter-States relations. Mismanaged migration can also lead to tensions between host communities and migrants, and give rise to xenophobia, discrimination and other social pathologies.[1]

Southern Africa has a long history of intra-regional labour migration dating back to the discovery of diamonds and gold in the nineteenth century. "Migration was the single most important factor underlying the emergence of a single regional labour market."[2]

This research report will explore the African National Congress' (ANC) policies towards African foreigners.[3] I will focus on the attitudes of the ANC but will also explore some of the feelings of the Tripartheid Alliance,[4] most notably the Congress

[1] Crush, J. Peberdy, S. Williams, V. (2006). "International Migration and Good Governance in the Southern African Region." Migration Policy Brief No.17. Southern African Migration Project: Johannesburg.
[2] Black, R. Crush, J. Peberdy, S. (Eds.). (2006). Migration & Development in Africa: An Overview. African Migration and Development Series No 1. Southern African Migration Project. Ontario. Pg. 80
[3] For the purpose of this paper, I will use the United Nations definition of foreigners which include: irregular migrants, asylum seekers, refugees, migrants and immigrants.
[4] The Congress Alliance was formed in the 1950s between the African National Congress (ANC), South African Congress of Trade Unions (SACTU) and the Congress of Democrats. During the 1990s its descendent, the Tripartheid Alliance, was similarly formed between the ANC, Congress of South African Trade Unions (COSATU) and the South African Communist Party (SACP). I will use the

of South African Trade Unions (COSATU). COSATU is made up overwhelmingly of ANC members and has adopted a "watchdog" role over ANC affairs and policy.

The status of the ANC has changed over the years - from its early beginnings as an organisation representing the African population of South Africa, to a banned organisation, to an organisation involved in an armed struggle against the apartheid government, to the perceived voice of a South African people in exile, to a democratic multi-racial political party that now governs South Africa. During each of these stages, the attitudes of the ANC towards African foreigners, migration and later, immigration, changed.

I have identified five distinct phases that shape ANC attitudes and interaction with African foreigners. Firstly, there is the pre-1960 era during which the party spoke of solidarity with the colonised world. Secondly, there was the 1960-1990 period during which the party was banned and its leadership in exile. Consequently, they were forced to physically rely on the support of African states. Thirdly, there was a transitional phase during which the negotiations for a new South Africa took place. This period was characterised by a sense of indebtedness to the rest of Africa and specifically, the Frontline states. Fourthly, there was the early period of government during which the ANC tried to balance their human rights tradition with popular perception. And lastly, the final phase, which lead to the promulgation of the

---

Congress Alliance when referring to both groupings. This does not suggest that the two organisations were the same, but for continuity purposes this is acceptable. Both were groupings between the ANC, the Trade Union Movement and the Communists.

Immigration Act of 2002. Despite leadership rhetoric, this period was characterised by growing xenophobia amongst South Africans and ultimately tighter, less generous immigration legislation.

From the outset it is important to note that the fundamental tenet of nationalism and patriotism excludes foreigners. Ideologically, these terms are focused on identity, sovereignty and exclusion. I have chosen 1990 as the starting point for my research. It was during this transitional period that the ANC embarked on its discussion phase with the apartheid state around formulating a government of national unity and consequently, an overhaul of apartheid era policy. I will, however, provide some early background looking at the ANC's attitude towards foreigners from 1948, the year the National Party came to power, when legislation was systematically implemented to exclude Africans from political participation in South Africa.

The debates around policy formation and attitudes toward African foreigners exist within the broader theoretical framework and debates around identity formation/creation, the South African patriotic project, nationalism and globalisation. How does identity and national affiliation relate to global economic forces and do they uphold ideals of national sovereignty and the nation state? Within a society with numerous local ethnic, religious and ideological identities, the question of defining South African identity has posed a unique challenge to the ANC. What constitutes a South African identity? How do South Africans define themselves in terms of their

African heritage and how do we see ourselves in relation to both Africa and the rest of the world?

The ANC leadership presents a new rhetoric of *ubuntu* and the African Renaissance. This is paradoxical in relation to the notions of South African nationalism and the creation of a South African national identity. Identity construction relies on the creation of an inclusive identity and a "foreign" identity – what I am and what I am not. In saying this, can the ANC and South Africans define themselves in terms of *South Africa* and *Africa*? Or are the two mutually exclusive?[5]

Globalisation is rendering trans-national economic activity and labour-sourcing more common. Borders have opened up to the freer flow of goods. Within this context, regionalism is becoming the focus of foreign policy. President Thabo Mbeki was a strong supporter of the New Economic Partnership for African Development (NEPAD) and an Africa for all, he called for greater inclusion and integration of the continent. How did this play out against the notion of South African nationalism and how did the party balance the rhetoric of the leadership against the feelings of ANC supporters?[6] These are some of the questions that will be addressed as I examine the

[5] See for example:
I) Durrheim, K. (1997). "Peace Talk and Violence: an Analysis of the power of 'peace'. In A Levett, A Kottler, E Buman and I Parker (eds.). (1997). Culture, Power and Difference: Discourse Analysis in South Africa. Cape Town University Press: Cape Town.
II) Harris, Bronwyn. (2002). "Xenophobia: A New Pathology for a new South Africa?" Centre for the Study of Violence and Reconciliation: Johannesburg.
III) Makgoba, MW (ed.). (1999). African Renaissance: The New Struggle. Tafelberg: Cape Town.
[6] See for example: Comaroff Jean & Comaroff John L. (2001). "Naturing the Nation: Aliens, Apocalypse and the Postcolonial State." Journal of Southern African Studies. Volume 27, Number 3.

changing relationship between the ANC and African foreigners and the impact this has had on policy development.

There is a wealth of literature dealing with migrancy and South Africa. However, this tends to focus on the migrant labour system, migration as a discipline of study, immigration and migration to South Africa in post apartheid South Africa, State responses, human rights obligations, qualitative reports and studies.

While these are all useful in providing an understanding of the area of focus, none of this literature deals specifically with attitudes of the ANC or offers a comprehensive history of the ANC and Tripartheid Alliance's policy.

There is an absence of a historical framework on which the ANC's decisions are based. Sally Perbedy does track a history of immigration to South Africa during the apartheid era, focusing on apartheid legislation[7], while Timothy Smith looks at the making of the Refugee Act, offering a brief history on the formation of the specific law and examining the players involved.[8] Furthermore there is cognisance of history in the presentation of statistical information, but this is superficial and frequently in a

---

[7] Peberdy, S. (1997). "A Brief History of South African Immigration Policy." Submission to the Green Paper Task Group. Cape Town. Located on the world wide web: http://www.polity.org.za/html/govdocs/green_papers/migration/histsa.html.

[8] See for example:
Smith, Timothy R. (2004). "The Making of the South Africa (1998) Refugees Act." Migration Studies Working Paper Series #5. Forced Migration Studies Programme, University of the Witwatersrand.
Crush, J. (1997). "Contract Migration to South Africa: Past, Present and Future." Submission to the Green Paper Task Group. Johannesburg. Located on the world wide web: http://www.polity.org.za/html/govdocs/green_papers/migration/crush.html.

tabular form. Collectively this provides insight into the history but they are missing specific party policy. A critical analysis of ANC policy formation will therefore make a significant contribution to the literature.

There is a considerable body of literature on the ANC, which tends to focus on the struggle themes and government.[9] Of the literature used, there is no explicit text focusing on the ANC's attitudes towards foreigners. Reference to foreigners is made in economic and foreign policy papers and in reference to the fourth pillar of the struggle movement - international support for the ANC - whereby the ANC sought support for economic sanctions as well as sports and cultural boycotts and travel bans.[10] This is largely because nobody could predict the mass migration that would follow in the mid to late 1990s. Previously migration was seen as cyclic. The absence of any real study is indicative of how "off guard" the party was caught. The ANC did not often explicitly deal with the issue of African foreigners but historical reference is often inferred or implicitly stated within economic policy and foreigner policy texts.

Much of the literature approaches the subject through a quantitative research methodology - statistical information is discussed extensively in writings by the Forced Migration Paper Series and the Southern African Migration Project (SAMP). The most common themes explored are attitudes of South African citizens towards

[9] Struggle themes include: human rights analysis, the adoption of an armed struggle, guerrilla tactics, and extra parliamentary activities.
[10] Norval, M. (1980s). "The Fourth Pillar – International Isolation." Inside the ANC: The Evolution of a Terrorist Organisation. Selous Foundation Press: Washington D.C.

foreigners (not necessarily official ANC membership feelings), the number of foreigners entering South Africa and the number of foreigners detained and deported in South Africa.[11] They collect their data through a host of surveys run by the respective organisations. SAMP conducted surveys in 1998 while the Forced Migration Project conducted a similar survey in 2003. What they do not offer is a careful analysis of the policy of the Alliance members.

There is also a wealth of literature pertaining to refugee experiences and human rights. Organisations like the Centre for Policy Studies, Human Rights Watch, SAMP and Foundation for Global Dialogue along with Landau and Palmary all discuss migration in terms of human rights obligations.[12] This provides valuable background insight into the experiences of refugees and their constitutional rights in line with international decrees and South Africa law. They also make numerous critiques and

[11] See for example:
I) Crush, Jonathan and Pendleton, Wade. (2004). "Regionalising Xenophobia? Citizen Attitudes to Immigration and Refugee Policy in South Africa." South African Migration Project, Migration Policy No 30. Cape Town.
II) Mattes R, Taylor DM, McDoland DA, Poore A & Richmond W. (1999). "Still Waiting for the Barbarians: SA Attitudes to Immigrants and Immigration." South African Migration Project, Migration Policy No 14. Cape Town.
III) Crush, Jonathan. (ed.) (2001). "Immigration, Xenophobia and Human Rights in South Africa." South African Migration Project/ South African Human Rights Commission, Migration Policy No 22. Cape Town.
[12] See for example:
I) Landau, Loren B. (2005). "Transplants and Transients: Nativism, Nationalism, and Migration in Inner-City Johannesburg." Migration Studies Working Paper Series #19. Forced Migration Studies Programme, University of the Witwatersrand.
II) Palmary, Ingrid. (2006). "Refugees, Safety and Xenophobia in South African Cities: The Role of Local Government." Research Report written for the Centre for the Study of Violence and Reconciliation. Located on the world wide web: http://www.wits.ac.za/csvr/papers/papalm4.htm. Accessed June 2008.

recommendations for government policy.[13] SAMP has dedicated part of their research to policy recommendation.[14] From COSATU commentary it is evident that recommendations are usually ignored by different sections of the Alliance.[15]

The literature also highlights the challenges that the government of South Africa faces in dealing with immigration.[16] The literature is largely ahistorical and does not focus on ANC policy. This is where I believe my research report can contribute toward the debate; by examining the changing attitudes towards African foreigners and the impact this had on policy development.

[13] See for example:
I) Human Rights Watch. (1998). Prohibited Persons: Abuse of Undocumented Migrants, Asylum-Seekers, and Refugees in South Africa. Human Rights Watch: New York.
II) Reitzes, Maxine. "Towards a Human Rights-Based Approach to Immigration Policy in South and Southern Africa." FDG Occasional Paper No 7. Located on the world wide web: http://www.queensu.ca/samp/transform/Reitzes.htm. Accessed June 2008
III) Landau, Loren B. (2003). "Forced Migrants in the New Johannesburg." Migration Studies Working Paper Series #6. Forced Migration Studies Programme, University of the Witwatersrand.
[14] See for examples:
I) Waller, L. (2006). "Irregular Migration to South Africa During the First Ten Years of Democracy." Migration Policy Brief No.19. Southern African Migration Project: Johannesburg.
II) Williams, Vincent. (2006). "The Draft Protocol on the Facilitation of Movement of Person in SADC: Implications for Stats Parties." Migration Policy Brief No 18. Southern African Migration Project: Johannesburg.
III) Crush, J. Peberdy, S. Williams, V. (2006). "International Migration and Good Governance in the Southern African Region." Migration Policy Brief No.17. Southern African Migration Project: Johannesburg.
[15] COSATU. (2000). "COSATU Submission on the White Paper on International Migration." Presented to the Portfolio Committee on Home Affairs on 19 May 2000. Located on the world wide web: http://www.cosatu.org.za/dosc/2000/inatmigr.htm. Accessed June 2008.
[16] Crush, J. (2003). "South Africa: New Nation, New Migration Policy?" Migration Information Source. Located on the world wide web: http://www.migrationinformation.org. Accessed June 2008.

CHAPTER 1:

APARTHEID AND THE ANC

1.1 Introduction

The ANC was formed in 1912 as a voice for the African population of South Africa. From the outset the organisation sought greater rights for the African population and an end to colonialism. Although during the early years they focused solely on the South African question, there was interaction with people and movements from other countries. Over the years the ANC drew inspiration from similar struggle movements around the world, who also sought greater political rights and an end to imperialism.

In this chapter I am going to explore the origins of the ANC's attitude towards people from the African continent, starting in 1948. This is a significant year in South African history as it is the year in which the National Party came to power and the start of the Apartheid system with its institutionalised racism. Apartheid and the consequent legislation changed the way in which the ANC interacted with both South Africans and people from different countries. During the Apartheid era the party would increasingly rely on the support of African foreigners.

1.2 Early ANC Conferences

As early as 1953, in his Presidential Address at the 42nd Annual Conference of the ANC held in Queenstown from 18-20 December, ANC President Chief Albert Luthuli, acknowledged the plight of Africa. The ANC, he stated, supported liberation

movements and the emancipation of African people as a whole. Drawing parallels with colonialism, Luthuli articulated that apartheid's intentions were "to maintain white supremacy, which, conversely, means the permanent subjugation and domination of non-whites by whites".[1] He believed that all Africans should unite and fight a collective battle against the white nationalists for greater political participation. This example indicates that for over fifty years the ANC had pledged some form of solidarity to the people of Africa. A call for solidarity throughout the continent was the early example of kinship with African foreigners and an important step in interacting with African foreigners.

Resolution two which was adopted by the ANC at the 1953 National Conference called for the creation and preparation of the Congress of People of South Africa, who were mandated to develop a Freedom Charter for all peoples, races and groups in the country. To this end a National Conference would be convened with a broad representation of the people of South Africa including delegates from the ANC, South African Indian Congress, South African Congress of Democrats, the Coloured People's Organisation and any other body that wished to participate. Through negotiation and consensus they would create a Freedom Charter for South Africa.[2] The charter would be a collective voice for all people in South Africa, in which no distinction was made between people who were citizens and those who were not. This

[1] Luthuli, A. (1953). "Presidential Address by Chief A.J. Luthuli, 42nd Annual Conference of the African National Congress." Queenstown, 18-20 December 1953. ANC Online Archive.
[2] Resolution Two in ANC. (1953). "Resolutions of the 42nd Annual Conference of the ANC. Queenstown, 18-20 December 1953. ANC Online Archive.

could be interpreted as political naivety, or a progressive approach to African foreigners. Alternatively foreign "invasion" and migration were not yet seen as problems. People across the continent were fighting similar battles. Similarly, in resolution nine the ANC stated that: "The freedom struggle and emancipation [of the African people] should seek solidarity with other colonial people in their struggle against imperialism, for self-determination and independence."[3] This resolution, proclaimed by Luthuli at the conference, would guide ANC policy toward foreigners for the next forty years, a policy based on solidarity with other oppressed people of the world. It indicated a "kinship" with oppressed people of the world, especially African.

Similar sentiments were raised a year later at the 43rd National Conference of the ANC, which was held in Durban from 16-19 December 1954. President Luthuli's opening address reiterated the rhetoric of the day - the emancipation of mankind in Africa. In reference to the world stage, Luthuli stated that:

> We are grateful as we always have been to progressive opinion in the world that has not hesitated to champion our cause in the Union of South Africa. We watch with interest the developments towards full democracy in Western African territories under British Rule.[4]

[3] Resolutions Nine in ANC. "Resolutions of the 42nd Annual Conference."
[4] Luthuli, A. (1954). "Presidential Address by Chief A.J. Luthuli, Annual Conference of the African National Congress." Durban, 16-19 December 1954. ANC Online Archive.

The development in West Africa is noteworthy because it highlighted the plight of Africans and was a precursor to the independence movements starting to take root on the continent.

The ANC noted in the annual report of the National Executive Committee (NEC) that for the first six years of apartheid rule, the state had been pre-occupied with the building of a so-called "fascist" legal framework for a police state. In response to their actions the ANC called for all people of the world to join the fight against apartheid.

> From the point of view of the ballot box, therefore, the Non-Europeans can do nothing to their overlords and tyrants. Yet all concerned can successfully resist and defeat these oppressors. They must be fought outside Parliament, in the towns, on the farms – in economic, political and industrial spheres, they must be fought everywhere! The policy of the African National Congress in this connection is inter-racial cooperation on the basis of mutual respect and equality. This policy the African National Congress proclaims boldly to all interested groups, organisations and to the world at large.[5]

The ANC, who proclaimed themselves representative of the people of South Africa, began exploring ideas of a foreign policy that was opposed to war, colonialism, imperialism and white domination. This statement was made when Africa was still dominated by six imperial powers – England, France, Portugal, Belgium, Netherlands

[5] ANC. (1954). "Report of the National Executive Committee, 43rd Annual Conference." Durban, 16-19 December 1954. Part 1. ANC Online Archive.

and Italy. The ANC initiated a policy of solidarity with the people of Africa and formed friendships with African independence movements. They believed that the fight in South Africa was not unique to this territory; the people of Africa as a whole were fighting for the same rights. The NEC argued that freedom in Africa was neither a domestic nor internal issue, but a collective issue, experienced by all people of Africa. Furthermore, they stated that the struggle would be "fought by the Africans themselves under their own independent leadership but they will have to keep a very clear eye open for international developments detrimental and advantageous to us".[6]

The NEC explored relationships with likeminded organisations during the early 1950s, prior to the formulation of an official foreign policy. Potential allies (countries and groups) had to meet the following criteria: they had to be anti-imperialist, pro-equality, pro-African and anti-colonialism. As many African and Asia groups and countries met these criteria, they became affiliates of the ANC. In Africa, the continent was still occupied by imperialist forces; with the exception of Ethiopia no sub-Saharan country was under self rule. The ANC therefore interacted with groups and political parties. This interaction and solidarity was still happening on a rhetorical level. Nevertheless, the origins of African diplomacy can be seen during this time.

[6] ANC. (1954). "Report of the National Executive Committee, 43rd Annual Conference." Durban, 16-19 December 1954. Part 2. ANC Online Archive.

In 1954, Albert Luthuli spoke of the need to unite the "sons and daughters of Africa" against the evils of colonialism in an effort to achieve the emancipation of Africa.[7] Inspired by the anti-colonial movements of Asia, he believed that independence for Africa as a whole was possible. Luthuli called for solidarity in the struggle for independence: "We express our solidarity and sympathy with these countries in bitter and bloody struggles"[8]; and:

> Your conference meets at a time when grave issues face not only people of our country but the peoples of the world. Today in every country, in all continents of the world, the forces of peace and freedom are making great headway. The days of colonialism and imperialism are rapidly coming to an end.[9]

The ANC NEC adopted ten new resolutions at the 43rd Annual Conference, many of which further endorsed ideas of solidarity and a commitment to the anti-colonial movement. Resolution one committed itself to the Congress of the People and called for the drafting of a Freedom Charter. Resolution five urged the British Government to engage in discussions with the peoples of Kenya. Resolution six called for peaceful co-existence and a world without war, while resolution eight recommended that the ANC find organisations both domestically and abroad who they could approach for support.[10] These resolutions highlighted the prevailing mood of African solidarity. Furthermore there was a feeling that the ANC should look beyond the borders of

[7] Luthuli, A. (1954). "Presidential Address by Chief A.J. Luthuli, 43rd Annual Conference of the African National Congress." Durban, 16-19 December 1954. ANC Online Archive.
[8] Many of the former colonies in Asia gained their independence during the 1940s and 1950s. Before the anti-colonial movement took root in Africa.
[9] Luthuli, "Presidential Address 43rd Annual Conference."
[10] ANC. (1954). "Resolutions of the 43rd National Conference." Durban, 16-19 December 1954. ANC Online Archive.

South Africa for allies, solidarity and support. Notably absent from any discussion was citizenship and what constitutes being South Africa. The ANC was a political movement fighting for independence and did not imagine the issues that would be associated with African solidarity.

The ideological framework of the ANC during the fifties was caught up in the African Nationalist movement sweeping the continent. African Nationalism called for solidarity, an end to colonialism and self rule. While the rhetoric called for a march of modernity toward a more unified continent, in which Africans could collectively stand against the world:

> …principles of 'Freedom for all' in a country, unity of all in a country, embraced all people under African Nationalism regardless of their racial and geographical origin who resided in Africa and paid their undivided loyalty and allegiance… gradually led Africans from these narrow tribal loyalties to wider loyalty of the brotherhood of man throughout the world.[11]

Internationally the ANC was inspired by the anti-colonial movement that was sweeping the globe in the post World War Two era, first in Asia and later Africa. This fever confirmed that independence was possible. Ghana was the first African colony to gain independence in 1957, an event that was revered across the continent. Their independence stood as a symbol of hope for the oppressed. Consequently "independence in our lifetime" became a mantra of the African Nationalist

[11] Luthuli, A. (1955). "Special Presidential Message." 44th ANC Annual Conference. Bloemfontein, 17-18 December 1955. ANC Online Archive.

movement. Although rhetoric called for solidarity, the ANC was still largely preoccupied with domestic issues and so concerned with formalising their own anti-apartheid policies that they did not yet have an official foreign affairs policy, let alone a policy on home affairs. I cite these examples to show that the ANC was already in someway looking beyond their borders for support and friendship.

1.3 The Freedom Charter

As articulated by Luthuli and the ANC resolution taken at their Annual Conference, a Freedom Charter was to be created by the Congress of the People. This Charter was adopted by the Congress of the People on 26 June 1955 in Kliptown. It served as the basis for the ANC's struggle against apartheid and governed ANC policy for the next four decades. The Charter stands as an example of the ANC's early attitudes towards African foreigners.

The Charter stated in the preamble:

> We, the people of South Africa, declare for all our country and the world to know: -
>
> *That South Africa belongs to all who live in it*, black and white, and that no government can justly claim authority unless it is based on the will of the people;
>
> That our people have been robbed of their birthright to land, liberty and peace by a form of government founded on injustice and inequality;
>
> That our country will never be prosperous or free until all our people live in brotherhood, enjoying equal rights and opportunities;

> That only a democratic state, based on the will of the people can secure to all their birthright without distinction of colour, race, sex or belief;
>
> And therefore, we the people of South Africa, black and white, together – equals, countrymen and brothers – adopt this FREEDOM CHARTER.
>
> And we pledge ourselves to strive together sparing nothing of our strength and courage, until the democratic changes here set out have been won.[12]

Although toward the end of the preamble explicit mention is made of the People of South Africa, there is an implicit inclusion of foreigners in the opening expression that "South Africa belongs to all who live in it".[13] The opening lines can be interpreted as an acknowledgement of the role that African foreigners played in creating South Africa, specifically in reference to the migrant labour system. Foreign miners have worked alongside their South African counterparts in poor conditions underground for low wages, contributing to the wealth and development of South Africa. This statement pledged tolerance and brotherhood toward the peoples of Africa. In a retrospective report, the ANC acknowledged that:

> [The statement] embodies the historical principle which has characterised the policy of the African National Congress towards the peoples who have settled in the country in the past centuries. The African people as the indigenous owners of the country have accepted that all the people who have made South Africa and helped build it up,

[12] Congress of the People. (1955). **"**The Freedom Charter" as adopted at the Congress of the People 26 June 1955. Kliptown. William Cullen Historical Papers AK2915 - A1.
[13] Congress of the People. **"**The Freedom Charter."

> are components of its *multinational population*, are and will be in a democratic South Africa, one people inhabiting a common home.[14]

The Charter highlighted the attitudes of the Congress and called for the realisation of a multiracial and democratic South Africa. The Freedom Charter contained ten sections, the final of which is dedicated to ideals of Pan-Africanism, entitled: "There shall be peace and friendship". "The people of the protectorates – Basutoland, Bechuanaland and Swaziland[15] – shall be free to decide for themselves their own future."[16] At the time of the Congress all three protectorates were still under British colonial control. This statement asserted the right of these neighbouring colonies to decide for themselves their respective futures. This future could be aligned with South Africa if it were the will of their people. Furthermore, this statement suggested that the ANC understood the role these states played in the creation of South Africa, specifically in respect to mining and migrant labour. Moreover, it stands as an early acknowledgement of the interdependence of the region and the reliance of the South African economy on these people. Interdependence and regional co-operation would later form the basis of the ANC foreign policy.

Moreover, the Charter stated that "the right of all peoples of Africa to independence and self-government shall be recognised and shall be the basis of close co-operation".

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[14] Emphasis mine. ANC. (1969). "The Freedom Charter: Revolutionary Programme of the African National Congress." African National Congress: First National Consultative Conference. Morogoro, Tanzania, 25 April – 1 May 1969. ANC Online Archive.
[15] Basutoland would later be renamed Lesotho and Bechuanaland would later become Botswana.
[16] Congress of the People. **"**The Freedom Charter."

Again the Freedom Charter highlighted the ideal of solidarity and kinship with the people of Africa, while acknowledging the need for sovereignty. A balancing act between independence and co-operation was endorsed by the ANC. The Freedom Charter, more than other any document, shaped future policy decisions of the ANC, from human rights to political rights and much in between. This document would form the foundation for the Constitution and the Bill of Rights of South Africa more than forty years later.

1.4 After the Charter

In the first meeting of the ANC following the adoption of the Freedom Charter, Luthuli clarified the ideology of the ANC. In his presidential message at the 44th National Conference, held in Bloemfontein from 17-18 December 1955, he stated that ideologically "African Nationalism" implies an *all inclusive principle* devoid of racial segregation. Moreover, the interpretation extends to an anti-tribal understanding and should be used as a guiding principle to gradually lead Africans from tribal loyalty to a wider loyalty of the "brotherhood of Man throughout the world".[17]

This principle was expanded upon in the report of the NEC, who believed that colonialism would be overthrown. In addition the NEC sent a delegation to the Bandung ["non-aligned" movement] Conference in Indonesia in 1955, where they pledged to fight until the remains of colonialism had been wiped from the earth. "In

[17] Luthuli, A. (1955). "Special Presidential Message." 44th ANC Annual Conference. Bloemfontein, 17-18 December 1955. ANC Online Archive.

the last ten years the maps have been redrawn, the face of the world has changed, the people of great parts of Asia have been risen to their feet, and now the freedom struggle is spreading to our own continent, Africa."[18] The aim of the Conference was to forge relationships between newly independent states, and to further assist in freedom struggles in countries still under colonial rule. The fact that the ANC sent a delegation and took part in the pledge highlighted the importance given to solidarity of the anti-colonial movement. The Pan-Nationalist movement was formed at this conference.

With the anti-colonial movement gathering momentum, Luthuli and the NEC stated during the 45th Annual Conference of the ANC held in Orlando, Johannesburg on 16 December 1957, that the goal of the struggle was a "democratic civilised pattern of life and a belief in justice, fair play, human dignity and in the equality and brotherhood of man".[19] The NEC also stated in reference to "external affairs", that the ANC pledged to take greater cognisance of events on the world stage and further understand the impact that such events have on the situation at home. Freedom abroad encouraged the freedom movement back home. Luthuli and the NEC reiterated their support for peaceful coexistence, continued opposition to colonialism and support for newly emergent native territories and liberation movements. In this statement Luthuli and the NEC confirmed that the policy of the ANC towards

[18] ANC. (1955). "Report of the National Executive Committee to the 44th ANC National Conference." Bloemfontein, 17-18 December 1955. ANC Online Archive.
[19] Luthuli, A. (1957). "We have the Key to Freedom, Not the Oppressor." Albert Luthuli's Presidential Address to the forty-fifth Annual Conference of the African National Congress. Orlando, Johannesburg, 16 December 1957. ANC Online Archive.

foreigners was based on support. However, the party was neutral, in so far as the ANC was aligned to neither East nor West. Alliances would not be entered into because of geographical location, rather friendships would be formed with supporters who were sympathetic to the cause of the ANC and who would uphold principles of honour and dignity.[20] Thus early friendships of the party were based on the traditions of human rights and not necessarily on the geographical proximity to South Africa.

The ideals of the mid-1950s were carried through to both the 46th Annual Conference of the ANC held in Durban from 12-14 December 1958 and the 47th Annual Conference of the ANC held in Durban on 12 December 1959. Again President Luthuli spoke of world condemnation of apartheid, greater solidarity and brotherhood for the struggle.[21] The call for solidarity was largely rhetorical – the ANC did not physically rely on a foreign state until the 1960s.

1.5 The Banning of the ANC

The late 1950s and early 1960s was a tumultuous period for liberation movement and the ANC: the Pan African Congress (PAC) broke away in 1958/9. In 1960 the political party was banned, its leadership either imprisoned, or forced underground

[20] Luthuli. "We have the Key to Freedom."
[21] Luthuli, A. (1958). "Freedom in Our Lifetime." Albert Luthuli's Presidential Address to the forty-sixth Annual Conference of the African National Congress. Durban, 12-14 December 1958. ANC Online Archive.
and
Luthuli, A. (1959). "The Liberation Struggle is on in Earnest." Albert Luthuli's Presidential Address to the forty-seventh Annual Conference of the African National Congress. Durban, 12 December 1959. ANC Online Archive.

and into exile. These events led to the adoption of the armed struggle.[22] Furthermore, these events had a major impact on how the party interacted with African foreigners. In essence these events forced ANC attitudes to change from rhetoric and solidarity to a state of physical reliance. The banning of the organisation forced the party to set up offices in foreign states. I would argue that this for the first time really forced the ANC to look at African foreigners as friends. They were after all guests in foreign countries.

During 1958/59 it was the PAC and not the ANC that had begun forging relationships with newly independent African states. Their actions forced the ANC, who saw themselves as the voice of the South African people, to tone down their socialist ideology and develop concessions towards "Africanism", lest they find themselves without allies. The PAC felt that the Freedom Charter and mass democratic movement was an abandonment of genuine African nationalism, as outlined in earlier ANC doctrines.[23] These Africanists favoured joining forces with other Africans and were also opposed to the patriotic project of the Freedom Charter. Leaving the ANC in 1958, Robert Sobukwe and PK Leballo formed the PAC. The new party intended to be true to the notions of African Nationalism.[24] The split forced the ANC to re-examine policies.

[22] Many of the ANC's top members were found guilty at the Rivonia Trials and sentenced to long prison sentences; this includes Govan Mbeki and Nelson Mandela.
[23] African Nationalism was adopted in the 1949 Programme of Action.
[24] ANC. (1987). "Advance to Power: 75 Years of Struggle." ANC Online Archive.

It was the PAC that organised the passive resistance campaign on 21 March 1960, which led to the Sharpeville Massacres. In response to the massacres the ANC called for a national strike on 28 March. This event led to the government declaration of a state of emergency and the banning of the respective political parties. The banning of the ANC forced many of its leadership into exile and dramatically changed the way in which the party interacted with African foreigners. The relationship changed from one of an ally in rhetoric, into a friend in reality. Consequently the frontline states became the physical home of the ANC.

In addition, the banning of the ANC led to the party's adoption of the armed struggle in 1961. The armed struggle was presented as an effective means of overthrowing white supremacy and a break with previous struggle methodology. This led to the creation of a military apparatus of the ANC – *Umkhonto we Sizwe* (MK). MK adopted guerrilla warfare as a strategy because of the vast imbalance of military resources between the State and the ANC.

By the grace of foreign, especially African, countries the ANC was able to actively continue working on the liberation struggle. Many states allowed the ANC to set up offices. Some key centres of the ANC in exile included: Lusaka in Zambia – the headquarters of the ANC in exile, Maputo in Mozambique (after 1975) – a regional office of the ANC, and Harare in Zimbabwe (after 1980) because of its proximity to South Africa became home to many comrades. Furthermore Tanzania became home to both comrades and a liberation school, while Angola (after 1975) offered material

and training facilities as well as physical protection from the South African government. In addition to the support from Africa the ANC also relied heavily on international co-operation from Russia, the Soviet Union, Scandinavia – more specifically Sweden, for financial support, and lastly the United Kingdom, London became the home for its international office. The reliance on foreign nations ensured that the ANC maintain a stance of international solidarity. Having multiple offices in multiple states would force the party into friendships with African foreigners where there may not have previously been common ground. Many of the offices were established because of their proximity to South Africa.

1.6 The Morogoro Conference

The first ever ANC National Consultative Conference was held in Morogoro, Tanzania from 25 April to 1 May 1969. The main aim of the seven day conference was "to bring about a qualitative change in the organisational content of our movement in keeping with the new situation – namely a Revolutionary People's War".[25] The conference was important for a number of reasons. Firstly, it laid down strategy and tactics for the ANC, paving the way for the National Revolutionary Struggle and an armed struggled and secondly, it called for international support for the fight against apartheid.[26] The pace of the 1970s' movement was established at the conference.

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[25] ANC. "Advance to Power."
[26] ANC. (1969). "Intensify the Revolution." Extracts from the Political Report of the National Executive Committee to the Consultative Conference of the African National Congress. Morogoro, Tanzania, 25 April – 1 May 1969. ANC Online Archive.

The conference was attended by over 70 delegates from various ANC branches, *Umkhonto we Sizwe* wing, the trade unions and Indian and Coloured peoples, in addition to representatives from TANU, NUTA, All African Trade Union Federation and revolutionary leaders from FRELIMO (Mozambique), MPLA (Angola), SWAPO (Namibia) and ZAPU (Zimbabwe). The conference was opened by the executive secretary of the OAU Liberation Committee, Mr George Magobe. Inviting as many foreigners as the party did, added to the legitimacy of the event and highlighted the need for the support of African foreigners to continue with the struggle. True to ANC policy the conference was anti-imperialist. Furthermore, the proceedings of the Morogoro Conference marked a turning point in the ANC policy and revealed, in part, the origins of a coherent foreign policy.[27]

To borrow from the socialist rhetoric, the Morogoro Conference stands as part of the post-colonial trend of trans-national African socialist-worker solidarity. Reference in speeches and reports are made to "brothers" in an alliance, similarly calling on socialist rhetoric: "workers of the world unite". In addition documents contain explicit reference to "friends" in, amongst others, Zambia, Tanzania and Algeria acknowledging their support for housing members of the ANC in exile. Highlighting both the reliance on Africa and support for regional struggle movements, led to the signing of alliances with ZAPU of Zimbabwe, FRELIMO of Mozambique, SWAPO

[27] Membership of the ANC was opened to all South Africans regardless of race. It was, however, restricted to South Africans and South Africans borne in exile only.

of South West Africa and MPLA of Angola.[28] Lastly, the Morogoro Conference is seen as a commitment by the ANC to greater regional support and implicit integration of Southern Africa.[29]

> Not only do we join the powerful mass of mankind fighting the same enemies, but we are able to disseminate information about our struggle, thereby winning support and strengthening ourselves and our allies and obtaining broader moral and material support for our struggle.[30]

The topic of international support and solidarity was high on the agenda at the Morogoro Conference. The ANC was spurred on by the steady increase in the number of socialist countries in Africa and the world, potential allies from whom they could garner support. The number of colonial powers retreating and newly independent nations in Africa was interpreted as a sign of the times, and resulted in new partnership opportunities. The ANC had much in common with the people of Africa – race, cultural, colonialism and geographical similarities would result in favour being bestowed on African countries and movements. The Conference represented a change for the ANC. Out of it they resolved to be more organised and started putting together policy that articulated regional integration and begun exploring foreign policy and international relations - a clear sign of a relationship with foreign states and early interaction with African foreigners. Since the party was

[28] ANC. "Intensify the Revolution."
[29] Ibid.
[30] Ibid.

still fighting a revolutionary movement, any discussion around foreigners would be a foreign policy question.

A noteworthy remark made at the conference echoed the preamble of the Freedom Charter: "The South Africa of today is the product of the common labour of all its peoples. The cities, industries, mines and agriculture of the country are the results of the efforts of all its peoples".[31] This statement made by Oliver Tambo before ANC delegates and many foreigners could be implicitly interpreted as an acknowledgement of the support of Africa's people in forging the country. Although, they did not refer to the support of foreigners, there was an implicit understanding that South Africa was in part a product of the migrant labour system. Moreover, it was mentioned at the Morogoro Conference that the formation of the OAU in the 1960s was a symbol of African aspiration and determination to place Africa on the world stage. The OAU was actively supported by the ANC as it contributed to solutions in interstate affairs and in the anti-imperialist struggle.

1.7 The Bantustans

This period was also shaped by opposition to the emerging "bantustans" movement and ethnic conflict (within the context of this Pan-Africanist movement). The formation of the bantustans had an impact on the ANC's thinking about national identity formation, particularly within the context of the migrant labour

[31] ANC. (1969). "The Freedom Charter: Revolutionary Programme of the African National Congress." African National Congress: First National Consultative Conference. Morogoro, Tanzania, 25 April – 1 May 1969. ANC Online Archive.

system/compounds. The system created a separation of the family, with working age men living on the mines and women, children and the elderly in the artificial "homelands". The balkanisation of South Africa sought to make "foreigners" of the local African population and divide domestic population groups into rival "tribes".

Transkei, under the leadership of Kaiser Matanzima, was the first homeland to be given so called "independence" in 1976 by the National Party. The following year Bophuthatswana was declared independent, with Chief Lucas Mangope as president.[32] In total ten bantustans were manufactured along perceived ethnic lines: Transkei (Xhosa), Bophuthatswana (Tswana), Venda (Venda), Ciskei (also Xhosa), Gazankulu (Tsonga and Shangaan), KaNgwane (Swazi), KwaNdebele (Ndebele), KwaZulu (Zulu), Lebowa (Northern Sotho and Pedi) and QwaQwa (Southern Sotho). The arbitrary division of language groups into multiple homelands and the bracketing of others resulted in a loss of formal national identity and a dislocation of families. People found themselves citizens of homelands in which they did not belong. The bantustan policy led to the loss of collective national identity amongst South African "blacks". However, in turn it did lead to a stronger alliance with an African identity, which shared a collective characteristic with people of the continent.

The ANC, of course, was a fierce critic of the bantustan system. The bantustans were created as an attempt by the Nationalist Party to entrench the ideas of separate

[32] ANC. (1994). "A Chronological History of the ANC." Located on the world wide web: http://www.liberation.org.za/ancchrono. Accessed 11 June 2008.

development and remove the citizenship of the ANC's supporters. The ANC viewed this as a travesty and not the will of the people. The policy was condemned because it sought to divide the people of South Africa along tribal lines by creating artificial borders. The carving up of the country had happened previously during the colonial period. The ANC's critique of the bantustan system was adopted by African foreigners who had experienced similar dislocation during colonisation of their own countries. Instead of acting as a divider, the bantustan system in some way unified opposition.

With the ANC in exile, the South African government embarked on cross border raids targeting ANC members in foreign countries, including in Botswana, Lesotho and Mozambique. The disregard for sovereignty of a nation and these unprovoked acts against ANC members prompted Mozambique President Samora Machel to openly declare his country's solidarity with the anti-apartheid movement on 14 February 1981. Similarly an ANC leaflet distributed on 19 March 1976 carried a message of solidarity with African foreigners: "The struggle in Angola, Zimbabwe and Namibia is our struggle – a struggle against a common enemy – racism and imperialism. Together we will win."[33]

[33] ANC. (1976). "People of South Africa – Sons and Daughters of the Soil." ANC flyer distributed on 19 March 1976. ANC Online Archive.

1.8 The Kabwe Conference

The Second National Consultative Conference of the ANC was held in Kabwe, Zambia from 16-22 June 1985 and was attended by 250 democratically elected delegates representing a cross section of the movement. The conference lasted for seven days and focused on issues pertaining to the struggle, strategy and tactics of the ANC and its strengths and weaknesses. It reinforced policy decisions taken at the Morogoro Conference and upheld the principles of the Freedom Charter while endorsing the anti-imperialist positions of the ANC.

In a communiqué issued by President Oliver Tambo at the Conference he stated that: "We shall forever be indebted to the Zambian people and their leadership for their outstanding contribution to our struggle."[34] The statement showed how reliant the ANC was on the goodwill of African countries and leaders and indicated that when the time was right, this debt would be repaid.

On the international question the ANC agreed that the party would further expand the net of international relations and give support to more regions, governments and countries. In a statement entitled "Call to Peoples of the World", adopted at the conference, the ANC stated:

[34] Tambo, O. (1985). "Conference Communiqué." Second National Consultative Conference. Delivered by OR Tambo on 25 June 1985 at press conference after Kabwe, Zambia Conference. ANC Online Archive.

> Your firm and consistent support for our struggle and movement inspires us to fight the liberation of our motherland with even greater vigour and determination. We are convinced that acting together with you we shall achieve our most cherished desire – to rid our country and the world of the evil of apartheid…[35]

The ANC also addressed special greetings to each of the frontline states: Botswana, Zimbabwe and Mozambique, amongst others, an indication of the continued solidarity with the people of Southern Africa.

The ANC did not have a home affairs department. Instead decisions pertaining to foreigners were discussed within their foreign policy commissions. A clear basis for a foreign policy was presented in the Report of the Commission on Foreign Policy. The report was influenced by the prevailing conditions of South Africa as well as global balances of forces in which the "imperialist" USA was dominant. The ANC took credit for the expulsion of the RSA from the United Nations Organisation (UN) in 1974. They depict the event as a milestone in exposing the racist ideology of the National Party government.

The aim of the new ANC foreign policy was three-pronged. First, the ANC called for the total isolation of the white minority regime in South Africa. Second, they wanted the ANC recognised as the sole and authentic representative of the South African majority, and third, they called for the establishment of diplomatic ties with foreign

[35] ANC. (1985). "Call to the People of the World." Appeal to the World Community, adopted at the Second National Consultative Conference, Kabwe, Zambia. Sechaba. August 1985.

governments. To achieve these aims the ANC laid down a thirteen point plan, four of the points dealt explicitly with relations with Africa. Again their plan highlights the bias towards the region. Point five called for increased co-operation with SWAPO of Namibia and the struggle for the freedom fight under way in Namibia. Point six dealt with the support and relations of the so called frontline states, emphasising the need to strengthen the relations with these neighbouring states, all (except Namibia) of whom by 1985 had achieved independence from their respective colonial powers. Point eight called for the consolidation of relations with socialist countries and fight for unity within the movement, while point thirteen called for co-operation with authentic liberation movements of peoples fighting for self determination in Africa and an end to all forms of colonialism. Ultimately the ANC believed that "Africa will be free".[36] Significantly, whenever the ANC made a statement on foreign policy, Africa took centre stage. "We also hail the support given to the ANC by the OAU, the Non-Aligned Movement, and other international organisations, and should press for full recognition by such bodies and our acceptance as the sole representatives of the South African people."[37]

Following the recommendations made at the Kabwe Conference, the ANC established its International Department and mandated it to create both a coherent and formal foreign policy in addition to creating foreign missions in African states.

[36] ANC (1985). "Report of the Commission on Foreign Policy." Presented at the Second National Consultative Conference of the African National Conference, Kabwe, Zambia. ANC Online Archive.
[37] ANC. "Report of the Commission on Foreign Policy."

1.9 The Late 1980s

Oliver Tambo remarked at the 75th anniversary celebrations of the ANC in 1987:

> Let the Peoples of the world further increase their support for SWAPO and the people of Namibia in their struggle to liberate their country from apartheid colonialism and military occupation. Let all rally to the support of the Front Line States and other states of Southern Africa to help them withstand Pretoria's campaign of aggression and destabilisation.[38]

The impact of sanctions and apartheid on the region was severe. During the 1980s millions lost their jobs in countries such as Mozambique, Zimbabwe, Botswana and Zambia. The apartheid government inflicted an estimated $60 billion worth of damage on the frontline states, and actively attempted to destabilise the area. As such the ANC openly stated that "everyone [including neighbouring countries] has suffered due to sanctions". Sanctions were called for and implemented to isolate Pretoria and bring her to her knees.[39] The leadership of the ANC stated that the party and the people of South Africa were indebted to them for bearing the military intrusions and economic interventions. These sentiments of debt and the obligation to repay would become the focal point of the ANC relationship with African foreigners during the 1990s.

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[38] Tambo, O. (1987). "75th Anniversary: The ANC Appeals to the People of the World." Lusaka, Zambia. 8 January 1987. ANC Online Archive.
[39] Norval, M. (1980s). "The Fourth Pillar – International Isolation." Inside the ANC: The Evolution of a Terrorist Organisation. Selous Foundation Press: Washington D.C. Pg.187

The African Community, with the exception of Malawi, condemned apartheid. The Declaration of the OAU ad-hoc Committee on Southern Africa (CSA), to which the ANC sent a delegation, stated on the question of South Africa, in what became known as the Harare Declaration, on 21 August 1989:

> The people of Africa, singly, collectively and acting through the OAU, are engaged in serious efforts to establish peace throughout the continent by ending all conflicts through negotiations based on the principle of justice and peace for all.
>
> We reaffirm our conviction, which history confirms, that where colonial, racial and apartheid domination exists, there can be neither peace nor justice.
>
> Accordingly, we reiterate that while the apartheid system in South Africa persists, the peoples of our continent as a whole cannot achieve the fundamental objectives of justice, human dignity and peace crucial in themselves and fundamental to the stability and development of Africa.[40]

The OAU CSA acknowledged that Africa could not be free until apartheid had ended. The OAU furthermore pledged to do everything in its power to apply pressure on Pretoria and ensure that the people of South Africa could determine their own destiny. The Harare Declaration stood as an example of the reciprocal support by African countries for the ANC.

Moreover, the OAU called for a cessation of hostilities between parties and the commencement of negotiations for a democratic South Africa that would end

[40] OAU. (1989). "Harare Declaration: Declaration of the OAU Ad-hoc Committee on Southern Africa on the Question of South Africa." Harare, Zimbabwe: 21 August 1989. ANC Online Archive. These sentiments echoed the Lusaka Manifesto of the OAU two decades earlier which also called for an end to Apartheid.

apartheid and bring stability to Southern Africa. The OAU also believed that only a democratic South Africa could uphold human rights traditions and respect the rights, sovereignty and territorial integrity of all countries while pursuing a policy of peace, friendship and mutually beneficial co-operation with all peoples of Africa.[41]

1.10 Conclusion

The 1980s ended with FW de Klerk coming to power and radical reform. The new decade would herald a new chapter in South African history, as the ANC found itself for the first time with a seat at the negotiations table. While the period prior to 1990 saw the ANC rely heavily on the support of African countries and foreigners, the new decade would see a shift from physical reliance and solidarity to the repayment of debt. The relationship between the ANC and African foreigners during the 1950-1989 was characterised by rhetorical solidarity as well as real co-operation and physical support.

Geographical proximity and physical reliance shaped the way the party interacted with fellow Africans. Many of their allies came from the continent, hence the sense of camaraderie between the leaders of the ANC and the freedom fighters of other revolutionary movements. However, solidarity and international alliances do not always translate into an acceptance of the free movement of people. In the case of South Africa it was different. Migrant labour was already an established phenomenon for over 100 years. The ANC had relied on nations and African foreigners for aid,

[41] OAU. "Harare Declaration."

protection and land. Moreover, apartheid had destabilised the entire area. As such the calls for solidarity were more genuine and would shape later interactions between the party and African foreigners. The ANC would also from 1990 onward have to define the patriotic project, a unique case because many ANC supporters were born in exile.

Now that the party was unbanned the question remained: how would the relationship between the ANC and African foreigners shift during the 1990s and what would the impact be on policy?

CHAPTER 2:

THE TRANSITION PERIOD

2.1 Introduction

A transition period followed the unbanning of the ANC in 1990. This period saw the ANC return from exile and consequently there was reduced reliance on the physical support of African frontline states. The period was, however, characterised by the ANC acknowledgement of the support of African countries during the struggle. They appealed for this support to continue until freedom could be formally attained. During this period the relationship with African countries and foreigners shifted slightly, from physical support to more rhetoric. Policy suggested that they had an obligation to encourage regional development in return for forty years of unfailing support. The transition period was also characterised by a change in the world order. Just as the ANC was legalised, they found themselves without their traditional allies – a new world order was ushered in with the collapse of the USSR, the demise of communism and the end of the Cold War.

The Harare Declaration had highlighted Africa's support for the anti-apartheid struggle and supported the ANC's call for negotiations.

> 'If there is a demonstratable readiness on the part of the Pretoria regime to engage in negotiations genuinely and sincerely, could create the possibility to end apartheid through negotiations.' Whether or not this process unfolds towards the desired end, depends primarily on the strength of the national

democratic movement, the main function of which is the people in political motion.[1]

President FW De Klerk made a historic announcement on 2 February 1990, when he unbanned the ANC, SACP, PAC and COSATU.[2] This was followed days later, on the 11 of February with the release of Nelson Mandela, an event that paved the way for negotiations as indicated in the Harare Declaration. The unbanning of the party provided the ANC with the first opportunity in over 40 years to assemble legally on South African soil. In addition to the unbanning, the ANC found itself in unchartered territory with the collapse of socialism in Eastern Europe. All of these events had implications for attitudes toward African foreigners.

2.2 Home at Last – The First National Conference on South Africa Soil

In December of 1990 the ANC was able to hold its Consultative Conference at home with all of its leaders present. The Conference, titled "Advance to National Democracy" was held in Johannesburg from 14-16 December 1990, and attended by the national leadership of the ANC, the leadership of *Umkhonto we Sizwe*, representatives from MK, the ANC international mission, the Women's League,

[1] ANC. (1990). "Draft: Advance to Democracy: Theses on Strategy and Tactics of the African National Congress." William Cullen Historical Papers. AK 2915 - A1. Pg.1.
[2] ANC. (1994). "A Chorological History of the ANC." Located on the world wide web: http://www.liberation.org.za/ancchron. Accessed 11 June 2008.

Youth League, COSATU, the SACP and UDF.[3] The conference was significant because it outlined the ANC's approach to the transition period.

At the conference, the ANC called for an end "to the campaign of aggression and destabilisation directed against the independent states of our region";[4] indicating an allegiance with neighbours while highlighting a belief in sovereignty of nations. High on the agenda was the newly acquired status of the ANC as a legitimate organisation in South Africa and the road to democracy. A declaration was taken by those in attendance that acknowledged and thanked people, South Africans and African alike, for their support in the struggle. The ANC also declared that 1991 would see the transfer of power to the people.[5] Interestingly, the statement did not contain an explicit reference to South African citizenship. This would be one of the big challenges facing the ANC – integrating people from South Africa, the bantustans, exile and abroad, and immigrants all into a national identity.

The NEC in the conference resolutions paid homage to President Kaunda of Zambia.

> [This] conference extends profound thanks to President Kaunda, the Government and people of Zambia for their selfless solidarity and friendship they have extended over the years to Comrade President Oliver Tambo. We

[3] ANC. (1990). "Advance to Democracy: Report on the ANC National Consultative Conference." Johannesburg, 14-16 December 1990. ANC Online Archive.
[4] ANC. "Draft: Advance to Democracy." Pg.11.
[5] ANC. (1990). "Declaration of the 1990 National Consultative Conference." Johannesburg, 14-16 December 1990. ANC Online Archive.

> thank them especially for all their assistance they extended to us to ensure the safe return of our president, after absence of more than 30 years.[6]

This statement continued the prevailing ANC Africanist sentiments and solidarity approach to policy. In addition the ANC maintained that sanctions needed to continue against the illegitimate South Africa government during this period of transition. To them, sanctions acted as an effective method of total isolation, and continuing their application would maintain pressure during the negotiation process. [7] The ANC acknowledged that sanctions had adversely affected the continent and in calling for them to continue, understood the sacrifice made by nations. They met with both the frontline states and the OAU, to garner support for this economic weapon.[8]

2.3 Developing an Economic Policy

A working conference was held in Harare from 28 April to 1 May 1990, during which the recommendations were submitted by the working committee on economic policy in a post-apartheid South Africa. The working committee discussed and acknowledged that the South African economy was in a crisis and required active restructuring to expand employment, redistribute income and provide universal access to social services. They proposed that a new state assume the leading role in this endeavour. Although never fully realised, early economic discussion favoured nationalisation of enterprise and assets. However, the economic forum insisted that

[6] ANC. "Advance to Democracy."
[7] ANC. (1990). "Managing the Period of Transition: Draft Discussion Document on Sanctions." William Cullen Historical Papers AK 2915 - A1.
[8] Mandela, N. (1994). "Political Report of the National Executive Committee, to the 49th National Conference of the African National Congress by President Nelson Mandela." 49th National Conference. Bloemfontein, 17-21 December 1994. ANC Online Archive.

international investment was fundamental for growth, not only for South Africa but for the region as a whole. Economic success would only be achieved if the Southern African region was collectively developed.

Section 1, point 7 of their recommendations stated:

> The non racial democratic state would actively seek to promote regional economic co-operation along new lines, in ways that would not be exploitative and will correct imbalances in current relationships. The state must be prepared to enter into negotiations with its neighbours to promote a dynamic and non-exploitative and mutually beneficial form of regional co-operation and development. This may involve making concessions to our neighbours.[9]

This statement was significant as it underscored the policy approach of the transition period as one of co-operation and indebtedness toward the region. Interestingly, neither the Agriculture nor Labour and Human Resource Development Plan contained reference to foreigners. Perhaps this was because the statement was made during an era of political naivety, when all was well in neighbouring states. Zimbabwe's economy was booming, Mozambique was rebuilding and an AIDS pandemic had not yet taken root. Few people would have predicted mass migration to South Africa just a few years later. Concerned primarily with domestic economic recovery, the ANC did not foresee the extent to which South Africa would become a refuge and place of opportunity.

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[9] ANC. (1990). Workshop on Economic Policy for a Post-Apartheid South Africa." Harare, 28 April – 1 May 1990. William Cullen Historical Papers AK 2915 - A1.1.

The Department of Economic Policy of the ANC met again in Harare from 20 to 23 September 1990 and once again stated that the future democratic state would encourage foreign investment in South Africa. The ANC insisted that investment must accompany acceptable labour policies in line with the labour movement and trade unions of South Africa. Labour law did not exclude foreign migrants workers currently employed in the country. The statement made by the economic forum supported the rights of African foreigners. Furthermore, the department believed that development of the Southern African region would open up opportunities for increased trade, provision of services and greater investment. They affirmed the need for a non-exploitative approach to investment and took into consideration the negative impact apartheid had on frontline states. Collective investment would require the prioritisation of the interest of the most impoverished of South Africa's neighbours.[10] It is evident that the ANC is very mindful of the role foreign states played in the struggle. But little mention is made of migrant labour and of immigration. Although they did call for greater economic co-operation, immigration was not perceived as a problem during the transition phase of South Africa.

In a similar conference held in 11-12 May 1991, a draft resolution was adopted by the ANC's Department of Economic Policy in which the ANC pledged to promote closer ties with other countries on the African continent and more specifically neighbouring

[10] ANC Department of Economic Policy. (1990). "Discussion on Economic Policy." DEP Workshop, Harare, 20-23 September 1990. William Cullen Historical Papers AK 2915 - A2e-g.

states.[11] In a follow-up session held in 1992, the ANC Department of Economic Planning published a discussion document on "Regional Co-operation and Integration in Southern Africa after Apartheid", in which they tackled the role and support of foreigners and the migrant labour system. The party acknowledged that the whole Southern African region was destabilised by apartheid, resulting in the loss of lives of nearly 2 million people across the region. In response they called for closer co-operation and economic integration. A new policy, it was believed, would benefit the entire region. The proposed new regional order would collectively benefit all peoples of Southern Africa and would not be imposed by either a regional power or regional forces.[12] Instead, recommendations were made that called for regeneration based on the ideals of peace and collective development. The ideals of collective development strongly underpinned ANC economic discussion. In their opinion a new South Africa, as the strongest economic force, would need to resist the urge to appoint itself a regional power. Instead it would be preferable if South Africa became part of a region based on a mutually beneficial and interdependent economic order. The ANC Department of Economic Policy appears very mindful of the wrongs of the apartheid state and did not want to assume a similar dominant role in the region. Understanding that neighbouring countries are heavily dependent on the migrant labour system for both employment and foreign exchange earnings, the ANC recommended that the new regional authority would seek to transform the exploitative system of the past.

[11] ANC. (1991). "Draft Resolution on ANC Economic Policy for National Conference." William Cullen Historical Papers AK 2915 - A1.
[12] ANC Department of Economic Planning. (1992). "Discussion Document on: Regional Co-operation & Integration in Southern Africa after Apartheid." ANC Online Archive. Pg.1-2

These plans were still, however, conceptualised around the boardroom table, their application would be significantly harder.

According to the ANC, economic issues remained pivotal to regional stability. They called for the establishment of a regional investment code that would prevent neighbouring countries from competing against one another. Rather, economic stability needed a policy of regional development. The Southern African region should act as a collective in international activity; this could be done through the establishment of, among other things, accords and the creation of a Southern African Development Bank. The bank, it was believed, would promote co-operation and integration and fund regional infrastructure projects.[13] Again the Economic Policy urged regional development and co-operation with neighbouring states and hinted to an open economic policy in which the ANC was very tolerant of African foreigners. The discussion did however place the foreigners in the own countries and did not explore the issue of foreigners in South Africa.

2.4 The 48th National Conference of the ANC

The ANC met in Durban in July 1991 for the 48th National Conference, the aim of which was to discuss the way to take South Africa into a united, democratic, non-racial and non-sexist country; transferring power from the police state to the people. This human rights approach underpinned attitudes toward foreigners in that it

[13] ANC Department of Economic Planning. "Discussion Document on: Regional Co-operation." Pg.4-5

guaranteed the rights of both foreigners and citizens alike.[14] In Nelson Mandela's opening he remained true to the tone of the ANC when he thanked the friends of the party:

> We have with us many of our friends from the rest of the world who, only a short while ago, would not have been able to enter this country. They have come here at the invitation of the ANC in order to demonstrate their continuing solidarity with our cause.[15]

At the conference Mandela called for continued work from the ANC departments in preparing policy reports on all aspects of public life. He believed that it was necessary to inform the public on positions and actions of the ANC before they could take over governing the country. Similar sentiments were raised in his closing remarks, when he called for the continuation of sanctions, despite the fact that it was placing strain on many Africa countries including those that had supported the ANC's cause. [16]

Reflecting on the past, Oliver Tambo spoke of his life in exile and the unfailing support he had received from great freedom fighters of Africa, including Mwalimu Nyerere in Tanzanian and Kwame Nkrumah in Ghana, and many more from the newly formed independent states on the continent. These men had graciously supported the ANC in exile; their support was frequently citied in speeches by the

[14] Mandela, NR. (1991). "Nelson Mandela's Opening Address to the 48th National Conference of the African National Congress: Presidential Report II" Durban, 2 July 1991. ANC Online Archive.
[15] Mandela. "Opening Address to the 48th National Conference."
[16] Mandela, NR. (1991). "Nelson Mandela's Closing Address to the National Conference." Durban, July 1991. ANC Online Archive.

leadership of the ANC. As a measure of the success of the ANC foreign policy, Tambo stated that the ANC had more representatives abroad in 1989 than the South African government.[17] Tambo stressed that issues Africa faced were similarly issues faced by the party. The ANC had openly supported revolutionary movement in Africa, sending manpower to bring about change on the continent. In 1967 *Umkhonto we Sizwe* combined forces with Zipra in what was known as the Wankie-Sipolilo campaigns in Rhodesia.

The collapse of the Portuguese colonies created new opportunities for the ANC in both Mozambique and Angola.[18] Angola provided military bases for training and with the support of Cuban and Soviet forces, helped the ANC stand firm against Pretoria's destabilisation of Angola. Moreover, the independence of Zimbabwe in 1980 stood as another pillar behind the ANC's struggle. Tambo also mentioned that Tanzania provided land for the Solomon Mahlangu Freedom College in Morogoro in 1979.[19] These stand as examples of regional co-operation between the ANC and the frontline states. Their reference continued to highlight the notion of indebtedness. Similarly there was a sense amongst the leadership that the ANC had an obligation to return this favour.

[17] Tambo, O. (1991). "Oliver Tambo's Opening Address to the ANC 48th National Conference." Durban, 2 July 1991. ANC Online Archive.
[18] Mozambique gained independence from Portugal on 25 June 1975. Angola gained independence later that same year on 11 November, at the same time that the South African army invaded the country started a bitter border war.
[19] Tambo. "Opening Address to the ANC 48th National Conference."

The foreign policy resolutions adopted by the ANC at the 48th National Conference added to those already agreed upon at Kabwe. They reiterated an approach based on the principle of universal human rights and the continuation of sanctions against South Africa. The ANC called for financial and material assistance from the international community to counter sanctions and fund development by: "upholding the principles of the sovereignty of nations, regional stability and international peace and security"; to assist in socio-economic development and for the creation of a South African Development bank modelled along the lines of the Bank of Reconstruction and Development in Eastern Europe. [20] On the question of regional and international co-operation the ANC pledged to promote Pan-African solidarity and mutually beneficial co-operation amongst people.

2.5 Ideology of a Nation

During the transition phase, the ANC found itself having to deal with a new challenge of nation building. The ANC defined nation building as a search for national sovereignty or self rule – power for the people – or, more accurately, the transfer of power to the people. The ANC emphasised the need for a National Democratic Revolution (NDR) to create a united, non-racial, non-sexist, democratic society.[21] Key to this cause was the creation of an identity which would evoke patriotism and a sense of belonging.

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[20] ANC. (1991). "Adopted Resolutions on Foreign Policy." ANC 48th National Conference. Durban, July 1991. ANC Online Archive.
[21] ANC. (1991). "Nation-Formation and National Building: The National Question in South Africa." Located on the world wide web: http://www.anc.org.za/ancdocs/discussion/nation.html. Accessed June 2008.

The concept of nation building was, and continues to be, sensitive in South Africa. There were a number of paths which the country could follow. Central to the "Nation-Formation and National Building" document of the ANC was how to position the country. Would South Africa be an African nation on the African continent, or a copy of the west mimicking the cultural expression, food and language of the former colonial power?[22] The document penned in 1991 by the ANC, highlighted issues facing the party and dealt with notions of inclusion and exclusion. Nation building was feverishly debated by the ANC during the transition period as they sought to transform both the party and the country. It involved a continual battle to assert African hegemony in a non-racial and multi-cultural society. In the end the ANC chose to emphasise Africa identity and closer regional ties. This was premised on a sense of regional belonging and the support given to them during the apartheid years.

The "rainbow nation" was coined to reflect the multi-racial tapestry of South African society. It had both a positive and negative connotation. On the one hand, it allowed different cultures and people to be categorised alongside one another, making space for differences in opinions and appearances. On the other hand, it limited the representation of South Africans by not accurately recognising "a healthy osmosis" among various cultures and other attributes in the process towards the emergence of an African nation.[23] Whatever term is used to describe South Africa, the ANC

[22] ANC. "Nation-Formation and National Building."
[23] Ibid.

believed that the unifying principle remained consistent, that the people of South Africa are part of this land. Central to the nation building debate is a discussion of identity, in this case what constitutes being South African. The ANC acknowledged the philosophical discussion but chose to more pragmatic in their creation of a South African identity. Interestingly the emergence of a South African identity contributed toward the emergence of an African foreigner. The converse to national identity is the emergence of the "other" or "outsider". Identity depends as much on knowing what one is, as what one is not. The very assertion of a South African identity has contributed toward the emergence of an "African foreigner". This patriotic project contributed to rising xenophobia.

2.6 Ready to Govern

The "Ready to Govern" doctrine was adopted at the National ANC Conference in May 1992. The document was the product of all ANC departments, and put pen to paper Mandela's call for debate and development on policy affecting public matters. The conference and document launched the Reconstruction and Development Programme (RDP). The basic policy was four fold: Firstly, it called for the rights of all South Africans as a whole to economic and political self determination in a united South Africa. Secondly, it stated that democracy could only be achieved if South Africa were to overcome the legacy of inequality and injustice created by the apartheid system. Thirdly, it stated that a sustainable economy was only possible if the development of infrastructure benefited all South Africans. Finally, the doctrine encouraged a feeling that South Africa belongs to all who live in it, promoting a

common loyalty toward South Africa and a universal sense of freedom within its borders. As before, the notions of human rights took centre stage in ANC policy. Interestingly the final point of the "Ready to Govern" document stressed that the country belonged to all who live here. It did not discriminate against people who were not South African by birth, and again endorsed the idea held in the Freedom Charter, that South Africa is the product of people of the SADC region.[24] The creation of a Bill of Rights was also reiterated in the doctrine. A Bill of Rights would guarantee that the basic rights and freedoms of all people. These rights would be upheld through improved legislation and enforced by the courts (headed by the proposed Constitutional Court).[25]

Furthermore, the "Ready to Govern" doctrine called for an economic policy that would "develop a prosperous and balanced regional economy in Southern Africa based on the principles of equality and mutual benefit".[26] The ANC perceived the country as rooted on the African continent and consequently stated that a new South Africa would enforce the aims of the Organisation of African Unity (OAU), the Southern African Development Coordination Conference (SADCC) and the Preferential Trade Area for Southern and Eastern Africa (PTA) and in doing so achieve economic integration on the continent. The discussion focused on regional

[24] ANC. (1992). "Ready to Govern: ANC Policy Guidelines for a Democratic South Africa." Adopted at the 49th ANC National Conference. 28-31 May 1992. William Cullen Historical Papers AK 2912 – A1.
[25] Democratic Constitution for South Africa discussed in the ANC's "Ready to Govern" document.
[26] Economic Policy discussed in the ANC's "Ready to Govern" document.

integration in terms of trade.[27] This approach was in line with global economic trends which had witnessed the creation of major regional trading blocks. These could potentially increase competitiveness and attract investment from the advanced industrialised economies.

> An ANC Government will seek to actively promote economic cooperation in Southern Africa in ways that will correct existing imbalances and promote non-exploitative relationships.[28]

The ANC adopted a new approach to both peace and security. They held the belief that national and regional security should not be restricted to military, police and intelligence matters. Rather the very definition of security should be broadened to include political, economic, social and environmental dimensions as these too could pose a threat to the security of states. Overarching, the document stated that the ANC was committed to resolving both internal and external conflict through non-violent means. A new South Africa, led by the ANC, would pursue peaceful and co-operative relations with neighbouring states in stark contrast to the apartheid state. To achieve this, the security apparatus would need to respect human rights and be non-partisan. This new approach to peace and security was a departure from the police state of the National Party to diplomacy that respects the African foreigner.[29]

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[27] Economic Policy discussed in the ANC's "Ready to Govern" document
[28] Ibid.
[29] Peace and Security discussed in the ANC's "Ready to Govern" document.

The international relations policy articulated in the "Ready to Govern" statement emphasised that the foreign policy of a democratic South Africa would be primarily shaped by domestic issues and serve the needs and interests of its people.[30] Despite the call for regional co-operation, this principle was the first statement to contradict the notion of regional co-operation and a mutually beneficial policy, by stating that foreign policy must serve the interest of "its" people. The new foreign policy called for the forging of relations in the new uni-polar world led by the west. It was believed that the ANC would find the majority of its allies amongst the grouping of nations of the "South". Africa falls into this description. Finally, as a member of the international community, the ANC pledged to promote the objectives of democracy, peace, stability and development and Pan-African solidarity. It was hoped that an ANC-led South Africa could help reposition the continent and overcome the marginalisation of Africa. Inter-Africa relations would continue to be built on regional co-operation. This would be possible through membership to African organs like SADC and the OAU.[31] The ANC clearly outlined a hierarchy in its international affairs in the "Ready to Govern" document, by placing Africa and the SADC region above others, signifying their preference toward African foreigners, primarily in terms of trade and political alliances. Mass migration was still not perceived as a problem.

[30] International Relations discussed in the ANC's "Ready to Govern" document.
[31] Ibid.

2.7 CODESA and Negotiations

The Convention for a Democratic South Africa (CODESA) met for the first time on 20 December 1991 where working groups for negotiations were organised. The working groups were tasked with: the creation of a climate for free political participation, the articulation of general constitutional principles and a formation of a constitution-making body, discussions on transitional arrangements and an interim government, the future of the TBVC states, and time frames and implementation of CODESA decisions.[32] Focusing on domestic issues and the formation of a democratic government resulted in little focus being placed on international relations. The CODESA talks broke down after certain parties refused to sign the declaration of intent. A second CODESA session was convened in May 1992 which also ended in deadlock. The issues that led to the cessation of talks were resolved by the multi-party forum held in April 1993.[33] The multi-party forum led to, amongst other things, the creation of a Transitional Executive Council, which levelled the playing field and created a climate free for political activity.

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[32] Ramaphosa, C. (1994). "Secretary General's Report to the ANC 49th National Conference." 49th National Conference. Bloemfontein, 17-21 December 1994. ANC Online Archive.
[33] Ramaphosa. "Secretary General's Report to the ANC 49th National Conference."
See also
Mandela, N. (1994). "Political Report of the National Executive Committee, to the 49th National Conference of the African National Congress by President Nelson Mandela." 49th National Conference. Bloemfontein, 17-21 December 1994. ANC Online Archive.

2.8 Conclusion

The transition phase ended with the ANC participating in a South African election. For three-quarter of a century the ANC had championed beliefs of equal rights, citizenship and a bill of rights.[34] As early as 1923 the ANC called for the adoption of a bill of rights, which was revisited in 1943 with the African Claims and again in the 1955 Freedom Charter. The Freedom Charter became the foundation for the transitional constitution although implicitly these rights did not exclude foreigners. During the transitional negotiations the ANC also called for the establishment of a human rights commission that could work with the courts and legislation in defining and defending human rights based legal framework for the country.[35] This approach would ensure that foreigners were afforded legal rights in the country, by virtue of the adoption of human rights based legislation.

> Rights are not the product of lawyers but the expression of what people expect and claim for themselves. They articulate the essence of what it means to be a human being and a citizen in South Africa. They establish a broad social compact based on agreed common values in terms of which all our people in all variety can live together in the same country. Rights can never be conferred. They belong to the people and not to the state or any political party.

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[34] ANC. (1993). "The ANC and the Bill of Rights: A Seventy Year Survey." ANC Online Archive.
[35] ANC. "The ANC and the Bill of Rights."
and
Asmal, K. (ed.). (2005). Legacy of Freedom: The ANC'S Human Rights Tradition. Jonathan Ball Publishers: Johannesburg.

> This has been the position of the ANC for seventy years. We are looking forward to the whole nation participating in an active way determining what the fundamental rights and freedoms of our people will be for our generation and the generation to come.[36]

Consistently the ANC called for human rights, regional co-operation and tolerance. All of which are lofty ideals that imply an acceptance and kinship with African foreigners. Furthermore, article twelve of the Draft Bill of Rights echoed the long held idea of the ANC that "South Africa belongs to all who live in it".[37]

The transition period closed with South Africa's first democratic election, which was held on the 27 April 1994. The real impact of immigration was not felt during the transition period despite the signs of increased immigration to South Africa. During the transition phase the ANC foreign policy was preoccupied with regional co-operation and integration. This co-operation advocated economic partnerships and not demographic movements. There was, however, a feeling of indebtedness, a sense that the ANC was fulfilling her role to the region for the support that Africa and the frontline states had provided them. The policy was about to change during the first term of the ANC government.

[36] ANC. "The ANC and the Bill of Rights."
[37] Asmal. Legacy of Freedom.

CHAPTER 3:

THE ANC IN GOVERNMENT, 1994 – 1997

3.1 Introduction

The ANC went to the polls on the 27 April 1994, contesting the elections under the phrase, "A Better Life for All". Although voting was restricted to South Africans only, there was an implicit promise of a better life for everyone. The ANC won a comfortable majority of votes in the election, resulting in the country's first democratically elected government or Government of National Unity (GNU). This event constituted a dramatic shift for South Africa and the ANC, as the status of the party changed from a political resistance movement to a party in government which now governed South Africa. The realities of day-to-day government would irrevocably change the way in which the party dealt with African foreigners.

Two weeks after the elections, on 10 May 1994, both the President and Deputy Presidents were sworn into office. Within days the new GNU adopted the interim constitution, debated at CODESA, until a new constitution could be created for the country. One of the major milestones of the GNU was the interim constitution and later bill of rights. This document detailed the rights of citizens and foreigners.

ANC attitudes towards foreigners underwent significant change during the first few years of Mandela's presidency. This was largely evident in legislative changes. Firstly, in 1996, South Africa adopted a human rights based constitution, which

included many of the salient points in the Freedom Charter. The new constitution contained the Bill of Rights in chapter two, which guaranteed the rights of all people within the state – citizens and foreigners alike. Only two rights, the right to vote and the right to work, were restricted to South African nationals.[1] The Bill of Rights was, however, a very inclusive document premised on human rights.

3.2 The 49th National Conference of the ANC

"From resistance to reconstruction and nation building" became the new mantra for the ANC once in government. Although the party achieved their ideal of a non-racial, non-sexist democratic constitution, the struggle for equality continued in that there was still a vast imbalance in wealth distribution.[2] The ANC's 49th National Conference was held in Bloemfontein from 17-21 December 1994. This was their first conference since the ANC assumed power. At the conference they explored, for the first time, issues facing government as opposed to issues facing a political party or organisation.

By the end of 1994, South Africa had already restored diplomatic relations with many countries. As a symbol of regional co-operation the government of South Africa

[1] Obviously the state cannot guarantee employment for all. The right enshrined in the Bill of Rights means that only citizens have the right to seek employment.
[2] ANC. (1994). "State of the Organisation: From Resistance to Reconstruction and Nation-Building." 49th National Conference. Bloemfontein, 17-21 December 1994. ANC Online Archive.

joined forces with Zimbabwe and Botswana in an attempt to restore democracy in Lesotho and similarly to encourage democratisation in Mozambique.[3]

The ANC again committed itself to regional development in Southern Africa, acknowledging for the first time, as the South African government, the role its predecessor played in instigating and fuelling civil wars aimed at destabilising the area. With the ANC in power, South Africa was formally accepted as a member of the SADC organisation. In addition, at the National Conference, the ANC emphasised that political commitment to the region was not sufficient; rather they believed that this commitment needed to go beyond the political rhetoric in an effort to address the wrongs of the past. This statement echoed the sentiments of the early nineties during which the ANC expressed a sense of debt to the region. Significantly, the report from the NEC for the first time contained reference of immigration. "The high expectation within our country has also spread across our borders, as the wave of immigration from neighbouring countries demonstrates."[4] The reference highlighted the party's acknowledgement of the phenomenon. The tone was however neutral and more matter of fact, and it neither encouraged nor discouraged immigration. The document expressed the will of the leadership of the ANC. A survey of South African opinion conducted by the Southern African Migration Project (SAMP) in 1995 presented a different picture. Their findings suggested that 16% of South Africans felt that foreigners should be prohibited from entering the country, while a further 49% called

[3] ANC. (1994). "Report on Government." 49th National Conference. Bloemfontein, 17-21 December 1994. ANC Online Archive.
[4] ANC. "Report on Government."

for stricter limitations placed on foreigners entering the country. The survey did not express the percentage of the respondents who supported the ANC; rather it reflected the population in general.[5] However, it can be concluded that a significant portion of the respondents were members of the ANC, as they were the majority party at the time. It is a significant result in that it highlighted the growing concern and xenophobic attitude of general South Africans toward foreigners.

Interestingly, the ANC affirmed the prevailing policy position on citizenship. As previously discussed, one of the major challenges facing the ANC was uniting people under one South African identity. This definition was expanded to include: people born abroad, people born in exile, people from the bantustans, people from white South Africa, people from the township and the like. The question again highlighted the contentious issue of what constitutes a South African identity. In response the ANC stated that citizenship would be granted as follows:

> All South Africans shall be entitled to equal and full citizenship. Citizenship may be acquired by birth, descent, marriage or naturalisation. No citizen shall be arbitrarily deprived of his [or her] citizenship, though legislation shall set out the circumstances in which citizenship may be lost.[6]

The statement is significant for a number of reasons. Firstly, it afforded people born in exile the opportunity to become citizens by virtue of descent. Secondly, it speaks of naturalisation, which an African foreigner could invoke to become a legal citizen

[5] Crush, Jonathan and Pendleton, Wade. (2004). "Regionalising Xenophobia? Citizen Attitudes to Immigration and Refugee Policy in South Africa." South African Migration Project, Migration Policy No 30. Cape Town.
[6] ANC. "Report on Government."

in the country. The report does not, however, state what that process entails or how a foreigner would become South African. It did, however, state that this was possible. Furthermore, the ANC affirmed its responsibility of leading the country to reconstruction, reconciliation and nation-building.

The regional reports of provincial government focused on success stories and challenges still facing the respective provinces since the ANC assumed power in May 1994. Interestingly, all spoke of labour concerns, the reorientation of public services, integrating communities, RDP and violence but none of them included any reference to immigration. This includes the reports from the PWV and Mpumalanga regions, where foreigners were known to be working on a large scale in the mining and agricultural sectors.[7]

The conference resolved to continue the objective of the struggle in building a democratic, united, non-racial and non-sexist society as envisaged in the Freedom Charter.[8] On the note of security forces, the ANC resolved to move away from a militaristic society to one that addressed the key needs of its supporters. While still taking cognisance of the region it stated that the new security doctrine needed to be conceived within broader regional stability perspective, noting that the SADC region was, and continues to be, inter-dependent and required consistent development of

[7] ANC. (1994). "Provincial Reports." 49th National Conference. Bloemfontein, 17-21 December 1994. ANC Online Archive.
[8] ANC. (1994). "Adopted Resolutions." 49th National Conference. Bloemfontein, 17-21 December 1994. ANC Online Archive.

democracy, peace and economic development. To the ANC, real stability was only possible if the entire region remained stable.[9]

Mandela reiterated, in his report of the NEC to the 49th Conference of the ANC, that the ANC needed to strengthen relations with sister organisations in Southern Africa.

> Everywhere across the globe, the flame of hope for dignity, human rights, national self determination and prosperity burns in the hearts especially of those denied these rights. The ANC should always extend its hand to them; on the basis of our morality and the fact that we were ourselves prime beneficiaries of such human compassion. In this regard, and within the limits of our capacity, we have a commitment particularly to our brothers and sisters in Africa.[10]

These sentiments were echoed in the declaration taken at the conference, which pledged support for people still fighting for liberation and acknowledging the role that the frontline states and Africa played in bringing apartheid to an end.[11]

The ANC called for the acceptance of a new foreign policy for South Africa at the December conference. The organisation felt that foreign policy was an integral part, perhaps even an extension, of national policy. Objectivity and openness were branded about as the mantras of the new foreign policy and government resolved to be unbiased in their application. The ANC wanted to re-orientate the Department of

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[9] ANC. "Adopted Resolutions."
[10] Mandela, N. (1994). "Political Report of the National Executive Committee, to the 49th National Conference of the African National Congress by President Nelson Mandela." 49th National Conference. Bloemfontein, 17-21 December 1994. ANC Online Archive.
[11] ANC. (1994). "Declaration of the 49th National Conference of the African National Congress." 49th National Conference. Bloemfontein, 17-21 December 1994. ANC Online Archive.

Foreign Affairs along these lines, in an effort to create a policy that belonged to all South African people. The policy needed to mirror the long relationship within the international community, reflect the rich tapestry of South Africa's international heritage while demonstrating the desire to live in harmony with its neighbours and most importantly, signal intent to contribute toward a collective African future. The ANC believed that South Africa needed to be a responsible global player, being creative about the future while at the same time always echoing the Freedom Charter's call "There shall be Peace and Friendship".[12]

Firmly entrenched in Africa, the foreign policy recommendations of the ANC called for Pan-African Solidarity and mutually beneficial relations among the people of Africa, thereby humanising the context of the foreign policy as a contract between people. Evidenced in the resolutions taken by the ANC there was a commitment to Africa, which was placed as a priority in comparison to the rest of the world.

The principles of a South African foreign policy, according to the ANC, needed to include a human rights based approach that went beyond political rhetoric to include social, environment and economic orders; while holding the belief that both justice and international law would guide relationships between states. To the ANC the central tenet of the new foreign policy should reflect the interests of the continent of Africa and call for regional economic development. The ANC held the belief that

[12] ANC. (1994). "Foreign Policy Perspective in a Democratic South Africa." 49th National Conference. Bloemfontein, 17-21 December 1994. ANC Online Archive.

South Africa owed Africa, and more specifically Southern Africa, for the support during the apartheid years. The region sustained the ANC during the struggle and suffered alongside; "our destiny is intertwined with the region; our peoples belong with each other"; furthermore "a democratic South Africa's future is inextricably intertwined with that of Africa. As the new and latest member of the Organisation of Africa Unity, South Africa will have the opportunity to contribute towards the issues which would affect the Africa continent."[13]

The new foreign policy recommendations were caught up in the rhetoric of what would later become Mandela's African Renaissance – a revival of the Africa continent.

> With fellow Africans we share a vision to transform our continent into an entity that is free, peaceful and vibrant – a continent which is capable, given the opportunity, to make an abiding contribution in all fields of human endeavour – particularly in the sphere of international relations.[14]

For this reason the ANC joined the OAU to assist with the goals of deepening the unity of Africa's diverse people and thereby advancing common well-being.

The party's proposed foreign policy perspective referred to refugees, albeit briefly. They acknowledged the steady rise of this scourge, and, as good global citizens, agreed that South Africa should assist in addressing this issue. The party openly supported the United Nations High Commission on Refugees (UNHCR), but took

[13] ANC. "Foreign Policy Perspective."
[14] Ibid.

their cue from the definitions of refugees as agreed upon by the OAU's Convention of Refugee Problems in Africa, proclaimed in 1969.[15] A democratic South Africa, according to the ANC, would actively pursue the establishment of common security arrangements in Southern Africa and develop a coordinated approach to issues, including refugees. It seemed that during the first few years of the ANC government, policy had a bias toward regional co-operation, almost as if there was a deep seated belief that the ANC owed the region for its support during the Apartheid era. How effectively was this policy put into practice?

3.3 The Constitution of the Republic of South Africa

In 1996 Deputy President Thabo Mbeki delivered his seminal "I am an African Speech" which marked the adoption of the Republic of South Africa Constitution Bill of 1996.[16] This speech, delivered on behalf of the ANC, highlighted Mbeki and the ANC leadership rhetoric for closer unity with Africa. A son of Africa, Mbeki claimed that he was the product of a collective continent.

> The constitution whose adoption we celebrate constitutes an unequivocal statement that we refuse to accept that our Africaness shall be defined by our race, colour, gender or historical origins. It is a firm assertion made by ourselves that South Africa belongs to all who live in it, black and white.[17]

[15] ANC. "Foreign Policy Perspective."
[16] Mbeki, T. (1996). "Statement of Deputy President TM Mbeki, on Behalf of the African National Congress, on the Occasion of the Adoption by the Constitutional Assembly of the 'Republic of South Africa Constitution Bill 1996'." Cape Town 8 May 1996. ANC Online Archive.
[17] Mbeki. "Republic of South Africa Constitution Bill 1996."

Echoing the lines from the Freedom Charter, Mbeki called South Africa a home for all people that lived here. This statement could once again be interpreted as an endorsement of the contribution made by African foreigners in creating South Africa and an invitation to them to make this their home.

His speech was Pan-Africanist in its approach with many lines highlighting this: "I am born of the peoples of the continent."; "This thing we have done today, in this small corner of a great continent that has contributed so decisively to the evolution of humanity says that Africa reaffirms that she is continuing her rise from the ashes."; "Africa shall be at peace!" and "Africa will prosper." His speech, together with the Constitution, suggested an openness and identity with Africa and afforded many rights to African foreigners.

The New Constitution of the Republic of South Africa stated in Article 1, in reference to the republic, that the state was founded upon "(a) human dignity, the achievement of equality and the advancement of human rights and freedoms. (b) Non-racism and non-sexism."[18] Chapter two of the Constitution contained the Bill of Rights, in which article seven referred to the bill as "a cornerstone of democratic South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom".[19] The Bill of Rights guarantees the rights of

[18] Office of the President. (1996). "Act No 108 of 1996: Constitution of the Republic South Africa, 1996." Republic of South Africa – Government Gazette. Located on the world wide web: http://www.polity.org.za.
[19] Office of the President. "Act No 108 of 1996."

everyone in South Africa, foreigners and citizens alike, the only exceptions granted to citizens and not all residents, were political franchise and rights relating to freedom of trade, occupation and profession.[20]

This document, heavily influenced by the Freedom Charter, afforded equal opportunity and rights to foreigners. However, future legislation pertaining to foreigners moved away from this approach, and started to criminalise unauthorised and illegal immigration while containing hints of xenophobia.

Migration, both legal and illegal, exploded during the mid-nineties as people of the continent viewed South Africa as a land of opportunity and an escape from the dire economic, social and political state of various nations.

3.4 The 50th National Conference of the ANC

In preparation for the 50th National Conference of the ANC, the National Working Committee (NWC) circulated a draft strategy and tactics document in July 1997. In this document the ANC highlighted changes to their strategy that would be discussed at the later conference. In the report they also acknowledged the support of the international community during the governance handover three years prior.[21]

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[20] Political rights as outlined in Point 19 of the Bill of Rights. "Every *citizen* is free to make political choices…" Freedom of movement and residence as outlined in point 21.3 and 23.4. Freedom of trade, occupation and profession as outlined in point 22

[21] ANC. (1997). "All Power to the People! Building the Foundation for a Better Life. Draft Strategy and Tactics of the African National Congress." July 1997. ANC Online Archive.

This period was significant as the ANC was now firmly in power and starting to grapple with the day-to-day issues of running a country. One of the main challenges that faced them was nation building and the de-racialisation of South Africa, the creation of a society that was integrated and in which individuals could freely occupy positions in politics, social and other areas. The new nation would not discriminate against individuals on the basis of the race, ethnicity, language, religious, cultural and other such considerations. To the ANC, de-racialisation was about integrating communities and facilitating the creation of a national identity in which people could belong. The ANC recognised that the individual could have multiple identities, shaped by their social upbringing, cultural life and psychological make-up, features that do not necessarily disappear under the umbrella of South Africanism. It was, however, critical that an identity of South African was promoted as part of the project of being an African Nation.[22] The contested terrain of identity was not the domination of one cultural form over another. Rather it called for the harmonious collective identity for South Africa. This was important as the leadership called for regional integration and Pan-Africanism. The National Working Committee, on the other hand, was still exploring what constitutes being South African and encouraging people to feel part of that identity, which could be seen as an exclusion of a perceived/manufactured "other".[23]

[22] ANC. "All Power to the People!"
[23] For more information on the formation of a South African identity read Harris, Bronwyn. (2002) "Xenophobia: A New Pathology for a new South Africa?" Centre for the Study of Violence and Reconciliation: Johannesburg.

Exploring identity politics, the ANC elaborated that South Africa continued to be an African country, not because of the domination of one population group over another, but rather because of the geographical situation of the country at the southern tip of the continent. The construction of a national identity out of a violent and fractured past problematised the country's commitment to Africa-building on the one hand and nation building on the other. These two processes operated together but simultaneously produced tensions on the ground.[24] As such the party reaffirmed its previous foreign policy ideal in which the ANC and South Africa committed itself to the SADC region, not only politically but also economically through the promotion of the region as a collective (and important) investment destination, with vast natural and human resources and ultimately a common market. This focus on regional economic development was consistent with previous policy recommendations and a sense of caring for the wellbeing of nationals in the frontline states.

The first three years of government provided the ANC with a multi-faceted domestic and international experience from which the ANC learnt and was able to continue developing a strategic direction for the country.

[24] Handmaker, Jeff & Parsley, Jennifer. (2001). "Migration, Refugees, and Racism in South Africa." Refuge. Volume 20, Number 1.

3.5 The African Renaissance

The African Renaissance[25] was introduced as a guiding principle for the ANC and South Africa, touted as being the rebirth of the continent that had for too long been plundered, colonised and exploited.[26] To the ANC the African Renaissance was, and continued to be, a call to action as well as a strategic objective.

> It must be underpinned by the mobilisation of the people of Africa to take their destiny into their own hands: in the definitions and consolidation of democratic systems of government in which the people play an active role; in attaining rapid economic growth that is based on meeting the basic needs of the people; in widening and depending the scope of economic, political and social integration on the continent; and in joint efforts to prevent and resolve conflicts among African nations.[27]

Calling for social integration encouraged more interaction at a personal level and not just on aspects of economics and politics. This can be interpreted as an implicit endorsement and understanding of the natural movement of people.

According to an ANC strategy document, Africa should consolidate its collective sovereignty in an effort to improve Africa's standings in the global arena. Using the global economic lingua franca, the ANC said it was necessary for Africa to forge relations with nations of the "South", as they have similar developmental goals. The

[25] Renaissance means rebirth and renewal. In this context, the Africa Renaissance is a rebirth and renewal of the continent.
[26] ANC. "All Power to the People!"
[27] Ibid.

RDP programme was refocused at the 1997 Mafikeng Conference to be seen as part of the broader African Renaissance project. To the ANC economic development, popular participation and the respect for human rights were all part of the same process: bettering the life for all Africans.[28]

The ANC continued to define itself as a "broad church" in progressive ideological terms. It continued to be nationalist, Africanist, at times socialist, and drawing on a variety of different social strata and classes all with the explicit commitment to national democratic transformation.[29] Nelson Mandela, in his presidential report, reflected on the principle issue relating to the ANC. Of the eight points, three have a direct bearing on the relationship with African foreigners.

> The success of our process of reconstruction and development will, to a good extent, depend on the peoples of our region of Southern African and Africa as a whole ourselves achieving the same goals that we pursue, of democracy, peace, prosperity and social progress, within the context of an African Renaissance. [30]

Mandela believed that South Africa would prosper as a nation only if the entire region was offered the same opportunity.

> We have to succeed in our objectives in the context of an accelerated process of globalisation which is leading to a greater integration of the nations of the world, the

[28] ANC. (1997). "The Core Values of the RDP." 50th National Conference. Mafikeng, 16-20 December. ANC Online Archive.
[29] The broad church approach has come under fire in the 21st century, as the emerging black middle class often see themselves marginalised in party decisions in favour of the poor masses.
[30] ANC. (1997). "Report by the President of the ANC: Nelson Mandela to the 50th National Conference of the African National Congress." 50th National Conference. Mafikeng, 16-20 December. ANC Online Archive.

> limitation of sovereignty of states and the enhancements of the disparities between the rich and the poor. [31]

Furthermore, he believed that globalisation was redrawing world boundaries and calling for greater integration between nations on all levels, including the flow of people. "We have to construct our system of international relations in a manner consistent with our domestic programme of reconstruction and development and our vision of a world of democracy, peace and social progress for all."[32] Lastly any form of foreign policy had to be based on human rights and concern itself with mutually beneficial social progress.

The ANC responded to the leadership rhetoric of the African Renaissance by launching a number of local campaigns in an effort to popularise the concept. There was a call to a new patriotism and the contradictory advance toward an African Renaissance. If ideology was to resonate it needed to be embraced by the populous, a notion that the ANC leadership was aware of in its National Democratic Revolution which involved some degree of grassroots intervention.

Nelson Mandela believed that the people of Africa shared a common destiny. Peace, development and stability would only be possible for an Africa country if a sister nation shared these same ideals. According to Mandela, the principle aims of the African Renaissance were, first, the establishment of a democratic political system in

[31] ANC. "Report by the President of the ANC."
[32] Ibid.

which “the people shall govern”. Second, that political systems in Africa uphold human rights and democratic ideals as the central tenets of their society. Third, that institutions be established to deal collectively as a continent with issues pertaining to Africa. Fourth, that the African Renaissance called for the establishment of sound economic principles and development that would lead to the continual upliftment of the people of Africa. Fifth, that there was a dramatic shift in the economic status of Africa from the burden of debt and neo-colonialism[33] to a continent which would be able to dictate its own economic position and be able to rightfully position itself as a resource-rich continent. Sixth, that it promoted the rediscovery of Africa’s creative and artistic nature. Seventh, it called for the advancement of African unity. And, last, the strengthening of genuine independence of African countries and the collective relationship of the continent with the rest of the world.[34] To achieve these aims Mandela believed it was necessary to reorientate the OAU, mobilise the masses in different countries behind the renaissance, and ensure links were built across Africa’s borders among social sectors to improve levels of co-operation and integration amongst people. The ANC and South Africa took a leading role in promoting the African Renaissance under the presidencies of Mandela and Mbeki. And while both the party and the country have lived up to many of the aims, there remained a difference in opinion between the leadership of the ANC and the man on the street.

[33] Neo-colonialism is colonialism of an economic nature.
[34] ANC. “Report by the President of the ANC.”

With the assistance of ANC led South Africa, and following the ideals of the African Renaissance, by 1997 peace had been achieved in countries such as Nigeria, the DRC, Rwanda, Burundi, Angola, Morocco, Lesotho, Swaziland and to some extent Sudan. The ANC leadership's commitment to Africa is testament to addressing Africa's issues and supporting their fellow citizens, an act of support for African nationals.[35]

3.6 ANC Commission Reports

The ANC Commission on International Relations echoed Nelson Mandela's ideals of an African Renaissance as did the ANC Commission on Peace and Stability.[36] And to a lesser extent the ANC's Economic Transformation Commission, who stated at the 50th Conference in reference to mining, that mining and minerals policy needed to re-evaluate the sector. They called for greater co-operation between Government, the private sector and labour. This was important as traditionally the mining sector had employed many African migrants. Strategic conclusions encouraged the co-operation amongst SADC countries on mining and mineral development based on a principle of mutual benefit.[37] Any economic policy, according to the commission, had to be integrated into the SADC regional policy. In response to agricultural policy they

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[35] ANC. "Report by the President of the ANC."
[36] ANC. (1997). "Discussion Document For: Commission on International Relations." 50th National Conference. Mafikeng, 16-20 December. ANC Online Archive.
and
ANC. (1997). "Peace and Stability." 50th National Conference. Mafikeng, 16-20 December. ANC Online Archive.
[37] ANC. (1997). "Economic Transformation Commission: Discussion Document. Challenges and Programmes of Economic Transformation into the 21st Century." 50th National Conference. Mafikeng, 16-20 December. ANC Online Archive.

stated that there should also be greater focus on collaboration with neighbouring states.

The ANC's Foreign Affairs Commission warned that the consolidation of the NDR needed to uplift both South Africa and neighbouring states. "South Africa that is thriving and experiencing growth and development in a Southern Africa or on a continent that is experiencing poverty and underdevelopment will increase the problems of illegal entry into the country."[38] The ANC placed Africa high on the agenda, as South Africa is part of the African continent, and it therefore believed that South Africa had an important role to play in the political and economic revival of the continent. Furthermore, South Africa should rightfully, as the most powerful country on the continent, help overcome the north-south divide in geo-politics and position the continent as an economic force.

The Commission pointed to a key concern that the reality of cross border migration from less developed SADC states to more developed ones would continue as long as there were no co-ordinated strategies for effective economic integrations and development. To counter this, South Africa, together with Mozambique, launched a joint development "Maputo corridor", as a development zone.

> It is important that as a movement we understand the issue of illegal immigration from the region from this perspective [unequal development in the region] in order

[38] ANC. (1997). "Developing a Strategic Perspective on South African Foreign Policy." 50th National Conference. Mafikeng, 16-20 December. ANC Online Archive.

> not to develop xenophobic attitudes toward illegal immigrants, whilst at the same time developing short-term and long-term measure to deal with this reality.[39]

Reporting on Home Affairs, the ANC stated in the commission, that the Department of Home Affairs had embarked on a reformulation of the immigration policy. Used correctly, in 1997, the ANC was of the opinion that immigration could add great economic, social and cultural benefit to the country.[40] The new policy would be aimed at allowing those people who could make a valuable contribution to the country entry into South Africa. Immigrants needed to contribute to the country in the form of personal skills development, investment leading to industrial expansion and job creation.[41] However, this approach would not be adopted in the final legislation in which both the ANC and government rejected the openness. "The new policy, while allowing the country to exercise effective control over all who sojourn in the country, will also preserve the humane face of government."[42] Clearly the Home Affairs feedback warned the government of an impending crisis and made subtle recommendations to "save face". Home Affairs did not have the same open and integrated approach that the leadership of the ANC had spoken about. Moreover, the Department of Home Affairs embarked on bilateral discussion with members of the SADC community over border control in an effort to conceptualise a collaborative

[39] ANC. "Developing a South African Foreign Policy."
[40] ANC. (1997). "Home Affairs." 50th National Conference. Mafikeng, 16-20 December. ANC Online Archive.
[41] Ibid.
[42] Ibid.

solution to the issue, as well as, the standardising of entry forms and one-stop facilities.[43]

The Department of Home Affairs also saw the restructuring of an immigration selection board in January 1997, consisting of a central committee in Pretoria with reviewing powers and regional committees in each province for day to day work. Understanding the contribution that SADC migrant labour had made to South Africa, resulted in exemptions being granted to those citizens who had been domiciling illegally in South Africa for at least five years. Between 1995 and 2000 three separate immigration amnesties were approved. The first amnesty in 1995-1996 offered permanent residence to contract mineworkers from the SADC countries who had voted in the 1994 elections and worked in South Africa for at least ten years. Only 46,364 applications were received from an estimated 130,000 eligible miners. The second amnesty was granted to undocumented SADC citizens who had lived in SA for more than five years.[44] By the December 1997 conference approximately 240,000 applications had been received, vastly below the expected number.[45] The general SADC amnesty was approved by a majority ANC Cabinet in February 1996 and handed to the Department of Home Affairs for implementation. Eligibility was judged using the following criteria: the individual was a citizen or permanent resident of a SADC country; the individual had lived continuously in South Africa for longer

[43] ANC. "Home Affairs."
[44] Peberdy, S. (2001). "Imagining Immigration: Inclusive Identities and Exclusive Policies in Post-1994 South Africa." Africa Today. Bloomington Fall 2001. Vol 48, Issue 3.
[45] ANC. "Home Affairs."

than five years; the individual had no prior criminal record; the individual had been employed or self employed since before 1991 and lastly the individual had a child or spouse born in South Africa.[46] Of the 201,602 applications received 124,079 were approved, vastly below the anticipated millions. A final amnesty was offered in 2000 for Mozambiquian refugees who had entered South Africa before 1992 and who were still residing in the country.[47] All of these demonstrated a tolerance toward African foreigners, and more specifically SADC foreigners, but the strict criteria did not make it easy for applicants to achieve amnesty.

However, with regard to illegal immigration the Home Affairs report stated that a real solution did not seem in sight, and called on the ANC to develop a coherent strategy on this issue. This promoted the ANC to adopt several resolutions at the conference. It was their understanding that since the establishment of a democratic South Africa, illegal immigration from SADC countries, Africa and the world has reached "unprecedented proportions", placing considerable strain on sectors of South Africa. The ANC was furthermore concerned that the competition over scarce resources had

[46] Crush, J. (1997). "Temporary Work and Migration Policy in South Africa." Submission to the Green Paper Task Group. Johannesburg. Located on the world wide web: http://www.polity.org.za/html/govdocs/green_papers/migration/crush2.html.
and
Crush, J. (1997). "Contract Migration to South Africa: Past, Present and Future." Submission to the Green Paper Task Group. Johannesburg. Located on the world wide web: http://www.polity.org.za/html/govdocs/green_papers/migration/crush.html.
[47] Peberdy. "Imagining Immigration."

> fostered in our people's xenophobic hostility to illegal immigration particularly those from the sub continent and the rest of the continent, and that *we have failed* to respond to this in satisfactory terms.[48]

Therefore the party resolved to address the growing feelings of xenophobia. It was argued that the slow rollout of the RDP and the application of the programme was fuelling xenophobia. ANC supporters had begun blaming foreigners for not personally benefitting from the RDP, as there was a perception that foreigners were receiving aid before local people.

The ANC believed that the only way to overcome illegal immigration from SADC countries was through the creation of viable political and economic institutions capable of creating jobs and thus stemming the flow of people. Working with the leadership of neighbouring countries in their own development could reduce immigration. The ANC acknowledged that the best immigration policies would always be susceptible to the illegal immigration and given the legacy of the labour recruitment for mining in the SADC region, legislation required major change. The ANC also called for a distinction to be drawn between those who were in country legally and those who were in the country illegally, against whom, given the circumstance, action could be taken.[49]

[48] ANC. "Peace and Stability."
[49] Ibid.

Taking all this into account the ANC resolved to: firstly, ensure that the rule of law was upheld; secondly, called for tighter security along SA's border; thirdly, that greater co-operation between home affairs and the security department be fostered; and lastly, that corruption in the home affairs immigration department be stamped out.[50] These all appear lukewarm in the resolve and hinted that ANC did not know how to adequately deal with the issue. It did, however, highlight the need for new legislation in dealing with the matter.

The ANC delegates at the conference examined social transformation and reported the following on refugee policy: the state should play a leading role in the solving the problem of African refugees, and in the absence of legislation on refugees resolved to "support the work of the local UNHCR and international NGOs assisting to alleviate the plight of refugees", further resolving "to ensure that refugee legislation is in place by June 1998".[51]

3.7 Conclusion

Between 1994 and 1997 mass illegal immigration became a reality in South Africa, catching the ANC off guard and unaware of how to tackle the problem. In 1996 they proposed the creation of new legislation that would help tackle the problem. However, during this period the ANC continued to approach legislation based on human rights and its leadership continued with the rhetoric of greater integration and

[50] ANC. "Peace and Stability."
[51] ANC. (1997). "Social Transformation." 50th National Conference. Mafikeng, 16-20 December. ANC Online Archive.

an African Renaissance. The reality was stark, with leadership being pro-cooperation and development, while the man on the street, according to interviews conducted by SAMP, saw immigration as competition for resources and adopted increasingly xenophobic attitudes towards foreigners. Without an adequate policy in place, immigration was on the increase.

CHAPTER 4:

REVISITING SOUTH AFRICA'S REFUGEE AND IMMIGRATION LEGISLATION

4.1 Introduction

When the ANC came to power in 1994, one of the major challenges facing the party was the undoing of the apartheid police state and updating legislation to reflect the principles of human rights and democracy and, where necessary, to create new legislation to uphold these principles, while at the same time acknowledging the growing anxiety of their own constituency. With the increase in immigration in a post-1994 South Africa, it became necessary to formulate policy that would capture the constitutional ideals of the country. Policy relating to refugees and immigration was no different.

Shortly after the creation of democratic South Africa, in 1994, the Department of Home Affairs published an unofficial draft Refugee Act. Some sources suggest it was a copy of existing legislation from either Kenya or Zimbabwe. This draft was largely forgotten by the time the Green Paper task team made their recommendations in 1996.[1] During this period, the Department of Home Affairs was headed up by Mangosutho Buthelezi of the IFP, which would in some ways extend their own

[1] Smith, Timothy R. (2004). "The Making of the South Africa (1998) Refugees Act." Migration Studies Working Paper Series #5. Forced Migration Studies Programme, University of the Witwatersrand. Pg.5

political agenda over departmental decision making. Despite this, the ANC-led government committed itself to overhauling legislation relating to immigration.

Another draft bill emerged from the Department of Home Affairs in 1996. This went one step further than previous attempts, when it invited comment from public and civic organisations working with refugees. Responding to the call, many of the NGOs decided to comment. This lead to the formation of the Refugee Rights Consortium which included: the Human Rights Commission of South Africa; Lawyers for Human Rights; both the Gauteng and the Cape Town Refugee Forum.[2] These different organisations all had experience working with refugees and made a valuable and sometimes critical contribution to the legislative process.

At the request of the Lawyers for Human Rights and Wits Refugee Research Programme, a workshop entitled "Asylum and Naturalisation: Concerns regarding Policy and Practice", was convened on 16 November 1996 in Johannesburg in which both government and NGOs addressed the problems experienced by refugees.[3] This meeting led to tension between government and the NGO sector. By 1996 there already was a significant amount of refugees living in the country and government found itself on the opposite side of the table from various civil organisation and NGOs who had started lobbying for the rights of refugees. They accused government of "dragging their feet" in updating relevant legislation. Following on from their

[2] Smith. "South Africa Refugees Act." Pg.5-6.
[3] Ibid. Pg.5

discussion, a second meeting was called in November with the explicit aim of developing a second draft of the proposed refugee bill. Despite the meeting and progress in the process, it was abandoned in December 1996, when the Department of Home Affairs elected to appoint a Green Paper Task Team to consider all aspects of immigration and migration, not only forced migration and refugees.

In 1996, a task team was commissioned by the Department of Home Affairs to investigate immigration and refugees. Their discussion would yield recommendations from which the government could formulate law for dealing with immigration and refugees.[4] Although the DHA was headed by Mangosutho Buthelezi, the leader of the IFP, the ANC shaped the investigation by holding other key positions in the department and through their submission of comments during the legislative phase. The role of civil servants is important, as no matter how effectual new legislation is, it is the enforcement of this legislation and day-to-day running of a department that is done by civil servants, whose own social, political and economic background come in to play on their efficacy and attitude. There often existed a disjuncture between policy and practice. This can be attributed largely to the xenophobic attitudes of many South Africans. Smith argues that a climate of xenophobia had been prevalent in South Africa for decades, and that the nation building project of the ANC actual exacerbated these attitudes.[5]

[4] Human Rights Watch. (1998). Prohibited Persons: Abuse of Undocumented Migrants, Asylum-Seekers, and Refugees in South Africa. Human Rights Watch: New York. Pg.137
[5] Smith. "South Africa Refugees Act." Pg.4

By the mid 1990s there was growing tension between the human rights ideals of the ANC and popular sentiment. The ANC, mindful of its human rights tradition, found itself shifting towards the demands of its constituents.

The Green Paper recommended two separate pieces of legislation: one aimed at immigration control, such as migration, immigration and naturalisation; and a second piece of legislation dealing specifically with refugees and asylum seekers. Following the recommendations set out in the Green Paper, the Refugees Act was passed in 1998 (Act No 130 of 1998) and the Immigration Act in 2002 (Act No 13 of 2002).[6]

4.2 The Draft Green Paper on International Migration

Government appointed a task team to prepare a paper on migration policy for presentation in May 1997. It was believed that the existing legislation – the Aliens Control Act[7] – was outdated and a new migration policy was required. From the outset legislation derived from the Green Paper would need to be premised on the rule of law, the Bill of Rights and established international convention.

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[6] Office of the President. (1998) "Act No 130 of 1998: Refugees Act, 1998." Republic of South Africa - Government Gazette. Signed by the President in Cape Town 2 December 1998.) Located on the world wide web: http://www.polity.org.za.
and
Office of the President. (2002) "Act No 13 of 2002: Immigration Act, 2002. Republic of South Africa – Government Gazette. Located on the world wide web: http://www.polity.org.za.
It is important to acknowledge that Acts are the outcome of the parliamentary process. They start off as Green Paper and White Paper recommendations, before becoming a Draft Bill, Bill and then finally an Act which is signed into governance by the president. The parliamentary process takes cognisance of all parties and opinions. Hence the final Act may not reflect a specific party's opinion of the matter. A close investigation of the steps in the process does shed light on party politics.

[7] The Aliens Control Act and the 1995 amendment were restrictive and exclusionary. It contained no reference to Refugees rather it classed them as "Prohibited Persons".

There are two components to a Green Paper: first, the research component, in which experts in the field were invited to present papers to the task team and, secondly, the Green Paper committee recommendations.

The research aims were divided into four sections: policy briefing papers, the inherited situation, challenges and the future. Jonathan Crush from Queens University in Canada and the Southern African Migration Project (SAMP), Steven Friedman from the Centre for Policy Studies (CPS), Human Right Watch, the Institute for Democracy in South Africa (IDASA), Robin Cohen from the University of Warwick, Sally Peberdy, Maxine Reitzes from Foundation for Global Dialogue, Jonathan Klaaren from the Wits Refugee Law Project and Professor James Hathaway from the Osgoode School of Law in Canada[8] all presented papers to the Green Paper task team.[9]

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[8] Professor Hathaway also acted as a consultant to the Green Paper Task Team on their final report.

[9] See for example Cohen, R (1997). "Brain-Drain Migration." Submission to the Green Paper Task Group. Johannesburg. Located on the world wide web: http://www.polity.org.za/html/govdocs/green_papers/migration/cohen2.html.
Crush, J. (1997). "Temporary Work and Migration Policy in South Africa." Submission to the Green Paper Task Group. Johannesburg. Located on the world wide web: http://www.polity.org.za/html/govdocs/green_papers/migration/crush2.html.
Crush, J. (1997). "Contract Migration to South Africa: Past, Present and Future." Submission to the Green Paper Task Group. Johannesburg. Located on the world wide web: http://www.polity.org.za/html/govdocs/green_papers/migration/crush.html.
Friedman, S. (1997). "Migration Policy, Human Rights and the Constitution." Submission to the Green Paper Task Group. Centre for Policy Studies: Johannesburg. Located on the world wide web: http://www.polity.org.za/html/govdocs/green_papers/migration/friedman.html.
Hathaway, JC. (1997). "Toward the Reformulation of International Refugee Law: A model of Collectivized and Solution-Orientated Protection." Submission to the Green Paper Task Group. Toronto. Located on the world wide web: http://www.polity.org.za/html/govdocs/green_papers/migration/consult.html.
Human Rights Watch. (1997). "The Human Rights of Undocumented Migrants, Asylum Seekers and Refugees in South Africa." Submission to the Green Paper Task Group. Cape Town. 11 May 1997. Located on the world wide web: http://www.polity.org.za/html/govdocs/green_papers/migration/manby.html.

Jonathan Crush articulated four models for dealing with immigration. Model one: Fortress South Africa - the sealed borders approach which called for a US-Mexico style of patrols, floodlights, motion censors and other resource intensive monitoring. Model two: Heartland policing model - moving the monitoring of illegal migrants from "porous" borders to industrial nodes in the heartlands, it involved making life unpleasant for illegal immigrants through police raids. Model three: The Free Movement Model - a visionary approach similar to the European Union model that would facilitate free cross border movement for all SADC nationals. The proposed SADC Draft Protocol on the Free Movement of Persons in Southern Africa, which aimed to achieve this within a ten year period, raised grave concerns for South Africa.[10] The Fourth Model: The Controlled Access Model - this model acknowledged that migrants were going to come anyway, therefore it proposed to regulate the movement and legalise and control the manner in which foreigners enter the country.[11] The first two models, Crushed argued, had failed in their application and both were resource intensive. They also limited the rights of migrants, an approach which was contrary to the policies of the ANC and the Bill of Rights.

Klaaren, J. (1997). "Institutional Reform and Immigration Management." Submission to the Green Paper Task Group. Cape Town. 11 May 1997. Located on the world wide web: http://www.polity.org.za/html/govdocs/green_papers/migration/manby.html.
Peberdy, S. (1997). "A Brief History of South African Immigration Policy." Submission to the Green Paper Task Group. Johannesburg. Located on the world wide web: http://www.polity.org.za/html/govdocs/green_papers/migration/histsa.html.
Reitzes, M. (1997). "The Migrant Challenge to Realpolitik: Towards a human Rights-Based Approach to Immigration Policy in South Africa and Southern Africa." Submission to the Green Paper Task Group. Foundation for Global Dialogue: Johannesburg. Located on the world wide web: http://www.polity.org.za/html/govdocs/green_papers/migration/histsa.html.

[10] Despite the deadline for implementation being set for 2005, this has not yet been rolled out, largely because of the objection of South Africa and Botswana.

[11] Crush. "Temporary Work."

Crush, in his submission, called for a debate around the last two models. They were more in line with the ANC policies of integration and regional development echoing the sentiments of the ANC, which frequently conveyed a sense of indebtedness to the frontline states for support in the past.

Robin Cohen, in his submission, advocated using immigration to counteract the "brain drain" that South Africa was experiencing, by adopting a "brain gain" and "brain train" approach.[12] He believed skilled migrants should be allowed to enter the country to replace those skilled migrants who had elected to emigrate.[13] Immigration expert Sally Peberdy agreed with Cohen, stating that immigration could be used positively to develop the economy of the country:

> South Africa needs to formulate a coherent, positive, proactive alternative vision of the role of immigration that recognises that immigration properly managed can be of great economic, social and cultural benefit to a receiving country.[14]

Human Rights Watch reiterated that policy must be mindful of the rights of refugees and be cognisant of international conventions and agreements.[15]

The next phase of the Green Paper formulation was for the task team to compile a Green Paper for public comment. The Minister of Home Affairs, after consultation with relevant parties, appointed a task team, including: Dr Wilmot James, Prof H

[12] The brain drain is a colloquial term for the emigration of educated people. Brain gain refers to the immigration of educated people, while brain train refers to a skills development approach which immigration could contribute toward.
[13] Cohen. "Brain-Drain Migration."
[14] Peberdy. "A Brief History of South African Immigration Policy."
[15] Human Rights Watch. "The Human Rights of Undocumented Migrants."

Hough, Prof K Oosthuizen, Mrs Zanele Mbeki, Mr S Molefe, Mr JE Pokroy, Dr G Sibiya, Mr J Sindane and Dr E Kornegay.[16] Several of these were members of the ANC and represented the party's political ideology, most notably Mrs Zanele Mbeki, the wife of deputy president Thabo Mbeki.

The Green Paper team began the task in earnest by identifying three types of people crossing South Africa's borders. The first group identified were immigrants who wished to settle permanently in South Africa. The second group identified were refugees, who had fled their country of origin and sought asylum in South Africa. The final group identified were migrants, many of whom came to South Africa illegally.[17] Echoing the openness of the ANC, the Green Paper called for the implementation of the following steps: A point system to attract immigrants wishing to enter the labour market and who could make an active contribution to the economy of South Africa; a collective and regionally focused solution for dealing with refugees, which would see the burden being shared with SADC countries. And, lastly, the creation of a policy to allow bona-fide economic migrants from the SADC region entry, who have no intention of making South Africa their permanent home. They proposed that final act contain definitions of each of these categories to ensure that the system would not be abused.

[16] Mandate: International Migration Green Paper. James, Wilmot. (1997) "Draft Green Paper on International Migration." General Notice 849 of 1997. Government Gazette No 18033, 30 May 1997.
[17] James. "Draft Green Paper on International Migration."

While all of these recommendations were more open and immigrant friendly than previous legislative attempts, the task team did choose to premise the statement with a warning, in which they believed that until such time as there was economic parity in the economies of the SADC region, it would be dangerous for South Africa to open its borders.[18] Although they were open in their recommendations from the outset, the team was mindful of the pitfalls of immigration policy. The ANC revealed a departure from the Pan-African rhetoric of its leadership, towards a more pragmatic approach of dealing with immigration.

To achieve these recommendations, the team stated that not only was new legislation necessary, it also needed to uphold the principles of the Constitution and the Bill of Rights, as well as, the obligations demanded by both the UN and the OAU, to which South Africa was a signatory. As previously mentioned, most of the rights in the Bill of Rights were guaranteed for everyone, foreigners and citizens alike.[19]

A major challenge facing the new government was the country's immigration laws. They needed to create a policy that would both benefit the state, placate the electorate, and which was aware of the contributions of foreigners to the state; a task

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[18] James. "Draft Green Paper on International Migration."
[19] Ibid.
The notable exceptions: political rights and rights relating to freedom of trade, occupation and profession. Political rights as outlined in Point 19 of the Bill of Rights: "Every *citizen* is free to make political choices…" Freedom of movement and residence as outlined in point 21.3 and 23.4. Freedom of trade, occupation and profession as outlined in point 22.
Also see the Bill or Rights Chapter 2 of the Constitution of the Republic of South Africa. Office of the President. (1996). "Act No 108 of 1996: Constitution of the Republic South Africa, 1996." Republic of South Africa – Government Gazette. Located on the world wide web: http://www.polity.org.za.

that would prove tricky. The task team believed that if enforced properly, immigration could be of benefit to the country. Firstly, immigration could be used to enhance the country's competitiveness and integration into the world economy. Secondly, the new policy could further enhance regional development and integration within the SADC region. Thirdly, it could generate both economic growth and job opportunities for people in both the formal and informal sectors and, lastly, used correctly it could improve the living standards of the people of South Africa. Throughout the paper's recommendations and challenges, the notions of regional integration and support was present.[20] In this instance the task team was making the recommendation but all ANC policy contained similar sentiments.

Furthermore, the task team recommended that immigration reform needed to be sensitive to the history of the region and the economic ties of fellow SADC states. The economies of many of the SADC countries were inextricably intertwined with the economy of South Africa. They stated that policy should treat SADC nationals and foreigners from further afield differently, favouring the former category.[21] This took into account the history of migrant labour and the fact that certain SADC countries relied heavily on remittances from workers in South Africa. Therefore, they argued that SADC nationals should be given greater opportunities than foreigners from the rest of the continent and the rest of the world.[22] Understanding that the

[20] James. "Draft Green Paper on International Migration."
[21] Ibid.
[22] Deferred pay and remittances are an element of the migrant labour system, whereby migrant remit a portion of their income of their earnings to home countries, with a major impact on home societies.

whole of Africa was not a homogenous entity, there was a definite bias towards the rights of foreigners from Southern Africa, with whom black South Africans were believed to have a closer cultural understanding. This approach was in line with the regional co-operation advocated by the ANC.

Furthermore, the task team mentioned that the new policy needed to be mindful of unregulated access to South Africa's labour market, as this could lead to competition for jobs between South Africans and SADC nationals. Cognisance was taken of the fact that South African citizens, the labour movement and the ANC support base might rebel against policy if it were to be too lenient towards foreigners. The task team also recommend that SADC citizens be afforded legal opportunities to participate in South Africa's economy, subject to the following provisos. Firstly, non-South African labour should not be restricted to the mining and agricultural sectors as it was at that stage. Secondly, mechanisms for economic participation should be consistent across all economic sectors and in line with UN and International Labour Organization (ILO) conventions of which South Africa was a signatory. Thirdly, semi-skilled and unskilled labour should be restricted to SADC citizens only and not the rest of Africa or the world. Fourthly, that temporary work permits be issued to fill flexible annual quotas that were set in consultation between the DHA and the Department of Labour. Fifthly, the onus and rationale for employing SADC nationals

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Lesotho and Mozambique have legislation that compels migrants to remit 30% and 60% respectively of their income, contributing significantly to the foreign earnings and Gross Domestic Product of these countries.
For more on this see Crush. "Contract Migration to South Africa."

be placed on the employer. Sixthly, all foreign workers should be afforded the same rights and legal protection as local citizens as per labour law and the Bill of Rights.[23] Lastly, that temporary legal access to SA was not seen as a step toward immigration and permanent residence, in that it remained clear to the foreigner that this was a temporary permit.[24] All the while the party and state should develop an immigration plan based on labour market needs, regional responsibility and international obligations.

The task team proposed that distinction be drawn between the institution designing the immigration plan, the institution responsible for executing the plan and the institution responsible for reviewing the immigration decisions.[25] This distinction would ensure that there was more accountability in the system and reduce the chances of corruption.

The issue of international migration and immigration cut across many government departments and institutions, including the Department of Home Affairs, Labour, Foreign Affairs, Justice, Correctional Services, Customs and Excise, Social Welfare, Health, Trade and Industry, the SANDF and SAPS. The task team proposed the creation of a body that would co-ordinate immigration issues.

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[23] In the past foreigners were often paid less than their local counterparts because employees evaded the law. See Friedman. "Migration Policy."
Also see Crush. "Temporary Work."
[24] James. "Draft Green Paper on International Migration."
[25] Ibid.

It was, furthermore, a challenge to transform the racially motivated migration system into a non-racial and rational policy. The Green Paper task team echoed policy recommendations of the ANC, by inferring that South Africa's history had resulted in the country having an obligation to the region and that this needed to inform future immigration policy. Why? Firstly, during apartheid, people from Africa, unlike Europe, were excluded from immigration and treated as migrants with no opportunity of legal permanent settlement.[26] Secondly, African participation in the economy was limited to mining and agricultural sectors and restricted to men. This was in turn governed by intergovernmental agreements and despite a migrant's lengthy tenure of service, he was never afforded the opportunity to be naturalised in South Africa.[27] Thirdly, South Africa, despite being a major contributor to the refugee flows of the region through its destabilising programme in the late 1970s and 80s, provided no legal access for refugees from Africa. Fourthly, the Alien Control Act that was still being enforced empowered the minister to make decisions removing all steps of accountability.[28] Greater acceptance of African foreigners would reverse this racially motivated immigration policy.

[26] There were periods during the apartheid era during which European immigration was also discouraged.
[27] Bi-lateral labour agreements have been in place since the 1960s between the South Africa Government and the Governments of Mozambique, Lesotho, Botswana, Swaziland and Malawi, providing the mining industry with labour outside the Aliens Control Act.
See Crush. "Temporary Work." in Section B "Bi-lateral Labour Treaties," Crush refers to this as the 'Two Gates Policy'.
For more information see Crush. "Contract Migration to South Africa."
[28] James. "Draft Green Paper on International Migration."

In summary, the Green Paper recommended that the state needed to design and implement a market-related point system as a screening and admission framework for people who wished to immigrate to South Africa, affording additional and special legal avenues for SADC nationals who sought to enter the country.

With regard to new immigration policy, the Green Paper stressed that this policy needed to be rights based. Enforcement of the policy should focus on people who are unauthorised immigrants and it should strengthen the capacity of government to detect fraudulent use of documents, provide effective surveillance of smuggle routes and monitor national borders in which illegal migration is known to happen. Illegal immigration would be tackled and control led through a programme of "track and dispel". With regard to refugees, the task team stated that this policy should be explored independently from immigration, and without delay, as South Africa had no legislation for handling refugees.

The team recommended using the OAU definition of a refugee, which expanded the definition of the UN Convention Relating to the status of Refugees:

> any person who… owing to a 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, or who, not having a

> nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear is unwilling to return to it.[29]

By adding:

> The term 'refugee' shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part of the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.[30]

The expansion of the definition to include the OAU definition was significant as it acknowledged the work of the OAU in tackling refugees on the continent and put African multipartisan decisions ahead of global conventions.

The Green Paper on International Migration recommended two separate White Papers. The first paper would deal with immigration, migration and naturalisation, while a second paper would deal with refugee protection. Both would lead to legislation. They believed that refugee protection was a human rights issue and would not be able to be adequately dealt with as an immigration issue.[31]

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[29] Definition of a Refugee as decreed by the UN General Assembly.
UN General Assembly. (1950). "Convention relating to the Status of Refugees".
Adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950. Located on world wide web: http://www.unhchr.ch/html/menu3/b/o_c_ref.htm. Accessed June 2008.

[30] Article I(2) from the OAU Convention pertaining to refugees in Africa.
OAU. (1969). OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. Adopted on 10 September 1969 by the Assembly of Heads of State and Government. Located on the world wide web: http://www.africa-union.org/Official_documents/Treaties_%20Conventions_%20Protocols/Refugee_Convention.pdf. Accessed June 2008.

[31] James. "Draft Green Paper on International Migration."

This approach was pragmatic and characterised by active civil society involvement. The draft Green Paper on International Migration and resultant Refugee Act proposed practical measures to address the country's objective labour requirements, while incorporating a commitment to human rights. This approach was, however, short-lived. In later legislation it became increasingly evident that the government was to sacrifice this approach in favour of a more security orientated approach.[32]

4.3 Reactions to the Green Paper on International Migration (realising Refugee Rights)

The government and the ANC needed to balance this policy against growing concerns from the organised labour – in particular COSATU:

> The new migration regime has prompted rising demands from interest groups within the South African population – such as organised labour and hawker's group – to adopt a blanket 'South Africans first' policy in the labour market. Employers, particularly the farms and the mining companies, have argued in public for the right of continued access to foreign labour. Employers in other sectors – such as construction and tourism – have made few public pleas but continue to employ non-South Africans in considerable numbers.[33]

Central to the debate on International Migration was the fear of a negative impact on South African labour with the presence of additional foreigners in the market place.

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[32] Handmaker, Jeff & Parsley, Jennifer. (2001) "Migration, Refugees, and Racism in South Africa." Refuge Volume 20, Number 1.
[33] Crush. "Temporary Work."

Further reactions to the Green Paper came from the Human Rights Commission, the UNHCR, Gauteng and Cape Town Refugee Forums, Amnesty International South Africa and others. They all welcomed the rights based approach and two separate legislation tracks – immigration and refugee law.[34] There was, however, criticism over chapter four of the Green Paper which dealt with refugees and more specifically the call for temporary and collective approach to protection on the part of the SADC countries.[35] They were critical because refugee status is by nature temporary and using the word "temporary" would add confusion. Moreover, the collective protection could result in the lowest common denominator for handling refugees being adopted by all SADC countries, potentially reducing the rights afforded to refugees.[36] The SADC region did not have economic parity, nor the same strong rights based constitutions. Furthermore, it was felt that certain omissions had been made, including "structures for the delivery of services, refugee children and others 'at risk', the detention of asylum seekers, refugee law and extradition, implementation strategies, and so on".[37]

Timothy Smith, Director of the Catholic Health Care Association, observed that two groups of critics emerged from the public commentary: those that sought a

[34] Smith. "South Africa Refugees Act."
[35] "We believe that the legislation should be based on a model of refugee protection that is rights-regarding, solution orientated, with the sharing of the burden across all SADC member states. The objective of the model is to provide temporary protection to persons whose basic human rights are at risk in their country of origin, until such time they are able to return home in safety." James. "Draft Green Paper on International Migration." Refer to chapter 4 Refugees, 4.2.1 Refugee Protection.
[36] Smith. "South Africa Refugees Act."
[37] Ibid. Pg.11

compromise between the legitimate fears of government and the rights of refugees; and the "purists" who felt that any limitation on refugee rights was a betrayal.[38] Consequently, a conference was organised by the SAMP and IDASA in September 1997 to discuss the Green Paper's recommendations, with a follow up conference taking place in Pretoria in March 1998, entitled "Refugees in the New South Africa".[39] Cabinet started working on a proposed Refugee Bill in January 1998, ignoring many of the contributions and recommendations made by civil society. The Minister of Home Affairs, IFP leader Mangosutho Buthelezi and his task team afforded only the UNHCR the opportunity to comment on the proposed bill.[40]

The proposed bill was, however, scrapped in April 1998 when a White Paper task team was established to focus on the refugee stream as laid out in the recommendation made by the Green Paper. During the Green Paper process it was evident that there was rising immigration and government was becoming increasingly concerned about the impact this would have on the country.

4.4 The White Paper on Refugees

The White Paper task team consisted of Attie Tredoux, a civil servant, Dr Barney Pityana, Chairman of the HRCSA, Lee Anne de la Hunt from the UCT Legal Aid Clinic, Babini Vantyu from Lawyers for Human Rights, Bruno Geddo from the UNHCR, Vivian Taylor from the Gender Commission, and Michael Tlomelang and

[38] Smith. "South Africa Refugees Act." Pg.11
[39] Ibid. Pg.11
[40] Ibid. Pg.11

Micahel Schoeman both from the DHA. Workshops were held in quick succession in an effort to deal hastily with the issues raised through public co-operation. Of critical concern was the determination of refugee status.[41] The meeting clearly highlighted the growing divisions between government and human rights NGOs on policy questions pertaining to refugees. NGOs wanted independence of all refugee structures, while government insisted they be under the control of the DHA. This would afford government, the DHA and the ANC more control over structures, potentially influencing them politically. Despite the opposition, the White Paper task team developed a paper and draft bill in a short time, falling in line with the recommendations of political parties, especially those of the ANC.

The Draft Refugee Bill, together with the White Paper, was published in the Government Gazette on 19th June 1998, on Refugees Day. The White Paper called for a broader definition of refugees captured in the OAU convention while still excluding economic refugees. As a concession it called for structures to be created both within the DHA and independently to deal with refugees: a Refugee Affairs Structure within the DHA, an independent Standing Committee, and a Refugee Appeals Board.[42]

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[41] Mokoena A.S (1999) "White Paper on International Migration." Presented to The Minister of Home Affairs on 31 March 1999, modified and approved by Cabinet. Located on the world wide web: http://www.info.gov.za/whitepapers/1999/migrate.htm. Accessed June 2008.
and
Smith. "South Africa Refugees Act." Pg.13

[42] Ibid. Pg. 16

The Draft Bill followed. Chapter one dealt with the relevant definitions. Chapter two dealt with the necessary structures, and agreed to the autonomy of the structures of the standing committee and appeal board while maintaining the establishment of refugee receiving officers in the DHA. The independence of the first structures, although guaranteed by the bill, did not include an explanation of how this independence would be achieved or how these people would be appointed.[43] Chapter three set out the process for applying for refugee status. Chapter four highlighted the process of both granting and rejecting refugee status as well as the appeal process. Chapter five dealt with the rights and obligations of refugees, in line with the provisions highlighted in the Bill of Rights. Lastly, chapter six focused on all general provisions including non-refoulement. Non-refoulement is the non return of refugees to their home country during a time when their safety cannot be guaranteed.[44]

Both the White Paper and Draft Bill drew comments and criticism from the public sector, especially from NGOs working with refugees. Among them was Professor Hathaway from the original Green Paper research team. He felt that the new legislation was a huge departure from the recommendations of the Green Paper:

> The white paper falls short in terms of both human rights protection and practicability. It affords refugees less protection than the green paper in a number of key ways: the class to be protected is more constrained, the determination authority is less independent, rights degradation in the context of an (undefined) mass influx is

[43] Smith. "South Africa Refugees Act." Pg.16-17
[44] Department of Home Affairs. (1998). "Draft Refugee Bill". Located on the world wide web: http://llnw.creamermedia.co.za/articles/attachments/06144_draft_refugee_bill.pdf. Accessed June 2008.

> contemplated, and no provision is made for the immediate admission as a permanent resident of 'special needs cases'.[45]

Smith was also critical of the DHA submission which stated that:

> In the exercise [refugee rights] its discretion the Government must seek at all times to maintain its sovereignty, ensure that it does not surrender its sovereignty to multilateral organisation in the ostensible pursuit to meet its responsibilities and obligations in terms of international law.[46]

The DHA also called for a fee to be administered which would be refunded to people given refugee status. This would, it believed, act as a deterrent to people who would try and exploit the system. These comments may have come from the DHA which was run by the IFP. It is, however, interesting to note that, by 1998, immigration policy was starting to become a concern for the DHA. The practicalities of implementing an "open policy" as purported by the leadership of the ANC was being reduced because of resource constraints, process management and even the will of the people. This shift in policy highlights growing xenophobia in the DHA and among the South African population in general.

The task team met one more time after the submission period before public commentary closed on 20th of July prior to handing over the draft White Paper and

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[45] Hathaway, JC. (1997). "Toward the Reformulation of International Refugee Law: A model of Collectivized and Solution-Orientated Protection." Submission to the Green Paper Task Group. Toronto. Located on the world wide web: http://www.polity.org.za/html/govdocs/green_papers/migration/consult.html.
Also quoted Smith. "South Africa Refugees Act." Pg.18

[46] DHA white paper submission quoted in Smith. "South Africa Refugees Act." Pg.19

Draft Refugee Bill to the DHA and state Law Advisors. In their memorandum attached to the White Paper and Bill numerous alterations were made.[47] They recommended in the memorandum that the independence of the Refugee Appeal Board, chairperson qualifications and the Refugee Council as proposed by NGOs be ignored. Instead they proposed that members of the Refugee Appeal Board be appointed by the "Minister in accordance with principles of transparency and openness".[48] Likewise, the memorandum stated that the chairperson need not have a legal degree to fulfil his duties, a departure from the norm when compared to similar statutory bodies. The rejection of a refugee council kept civil organisation out of watchdog roles, indicative of political influence triumphing over NGO recommendations. It appeared as if government left a "backdoor" in the policy which gave additional power to the DHA and the Minister in dealing with refugees. This was done by removing the independent safeguards written into the draft legislation.

Government shifted its policy, giving it greater control over the process. Increasingly, the ANC NEC was being infiltrated by members of COSATU who always placed the rights of the organised worker ahead of the rights of others. Former labour leaders now had a more direct role in shaping South African legislation. In addition, a climate of xenophobia was growing in South Africa.

[47] Ibid. Pg.20-22
[48] Smith. "South Africa Refugees Act." Pg.21

The Cabinet memorandum also highlighted Government's priorities in creating refugee policy:

> (i) the migration control objectives;
>
> (ii) law and order;
>
> (iii) concerns over gun-running, drug trafficking and racketeering, money laundering, international crime syndicates and cartels;
>
> (iv) various other aspects of national and state security;
>
> (v) social and economic interests; as well as
>
> (vi) bilateral, regional and international relations[49]

Moreover, while government upheld international obligations, it was the recommendation of the task team in the memorandum that government:

> is entitled to treat and decide upon aspirations to migrate into, remain or reside in South Africa, on the basis of legal, political or other criteria, which it may establish domestically with wide room for discretion.[50]

Therefore government would have the last say.

The draft law was approved by Cabinet on 19 August 1998 and included all the changes recommended by both the State Law Advisors and the DHA.[51] This was met with outrage by those parties that had been part of the Green Paper and White Paper task groups. They felt that the DHA maintained overall control over the refugee process. The Draft Bill was introduced to the National Assembly on 30 September 1998 and referred to the Home Affairs Portfolio Committee. Bills submitted to

[49] Cabinet Memorandum 1998:3, quoted in Smith. "South Africa Refugees Act." Pg. 22
[50] Smith. "South Africa Refugees Act." Pg. 22
[51] Ibid. Pg.22

parliament were first channelled through departmental committees, who were made up of members of all major parties. These committees were set up by the new government in 1994 to speed up the process involved in enacting legislations. Each department had a Portfolio Committee that would debate proposed law in front of the public and press, after inviting comment. This committee would finalise legislation before putting it to vote in both the National Assembly and Council of Provinces. The Home Affairs Portfolio Committee in National Assembly was headed by, ANC Member of Parliament (MP), Mr Desmond Lockey. In addition to Lockey there were eleven ANC members in the twenty member council, giving the ANC the majority and power to shape the proposed legislation. The committee met for the first time on 30 September 1998 to discuss the Draft Bill and public submissions. Six civil society organisations submitted comments: Human Rights Watch, Lawyers for Human Rights, the National Consortium for Refugee Affairs, the Southern African Catholic Bishop's Conference, the Human Rights Commission and the UNHCR. Of major concerns were, firstly, the fact that members of both the Standing Committee and Appeal Board laid out in the Draft Bill were to be appointed by the Minister of DHA and, secondly, why the bill had changed so dramatically from the bill proposed by the task team.

The Portfolio Committee made amendments to sixteen clauses. These included agreeing that at least one member of the Standing Committee must be legally qualified and in clause 12 the committee inserted "the Appeal Board must function without bias and be independent". How this independence was to be achieved or

monitored was not explained.[52]

What caused the shift from openness to more government control? Although statistics are hard to come by, the total number of persons removed from the country increased steadily during the first term of the ANC. In 1994 the Department of Home Affairs deported 90,692 "illegal aliens" from South Africa. In 1995, this figure rose sharply to 157,084 and again in 1996 when 180,713 people were removed. The figure then settled for a three year period, 176,351 in 1997, 181,286 in 1998 and 186,861 in 1999.[53] How these figures relate to the total number of illegal immigrants is unclear. What is clear is that there was a dramatic increase in deportations during the 1990s. One can assume that this was because of a dramatic increase in the number of immigrants coming into the country. This figure declined by 2003, when the DHA reported that only 151,653 non-citizens were removed.[54]

The Portfolio Committee tabled the bill on 2 November 1998 before the National Assembly. The bill was read again on 5 November in Parliament, during which time, the Deputy Minister of the Home Affairs and ANC MP, Lindiwe Sisulu, introduced the bill with the following statement:

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[52] Smith. "South Africa Refugees Act." Pg. 30

[53] Home Affairs deportation figures quoted in Klaaren, C. Ranji, J. (2001). "Inside Illegality: Migration Policing in South Africa after Apartheid." Africa Today. Bloomington Fall 2001. Vol 48, Issue 3.

[54] Landau, Loren B. (2004) "The Laws of (In)Hospitality: Black Africans in South Africa." Migration Studies Working Paper Series #7. Forced Migration Studies Programme, University of the Witwatersrand.

> When we give asylum to refugees, we do so because of our constitutional and international obligations. We do it as a matter of principle. We do not do it as a matter of goodwill, or because we like the people that we confer the status on.[55]

Her speech signalled a shift in the policy and the attitudes of the ANC toward African foreigners. Sisulu appeared to ignore, or overturn, the ANC attitudes of solidarity and collective development for the granting of asylum. Alternatively, her statement highlights the divergent voices within the organisation. It is almost as if she is stating that both South Africa's and the ANC's debt to African countries had been repaid and that refugee status would no longer be granted on the basis of a reciprocal relationship which the frontline states had granted the ANC during the apartheid era. To her, and possibly to a growing faction within the ANC, asylum was not an act of goodwill or affection, but an international obligation. The reality facing the ANC at the time of the Draft Bill was the perception of an increase in illegal immigration at a time when unemployment and poverty remained a primary concern for many members of the ANC. In addition, a second survey conducted by SAMP in 1997 reported an increase in intolerance amongst South African citizens. 25% of people believed that all immigration should be prohibited, an increase from the 16% who held similar sentiments two years earlier.[56]

Once the National Assembly agreed to the bill, it was passed before the National Council of Provinces, who unanimously supported the bill. The bill was signed into

[55] Lindiwe Sisulu quoted in Smith. "South Africa Refugees Act." Pg.33
[56] Crush, Jonathan and Pendleton, Wade. (2004). "Regionalising Xenophobia? Citizen Attitudes to Immigration and Refugee Policy in South Africa." South African Migration Project, Migration Policy No 30. Cape Town.

law by then President Nelson Mandela and published as Act No 130 of 1998 on 2 December 1998.[57]

4.5 Conclusion

After two and a half years the Act was passed

> to give effect within the Republic of South Africa to relevant international legal instruments, principles and standard relating to refugees; to provide for reception into South Africa of asylum seekers; to regulate applications for and recognition of refugee status; to provide for the rights and obligations flowing from such status; and to provide for matters connected therewith.[58]

To many of the refugee lobbyists and NGOs, the Refugees Act (1998) is still hailed as a progressive piece of legislation and represents a commitment by the South African Government towards the protection of the rights of refugees. There remains some concern that the final act was influenced by political forces. I would suggest that the Refugee Act highlights a shift in the policy of the ANC towards African foreigners. After four years in power the ANC was starting to face the realities associated with governance, and the realities associated with adhering to popular perception. The leadership may have spoken favourably of SADC integration but on the street and in the trenches of the ANC the attitudes toward foreigners, and African foreigners in particular, were going through a metamorphosis.

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[57] Office of the President. "Act No 130 of 1998."
[58] Ibid.

CHAPTER 5:

REVISITING SOUTH AFRICA'S IMMIGRATION LEGISLATION

5.1 Introduction

The Green Paper on International Migration recommended two separate pieces of legislation: one piece of legislation aimed at dealing with refugees and asylum seekers; which became the Refugees Act (Act No 130 of 1998). The second piece of legislation recommended by the Green Paper was legislation aimed at immigration control, such as undocumented migration, immigration and naturalisation. This would become the Immigration Act in 2002. (Act No 13 of 2002).[1]

The journey toward legislation aimed at regulating immigration took six years, beginning in 1996 and culminating with the Act in 2002. During this time both legal and illegal immigration to South Africa increased. This perceived scourge placed strain on the country's resources and started to create a shift in the ANC attitudes at a grass roots level toward foreigners, specifically African foreigners. Although the leadership still advocated openness and integration, the man on the street had very different ideas. The legislative process was fraught with dissent and division, both within the ranks of the ruling ANC as well as beyond the party. This chapter will

[1] Office of the President. "Act No 130 of 1998."
and
Office of the President. "Act No 13 of 2002."
It is important to acknowledge that Acts are the outcome of the parliamentary process. They start off as Green Paper and White Paper recommendations, before becoming a Draft Bill, Bill and then finally an Act which is signed into governance by the president. The parliamentary process takes cognisance of all parties and opinions. Hence the final Act may not reflect a specific party's opinion of the matter. A close investigation of the steps in the process does shed light on party politics.

chart the creation of the Immigration Act showing how the Act came to be inherently anti-foreigner, ultimately leading to the criminalisation of many forms of immigration.

5.2 The Formulation of the White Paper on International Migration

In 1998 the Minister of Home Affairs appointed a task team to consider findings of the Green Paper and draft both a White Paper and Draft Bill on Immigration. This task team consisted of an appointed chairperson, then Director General of the Department of Home Affairs, ANC member, MR AS Mokoena, Mr D Chetty and Mr D Lewis of NEDLAC, Dr W James from IDASA, Mrs NW (Winnie) Madikizela-Mandela and Dr SH Buthelezi both from the ANC, Adv OK O'Malley from the IFP, Dr PM Matlou, Mr C Schravesande, Mr M Tlhomelang and Mr AF Tredoux from Home Affairs and lastly Dr MGR Oriani-Ambrosini, the ministerial advisor.[2]

The team met for the first time in May 1998 when they were briefed by the chairperson on the guidelines for the new White Paper on Immigration. The following came to bear on their deliberations. Firstly, the task team was not bound by the findings of the Green Paper. Secondly, they would not deal with the issue of refugees. Thirdly, the White Paper should be inspired by practical considerations and should be a guideline that could immediately be translated into relevant legislation, at the very least, be able to be transformed into administrative practices and operate within current logistical and budgetary constraints, including a scarcity of human

[2] Mokoena. "White Paper on International Migration."

resources. In essence the recommendation was expected to contain a practical application and not be based on theoretical considerations. This condition would adversely affect the Act, as the ANC wanted to hastily roll out new legislation at a time when they were still coming to terms with the running of a country. Fourthly, the process should deal with current scenarios while maintaining sufficient flexibility to imagine and encompass future scenarios. Fifthly, it should consider recommendations made by Cabinet. Lastly, the White Paper needed to be finalised by the end of October 1998, giving the task team a mere six months to draft the paper.[3] From the outset there was a drive to make the proposed legislation easily enforceable in current conditions and within the resource constraints of South Africa. While there was mention of future scenarios there appeared to be an urgency to get working and applicable legislation drafted.

The White Paper task team called for a shift in policy away from the Aliens Control Act (ACA) approach of border control, to community and workshop inspection, which called on the participation of communities and government. They believed that South Africa's 6000 kilometre long border, forty odd airports and harbours would require excessive resources for monitoring, a costly exercise for a party concerned with transformation and social upliftment.

They also recommended the establishment of an Immigration Service (IS) with investigative and monitoring capacity at community levels. The IS would be

[3] Mokoena. "White Paper on International Migration."

mandated to conduct inspections in schools, service providers and workplaces to ensure that people were in compliance with immigration permits. Furthermore, IS would detect, track and act against temporary permit violators as well as illegal aliens. It would also work with the newly proposed immigration court and border control for effective control over immigration.[4] This new Immigration Service would be modelled on the United States Immigration Control. The task team was of the opinion that the US had an effective approach toward immigration and was in a similar position to South Africa, being the immigration destination of choice in North America.

The use of the word "aliens" in the White Paper as well as police style crackdown on immigration, hints of the changing attitudes of South Africans and the adoption of a more xenophobic approach. One would think that proposed legislation would echo ANC calls for regional co-operation and integration, yet throughout the draft subtle nuances of xenophobia with similarities to the Aliens Control Act were evident. Although both racism and xenophobia were explicitly condemned in their recommendations, the terminology used, and the approaches recommended, made it clear where the government stood in dealing with migration – a position not dramatically different from that of the apartheid government. As Crush argues, "the security and control orientated approach was evident in the focus on deterring undocumented migrants and 'bogus' asylum seekers".[5]

[4] Mokoena. "White Paper on International Migration."
[5] Crush. "Regionalising Xenophobia?"

However, the White Paper also explicitly proposed a hierarchy of foreigners entering the country. The interests of South African citizens were placed above all others. The paper stated that immigration preference would be given: firstly to the people from the SADC region, followed by Africans from the rest of the continent, and lastly foreigners from the rest of the world. This highlights a pro-SADC approach to immigration.[6] It is, however, worth reiterating that although the paper advocated preferential treatment toward SADC nationals, citizens on the street and ANC supporters were becoming less tolerant of their foreign neighbours. Furthermore, it was suggested that the proposed policy needed to take advantage of aspects of globalisation. Globalisation could be used in the development and reconstruction of South Africa but this needed to balance the interests of domestic communities.

Any migration policy is affected by population growth and population control. In 1998 the Department of Welfare acknowledged that South Africa's current population increase was placing strain on the country, with future generations at risk. South Africa, with limited resources, was struggling to support its own population. As such, it was recommended that migration policy should not be used to encourage population growth through migration.[7] Migration policy needed to be mindful of the impact foreigners could have on South Africa's resources, as they competed for scarce resources, services and jobs while many South Africa lived in abject poverty.

[6] Mokoena. "White Paper on International Migration."
[7] Ibid.

Moreover, the White Paper task team identified the following problems: "a considerable percentage of illegal aliens [have] been involved in criminal activities"; and "weaken the state and its intuitions by corrupting officials, fraudulently acquiring documents and underserved rights and tarnishing our image locally and abroad".[8] Foreigners were hence, even in the investigative phase of legislation, used as a "scapegoat" for some of society's ills. This is not to say that there may be an element of truth to it. Nigerians, for example, have been known to run 419 email scams and peddle in drug trafficking. However, it is contrary to the constitutional guidelines of South Africa and human rights traditions of the ANC to create a homogenous group of "criminal foreigners". Klaaren argues that approaches used to crack down on illegal foreigners was remarkably similar to those of apartheid. Operation Crackdown launched in March 2000 saw the arrest and detention of mainly black foreigners; the SAPS cited the arrest of 7,068 "illegal immigrants" in Hillbrow and Berea alone.[9] ANC leaders praised the effort of the police. Gauteng Premier Mbhazima Shilowa applauded police for "sending a strong message to criminals".[10] Statements like this are indicative of the changing attitudes toward African foreigners.

New legislation needed to adhere to the constitutional principles and bill of rights as outlined in the Constitution of South Africa, which afford many rights to foreigners. However in terms of section 21(3) the "right to enter, to remain in and reside

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[8] Mokoena. "White Paper on International Migration."
These sentiments were also reflected in documentation by the DHA and in numerous media reports.
[9] Klaaren, C. Ranji, J. (2001). "Inside Illegality: Migration Policing in South Africa after Apartheid." Africa Today. Bloomington Fall 2001. Vol 48, Issue 3.
[10] Shilowa quoted in Klaaren. "Inside Illegality."

anywhere in the Republic" is solely afforded to citizens; government can legitimately refuse or regulate the entry of foreigners.[11] ANC stalwart and Police Commissioner, Jackie Selebi, stated that there were no human rights abuses in the crackdown. Whether this was true is unclear as no investigation followed. Echoing the prevailing sentiment that "foreigner equals criminal", then Minister of Safety and Security, Steve Tshwete, stated that border control should be strengthened to prevent deported migrants from returning. He also appealed to the community to assist in "the war against crime".[12] Senior ANC cabinet members appeared to shift from a pro-African foreigner stance to a more intolerant approach.

5.3 Recommended Permits for Entry

The White Paper recommended an overhauling of the residence permits, stating that the Aliens Control Act and its 1995 amendments did not meet the current requirements of South Africa. Ten classes of temporary residents' permits were suggested.[13] These permits governed the right of entry and placed the onus of monitoring on the appropriate organs.

The ten categories were: First, student permits granted to students who were able to produce documentation from receiving places of learning; this permit placed the onus on the academic institutes to keep Immigration Service informed. Second, work

[11] Office of the President. "Act No 108 of 1996."
and
Mokoena. "White Paper on International Migration."
[12] Tshwete quoted in Klaaren. "Inside Illegality."
[13] A temporary permit in this category was considered for a period of longer than three months.

permits granted on the basis of need on the part of the employers. However, as a precondition, employers would be required to make a payment into the national training fund for South Africans. This fund would help raise skill levels and develop South Africa human capital. The task team felt that if jobs were to be lost to foreigners then at least there could be some form of skills development, a policy advocated by COSATU and the ANC. Third, exceptional skill or extraordinary qualifications permit issued at the discretion of the IS and based on documentation supplied by the applicant. Fourth, diplomatic and foreigner authority permit – this permit required input from the Department of Foreign Affairs, who would at their discretion afford the applicant these rights. Fifth, an exchange persons permit, which would be issued based on documentation supplied by the respective organ of state involved in the exchange. This organ of state would also be responsible for monitoring of the foreigner and for keeping IS informed. Sixth, a treaty person's permit, which related to international treaty obligations and would once again, be issued with the input of Foreign Affairs, who would also assume responsibility for monitoring the compliance of the person granted the permit. Seventh, investor or self employed person permit, this permit would be issued based on documentation supplied by an accountant once an investment in the country had been made by the applicant. It was recommended that the investment amount be determined by the legislation. Eighth, crew persons permit would be issued to marine crew in port, based on documentation supplied by ship owners, who in turn would take responsibility for monitoring crew compliance of regulations. Ninth, a relative's permit would be issued to third-step citizenship or second-step permanent residence

on the grounds that the person domiciling in South Africa undertakes to support said applicant. Lastly, a medical treatment permit; this permit would be issued to individuals requiring long term treatment based on documentation supplied by the receiving medical institution, who would undertake to monitor the compliance of the patient and keep IS informed.[14] While the list is comprehensive, it is evident that a lot of the compliance and monitoring was shifted away from IS and the DHA to the receiving organisation. Whereas the Refugee Act was principled on human rights and the constitution, the permits recommended in the Immigration White Paper were premised on control and monitoring, a departure from the ANC's early policies.

A second class of permits was recommended for corporate purposes. The class required a negotiated quota between IS and the employer concerned. The employer also remained responsible for the repatriation of "aliens". This permit would be available to foreign investors who would provide job opportunities or training for South African citizens, seasonal workers, industries who cannot find local labour, as well as, industries who rely on international labour as agreed upon by the Department of Labour.[15] The minerals and energy sectors would use this permit to continue their migrant labour practices.

Lastly, a third class of permits was recommended: permanent residency. This would be available to those who held a temporary permit for at least five years, who are in

[14] Mokoena. "White Paper on International Migration."
[15] Ibid.

possession of an offer of permanent employment and have met the requirements of NEDLAC or when no local South African citizen could be found to fill such position; who are spouses of citizens and their offspring, people with exceptional skills or extraordinary qualifications or business owners if this was in national interest.[16] This class of permits was the hardest to attain, making it increasingly difficult for an African foreigner to be naturalised in the country.

The changes recommended reflected a shift from previous immigration polices that sought to bolster white populations by permitting access on a limited scale to people of European descent. The proposed policy was pre-occupied with regulation. Only allowing people to enter South Africa when locals were unable to fill positions, or when the person had considerable wealth and resources, which could be used for development. The shift also called for greater monitoring, reflecting in part a return to the police style monitoring of the apartheid state. Klaaren draws a parallel between the permits and the "passes" given to Africans during apartheid which also aimed to monitor and restrict the movement of Africans.[17] The new policy was as restrictive as apartheid era law.

[16] Mokoena. "White Paper on International Migration."
[17] Klaaren. "Inside Illegality."

5.4 The Enforcement of Migration Policy

The increase in migration to South Africa necessitated an examination of immigration policy enforcement. The task team recommended that enforcement be handled by the proposed Immigration Service, which would in turn transfer much of the onus into the hands of those organs receiving immigrants. They recommended that monitoring and compliance of immigration became the task of the public services; it would be up to them to report illegal "aliens" to IS. The DHA had done an abysmal job in regulating immigration up until 2001. The proposed IS was to many the only viable solution capable of bringing the situation under control.

The task team also recommended that the IS embark on an educational drive detailing immigration policy. This would be conducted both locally and in the countries of origin of migrating foreigners, in an effort to secure co-operation and reduce the risk of xenophobia. One of the ways in which to weed out illegal immigration, was through the imposition of stricter sanctions against employers who employ illegal aliens, thereby making it less desirable to break the law. To achieve these ends, the task team recommended the introduction of specialised immigration courts and specialised investigation forces. The manner in which the organisation operated would be defined in the legislation, with deportation based on a prescribed judicial process. Lastly, the paper called for the creation of an interdepartmental committee to co-ordinate law enforcement activities and the creation of a specialised security service mandated to enforcement immigration policy, specifically with regard to

detecting illegal aliens and border control and coastal patrol.[18] This focus on enforcement highlights the growing intolerance toward foreigners. The paper, instead of exploring the economic benefits of immigration, proposed a "closed border" approach, reviving the sentiments of the Aliens Control Act.

Public hearings on the paper raised many concerns, the most commonly voiced was concern over the government's incapacity to regulate the influx of illegal immigrants.[19] Government was already failing to monitor the situation. Consequently the labour organisation, COSATU, wanted more clarity on how they hoped to address the issue. The paper stated simply that, "the migration system should enable government to retain control over who may enter the country and the conditions and lengths of their stay".[20] Without clarity, there was scepticism about the application of policy.

Other proposed measures could stem the flow of immigration. The NEC of the ANC advocated addressing the "push factors" that led to immigration. It was believed that regional development and peace in Africa was necessary to address migration concerns, as economic disparity, environmental degradation, poverty, social and political turmoil in Africa would continue to encourage people from the rest of the

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[18] Mokoena. "White Paper on International Migration."
[19] COSATU. (2000). "COSATU Submission on the White Paper on International Migration." Presented to the Department of Home Affairs on 11 May 2000. Located on the world wide web: http://www.cosatu.org.za/dosc/2000/wpintmig.htm. Accessed June 2008.
and
Mokoena. "White Paper on International Migration."
[20] Ibid.

continent to migrate towards South Africa.[21] Although South Africa could not base a policy on the so called "push factors" that lead to migration, the work being championed by the leadership of the ANC, both Mandela and Mbeki, in addressing war on the continent would contribute significantly to reducing illegal immigration and the desire, or need, to move from one's country of origin. In this context the African Renaissance could be perceived as a tool to integrate the continent geographically, economically and politically, while keeping people at arm's length and discouraging immigration.

It was argued that the ANC and South Africa could reduce the "pull factors" of immigration by working together with labour institutions. This could be done by reducing employment opportunities for foreigners, through empowerment schemes that would make employers, communities and trade-unions co-responsible for maintaining the correct balance of migrant labour and labour standards.[22] However, at risk was the rising xenophobic attitude amongst South Africans. Any policy the task team recommended, would need to be accompanied by an educational campaign aimed at informing people at a community level on the distinction between refugees and illegal immigrants, the former being afforded different and special rights as per the Refugee Act.

[21] Mokoena. "White Paper on International Migration."
[22] Ibid.

Xenophobia was rising at an alarming rate during the late 1990s. According to a survey conducted by SAMP in 1995, 16% of South Africans were vehemently opposed to people from other countries coming here. The figure had increased to 25% in 1997 before dropping to 21% in 1999. As stated earlier, 49% of South African in 1995 called for strict limits being placed on the number of foreigners entering the country. This increased to 64% by 1999. Conversely only 6% of South African believed in laxer immigration laws which would allow free movement. This declined to 2% in 1999. In comparison to other countries, South African by 1999 was the most anti-foreigner. A similar global survey stated that only 1% of Swedes, 3% of Australians, 6% of Nigerians, 8% of Americans, 11% of Chinese and at the top of the list 18% of Russians wanted to prohibit people from other countries entering theirs.[23]

The task team believed that immigration law should also define the classes of individuals that should be excluded from entering the country. In their opinion the following people should be regarded as prohibited people: those with an infectious disease, those that had a prior criminal record, anyone against whom an arrest warrant had been issued by any other government with whom South African had diplomatic ties, specifically pertaining to murder, terrorism, genocide, drug trafficking and money laundering, citizens identified by certain countries, individuals declared

[23] Table 4: International Attitudes Towards Immigration. Crush. "Regionalising Xenophobia?" Pg.15
See also Crush, Jonathan. (ed.). (2001). "Immigration, Xenophobia and Human Rights in South Africa." South African Migration Project/ South African Human Rights Commission, Migration Policy No 22. Cape Town.
And
Mattes R, Taylor DM, McDoland DA, Poore A & Richmond W. (1999). "Still Waiting for the Barbarians: SA Attitudes to Immigrants and Immigration." South African Migration Project, Migration Policy No 14. Cape Town, 1999.

judicially incompetent, people previously deported from South Africa, people identified as terrorists and members of associations which encourage racial hatred.[24] The ANC members on the task team believed that it was the right of that sovereign territory to decide who enters that country. Interestingly all political parties agreed to the "prohibited persons" list. It was not uncommon to include a prohibited persons list, many other countries had added this clause to their own immigration law, but the inclusion does demonstrate a focus on the negative attributes of immigration.

5.5 Comments on the White Paper on International Migration

The White Paper was moderated by Cabinet and published in the Government Gazette on 31 March 1999 at which time public comment was invited.[25] Again comments were received from civil society, including the Lawyers for Human Rights (LHR), the Centre for Policy Studies (CPS) and the HRC, as well as by political parties and union movements. Holding a common position, the NGOs advocated that foreigners needed to have their rights protected as per the new dispensation of a transformed South Africa. The four main areas of concern were: border control, xenophobia, training and interfacing with the Refugee Act. While supporting the belief that migration policy could fulfil South Africa's labour needs, they warned against adopting the US-style of border control and sanctions.

Historically, migration to South Africa had been cyclical, with migrants returning

[24] Mokoena. "White Paper on International Migration."
[25] Ibid.

home after periods of employment in the country's mining and agricultural sectors. There was not enough evidence that this form of migration had ceased. Secondly, elsewhere in the world the "track-and-dispel" model, whereby unauthorised immigrants were tracked down and deported, had failed. Since it had not worked in other countries they were not convinced that it would work here. Another area of concern was the proposed Immigration Service which would act as a security apparatus. NGOs believed this reeked of South Africa's past obsession with "control" and "security", which had seriously curtailed the free movement of people within the country.[26] Finally questions were raised as to why the recommendation of the Green Paper had been rejected (or ignored), including the use of more appropriate and less ideologically loaded terminology when referring to foreigners.[27] The excessive use of "aliens" by its very nature indicated intolerance toward foreigners, and since there were more African foreigners than any other groups, it was them that bore the brunt.

In commenting on xenophobia, LHR argued that migration policy itself could contribute to xenophobia, as the new policy relied heavily on community involvement. It was believed that this would lead to, rather than reduce, xenophobia and vigilantism.[28] Xenophobia was, and continued to be a, reality in South Africa. Tshitereke suggests that xenophobia in South Africa is a form of scapegoating.

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[26] Comments on the White Paper on International Migration, Lawyers for Human Rights. (1999). "Comments on the White Paper on International Migration." Published in the Republic of South Africa - Government Gazette No 19920 April 1999.

[27] One of the chairman of the task teams comments in his address to the White Paper task team at the first meeting of the White Paper was to not to be bound by these recommendations.
See Lawyers for Human Rights. "Comments on the White Paper."

[28] Ibid.

> In the post-apartheid epoch, while people's expectations have been heightened, a realisation that delivery is not immediate has meant that discontent and indignation are at their peak. People are more conscious of their deprivation than ever before… . This is the ideal situation for a phenomenon like xenophobia to take root and flourish. South Africa's political transition to democracy has exposed the unequal distribution of resources and wealth in the country.[29]

The HRC launched a "Rollback Xenophobia" campaign in 1998 in an effort to counteract the growing attitudes of xenophobia amongst everyday South Africans, particularly amongst those in the townships, where much of the ANC's support came from. This campaign was not enthusiastically supported by government and political parties.[30] According to the LHR, "the nature of xenophobia in South Africa is highly complex, and shown to be rooted in the previous government's policy of separation and its isolation from the international community, particularly the African continent."[31] I would argue that during apartheid the movement of people and immigration was curtailed, restricting the interaction between the man on the street and foreigners. In addition, the culture of violence that was promoted to achieve the aims of the struggle still lingers today. In turn this results in an "immaturity" when dealing with foreigners and perhaps a reason for the adoption of violence by ANC supporters toward a perceived "other".

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[29] Tshitereke quoted in Harris, Bronwyn. (2002) "Xenophobia: A New Pathology for a new South Africa?" Centre for the Study of Violence and Reconciliation. Johannesburg.
[30] When Xenophobic attacks broke out in South Africa in May 2008, the government and the ANC were once again slow off the starting block in condemning these attacks. Their silence was read by many critics as reflective of their own political beliefs.
[31] Lawyers for Human Rights. "Comments on the White Paper."

The CPS argued that the White Paper was objectionable in two ways: firstly, it continued to define the foreigners as a threat to the country and its people. This was similar to the sentiments of the Aliens Control Act of 1991. By contrast the Green Paper had presented immigration as an issue of economic development.[32] Secondly, the threat was justified on the basis of the perception of an unacceptably high number of foreigners living in the country. Media regularly carried "loaded" headlines that shaped their readers' opinions.[33] Government had an obligation to address the issue, and consequently appeared to adopt a response that was opposed to immigration. This was done by reducing the incentive of immigration and encouraging repatriation.[34] The CPS stated that the White Paper was not consistent with the constitutionally guaranteed rights of foreigners.

COSATU, as a member of the Tripartheid Alliance, acts as a watchdog over government and claims to be the voice of the worker.[35] The trade union movement played a very active role in the ANC and South African politics, both during the

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[32] James. "Draft Green Paper on International Migration."

[33] "Illegal immigrants from war-torn and poverty-stricken parts of Africa are *flooding* into most SA cities." (Natal Witness, 94/11). "In one of the biggest apartment blocks in Jo'burg, notices in English and Afrikaans have taken a second place to signs in French and Portuguese as *thousands of new migrants* from Africa pour into the city." (Sunday Times, 93/06/06). "*Foreign influx*: citizens fear for their job prospects after *hordes descend* on the country from the troubled north." (Sowetan, 93/09/29). "Flow of job-seekers from neighbouring countries." (Electronic Mail and Guardian 97/02/05). Italics my emphasis. All quoted in Harris, Bronwyn. (2002) "Xenophobia: A New Pathology for a new South Africa?" Centre for the Study of Violence and Reconciliation. Johannesburg.

[34] Reitzes, M. (1999). "Patching the Fence: The White Paper on International Migration." Policy Brief. CPS: Johannesburg. Located on the world wide web: http://www.cps.org.za/12.htm. Accessed June 2008.

[35] Many of COSATU's members are also members of the ANC, or at least during elections vote for the ANC party.

struggle and in Post-Apartheid South Africa. Their power has always rested on being representative of, and responsive towards, its members. Unlike political parties, trade unions generally toe the line of their constituencies, and have a bottom up approach to issues. They pursue a policy that is in the interests of their members, "the worker", with leadership taken from the "shopfloor".[36] COSATU, as the major representative of labour, was concerned with the three-pronged approach favouring South Africans: job preservation, job creation and social equality. [37] Through its membership of the Tripartheid Alliance, COSATU had been able to influence policy, yet it remained an independent organisation acting as a "watchdog" over government policy. Acknowledging the need for regional development, the Trade Union Movement was not entirely opposed to immigration. They advocated the development of immigration policy that would overhaul the archaic system inherited from apartheid. Used correctly migration and immigration could fulfil the development needs of South Africa, bearing in mind that any form of immigration should be inherently non-racial and should not be done at the expense of domestic development.[38] COSATU submitted their White Paper comments to the DHA on 11 February 2000. Repeating their principles submitted to the Green Paper task team, COSATU stated that migration policy *must not* compromise the interests of the workers of South Africa.

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[36] COSATU. (1995). "Ten Years of Worker's Unity and Struggle: Special COSATU Tenth Anniversary Edition." The Shopsteward. Volume 4. no 6.
[37] It must be noted that like the ANC, at no stage, was and is, COSATU a homogenous organisations. There are many conflicting ideals within the organisation.
COSATU. "Ten Years of Worker's Unity."
[38] COSATU. (2000). "COSATU Submission on the White Paper on International Migration." Presented to the Portfolio Committee on Home Affairs on 19 May 2000. Located on the world wide web: http://www.cosatu.org.za/dosc/2000/inatmigr.htm. Accessed June 2008.

However, migrant workers must be allowed to join trade unions and also be able to remit income should they choose to.

COSATU also believed that the SADC region had to agree on effective labour standards for the entire region, perhaps as a deterrent to immigration. They believed that government, in consultation with trade unions, should develop a migration policy as part of a broader regional economic development plan; poverty in Southern African was a collective scourge aggravated by apartheid. COSATU advocated effective and legal guarantees of equal wages between South African and foreign workers, whereby the employment of foreign labour should not have a negative impact on either wages or labour standards. There was a very real fear that foreign labour could drive wages down. Proper control over the entry of foreigners had to be enforced with clear understanding and distinction between different types of persons: migrants, tourists, traders and job seekers. This had to be done within the constitutional framework of South Africa's legislation. Furthermore, COSATU advocated the implementation of quotas for skilled workers, as this would give government and labour more control over foreign labour. When using this principle, they also stated that preference should be given to SADC countries. Lastly, COSATU insisted that the attraction of skilled workers from foreign countries should in no way jeopardise skills development in South Africa.[39]

[39] COSATU. (2000). "COSATU Submission on the White Paper on International Migration." Presented to the Department of Home Affairs on 11 February 2000. Located on the world wide web: http://www.cosatu.org.za/dosc/2000/wpintmig.htm. Accessed June 2008.

COSATU, like the ANC, recognised the need for greater control over immigration to minimise what they perceived to be the negative effect on the South African worker. Where immigration was to be used, they advocated preference to immigrants from the SADC region. While this does not necessarily indicate tolerance toward African foreigners, it highlights that all foreigners were not placed on an equal footing. African foreigners were, on paper, afforded greater opportunities.

COSATU, ever mindful of their constituents, shared the view that sanctions should be imposed on employers who transgressed the proposed legislation and employed foreign workers illegally. They were of the opinion that the government also needed to take full responsibility in determining the number of foreign workers in the country. This in turn would facilitate control over immigration by government. Indirectly it would put COSATU in good standing as they wielded considerable influence over the ANC.

COSATU did indicate that skills development should not be limited to South Africans. The Skills Development Act made reference to any person benefiting from the programme and did not exclude migrants. Furthermore, the White Paper stated that migrants should enjoy full rights in terms of labour legislation.[40]

COSATU also identified the rise in xenophobia and believed more emphasis should be placed on combating xenophobia.

[40] COSATU. "COSATU Submission on the White Paper." 11 February 2000.

> Since the 1994 elections, South Africa has experienced a high influx of immigrants/migrants either legal or illegal. This happened at a time when the country is experiencing massive job losses. Because of these unfortunate circumstances people tend to put blame on foreigners as those who are responsible for their predicament.[41]

Most of this blame was ironically seen through a racial prism, with African foreigners becoming the victims of this abuse. COSATU called for an education campaign on the ills of xenophobia as well as the removal of xenophobic terminology from the proposed legislation. Terms like "alien" breed intolerance, they argued. The use of "foreigner", "migrant" and "immigrant" would be more appropriate.

COSATU, like the ANC, believed in developing the region as this could go a long way in reducing immigration.

> The long-term objective of International Migration policy in South Africa should ensure free movement of people, economic integration and access to education within the region, as proposed in the RDP, the Social Charter of Fundamental Rights in Southern Africa and various SADC protocols. South Africa should continue to play a visible role in bringing peace and stability within the region and in the economic development of the region. This will assist in alleviating poverty and in reducing illegal immigration.[42]

[41] COSATU. "COSATU Submission on the White Paper." 11 February 2000.
[42] Ibid.

In their White Paper submission presented to the Portfolio Committee on Home Affairs on 19 May 2000, COSATU echoed many of the points in their earlier submission, including the six principle guidelines. They also stated that the paper had some positive aspects, including the enforcement of labour legislation, the separation of permits and conditions of entry.[43] All of this put South African citizens first. However, there still remained a number of concerns. They were concerned that the task team had a preoccupation with illegal migration and continuously referred to unsubstantiated claims of floods of migrants entering the country.[44] This, they believed, was fuelling xenophobia and leading to foreigners being blamed for crime and unemployment. New policy needed to address this and re-educate people.[45] The White Paper appeared to focus on control and detection and not on integration.

Of particular concern was the lack of reference to the RDP, which in clause 4.9.6 provided:

> One element of regional policy, defended particularly in the call for a Southern African charter by trade unions, is that minimum standards with regards to rights of workers to organise be established across the region as a whole. This will allow a process of greater integration to become one of levelling up rights and conditions of workers, rather than levelling down to the lowest prevailing standard.[46]

They recommended that the White Paper should give expression to the vision outlined in the RDP. In saying this, COSATU had worker rights at the core of their

[43] COSATU. "COSATU Submission on the White Paper." 19 May 2000.
[44] Ibid.
[45] Ibid.
[46] Ibid.

submission calling for an upliftment for all; they feared that the standardisation of labour practices in the region could lead to a degradation of South African labour standards. COSATU further stated that the ANC had numerous international obligations, as a signatory of treaties ranging from the UN to ILO; all of these should form the basis of the White Paper's approach to labour.[47] Although treaties were not directly enforceable, domestic legislation should take these ideals and capture them in local law.

Many of the recommendations made by COSATU made it into the Draft Bill and Act, including the updating of terminology.

The Immigration Act was signed into law by President Thabo Mbeki on 30 May 2002 as Act No 13 of 2002. The Act set out to "provide for the regulation of admission of persons to, their residence in and their departure from the Republic; and for matters connected therewith".[48]

5.6 Conclusion

The new Act set out a new system of immigration control which ensured: the terms for temporary and permanent residence permits; security considerations for the state; ensuring interdepartmental co-ordination on matters pertaining to immigration; globalisation impacts; border monitoring; administration of ports of entry;

[47] COSATU. "COSATU Submission on the White Paper." 19 May 2000.
[48] Office of the President. "Act No 13 of 2002."

administrative capacity of enforcing the act; South African economic requirements; non adverse conditions of SA labour; training of South Africans; addressing push factors encouraging immigration; an application of human rights and countering xenophobia.[49]

Overwhelmingly, the Act was focused on control and detection, rather than on integration. Moreover the Immigration Act (2002) continued to include subtle xenophobic nuances.

[49] Office of the President. "Act No 13 of 2002."

CONCLUSION

This research report has explored the changing attitudes of the African National Congress toward African foreigners in South Africa and the impact this has had on policy. I have identified five distinct phases that shape ANC attitudes and interaction with African foreigners and highlighted historical events that shaped this change: the Freedom Charter, banning of the ANC, life in exile, the negotiations table and majority party in government. During each of these phases, the relationship with African foreigners moves from rhetorical support, to physical reliance, to indebtedness, regional development and finally a return to the rhetorical.

Firstly, there is the pre-1960 era. During this period the organisation was concerned primarily with domestic issues affecting black people and did little outside the borders of South Africa. They did, however, speak of solidarity with the colonised world by calling these parties “brothers in alliance” and fighting for independence against colonial powers.

Secondly, there was the 1960-1990 era, during which the party was banned and its leadership forced into exile. While in exile, the ANC was forced to physically rely on the support of African states and international partners. This support ranged from financial, social and political, to actual land on which they could set up offices and live. During this phase the ANC paid homage to their supporters, spoke of a global

anti-imperialist struggle and called for international solidarity against the colonial powers.

Thirdly, there was a transitional phase during which the negotiations for a new South Africa took place. The ANC became a legitimate organisation that the State allowed to operate legally within South Africa. This phase saw the ANC's relationship with foreigners change, in that they no longer needed the physical support of the frontline African states. The period was, however, characterised by a sense of indebtedness to the rest of Africa and specifically the frontline states, who had shared the burden of apartheid. The ANC spoke highly of African foreigners, while at home they actively sought to improve the lives of both South African citizens and African foreigners within the country. During the negotiations, the ANC continued their call for solidarity with Africa.

Fourthly, there was the early period of government. The ANC came to power in 1994 and was faced with a very different set of realities. The party changed its focus to transformation and pushed forward with the pre-election promise of a better life for all, as well as greater integration with Africa. During this phase migration to South Africa escalated dramatically. Early legislation, for example, the Bill of Rights and the Refugees Act, set minimum standards and rights that were for all people in South Africa, including foreigners. In addition, amnesties were offered to African foreigners who had contributed to the growth and development of South Africa. The period did,

however, witness changes and divisions amongst members of the ANC and its alliance partners, toward African foreigners.

Lastly, the final phase leads up to the promulgation of the Immigration Act of 2002. Laws shifted away from inclusion, adopting a more aggressive approach to dealing with foreigners. Although the leadership of the ANC actively endorsed ideas of an African Renaissance, the supporter on the street became less tolerant of African foreigners. A climate of xenophobia took root in South Africa during the period. This would lead to tighter, less generous immigration legislation.

One of the reasons for this change is that nobody, including the ANC, could have predicted the sheer scale of mass migration to South Africa. In the earlier period there was a distinct absence of the discussion. Immigration was not raised at any of the early conferences, instead the rhetoric focused on integration and rights for all. This highlights how unaware the party was of the pending crisis. Once mass migration took off, the party found themselves in a precarious position.

As the strongest economy on the continent, the party and state had an obligation to develop Africa, in addition to a sense of indebtedness for the years of physical and financial support. This was juxtaposed against the real issues of governance, as the party sought to fulfil the hopes and dreams of its supporters and raise them out of poverty. These supporters see African foreigners as competitors for already scarce resources. The ANC today finds itself moving from a mass movement to a party that

is responsible to its constituents. Balancing its human rights tradition with the realities of governance is proving tricky. Escalating popular xenophobia has influenced the approach that the ANC has chosen in recent years: African migrants are more tightly controlled and the conditions under which they can stay and find work in this country are less generous.

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