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The Practice and Rhetoric of Deportation in South Africa

Natasha B. Ngoma

Student Number:
501962

Supervisor:

Professor Loren B. Landau

This research report is submitted in partial fulfilment of the requirements for a Master of Arts Degree in Migration and Displacement

Date: 23 October 2015.

DECLARATION

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

Signature: _N.Ngoma_

Date: 23 October 2015_

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Abstract:

This research analyses the link between the practice and rhetoric of deportation and the South African state's understanding of state sovereignty. Through this inquiry, I argue that although state agents often portray the political rationale for deportation and exclusion, economic interests equally form a crucial part in the practice of deportation policy in South Africa. The prominence of private economic interests reveals that the imperative to embrace the population or exercise exclusive political jurisdiction over state territory may be less influential than state officials assert when describing and justifying deportation. These findings have implications for how we think about the increasing dependence on deportation by states throughout the world.

Keywords: Deportation, rhetoric, practice, policy, immigration, state, nation, sovereignty, politics, economics

CHAPTER ONE
INTRODUCTION

1.0 Background

State officials often portray deportation as a way of building and protecting the nation and strengthening the state. However, although this may be true, the economic agenda in the form of bureaucratic and business interests is equally significant in driving this process. This paper explores practices and rhetoric surrounding deportation in South Africa in an effort to reveal what the exercise of territorial sovereignty reveals about the South African government's understanding of nation and state. The research explores whether deportation policy and practice are driven by efforts to consolidate the nation-state and questions how South Africa's political leaders understand sovereignty. It explicitly compares these images with Western states like the United States of America, Western Europe and Australia.

The theoretical framework of this research documents what state sovereignty reveals about the rhetoric of deportation in South Africa. I argue that although consistently used as a political justification for the exclusion of non-citizens, defending state sovereignty and constructing a unified nation is not as influential a driver in shaping policy as the literature suggests or officials claim. Solely focusing on the nature of the state in building the nation or protecting sovereignty can distract us from other issues that may be at work, such as the economic interests of other actors who drive the deportation agenda. Empirically, I seek to understand the role of private actors in influencing deportation policy and practice, and what this reveals about the nature of sovereignty in South Africa. In so doing, I examine what state officials' understanding of sovereignty is and whether by giving up authority to private actors, the South African government is actually revealing and acknowledging that its authority is limited.

Often operated by private companies and administered by non-governmental organisations (NGOs), the deportation regime in South Africa has become a space where the laws of the land are very scarcely applied (Landau, 2006; Vigneswaran et al., 2010; Agamben, 1998). Under the persistent pressure of high levels of mobility, the South African state has delegated duties and responsibilities to 'expert' third parties. These parties include private companies operating detention centres, for example Bosasa at the Lindela Repatriation Centre (Flynn and Cannon, 2009), and other non-state agencies offering expertise advice on border management and visa applications such as VFS Global (Department of Home Affairs, 2014). Managing migration has now become a depoliticised transnational affair involving many

different actors. Consequently, these actors have begun to play a significant role in making deportation seem as a mere administrative practice, separating it from larger political and social processes. Thus the rhetoric and practice of deportation in South Africa has become a kind of performative politics for the international community and donor governments.

There are two major objectives in this research: the first is to analyse the link between the practice and rhetoric of deportation and the South African officials' understanding of state and nation in terms of sovereignty. The second and main objective is to show that the practice of deportation in South Africa has become highly economical as it is political. Although states often portray that the political rationale of deportation and exclusion – which favours sovereignty and the compulsion to protect their citizens – is the motivation for their actions (Turner, 2005), economic interests equally form a crucial part in the practice of deportation policy in South Africa. The prominence of private economic interests reveals that state sovereignty is actually not as influential as we are led to believe by state officials in decisions concerning deportation. Thus here, we see already a fragmentation in the concept of sovereignty and a weakness in using it to justify the abuse and exclusion of non-citizens. Through these objectives, I will highlight how this enquiry is significant for practical and theoretical reasons. Practically, this means that that efforts to reform the immigration system in South Africa need to focus on the economics more. Theoretically, the rhetoric in the literature about what states 'do' may actually not be significant as far as the practice of deportation is concerned.

1.1 Aim and Rationale

This report is an illustrative attempt to show that little scholarly attention has been given to analysing what depoliticised deportation – deportation that not only focuses on politics but on economics too – says about the nation-state in South Africa, and its relationship to issues of sovereignty, citizenship, and belonging. Similarly, the global literature on immigration and state sovereignty tends to presume a certain level of state capacity, and consequently misses out on Africa because the idea of the nation-state is fragmented in Africa. There have not been many significant attempts in the current literature on South Africa's deportation and immigration to talk about what state sovereignty means for deportation and how state officials talk about and understand what they do regarding deportation. Most of this literature tends to focus on issues of migrant rights, xenophobia and security (for example Crush, 1998 and 2000; Adelman, 2001, Amit, 2010 and 2012), and only few have written about what sovereignty means in relation to the rhetoric and practice of deportation in South Africa.

This research attempts to add to the limited existing literature as well as raise a concern of the importance of understanding that deportation practice is a multi-faceted phenomenon, involving a myriad of actors other than just the state. This understanding has great implications for both theoretical and practical reasons. As such, addressing these gaps in literature is one of the many tasks of this study.

CHAPTER TWO
RESEARCH METHODOLOGY

2.0 Introduction

The outcome that this research paper attempts to explain is massive deportation in South Africa. Basically, I am evaluating two competing hypotheses: the first is that the state is driven by a compulsion to protect and build the nation. This is evidenced in the language officials and immigration policy documents use when talking about immigration. The second hypothesis is that there are economic interests pushing for the deportation solution to an immigration problem. However, the analysis shows that these economic interests are also helping to define this problem. The aim here is to question and show how these hypotheses are causing deportation. This may not be possible to do explicitly, but the research analysis attempts to engage these two hypotheses. This research employs qualitative analysis using key-informant interviews and document analysis of policy documents to illustrate how South African politicians' understanding of the nation-state affects deportation policy and practice, and to illustrate that the deportation process is as much affected by economic interests as it is by politics.

2.1 Conceptual Framework

The purpose of this section is to offer an understanding of some relevant concepts, as they have been used in this research. These include deportation, sovereignty, the state, the nation-state, and an argument on how to measure state interests and state self-understanding.

Deportation and sovereignty, as used in this study, are fairly easy concepts to define. Deportation refers to the state's ability to expel non-nationals from South Africa. Usually, these are people without the legal capacity to be in the country, but sometimes, as the study will later show, people with the proper legal documents get deported too. What this suggests it that deportation in South Africa is sometimes a random act to legitimise South Africa's sovereign authority. Thus although state sovereignty is in various forms and can have many definitions, this study is more concerned with how it is a political tool used to justify deportation. In this study, sovereignty will be understood as a state's ability to control its borders, protect its citizens and safeguard its interests. Sovereignty is essentially how states gain a sense of who they are; through an understanding of what they need to do for their citizens and their territories. It is this self-understanding that legitimises the use of sovereignty as a tool for exclusion. Because the sovereignty concept forms a substantial part of this study, I will conceptualise it further in the literature review.

However, defining state interests and state self-understanding is a complicated process because these terms are ambiguous concepts. Moreover, measuring them can be quite problematic. I believe that there is a general assumption among state officials and even some citizens in South Africa that the interests of the African National Congress (ANC) are the interests on the citizens or nation. So in vague terms, state interests are informed by the state's ability to gain recognition from the citizens and the international community as the legitimate authority in the country. In South Africa's case, the government's interest is to be the legitimate authority for its citizens by proving that it is doing something about the immigration problem. Consequently, I argue here that South Africa's self-understanding is very much shaped by its interests. For example, South Africa understands itself as a 'rainbow nation'. But this is because it is interested in presenting an image of itself to the international community as a consolidated nation which has moved beyond the racial prejudice and segregation that it experienced during apartheid, into a peace loving democracy. To relate this to the study, the South African government understands itself through its ability to control migration and protect its citizens. This also means an ability to convince its population that the interests of the state mean well for all citizens. Thus interests also define states' self-understanding of who they are by how they are formed. According to Landau (2014, p. 2), "'states are made' in a specific way" and they maintain their authority by convincing their population to accept the overarching political power of the state. This way, the state becomes legitimate to its citizens.

2.2 Qualitative Methodology

The basis of this research is purely informed by qualitative analysis. The goal of qualitative research is to gain an in-depth understanding into the research question(s) under study (Strauss and Corbin, 1990). Muranda (2004, p. 53) also argues that qualitative research "involves small samples of respondents who provide descriptive information about their thoughts, feelings and beliefs that cannot be easily projected onto the total population". Similarly, Merriam, (1998, p. 6) states, "qualitative researchers are interested in understanding the meanings people have constructed, that is, how they make sense of their world and the experiences they have in the world". Hence this methodology helps the research to understand how deportation policy and practice contribute to the South African government's understanding of what a nation-state is, its conceptions, and officials' perceptions of deportation. Applying this method also helps me to assess the actors and

interests involved in the deportation process by documenting and analysing policy on immigration and government officials' statements, opinions and feelings.

This research seeks to establish officials' opinions of what sovereignty means in relation to the practice and rhetoric of deportation in South Africa. In this sense, the study has roots in human thoughts, feelings and beliefs on how deportation and state sovereignty are conceptualised and understood by the various groups of key informants in this research. These perceptions will be used to assess what deportation says about the way South Africa's government officials understand state sovereignty. In that sense, the research has roots in theoretical debates, opinions, beliefs and empirical data on what constitutes the practice and rhetoric of deportation.

2.3 Data Collection Strategies

The research instruments used to collect data were document analysis and in-depth, semi-structured interviews with the key informants and reviewing policy documents such as the Green and White Papers on immigration. These data collection strategies assisted in documenting current deportation practices and reveal who the main actors in the deportation process are. Because I am assuming that deportation and state sovereignty are ambiguous, socially constructed, and highly contextualised, the interviews and policy documents analysis best informed my theoretical questions.

I conducted interviews with a government official in the City of Johannesburg as well as 5 key informants in the relevant fields and organisations that deal with migrants in South Africa. These categories of people were my key informants on the policy and practice of deportation and the nature of the South African nation-state, and how it is being challenged. I hoped to hold interviews with government officials in the Department of Home Affairs (DHA) because I thought it would be necessary for documenting what the South African government says and believes it does on the borders. However, this was not possible because I encountered some challenges in obtaining permission from the Department. But the one interview conducted with the City of Johannesburg was useful for collecting information on the tensions between the government's efforts to integrate immigrants and the xenophobic sentiments in the country towards immigrants of both state officials and nationals, which hinder these integration efforts.

Interviews with people from organisations working with migrants such as Lawyers for Human Rights assisted me in documenting what actually happens, and bring to the fore the

gap between the rhetoric and practice of deportation. To recode these interviews, I applied discourse analysis to highlight the key ideas and themes underlying the political rationale for the practice of and explanations for deportation. This was done to examine what these invoke about the nation-state in South Africa.

To analyse the data collected, I divided it into two categories: practice and rhetoric. Analysis of the data from the interviews mainly represented the practice because it revealed what is really going on in the deportation process as opposed to what officials and state policy say. The data from the policy analysis represented the language used to talk about deportation in terms of upholding sovereignty and protecting the nation and its people. Basically, this set of data talks about state interest and self-understanding. An analysis of these two sets of data reveals that gap between the rhetoric and actual practice of deportation because government officials are more concerned with portraying South Africa's deportation regime as good and justified by state sovereignty, while on the other hand, NGO's are more concerned with portraying what the reality is surrounding the practice of deportation.

To understand and analyse this data as described above, I used purposive sampling. Barbour (2001) notes that the main goal of purposive sampling is to focus on a particular group of people of a population that are of interest and would best enable the researcher to answer the research question(s). Hence I identified and targeted to interview and engage with people whom I believe would best inform the study – these were government officials and people from non-governmental organisations working with migrants. This was helpful in pointing out that there is a variation in perspectives about deportation between the government officials and the people from the non-governmental organisations.

Policy analysis was a secondary data collection technique used in the study, and it also highlighted the gaps and inconsistencies. While I used the interviews to mostly illustrate what is actually going on in terms of deportations, the policy documents helped me to identify the gaps. This is because I used the policy documents to help me analyse what officials are saying about deportation and how, ideally on paper, deportations are conducted, as compared to what the data from the interview portrayed.

2.4 Limitations of the Research

The research encountered some limitations, both conceptually and practically. Conceptually, it is quite difficult to measure state interests. Because these vary over time, and when there is a change of government even. So basically, in my understanding, state interests reflect the

interests of the government of the day. This is a limitation because there is no absolute measure for this, which is common for most social sciences concepts.

Practically, in terms of data collection, it is difficult to predict human behaviour. My data collection process did not go as planned. For instance, I had intended to interview DHA officials, but I had no success in getting permission. At the beginning of the research, I did put into perspective that gaining permission to access government officials at the DHA may be difficult. Thus I expected that interviews with government officials may be more difficult to attain than with key informants in organisations working with migrants because of the nature of the study which might come across as an attack on government policy. I thought that to minimise this problem, I needed to clearly state to potential government official participants that I only seek their opinions and that they may speak off the record if they wish, as people merely reflecting on mobility and its responses in South Africa, and not as official representatives of the government. Moreover, a participant information sheet detailing the nature and aim of the research study, and offering a guarantee of confidentiality and anonymity to the respondents in reporting the data was also attached when requesting the permission. Unfortunately, I did not manage to acquire permission.

To address this gap in my study, I included the City of Johannesburg in my data collection process with the hope that the data collected would be similar with what I would have collected from the interviews with Home Affairs officials. An analysis of the government documents on immigration such as the Green and White Papers also helped to feel this gap.

Furthermore, due to limited time and other resources, I only interviewed 6 people. I initially intended to interview about fifteen participants, but I did not receive permission from those I intended to interview in time for me to collect the data, transcribe it, where possible, and analyse it. As a result, I felt that the research had some shortfalls. Nevertheless, I believe that I collected enough data from the participants I interviewed, and I feel that the data from the interviews that I did not carry out would only have been a repetition of what I had already collected. This is because most of the organisations working with migrants deal with and encounter almost the same issues, especially with regards to deportations. This is evident in the interviews that I conducted; even with those few participants, certain issues pertaining to deportation were being repeated by almost all the participants.

2.5 Ethics

The data collection strategies used in this study and all interviewing materials were subject to the approval of the Human Research Ethics Committee (HREC) at the University of the Witwatersrand, of which approval was granted.

Since this research involves human participation, maintaining high ethical standards is of paramount importance for me to protect the participants as well as produce quality work. I obtained an ethics clearance from the Wits Ethics Committee to ensure that the research abides by the ethical standards and expectations of the University of the Witwatersrand and South Africa. Most importantly, permission and consent for the interviews was obtained from the key informants. I adhered to the following ethical standards, which were explained to participants:

2.5.1 Privacy and confidentiality

Interviews were conducted in private but in a location that was secure for the participants as well as me. The participants were informed that they do not have to give their real name if they do not wish to be known. They are entitled to anonymity as their names will not be referred to in the research and only I will have access to the information they provide.

2.5.2 Beneficence

The participants were informed that there are no benefits attached to the research, it is only asking for their opinions. However, there is a possibility of some risks for the participants, though minimal. I expected that some informants, especially those from the non-governmental organisations, might find speaking about the human rights abuses in the way the government conducts deportation risky. Quoting them in my study or presenting critical perspectives based on their views may limit their ability to engage with government, could upset their superiors, or could potentially create a hostile environment in the sector or in the public. So articulated and discussed with them the potential risks and asked them if they are comfortable with those risks. All of my participants from the NGOs were actually comfortable talking to me about the issues at hand.

2.5.3 Informed consent

I acquired formal consent from the respondents to conduct the interviews and for the conversation to be digitally voice recorded (although two of the participants did not consent to have my conversation with them recorded). The recordings are stored on my password-

secured personal computer. Consent is still on-going as I will have to ask for consent from the participants in cases where follow-up interviews are necessary.

2.5.4 Nature of the research and its details

The details of this research, its aims and what it hopes to achieve were explained to the participants and I also informed them that they can choose not to take part if not comfortable with the nature of the research.

2.5.5 Voluntary participation

The participants were informed that they can withdraw from the research at any time without having to give reasons and that they will not be penalised for withdrawing nor will they be questioned on why they have withdrawn.

Finally, I am aware that the 'respondent burden' puts pressure on respondents because of the time and effort necessary to complete an interview (Parahoo, 2006). To reduce this burden, I stated to the respondent that the interviews will only take between 20 and 30 minutes of their time and indeed abided by this.

2.6 Conclusion

The methodology of this study, through qualitative interviews and document analysis, represents perceptions and feelings of how state officials view deportation, what their reasons are and what is actually going on. The aim of this methodology is to reveal the disjuncture between the language used in the rhetoric surrounding deportation, and the actual practice of deportation. Thus this section showed that data analysis will mainly be about comparing the rhetoric and practice, and then highlighting the gaps that exist and consequently what this implies about the South African state.

CHAPTER THREE
LITERATURE REVIEW

3.0 Introduction

According to Amit (2012), South Africa's government policy with regards to immigrants in recent years has led to the 'securitisation of immigration'. This is as a result of the government viewing immigrants, especially those from Africa, as a burden to the country's already existing problems such as high levels of unemployment and poverty, recurrent labour unrest and prevalent uprisings due to state's failure to provide basic services. Hence attitudes and statements among South African government officials that immigrants are draining the economy have produced an increased sense of the need to protect South Africa's borders against immigrants. This has led to the tightening of legal controls and deportation in recent years. It is these perceptions and rhetoric that are behind the vision of the state in informing policy towards immigration.

This literature review is an attempt to uncover perceptions of state sovereignty among South African officials and what this understanding of the state and nation implies for deportation.

3.1 Conceptualising Sovereignty: The Basis for Exclusion

Some scholars argue that the increasing concern by the state about mobility of people across state borders post-9/11 has engendered the rise of deportation as one of the ways to control migration. Other scholars have also theorised the nature of sovereignty in terms of immigration and argue that the increase in migration has made states to prioritise notions of state sovereignty and citizenship over the freedom of movement. According to Croxton (1999), the Peace of Westphalia of 1648 marked the birth of the nation-state system. For Arendt (1958), the declaration of the Rights of Man at the end of the 18th Century brought about secularisation of society, which gave power to the sovereignty of the nation-state. Hence to define state sovereignty, I acknowledge Steinberger's (2000, p.35) argument that: "Exclusivity of jurisdiction of States over their respective territories is a central attribute of sovereignty." The nation-state can thus be defined as a geographical area which derives its "political legitimacy [and power] from serving as a sovereign" political, geopolitical, cultural and ethnic entity (Tishkov 2000:627). Similarly, Croxton (1999) argues that sovereignty means that the government of an autonomous state has the ability to exercise fully total, independent political and military authority over its permanent population and within its demarcated territory without interference from external actors and other states.

However, taking these definitions, the notions of the nation-state and sovereignty are limited for the African context, even for South Africa which is arguably one of the continent's strongest states. The ideas of territory and exclusive or absolute political power and legitimacy are problematic for most African states. While this definition might sit well with Western countries (although Arendt (1958) also problematises the assumption that nations occur more naturally to European states), it is nonetheless limited when applied to the African state. Herbst (1989) argues that the mass of artificial 'nations' that Africa inherited from colonial rule were arbitrarily drawn borders and engendered ethnically diverse populations with few or no historical ties to the territory. Similarly, Mamdani (2001) asserts that identities in Africa have mainly been forged along colonial lines and are usually exclusive and critical of outsiders.

Although African states were marked by territories during colonialism, there was still fluidity in movement and they had multiple sovereigns: European colonialists and the local chiefs (Herbst, 2000). So, African states were born without a state, but with different and fragmented ethnicities, and African borders are precarious because of the various ethnicities that are related but reside in different nations (Adepoju, 2006).The arbitrary state system and borders created and defended by European powers have had consequences for nation-building in Africa, and have massively contributed to ethnic conflict and border disputes (Herbst, 1989). These demarcations still define African states today; hence due to the arbitrariness of borders in Africa, ethnic groups and affiliations are often not constrained to one state, but exist across national borders. These multiple identities of people with more than one nation-state challenge the definition of sovereignty, which requires that a particular people are bound to one territory. Thus the nation-state in Africa tends to be fragmented, and South Africa is no exception.

Furthermore, power in Africa is often held by parties who are not state actors, such as rebel groups and militia, as is the case with Boko Haram in Nigeria. Max Weber (1964) defines the state as having total jurisdiction and having the ability to monopolise force over a territory and a permanent population to legitimise its authority. If strictly applied to the African case, this definition reveals that most African states do not qualify as states because they do not always have monopoly on the legitimate use of force. Additionally, a permanent population connotes a stable community. But in Africa, with the exception of a few states, majority of the population is divided along different ethnicities, languages, race and religion. Most African governments have lost power and control on important areas in their jurisdiction to

rivals and oppositions who are able to establish effective monopoly of force over significant territories (Jackson and Roseburg, 1982). For this reason, Jackson and Roseburg (1982) assert that most African states do not have empirical sovereignty. Essentially, a lot of what we see in Africa is different from what state formation and the nation-state looks like in some parts of Europe, for example.

Therefore, in the African context, where identities are numerous and the state is not always the sole holder of power and authority, absolute sovereignty is not possible. In such an environment, using sovereignty as a justification for the exclusion of those the state considers as non-citizens is problematic and baseless. Consequently, the argument made by South African politicians that controlling migration is a way of safeguarding the country's sovereignty and citizens from external threat and deprivation is challenged by this absence of the nation-state in Africa.

3.2 Deportation and Citizenship

The practice of deportation in South Africa has raised attention and interest among scholars, following its rising role as a prominent tool in managing migration and controlling borders. In South Africa and elsewhere, deportation is often linked to notions of citizenship. Some academic literature has focused on the relationship between citizenship and deportation, and how this affects national identity in South Africa. Citizenship is vital in creating group identities and securing access to various rights and privileges for those who can claim membership (Malkki, 1992). People are usually linked with a particular territory or nation, from which they derive their identity as citizens, which in turn presumably guarantees them access to rights that are unique only to them by virtue of being citizens. Thus in legal terms, citizenship is the main indicator of belonging and rights, and South African state officials also see the South African nation-state this way, hence their need to regulate the movement of non-citizens. This is supposedly done to protect citizens and safeguard their rights from external threats brought about immigration. Citizenship, in its most general sense, is having membership in a given political society or state, to which citizens owe allegiance – duty and responsibilities – and from which they may lawfully demand protection – rights (Linklater, 1998). Thus human rights become real through the relationship between the nation-state, as the upholder and provider of rights, and citizens, who have the moral and legal responsibility to these rights.

Theoretically, citizenship defines those who belong to a particular community or polity and those who do not. Whereas 'belonging' in apartheid South Africa revolved around racial or ethnic lines, emphasis is now put on unity through difference within the ideas that South Africa is a diverse 'rainbow' nation-state (The South African Constitution, 1996). In essence, racial or ethnic membership has been replaced by national membership through citizenship. Nevertheless, identities are always constructed in relation to notions of and through comparisons with the 'other'. For Mamdani (2001), just as the Hutu and Tutsi gained a sense of their respective political identity by excluding and contrasting themselves with the other ethnic group, and as resonated by Hansen and Stepputat (2005), just as Europe only gained a sense of its political identity by excluding and contrasting itself with its colonies, modern states also understand who they are by comparing themselves to, and then excluding, those they consider as outsiders. Similar to this, individual and group identities of 'who we are' are formed through an understanding of who the 'other' is. For example, a migrant is considered as 'out-of-place' or 'uprooted' and needs to be re-attached to his/her rightful territory or culture. Deportation, much like repatriation with regards to refugees (Malkki, 1992), is seen by state officials as a way of properly realigning the world into well-demarcated nation-states. However, the act itself suggests that the nation-state is not after all so neatly defined, especially in Africa because cross-border mobility still persists despite the barriers.

In the West 'belonging' has traditionally been conceptualised as singular and territorialised, limited to the nation-state. Members of the nation-state produce national myths to legitimise their 'imagined' unity (Anderson, 1991). They produce normative values, shared common projects and cultural markers to differentiate themselves from those they consider as 'others' or 'outsiders'. The notion of sovereignty is that people belong to one country, in one territory, under one sovereign (Linklater, 1998). People are usually linked with a particular territory or nation, from which they derive their identity as citizens. Thus in legal terms, citizenship is the main indicator of belonging. Politicians in South Africa also see the South African nation-state this way, hence the practice of deportation.

Furthermore, some scholars have noted the reciprocal relationship between deportation and citizenship in reinforcing the latter as the main determinant of identity and belonging (Nyamnjoh, 2006). Most literature presents deportation as only affecting the nation-state and hence causing disunity to the natural societal and political unit of the modern world (Wimmer and Glick Schiller, 2002). The limits of such a 'methodological nationalism' is that it obscures the ways in which deportation affects the social and political processes occurring at

the supra-national, national, and sub-national levels. Such an approach also ignores the role of transnational actors and disregards other forms of belonging that may not cohere to the nation-state (Malkki, 1992).

What is even more problematic is that national identity treats the nation-state as an unparalleled unit of analysis, which consequently reinforces a nationalistic sense of belonging. Yet, in most parts of the world, national claims of unity may play no part in determining whether a person can belong or claim membership. Actually, transnational theory often recognises that "complex national identity structures emerge because of people's attachment to more than one nation state" (Olwig, 2003, p.789). Zillberg (2004), for example, in her study of deported Salvadorans from Los Angeles to San Salvador, argues that these individuals developed a 'transnational subjectivity' as they moved across local, national, international settings. 'Banished' from the only home they ever knew – the United States – these deportees had to negotiate new spaces and construct new identities in El Salvador. Hence, because identity and membership are often rooted in more localised sites and may be completely divorced from the larger nation, the basis for excluding people is often baseless. As a matter of fact, this reveals that deportation may after all be solely driven by the interests of the state actors involved, and not on notions of sovereignty and citizenship. Therefore, it is more helpful to situate migration in the socio-cultural worlds inhabited by migrants to understand both rationales for mobility and the expectations surrounding it.

Corresponding with Malkki's argument, Hansen and Stepputat (2005) argue that the nationalistic understanding of belonging has further consequences of being violent in an attempt to exclude the other. Consequently, xenophobia in South Africa is one of the significant informal responses to human mobility (Misago, 2009). However, although most of the literature has focused on xenophobic violence in South Africa as the mechanism through which membership is brutally delineated, deportation can be understood as playing a similar role (Mosselson, 2010). State actors use deportation as a way to violently exclude non-nationals. To achieve this, government officials and policy makers often hold national laws in adoration when discussing deportation. Thus, De Genova (2002) argues, they assume that the laws of the land are absolute and unshakeable, and they believe laws reflect an impartial avenue to seek redress over grievances.

A further complication of understanding identity in terms of national boundaries is that globalisation and the age of heightened mobility have challenged this conception of national

belonging. The study of transnationalism by Portes et al. (1999), for example, posits that linkages and relationships can exist across national borders, allegiances and loyalties may be multiple, and people are flexible in how they define themselves and conceptualise their sense of belonging. In this view, citizenship tied to the nation-state may not be the only form of identity. Similarly, Castles and Miller (2009) assert that transnationalism poses challenges to the power and authority of the nation-state because as migration increases, many people build durable political, social and cultural relationships in two or more states or societies. This goes against the nation-states' conception of identity, because with transnationalism people become affiliated with more than one country and it becomes difficult for states to decide who should be excluded and included (Turner, 2005). States usually view this as a danger to their citizens' undivided loyalty crucial to the sovereign integrity of nation-states. Yet, it is on such bases, unfounded as they are, that states expel non-citizens from their territories. Seen from this perspective, deportation has no merits and the reasons states give for its practice do not hold.

For this reason, Carens (1987) posits that regardless of whether one is a citizen or an outsider, the state must be able to protect and give access to rights to both. This is a challenge to the statist approach which posits that citizenship has no meaning outside the sovereign bounds or borders of the nation-state, and guarantees rights to citizens only. Viewing citizenship and human rights in this way has the danger of bringing about state responses such as mass deportation policies to push settled migrants back to their places of origin. For Bakewell (2009), such policies are only aimed at migrants and do not limit migration itself. Thus there is need to be aware of migration as a process, rather than being migrant sensitive which would enable scholars and state official alike to look at migration not as a threat to the receiving countries, but as actually a benefit to them in terms of economic growth and contribution to the labour force.

As such, a nationalistic focus on deportation has problematic consequences. It minimises the effects that the international actors and forces such as globalisation have on the role of deportation in reinforcing the state-centric system (Vigneswaran, 2008). A successful deportation policy requires the efforts of both the deporting country and the country of origin since both countries are implicated in the process of mobility. Deportation, for example, is understood as a return 'home'. It is through the work of both states that a national and territorially-bounded conception of belonging is re-established in a world of high mobility.

However, the practice of deportation has also attested that nation-states often disregard their own laws to presumably strengthen their sovereignty. In this 'exceptional' space, migrants are rendered powerless against the exclusion that the law engenders. It is only by understanding the actors involved in the making of deportation policy and their intentions that we can know how the law functions and facilitates this process.

3.3 Deportation and Sovereignty

Deportation in South Africa gained momentum after the mass influx of Zimbabweans fleeing political persecution and economic deprivation due to the collapse of the Zimbabwean economy in the early 2000s, and has thus become one of the major official responses to migration (Chirwa et al., 2007). One of the reasons why this is the case is because the South African government perceives migrants as threats to the sovereign integrity of the South African state, and as undeserving of South Africa's generous human rights and refugee regime.

Similar to the arguments for the rise of deportation studies in other settings, scholars argue that the practice of deportation in South Africa is a response to the alleged dangers of unregulated cross-border mobility and its effects on state sovereignty: most state actors understand migration as a problem to be 'managed' (Castles and Miller, 2009). The emergence of deportation in South Africa has led scholars to theorise about the nature of sovereignty. Sovereignty is an 'exception' to the rule, whereby protecting the sovereignty of the state is used as an excuse to justify suspension of the law (Agamben, 1998). As a result, some scholars investigate the legality of deportation policy itself. For example, Amit (2010 and 2012) argues that there is a disjuncture between legislation and practice regarding South Africa's often praised refugee regime. Amit also notes that the Department of Home Affairs and its counterparts disregard the law to serve their own agenda of migration control, hence the mass deportations of migrants.

The relationship between deportation and sovereignty can be elaborated through two camps: deportation as representative of a total sovereignty and deportation as representative of a fragmented sovereignty. Scholars supporting the total sovereignty argument presume that in a globalised and highly mobile world, deportation has become an "expression of a complex socio-political regime that manifests and engenders dominant notions of sovereignty" (De Genova and Peutz, 2010, p.1). Due to the normalisation of deportation by state actors and perceptions of it as simply an administrative matter, these actors often forget that the

employment of sovereign power to restrict human mobility is the imposition of power over life itself. This is evident in the proliferation of securitised spaces which often exist within and beyond a state's borders and act as manifestations of such power. Examples of such spaces are as electrified fences around borders, patrolled detention centres, armed navies, airport interrogation rooms, et cetera. Such spaces are examples of performative sovereignty as talked about by Hansen and Steputtat (2005) in *Sovereign Bodies.* States use force and violence to perform sovereignty and to exclude non-citizens.

In such spaces, state officials fetishise national laws when discussing deportation. They present these laws as absolute and unshakeable, hence they lead us to believe that the laws reflect an impartial avenue to seek redress over grievances (De Genova, 2002). The rise of deportation, however, has also shown how nation-states often disregard their own laws to reinforce their sovereignty. The practices of deportation and how the deportees themselves interpret the actions of the state against them are undermined in this interpretation of the law. Detention centres, now being run and operated by private companies, and overseen by non-governmental organisations, have become a fine example of extra-legal or exceptional spaces where application of national laws is limited (Landau, 2006; Agamben, 1998) In this 'exceptional' space, we can see that migrants are powerless against the law's exclusion.

In the South African context, the private actors who operate the Lindela Repatriation Facility have turned it into such a space. Since the South African Department of Home Affairs is no longer the administrator of Lindela, Bosasa, a private company, manages it (Flynn & Cannon, 2009). Famous for its disregard for migrants' human rights, Lindela is the space where foreign nationals are often deported without having their deportation order confirmed in court. Amit states that at Lindela, migrants are often held longer than the maximum time allowed and they are often denied the right to apply for asylum (Amit, 2012a, 2012b). The centre is an example of the many 'exceptional' spaces in South Africa where the law does not apply. Through this suspension of the law inside this centre and placing migrants outside the protection of the law, the South African government effectively reinforces its performance of sovereignty by declaring a never-ending 'state of emergency' to neutralise the threat of migration.

Hansen and Stepputat (2005) argue that scholars should question what may appear as obvious between the territory and state sovereignty link. The authors posit that the concept of sovereignty and the territorial state are a social construct, and scholars and academics need to

treat them as such. Sovereignty is not a natural 'capability' of state systems either, as most neo-realist scholars in International Relations presume. Since sovereignty is not a given, states externalise their power through constantly performing sovereignty by the use of force and violence to control and 'civilise' the minds and bodies of their subjects. For Hansen and Stepputat (2005), the assumed 'civilising' role of state action often involves the use of mechanisms of control such as domination and regulation of individuals.

Similarly, Torpey (1998) argues that states build power by regulating people and their movement. For this reason, modern states have legitimised and monopolised the control of mobility to determine who may or may not enter or leave their territories. This has been made possible through the use of mechanisms such as the passport as systems of identification (Torpey, 2000). These mechanisms have thus become crucial in forcing an identity on people, thereby distinguishing between citizens and non-citizens. This resonates with Foucault's (2003) argument on biopower. Biopower is about regulating communities or individuals and organising them to behave in a particular way. Like other official responses to migration, the practice of deportation by states falls into the biopower politics because it functions as a means of regulation. Thus biopower is also embedded in institutions such as the state. Controlling the movements of people works best for states if people are organised into categories of citizens and non-citizens because this assists them in determining and regulating who enters or leaves their territory.

However, scholars in the second camp bring to light the fact that the practice of deportation and deportation policy itself reveal that sovereignty is actually never that absolute and fixed especially in the South African context; it is rather fragmented and incoherent. Perhaps this can, in part, be attributed to the presence of economic interests in the deportation sector. According to Landau (2006) the emergence of the 'exceptional' spaces is an attempt to solidify the South African government's control over permeable borders. In theory, these spaces are meant to reinforce the state's power to regulate people's mobility, but in practice - whether it be establishing detention centres or granting extra-legal powers to police and immigration officers - state sovereignty is only an illusion. Moreover, Landau (2005, p.1115-6) notes that, "quests to assert sovereignty through immigration controls are resulting in actions that undermine the legitimacy and founding principles of the liberal states that undertake them." Detention facilities such as Lindela exist with the presumed role of protecting territory and citizens from foreign intruders. However, this is only a façade and due to the high levels of corruption nurtured by these exceptional spaces (Flynn and Cannon,

2009), state sovereignty is undermined and state power becomes fragmented as people buy into the corruption at these spaces to gain access to into the country. So after all is considered, the state is not as strong a presence as we are meant to believe.

The ineffectiveness and futility of deportation and its related policies that the South African context highlights has also been reflected by scholars in other contexts. Gibney and Hansen (2003), for example, note an inconsistency in their study of rejected asylum seekers in Canada, Germany and Britain. They learnt that although large numbers of asylum seekers arrive to these countries, only few are granted refugee status, but even fewer are forced to leave. To account for this seeming inconsistency, they present that failure to cooperate with the country of origin, the emergence of international human rights law and the costs of deportation as the reasons. Gibney and Hansen make the conclusion that there is nothing more to deportation policy other than that it is a myth employed to preserve the illusion that governments have the power to expel all foreign citizens from their territories.

Thus deportation can be seen to either represent a state's total control over its space or a state's desperate need to hold on to an already fragmenting sovereignty. The relationship between the two, however, is never that polarised. By analysing the actors on the ground, through an ethnographic study of border posts and immigration offices, Vigneswaran et al. (2010) present a more nuanced argument. They contend that this fragmentation in South Africa – instead of loosening the state's grip on power – can actually serve to reinforce it. Immigration officials act beyond or against the law to legitimise state power. Border officials who routinely deny asylum permits to seekers or deport individuals without any further oversight are not purely acting to further their own goals but rather these actions serve to protect the "state's monopoly over the legitimate means of movement" (Vigneswaran et al., 2010, 469) from other actors such as smugglers or traffickers and regimes like the 'too altruistic' refugee system that weaken state sovereignty.

Furthermore, due to globalisation, regulation of mobility is rarely the responsibility of states alone. For some scholars, the control of cross-border human movement has become a global phenomenon. In this regard, Andrijasevic and Walters (2010, p. 978) argue that the regulation and administration of borders has resulted in a "specialist domain wherein the design, policing, administration and legal and technical operation of borders has become a field of knowledge in its own rights." Therefore, border control and consequently migration itself, have become an international effort requiring a myriad of international agencies and non-

governmental organisations. This is why this research also acknowledges that, far from being solely about ideas of sovereignty and citizenship, deportation policy and practice is driven by the interests of private actors, most of which are economic. These actors not only undermine the power of the state, but they also act in collaboration with it to produce a state sovereignty that is internationally regulated (Andrijasevic and Walters, 2010).

In other contexts a similar pattern emerges: what appears to weaken and fragment a state's power may actually serve to further secure it in a globalised world. Nicolas Fischer (2012), in his ethnography of detention centres in France, argues that the detention centre should be read as a border zone where detainees constantly renegotiate their right to belong to the nation-state. Here, human rights lawyers within the centre actively interpret the law to see whether they can find avenues through which to 'stay' the deportation processes against the detainees. The detainees must establish some connection to French society or they are deported. By granting these powers to lawyers, and ostensibly surrendering to burgeoning human rights norms, the French government actually legitimizes the practice of deportation. Actors who are typically understood to challenge the sovereign power to deport can be easily co-opted through their very inclusion in the deportation process. However fragmented sovereignty might become, its underlying logic remains very much intact, if slightly negotiated.

Although for most scholars deportation is understood as a response to globalisation – a mechanism whereby a state can reassert, redefine and redistribute its sovereignty in an age of global pressures – little attention has been paid to how deportation is an act of regeneration. Since its foundation (Which Arendt (1958) argues was in Europe after the First World War), the nation-state has been re-making itself, responding to both external and internal pressures. Far from being a fixed and permanent entity, the nation-state has been in constant dialogue with the world around it, forever establishing new conceptions and interpretations of its internal coherency and relationship to the international community. As the literature demonstrates above, deportation not only reaffirms the sovereign power of the state, but also illustrates the flexibility of the state in responding to global realities and pressures; this becomes particularly apparent in the political rationale of deportation itself, and the emergence of transnational actors, like the UNHCR, IOM and other private actors dealing with immigrants.

In their paper *A surrogate state?: The role of UNHCR in protracted refugee situations*, Slaughter and Crisp (2009) suggest that the United Nations High Commissioner for Refugees finds itself in a paradox: it can either continue to take on responsibilities which are actually those of the state by caring for refugees and other needful migrants, and thus "absolve host states of their international obligations" or it could "insist upon the principle of state responsibility" (p.8) and leave the fate of the thousands of displaced and helpless in the hands of the state. Consequently, the UNHCR finds itself in a difficult position: it can either continue to take over the responsibilities of the state by offering protection and services to refugees, or it can refuse to do this on the grounds that refugees are in fact the state's obligation to protect, bearing in mind that states may well not, in turn, pull their weight. Hence non-state actors such as the UNHCR fill in the gaps where the state has failed when it comes to refugee and migrant protection. As a result, these agencies have become a 'surrogate state' (Slaughter & Crisp, 2009p. 2,7 & 8). In this instance, we can understand how despite states' efforts to reinforce and strengthen the appearance of their sovereignty, this sovereignty is still undermined when they fail to have absolute authority and control over all areas of their territory.

Slaughter and Crisp (2009) further argue that as a result of the weak application of 'state responsibility', the UNHCR have had to implement a 'care and maintenance' model which includes the organisation taking responsibility for services for refugees and other migrants which, it was originally imagined, the host state would be responsible for. Through providing these services, which are primarily the responsibility of the state, the UNHCR can be seen as replacing the state, although not entirely, but in some aspects. This implies that part of state sovereignty has been given up to non-state actors and private agencies, and that state's claim to sovereignty is not in fact as strong as we are led to believe. Some of these actors are actually more interested in driving their business interests of profit maximisation, and less concerned about upholding sovereignty.

3.4 Categorisation as a tool of State Bio-power

The literature in this section suggests that categorisation, although essential, also means that the state holds the right to organise people into clusters, which sometimes fail to take into account their real experiences or situations. Seen this way, categorisation becomes a tool through which states assert their authority by dividing people into categories of 'wanted' and 'unwanted'.

Categorisation is necessary to any social science study. In most studies, the population in question needs to be constituted and defined. However, if these categories are not problematised, they can become reinforced over-time and can render sub-groups that do not rigidly fit into the neatly defined parameters of the category invisible (Ragin, 2000). De Genova (2002) argues that categories or classifications do not offer self-represented or self-defined objects of study. The norm is that experiences are heterogeneous. Taking for example the term 'deportee', the people in this category may be unified along the lines of length of time in the country of destination, method of deportation, legal processes initiated and so forth. However, their subjective experiences may differ. Because I am interested in what policy and policy-makers say about deportation, and what the actual experiences and practices of deportation are, the category of 'deportee' is further defined. For the purposes of this study, I define the term as anyone who has been forcibly returned from South Africa to their 'perceived' country of origin. Here I say 'perceived' because there have been cases where South Africans have been deported to neighbouring countries because Home Affairs officials believed they "did not look South African enough" (from interview with Participant D, Johannesburg, 2014). This was one of the topics that was raised in one of my interviews. Similarly, research by the SAHRC showed that over 10% of the immigration detainees in the Lindela Repatriation Centre were actually released because they were misidentified as illegal foreigners, when they were in fact either South African citizens or legally resident non-citizens (SAHRC, 1999).

However, far from being solely an administrative category related to the expulsion from a nation-state, the category deportee – as Malkki (1995) reminds us regarding 'refugee' – is also socially constructed. To further define the category deportee, I question what the category deportee is. In my understanding, deportee is a category that derives from other categories, thus the term deportee encompasses both the forced and involuntary categories of migrants. Unsettling and unpacking the deportee category is necessary and essential because it allows scholars and even policy-makers to view deportation not only as a mere passive administrative task, but as a complex process that involves real people with real experiences.

The distinction between forced and voluntary migration remains very important and this is also reflected in the policies of international humanitarian actors and agencies. According to the UNHCR, there is a clear distinction between refugees and migrants, as argued by its Director of International Protection that "refugees are not migrants" (Feller, 2005, p. 17-18). For Turton (2003), the categorisation of migration into voluntary and forced migration is for

policy purposes. He argues that categorisation for refugees gives them legal access to rights such as protection, certain social services and the right to stay in a particular state. This is because more focus is put on forced migrants, as they are more internationally recognised, and they are seen as having a more credible threat than other categories (Bakewell, 2011). The belief is that if someone is forced out of their place of origin, states and the international community have a moral obligation to them. Analytically, we take this category and begin to presume that a refugee's experience, as a forced migrant, is different from that of an economic migrant, for instance. Hence the perception is that refugees are more protected from deportation. But the reality is that not every forced migrant is protected because the state has the power and authority to decide who can and cannot be granted asylum and refugee status. In South Africa, between 1994 and 2003, there were about 152,414 asylum applications in total, and only about 26,624 of these applications were successful, while 39,578 were rejected refugee status (Landau, Kaajal and Singh, 2005). Other applications stay in the system for many years before they get approved and settled (or even get denied). This is supported by Landau and Amit's (2004) illustration about South Africa having the most progressive refugee legislation but nonetheless, characterised by poor implementation like rejection of genuine asylum claims. This gap is proof that regardless of whether one is a forced immigrant or a voluntary one, they are all vulnerable to the whims and wrath of the state. This is a state's way of exercising bio-power and upholding sovereignty, but it also illustrates how there is indeed a gap in the rhetoric and practice of deportation in South Africa.

3.5 Conclusion

The literature review discussed how citizenship is one of the important concepts of sovereignty and the nation-state, and how it is used as tool for exclusion of non-members. The evidence in the literature, and therefore my conclusion, is that citizenship is essentially a very fundamental concept in how states understand themselves because the citizenry virtually forms the nation-state. Moreover, deportation, in the South African case at least, has become embedded in sovereignty. This suggests that the practice of deportation implies that a state is strong and capable of protecting its citizens. On one hand, deportation strengthens a country's ability to uphold sovereignty, but on the other hand, it also suggests a fragmenting sovereignty because in South Africa's case, some control around immigration and border management has been delegated to private companies such as Bosasa and VFS Global. So what the literature concludes here is that deportation can either strengthen or weaken a

nation's grasp on sovereignty. What may initially appear as a fragmented or weakened sovereignty may actually be tactical: by bringing in and involving a variety of actors and interests into their arsenal, states can actually legitimise the same mechanisms used to assert its power. Thus deportation is not simply a political act involving states only, but includes many other interests and actors who find it beneficial to drive this regime.

If examined closely, it is apparent that the making of deportation policy and its practice both challenge and re-strengthen sovereignty in an era of augmented mobility. As scholars, we need to understand that as states transform, modify, and redefine ways of asserting their power and authority in responding to the new challenges of globalisation, so do their forms of control. Deportation policy and practice are some of these responses.

CHAPTER FOUR
DATA PRESENTATION AND ANALYSIS

4.0 Introduction

This chapter focuses on the presentation and analysis of the research findings. Here, I discuss the main themes that emerged from the data analysis processes. The main arguments, which are in alignment with the research aims and rationale, guide this discussion, thus the analysis of the main findings revolves around the core areas of the study. As such, the discussion of the findings is based on the participants' views on their understanding of the rhetoric on deportation in South Africa and what the actual practices of deportation are, as well as their experiences as people working with immigrants who are liable to deportation. Since there were no participants from the government's Department of Home Affairs, this study also dwells equally heavily on the analysis of secondary data from government documents such as the Green and White Papers on International Immigration.

The analysis of these themes and findings will enable this research to convey what the real implications and practices are for South Africa's immigration and deportation process. A critical analysis of the findings will reveal that the disjuncture between government rhetoric and what is actually going on in practice suggests that economic imperatives are as much at the core of immigration and deportation practice as are political motives.

4.1 The Findings: What the State Says (Rhetoric)

The findings in this section provide evidence on how the government describes what it is doing with regards to reinforcing the nation-state. This will be informed partly by what has been said in the literature above about sovereignty, citizenship, and the nation, and primarily by what the state says in its Green and White Papers on International Migration. However, the two re-enforce each other since the literature review will be used as a tool for supporting the analysis of what the official documents say.

State officials often see immigrants as criminals and a threat to the South Africa nation-state. Perceptions such as these have engendered a securitised response to immigration. Here the issue is that foreigners bring disharmony to the assumed well-structured nation-state. As such, policy has been put in place to ensure that the state and its officials are fully in control. For example, section 5.1.4. of the Draft of the Green Paper says, about the separation of roles on deportation, that "The enforcement of immigration controls is currently the responsibility

of the *Department of Home Affairs*, the SAPS and the SANDF." Here, the state is claiming to take full charge and authority on immigration. This assertion goes on to show how the state sees immigration as a process that needs to be managed in order to ensure that the nation and state are safeguarded. This view of immigrants by officials as a security threat enables the state to grant power to the South African Police Services (SAPS) and the South African National Defence Force (SANDF) to ensure that this security threat is contained. The state is essentially asserting its dominion over the perceived immigration problem.

However, in the same document, there is a contradiction. Still in section 5.1.4., the Draft of the Green Paper suggests that:

> A clearer distinction that now exists should be made between criminality and unauthorised migration. In our view, the primary responsibility of the SAPS is crime-fighting. Resources used by the SAPS in the arrest and deportation of undocumented migrants should be diverted to fighting crime. The practice of appointing police as immigration officers should end.

This is a huge inconsistence not only in the policy itself, but in practice as well. Evidence from the interview findings, as I will show later, suggests that the police is very much involved in the deportation process. Which goes back to support my argument above that migrants are perceived as security threats, so the government has delegated some of its authority to the SAPS to deal with the problem. Moreover, contrary to what is espoused in the Green Paper on disassociating 'illegal' immigrants with criminality, in practice, this is the perception of many decision-makers and government officials. In this instance, Arendt (1958) also argues that "In other words, the state, insisting on its sovereign right of expulsion, was forced by the illegal nature of statelessness into admittedly illegal acts" (284-5). This is to say that the absolute right of asylum has become a right subject to the whims of the state. She further highlights that "the stateless person, without right to residence and without the right to work, had of course constantly to transgress the law. He was liable to jail sentences without ever committing a crime [. . .]. Since he was the anomaly for whom the general law did not provide, it was better for him to become an anomaly for which it did provide, that of the criminal" (286). In essence, the distinction between the rights of criminals and the rights of the unwanted immigrant becomes blur. As a result, "the nation-state, incapable of providing a law for those who had lost the protection of a national government, transferred the whole matter to the police" (Arendt, 1957: 287). This can also be said about the way South Africa deals with immigrants, especially those considered to be illegal or undocumented.

On page 2 of the Executive Summary of the Draft Green Paper on International Migration dated 13 May 1997, foreigners have been categorised into three groups and defined as follows: "There are three streams of people crossing our borders. The first are immigrants, individuals who would like to settle here permanently. The second stream are refugees, people who flee persecution in their own country and seek asylum here. The third and most controversial stream of people is migrants, many of whom are not authorised to be here". Clearly, the third category, migrant, has prejudice attached to it. Since decisions are solely in the hands of officials, some of whom have very little regard for the law and the right procedure in determining whether one qualifies for refugee status or not, or is qualified enough to be awarded permanent residence or not, the other two categories sometimes fall into the 'unwanted' category of migrants. Hence the distinction between these categories is sometimes blur and contradicts policy.

Moreover, the civil society community and NGOs concerned with immigrants have expressed concern over the gaps in what South Africa's policy on immigration espouses and what is actually seen on the ground. While government, through Home Affairs, has made efforts to revisit and revise policy and legislation affecting International Migration, the White Paper, however, is filled with contradictions and irregularities. One of these is that while South Africa aspires to be a regional and continental hegemony, it fails to practice this role when it discriminates against migrants from neigbouring countries and Africa at large. Due to South Africa's relatively wealthy economy and abundance of mineral resources, many people from neighbouring countries migrate to South Africa to seek work especially in the mining industry, and many foreigners are indeed employed by the mining sector (Adepoju, 2003). So due to push factors in their countries of origin, such as declined economic situation and high rates of unemployment, many people from neighbouring states have a great dependence on South Africa and the opportunities it provides. It is not surprising that unskilled migrants are also attracted to these opportunities and most of them undertake jobs in sectors where they are a more preferred employment base than South Africans by South African employers, and where the citizens themselves prefer not to work, for example the mining industry and seasonal farm work (The White Paper, 1999, Chapter 6 paragraph 4.4.6. and 4.4.7.). However, it is these types of migrants that the South African government wants to get rid of. In this regard, the White Paper proposes that:

> The people who can add value to our growth and development are those who invest, are entrepreneurs and promote trade, those who bring new knowledge and experience to our society, and those who have the skills and expertise required to do the things we cannot properly do at this stage (The White Paper, 1999, Chapter 4 paragraph 3).

So the solution for the government is to criminalise those migrants who are believed not to be contributing to South Africa's economy and prosperity as understood by the government. But research suggests that:

> … anyone who engages in economic activity also creates wealth - and it is generally accepted that immigrants do engage in this activity. A Centre for Policy Studies report found, for example, that Mozambican immigrants in the Ivory Park informal settlement at Midrand are sought-after builders, and there is no shortage of evidence which indicates that many immigrants are engaged in trade and service industries (Friedman, 1997).

This highlights how this sort of policy formulation is limited because it does not take due consideration for both the historical reality of the country and South Africa's obligations to the region. This also has dire consequences for the country because it encourages both illegal migration and ignores and undermines the actual existence of the many migrant workers already active in the country and contributing to economic growth.

Another theme adding to the gap in the White Paper is the xenophobic attitude against foreigners, which also came up in the interviews. Xenophobia, a fear for foreigners, is obviously a persistent problem in South Africa, and needs to be urgently addressed. The way officials perceive xenophobia and how it is framed has implications for this study. It somehow highlights the need to exclude non-nationals in order to forge ahead an imagined, consolidated nation.

The White Paper acknowledges the fact that most illegal immigrants originate from Africa and, therefore, African migrants are the most adversely affected by xenophobia (The White Paper, 1999, Chapter 6 paragraph 4.2.2.). The increased numbers of non-nationals in South Africa has also led to a perceptible rise in xenophobia. Although xenophobic attitudes gained prominence with the 2008 xenophobic attacks, they have been evident since the first post-apartheid national election in April 1994 (SAHRC, 1999). Anti-foreigner sentiments are at times expressed in violent attacks on those who are considered to be illegal immigrants by

South African citizens and even government officials and the police. Unable to blame the government for its failure to address the economic problems and inequalities, most South Africans are redirecting the blame to the perceived illegal foreigners who are also caught in cycles of corruption, abuse and disregard for their human rights (Reitzes, 1997).

Despite recognising that anti-foreigner sentiments and xenophobia exists in South Africa, the White Paper fails to address this issue and how it relates to migration policy, in any substance. The White Paper suggests that educating the communities and immigration officials would be able to curb xenophobia. It says in Chapter 11 paragraphs 2.1.-2.1.1. that:

> The I.S. [Immigration Services] should have the training and educational capacity to explain immigration issues to police and local government authorities. Training and education of broad segments of the public service and of the public is essential to the success of the migration policy.

The White Paper also proposes that the Immigration Services should be concerned with the task of working "with other departments and with NGOs to ensure that communities recognise the difference between illegal aliens and refugees, accommodate refugees and reject any type of xenophobia. A special campaign against xenophobia should accompany the I.S.'s on-the-ground presence." (Chapter 11 paragraph 13). However, xenophobia's impact is a destabilising one, both on the domestic and regional levels, and the White Paper fails to acknowledge its huge impact. It also has a very little understanding of the concept and it does not take the concerns xenophobia brings about any further. To successfully counter xenophobia, policy should be firm and direct in informing any legislation passed with regards to International Migration.

There is an unfortunate tendency in the White Paper, and that is its persisting quest for a community based enforcement policy whereby emphasis is redirected "from border control to community and workplace inspection with the participation of communities and the cooperation of other branches and spheres of government" (The White Paper, 1999, Chapter 1). Although I argued earlier in this research, and I am also aware of the fact that the notion of closing up the borders and restricting movement has proved to be unsuccessful and ineffective and also expensive to implement even in the United States of America, the proposed community based policing of the White Paper will only lead to a form of

institutionalised racism, which brings us back to the apartheid regime. In essence, the White Paper's proposal suggests that communities should help the Immigration Service monitors in identifying illegal immigrants and carry out the task of 'whistle blowers' by reporting them to officials. This also seems to suggest that citizens can go ahead and attack those foreigners they do not deem fit for their communities, and for South Africa at large. Thus the consequence will be more xenophobia and anti-foreigner sentiments, instead of less of such, which will also result in unstable communities.

South Africa's history of migration policy has deep roots in racism. In this regard, it is necessary to call to mind that the Aliens Control Act, which assumes that residence in South Africa is a gift that authorities bestow on 'deserving' migrants, was primarily a racial law, because it forced those granted permanent residence or citizenship to readily assimilate into the white inhabitants' lifestyle. The authorities also had to make sure that immigrants did not destabilise and threaten "the language, culture or religion of any white ethnic group" by bringing and practicing their own language, culture, religion and ethnicity (SAHRC, 1999). Even after the abolishment of this clause, black immigrants were often excluded from the application of the law. For example, migrant miners could not qualify for permanent residence and there is a stipulation that immigrants who are self-employed require cash assets of R50 000 (SAHRC, 1999). This excludes most immigrants who could not raise these funds.

As a result, we can argue that many black immigrants have had difficulties in acquiring legal status simply because of their race. Most of them are eligible because they have resided in the country for a lengthy period of time and they have played a significant role in the job market, which would have ensured their legality were they white. While the amnesty implemented by the government in 1999 attempted partly to rectify this, its effect has been limited. The fact that most immigrants against whom control is currently exercised are black can - and has - been seen as an indication that aspects of apartheid remain in force.24 The White Paper makes no attempts to address this historical legacy as it has chosen to approach migration policy by looking at its form as opposed to its substance. It is only when we look at a substantively fair migration policy that we can begin to address both the historical racist policies and ensure that indirect racism does not persist.

Another great concern is the White Paper's proposal to reduce the pull factors so as to make South Africa 'unattractive' to potential, undocumented migrants. This is said in Chapter 6 paragraph 4.2.3:

> Therefore, this White Paper has accepted the following additional main policy parameter: under present circumstances it is not possible for South Africa to deal with the "push" factors acting in the rest of the continent nor build a migration system predicated on the improvements of these factors.

This assertion and approach to migration is deeply flawed and there is need for its revision because it provides that the 'South African community' be partly responsible for enforcing this migration policy, together with a 'professional security service'. This implicitly highlights officials' compulsion to protect the nation-state. The irony is that South Africa, with its regrettable past obsession with 'control' and 'security' that had adversely affected a lot of people's lives during apartheid, is repeating the very same costly mistakes in its current migration policy. The fact remains, whether South Africa accepts it or not, that one of the potential drivers of migration to this country are the perceived opportunities that exist here. This idea was also emphasised in the interviews. One interview participant reiterated that:

> Remember the whole issue around irregular migration is that you have push factors and you have pull factors, right. And in South Africa there are a few pull factors. It's seen as a land with great laws and civil protections and also economic opportunities. But then there are a lot of push factors, particularly from your Horn of Africa, with conflicts there and from places like DRC, Burundi…. right. So, if someone is deported to a place which has a push factor, most likely they're gonna come back because they don't have a choice (from interview with Participant B).

South Africa's opportunities and the unfortunate circumstances in neighbouring countries and the continent at large all present South Africa as a rectitude base, a safe haven and a land of opportunity. However, the perceived "great laws" of this land should be in unison with their implementation and practice, even as far as migration policy is concerned.

Similar to the gap that exists between what the law and policy state, and what we actually see in practice, human rights violations or their disregard is one of the inconsistencies in the White Paper. It proposes that the limitation of rights in the Bill of Rights should be carried

out by the legislature and that the limitation on migrants' rights may be contained in this legislation (The White Paper, 1999, Chapter 11 paragraphs 4 and 4.1.). However, and contrary to this, Section 9(3) of the South African Constitution states that: "The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth." Like in many other instances, here we see a contradiction in South Africa's own laws and policy. This reaffirms what has been said above that South African law is applied inconsistently, and is at the whims of the government to serve the interests of that specific time, without regard for human rights.

Actually, government officials dealing with migrants have very little regard for the law, and their justification, as evidenced in policy, is that they are protecting South Africa from unwanted migrants. Respondent B from the interviews, for instance noted, and brought to my attention yet again, how the Department of Home Affairs commonly and regularly does not comply with the law in the name of protecting the interests of the state and its citizens:

> […] so many people are being detained for the purpose of deportation when they've valid status in the country. So the problem is that verifications do not take place. Police arrest someone, the Home Affairs officials come and grab a stamp instead of investigating whether or not people have permits. And then they just get taken to Lindela. […] I cannot tell you why they have these policies or why they're not complying with the law, but there's massive non-compliance with your regulations and with your laws. […] most immigrants who are arrested for immigration detention, they're not given access to the courts and they don't even give them access to their families, where they're being held at the police stations. It's very draconian the way the law is applied to them and it's unlawful.

South Africa's rhetoric on deportation has no room for improving the welfare of migrants, but is more concerned with building authority and legitimising the ill-treatment and expulsion of non-nationals with references to state sovereignty. As common as this is, it is rarely addressed in subsequent policies concerning migrants, especially those labelled as illegal.

Essentially, the basic premise of any good migration policy should be respect for individual human rights, and not reverence of state sovereignty. As this often tramples on and disregards

human rights. Thus South Africa should be obligated to assure the human rights of all those within its territorial domain, whether South African or not, legal or illegal. Even though they are illegal migrants, harassing and mistreating them in detention centres or forcing them to take part in practices of bribery and corruption are all acts of human rights abuse and undermine the rights accorded to them in the Constitution (SAHRC, 1999).

4.2 The Findings: What is Actually Happening in the Deportation Process (Practice)

This section picks up from the previous section. It presents my analysis of what is really going on, and this is mainly informed by data from the interviews. I argue that while sovereignty and protecting the nation is the language that legitimises the practice of deportation, the real concern is as much about the economics of deportations, evidenced in the corruption and the varied actors in the process, as it is about protecting the nation.

The rhetoric, as evidenced in the review of the literature, suggests that citizenship, a very important concept of sovereignty, is strictly applied and used in granting membership and access to the country. However, one of the themes that came up from the interviews was that citizenship is a limited concept, and one of the reasons for this is that it fails to cater to those who are considered stateless people. Stateless people are those who have no nationality and cannot claim citizenship from any country (Convention on the Status of Stateless Persons, 1954). As unfortunate as this is, many people fall in this category and there are even some here in South Africa. In a world that seems to be so neatly defined and demarcated with borders, and where identity is forced on everyone, it is rather ironic that this same world cannot cater to the millions of people who cannot claim the right that gives access to all rights. Due to the precarious nature of statelessness and unavailability of records from most countries, among other things, it is difficult to pinpoint exactly how many stateless people there are in the world. But the UNHCR estimates that there are about 10 million stateless people in the world today, and there could be more (UNHCR, 2014). With South Africa's often praised Constitution and its supposed respect for human rights and democratic values, it is rather unfortunate that it has not put in place any formal measures to assist and accommodate stateless people. One of my participants had this to say in this regard: "South Africa has not signed either of these Conventions [the 1954 Convention on the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness]. There's a big loophole here. Immigration [government institutions in charge of managing immigration] actually has no idea what to do with these people." (Participant D, Interview transcript).

Since the South African government has not adopted any legal mechanisms through which the statelessness problem can be addressed, private actors such as NGOs intervene in the immigration process by advocating for the signature of the Conventions here. In the meantime, the Constitution acts only as partial avenue for redressing the problem. For example, the Constitution affords a child their rights to a name and nationality from birth, it ensures human dignity and other human rights. However, it is limited due to a lack of a formal immigration process for stateless people. There is also another means through section 31 2(b) of the Immigration Act. This is an application made to the Minister of Home Affairs to exempt stateless people from the requirements for permanent residence and to grant them permanent residence without conditions because of their special circumstances as stateless people. However, this approach is also very limited as majority of these applications were rejected and others have just never been finalised.

Participant C, for example, noted that "It's very difficult for them because, remember, [they] require some kind of identification [...]. So they're literally, I'd say rightless, because although the Constitution is there for everybody, in essence, in practice, these guys do not enjoy such rights because they're undocumented." In other words, the Constitution is just not there for everyone, and unfortunately neither is the current immigration policy. No formal measures have been put in place to guarantee stateless people their human rights, and this is just plain unjust. There can never be any amount of justification for this, not even South Africa's interests to protect its citizens and uphold its sovereignty, nor the economic interests behind this façade.

This begs the question: how legitimate and useful is it to use citizenship, a very important criterion of the nation-state and sovereignty, in determining membership and access to rights, if certain categories of people cannot be afforded this one right? As explained earlier, citizenship is a dominant tool used in the categorisation of people, and also the only mechanism through which one can practice and access rights. If one is not a citizen of a country, apart from the very basic rights such as the right to life itself, they cannot fully enjoy other rights such as the right to vote or have a say in the political affairs and decisions in the country, the right to descent work and so forth. It is already difficult for foreigners who have at least some level of recognition to be in the country, but for the many stateless people who cannot even get documents to do anything, it is highly difficult and problematic. What happens is that these people are constantly caught in a cycle of arrests, harassment and abuse. This was resonated by my interview participants:

> [...] a lot of them actually get arrested regularly but they're never deported [...]. So mostly they're held at Lindela, the Repatriation Centre, or they're arrested and kept at a police station over the weekend and get harassed and assaulted and then they're just set free again. Because what happens once you get to Lindela, they ask officials from different embassies to come there and to speak to you and interview you, and then if none of those embassies can identify you as a citizen, then they actually can't keep you because detention has to be for deportation purposes [...]. So we've had them released, but then they're released and there's still no documentation, they're still arrested by the police (Participant D, Interview transcript).

Essentially, stateless people are caught in a limbo. And the rhetoric on deportation in South Africa does not mention or recognise these people. To the South African officials, stateless people are essentially non-existent. Thus this brings us to another theme: the huge gap between immigration policy and practice.

Xenophobic sentiments, a common theme in all the interviews and even in policy documents like the White Paper, still loom large in the country, especially among officials and the police. It was raised in the interviews that South Africa has developed a securitised immigration control system, and this has unfortunately encompassed the psych of many South Africans, citizens and government officials alike. Hence, one of the reasons why there are inconsistencies between policy and practice in South Africa's immigration settings is the anti-foreigner sentiments and prejudices among citizens, officials and the police. Foreigners often get stopped on the streets and asked for some form of identification, and many of them get arrested not because they do not have proper documentation somewhere, but simply because they do not look South African enough. This is what my participants had to say:

> This is done randomly, but it's also done prejudicially. Normally you only find people of a certain class who are stopped and who are asked for documents, and it's normally men who are stopped and asked for documents. And what then happens is that if they don't have the documents on them, the police arrests them immediately and then they take them to the police stations. Sometimes [...] practically what happens is most of the time they then ask for a bribe to be released and if they don't get bribes, if they don't pay a bribe, that's when they get taken to the police station (Participant B, Interview transcript).

What this clearly suggests is that issues of sovereignty and citizenship are not the only drivers of immigration and deportation policy in South Africa, as the rhetoric suggests. Private

business interests, even among government officials are also prominent in driving this regime.

The interviews also raised some very interesting and crucial issues concerning the prejudices of immigration officials and the flaws in South Africa's immigration system, revealing how the concept of nationality and citizenship is hugely misunderstand in the practice of immigration. Basically, criminality and illegality in immigration has no criteria – anyone can be found guilty by state officials, as long as it serves their interests. The law is not is not the issue, because they might not even know it, but the language used in talking about immigration and the perceptions officials towards foreigners. If someone does not look South African enough, they need to be expelled before they pollute the sanctity of the South African Participant D notes that:

> There's nothing in the Immigration Act or in any other Act that tells you how you find a person to be an illegal foreigner. My experience is that immigration officials do not know nationality law, they don't know how to determine whether a person is South African even. Never mind to determine whether they're Zimbabwean or any other nationality. So how do these officials find anybody to be an illegal foreigner? For instance, this lady was just deported so easily. They [Home Affairs] just decided that she's Zimbabwe. So the immigration official said that it came to her – she realised it that this woman was Zimbabwean. Which is very interesting 'cause it just tells you how people think about nationality.

Another participant also noted how deportation in South Africa is highly a personal issue and not about ensuring the sanctity of the nation-state, "it is a question of either administrative error or a client was so vocal about their rights that they angered some officials there. They wanted to sort the person" (Participant C). The irony here is that all this takes place in a country that believes and propagates the idea of ubuntu – the South African principle of humanity or shared humanness. The prominence of private companies hired directly by the government through the Department of Home Affairs with the mandate to control migration and to operate borders, airports and ports takes our attention from the rhetoric on deportation and brings it to what is really going: that the immigration regime and deportation process may after all not be serving the political interests of the nation-state only, but also the business interests of private actors.

These inconsistencies have further brought about contradictions between the various government levels. At the local level, municipalities and even some communities have attempted to influence immigration policy through integration programmes. The City of Johannesburg, for example, works at the municipal level to spearhead this initiative of nurturing peaceful co-existence between the local communities and both internal and cross-border migrants. Part of this integration agenda is to educate and sensitise the local people about the negative consequences of prejudice and xenophobia against foreigners. These programmes are aimed at "address[ing] issues of discrimination and so forth, given the historical background of South Africa to make sure that communities live in peace and harmony." (Interview with Respondent A). However, concern was raised in the interviews that the national government has not offered much support to this regard, whether in terms of resources or funding. Participant A noted that:

> We've got that limitation, even [with] our policy on integration we've got that challenge because we're not allowed per policy and even the laws that govern the country to assist or help irregular migrants. Immigration is a national competence, so the challenge is that we don't have funding, from national government, from provincial government. We're taking from the departmental budget to make sure that we address issues of migrants, but we don't have any approved overall budget of the City to terms of migration.

As a result, integration efforts have failed to take a much needed place in the formulation and implementation of immigration policy. Consequently, both the rhetoric and practice of deportation policy are highly prejudicial and abusive towards foreign migrants.

4.3 Reflecting on the Disjuncture between the Rhetoric and Practice

The above analysis highlights that there are varying interests at play: both political and economic. However, sometimes these two actually converge. The interests of the state officials are to protect South Africa's sovereign territory and to do what is presumably good for South Africans by using any means necessary (such as corruption, bribery and disregard for the law). Similarly, there are private actors who can assist in this process while at the same time driving their business interests. What then this suggests is that economic interests are equally as influential as political interests in the rhetoric and practice surrounding deportation in South Africa.

These economic interests are in varying forms; sometimes they are eminent in the way officials accept bribes to release migrants who are due for deportation, and other times it is in

the way the private sector is using deportations in South Africa as a money-making venture. For example, one of the participants in the interview reiterated how private lawyers are using the unlawful arrests and deportations of migrants by state officials as means for advancing their economic interests: "that's why Home Affairs is always in the news and in the court rooms [because of its non-compliance with the law] and attorneys are making a lot of money because of this non-compliance with the laws. And that stems from this policy of Home Affairs just wanting to deport a lot of people" (Participant B, Interview transcript). The rhetoric is that state officials conduct deportations to protect South Africa. However, the practice suggests that state officials and their political interests are not the only determinants of deportation, but that economic interests through private companies and organisations are actually driving the practice of deportation.

Private lawyers are not the only ones showing this gap between the rhetoric and practice surrounding deportation. As mentioned earlier, private companies such as Bosasa hired by the South African government to manage and oversee detention centres and entry ports are also very much in charge of deportations. The government has granted private companies, who are driven by neoliberal economic policies, a responsibility that we have long considered a primary function of the state – the control of borders and management of deportations. With this privilege to take over this state function, the main endeavor of these contractors, like that of many neoliberal companies, is to maximise their profits and expand their businesses. The privatisation of the immigration sector implies that the South African state suspends its political hold on immigration by letting the private companies to run it, who in turn gain economically from the government. Hence the practice of deportation has become an economically driven process. This resonates with what another interview participant noted, "Private individuals and companies with economic interests are literally running and controlling our borders. This begs the question of how much in control our government really is in practical terms" (Interview with Participant D). This is evidence that our understanding of the state as talked about by state officials is misleading. What the practice tells us is that the state does not have a firm grasp on deportation and its practices.

This disjuncture between rhetoric and practice has implications for revealing what is actually driving practice. The language and notions around state protection have, in fact, created opportunities for self-interest and economic benefit. Consequently, economic interests may be driving the security agenda in South Africa.

4.4 Conclusion

The chapter discussed the findings of the study in which the research highlighted key issues that emerged from the data gathered during the interviews and document analysis. The discussion was directed by an attempt to address the objectives set out in the study and the findings show that immigration policy generally, and deportation policy in particular, does not match with its practice. Furthermore, the nation-state and ideas of sovereignty have nothing to do with the practice of deportation, although these concepts are often raised, whether directly or indirectly, in policies concerning immigration control. The practice of deportation is informed more by personal feelings and attitudes of immigration officials and even South African nationals and less by the formal political structures and procedures proposed in policy and the rhetoric. It was clear from the findings of the study that there is huge gap between the rhetoric and practice of deportation in South Africa, with economic imperatives sometimes taking more precedence than the political rationale of state power, sovereignty and protection.

CHAPTER FIVE
RESEARCH CONCLUSIONS

This study has argued that scholars should question and problematise what may appear as obvious in the link between deportation policy and state sovereignty. The concepts of sovereignty and the nation-state are a social construct, and scholars and academics need to treat them as such. Sovereignty is not a natural 'capability' of state systems either, and does not take a very prominent role in South Africa's deportation and immigration policy, as the current rhetoric leads us to believe. The research has shown that the assumed 'civilising' role of state action to control migration often involves incorporating other private actors to assist in this process. The government has given up management of detention facilities such as Lindela Repatriation Centre to private actors, with interests other than politics. With the high levels of corruption in these spaces, state sovereignty is undermined and state power becomes fragmented as people buy into the corruption to gain access into the country and as private business interests take prominence.

Therefore, South Africa should avoid the 'control' mentality in migration policy and rather adopt and enforce 'management' of migration. This suggests a more open policy with a view to meeting the country's needs and a collaborative policy in cooperation with SADC neighbours and the continent at large. Moreover, a securitised notion of immigration misses the bigger picture of what is really going on in the immigration process. It assumes that the rhetoric around deportation, which puts state sovereignty at the heart of the immigration regime, is the dominant way of assessing the deportation process in South Africa. What this then tells us about the state is that we should not always assume a certain level of state capacity and authority. In studying the state, we should not only consider their political power, but also other social, cultural and economic processes that may be at play in forming state identity and legitimising their authority. Essentially, the rhetoric of what the state is and what it does is not enough in understanding processes such as immigration and deportation. The practice should also be incorporated in understanding not only these processes, but also how the state is shaped and influenced by the non-political practices. The rhetoric in the literature about what states 'do' may actually not be significant as far as the practice of deportation is concerned, and so efforts to reform the immigration system in South Africa should focus on the economic aspects more.

To conclude, economic interests play a much equal role in South Africa's immigration process and sometimes take precedence over the imperative to protect. Hence, economics is

actually driving immigration and deportation policy, while policy-makers think immigration control and deportation are prominently politically driven.

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Appendices:

A. *Participant Information Sheet*

Title of Study: "The Practice and Rhetoric of Deportation in South Africa".

Dear Sir/Madam,

I, Natasha Ngoma, would like to invite you to participate in a research study conducted as part of fulfilment requirements for my Master's degree in Migration and Displacement Studies with the African Centre for Migration and Society at the University of the Witwatersrand, Johannesburg.

The aim of this research is to understand the reasons for deportation and how it is practiced. Through this, the researcher wishes to further understand what this invokes about the South African nation-state. The study aims to explain whether or not deportation policy and practice bring about a consolidated nation-state.

If you agree to take part in the study, I will conduct an interview aimed at at understanding your opinions and views about the rhetoric and practice of deportation in South Africa for approximately 30 minutes. I also ask for your permission to audio-record the interview in order to accurately capture your answers.

There are no individual benefits for your participation but your contribution is of great value to this research. Please note that your participation is absolutely voluntary. You are free to withdraw from the study at any time without giving any reason and without any negative consequences. You shall remain anonymous and I will ensure your confidentiality. Your real name will not be written anywhere in the research and any identifying information you give will be kept on my password-protected personal computer accessible only by me. A pseudonym or false name, linking the information you will provide, will be used in the data and in the final research report.

One potential risk is that there is the possibility that your anonymity might not be completely guaranteed because by describing your institutional affiliations and position, someone in your sector might likely know who you are.

A summary of the research will be available should you request it.

Should you require any further information, please contact me on e-mail at Natasha.Ngoma@students.wits.ac or by phone on 0784342319. My supervisor is Dr. Loren Landau and he can be contacted at Loren@migration.org.za or by phone on 011 717 4038.

Yours sincerely,

Natasha Ngoma.

B. Consent Form

Title of Study: "The Practice and Rhetoric of Deportation in South Africa".

I, the undersigned, confirm that:

- I have read and understood the information about the project.
- My participation in this research is voluntary and I am free to withdraw at any time, without giving any reason.
- My confidentiality will be ensured.
- The researcher has explained that I will be anonymous.
- The information I provide will only be accessible to the researcher.
- I understand the risks and benefits of my participation which were sufficiently explained to me.
- I have been given a chance to ask questions which the researcher answered to my satisfaction.
- I have been given an extra copy of this consent form.

I agree ☐/ do not agree ☐ (tick as applicable) to take part in the above study.

_____ _____ _____

Name of Participant Signature Date

TAPE RECORDING CONSENT:

- Tape-recording this interview is voluntary.
- I can request for the recording to be stopped at any time.
- Recorded information will be confidential and only accessible to the researcher.
- My recordings will be destroyed if at any point I decide to withdraw from the study.
- The researcher will make the transcripts available to me upon request.

I agree ☐/ do not agree ☐ (tick as applicable) to take part in the above study.

_____ _____ _____

Name of Participant Signature Date

C. Interview Guiding Questions

(a) For Government Officials

1. What categories of migrants does the government deport?
2. What are the government's reasons for deporting some foreign nationals?
3. Apart from the South African government, are there any other organisations/companies/people that are involved in the making and practice of deportation?
4. What are some of these organisations and what is their role?
5. Are there strategies that the South African state puts in place to make sure that deported migrants do not return without the necessary legal documents?
6. Has the South African state implemented security measures at point of entries to ensure deported migrants do not come back?
7. Does the government experience any challenges, for example in terms of resources, in maintaining these security measures?

(b) For Non-Governmental Organisations Participants

1. What is this organisation about?
2. What categories of migrants does this organisation work with?
3. What do you think are some of the reasons why the government deports some foreign nationals?
4. Does the organisation know migrants who have been deported before?
5. Do you know if these people remained in their country or they came back to South Africa?
6. Apart from the South African government, are there any other organisations/companies/people that are involved in the making and practice of deportation?
7. Doe the organisation know of any corrupt practices by officers at borders and detention centres?

D. *Requests for Permission*

REQUEST FOR PERMISSION TO CONDUCT RESEARCH WITH YOUR ORGANISATION

Dear Mr. Miya

My name is Natasha Ngoma, and I am a Masters student at the African Centre for Migration and Society (ACMS) at the University of the Witwatersrand, Johannesburg. My research topic is **"The Practice and Rhetoric of Deportation in South Africa."**The aim of this research is to understand the reasons for deportation and how it is practiced. Through this, I wish to further understand what this invokes about the South African nation-state. The objective of the study is to explain whether or not deportation policy and practice bring about a consolidated nation-state. This project will be conducted under the supervision of Dr. Loren Landau – Loren@migration.org.za(ACMS, South Africa).

I am hereby seeking your permission to interview20 officials in the DHA Johannesburg regional office. Their contribution will be of high value to this project and will assist me in understanding the practice and rhetoric of deportation in South Africa.

A copy of my research proposal will be provided to you should you request it. Please find attached copies of the consent forms to be used in the research process. I will also provide you with a copy of the approval letter the Wits Research Ethics Committee (Non-Medical) once available.

Upon completion of the study, I undertake to provide your organisation with a copy of the full research report. If you require any further information, please do not hesitate to contact me on 078 434 2319 or Natasha.Ngoma@students.wits.ac.za. Thank you for your time and consideration in this matter.

Yours sincerely,

Natasha Ngoma.

If you are willing to be involved would, please sign the form below that acknowledges that you have read the explanatory statement, you understand the nature of the study being conducted and the risks and likely benefits of participation in this study, and you give permission for the research to be conducted at the site.

I [Name: _____] as [Role Title: _____] of [Site Name: _____] having been fully informed about the nature of the research titled **"The Practice and Rhetoric of Deportation in South Africa"**give my permission for the study to be conducted. I reserve the right to withdraw this permission at any time.

Signature: _____ Date: _____

E. *Ethics Clearance*

Research Office

HUMAN RESEARCH ETHICS COMMITTEE (NON-MEDICAL)
R14/49 Ngoma

CLEARANCE CERTIFICATE	**PROTOCOL NUMBER H14/08/21**
PROJECT TITLE	The rhetoric and practice of deportation in South Africa
INVESTIGATOR(S)	Ms N Ngoma
SCHOOL/DEPARTMENT	African Centre for Migration & Society
DATE CONSIDERED	22 August 2014
DECISION OF THE COMMITTEE	Approved unconditionally
EXPIRY DATE	07/12/2016

DATE 08/12/2014 **CHAIRPERSON** (Professor T Milani)

cc: Supervisor : Prof LB Landau

DECLARATION OF INVESTIGATOR(S)

To be completed in duplicate and **ONE COPY** returned to the Secretary at Room 10000, 10th Floor, Senate House, University.

I/We fully understand the conditions under which I am/we are authorized to carry out the abovementioned research and I/we guarantee to ensure compliance with these conditions. Should any departure to be contemplated from the research procedure as approved I/we undertake to resubmit the protocol to the Committee. **I agree to completion of a yearly progress report.**

Signature **Date** _____/_____/_____

F. Interview Transcript

Respondent A

Interviewer: I just wanted to find out which types of migrants come to the City of Joburg. And who do you generally deal or work with?

Respondent: Ok, hmm, you know in the City of Joburg we have all kinds of migrants that come to the City. Eh, you have documented migrants and undocumented migrants. We normally refer to them as regular and irregular immigrants. And we've got, eh, other types of migrants who are here for purposes of visit, eh, others is for business purposes, then we've got also the students at various colleges, universities and schools, and so forth… eh and others are here for asylum – eh those who seek protection given the situation in their respective countries. But we deal with the all types of migrants in the City of Joburg.

Interviewer: alright. So I understand that one of your objectives is to – what can I say – to integrate migrants in their various communities, so how does that work and how successful is that?

Respondent: Eh, ok. You know what the City of Joburg neh, ehh, has seen before even the 2008 xenophobic attacks, I'm not so sure you're aware of that background – (Interviewer: Yeah I'm aware of that) – through the Department of Human Development by then, the City developed a strategy on building social cohesion that seeks to address issues of discrimination and so forth, given the historical background of South Africa to make sure that communities live in peace and harmony. Eh, it was in 2007 when the Executive Mayor then launched the first Migrant Help Desk, which is this one, you could see with that (points towards photos hanging on the office walls). It was in 2007 before the attacks. But by then we had an influx of migrant communities. They would arrive just here in Parkstation, and so forth and they would come to the City and say, look, we want accommodation, we want this and what what. Then the Mayor said no let us have an office or a desk where they will come and get proper information and so forth. Eh, in terms of government services and how they can be helped by then, up until the 2008 xenophobic attacks and so forth. Then after the 2008 xenophobic attacks, the migrant communities themselves, they organized themselves and they formed organisations, their own organisations. Some originate from their respective countries, nationality and so forth. But others currently, they're just mixed. We've got all nationals in those particular organisations. Eh, so what happened is that through the eh, human development strategy of the City, then the City recommended the establishment of migrant help desk in each Region. So the City has 7 Regions. So this is Region F, then we've got Region A dominant of ehh Diepsloot and we've got Region B just here. It deals with eh (pause) partly of Roodeport. Then we've got also Region C, eh which also has eh your Braamfischer. And then, eh, we've got Region D which is Soweto. Then we've got Region E which is Alex and we've got Region F which is Inner City. Then we've got Region G which is your Orange Farm. So we've got this, eh, Migrant Helpesk Regional Coordinators. So they work with various organizations. So how the City's been able to deal with issues of social cohesion and building communities of peace and promoting integration, the City of Joburg developed a policy on integration of migrants. Yah, so that policy we use it as a guide. Eh, it was developed through various inputs. There was a study tour that was done and so forth. Eh Wits also played a crucial role in terms of contributing towards development of that project. So we've got what we call policy elements that deals with reception strategy that deals with new arrivals, where we give manuals in terms of training, giving information and so forth and so forth. But we have dealt with, what we're actually dealing with regards to the issues of integration, like we, we're conducting what we call eh dialogues. Also conducting trainings and workshops. So the dialogues, the trainings and the workshops we do it with the partners: the police, the Public Protector, sometimes Lawyers

from Human Rights, eh, eh we also involve other major stakeholders - organisations that we work with, like your CORMSA which is a Consortium for Refugees and Migrants in South Africa, we've got SAFIS which is South African Forum for International Solidarity. So most organisations affiliate to those particular organis… (fading). So what we do we, during the dialogues the trainings and the workshops, we've got the local community and the migrant communities. When we say migrants, it is both cross-border and inland migrants. We've got sessions, you know, issues of discriminations and xenophobic and so forth. What this group is saying about this particular group and, you see. So we address those issues and, eh, through public engagement this is one of the efforts that actually assist us because now the people have eh proper information. And then they share knowledge and experience and we also promote diversity and cultural values. If you could go around you'll see that we have your carnivals, where all migrants and local people come and enjoy and so forth. So in those communities, you'll see that there is integration. Migrants themselves they enjoy that particular space. Eh you go to Soweto, they've, eh you know, integrated even themselves besides the Migrant Helpdesk being there because already they've got their brothers, sisters and so forth. So it's through those initiatives, eh, of trainings, workshops and dialogues and open session with the eh, eh, partners. Your Department of Home Affairs giving proper information and so forth. Yah.

Interviewer: Alright. So, just, I understand that you also deal with illegal migrants, right? Yes, so, ahh, 'cause usually the general understanding is that illegal migrants cannot be in the country right? So they have to be sent back to their country or come with proper documentation. So do you have any problems with regards to that, like for example the Department of Home Affairs coming to chuck out those people? Is there such a situation or maybe those people are actually integrated and protected?

Respondent: You know, our desk, eh one thing that we don't do, eh we don't arrest migrants, whether legal or illegal. If a person comes here and say I'm so and so, I'm from this country. Eh, those who have documents and if it is an issue that wants the Department of Home Affairs or Police Service or whatever service that might be needed, we've got what we call an intake form. So we register that person, the details and everything then we do a referral note to say go to Home Affairs because we work with… then they will know that ok, this person has been referred by the City of Joburg and so forth. But with illegal migrants, obviously they don't have documents, but what the Mayor says, you cannot divide eh acc… eh eh, deny a person access to services on the things that… and so forth. But there are those limitations and laws that governs the country in terms of…. Because it, the Home Affairs for instance will say that is a criminal offence to assist a person who's illegal in the country. You see. So we've got those particular technicalities.

Interviewer: So you've got that limitation…

Respond: We've got that limitation, even our policy on integration we've got that challenge because we're not allowed per policy and even the laws that govern the country to assist or help irregular migrants. But when they're here within our space, if a person comes and say, look I'm looking for information, where is South African Police, eh, office. I can't call Police and say hey there's a irregular migrant come and arrest. No it's not my responsibility. For me it's to give proper information and so forth.

Interviewer: Ok. So are you aware of any illegal immigrants that have been deported by Home Affairs?

Respondent: You know, so far we don't have that information. It's specifically Department of Home Affairs that deals. They do their own operation and so forth. But ours is just a desk, assist migrant

communities and make sure that we create space for them to operate and give necessary information.

Interviewer: Ok. And resources. Alright. So are you sometimes limited in terms of resources or…

Respondent: As a desk?

Interviewer: Yes.

Respondent: Ehh, let me not reduce it to a desk per se, but you see, aint I said the immigration is a national competence, so the challenge is that we don't have a funding, probably from national government, from provincial government to say guys given that there is this ending you're doing. So we're doing it out of our own limited budget from the municipality. So there's that challenge of resources…

Interviewer: from the national government itself?

Respondent: No the national, I'm so sure of their budget, but I'm just saying in the City we have that challenge because we're taking from the departmental budget to make sure that we address issues of migrants, but we don't have any approved overall budget of the City to say in terms of migration. Is a departmental thing under the Department of Social Development. But hence I said that we've got partners, we've got UNHCR, we've got IOM, these international organisations of migrants and so forth. We come together and say guys we've got this, can we share space, can we share resources and so forth. But yes we're challenged with quite a number of resources like if you look here, I'm alone. So if I go to a meeting there's no one…

Interviewer: (Agrees) there's nobody here.

Respondent: But what we're saying is that migrant organisations we've created this space for them to come and work with us. In a week they can come three times a day, given their own operational hours to come and assist.

Interviewer: Ok, so generally you work with the migrant organisations, other migrant organisations, NGOs and non-governmental organisations.

Respondent: Yah, yah.

Interviewer: Ok. I see. Well, that was very helpful. Thank you very much. So I'll try and get back to you if I have any questions.

Respondent: Yes, it's fine, just drop an email.

Interviewer: You have been very helpful. Yes, and then, I don't know, maybe you'd like to see a copy of my research after I'm done and everything. Maybe it could go towards assisting.

Respondent: No, it's fine there's no problem. Yah, yah. But hence I said some of the things we don't do as a City and so forth, like deportation it's not our duty, it's not our … arresting migrants and so forth and so forth. People they don't understand, for instance, the work of the Police, the Johannesburg Metro Police, is there to enforce the by-laws. But they're not chasing after immigrants or migrants. No, no, no. it's not that.

Interviewer: Yah, they're just doing their job.

Respondent: Enforcing the by-law. You'll find that people have created… if you go around here, you'll see there's an illegal building there. It's been occupied and so forth. You see. When we try to

enforce the by-laws then the people will say yah you see the City what, what, what. And that building is not meant for accommodation or for people to…

Interviewer: Yah, the people are still occupying it for accommodation purposes.

Respondent: Yes and they've connected illegal electricity, water and so forth.

Interviewer: Ok, thank you very much.

Respondent: Ok, no thanks ma…

Respondent B

Interviewer: ok, so basically, ahh, I wanted to know what categories of migrants probably, ahh, Lawyers for Human Rights works with.

Respondent: ok so, you know Lawyers for Human Rights, you know our background right?

Interviewer: Yes.

Respondent: Ok. So our refugee rights and migrants rights program, ahh works as, well yah basically refugees and migrants. So we deal with practically all kinds of refugees and migrants, but particularly, you vulnerable groups. So we're not focused too much, you know like ahhh people (a) with resources and in the immigration system. Right, our primary focus is on refugee protection. So we're talking about asylum seekers and refugees, though we also assist migrants, normal migrants, who're trying to get regularised in the immigration setting. And we deal a lot with statelessness. So like people who are stateless, they're not necessarily refugees and umm, I'm not sure if you know what stateless is.

Interviewer: Yah…

Respondent: Ahh, yah so that is, so basically we deal with all types of immigrants, migrants, ahh but with a particular focus on the vulnerable groups which are mainly your refugees and your stateless people.

Interviewer: So, ahh, are these sometimes irregular or illegal migrants?

Respondent: Well, ahh, thing is, well irregular… I prefer the term irregular to illegal, illegal carries a lot of connotations and ahh, just as an example, someone who has fled their country, has fled war, has fled persecution, when they arrive in the country, they're technically in contravention of the Immigration Act. In fact basically all refugees are in contravention of the Immigration Act, but the Refugees Act stipulates that whilst they're having their term determined, they cannot be prosecuted or any action be taken against them in terms of the Immigration Act. So, technically all our clients will be irregular/illegal even though there's a stayoff execution. Right, so yes, a lot of it will be irregular migrants, and a lot of our workers try to regularise people (inaudible)…

Interviewer: Ok, So I just wanted… just a quick question on the refugees: what definition of refugee? Do you use the UN definition or the…

Respondent: So there's a UN Convention definition which is almost translated verbatim into South African law. Right, so we in the South Africa system, so we use what is in the Refugees Act, but is in yhe Refugees Act is identical to quote what is in the UN Convention on Refugees and you find it in Section 3 of the Refugees Act and ahh it literally sets out three categories for what a refugee is.

Broadly speaking [inaudible] is someone who is fleeing prosecution, is outside of their ahh their state, is unable to return by, for fear of prosecution because of five categories: race, religion, ahh nationality, ahh, membership of a particular social group and ahh, the last one escaped from me, and yah political opinion.

Interviewer: 'Cause, ahh, the OAU Convention, I don't know if it's 1951, it also defines who a refugee is, but more broadly in that it doesn't have to be, you know they say a well founded fear of prosecution and so forth, and usually it's political, more political. So the AU also includes economic or even social persecution or threat. So do you also maybe work with those people?

Respondent: No, so we work with ahh… so, economic and social reasons. Ok so just coming to the second part of the definition, the second category is people who are fleeing areas of disturbance or war or where there's been a disturbance in normal life. Technically, they might be catered in that specific sphere. But then it'll have to be… there's quite a large burden to prove that, right. But generally, if you're talking about economic migrants, in terms of our law, in terms of South African law, they have to be governed by the Immigration Act, not the Refugees Act. Because the purpose and understanding of the Refugees Act is around protecting people from persecution, from refoulment and not so much from economic systems. Because South Africa has not signed on to carry the burden economically for failed states, but they're signatories to treaties to house refugees, people who have a fear of life, along those five categories that I've talked about, not so much economics.

Interviewer: Alright, ok thank you. Ahh, just moving on, so do you know, like does this organisation know of people, work with deportees, people who were formerly deported or so?

Respondent: Yes we do. In fact ahh I work in our detention monitoring unit. Right, so ahh it in essence works with people who are being detained for immigration reasons, pending deportations, right. And we work with people who have been deported before and in principle, we work towards assuring the principle of non-refoulment, right. Ahh, that's how we also do some cases around extraditions. I'm sure you might have heard we have worked on those high profile death penalty cases, right. So that is around ensuring that principles of non-refoulment, ensure that deportations do not amount to refoulment of people to places where they'll face prosecution, torture or anything that would be in convention of your, you know, your up cut, your convention against torture and… yah.

Interviewer: So basically what, ahh, what categories of people are deported and…

Respondent: So technically the people, people who are meant to be deported are meant to be deported in terms of Section 34 of the Immigration Act, and these are people who are found to be, ahh, illegally residing in the country. So that falls into, so that would either be people who are not asylum seekers or refugees. This is how the law is meant to apply. People are not asylum seekers or refugees, or have had their asylum claims rejected or have had their refugee statuses withdrawn or people who have no immigration permits, or whose immigration permits have expired.

Interviewer: Ok. So can… Ok ok. I think you've answered that one. So I think, basically. Ok, so do these people come back without, once deported, so do these people eventually come back. You know of some that have come back…?

Respondent: Well it depends what category of people you're talking about. But certainly a lot of people do come back to the country after deported, or being deported.

Interviewer: With papers?

Respondent: Ahh, well that's the thing. Like it's not like anyone has done any great research on this. But, we have had clients who have been deported and these are clients who had fled their country from persecution, who then would go back to their country, they're arrested, they're tortured and then they come back fleeing because the push factors still exit. Remember the whole issue around irregular migration is that you have push factors and you have pull factors, right. And in South Africa there are a few pull factors. It's seen as a land with great laws and civil protections and also economic opportunities. But then there are a lot of push factors, particularly from your Horn of Africa, with conflicts there and from places like DRC, Burundi…. right. So, if someone is deported to a place which has a push factor, most likely they're gonna come back because they don't have a choice. But then in terms of giving you kind of accurate stats in terms of how many people come back and how they come/what documents they have , I'm not able to tell you.

Interviewer: Ok…

Respondent: but what I can tell you is that most people who end up in DRC, who get deported in DRC , get arrested and put into one of the military prisons because there's an assumption that they're working against the State.

Interviewer: Ok. So do you work with the Department of Home Affairs, like do you liaise with them?

Respondent: So we do liaise with them. We liaise particularly with the Immigration Department and with the Deportation Department and we have people who work at Lindela. So we attend at Lindela once or twice a week. Lindela is a deportation facility, it is a holding facility where people then get deported from and I was actually there on Monday. Ahh, and we work with them but when we now seek our client's release, when we find that there are people who're being detained unlawfully, they're either asylum seekers, refugees or people with valid immigration permits, a lot of times we have to take them to court to secure our clients rights. If they refuse to release the people who are being detained unlawfully or they refuse to comply with the regulations in terms of what is meant to happen in terms of deportations, which doesn't always take place in fact.

Interviewer: Ok, alright. So basically you work with, or in line with the South African Constitution?

Respondent: Well, we're stakeholders. So we work with, in line with the Constitution.

Interviewer: In line, I mean you work in line with the South African Constitution and then the laws of immigration it has put in place right?

Respondent: Yes. So that's exactly it and ahh what our, what we're trying to do in terms of our detention monitoring is to ensure that detentions are taking place in terms of the Constitution, in terms of the immigration Act, in terms of the Refugees Act, in terms of case law around it, right. And wherever there's a violation of that law, be it in the Constitution or in your Statute, that is where we intervene.

Interviewer: Ok, ok.

Respondent: Yah. And we work towards developing the law and developing the interpretation of the law and we bring a lot of strategic cases around that.

Interviewer: Ok. Aright. Well I think that's basically it. And would you happen to know how many people are deported, like roughly the statistics of how many people are deported?

Respondent: Ahh, off hand, ahh no I don't have. I mean there are records that we can get, but you'll probably be best getting them from Human Rights Commission or the United Nations refugee agency.

Interviewer: Ok. Alright, I think that's basically it, unless you have any questions.

Respondent: No, no, no. I'm alright. It depends on what you wanna know. Ahh, so I mean do you understand how the deportations actually take place. As in how the system works in practice.

Interviewer: Yes, yah. I think basically it's to uphold the law.

Respondent: Huh?

Interviewer: Uphold the law right? It's to uphold the law and…

Respondent: No, no I'm saying do you know how in practice deportations take place?

Interviewer: Ah, not really.

Respondent: So as in exactly how the whole system works. Is that not something you'd want to know?

Interviewer: Ah yah I'm interested. I'd want to know that.

Respondent: Ok, so like your majority of people are arrested by the police, who normally stop people and ask for their documentation, right. And when someone doesn't have a document…

Interviewer: So this is done randomly?

Respondent: This is done randomly, but it's also done prejudicially, ahh normally you only find people of a certain class who are stopped and who are asked for documents, and it's normally men who are stopped and asked for documents. And ahh what then happens is that if they don't have the documents on them, the police arrests them immediately and then they take them to the police stations. Sometimes what happens is that, ahh, practically what happens is most of the time they then ask for a bribe to be released and if they don't get bribes, if they don't pay a bribe, that's when they get taken to the police station. And once they've been arrested, the law says that you can hold someone for 24 hours, 48 hours sorry, to verify their status. So practically what is meant to happen is that… yah, there's meant to be verification of status, and then they're meant to be declared illegal and then from there the people then get sent to Lindela to be deported. Practically what then happens is that at Lindela, you then have to get the member state, the embassy to come and accept the person. And then they have to charter a private plane to that area, unless it is one of the bordering countries and then they charter a bus to drop them off. Now if they cannot get the embassy to say this is one of our people we'll accept them back, they cannot deport them. And this is why it's particularly difficult for stateless people who have no nationality. When they get detained, there's no country which will accept them because they're stateless. So I mean those are really the more kind of pregnant issues around deportations and the way it takes place and those are the, if I was doing your research, those are the areas that I would canvas. But, ahh, yah. Ahh, I think my colleague will take the rest.

Interviewer: Ok. So, alright thank you. Just one last thing. So I understand that there are people who are basically like arrested maybe sometimes by the police right? Maybe they don't… sometimes they have papers and all, but they still get arrested and they're put up for deportation.

Respondent: Yes, and those are the people we assist.

Interviewer: Ok, this is when Lawyers for Human Rights…

Respondent: So we have… we bring cases every week because so many people are being detained for the purpose of deportation when they've valid status in the country. So the problem is that verifications do not take place. Police arrest someone, the Home Affairs officials come and grab a stamp instead of investigating whether or not people have permits. And then they just get taken to Lindela. That's why you see there's a lot of cases, that's why Home Affairs is always in the news and in the court rooms and attorneys are making a lot of money because of this non-compliance with the laws. And that stems from this policy of Home Affairs of just wanting to deport a lot of people and the general xenophobic attitude in the country, right. Ahh, and so I cannot tell you why they have these policies or why they're not complying with the law, but there's massive non-compliance with your regulations and with your laws. And it might be an area you want to tackle.

Interviewer: Yah, it's interesting. It's interesting, 'cause I also wanted to do an interview with the Home Affairs and they didn't want to let me.

Respondent: that's why they don't want because getting a lot of that press… if you read up, we were working in Benoni recently and if you read up what was happening in Benoni with all those people, and most immigrants who are arrested for immigration detention, they're not given access to the courts and they don't even give them access to their families, where they're being held at the police stations. It's very draconian the way the law is applied to them and it's unlawful . So those are the issues to compass.

Interviewer: Yah, thank you very much. You've been helpful and opened my mind to so many issues.

Respondent: Well I hope I've been a bit helpful. Unfortunately my time has run out.

Interviewer: Ok, thank you very much.

Respondent C

Interviewer: and don't worry I'm not gonna, it's for your confidentiality and everything else, it's guaranteed. I'm not gonna use your name anywhere in the research.

Respondent: Ok. Is this noise not going to distract?

Interviewer: Ahh, I hope I can get something (inaudible).

Respondent: Ok, ok.

Interviewer: Ok. So [name withheld] and I had an interesting conversation, basically talking about the deportation poli..., I mean the deportation process in South Africa. And ahh, I don't know is it, what do you really work with.

Respondent: ehh, detention, I'm heading detentions, the detention monitoring unit, and I'm also managing the refugee (inaudible), 'cause here there are sub-units. So there's refugee and migrant rights program in the office, refugee clinic in the office which I'm managing and I'm also the head of Detention Monitoring Unit. Yah.

Interviewer: Ok, so I gue.., then you work with detainees and the deported people?

Respondent: Yes. Although I no longer go straight to Lindela, I'm relying on colleagues (inaudible), I'm sending them to go and consult. I only go this day, ah this time whenever none of them is

available and there's some kind of emergency case. But I'm dealing with this 'cause every case passes through me.

Interviewer: Ok. So what categories of migrants do you deal with? Is it just refugees, asylum seekers or migrants in general?

Respondent: Eh, both refugees... asylum seekers, refugees and other migrants. But the limitation is far as whether people are able to pay private lawyers or not. If you're able to pay private lawyers, we'll refer you to private lawyers. Sometimes even if you're able to raise funds to pay private lawyers, but because of our speciality, we may also still step in to step in and assist the person who may not get proper assistance from private lawyers who are not experienced in the area. Yah, yah. So we assist such kind of groups.

Interviewer: Ok, so do you or are you obliged to work with... there are people who've been deported before and then they come back without papers and then they seek your help again. Are you obliged to work with those or help them?

Respondent: Ehh, I wouldn't call it an obligation, because we apply our discretions. We assess every case on its own merits. A person may have left a country on deportation, eh but upon arrival in the country, they may consider it unsafe to remain there, so that... the individual comes back in the country. So it's not a question of obligation. It's a question of whether or not we feel like their merits require our interaction.

Interviewer: Ok, ok. So their merits... it depends on the merits that the person or the reasons that the person presents for coming back?

Respondent: Yes, yes, yes.

Interviewer: Ok. So if those reasons are not sufficient enough, they can be redeported?

Respondent: Ehh, you know, if the reasons are not sufficient, the thing is (inaudible) about deportation, the question is whether they're found by authorities. If they're found, well, they'll be deported again (laughs).

Interviewer: Ook... Hmm. So you don't, yah, you don't report them. So you say oh this person was deported but they've come back (laughs).

Respondent: No, we're... No, it's a question of confidentiality between lawyer and client. So when a person comes and say well I was deported and I've returned for the following reasons, in fact there'll be such cases, eh we assess eh why did you return.? Was it proper in the first place that you were deported? And then if we feel like in the first place there was an error in the deportation, or even if properly he was deported, but the new circumstances they warrant he be considered afresh, then we do come in and help.

Interviewer: Alright, ok. So I understand sometimes the police takes bribes from even people who are sort of irregular and those people stay in South Africa. Is that true? (Laughs)

Respondent: Yes. Eh, honestly neh, we have heard these kind of allegations many times before and our difficulty is to ascertain them because our clients are easy to say there's been some bribery. But when we want to bring this forward to authorities, they're hardly able to come forward to assist, obviously for fear of being prosecuted by whoever they're charging against. Yah.

Interviewer: Do you work with the Department of Home Affairs? Do you liaise with them in terms of deportation matters?

Respondent: We do, we do because, remember, Lindela is within their control. So we do deal with them all the time, but our relation is not always smooth. Because our position is to assert the position of the clients and their position is to defend their procedure... their stance. To say the way they want things to be done has to be that particular way and must be respected, but our position is to say compliance with the law is, is essential. It cannot negotiated.

Interviewer: Ok, so do you know the reasons the Department of Home Affairs gives for deportation or is it just some random act?

Respondent: Well, (inaudible), one if you're an asylum seeker, you have been processed, remember there's an asylum seeker process when you first come to South Africa, then you apply for refugee status. They access, they take your application, they process it and then it is determined whether you qualify for refugee status or not. If they feel like you qualify they'll grant u refugee status, if they feel like you don't qualify they'll reject you either as a manifestly unfounded claimant or purely as unfounded. To say if it's unfounded, you still have time to appeal. If it's manifestly unfounded, it's referred to a standing committee for immediate review. And ahh, they might say, finally, that you deserve to be in South Africa and, therefore, you must y be deported. I don't know whether I missed your question.

Interviewer: No, no, no, you're answering it.

Respondent: And then if they say finally you don't qualify, that reason will be sufficient if the (inaudible) of your asylum claim is weak. Say for example you ought to have come here on economic basis and therefore you must have acquired a business visa to come to South Africa, you instead went through the asylum process and that's why they'd eventually find that out actually you don't qualify for asylum. And, therefore, that ground on saying your claim was manifestly unfounded would warrant them to say go back to your country. Other situations is where, ehh, you... what, like why you apply twice, a person apply for asylum now, he has to go and extend the permit after some time, he fails to extend the permit. And then instead of trying to resolve the delay in extending his permit, he chooses to go and apply afresh with different names sometimes and then all that. So as soon as Home Affairs finds that out, he's liable to deportation.

Interviewer: I also understand that sometimes Home Affairs deports people who apparently have papers, so is that just an administrative error or...?

Respondent: Ahh, it is a question of either administrative error or a client was so vocal about their rights that they angered some officials there. They wanted to sort the person.

Interviewer: So sometimes it's a personal issue?

Respondent: Yes, yes, yes.

Interviewer: Ok, I see, I see. Alright, what about the, I don't know if you also, ehh, deal with this issue of stateless people.

Respondent: Eh, it's a, this is an area which is, eh, as a particular unit that is dealing with. But we also come across such cases in our consultations with clients, sometimes at Lindela or elsewhere. Where the client would say look these guys have been keeping me in detention here, they cannot deport me to anywhere because I don't belong anywhere. Like a person will be coming from Kenya, was born in Kenya, but has never been a citizen and came to South Africa. South Africa does not recognise him, so they cannot deport him to Kenya because Kenyan authorities don't recognise him.

Interviewer: So what happens to those people?

Respondent: Eh, we refer them to our colleague here, but one thing we do is to demand their release. Because you cannot just detain a person, without the purpose of deporting them. If you're not going to deport, you don't detain. Yah, because the risk is for them to detain them indefinitely just because they don't have any citizenship. So we refer, first we demand their release and then we engage our colleagues in the Statelessness Unit to assist them.

Interviewer: Ok. So basically those people can stay in this country?

Respondent: They can stay, because they cannot be deported anywhere.

Interviewer: But do they have rights here, like can they work?

Respondent: It's very difficult for them because, remember, the employer will require some kind of identification...

Interviewer: Papers yah?

Respondent: So they're literally, I'd say rightless, because although the Constitution is there for everybody, but in essence, in practice, these guys do not enjoy such rights because they're undocumented.

Interviewer: I see. Well, that's very helpful. But anyway, I think I've covered basically what I needed to cover. Yah.

Respondent: Ok, ok.

Interviewer: Oh yah, I also hear of abuses of human rights and corrupt officials at Lindela (laughs). How true is that?

Respondent: Ok, what we used to hear at Lindela, I think I can talk of two things: one, eh, there's an argument that the security guys that remain in that place sometimes do assault people there. That's what we have heard. And the other that I can think of is the lack of proper medication that we have been told off. Someone might get sickly and they don't get proper medication. Some medication might not be available and the client, I mean the patient is, has to trust, I mean to depend on the friends outside or relatives to finance their medication, Ahh, what else again? (Brief pause).

Interviewer: What about for how long they're held there; how long are they supposed to be held?

Respondent: Yes, yes. That's one important thing. You know the Immigration Act says you can at least detain a person for a maximum of, say not a maximum. 48 hours a person can be detained and brought before a magistrate court. If he's not brought before a magistrate court he must be released. So if he's brought and it's considered that it's an immigration thing, and it's intended that the person will be deported, they're transferred to Lindela and there they have to be held for at least 30 days. And then if they want to extend their detention for whatever reasons, beyond 30 days, the Immigration Act says they must acquire a warrant [inaudible] to extend the 30 day detention period from the magistrate court. But the magistrate court cannot, ehh, extend detention indefinitely. The maximum can be only 120 days. And, but our experience has been that in most cases, they've not acquired any warrant to detain a person beyond 30 days. And again in most other cases, 120 days period would have elapsed and yet the person would not have been released. So those are the kinds of pure abuses of rights because there is just arbitrary detention. Yah, the period has elapsed and yet you're kept in detention. So that's one thing that is always taking us to court all the time. To say we must, eh, bring them to account for that.

Interviewer: Ok, Alright. Thank you very much for your time.

Respondent. Ok, ok. And I wish you all the best.

Interviewer: Thank you very much.

Respondent D

Interviewer: Thank for the opportunity to see me.

Respondent: It's a pleasure.

Interviewer: Ahh and basically you've read about my research. I'm generally looking at the immigration policies in South Africa and what the government says it does and what is actually happening. Umm, so I understand you deal with statelessness, so yah I wanted to basically hear more about that and I wanted to understand what happens to people who are considered stateless. And when they're deported, and they have nowhere to go, so what happens? Does the government provide for them here, do they have access to rights and so forth?

Respondent: Ok. Well, so statelessness, umm, a person is stateless if they are not considered a national by any state under the operation of its laws. And that's the definition you find in, there's a 1954 Convention on the Status of Stateless Persons and the definition is in there, like that. So basically, it means that there's no country in the world that will recognise you as a citizen, whether it's because of the laws or whether it's because of the practice. So maybe there's discrimination, or whatever the case may be, or maybe the laws just don't allow it. It's possible for a person to have links to different countries, but to not be recognised by any of those countries. Umm, so there's that Convention and there's another Convention, a 1961 Convention on the Reduction of Statelessness. So these two Conventions are aimed at identifying stateless people - where they reside, in the country where they reside, and then to give stateless people certain rights. Most importantly, the right to reside in the republic or in the country where they are. To reside legally there, and to have freedom of movement, to be able to travel and to be able to work specifically, and then also this, some pathway to access nationality. So for instance if you gave someone permanent residence, even though they're not a citizen of any state, you help them to be able to work, to stay and then after five years of permanent residence, you can apply for citizenship. So that's what we ideally would want our country to do, although South Africa has not signed either of these Conventions. So we can't apply the Conventions here, so what we do is we advocate for the signature of the Conventions here. Umm, so in the meantime, we have certain other things that we can use: legal mechanisms like the Constitution gives you a lot of rights, gives a child their rights to a name and nationality from birth, it ahh, you know, it ensures your human dignity and all of these things. So it's possible to use the Constitution to assist stateless people, but there's no formal immigration process for them. There's only one application that we have used for stateless people before, and that is an application in terms of the Immigration Act. It's section 31 2(b). It's when you ask the Minister to exempt you from the requirements for permanent residence and to just give you permanent residence because of special circumstances. So what we argue for these people in that being stateless is a special circumstance and they can't comply with the requirements for permanent residence. So the Minister must exempt them from that and give them permanent residence. This hasn't happened a lot. I think we've had three applications go through, some of them have been rejected, some of them have just never been finalised. So there's a big, ahh, loophole here. Immigration actually has no idea what to do with these people. They are actually my clients, a lot of them actually get arrested regularly but they're never deported because, umm, I mean some of them are but of my clients, I've only had one client who was eventually deported. So mostly they're held at Lindela, the

Repatriation Centre, or they're arrested and kept at a police station over the weekend and get harassed and assaulted and then they're just set free again. Because what happens once you get to Lindela, they ask officials from different embassies to come there and to speak to you and interview you, and then if none of those embassies can identify you as a citizen, then they actually can't keep you because detention has to be for deportation purposes. So sometimes they'll let go if they're there for a long time. We've done a lot of applications to release stateless people, and we just argue that you can't keep a person if it's not for deportation purposes and also you can't keep a person for longer than 120 days.

Interviewer: So it's the same cycle.

Respondent: Yah. So in my one case where my client was actually deported, what happened, the deportation was completely unlawful, because you can't deport anybody to a place where that government does not accept the person. So what happened in this lady's case, for instance, they thought she was Zimbabwean, so they brought, they asked the Zimbabwean Consulate to confirm and the Zimbabwean Consulate said we can't confirm her nationality, we don't know if her documents are legitimate, ahh we actually can't confirm. And then what happened is that they just put her on the same bus as the other deportees and she was deported to Zimbabwe without process.

Interviewer: oh oh!

Respondent: Yah. So, ahh and that is really, really, really worrying because... so the Immigration Act makes provision for this... if an immigration official finds a person to be an illegal foreigner he can, without a warrant, arrest and deport that person. And there's no, there's nothing in the Immigration Act or in any other Act that tells you how you find a person to be an illegal foreigner. So the big issue is that this is where everybody's prejudices and xenophobia and whatever comes into play because, umm, my experience is that immigration officials do not know nationality law, they don't know how to determine whether a person is South African even. Never mind to determine whether they're Zimbabwean or any other nationality. So how do these officials find anybody to be an illegal foreigner? And I'm convinced that they base it on... on incorrect understanding of the law or not knowing the law at all, or just being prejudiced against people with strange accents, or people who have mixed heritage. So there's a lot of prejudices that come into play and, umm, because there's no regulation, nothing in the law that tells you how do you decide and what are the steps to find someone an illegal foreigner. It just... it can just happen. Umm, if you have an ID, ahh the Identification Act actually says that you have to be charged and the court has to cancel your ID. But I've never seen that happen (laughs), and umm, for instance, this lady was just deported so easily. And she was in the process of getting DNA test to get... from her family to prove that she is related to them, and there was so much proof, but they just decided that... they decided...

Interviewer: to ignore it huh?

Respondent: Yah. So they just decided that she's Zimbabwe. So this woman said – the immigration official said – that you know, it came to her. She realised it that this woman was Zimbabwean.

Interviewer: (Laughs)

Respondent: Which is very interesting 'cause it just tells you how people think about nationality, you know. You know "I realised that you're a Zimbabwean." Why? You know, "ok because you lived in Zimbabwe". Well, that's not how nationality works, 'cause nationality is a very technical, legal, umm, concept actually. It's not about how you feel about a country. It's not about where your parents live.

It's not about where you're born even. It's about... it's different in every country. Here it's about whether you had South African parents. So I just find it extremely irregular and unconstitutional, and unprocedural that a person can just be deported so easily and it's even captured like that in the Immigration Act. Umm, and then like in our case, even if umm... even if she indicated that she wanted to appeal the decision, they ignored her, regressed her appeal and they just deported her anyway. They never gave her proper reasons. I mean there's Acts about that also, we have the Promotion of Access to, umm, Just Administration Act (PAJA), which says that you must get proper answers, you must get proper reasons, you must be able to appeal, you must be able to be represented...

Interviewer: But she didn't get all that...

Respondent: Nothing like that. So what's worrying and what'll be interesting to your own research is that deportation is extremely easy and I don't think that the procedures that you're actually entitled in terms of the Constitution is provided for you. And we've had a lot of cases where people are arrested and then their forms are filled in for them by the Immigration officials. And the immigration officials will just tick, you know, the box that says I wanna appeal it, and the people don't necessarily understand what's going on there. They're in a very vulnerable position so they just sign whatever the immigration official wants them to sign. And umm, so, ahh there's... it's very controversial.

Interviewer: Yah, eish. 'Cause anyway, it's interesting 'cause I also read of, ahh, of these two South African brothers that were actually also deported to Lesotho. Yah, and just as similar... as similar as you've said about the... the lady who was also deported to Zimbabwe. So it's quite interesting, it's like... like you said already, it's like the Department of Home Affairs was in charge then and they said that they were convinced that these two were not South Africa, despite them being born in South Africa and, them having gone to school here and even proving that they actually have parents from here. So they were deported and so forth. So it's actually interesting like how easily people can get deported, you know, without even following any due process.

Respondent: and what's interesting about deporting people like that is that is that if they don't have nationality in any other country, then you make them stateless by deporting them. So by deporting somebody, you're saying that I don't recognise you as a citizen. So it's a very formal act rejecting that person for citizenship. And if that person doesn't have any other country's citizenship, then they're stateless. Umm, so I mean if we... if we were signatories to the Conventions, the statelessness Conventions, we would probably come up with an Act that says that you can't deport someone if you've determined that they would be stateless once that happens, you know. But we unfortunately don't have that at the moment yet.

Interviewer: Oh? Ok. Well thats very helpful. Thank you very much.

Respondent: We have a... you can check on Youtube, we've made a little video explaining statelessness and it's a case that also... if you google umm the belonging and statelessness, umm. It's not long, it's like six or seven minutes. And, ahh, we explained the whole thing in there.

Interviewer: Ok, thank you, it would be helpful. Ahh, just one final question: I have heard that that Lindela, for example, is being run by Bosasa, a private company. I just wanted to hear your thoughts on what that then says about the South African state.

Respondent: Umm, well it's true. Bosasa was put in charge of Lindela. And in terms of the state, I think private individuals and umm, companies with economic interests are literally

running and controlling our borders. So this begs the question of how much in control is our government really in practical terms. So, yah.

Respondent: You've been very helpful, thank you very much for your time.

Respondent: Thank you and good luck with your project.