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CHAPTER ONE

1.1 Introduction

Taking legal documentation as a critical requirement and a source of protection for migrants in their host countries, this study interrogates the relevance of these documents in policing of forced migrants living in Johannesburg. The protection of forced migrants is of critical concern to the international community led by United Nations High Commission for Refugees (UNHCR) and International Organization of Migration (IOM) on the one hand, and human rights interest groups on the other hand. While these bodies may provide legal and humanitarian assistance to migrants, the onus of providing physical security and protection to migrants falls on the host countries. In their attempts to regulate and manage international migration, states enact legal frameworks that are at once intended to give protection to certain categories of migrants and to exclude others. In these legal frameworks, identity documents issued either by the government or a recognized body such as UNHCR signifies the acceptance of the host government to officially provide protection to the bearers of such documents. The civil police play an important role in separating undocumented from documented migrants and giving protection to those with documentation i.e. those in the country legally. On account of the pressure by various interest groups on governments to enact migration friendly legislation in various parts of the world, this study interrogates the presumed importance of documentation of migrants, with reference to policing in Johannesburg South Africa. The primary question this study poses is; does having legal documents enhance the protection migrants get from the police? I argue, based on my research findings that having the right legal documentation as evidence of legal status have

little influence on the protection migrants get from the police in Johannesburg South Africa.

I attribute the failure of legal documents to secure migrants police protection to three main reasons; first the legal framework gives the police the dual and potentially conflicting responsibilities of simultaneously regulating migration and protecting migrants. In Johannesburg, Somali migrants' experience give the impression that the police have taken the regulation responsibility to be synonymous with that of gate-keeping whereby migrants are consciously separated and prevented from accessing services available to nationals. The gate keeping responsibility creates conducive environment for malpractices such as corruption which is exploited by immigration officials, migrants and police officers, not always to the benefit the whole country. Second, the political and social context in which policing of migrants is conducted in Johannesburg creates a situation where the actions of "the police and other government officers against migrants retain the power of law but are not defined by it" (Landau, 2004b:1). This anomalous situation is reinforced by the fact that migrants have very limited channels through which to demand and obtain police accountability. The anti migration sentiment of a section of the public and some government officers (Segale, 2004; Landau, 2004b; Crush and Williams, 2002; SAHRC, 1999) encourages the police to either ignore the law or manipulate it to their advantage when dealing with migrants in South Africa. Third, there is evidence to suggest that the acquisition, retention and renewal of the legal documents are characterized by irregularities and corrupt practices which undermine their authenticity and perpetuate corruption within the Department Home Affairs (DHA) which then spills over to the police service.

The experience of Somali migrants of policing does not in anyway capture the whole spectrum of policing in the country, however it is a miniature window through which to analyze the articulation of other broader social processes such as exclusion and power mediation between different social groups. This study suggests that although there are malpractices in the policing of migrants, the incentives for such malpractices may be emanating from the Department of Home Affairs and from regulatory legislation such as the Immigration Act of 2002 and the fact that the police are not always held accountable in their relationship with migrants. The popular pressure exerted on the police by nationals to produce results especially in the vexing area of crime control, the vulnerability of migrants together with police discretion in issues pertaining to migration all combine to give credence to the argument by authors like Manning (2004) that policing is not merely a function of the law but a reflection of the dominant political and social order. Further, the politics of policing especially the incomplete transformation of the police service itself (Bruce, 2002; Scharf and Nina, 2001), the pressure levied on the police by an anti-migration public and the circumvention of the asylum seeking process by migrants which makes the police suspicious of the documents all combine to undermine the protection migrants get.

This report is divided into four parts. The introductory part includes a discussion of the statement of the problem, background and justification of the study. The second part contains a review of existing literature on international migration and the challenges of policing migrants in post-apartheid South Africa. In the second section I discuss the theoretical framework and research methodology. The research

findings is presented and discussed in the third section. The implications, recommendations and conclusion make up the fourth and final section.

1.2 Statement of the Problem and Research Question

Forced migrants and asylum seekers living in urban areas face a litany of problems ranging from acquiring the relevant legal status, meeting their basic needs and hostile reception by the host community (Bailey, 2004). South Africans like nationals in many host communities, conceive most urban migrants regardless of their legal status as people who are essentially looking for better economic prospects and not necessarily fleeing danger (Landau, 2004b; Story, 2005). Since forced migrants from other African countries travel through several countries in which they could presumably get protection, nationals assume that it is the better economic prospects and opportunities that exist in South African cities that attract them (Groot, 2004). Urban migrants are therefore sometimes referred to by unsympathetic terms such as economic migrants, ‘irregular movers’ or ‘bogus’ asylum seekers and therefore undeserving of asylum (Gibney, 1999). This perception of urban migrants as people undeserving of asylum, is projected by nationals both at the official and interpersonal level in their relationships with migrants. Second, urban migrants in South Africa and other African countries have to fend for themselves in terms of accommodation, food, health services and meeting other basic requirements (Landau, 2004b; Bailey, 2004). This compounds and reinforces the problem of perception in a context where access to resources and services is dependant on identity. The competition for these resources and services with members of the host community generates tension between nationals and migrants. Urban migrants are therefore seen as an economic burden and a threat to the existing social fabric. Most humanitarian organizations including UNHCR offer

very little assistance to forced migrants in urban settings either. In case of assistance it is usually on very a short term basis only. The assumption and the explanation given by UNHCR is that by opting to settle in urban areas, migrants are confident in their own abilities to survive (Groot, 2004).

The perception of urban migrants as ‘bogos’ asylum seekers is not only limited to African countries. Migration discourse in many parts of the world is dominated by vocabularies of illegality and criminality. In developed countries, this negative discourse has occasioned the reevaluation of asylum facility in several restrictive ways. Many democratic states in Europe and North America are erecting obstructive asylum practices supposedly to keep out economic migrants and ‘bogos’ asylum seekers (Kirisci, 2004; Chimni, 2002; Story, 2005). In Europe, North America and Australia, migration legal frameworks are becoming increasingly restrictive and indeed anti-migrants (Chimni, 2002; Gibney, 1999). Lengthy and difficult visa requirements; warehousing of undocumented migrants for lengthy periods, enhanced police powers in dealing with migrants and criminalization of migration are seen as deterrents for those migrants intent on breaking or bending the asylum procedure (Story, 2005). Migrants also face difficulties where host governments do not have clear legislation for them. Kenya, for instance, has tactically refused to enact refugee legislation that would guarantee migrants some basic rights within the country and set benchmarks by which the administration would be judged. Instead migrants are confined in camps managed by UNHCR¹. Forced migrants who venture outside these camps into urban areas therefore face many difficulties in securing livelihood and accessing social services. Human Rights Watch (2002) routinely catalogues

¹ This may change soon as the government initiated registration process for urban migrants in February 2006.

police excesses in cities like Nairobi, Kampala and Cairo in the treatment of forced migrants and asylum seekers and the seeming inability of the respective governments to curb such excesses.

South Africa, unlike most countries in sub-Saharan Africa, does not have refugee camps nor does it offer direct humanitarian assistance to refugees. The upshot is that forced migrants have to share social and economic space and services with nationals as well as other categories of migrants in the cities. They also have to compete for the available resources like accommodation and jobs with the members of the host communities. This has generated social tension between migrants and nationals leading to a strong anti-migration sentiment in South Africa. The anti-migration sentiment is manifested through widespread xenophobic utterances by public officials and the discrimination of migrants in accessing government provided social facilities (Landau, 2004a). While the legal frameworks allow refugees and asylum seekers to access these services, the physical security and protection of migrants - which is presumably of critical importance to migrants fleeing conflict - is left to the police. In light of this context, where most urban migrants are regarded by nationals as competitors for social services and economic resources, the concern of this study is to what extent police remains impartial in this contest. This study argues that although there is a clear and strong migration legal framework in South Africa, legal documents, as a form of legal recognition, fails to secure migrants police protection inherent in them primarily because the social and political context make migrants unwelcome minority.

1.3 Justification of the Study

International migration necessitates a new reflection on the liberal democratic policing debate and the precepts of social order, supremacy of the law and police accountability. This is because certain categories of migrants such as refugees and asylum seekers have both International and domestic legal frameworks protecting them. Such laws, although may be well intended, challenge the existing social and political order of the host community. Authors such as Reiner (1985) and Manning (2004) postulate that what constitutes order is society specific and that the police, as a social organization formed through a political process to maintain this order, are beholden to it. In the interest of legitimacy and acceptability, liberal democratic policing is premised on a shared social, political and economic order of community members. In the course of maintaining this order, the police are expected to operate within agreed normative and legal frameworks. To ensure police accountability and to forestall any misconduct among the rank and file in the police service, the legal frameworks in liberal democratic states make the police organization nominally accountable to elected governments. The theoretical concern here is what happens to social groups such as migrants who are excluded from participating in the social, economic and political processes because of their status none national minority. While the police are accountable to a majority of their citizens through democratically elected government, they are not accountable to migrants in so far as migrants do not have political representation. This study, therefore, seeks to contribute to academic debates concerning policing of migrants in the context of different social and political order and different sets of law.

The broader debate on the role of law in policing minorities is by no means the only concern of this study. It also seeks to contribute to the ongoing debates about the nascent South African democracy by reflecting on how minority groups such as migrants are perceived and treated by government officers and the possible implications. Given that South Africa is still going through transition, strong and viable democratic institutions are prerequisite in fortifying the gains it has made so far. The police organization will be the mirror of such efforts as it is the subterranean demonstration of government authority given that police officers are often in constant touch with public. Allowing police the latitude to bend or even break the law when dealing with migrants undermines the sanctity of the law as a foundation of democracy.

As one of the institutions that embody the state's legitimate monopoly of force, the police give a microcosmic view of how different ideals and popular demands are mediated and the extent to which government institutions are prepared to promote or undermine such ideals with regard to migrants. As Reiner (1985: 86) aptly puts it "the police officer is a microcosmic mediator of the relations of power in society... he is a street-corner politician".

1.4 Background of the Study

Migration is not a new phenomenon in South Africa. Its long history of immigration can be attested to by the fact that as early as 1924, over one million immigrants were already settled in the country as a consequence of the discovery of minerals (Ferenezi, 1929 cited in Massey, 2003). Although the apartheid regime structured migration according to its racial ideology, both voluntary and forced

migration still took place. The regime however refused to grant refugee status to black migrants from Mozambique and Angola on account of not being a signatory to the 1951 Geneva Convention on the Status of Refugees. Most black migrants prior to 1994 were however from neighboring countries such as Mozambique, Lesotho, Swaziland, and Botswana and were mainly migrant workers who took part in the circular migration as dictated by periodic economic activities (Crush and Williams, 2003). Owing to historical and cultural linkages migrants from these countries could easily communicate and interact with South Africans and were not deemed as threats, a quality that some of the post apartheid migrants lacked since they come from countries much further and are culturally different (ibid). The current diversity of the migrant population in the post-apartheid South Africa can partly be attributed to the liberalization of the economy. Considering that the South African economy is much more robust than most sub-Saharan Africa countries, skilled workers from other African countries have become part of this migrant labor. The skilled worker is most likely to be employed in towns and cities where they are relatively visible to nationals who are also just coming to the previously segregated South Africans cities. Previously, migrant workers in the farms and mine would come and disappear into their stations (Gotz, 2004). This visibility gives the false impression that there are too many foreigners who are taking jobs meant for South Africans and they are straining social services.

The reinsertion and acceptance of South Africa among the international community has also played a critical role in the diversity of the migrant population (SAHRC, 1999). The country has attracted a large number of migrants ranging from those fleeing conflicts and persecution in their own countries to those with temporary

visas from other African countries and elsewhere (Crush and Williams, 2001; Gotz, 2004; and Landau, 2004b). The number of migrants in the country at any given time is really just a matter of conjuncture and depends on which sides of the social divide one stands. For example, the release of migrant statistics (later discredited) by Human Science Research Council in 1996 (estimated to be 2.5-5-8 million)² appeared to confirm the fear of many South African nationals of being ‘swamped’ by foreigners and caused considerable panic. When compared to figures from the DHA of migrants 142, 000 who had formally applied for asylum by 2005, and those who have been granted refugee status in the country as 67, 000, it could only mean that the vast majority who made up the difference are illegal immigrants. These figures are constantly being reviewed down-wards (Reitzes, 1998; quoted in Crush, 1999b). Although such figures may be inaccurate due to faulty research methods and problems connected with the processing asylum application at the DHA, they reinforce the vocabulary of illegality that punctuates migration discourse in South Africa. UNHCR (2005) reports that only 1600 cases were successfully processed by DHA out of many applications due to constraints in capacity. This means a large number of migrants may remain without proper documentation exposing them to possible arrest and deportation. The inflated figures may also be an indirect appeal by the authors to the police to be more vigilant in looking for undocumented migrants.

More reliable figures hold that, by 2004 South Africa hosted 27 683 refugees and 115 200 asylum seekers whose cases are awaiting decision (UNHCR, 2004)³. In

² There are remarkable variations in these figures what is given here is just the range. They were first released by HRSC and have been quoted by DHA and other researchers.

³ South Africa is only second to USA with regard to asylum seekers whose cases are awaiting determination (UNHCR 2004)

addition, there are a significant but contested number of undocumented migrants varying between 500 000 to 800 000 (Crush and Williams, 2001; Landau, 2004b). Migrant labor in the mines and the agricultural sector remains a significant part of South African economy. Contract mine workers who come under bilateral agreements are estimated at 190 000 with numbers likely to go down owing to retrenchment in this sector (Crush and Williams, 2001). The number of skilled workers is estimated at 60 000. Migrant labor in the agricultural sector fluctuates according to seasons and may vary from 10 000 and 80 000 depending on the season (ibid). South Africa is also a host to thousands of migrants with student permits, tourists' visas, visitors pass, and business visas at any given time. All these migrants have different rights and obligations within the country. For instance, undocumented migrants are under obligation to apply for legal status or leave the country (Algotsson and Klaaren, 2004). Administratively it is the immigration officials and police officers who should identify those who do not have documents. The verification of identity documents has however become a flash point between migrants and the police.

While most of these migrants are under the ambit of the Immigration Act of 2002, refugees and asylum seekers are covered by South African Refugees Act no. 130 of 1998 which the UNHCR and human rights lawyers have commended for its rights-based approach. The Refugee Act 1998 for example confers to refugees rights such as freedom of movement, access to certain social services, and recourse to the judicial system in case of conflict (Bhamjee and Klaaren, 2004). However, widespread xenophobia, ignorance of the law and lack of access to proper documentation undermine migrants' access to such services (Algotsson and Klaaren, 2004; Palmay, 2004). Xenophobia has been cited as major reason in

explaining why migrants receive more and unsupportive attention from the police (Segale, 2004). Police officers have been accused of high-handedness and corruption, and acting outside of the law when dealing with migrants (Landau, 2004a).

As a destination for refugees, South Africa holds a unique position among the sub-Saharan African countries in the sense that refugees are not confined to camps except the former self-settled Mozambican refugees. Immigrants who come to the country therefore live with and among other South Africans (Landau, 2004b). Being a middle income country, South Africa does not receive any direct humanitarian assistance for the refugees within its jurisdiction from humanitarian organizations implying that it has to carry the responsibility of providing services. In this situation refugees have to compete with nationals for existing jobs, accommodation, medical services and education facilities engendering social tensions between nationals and migrants (ibid). In urban setting like Johannesburg that serves as point of convergence between internal and international migrants, struggle for control of access ensues.

Foreigners make a significant proportion of the 3.2 million inhabitants of the greater Johannesburg. According to the 2001 South African national census the number of foreign-born residents in Gauteng province increased from 65 000 in 1996 to 102 326 in 2001. Johannesburg residents, including South African nationals are relatively new to the city engendering a continuous negotiation of identity (Landau, 2004a). Like many cities in developing countries, Johannesburg has acquired a reputation for high crime rates, violence, congested inner city neighborhoods marked by poverty and dilapidated infrastructure. Nationals hold migrants from other countries responsible for most of these ills.

CHAPTER TWO

Literature Review and Research Methodology

2. 1 Literature Review

This section includes an overview of global migration trends and some responses from hosting states. In addition a general review of policing of minorities in the context of liberal democracy will be undertaken. Finally I discuss the literature on policing of migrants in the South African context as a basis for the rest of this work. The key concepts are migrants, legal status, liberal democracy and policing. This section will help in identifying knowledge gaps that exist and appropriate research methods for this study. I will then discuss the research methodology in the second section of this chapter.

Policing, a key concept in this study, has been defined variously by different people. Skolnick defines police thus; “The civil police service is a social organization created and sustained by political processes to enforce dominant conceptions of public order” (Skolnick, 1972: 44 cited in Reiner, 1985). Manning’s definition (2004: 2) is rather state centric and differs somewhat with that of Skolnick. To him, “Democratic police, constituted of many diverse agencies, are authoritatively coordinated legitimate organizations that stand ready to apply force up to and including fatal force in a legitimate territory to sustain political ordering”.

These two definitions carry several themes; first the police organization is an arm of the state constituted to enforce law and order. Secondly, the police is supposed to

have political legitimacy i.e. accepted by the majority of nationals as a lawful organization although legitimacy and brief may vary from time. Thirdly, the police have the authority to use fatal force and finally the police is an organization which participates in political ordering. While Skolnick's definition is broader and may include vigilantes and private police services, Manning's definition precludes any police force not formed by the state. For the purpose of this study police will be taken to mean only police organizations constituted by the legitimate government to enforce the law and maintain public order. In the context of Johannesburg, the South African Police Service (SAPS) and the Johannesburg Metropolitan Police Department (JMPD) are relevant.

2.1 .1 International migration and policing

The two issues of policing and migration generate much passion among the public, human rights activists, security experts and political establishments the world over (Chan, 1996; Story, 2005; Reiner, 1985; Dixon, 1999). The question of how governments regulate and categorize migrants has over time led people to view migration as an issue inextricably linked to the security of the state and that of the citizens (Newman and van Selm, 2003; Miller, 2000). Given that rapid development in transport and communication technology has given a great impetus to international migrations as never before, the debates are likely to continue rather than diminish. The role of immigrants in international terrorism in the recent past has heightened the security concern compelling western governments to create new legislation that empower police organizations in countering terrorist activities. There is fear however, that the wider and lasting effects of such laws will not be limited to migrants with criminal intentions only but will be extended to law abiding migrants and nationals.

Although the 175 million international migrants constitutes only a small portion of the world population, their presence and visibility in social, economic and political terms generates passionate debates and varied policy responses among states (IOM, 2005; Landau, 2004b). That most forms of migration continue despite opposition by various section of host communities means there are enough compelling forces that make it beneficial to migrants themselves and to the people and organizations who want their services (IOM, 2005). This is born by the fact that 90% of international migrants are those who move on their own violation. Forced migrants are only 19.2 million or roughly 10 % of the total migrant population. Refugees, in the sense of the 1951 convention, 1967 protocol and 1969 OAU convention are 9.2 million (UNHCR, 2004).

To a considerable degree, international migration reflects temporal, spatial, political and economic processes. During the cold war era for instance, migration to Western Europe and North America was numerically limited and regionally confined (Gibney and Hansen, 2003; Castles and Miller, 2003). Policing of migrants to large extent reflected the fears of espionage that characterized the cold war and the accompanying arms race. The industrialized countries of the west received mainly migrants from Eastern Europe escaping communist persecution who were accorded permanent resettlement (Crisp, 2000). In Africa and Latin America of the same period migration was occasioned by independent struggles from colonial rule. Those displaced by the struggles were granted asylum by neighboring states in the spirit of solidarity (Turton, 2002). However by 1980, migrants from Asia, Latin America and Africa fleeing civil strife and failing economies in their home countries begun arriving in the developed countries. The end of the cold war created conflagrations of civil conflicts in Balkan countries and many African countries previously held together by the bipolar politics

of the time. These rendered whole regions like better parts of west, central and horn of Africa inhospitable and migrants were forced to look beyond their neighbors for asylum. Though the number of migrants and asylum seekers reaching Europe and North America substantially increased during this time, it is noteworthy that most forced migrants remained in their regions. Africa alone hosts more than 4.5 million displaced persons with 2.7 million being refugees (UNHCR, 2004).

After the end of cold war most western countries shifted their migration policy from granting asylum to regional containment as a viable and lasting solution. Indeed the migration discourse is now dominated by a vocabulary of danger, crimes and threats and accompanied by a proliferation of obstructive asylum policies (Story, 2005). Such discourse directly or indirectly calls for enhanced police participation in regulating migration. Along the same line are the arguments supporting increased economic and political intervention in the migrant producing countries in order to stem migration to Europe and North America. Proponents of these ideas further hold that those already displaced should be assisted in the first place they get safety instead of being allowed to move. To discourage migration, many countries have also adopted restrictive measures such as mandatory and long detention of asylum seekers without documentation, warehousing of migrants, stringent visa requirements as well as carrier sanctions (Gibney, 1999). The threat of terrorism has also provided western states with opportunity to enact legislations aimed at not only reducing migrants' rights but also give police considerable latitude in arresting and detaining migrants. Some of these legislations, coated as attempts to delineate genuine migrants from 'bogus asylum' seekers have been condemned as oppressive and against liberal democratic ideals (Kibreab, 2003). In a context where migrants are seen as posing

security or economic threats, their protection by the police is not only limited by the legal regime but also the dominant attitude of the hosting community.

As Story (2005) argues, there is an increasing tendency in developed countries to criminalize migration by casting asylum seekers in negative light in order to show that they are not deserving of rights and privileges accorded to citizens. The potential of asylum seekers and migrants to be criminals is assumed by hosting communities to be innate, justifying a difference in how they are policed even if it means the denial of some basic legal rights. Even in developing countries migrants are commonly and deliberately associated by politicians and in popular discourse with crime, trafficking, drugs, diseases and other social ills (IOM/UN, 2000; Landau, 2004). Policing migrants is viewed as preventing and combating these vices. Two different policing levels therefore exist with regard to migrants. The first level involves the attempts to control migration or gate-keeping especially by the economically wealthy western countries (Castles and Miller, 2003). The barriers that states continuously erect to stop economic or 'bogus asylum seekers' essentially criminalize some types of migration and calls for police intervention. It is not lost on many observers that the apparent increase of 'bogus asylum seekers' is partly as a result of the restrictive migration policies (Turton, 2002; Gibney, 1999). This trend has spurred the flourishing of human smuggling and trafficking creating additional responsibility to the police and has created conflict between the police and that section of the community who benefit from the trade (Gibney, 1999). The second level is domestic or civil policing which is the concern of this study. Due to difficulties in controlling migration, there is an underlying assumption by nationals in many countries that most migrants are in the country illegally thereby breaching the law, in itself sufficient ground for deportation. In South Africa, high ranking government officials are on record as recommending

that instead of charging undocumented migrants with petty crime which takes a long and winding judicial process, it is better to charge them with the offence of being in the country illegally which is easy and faster way of solving the crime problem (Landau, 2004a). In the USA for instance it is also this group of asylum seekers who are thought to be perpetrators of crime even though there is no supporting evidence (Story, 2005).

Verifying migrants' documentation, an important plank in enforcing migration laws in many countries, have been resisted by some police organizations because of the potential conflict in confusing issues of regulation and protection. In the United Kingdom, the presence of a large migrant population has forced the government to consider introducing national identity cards for the first time in its history, a move that was hugely resisted by nationals (Kundanani, 2005). Proposed new legislation authorizes the police to ask for identification cards which migrants are required by law to produce upon request. Such IDs are also intended to determine whether migrants can access social services and employment. Owing to the discrimination and difficulties migrants face in their places of asylum, some countries like Australia and Canada have incorporated them in community policing as interpreters and clerks in order to encourage their integration in the new residences (Chan, 1996).

2.1.2 Transformation, migration and policing in South Africa

The 1994 democratic transition in South Africa not only changed the political and economic trajectories in the country but also brought fundamental shifts in both domestic and international migration patterns. The elections moved South Africa from a racially segregated society to a liberal and democratic society with high material expectations (Simpson, 2004; Scharf and Nina, 2001). Given the dark and turbulent

past of the country with its deep racial divide, the leadership had the daunting task to create a South African state that is free and a fair while addressing the historical injustices that had been inflicted on a large section of the population over the years (TRC, 2003). This entailed changing political and administrative structures to accommodate the diversity of the society and entrenching shared ideals necessary nurturing these institutions. The South African Police, as one of the institutions which symbolized the brutal past, was therefore of critical concern not only to the public but to those who had worked in it during the apartheid years and feared for their future prospects (Bruce, 2002).

The police transformation is taking place simultaneously a parallel negotiation of membership and national identity among the different sections of South African society (Landau, 2004b). Arrival of foreigners complicated and compounded these negotiations. Using the 'foreign other' as a rallying point, South Africans are constructing what it means to be a South African with the help of migration. Under the fledging nationalistic discourse, the effectiveness of legal protection of non-nationals, and its implication to a democratic South Africa state is of critical importance to all those involved.

The new democratic order had a substantial impact on policing in South Africa both in terms of its operational philosophy and organizational structure (Simpson, 2004). When the interim constitution came into operation in 1994, the SAP and other homeland police forces were amalgamated into the South African Police Services (SAPS) under the unified command of a National Police Commissioner. This thus ended the fragmentation of police services in the country (SAPS, 2006).

Besides the substantive changes, the police transformation was also symbolic in many ways. It signified the unification of the different territories of the country and bestowed sovereignty to one undisputed democratically elected government. In addition, all South Africans could now expect equal treatment from the unified police service. The creation, mandate and accountability of SAPS were all envisioned under Chapter 11 sections 205 to 208 of the South African constitution. Creating a police service acceptable to majority, if not all South Africans, rather than just a section of the society was not seen as only desirable but consonant with fulfilling democratic ideals. The first task was therefore how to integrate individual officers from diverse training background and value systems totaling 144 000 in one organization undergoing tremendous changes. Negotiations and accommodation therefore became preferred tools for achieving integration.

A democratic transition, which entails negotiations, has its own handicaps when it comes to creating institutions like a police service (Scharf and Nina, 2005; Simpson, 2004). Because of the 'sunset clause' for example most of the officers who served in the SAP remained in the new service. Critics have pointed out that many of these officers have low educational standards, are poorly trained and are not crime-free themselves. Those inherited from the previous regime were not subjected to screening to see if they had a clean record during the course of their service (Bruce, 2002). In order to prepare such officers for the new role, retraining and retooling was a necessary, yet an expensive and time consuming task. To date only a small number has been re-trained. By 1998 when the new Police Act came into force, only 5 714 new recruits joined the force (ibid.). A new beginning with old faces has proved a dodgy issue, given that these officers were exposed to a particular type of policing.

The upshot is that the SAPS is still dominated by personnel whose worldview and policing methods basically remain the same. Some of these shortfalls have been held accountable for the inability of the police to control crime and ensure the safety of citizens. The same police service is expected to give impartial protection to migrants in the country.

In the South African legal framework, there is a deliberate effort to include the police in the democratic ideals of accountability. For instance, the national commissioner of SAPS is technically answerable to a cabinet minister in charge of policing who in turn is answerable to parliament (SAPS Act 1995). The minister is charged with setting up a security and safety secretariat and formulating security policies. This significantly means that the organization can be held accountable through the political leadership as well as through the law responsible for its creation as an entity. It also allows for a direct engagement of elected officials with the police. In addition, Independent Complaints Department (ICD) established under chapter 9 of the constitution is incorporated in the Police Act to facilitate the investigation of any misconduct by police officer and to establish the cause of any deaths that occur in police custody. The desire to strengthen a strong civilian oversight of police work was extended to the provincial governments and local governments who are empowered to investigate any complaints of police inefficiency or a breakdown in relations between the police and the community (Bruce, 1997). However these changes created the tension that liberal democracies face in many parts of the world (Reiner, 1985). For example, while the police are required to be impartial in dealing with the law, they are supposed to respect and work with local communities.

In order to ensure that the police fulfill their mission according to the law, all members of the service are subject to the official code of conduct of the South African Police Service introduced in October 1997. This was theoretically meant to check possible excesses and instill the respect of procedural rules among the officers. While this may go along way, the reality of policing may reduce its significance. Police solidarity and disdain for outside interference do hamper the effectiveness of requirements such as reporting misconduct among others.

As part of the changes, new policing methods were introduced as well as new areas of jurisdiction. For example, community policing was introduced which was supported by community police forum to allow for consultation between police officers and members of the community and airing of grievances. It was envisaged that this would help achieve several goals namely; improve police community relationship and reduce the antagonism that was created by the apartheid regime, enlist the support of community members in the actual control of crime by recruiting police reservists and to gather intelligence about the particular needs of each community. It was also meant to inculcate and promote police accountability and transparency. A new intelligence section was also established to help in gathering information on the crime and security situation. All these changes are expected to benefit migrants and the nationals alike as the South African Constitution does not discriminate.

Some of the malpractices in the police are traced to the new changes. The SAPS unlike their predecessors have to be in close contact with civilian population which exposes them to a certain degree of temptation and corruption (Bruce, 2002). It also means that they have to share at least some intelligence information with the

community which may compromise their work. The guiding principal in the new policing methods such as community policing is that different communities have different concerns and they are best placed to identify such issues. While this study does not cast aspersions on the value of such an approach, it is prudent to point out that some discriminatory practices such as exclusion of minorities out may be high in the agenda of some communities. If a particular community resent the presence of foreigners it is unlikely the police will be impartial. Given these structural and qualitative changes there is an implicit expectation that police will observe the law in the course of their whether they are dealing with nationals or non-nationals. However the literature on policing of migrants generally suggests that the police bend or break these laws.

2.1.3 Policing migrants in South Africa

According to previous surveys, policing of migrants in South Africa is characterized by; the perception that most migrants are illegally in the country; the lack of distinction between the different groups of migrants; the assumption of migrants guilt in crime and other social ills; extra-judicial actions, and widespread xenophobia (Crush, 2001; Palmary, 2004). Although the Refugees Act of 1998 and the Immigration Act of 2002 determine the different legal categories of migrants, there is failure on the part of the police to distinguish between the various categories of migrants (Crush and Williams, 2001). The vast majority of migrants in the country are actually documented in spite of the difficulties of obtaining official documentations (Mac Donald et al 1999.) While the Refugees Act of 1998 deals specifically with refugees and asylum seekers, the Immigration Act of 2002 specifies other legal migrants as those with work permits; visitors' passes and study permits etc. Although

the existing literature show that migrants find it difficult to access social services, its not clear if this is because of their being migrants generally or its because of their unique legal status as refugees or asylum seekers (Bhamjee and Klaaren, 2004). The SAPS have been accused of arresting even people with such legal documents (Palmary, 2004; Segale, 2004). However literature indicates that some of these documents are forgeries and the police may be aware of this fact (Landau, 2004b).

The widespread assumption of migrant culpability in the high crime rates in the country has made them a target of police crackdowns (Algotsson and Klaaren, 2002). Police routinely equate arresting migrants with fighting crime (Palmary, 2004). Algotsson and Klaaren (2002), for instance, document how police swoops meant to flush out criminals frequently target migrant neighborhoods. Although migrants get netted in such swoops it is not clear whether police treat them differently depending on their legal status. The assumption of migrant guilt may also mean that police do not accord migrants equal protection in comparison to South African nationals. Police have been accused of arresting migrants on their way to renew asylum seekers permits at Refugee Reception Office (Landau, 2004a). This may be a way of stopping migrants from regularizing their status for the benefit of the police. In addition, police use excessive force when dealing with migrants although it is not clear whether such migrants resist arrest or they are defending their legal status (Algotsson and Klaaren, 2002). However use of excessive force is contrary to legal provisions for arresting migrants. Available literature also points to the fact that migrants are disproportionately victims of crimes and xenophobic attacks ranging from robbery to physical assault (Crush and Williams, 2003; Segale, 2004). While this may be true

generally it is not known if legal migrants experience such things differently. For instance records show that 19 % of migrants would not report crime to the police. The reasons behind such findings remain only speculative. It would be useful to find out if this is based on their legal status or other factors.

Several authors (Crush and Williams, 2003; Palmay, 2004; Landau, 2004) show that police do not adhere to some legal requirements when dealing with migrants. For instance, police officers do not give sufficient time for those arrested to produce their documents as required by law with the result that even documented migrants and South African nationals end in detention. At times police destroy valid documents to justify arresting people or as away of eliminating incriminating evidence (Landau 2004b; Crush and Williams, 2003; HWR, 2002). However some police actions which are sanctioned by the law may be abused. For example, the police are allowed to arrest suspected “illegal foreigners” on “reasonable grounds test” without defining what constitutes reasonable grounds. The police have resorted to stereotyping and phenotypic profiling in arresting foreigners (Algotsson and Klaaren, 2002). Such provisions in law set different standard for policing migrants and may be inconsistent to the extent that it takes away fundamental individual rights.

The police frequently overstep the bounds of the law when handling migrants. By involving vigilantes and the public when dealing with migrants as Landau (2004b) writes , police contravenes provisions of the law and deny migrants the right to be subjected to the due process of the law. Police activities that are outside the law undermine democratic ideals of the new South Africa. South African citizens also stand a chance of becoming victims of such undemocratic policing. For instance,

some of those in Lindela⁴ are South Africa nationals waiting to be deported (Crush and Williams, 2003)!

As the literature indicates, the information that exists with regard to migrant experiences is fairly general and does not disaggregate them according to legal status. While it is apparent that police routinely mishandle migrants, it is not clear what role legal documents play. Secondly most of the literature that exists tends to treat migrants as homogeneous group in their experience with the police. This study attempts to isolate and examine the experience of Somali migrant community in Mayfair Johannesburg.

2.1.4 Theoretical Framework

The liberal democratic policing debates focus on the rule of law, the desire of perfect freedom for citizens and the responsibility of the state to maintain law and order (Reiner, 1985). While authors like Tilly (1985) privilege the state formation as the genesis of civil police as we know it today, others such as Edwards argue that the policing became a necessity only after industrial revolution (Edwards, 1999). Tilly sees the civil police as becoming during the period of state formation in Europe. The victorious statesmen needed police to ensure peace and tranquility among noblemen within the conquered territories while the army was needed to protect the territories from external invasions. While the police remained armed and retained militaristic similarities they were only expected to deal with internal disputes. The consideration was that even though some lords would have been vanquished by superior military force they still had enough supporters who could ferment some form of military resistance. While there may be elements of facts in

⁴ Lindela is a private detention facility used by the South African government to hold undocumented migrants awaiting deportation.

Tilly's argument, the civil police of modern time perform more functions than keeping warring lords a part, although the need for political and social control by the state remains essentially the same. Indeed the modern police organization which can be traced to the London Metropolitan police of 1829 seems to have grown from real need to control the high crime rate in the city occasioned by industrial revolution (Edwards, 1999). The revolution displaced a large population and rendered thousands homeless and destitute. Edwards work demonstrates how the new mode of production was one of the real forces behind the formation of modern police. From this background therefore civil policing seems to have been hastened by the rapid inequality emerging in industrializing society.

The place and role of policing in democratic states has received considerable attention since then. Initially there are those who totally opposed the formation of civil police force because it contradicted the ideals of perfect freedom, and individual liberty. In the words of Edwards, 'reconciling an effective police system with perfect freedom of action and exemption from interference which is seen as the blessing of liberal democracies ...' is the litmus test of modern policing (Edwards, 1999:7). Others supported the formation of the police with the argument that the police in a democratic state are essentially responsible to a democratically elected government (Skolnick, 1975) and by extension to the electorate. Democratically elected governments may not be representative enough to include the diverse constituencies in any given community but by and large they represent the dominant classes. Minority groups like migrants may therefore not be represented and therefore they cannot call on the elected government to account for the excesses of the police.

The widespread acceptance of police in its various forms has still not resolved the debate on how policing in democratic states should be conducted. Because of the inherent tension in the dichotomy of law and order, the police in democratic society are basically a compromise between the two (Skolnick, 1975). They are supposed to maintain order and to do so under the rule of law (ibid). This view acknowledges that social order and law are community specific and may be contested. Other theorists argue that policing in democratic states is a function of the concerned society as the police come to reflect the cultural and political practices and aspiration of that society (Manning, 2004)

Migration brings substantive issues to the two principles. First migrants may not fit into the dominant social and political order of the hosting community. Indeed the social order may be such that migrants are deliberately excluded. Migrants may be viewed as undermining the prevailing social, political or economic order of a community. Because nationals see migrants as a threat to social order, some democratic states have separate laws for migrants, which contravene democratic ideals like equality before the law, fairness and impartiality.

2.2 Methodology

In order to successfully address the central question that motivated this study i.e. the importance of documentation in the protection of migrants, I proceeded through four steps. The first step involved identifying valid and relevant indicators of legal status and the actual experiences of migrants. I translated these indicators into questions in

a semi structured questionnaire which I used as one instrument of data collection. I then developed a non representative, snowball sampling strategy which helped in identifying potential respondents. With their consent, I collected information from the respondents through the questionnaires, informal interviews and personal observations. This report is a discussion of the data I collected in November and December 2005 in Johannesburg.

I anchored this research to the larger African Cities Studies project of the Forced Migration Studies Program (herein referred to as FMSP survey). The project is investigating how migration is changing African cities and how the migrants in turn are changed by them (Landau, 2004b). Using mainly survey methods, the research is generating baseline data in the cities of Johannesburg, Maputo and Nairobi. During the first phase of the project carried out in June 2003, 737 respondents from seven different nationalities were interviewed on various issues including their journeys and arrival in Johannesburg, livelihood strategies, social networks, policing etc. The Somali respondents in this research were 59. Part of the data I use in this report was generated by earlier research of this particular project.

In order to complement the quantitative data generated by the Johannesburg project, I decided to use qualitative research method for the present study. I considered this an appropriate way of getting the explanations behind the statistics generated. Because of the qualitative nature of the information I expected, I chose to conduct the research among the Somali migrant community using a small number of respondents as opposed to the FMSP survey which was conducted among several nationalities. The survey also generated data on several variables of migrants' life

in various neighborhoods in Johannesburg. The present study seeks to get some explanations for and provide deeper understanding of Somali migrants' interaction with police. For example, we know from the FMSP survey that 43% of migrants do not trust the police, but this figure does not answer the next critical question of 'why' such a situation occurs. This research is therefore designed to probe further and capture some of the social meanings of these figures. Where as this study may not be representative, its chief value in terms of methodology is the quality of information it reveals on one single variable in one specific community.

This study is designed in three interrelated stages. First and foremost it involves categorizing migrants according to their legal status in Johannesburg. I consider this important in assessing what rights and obligations migrants are entitled to in South Africa and the parameters set for policing. After categorizing migrants according to their legal status, I compare the relationship of the different categories of migrants with police in order to see if there are any differences. This entails comparing the policing experience of migrants and nationals.

2.2.1 Study Population

The number of Somali migrants residing in the Republic of South Africa, like most other migrants is only a matter of conjuncture and approximation from DHA and other agencies. The UNHCR (2005) approximates the number of Somali refugees and asylum seekers residing in the country at 7 100 by the end of 2005 which is mostly gleaned from the Department of Home Affairs whose mandate includes the registration of refugees and asylum seekers (UNHCR, 2005). However the UNHCR acknowledges to dealing with only about 500 of this group who receive some form

of assistance occasionally. Although this figure provides a rough idea of the number of Somali refugees and asylum seekers in the country, it does not tell the whole story. Obviously not accounted for in such data are undocumented Somali migrants or Somalis who have other forms of legal status. In the Johannesburg project only 1.7% of the Somalis had residence permit. It was also evident from the study that Somalis lives are highly transient, with some of the respondents indicating that they did not expect to be in the country in the next two weeks which echoes the findings that most migrants do not intend to stay in South Africa for long (Landau and Jacobsen, 2004). That the DHA is also the source of such figures calls for caution since what they have is what is volunteered by the migrants themselves. What migrants volunteer is targeted at improving their prospects of getting asylum. Going by the large number of undocumented migrants being deported every year from the country, it may be partially correct to postulate that there are many more migrants who are not captured by the registration at the DHA. The hidden nature of migrant community makes it difficult to ascertain whether there are many Somali migrants who fall in this category. Anecdotal evidence shows that they could be higher than this with some estimates putting them well over 10 000. Being a hidden population who shun engaging with public institutions it is difficult to accurately give the number of Somali migrants even in Johannesburg alone (Landau and Jacobsen, 2003).

Since some Somali migrants may not qualify for asylum status as stipulated in the Refugee Act of 1998, given that they are from various states where persecution and human rights abuse are not rampant they opt to use their community identity rather than national identity to apply for asylum status. During the course of this research,

I came across several Somalis from Kenya and Ethiopia with asylum seekers permits indicating they are from Somalia. While on the face of it, this may look like the abuse of the asylum system, it is prudent to contextualize the Somali individual whose life depends to a great extent on social networks of relatives and kinsmen. The war and violence that is occurring in the horn of Africa has not only affected Somalia but the whole Somali community by destroying their traditional support system (Horst, 2001). The need for the Somali to recreate this support system is even more pressing in South Africa given that the government does not extend any humanitarian assistance to migrants. This is not unique to the Somalis however; many ethnic groups in Africa and other parts of the world find themselves in such situations (Mamdani, 2002).

2.2.2 Sampling

Snow-ball sampling technique was used to identify suitable respondents. The technique entails identifying a member of the group to be studied and asking them to refer you to the next potential respondent who also does the same. I chose this method because it is appropriate in ethnographic studies especially where the population under study is a minority and hidden (Willems, 2003). The fact that the migrant population is fairly transient means that other sampling strategies may be difficult to use. Using contacts from the FMSP survey, I engaged the services of two research assistants who acted as my entry point to the target community. After being introduced to several Somali migrants, I strived to identify suitable respondents who could speak English and who had been in South Africa for at least six months so that they may have been exposed enough to the neighborhood.

Identifying undocumented Somali migrants who have lived in Johannesburg for six months proved practically impossible. We therefore had to interview even those who had stayed for shorter periods. This is partly because most migrants have applied for asylum status and partly because even if some have not applied, they may not be forthcoming with such information. Predictably, potential respondents were at first reluctant to be interviewed. We had to visit several times and ‘hangout’ in the restaurants that they frequented so that we could get acquainted. All in all 18 migrants and 9 nationals were interviewed. This sampling method has been successfully used by several researchers to study vulnerable populations as it helps in building trust and confidence (Horst, 2001; Willems, 2003). Several potential respondents refused to grant interviews because of the nationality of the researcher. The fact that most respondents are of the same age group and involved in similar business may be partly attributed to the demographic profile of migrants generally but it may also be a pointer to the potential bias of this sampling strategy. The respondents therefore may not represent the experiences of the whole community. However it was a faster and convenient method for this study. Most of the data collected were from documented migrants which constrain the comparison between documented and undocumented migrants.

2.2.3 Data collection

A short semi-structured questionnaire with open questions was administered to respondents in Mayfair Johannesburg. The questionnaire was divided into four parts. The preliminary section was meant to capture biographic data such as age, gender, marital status and education. The second section then records the legal status of the respondents, date and place of application and the process through which they went in order to make the application. The second part included

questions regarding migrants experience with the police, whether they have ever been arrested, stopped or questioned by the police, whether they have had reason to visit police stations and how they were treated. A short explanation of their experiences was then prompted. The third part included questions regarding migrants experience with crime. It was also necessary to observe the migrants in their places of work and restaurants where they took their meals. Although this did not give conclusive information of the migrants' life it helps for creating rapport and observing how they related.

Legal status refers to the various stages of official recognition or its absence accorded the particular group of migrants. A migrant in this case may be registered and have the proper documentation, or have applied and waiting status determination, or their applications have been rejected and their files closed, or those who simply did not register. The indicators of legal status expected include a) Identity documents b) Applications awaiting decision c) rejected applications and appeals d) those who never applied. To elicit responses on the issue of legal status I posed several questions to the respondents.

In order to test the hypothesis that legal migrants get more protection from the police than undocumented migrants I collected data on migrants' experiences. The real life incidences such as arrests, police searches both bodily and residential, deportation, incidences of bribery, experiences of crime in the cities, reporting of such incidences to police, police actions on such reports will be recorded as indicators of experience. While real life experiences are useful in as much as they

show what is going, attitudes and perceptions of those involved are equally important in structuring relationships between groups of people.

2.2.4 Data Analysis.

The data collected was subjected to thematic content analysis. Open coding was used to categorize the raw data (Strauss and Corbin, 1990). The data was then grouped under five broad concepts including; A) Legal status which I analyzed along the issues of place of application, duration of waiting, type of status and the obstacles of acquiring them. B) Migrants' experiences of how police conduct the verification of their legal documents. Here I looked at how the police treated migrants and nationals with or without documents. C) Experiences of migrants with the police service when they seek assistance or when they are in distress. D) Migrants' experience of police operations and other crime prevention strategies. E) The use or misuse of police authority with regard to migrants. The role of legal documents in such interactions was also examined. The experiences of migrants were then compared to those of nationals.

2. 2.5 Scope and Limitation of the study

This study is limited only to the experience of a small number of Somali migrants and South African nationals with regard to policing. Migrants from different nationalities may have differences in their interaction and relationship with the police. Again the study does not cover every aspect of migrants' life in Johannesburg nor does it cover the whole city. Police officer's experience in dealing with migrants is also not captured in the study. The research also does not include the many categories of migrants who live and work in Johannesburg. For

instance expatriate migrants were not included in the research design nor were any found during the field work. As in many qualitative studies, the sample is fairly small to be taken as representative of all forced migrants and nationals. The findings and conclusions are based only on this sample and general inferences may be constrained.

Policing is a difficult and demanding job. This study does not cover the wide range of police activities in South Africa and the police were not interviewed to give their side of the story. It only touches on those activities that migrants have experienced directly. This study does not seek to pass normative judgment on the police work. The experiences of respondents may not be uniform in all of Johannesburg or even South Africa for that matter. Given that social relations change over time the findings may not remain true forever.

Ethical considerations prevent me from using the real names of the respondents in this report. I therefore use numbers or other ways to refer to them. I also avoided any intrusions into their privacy and asking prodding questions that they did not want to respond to. This may have compromised the quality of my work. It means that other researchers can not repeat the research with the same respondents who participated in this research. For the interest of my respondents I do not discuss some of their concerns that they raised during my research.

CHAPTER THREE

3.0 Policing Migrants

In this chapter, I present the findings of my study and discuss them in relation to the broader social and political processes. The qualitative data is mostly from my interviews with Somali migrants and augmented by experiences of other migrants and South Africa nationals. The quantitative data is mainly from FMSP survey discussed along with other research findings. Although the initial research design envisioned a comparison of the policing experience between documented and undocumented Somali migrants, data generated from field work constrain a useful comparison between the two groups. While the undocumented migrants located by this study gave some relevant information, their short presence in the country as per by the time of the fieldwork limited their actual experience of policing as compared to those who have stayed much longer. In as much as there is paucity of evidence to prove or disapprove the hypothesis that documented migrants receive better police protection than undocumented migrants, the experience of documented migrants which forms the basis of this discussion, suggest that legal documents do not guarantee police protection either.

I group and present evidence of migrants' experience of policing in five key areas. These include; a) the issues and incidences that surround the process of application for legal status by Somali migrants b) police enforcement of migration laws through verification of migrants' identity documents. Evidence suggest that verification is characterized by suspicion, harassment, and intimidation and extortion for bribery. c) Police crackdowns, searches and operations in the course of their duty. These

searches are marked by violence, theft and disregard of law d) police response to migrants in distress. Migrants' experiences show that police are reluctant or unwilling to come to their rescue in times of distress. e) The abuse of police authority including intimidation, harassment and corruption.

3.1 The Somalis of Mayfair

The demographic characteristics of the Somali migrants who participated in this study are broadly similar to that of migrant population surveyed in Johannesburg in 2003 (Landau and Jacobsen, 2004; Gotz, 2004). From field observations and data generated, the Somali migrant population in Mayfair is largely composed of young males in the age bracket of 20-30 years, which is no much different from forced migrants from other nationalities. In the FMSP survey, 62 % of the migrant respondents are 30 years of age and below as illustrated in table 2 below. Although 42% of the Somali migrant respondents in the FMSP survey (Table 1) were females, this study could not locate as many Somali females. Indeed compared to migrants from other nationalities, Somalis have the least number of females (Table 1). Most of the Somali migrants in Mayfair are fairly educated with 8 of the respondents indicating they had attained at least some secondary education. In the FMSP survey, 39% of the Somali respondents indicated that they had finished secondary education. In comparison with their South African hosts, migrants have slightly higher formal education as indicated in Table 3 with 54% having attained some form of tertiary education. They are also self-employed in the informal sector, running restaurants, grocery shops as well clothing shops. The FMSP survey shows that 25% of them are self-employed while 45% are unemployed which means that the employed carry a heavy burden of supporting the unemployed. At least 11% of

them indicated that they are five people sharing accommodation wherever they are staying. In policing work, the profile of such a community would be of interest for several reasons. Under ordinary circumstances people in this age bracket are the ones likely to pose social control problems. The police in South Africa also believe that over crowding is responsible for high crime rates in certain areas.

Table 1 the gender differences of Johannesburg forced migrants by selected nationality

Sex	DRC	Angola	Ethiopia	Somalia
Male	74.5	73.0	74.6	57.6
Female	25.5	27	25.4	42.4
n	105	89	65	59

Source; FMSP survey

Table 2 proportion of Johannesburg forced migrants under the age of 30 by selected nationality

Age	DRC	Angola	Ethiopia	Somalia
18-20	5.8	21.4	3.1	10.3
21-25	24..9	26..9	41..5	17.2
26-30	33.7	20..2	38..5	34.5
% of those aged 18-30	64.4	68..5	83.1	62

Source; FMSP Survey

Table 3 highest level of education completed

	% South Africans	% Non- South Africans	% Total
No formal schooling/ some primary education	4.6	4.6	4.6
Finished primary education	29.1	18.3	24.0
Finished Secondary education	51.8	54.2	52.9
Finished Tertiary education (BA, BS, Diploma)	13.5	18.0	15.6
Post graduate degree Masters, doctorate, PG diploma	0.5	3.8	2.0
Other	0.5	0.3	0.4
DK/RA	0.0	0.9	0.4
n	392	345	737

Source; FMSP survey

3. 2. Legal Status of Somali Migrants

The importance of legalizing migrant's residence in the country is underlined in the Refugee Act, No 130 of 1998 and the Immigration Act No 13 of 2002 which stipulates the procedures and conditions of application for residence in the country. After registering their presence, migrants are issued with identity documents which specify the length of their residence and what they are entitled to when they are in the country. Asylum seekers are given section 22 permit while refugees are given section 30 permits. Those without proper documentations are either required to register or to leave the country (Algotsson and Klaaren, 2002). It is only with the possession of proper documentation that refugees and asylum seekers can make claim to government services such as health, education, work and protection (Groot, 2004; Tlou 2004). Migrants and nationals are in agreement that it is

important to carry the documents. Asked how the lack of identity documents would affect them, Somalis in the FMSP survey ranked the fear of being arrested as second only to inability to get employed. However the relationship between the police and migrants seem to belie the importance of these documents in matters pertaining to police protection.

Although the legal documents are supposed to secure police protection for those who have them, this is hardly the case. One of the reasons behind this is that the acquisition of legal status in South African is characterized by irregularities including long delays and corrupt practices. The high premium migrants place in acquiring the legal documents and the artificial shortage created by the slow determination process at the DHA exacerbate irregularities. To go around these barriers, migrants resort to other means such as paying bribes or giving incorrect information. Documented evidence shows that some people obtain legal status fraudulently. A case in point is where over one thousand South African women found themselves to be registered as married, yet they had never tied the knot (Landau, 2004b). In November 2005, the South African Broadcasting Cooperation (SABC) in its 'special assignment' series graphically aired illegal activities and corruption surrounding the acquisition of legal documents. Since such information is in the public domain, police have some reason to doubt legal documents held by both migrants and nationals.

The majority of the respondents in this study are legal, notwithstanding the administrative difficulties in the registration process and the doubts police may have about their legal documents. This is also contrary to the impression created by

official rhetoric and the mass media that most migrants are illegally in the country (Crush and Williams, 2003). In the FMSP survey in 2003, all the Somali respondents either had the official refugee status or asylum seekers permit. Indeed during the course of this study, we were unable to get equal number of undocumented and documented migrants as initially envisaged. According to the FMSP survey, 84% of Somalis applied for the documents in Johannesburg, making the city an important place of processing asylum application for the Somalis. Of the 18 migrants interviewed only four had not applied for registration which further confirms earlier works (Bhamjee and Klaaren, 2004; Crush and Williams, 2003) that most migrants register their presence in the country. The majority of the respondents have asylum seeker permits (Section 22) which they have to renew every three months (Bhamjee and Klaaren, 2004; Crush and Williams, 2001). Of the 18 migrants interviewed, only four had the official refugee status (Section 30). Corruption and delays at the DHA was cited by migrants as the reason for not promptly applying for documents. Asked why he had not applied yet he had been in the country for about ten days, a recently arrived Somali migrant said;

I come by bus so I am still tired, I hear they need money (to give you papers)...and people stand in the queue for days. I will go when I get money and camp there ⁵

The reputation of DHA may therefore discourage refugees and asylum seekers from immediately registering their presence in the country. The longer migrants stay without papers the more the chances of being arrested for being in the country illegally. Although asylum seekers enjoy almost equal rights as refugees, remaining in the same status indefinitely is a source of frustration. First, there are the practical

⁵ Interview no. 1. Nov 2005

difficulties of having to make the trip every three months to the DHA offices which are both expensive and time consuming given that migrants are required to renew the permit where they first made the application. This requirement also restricts the freedom to move. Those who fail to renew their permits in time due to such difficulties are at risk of being arrested and detained as the experience of this Somali migrant illustrates;

I was arrested by the police because my papers had expired and I had not gone to renew them. I was in Police custody for three days. They treated me well. On the third day they gave me a letter to take to Durban to renew my papers (asylums seekers permit) ⁶

The above case also illustrates that not all migrants are mistreated and that some police officers do act within the confines of the law. Although this is the only respondent who confirmed receiving positive treatment from the police, his case may be an indication that the police protection of migrants can still be enhanced.

Although the waiting period between application and receipt for some of the respondents seem to be fairly short, for most of them it is a long wait and numerous trips to DHA. Asked to specify when they applied and when they got refugee status, three of the respondents with refugee status indicated having waited for at least three years instead of the official six months. This is a continuous point of weakness in the migration administration process. Some of them indicated that officials at the DHA do exhibit hesitations when migrants lodge their application for status and do not encourage asylum seekers to insist on following their application for refugee status. Indeed three migrants reported to having paid money

⁶ Interview no. 4. November 2005

for the renewal of the permits although further inquiries suggest that many more would have paid. Asked if he has ever paid for legal documents a Somali migrant narrated the following;

...there is a middleman who we used to pay so that he can get for us the extension period we want. Where as if you go by yourself to Home Affairs, they (officials) deal with you inhumanly [sic]⁷

In the FMSP survey, 70 % of the Somalis confirm that they have actually paid to get documentation in South Africa, much higher than the average for all non-South African respondents which stand at only 29% (see Table 4). As is illustrated in Table 4, paying bribes seem to be more prevalent among migrants than South African nationals. This may be due to the vulnerability of the migrant population to police extortion while the nationals have the opportunity to resist. It is not clear why Somalis have higher propensity for paying bribes than other nationalities. It could be that they are the most vulnerable migrant group, or it could be that the collapse of the Somali state caused the informalization of services in the country. The point to be made here is that staying without documents exposes migrants to several difficulties. Most relevant for this study is that asylum seekers or migrants without documents stand a real chance of being arrested, detained and deported before their cases are concluded (SAHRC, 1999). The delays in processing of legal documents and the inconvenience caused to migrants has compelled human rights organizations to seek courts' intervention. At the time this research was being done in Johannesburg, Lawyers for Human Rights, acting on behalf of Somali Refugee secured an important judicial intervention. Sitting in Pretoria, the high court ruled that the DHA should reopen the Johannesburg reception office by January 2006,

⁷ Interview no. 5. November 2005.

hire more personnel to speed up the process of registration and to give a written commitment on how the process was going to be improved (LHR, 2005)⁸. The irregularities in the acquisition and renewal of legal documents impacts negatively on how police verify legal documents and how they treat migrants and nationals as will be shown in the next section.

Table 4: Percentage of those who have paid for documents by selected nationality

	Angola	DRC	Ethiopia	Somalia	S. Africa	Non S. Africa	Total
Yes	6.7	24.8	32.3	69.5	9.3	29.2	18.6
No	91.0	74.3	67.7	30.5	84.8	69.7	77.7
DK/RA	1.1	1.0	0.0	0.0	.8	.9	.8
Q not asked	1.1	0.0	0.0	0.0	5.2	.3	2.9
n	89	105	65	59	388	343	731

Source; FMSP survey

⁸ The office in Rosettenville has since been reopened.

3.3 Verification of identity documents.

In enforcing the immigration law, the police derive authority from the immigration Act No 13 of 2002. Section 41 of the Act says;

When so requested by an immigration officer or a police officer any person shall identify himself or herself as a citizen, resident or foreigner when so requested by an immigration officer or a police officer, and if on reasonable grounds such immigration officer or a police officer is not satisfied that such person is entitled to be in the Republic, such immigration officer or a police officer may take such person into custody without a warrant and if necessary detain him or her in a prescribed manner and place until such person's prima facie status or citizenship is ascertained.

Lawyers for Human Rights (LHR) saw the danger of abuse of this section of the Act even before it was enacted and made appropriate recommendations (Algotsson, 2001). They pointed out, among other things, that the process of arrest and detention would be highly arbitrary if the requirement of arrest warrant is waved. It also puts the burden of proof solely on migrants, making migrants guilty until proved innocent. The experiences of Somali migrants and indeed other migrants confirm the fear expressed by the LHR. Because it is not stipulated when the immigration or police officer should request for identification the verification is done randomly by stopping pedestrians on the streets or stopping taxis and asking passengers for their identity documents. Some migrants claim to have been arrested near their doors and driven around until they produced a bribe. A Somali respondent had the following to say,

....I was just around the corner near the house, then the police officers in a van stopped me, I knew one of them but he did not talk to me. His mate asked me for my ID and I told him it is in the house and I could get it. He

told me threateningly to get in the van. They drove around with me for two hours before taking me to (Johannesburg) central police station. From there I managed to call somebody who brought my papers. That was when I was released⁹

Besides what the law stipulates, day to day policing entails considerable discretion on the part of the police officer. Often times, it is upon the individual officer to decide whether an offense has been committed and if it is serious enough to warrant arrest and prosecution. Such discretion even under normal circumstances gives the police considerable powers (Reiner, 1985). Verification of migrant legal status -reminiscent of the much hated pass laws of the apartheid regime, enhances this police power over migrants. The frequency with which migrants are stopped and asked for IDs shows that it is not only the documentations police ask for. At least 14 of the migrant respondents reported to having been stopped and searched by the police while none of the nationals reported having been stopped. None of the undocumented migrants has ever been stopped. This is partly because they do not venture into the streets like the documented migrants. In the FMSP survey, 67% of migrants cited the verification of legal status as the reason why the police stopped them while only 12% of South Africans were stopped for the same reason. The big differences in the frequency of being stopped can be explained by the fact that police frequently target areas inhabited by recently-arrived migrants and that police use physiognomic differences to profile people. Besides the frequent demands for IDS, police also express verbal doubts over migrants claim to asylum in South Africa. On being stopped by the police a Somali respondent with valid documents reported being asked by an officer;

⁹ Interview no. 11. November 2005

Why did you come to this country where as there are many other (peaceful) countries who are your neighbors?¹⁰

Some of the experiences of migrants with police may be traced also to the language used in the immigration policy. The immigration Act 2002 creates room for contentious interpretation on how police or even the public should act towards migrants. For example in section 2(9) one of the stated objectives of the immigration policy;

Is promoting a climate within the Republic (of South Africa) which encourages illegal foreigners to depart voluntarily

It is not clear how such climate is to be created but this sort of language does little to discourage the anti migration sentiment that already exists in the country, particularly because little attempt is made to categorize migrants according to their legal status. Related to this are utterances from senior government officers which jeopardize the importance of legal documents and encourages police actions that are not within the law. A former Home affairs minister quoted in 2002 summarized it like this;

Approximately 90% of foreign persons who are in RSA with fraudulent documents i.e. either citizenship or migration documents, are involved in other crimes as well...it is quicker to charge these criminals for their false documentation and then to deport them than to pursue the long route in respect of the other crimes that are committed (Crush and Williams, 2003)

The above sentiment epitomizes what Landau (2005b) calls 'myths' about migration in South Africa among government officials and policy makers. That there are many illegal migrants in the country and these people are responsible for high crime rates and other social ills. Although the relationship between such statements and police

¹⁰ Interview no 7. November 2005

actions against migrants can not conclusively be proven here, they may impact on police perception of migrants.

Although it is not a legal requirement to carry IDs all the time, there is an implicit assumption that migrants must have them at all times. The law however provides that those who do not have the documents when requested should be given sufficient time to get them. The police regularly ignore this important requirement. Either the police are too pressed for time to accord migrants the opportunity to collect their documents or they simply do not entertain the idea of accompanying people to their homes. The case of this lady is illustrative. In response to her request to be given opportunity to get her passport the police officers;

...told me that they do not work for me that they will have to take me home for me to retrieve my passport.¹¹

The verification of migrants' documents is innocuous in itself yet the way police conduct it reveals other hidden processes. Besides enforcing the law that requires migrants to have documentation as proof of legal residence, it also gives the police the informal role of gate keepers. Most migrants feel that the request of IDs is done with other intentions owing to the frequency and sometimes the verbal insults or the demand for bribe that follows. Several persons stated that they believed that the possession of ID documents was regularly ignored by police officers. For example, one respondent said:

The police don't care even if you have an ID with you, if they suspect you ... they just detain you...the way police arrest immigrants is unsatisfactory, because even if you have ID they just tear it up, they don't want to listen to the explanation.¹²

¹¹ Interview by South African Human Rights commission in Lindela (1999)

¹² Interview no. 3. November 2005

Ideally those with documents only need to show them to the officer asking and that should be all. However police do confiscate them and ask for bribes or they may simply destroy them rendering the concerned migrants undocumented therefore liable to be arrested. A Somali man gave his experience thus.

...I was walking towards 10th street (Mayfair)... I was stopped by two police officers. They asked for my ID and I gave them the photocopy I had. They said it is forged and if I wanted it back I have to buy them a soda. I gave them R20....¹³

This is not unique to Somali migrants. Other migrants and South African nationals with documents often suffer worse fates. For example, Ngwenya Sidingani (South African national) said this to the South African Human Rights commission (SAHRC):

I was marketing (looking for a job) in D.F. Malan Street. The police came and asked me where I come from. I told them that I am from Kagiso. They asked me for my ID... and I gave it to Mageza (a Venda police officer). He took it and put it in his pocket and told me that I am a "Kalanga" (illegal). They refused to give me back my ID and told me that they want to check it in the computer. From there they took me to Newlands police station. I asked about my ID and they told me that it is in the car (truck)... at the police station they put that I am from Zimbabwe in my file. At Lindela they asked me about my ID and I told them that it is with the police who apprehended me. They told me that I can phone my wife and tell her to bring some sort of proof that I am South African. I could not because her work telephone numbers are in my ID. I don't know how I am going to get out from here and how am I going to get my ID.

As the experience of this man shows legal documents is not enough even to claim South African citizenship. The police officer doubts the authenticity of the documents

¹³ Interview no. 4. November 2005

and the man's claim to South African nationality. The police officer's role of gate-keeping demands that he goes beyond legal documents, especially for those who claim citizenship. Those who claim South African nationality are therefore put through language tests and body checks which are not stipulated in law. One South African lady of mixed parentage gave the following account to SAHRC;

Nelsa was apprehended in Bara, Soweto..., where she was selling goods. A police officer...asked her for her ID. She produced her ID, and the officer then asked her where she was born. She said that she was born in South Africa, and then the officer said that she was not born in SA. She replied that he should phone her grandmother to check. The police officer asked her to show him her hands, which she did. He saw the inoculation mark on her left forearm and said that she is born in Mozambique. She started to explain ... (a product of mixed South African and Mozambican family who moved back and forth between the countries over several generations) but the officer did not believe her. She gave him her ID and did not accompany him. The police officer spoke to her uncle. The officer asked Nelsa to give Zulu words for various body parts and she replied correctly¹⁴.

¹⁴ Interview with South African Human Rights Commission in Lindela (1999)

Table 5 Reasons for Being Stopped by the Police

	Non-South Africans	South Africans	Total
Traffic Violation	3.8	3.6	3.7
Working without permit	2.9	0.8	1.6
To check migration status/identity documents	67.1	12.1	37.9
Part of criminal investigation	2.6	4.9	3.8
Road Block	10.2	7.2	8.6
Other reasons	8.7	1.8	1.4
DK/RA	0.3	0.3	0.3
Questions not asked	28.9	74.2	52.9
n	343	388	731

Source; FMSP Survey

In examining the interaction between police officers and migrants three issues come to the fore which may explain the police extra-legal actions in the verification of legal documents. These include the irregularities that characterize their acquisition, making police to doubt their authenticity, the anti- migration sentiments which gives police considerable latitude in dealing with foreigners, particularly black migrants and finally there is wide discretion police have which has been enhanced by the migration legal framework.

3.4 Police Operations and Migrants' Protection

Due to the coincidence of high crime rates in the post-apartheid South Africa and the arrival of international migrants especially from other African countries, there is an assumption by nationals and public officers of migrants' culpability in crime (Landau, 2004b). This is further compounded by the assumed large number of illegal migrants whose criminality is taken as a matter of course. In both the Refugee Act of 1998 section 4 (a) and the immigration Act 2002, criminals or suspected criminals or those facing civil prosecution in their home countries are not entitled to asylum or residence in the country. Undocumented migrants are assumed not to have applied for documents because of their criminality. These perceptions are not only limited to the public and the police, but they permeate even other government sectors including high ranking officials (Palmary 2002; Crush and Williams, 2003; Landau, 2004b). However there is lack of evidence from police records of migrants' alleged contribution to the high crime rates in the country.

The assumed presence of a large number of undocumented migrants in crime infested areas has led the police to target such areas in their crime prevention *cum* identification of illegal migrants. Such operations are carried by a contingent of police officers in areas which account for the highest crime rates (Pelser, 2000). Crime prevention strategies like these are not separated from the enforcement of immigration laws. The arrest of illegal migrants is normally mentioned in the same breath as that of criminals. The high profile media coverage that such operations get paints the picture that police are doing something about the high crime rate in the country. One such strategy, code named 'operation crack down' was conducted in three the inner city suburbs of Hillbrow, Yeoville and Berea in March 2000 to flash

out criminals and illegal migrants. During the raid, 7 068 people were arrested on suspicion of being undocumented migrants (HRW, 2001). However most of these turned out to be refugees with valid documents and South Africans who did not have their documents with them at the time. Although crime blitz operations are standard policing methods in many parts of the world, the manner in which the police conduct them have raised concern in Human Rights quarters (Crush and Williams, 2001). Human rights lawyers claim that immigration policing is conflated with crime prevention to raise the arrest statistics (LHR, 2005). A Somali migrant who runs a restaurant complained;

Last month (October 2005) the police stormed this place while my clients were eating...they said that they are looking for illegal migrants...as if I am a smuggler of people! ¹⁵

Interestingly one of the undocumented migrants interviewed was present and he was not asked to show his identity documents. Had the police been actually looking for undocumented migrants, they would have probably asked all those present to identify themselves. These operations are in some instances used to sidestep legal requirements such as search warrants and the requirements that officers have reasonable grounds to doubt people's legal status etc. Characteristically they give the police blanket authority to enter and search the targeted premises without the mandatory search warrant. In addition the police are not restrained on the degree of force they can apply when conducting these searches. Constitutional rights which legal documents secure for migrants such as equality, Section 9, dignity section 10, freedom and security of the person section 12 (1a) and freedom of movement and residence are violated by such operations.

¹⁵ Interview no. 15 Nov.2005

Migrants' experiences of these police operations give an impression that they are targeted by the police. First, they are fairly frequent in migrant inhabited areas and unlike the major operations some of these do not get media attention. A Somali respondent who runs a shop explained that he had been a victim of such operations in Mayfair twice.

Just last month (October 2005)...police surrounded this building. They forced their way in when we refused to open because it was night. They said we are criminals and they know we have guns. They made us lie down as they searched the place. They took our phones, electronic goods and money that we had... we are not sure if they were actually police officers although they were in uniforms¹⁶

Similarities have been drawn between South African migration policing techniques and the policing of the pre-1994 apartheid state where;

Police raids on townships even before the apartheid era had ended up involving not only suspects but also innocent members of the black community who at times suffered serious injuries at the hands of the police (Crush and Williams, 2003: 3).

Similarly, while the current police raids supposedly target criminals and undocumented migrants, documented migrants and even nationals get arrested, injured or greatly inconvenienced. The raids are followed by complaints of loss of personal belongings, use of excessive force and little attempts to separate documented from undocumented migrants. In many instances police arrest and detain people first and then ask for their IDS later, which is against legal provisions. Indeed in interpreting section 41 of the Immigration Act 2002, the High court ruled

¹⁶ Interview no 12. November 2005

on November 2005 that undocumented migrants can only be arrested and detained for the purposes of deportation and for no other reason (LHR, 2005). The court ruling implies that suspected undocumented migrants have to be subjected to the due process and be proved to have no legal documents before they can be arrested.

3.5 Helping migrants in distress

One of the core responsibilities of the police as envisioned in the SAPS Act 1995 is the protection of all the people and their property in the territory of South Africa. Given that most migrants have documentations, they should feel secure enough to seek police assistance. Migrants do not feel that they are protected by the police or that the police are helpful. Asked to name one of the most important things the government should address urgently, 38% of migrants in the FMSP survey named security related issues while only 15% of South Africans thought that it is urgent. Research findings indicate that migrants are more apprehensive of crime than citizens (Crush and Williams, 2003). The apprehension is vindicated by FMSP survey which shows that 71% of migrant respondents have either been victims or they know somebody who has been a victim of crime while only 43% of South African respondents have been victims (See table 5 below). Although this study can not confirm whether there is a difference between documented and undocumented migrants in terms of crime experience and seeking police assistance, what can be said is that there is a difference in experience between nationals and migrants. Some respondents thought that they were targeted on account of their being foreigners and they had to close their business in that location. Most of the crimes are property related such as armed robbery and theft. Three respondents reported to have been victims of crime several times in one day. Some migrants think that the

police themselves are accomplices in such acts. A Somali respondent who is a student gave his experience as follows;

I had bought a fax machine which I wanted to use to make money. The following day a police officer came with somebody who claimed that his fax machine has been stolen. I explained that I bought the fax from a shop and not individual and I showed them the receipt. The officer insisted that they must go with the machine to the police station. He asked if I could I accompany them to the police station but he refused and told me if the machine is mine he will bring it back. I never saw him again and I never got my machine back¹⁷

The perception that police officers are not helpful is common among the Somali migrants. Although both national and migrant respondents perceive police as not very helpful migrants think that this is due to the fact that they are foreigners. However inability to respond promptly to calls of distress may be due to other reasons. Of those interviewed, ten migrants and 3 South Africans stated that none of the crime cases they reported to the police were ever resolved. The undocumented migrants did not however indicate whether they have had occasion to report crime to the police. This I attributed partially to the fact they have not stayed in Johannesburg for a long period and partially to the fear of being arrested because of lack of documents. The FMSP survey indicates that by the time of the research in 2003, the Somalis had very high confidence in the police with 96% of them indicating that they would report burglary to police and 50% of them thinking the police would help. This confidence level is higher than even among South African respondents. Somali migrants still seek police help even if they are not satisfied. One responded confirmed that such help is slow in coming.

¹⁷ Interview no.2 November 2005

It was around midnight, somebody knocked the door claiming that he was a policeman but we refused to open and we called the police for help instead. However the police took so long the robbers broke the door and took everything¹⁸

The inability of the police to resolve crime cases may be partially due to organizational limitations but also due to salient police hostility to migrants. One migrant told us;

When police arrested me, they kicked me...telling me, you f---cked up your country and you come here to f---ck this country¹⁹

In one particular notable case a migrant reported a burglary to the police with all the evidence as he knew the offender. The offender was arrested and later released. He went back to threaten the migrant. This is not an isolated case as many people indicated that police rarely take action on foreigner complains. A Somali taxi operator narrated the following incident;

I saw this guy trying to break into a nearby shop...just across the road and I raised an alarm. The man ran away. When the police arrived they questioned me if I could identify the person... I agreed and the person was arrested. A few days later the person was free and he threatened me...calling me makwerekwere²⁰

The implicit message that the police pass to migrants is that they are really not welcome to South Africa, however if they want to stay they have to deal with the police on certain terms. This role of gate keeping is fairly profitable for police

¹⁸ Interview no. 12. November 2005

¹⁹ Interview no. 13 November 2005

²⁰ Derogatory term commonly used to refer to foreigners

officers. This means they can arrest migrants anytime and ask for bribe. Migrants have claimed that the police treat them like ‘mobile ATM’ (Landau, 2005a).

Table 5 Respondents who were victims of crime in Johannesburg by country of origin

	Somalia	Non-South Africans	South Africans	Total
Yes	59.2	71.5	42.9	56.3
No	40.7	27.9	56.6	43.1
DK/RA	1.5	0.0	0.5	0.5
n	59	344	389	733

Source; FMSP Survey

Most migrants indicated that they have no faith in the police to resolve any problem. Respondents were in agreement that calling police or reporting any crime is not fruitful because the police either respond when it is too late or when they eventually come, they concentrate on side issues. All the 18 migrants felt the police cannot be trusted while 4 nationals thought police do help. Some of the experiences of migrants give credence to the mistrust they have about the police. Narrating his experience with the police, a Somali respondent stated;

I used to run a shop in Pretoria in a place called Garangwa. I was attacked by thugs in broad day light and robbed of R4000. They were speaking local South African language. I reported the matter to the police immediately. When I went at the station, the police asked me if somebody was hurt i.e. if

somebody has been shot or bleeding. I said no and they told me there is nothing they could do since nobody was hurt²¹.

A 26 year old Somali migrant confirms the uncooperative nature of the police;

---My cousin was coming from Cape Town and people whom he did not know tried to stop him. Since has been a victim of carjacking several times, he refused to stop. These people then chased him all the way to here (Mayfair). We called for help from the police because we suspected they were robbers; when the police arrived they instead turned on us, ransacked our house claiming we are criminals. They took away all our cell phones and the money they could get²².

Here the police not only failed to follow the leads on possible criminals, they became criminals themselves. Migrants indicate that after one or two incidences they no longer bother to report to the police. This partially explains the mistrust with which migrants regard police officers. The perceptions among police officers that migrants are responsible for high crime in the country as Palmary (2004) found out may be partially responsible for this situation. For South Africans, the inability to resolve crime has resulted into the proliferation of private security companies and neighborhood vigilantes (Shaw, 1997). For the migrants, they have disengaged from the police service. This leaves them exposed to further attack or extortion by unscrupulous police officers.

The presence of police officers in the neighborhood in form of patrols is a great boost to feeling of safety and security yet police patrol in the neighborhood where migrants live is not welcome. Most migrants indicate that such police offices

²¹ Interview no.2. November 2005

²² Interview no.8. November 2005

sometimes harass them or ask for money. In one instance, a police officer who was not in uniform tried to arrest a Somali business man who was also the custodian of the local xhawala²³ system attracting a crowd of Somalis . A Somali shopkeeper narrated the incident as follows.

....One weekend, two people claiming to be police officers came to the shop and demanded money from the shopkeeper on the pretext that he was running illegal business. The shopkeeper refused and started arguing with the officers who did not even identify themselves. This attracted a large crowd of Somalis who started shouting at the police. The officers threatened to shoot people. They left without arresting the shopkeeper. However the shopkeeper feared they would come back so he decided to close the shop and leave Johannesburg.²⁴

Given that most of the Somalis are involved in informal business and self employment, they are vulnerable to extortion from police even those who are off-duty. Several of them stated that police regularly search their premises to establish if they are selling contra-brand items. However these searches are accompanied by confiscation of goods or items that are not branded. All the respondents who are running business have documentation yet this does not seem to protect them from such predatory policing. Being in a relatively safe neighborhood and yet they are more prone to crime may point to either the general rate of crime in the country or to just the laxity on the part of the police.

Although the police record in resolving criminal cases is low generally in the whole country, the case of migrants is exacerbated by the police attitude. As shown in table 6 below the police believe that migrants are largely responsible for the high

²³ Somali money transfer facility, see Cindy Horst, 2001

²⁴ Interview no 9 November 2005

crime rates. They may therefore not consider crime reports from migrants very seriously. However the crime rate in the country may mean that police officers are already having their hands full with what they consider ‘serious cases’. Sometimes officers may be genuinely overwhelmed.

After we were attacked and robbed by a gang of four people, we met a police officer on patrol and we immediately informed him. He told us he could do nothing because he could not handle four armed people alone.²⁵

It can be argued that officer in such a situation can call for reinforcement but the fact that he was alone on patrol may mean other officers are engaged elsewhere.

Table 6 Johannesburg Metro Police New Recruits Perceptions on the causes of crime in Johannesburg

<u>Cause</u>	<u>%</u>
Poverty and Employment	91.9
Foreigners or Migrants	29.8
Weak Justice System	25.7
Overcrowding in the city	23
Facilitators of crime	19
Illiteracy	9.5
Psychological or emotional characteristic	8.1
Crime through (i.e. through revenge violence	6.9
Family problems and disruption	5.5
Prejudice	4.1
Homeless people.	4.1

Source: Palmary 2004

²⁵ Interview no.8. November 2005

3. 4 Abuse of police authority

The anti-migration sentiment and the political context in which the policing of migrants are done essentially make them ‘police property’ where the police can abuse their authority with little fear of repercussions. Regardless of migrants’ legal status, they are a marginal group considered a threat to economic and social interest of South Africans. In such a context, corruption and abuse of police authority flourish with the tacit approval of government officials. Lee (1981 cited in Reiner 1985: 95) explains that “A category becomes police property when the dominant powers of society (in the economy, polity, etc) leave the problems of social control to the police”. This category is powerless, have low status and the dominant majority view them as problematic. The dominant majority are prepared to let the police deal with ‘their property’ and not to pay particular attention on how it is done. This group includes ethnic minority and poor migrant communities. Reiner argues (1985) that the problem is not so much to enforce the law but to maintain the order and only refer to the law when it is appropriate, which SAPS has been accused of doing. The only qualification though is that the police should develop enough skills not to mistake a member of the dominant group for their property.

This is compounded by the fact that police are not happy with some laws that they consider as impediments to their work. As Reiner notes (1985: 86) “A central tenet of the highly practical culture of policing is that you can not (always) play by the book”. Some of police actions should be viewed from this prism. In matters such as migration which the public consider problematic, even with the existing legislation, extra-legal police actions acquire some form of legitimacy. Somali migrants and indeed other migrants in South Africa have become police property.

A significant number of the South African public is opposed to letting in migrants although the government has undertaken to host some categories of migrants. In FMSP survey, 43% South Africans believe the government is letting in too many migrants while less than 20% in the SAMP survey (1998) believe that migrants should enjoy some basic freedoms such as free speech etc. Having been ostracized from the mainstream society, the police are left to deal with migrants with little reference to the law which renders legal documents less important in getting protection from the police. In addition there is no pressure from the public except from a few organizations like HRW and Lawyers for Human Rights who persistently call on the police to account for their conduct towards migrants.

A Nigerian described the brutal treatment he suffered at the hands of policemen:

Just because I am a Nigerian, police-men have beaten me up. They have broken into and searched my house without a warrant. They have taken my money and planted mandrax, cocaine and all kinds of drugs so that I wouldn't speak. But the worst experience was when one white officer confiscated my passport and, not knowing where to find him, I ran all over to police stations in Johannesburg. When I failed to find him, I had to make an application for a new passport at the Nigerian embassy, something that cost me R2500 (Mail and Guardian 26.4. 2002).

When the South African Human Rights Commission criticized the police for such abuses especially after the operation 'crackdown', government officials vigorously defended the police. The Cabinet criticized the commission for "undermining the government's efforts to control crime" and creating the impression of being sympathetic" (Crush and Williams, 2003). Such government support for actions that are essentially illegal contravenes the objectives of democratic police but also shields the police from accountability.

Abuse of police authority has been attributed not only to the xenophobic attitude of the members of the police service but also to the incomplete police transformation (Scharf and Nina, 2005; Simpson, 2004). Because of the negotiated nature of the democratic transition, most of the officers who served in the SAP remained in the new service. Critics have pointed out that many of these are of questionable educational backgrounds, poorly trained and are not crime-free themselves. In order to prepare such officers for the new role, retraining and retooling was necessary yet expensive and time consuming. Only a small number has been trained. By 1998 when the new police Act came into force only 5 714 new recruits joined the force (Bruce, 2002). Those inherited from the previous regime were not subjected to screening to see if they had a clean record during the course of their service (ibid). A new beginning with old faces has proved a dodgy issue, given that these officers were exposed to a particular type of policing. The upshot is that the SAPS is still dominated by personnel whose world view and policing methods basically remain the same. This scenario may actually influence police work in that the personnel have not or are not ready to change to the new dispensation where policing is regulated by the law and public demands.

Such abuses are exacerbated by the fact that Somali migrant community avoids engagement with other formal institutions where they can channel their complaints. Of those interviewed none has ever gone to government offices except to renew their legal status. The migrants are therefore vulnerable to police misconduct. None has ever engaged the services of a lawyer. Only one reported to have heard about the Wits Law clinic for instance. Respondents have no idea that there is an independent Complaints committee where they can lodge complaints. South

Africans are however aware of such a body and responded that in the event that they have a problem with the police, they would report there. On being asked if they would take complaints against the police to government offices, migrants responded;

...but police is part of the government ...they are the same people, they will only listen if you speak their language.²⁶

This may be an attempt on their part to remain hidden so that they do not attract undue attention to themselves. It may be because of the feeling of marginalization that is exacerbated by the police. This means that government offices know fairly little about this segment of the population. It also means that ideas such as community policing may not include migrants.

²⁶ Interview No.13 November 2005

Summary

From the foregoing evidence, I derive four major explanations why legal documents offer little protection to migrants. First, police have reasonable grounds to be suspicious of the authenticity of these documents. Evidence demonstrates that police frequently disregard these documents either by destroying them or detaining migrants and sometimes even nationals with valid IDS. The irregularities that characterize the acquisition, retention and renewal of these documents may be a contributing factor to police suspicion. The police also abuse the power they are given to verify IDS to extort for bribes from migrants. At times, failure by migrants to give bribe may result in police destroying the documents.

Second, the migration legal framework creates room for potential conflict of roles by giving police the dual responsibility of regulating migration and protecting migrants. Migrants' experience suggests that police play a gate-keeping role in regulating migration while giving little protection to migrants. Migrants indicate that police are unhelpful when they go to seek assistance yet the police stop them very frequently to verify their documentations. Even South African nationals who the police think look like migrants find themselves in the situation. Related to this is that the enforcement of the immigration laws gives police considerable discretion when dealing with migrants. The analysis of the experience of the Somali community shows that the police in Johannesburg privilege their role of gate keeping which is much more beneficial to them personally than those of law enforcement or maintaining peace and order.

Three, the anti-migration sentiment in South Africa like in many parts of the world, makes migrants 'police property' i.e. a social group that police can interact with, with little regard to the law. Being a vulnerable group of people, migrants are easy target for police intimidation and harassment. Due to migrants vulnerability police get away with extorting bribes and other forms of harassment of migrants because of their fear. Migrants are hesitant to utilize the available channels of complains against police harassment or even failure to perform their duties due to the anti-migration attitude. Although there are indications that the police performance in their core area of crime control is not satisfactory generally even to nationals, this is more pronounced among migrants than nationals.

While the aforementioned reasons explain why legal documents offer little protection, it is important to add that shortcomings in the police service itself play an equally important role. Migrants and nationals alike think that police are not doing an effective job in solving crime. The police are under a lot of pressure from the public to show improved performance in the control of high crime rate in the country. Stoppage and verification of identity documents, arrests and deportation of foreigners is often equated with fighting crime. Issues such as police corruption, inability to fight crime or disregard of the law can be attributed weaknesses in the service itself.

CHAPTER FOUR

4.0

Implications and Conclusions

The emerging evidence that legal documentations have little significance in police protection of migrants raises several issues. First it implies that there are other more significant variables in policing which need to be isolated and examined by further research. Theoretically, the assumption that having a strong or even human rights friendly legal framework for migrants is sufficient to give the police protection is not supported by my findings. Given that the law is supposed to guarantee the protection of all people in the country and yet it does not, may mean that the law is not important. It implies that the social and political context in which the law is being implemented is equally important. It may also point to a weakness in the law itself or the reluctance of government officials to observe it. For instance while the Refugee Act gives protection of migrants, the stop and search provisions in the Immigrant Act undermines those rights in practice. Given that neither nationals nor migrants feel secure enough, it's possible that there exist problems in the service itself.

There are three major implications arising from this study namely; first, even though legal framework for hosting migrants is essential, it is by no means the only consideration in policing of migrants, Secondly, the police service is not achieving the objectives and goals set by the constitution in giving security to all people and their property in South Africa. Thirdly, the policing of migrants reinforces their discrimination and a social exclusion by the South African society which is contrary to the legal provisions. The problems associated with documentations and

the policing of migrants in turn hampers their livelihood strategies as well as their access to government and formal services. The latitude given to the police in dealing with migrants essentially undermines the very ideals of police accountability.

4.1 Legal documents not sufficient

That policing migrants is little influenced by their legal status means that there are other more significant variables that influence police. Since this study was only limited to legal documents, the findings are inconclusive in so far as pinpointing which single variable or a combination of variables is significant. Factors such as public and police attitude, as well as police corruption seem to play some role in the policing of migrants. That most migrants are either ignorant or unwilling to lodge complaints against police officers also influences the behaviour of the police towards them. In order to determine the degree to which these factors impact on policing, further research is required. In addition, the significance of the dual responsibilities of regulating migration and protecting migrants given to the police should be examined afresh by both police makers and legal experts.

Although a democratic government has to consider popular demands such as tough measures on undocumented migrants, it is under international obligations and under its own laws to accept some migrants and accord them appropriate treatment. Police discrimination and maltreatment of migrants implies either there is a tacit acceptance of this, or lack of public oversight in regulating police conduct. Having accepted to host some migrants, for example refugees and asylum seekers in the country, the

government is under obligation to oversee that they are treated well. The findings of this research, that policing of migrants is not conducted according to the law raise the question as to whether there are many other areas where the police actually do not observe the law. Ideally democracy should only thrive where the law is respected by all.

Indication that legal documentation has no significance in policing of migrants undermines the sanctity of law in a democratic society. For migrants, the fact that they do not get protection from state officials or that they can manipulate the system makes the state lose its legitimacy as the ultimate guarantor of everybody's rights. For a nascent democracy such as South Africa, this poses serious challenges. The same can be said of police officers who enjoy impunity in dealing with a section of the community. They manipulate the authority conferred to them by the state and circumvent state objectives for their own end. Such policing also undermines the relationship between government departments especially between DHA and SAPS. Since these documents are issued by DHA which is the only department allowed to issue them, they should be sacrosanct. Secondly by ignoring or undermining such documents, the police cast aspersions on the integrity of other government officers who issue such documents. On the other hand the police may have the knowledge that some of the documents are not valid, in which case the offending party should be treated according to the law.

There is also a possible weakening of state institutions and informalization of government services. Migrants and nationals, who do not get enough protection or fear harassment, may end paying police or informal security groups for such

services. Some studies indicate how police services are appropriated by certain groups (Hornberger, 2004). This scenario has led to a cycle of violence in many African countries and should be avoided.

Accountability and transparency can only thrive in the police force if the public remains vigilant. Giving the police latitude to apply the law selectively may not be in the best interest of democracy. Since the police service is still undergoing transformation, they should not be given immunity which may compromise the rule of the law. Being an important part of the on going transformation, practices which will reproduce a segmented and unequal society that is similar to the past should be discouraged. The civilian oversight committees are important in discouraging discrimination. That migrant do not have avenues of reporting police misconduct means that officers are not called upon to account for their misconduct. With time this will become institutionalised and accepted.

The South African society is still undergoing transformation and the police will continue to play a critical part in the process. Police actions that do not conform to the laws of the land may not augur well for the country. In a democratic society, police are expected to respect citizens' due process rights and to ensure order in society. The police in a democratic society face several dilemmas, they should be powerful but not oppressive, they should be efficient but not intrusive and above all they should be firm and impartial (Skolnick, 1976).

4.2 Corruption

The high premium pegged on getting legal documentation and the delay in processing the documents has created a conducive environment for malpractices.

While the findings seem to suggest impropriety on the part of the police, the migrants are not entirely innocent especially with regard to their legal status. The fact that migrants can bribe officials at DHA to secure legal status creates room for abuse of the asylum process and may deny those who qualify while giving in to those who are underserving. But since the police are also aware of these malpractices they are suspicious of the legal documents. They manipulate this suspicion for their own benefit. Evidence in this study and from previous studies (Groot, 2004; Segale, 2004) suggests that police routinely demand bribes from migrants. This implies that migrants who are rich can actually buy favours both from DHA and from the police. Even criminals or those fleeing prosecution from their own countries can actually elude the criminal justice system by corrupting the police. Those migrants who bribe their way through actually clog the application system and delay the processing of the cases of those migrants who rightfully deserve asylum.

4.3 Social-economic exclusion

The policing of migrants is characterized by tactics that reinforce their isolation and exclusion out of the community in the short run. This isolation may lead to migrants living in the margins of the society where policing them becomes even more difficult. It will also reproduce a very unequal society where some social groups can access education, jobs and health services while others remain poor and underprivileged. Having come from a past marked by inequality, it is doubtful

whether South Africa would want to travel this path once more. As the recent examples in European cities demonstrate, isolated migrant communities who live in poor neighbourhoods eventually develop resentment and may cause great public disorder. Since neither the Police nor the government knows how long some of the migrants will be here a more open policy may help in avoiding future problems.

Migrants offer a critical link between South Africa and the rest of the world and the treatment of migrants will have a bearing on how it is perceived globally. As Gotz (2004) argues, today's migrants may be tomorrow's leaders of their own country and by according them appropriate treatment, the government will be building bridges to other parts of the world. By marginalizing migrants, the South Africa is losing the opportunity to exploit the skills that migrants come with. The findings of this research that most migrants have at least tertiary education, and that of Landau and Jacobsen found that migrants create employment opportunities even for South Africans point to the kind of skills that majority of migrants have (Landau and Jacobsen, 2004).

4.4 Crime prevention

The crime fighting strategy of the police organization suffers irreparable damage when officers fail to follow or act on crime reports. Furthermore, police complicity in some of these criminal activities may be assumed by those reporting while it may just be ineptitude on the part of the police officers or a deliberate attempt to marginalize migrants. It may also imply that the police believe that migrants are actually guilty of the crimes. That the criminals can routinely get away with offences make them much bolder and daring and soon they may graduate from just

petty to much more serious and violent crime. Information provided by nationals and migrants about crime should therefore be given equal weight and followed to its logical conclusion. Winning the confidence and collaboration of migrants may be a useful way of preventing crime given that migrants are more prone to criminal attacks than foreigners. The fact that police do not seem to give them protection makes them more vulnerable than nationals. The fact that foreigners and nationals alike have no faith to report crime to police means the police is losing useful information from the public that can help them in fighting crime.

The fact that none of the migrants in this study have been arrested for criminal related activities also does not mean that they do not engage illegal activities. It may imply that the police pay more attention to their role of gate-keeping at the expense of preventing crime. Since migrants know that all the police will ask for is documentation and a bribe, even potential criminals within the migrant community will easily escape police notice.

Because of unfriendly policing and hostile public attitude, migrants are forced to live in the shadows where they have little or no interaction with formal institutions. This means that they cannot access social services, like education, jobs and decent accommodation. But it also means that the government may be forfeiting skills and the potential provided by these migrants. Having been forced to live like that for along time some of the migrants may actually start engaging in unlawful activities which would make the perception that migrants are criminals become a self-fulfilling prophesy. For government officers and service providers it is critical not only to know the number of people under their jurisdiction but their internal

diversity as well. Cultural preferences, religion and variables that frame social relations matter especially in areas as visible and important as policing.

Conclusion

In an attempt to examine the significance of legal documents in the protection of migrants this study compared the experiences of Somali migrants and nationals in Johannesburg. My hypothesis that documented migrants benefit from police protection as provided by the law was not validated by the research findings. Despite having one of the most comprehensive human rights oriented constitution not to mention Refugee and Immigration Acts that reflect best standard practices, policing of migrants in South Africa is characterized by discrimination and extralegal activities.

In analyzing why this paradox exists, I have argued that although theoretically the law is supposed to guarantee migrants' protection, the political social context in South Africa has denied them the benefit of their legal status. First, the law has given the police dual responsibilities that conflict with each other, second, the anti - migration sentiment among the public and police officers have made migrants 'police property', third there is evidence of corruption at the DHA which undermines the validity of legal documents making police suspicious of migrants. While police routinely stop migrants to verify their legal status, their aim is not entirely that of enforcing the law but soliciting for bribes. And finally the police service itself faces transformation challenges that undermine its ability to deliver effective services. Although changes were envisioned that would make the police conform to liberal democratic ideals some of these changes are blamed for the lack

of police efficiency. The carry over of personnel from the previous regime and the lack of retraining and retooling to prepare the SAPS for the new responsibilities hampers the complete transformation of the police. While the democratic changes instituted the respect of human rights and the enjoyment of basic rights, migrants have been prevented from enjoyment of such rights by discriminative policing. Migrants have been isolated so much so that they can not access some of the institutions that can not mediate between them and police officers .By creating room for police officers to treat migrants differently the law also denies them the opportunity to enjoy liberties enjoyed by citizens. In essence the law creates a separate social group that must be treated differently.

International migration indeed has brought new challenges to civil policing. There is ample evidence to suggest that migrants face discrimination because they challenge the social order in the host community which in turn pressures government institutions such as the police force to play the role of gate-keeping. This in practice allows the policing of migrants to be done with little regard to the demands of the law. I have argued that since legal documentation seems to be of little significance in policing there must be other variables which have a significance bearing on policing which should be the subject of further research. Such differentiated policing may have the long term effect of socially isolating migrants who will then live continuously in the margins of the community. But it also undermines the tenets of liberal democracy which privileges the rule of law above everything else. This is at variance with the long term vision of creating a South Africa where all groups enjoy equal treatment.

References:

- Algotsson, Emma and Klaaren, Jonathan. 2002. 'Policing Migration; Immigration Enforcement and Human Rights in South Africa', *Migration Policy Brief No. 14*, Southern Africa Migration Project. Cape Town.
- Algotsson, Emma. 2001. Submission of Comments on the Immigration Bill No 22439 of 29 June 2001, Portfolio Committee for the Department of Home Affairs, Lawyers for Human Rights, South Africa
- Bailey, Sarah. 2004. 'Is legal Status enough? ; Legal Status and Livelihood Obstacles for Urban Refugees: MA thesis, Fletcher School.
- Baldwin-Edwards, Martin. 2001. Crime and Migrants: Some Myth and Realities. Paper Presented during the International Police Association, 17th Greek section Conference, Samos, 4th may 2001.
- Bhamjee, Abida and Klaaren, Jonathan. 2004. 'Legal problems facing refugees in Johannesburg' (Ed) Landau, L. *Forced Migrants in the New Johannesburg: Towards a Local Government Response*. pp 54-60.
- Bruce, David. 2002. *New Wine from an Old Cask? The South African Police Service and the Process of Transformation*. Paper presented at John Jay College of Criminal Justice, New York, 9 May.
- _____. 2002. *Police Brutality in Southern Africa – A Human Rights Perspective* Mwanajiti, N., Mhlanga, P., Sifuniso, M. Nachali-Kambikambi, Y., Muuba, M and Mwananyanda, M (eds.). 2002. Inter-African Network for Human Rights and Development (Afronet).
- _____. 1997. Community Safety and Security: Crime Prevention and Development at the Local Level. *African Local Review Vol.6. No.4*

- Castles, Stephen and Miller, Mark. 2003. 'The State and International Migration: The Quest for Control' Pp. 94-121 in *The Age of Migration: International Population Movements in the Modern world*. Houndmills: Palgrave Macmillan
- Chan, Janet. 1995. 'Police Accountability in a Multicultural Society'. *Multiculturalism and the Law*. Australian Institute of Criminology, Canberra.
- Crisp, Jeff .2000. 'Mind the gap! UNHCR, humanitarian assistance and the development process', Paper presented at Centre for Migration Studies Conference 'Commemorating UNHCR at 50: Past, Present and Future of refugee assistance', NY 1-22.
- Chimni, B S. 2002. Aid, Relief and Containment: The first Asylum Country and Beyond. *International Migration*, Vol.40 (50), Blackwell Publishers, Oxford.
- Crush, Jonathan and Macdonald, David. 2002. 'Transitionalism and African Migration to South Africa'. Migration Policy Brief No 9. Southern Africa Migration Project, Cape Town.
- Crush, Jonathan and Williams, Vincent. 2001. Making Up the Numbers: Measuring "Illegal Immigration" to South Africa. South African Migration Project. *Migration Policy Brief No 3*. Cape Town.
- Crush, Jonathan and Williams, Vincent. 2003. 'Criminal Tendencies: Immigrants and Illegality in South Africa.' *Migration Policy Brief No 10*, Southern Africa Migration Project, Cape Town.
- Dixon, Bill and Rauch, Janine. 2004. Sector Policing: Origins and Prospects. *Institute of Security Studies Monograph*, Series No.97.
- Dixon, David. 1999. Reform, Regression and the Royal Commission into the NSW Police Service in "*A culture of Corruption, Changing An Australian Police*

Service” (Ed.) Dixon David. Institute of Criminology Monograph series, Hawkin Press NSW.

Edwards, Charles J. 1999. ‘Changing Policing Theories for the 21st Century Societies’. Federation Press, Annandale.

Gibney, Mathew J. 1999. ‘Liberal Democratic States and Responsibilities to Refugees,’ *American Political Science Review*, March 1999.

Gibney, Mathew J and Hansen Randall. 2003. Deportation and the Liberal State: the Forcible Return of Asylum seekers and Unlawful Migrants in Canada, Germany and United Kingdom. *New Issues in Refugee Research Working Paper No.77*

Gotz, Graeme. 2004. “The Role of Local government Towards Forced Migrants”. In ‘(ed) Landau, L. *Forced Migrants in the New Johannesburg: Towards a Local Government Response*” University of Witwatersrand.

Griffith, David. 2003. Forced Migration Online Country Guide, Somalia <http://www.forcedmigration.org/guides/fmo016/fmo016.pdf>

Groot, Fedde. 2004. Challenges of the UNHCR’s Programme for Urban Refugees in South Africa. In ‘(ed.) Landau, Landau. *Forced Migrants in the New Johannesburg: Towards a Local Government Response*” University of Witwatersrand.

Handmaker, Jeff. 2002. ‘Evaluating Refugee Protection in S. Africa’, *Migration Policy brief No. 7*, Southern Africa Migration Project, Cape Town

Hornberger, Julia 2004. “My Police-Your Police”; The Informal Privatization of the Police in the Inner City of Johannesburg. *African Studies*. Vol.63.2 (213-230).

Horst, Cindy. 2001 “Vital links in Social Security: Somali Refugees in Dadaab camps, Kenya” *New issues in Refugee Research Working Paper 38*. <http://www.unhcr.ch/refworld/Pubs/Pubon.html>.

- Human Rights Watch. 1999. In the name of Security; Forced Round ups of refugees in Tanzania. Vol.11.4
- Human Rights Watch. 2002. Hidden in Plain View: Refugees Living Without Protection in Nairobi and Kampala. <http://www.hrw.org/reports/2002/kenyugan/>.
- Human Rights Watch. 1998. "PROHIBITED PERSONS" Abuse of Undocumented Migrants, Asylum-Seekers, and Refugees in South Africa.
- International Organization for Migration. 2000. Human Rights of migrants: Challenges of the new decade; *International Migration Quarterly Review* Vol. 38 No. 6 Special issue 2/ 2000
- Kibreab, Gaim. 2003. Displacements, host governments' policies and -constraints on the reconstruction of sustainable livelihoods. UNSECO, Blackwell publishers, Oxford.
- Kundnani, Arun. 2005. ID Cards: Implications for Black, Minority Ethnic, migrant and refugee communities. Institute for Race Relations, UK
- Kirisci, Kemal. 2004. Reconciling refugees protection with efforts to combat irregular migration: the case of Turkey and the European Union. *Global Migration Perspectives No.11*. Geneva
- Landau, Loren. 2005a. Urbanization, Nativism and the Rule of Law in South African 'Forbidden' Cities. *Research on Immigration and Integration in the Metropolis*. Vancouver Centre of Excellence. Working Paper Series n. 5-05.
- _____. 2005b. Myth and Decision in South African Migration Management and Research .Paper prepared for: African Migration Alliance Workshop 10-11 March 2005 Pretoria, South Africa
- _____. 2004a. Democracy and discrimination: Black Africans Migrants in South Africa. *Global Migration perspective No.5*

- _____. 2004b. "Immigration and the State of Exception: Nativism, Security, and Sovereignty in Refugee affected areas" Paper presented at 47th Annual Meeting of the African Studies Association, New Orleans 11-14 Nov.2004.
- Landau, Loren and Jacobsen, Karen. 2004. Refugees in the New Johannesburg. *Forced Migration review* 19. 44-46
- Lawyers for Human Rights. 2005. Press Release 14th November 2005
- Mamdani, Mahmoud. 2002. African states, Citizenship and War: A case study. *International Affairs Vol.78 (30 pp.493-506*
- Manning, Peter K. 2004. Some Observation Concerning a Theory of Democratic Policing. *Paper presented during Police and Violence Conference in Bochom Germany, April 2004.*
- Massey, Douglas S. 2003.'A brief History of International Migration' Conference on African Migration in Comparative Perspective, Johannesburg 4-7 June 2003, pp.1-41.
- Mazrui, Ali A. 2002. Conflict in Africa, Overview, unpublished paper
- Morten, Madsen L. 2004. Living for Home: Policing Immorality among undocumented migrants in Johannesburg. *African Studies*. Vol.63.2. (172-192).
- Miller, John. 2000. 'Sharing the Burden: Towards the Convergence of Refugee Protection and State Security.' *Refugee Studies Centre Working Paper series No. 4* Oxford University.
- Newman, Edward and Van Selm, J. (Eds.). 2003. Refugees and Forced Displacement: International Security, Human Vulnerability and the State, United Nations University press.
- Oome, Barbara. 2004. Vigilantism or Alternative Citizenship? The Rise of *Mapogo a Mathamaga*. *African Studies*. Vol.63.2. (153-171)

Palmary Ingrid, Rauch Jenine and Simpson Graham. 2005. "Violent crime in Johannesburg", in (eds.) R Tomilson, R Beauregard, L Bremner, and X Mangcu, *Emerging Johannesburg: Perspective on the Post Apartheid Crime*. Routledge, London

Palmary, Ingrid. 2004. "City policing and Forced Migrants in Johannesburg" '(ed) Landau, Landau. *Forced Migrants in the New Johannesburg: Towards a Local Government Response*" Pp 61-69.

Palmary, Ingrid. 2002. Refugees, Safety and Xenophobia in South African Cities: The Role of Local Government. Research Report for the Centre for the Study of Violence and Reconciliation. <http://www.csvr.org.za/pubslst/pubsurb.htm>

Pelser, Eric, 2000. Operation Crackdown: The new policing strategy. NedBank ISS Crime Index Vol. 4. 2 2000

Reiner, Robert. 1985. The Politics of the police. Wheatsheaf Books Limited. Sussex
Refugee survey quarterly: April 2000.

Republic of South Africa. 2005. Statistics South Africa. <http://www.statssa.gov.za/> (30/01/2006).

_____. Refugees Act No. 130 of 1998

_____. The Constitution of the Republic of South Africa, Act No. 108 1996

_____. Immigration Act No. 13 of 2002

_____. Aliens Control Act 1991

_____. South African Police Service Act No. 68 of 1995

Scharf, Wilfred and Nina, Daniel (Eds.). 2001. The other Law: Non-State ordering in South Africa, Juta Law, Lansdowne.

- Segale, Tebogo. 2004. Forced Migrants and Social exclusion in Johannesburg ‘(ed) Landau, Landau. *Forced Migrants in the New Johannesburg: Towards a Local Government Response*” University of Witwatersrand.
- Shaw, Mark. 1997. South Africa: Crime in Transition. *Institute for Security Studies*, Occasional Paper number 17.
- Simpson, Graham. 2004. *A Snake Gives Birth to a Snake: Politics and crime in the transition to democracy in South Africa*. In Dixon, B. & van der Spuy, E. (eds.), *Justice Gained? Crime and Crime Control in South Africa's Transition*. Cape Town: Juta Academic Publishers
- South African Human Rights Commission, 1999. Report into the Arrest and Detention of Suspected Undocumented Migrants
- Skolnick, Jerome H. 1975. *Justice Without Trial: Law Enforcement in Democratic Society*. 2nd Ed. John Wiley and Sons, Inc. New York
- Story, Brett. 2005. Politics as Usual: The Criminalization of Asylum Seekers in the United States of America. *Refugee Studies Centre, Working Paper Series* No.26. Oxford University
- Strauss, Anselm and Corbin, Juliet. 1990. *Basics of Qualitative Research*. Newbury Park, CA: Sage
- Tilly, Charles. 1985 “War Making and State Making as Organized Crime” in Peter Evans, Dietrich Rueschemeyer and Theda Skocpol (Eds.) *Bringing the State back In*. New York: CUP.
- Tlou, Joyce. 2004. Challenges Facing Forced migrants in Johannesburg and the Non-Governmental Response. ‘(ed.) Landau, Landau. *Forced Migrants in the New Johannesburg: Towards a Local Government Response*” University of Witwatersrand.

- Turton, David. 2002. 'Forced displacement and the Nation State' Pp. 19-67 in J. Robinson (Ed.) *Development and Displacement*. Oxford: The Open University.
- Turton, David. 2003. 'Conceptualizing Force Migrants' *Refugee Studies Centre working Paper No.12*. Oxford: Queen Elizabeth House.
- UNHCR. 2001. "Ten Refugee protection concerns in the aftermath of September 11th," Press Release, Geneva.
- Willems, Roos. 2003. *Embedding the Refugee experience: Forced Migration and Social Networks in Dar es Salaam, Tanzania*. PhD thesis, University of Florida.
- World Bank. 2004. *Country Report*.