

Xenophobia and Problems Relating to It

**Hosted by the South African Human Rights Commission with the
Portfolio Committees of the Departments of Foreign Affairs and
Home Affairs**

Johannesburg, 1-3 November 2004

Paper prepared for the South African Human Rights Commission by:

Loren B. Landau, PhD

Research Coordinator and Acting Director
Forced Migration Studies Programme
University of the Witwatersrand
landaul@migration.wits.ac.za

Kaajal Ramjathan-Keogh

Legal Counsellor, Refugee Rights Project
Lawyers for Human Rights
kaajal@lhr.org.za

Gayatri Singh

Research Fellow
Forced Migration Studies Programme
University of the Witwatersrand
gsingh@migration.wits.ac.za

Executive Summary

As a result of long-standing patterns of labour migration, conflict and economic hardship in neighbouring countries, and South Africa's peace and prosperity, the country has become a primary destination and transit point for migrants from throughout the region. These numbers are only likely to increase in coming years. For South Africa to achieve its promises of human rights, tolerance, and prosperity, it must develop norms, laws, and practices that can capitalise on the contributions of foreigners to the country; promote the country's reputation abroad; and protect the rights, security, and livelihoods of all of South Africa's residents. Achieving democratic, rights-based migration policy in South Africa is extraordinarily difficult however, because **South Africa is a highly xenophobic society, which out of fear of foreigners, does not naturally value the human rights of non-nationals.**

Although attitudes towards non-nationals—especially black foreigners—vary across South Africa's socio-economic and ethnic spectrum, there is strong evidence that non-nationals living and/or working in South Africa face discrimination at the hands of citizens, government officials, the police, and private organizations contracted to manage their detention and deportation. Reasons for this vary and include, *inter alia*, fear of economic competition, a belief that foreigners are inherently criminal and a drain on public resources. Foreigners have also been made the scapegoat used to justify the shortcomings of elected leaders. This results in non-nationals facing disproportionate difficulties in accessing employment, accommodation, banking services, and health care. It has also legitimised extortion, corruption, and the arbitrary arrest and detention of suspected non-nationals (including children and dark skinned South Africans). Foreigners are also disproportionately the victim of crime.

South Africa has made commitments to all who live in the country, regardless of citizenship, nationality, or country of birth. Current legal practice and legislation now under consideration threaten its ability to deliver on these promises. As the country considers plans for institutional and policy reform, there are, therefore, strong reasons for including the rights of foreigners among the country's priorities. These include South Africa's ability to:

- promote economic development and fill its skills gap;
- ensure the health of non-nationals and citizens;
- achieve administrative justice and protect the physical security and human rights of non-nationals and citizens;
- promote regional integration and prosperity.

The promotion of NEPAD and similar regional projects will increase the numbers of non-nationals living in South Africa and the number of South Africans living outside the country. Such mobility will require a harmonisation of immigration procedures and efforts to facilitate people's cross-border movements. While political leaders trumpet the movements of capital, information, culture and highly skilled migrants, little is said about the other forms of movement that will necessarily take place. Coming to grips with these challenges will require new ways of thinking about public policy. This will be felt most immediately amongst those responsible for urban and immigration management, but will almost certainly call for greater collaboration among local, provincial, and national spheres of government. As these deliberations take place, there will be a need to move beyond long-standing stereotypes. There must also be an effort to transform government priorities: to move beyond a mindset that privileges control to one that can ensure that South Africa will, indeed, belong to all who live in it.