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Migration Policy and Xenophobia in the New South Africa: The Rise of Anti-Foreigner Sentiments and Apartheid's Inherited Policy Framework, 1994-2008

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This paper engages with transnational migration to South Africa and the immigration policies of the democratically elected ANC government. It is the aim to highlight the spill-over effects of migration policies designed during Apartheid on the anti-foreigner climate in South Africa after 1994, exemplified most obviously by the continuation of the Aliens Control Act of 1991. There is reason to believe that migration to and xenophobia in South Africa are closely intertwined phenomena which should be analyzed in tandem. Therefore, the xenophobic violence in 2008 serves as a reference point against which the policy analysis unfolds. The argument made in this paper is that the initial reluctance by the post-Apartheid government to address Apartheid's continuities in the migration legislation of the new South Africa encouraged a growing anti-foreigner sentiment that erupted in early 2008. However, this does not mean that explanations of xenophobia rest only on single factors. Instead, a comprehensive analysis must include a multitude of political and socio-economic factors, with an engagement of the continuities of Apartheid's immigration policies as one of them.

Introduction

There are quite a number of different factors that play into the decision of a group of people to begin migration, not limited to, but often reliant upon the political/economic situation in their home region. Today, there might certainly be no village, city, region or much less a state that is not witnessing aspects related to international migration, often being either a sender or a recipient of human beings. Southern Africa and South Africa in particular are no exception.¹ Since the

¹ Aurelia Segatti, "Migration to South Africa: Regional Challenges versus National Instruments and Interests," in *Contemporary Migration to South Africa: A Regional Development Issue*, ed. Loren Landau and Aurelia Segatti (Washington: World Bank 2011), 9-30.

early 1990s, South Africa has experienced, like any other African country, diverse migration configurations and serves today as a place of origin, transit, and destination for legal migrants, as well as those coming without papers or visa.²

In this paper, I engage with migration to South Africa in the post-Apartheid period after the piecemeal end of Apartheid. The occurrence of rising anti-foreigner sentiment within the country is likewise analyzed, because there is reason to believe that migration to and xenophobia in South Africa are closely intertwined phenomena. With regard to the period analyzed in this paper, the first democratic elections in 1994 constitute an important caesura in the recent history of the country and therefore serve as an adequate starting point. However, ten years had to pass until the first post-Apartheid Immigration Bill was implemented by the ANC government, with some scholars going as far to call this period a “lost decade” for the country with regard to immigration policy.³

This paper sets out to highlight the spill-over effects of immigration policies designed during Apartheid on the anti-foreigner climate in democratic South Africa after 1994, exemplified most obviously by the continuation of the Aliens Control Act. The xenophobic violence in 2008 serves as a reference point against which this analysis unfolds.

However, as some scholars argue, it is difficult to set an exact date for the end of Apartheid, therefore the latter is not interpreted as a sudden rupture but rather as an incremental transformation from the late 1980s to the elections in 1994.⁴ But even this milestone does not signal the end of a process which some argue has taken much longer, especially concerning the change in people’s perceptions.⁵

The focus on policies is especially interesting because, as Anderson argues, the actual level of immigration to South Africa has been lowered by laws, policies and procedures,⁶ quite to the contrary of what popular media discourses proclaim with regard to the allegedly rising number of foreigners. Most prominently this refers to the political crisis within Zimbabwe in 2007/08 during which migrants crossed the border into the Republic of South Africa. The numbers of migrants became grossly exaggerated by the media which referred to a “human tsunami”

² Aderanti Adepoju, “Internal and international migration within Africa,” in *Migration in South and Southern Africa: Dynamics and determinants*, ed. Pieter Kok, Derik Gelderblom, John O. Oucho and Johan van Zyl (Cape Town: HSRC Press 2006), 26-46.

³ Jonathan Crush and Belinda Dodson, “Another Lost Decade: The Failures of South Africa’s Post-Apartheid Migration Policy,” *Tijdschrift voor Economische en Sociale Geografie* 98 (2007): 437.

⁴ Holly E. Reed, “Moving Across Boundaries: Migration in South Africa, 1950-2000,” *Demography* 50 (2013): 74.

⁵ Segatti, *Migration to South Africa*, 9-11.

⁶ Barbara A. Anderson, “Migration in South Africa in comparative perspective,” in *Migration in South and Southern Africa: Dynamics and determinants*, ed. Pieter Kok, Derik Gelderblom, John O. Oucho and Johan van Zyl (Cape Town: HSRC Press 2006), 99-105.

coming from neighboring Zimbabwe. This in turn had an impact on the anti-foreigner sentiment in South Africa which culminated a little later.⁷

In May 2008, a wave of violent attacks aimed at migrants from other African countries hit South Africa's metropolitan areas, spreading rapidly to almost every province in the country. The devastating attacks led to the death of 62 people,⁸ left hundreds wounded and several thousand displaced.⁹ Most of South Africa's population, along with the rest of the world, were caught by surprise when international media covered the event.¹⁰

In this paper an emphasis is placed on migration from within southern Africa,¹¹ in particular those from the neighboring countries of Lesotho, Mozambique, Namibia, Swaziland, Botswana and Zimbabwe. Subject of analysis are the South African national policies vis-à-vis international cross-border migration.

In order to get an idea of the significance of immigration into South Africa, and of South African attitudes in response, it is important to give "[...] reference to the migration history of the country and the Southern African region".¹² Accordingly, it is imperative to acknowledge century-old flows of human beings migrating to certain sectors of the country as well as the long tradition of return migration, especially in the first half of the twentieth century. Over time, the migrant labor system stretched across the whole region to satisfy the workforce demand of the mines and farms in Zimbabwe, Namibia, Zambia, Swaziland and Botswana, while its core had always been in South Africa.¹³

The regime change in South Africa and the first black government in power stirred the expectations in neighboring countries that the new government would facilitate easy migration from within the region, because:

⁷ Jean Pierre Misago, "Disorder in a changing society: Authority and the micro politics of violence," in *Exorcising the Demons within: Xenophobia, Violence and Statecraft in Contemporary South Africa*, ed. Lauren B. Landau (Johannesburg: Wits University Press 2011), 91.

⁸ More than a third of the victims were South African citizens.

⁹ Judith Hayem, "From May 2008 to 2011: Xenophobic Violence and National Subjectivity in South Africa," *Journal of Southern African Studies* 39 (2013): 78.

¹⁰ Christine Fauvelle-Aymar and Aurelia Segatti, "People, space and politics: An exploration of factors explaining the 2008 anti-foreigner violence in South Africa," in *Exorcising the Demons within: Xenophobia, Violence and Statecraft in Contemporary South Africa*, ed. Lauren B. Landau (Johannesburg: Wits University Press 2011), 56.

¹¹ In other words, the focus lies on migration from within the Southern African Development Community (SADC) which, besides South Africa, consists of the following member states: Angola, Botswana, Democratic Republic of the Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, Swaziland, Tanzania, Zambia and Zimbabwe.

¹² Aurelia Segatti, "Reforming South African Immigration Policy in the Postapartheid Period (1990-2010)", in *Contemporary Migration to South Africa: A Regional Development Issue*, ed. Loren Landau and Aurelia Segatti (Washington: World Bank 2011), 31.

¹³ Oliver Bakewell and Hein de Haas, "African Migrations: Continuities, discontinuities and recent transformations", in *African Alternatives*, ed. Leo de Haan, Ulf Engel and Patrick Chabal (Leiden: Brill 2006), 13.

[...] countries had linked their fate to that of the blacks in South Africa, supported their liberation struggle and engaged in an armed struggle against Apartheid. It was hoped that democratic South Africa would acknowledge the contribution made by the Southern African region [...].¹⁴

Indeed, the argument made in this paper is that the continuation of Apartheid migration policies, such as the Aliens Control Act, negatively impacted migrants entering South Africa, who expected better treatment from the new black government in power. Hostile legislation was replicated by citizens' perception of entitlement and resulted in actions against actual and perceived foreigners. This in turn led to a prevailing climate of xenophobia within the country which culminated in 2008.

By now, it is an established fact that following the end of Apartheid, South Africa has become a center for migration, both within the region and for the rest of the continent.¹⁵ That being said, it is not clear how many people have migrated into the country since the demise of Apartheid and varying estimates of the number of migrants living in South Africa exist. Indeed, there is widespread agreement among scholars that more detailed research needs to be carried out in order to formulate more reliable data, as many believe that the numbers used by the media and in public discourses are grossly exaggerated.¹⁶

Taking a closer look at migration policies during the first decade following the end of minority-rule will help explain the high levels of xenophobia in post-Apartheid South Africa. Therefore, the underlying research question for this essay is: what are the continuities and discontinuities in the migration policies of the 'new' South Africa after 1994, and how exactly are they related to xenophobia?

As suggested by most of the literature aforementioned, a profound analysis of these enduring anti-foreigner sentiments should bring in a historical dimension. Superficial explanations by the media have the tendency to exacerbate anti-foreigner sentiments, thus, creating a climate in which reproduced stereotypes are often taken for granted.¹⁷

¹⁴ Reno Modi, "Migration to Democratic South Africa," *Economic and Political Weekly* 38 (2003): 1759.

¹⁵ Bakewell and de Haas, *African Migration*.

¹⁶ Audie Klotz, "Migration after apartheid: Deracialising South African foreign policy," *Third World Quarterly* 21 (2010): 838; Modi, *Migration to Democratic South Africa*; John O. Oucho, "Cross-border migration and regional initiatives in managing migration in southern Africa", in *Migration in South and Southern Africa: Dynamics and determinants*, ed. Pieter Kok, Derik Gelderblom, John O. Oucho and Johan van Zyl (Cape Town: HSRC Press 2006), 47-70; Segatti, *Migration to South Africa*, 32.

¹⁷ Francis B. Nyamnjoh, *Insiders and Outsiders: Citizenship and Xenophobia in Contemporary Southern Africa* (Dakar: Codesria Books 2006); Michael Neocosmos, *From 'Foreign Natives' to 'Native Foreigners': Explaining Xenophobia in Post-apartheid South Africa* (Oxford: Codesria 2010); Marguerite Duponchel, "Who's the alien? Xenophobia in post-apartheid South Africa," *WIDER Working Paper* 003 (2013): 1-35.

Migration to South Africa since the 19th century

Most literature on migration to South Africa agrees that the country attracted significant numbers of migrants since at least the mid-19th century – before colonial borders were drawn. This history of intra-regional migration is likely the main reason for the single regional labor market that emerged during the 20th century.¹⁸

In addition, the discovery of gold and diamonds brought thousands of people into the country who looked for work in the newly established mining sector. Back then, the majority of migrants came from within the SADC region, notably in the 1920s from Lesotho and Swaziland. These two countries later signed bilateral labor agreements with the Apartheid-state, which included the main characteristic of the migrant labor recruiting system, namely, that foreign workers would be denied the right to permanently work or reside in South Africa.¹⁹

Throughout the twentieth century, male cross-border labor migration dominated and became the most prevalent form of legal migration within the Southern African region.²⁰ However, as indicated by Bakewell and de Haas, a number of sectors such as farming, plantation work, domestic services, transport and construction lacked sufficient labor supply which resulted in the formal system of labor migration that predominately supplied mining labor, being supplemented by a “parallel system of irregular migration”.²¹

For a long time these patterns gave rise to a crisscrossing of often unskilled laborers between various sectors who were at the same time subject to an exploitative recruitment system.²²

After the National Party came into power in 1948, serious attempts to systematically plan the source and composition of immigration into the country manifested itself in the resulting policies. The Apartheid government favored a “temporary oscillatory migrant system” that saw labor migrants return to their country of origin after their contract had expired.²³

Increasingly since the 1950s and parallel to the temporary migration schemes for black people, the white minority government pursued a strategy that helped to attract and recruit skilled “ethnically desirable migrants”. The minority government perceived the need to enforce such policies because during this time the proportion of white South Africans with regard to the overall population was shrink-

¹⁸ Modi, *Migration to Democratic South Africa*; Jonathan Crush, Vincent Williams and Sally Peberdy, “Migration in Southern Africa” (Paper prepared for the Policy Analysis and Research Programme of the Global Commission on International Migration 2005): 1.

¹⁹ Marie Wentzel and Kholadi Tlabela, “Historical background to South African migration,” in *Migration in South and Southern Africa: Dynamics and determinants*, ed. Pieter Kok, Derik Gelderblom, John O. Oucho and Johan van Zyl (Cape Town: HSRC Press 2006), 71-77.

²⁰ Crush, Williams and Peberdy, *Migration in Southern Africa*, 2.

²¹ Bakewell and de Haas, *African Migration*, 14.

²² Oucho, *Cross-border migration*; Modi, *Migration to Democratic South Africa*.

²³ Adepoju, *Internal and international migration within Africa*, 40.

ing. These policies turned out to be successful when in the late 1960s more and more immigrants from Europe and North America settled in South Africa.²⁴

Throughout the twentieth century, the government actively sought white settlers but in turn rigorously limited Africans to only temporary forms of legal entry in accordance with the migrant labor system.²⁵ Therefore, South Africa was the only country in the region to pursue a proactive immigration policy up until the 1990s, albeit with a heavily racial undertone.²⁶

Migration since the end of Apartheid

The profound economic changes and the political restructuring of South Africa in the late 1980s and early 1990s impacted international migration patterns to the country. South Africa rapidly became a focal point not only for African migrants but increasingly also for people coming from Asia and Eastern Europe.²⁷

Following Apartheid, South Africa has seen a significant rise in the number of migrants from the SADC region, as well as other regions such as West Africa. Since the 1990s there has been a continuous southward flow of undocumented people forced to migrate due to difficult situations in their countries of origin. As a result, South Africa has become home to a growing Francophone and Nigerian community from West Africa.²⁸

Indeed, entrenched patterns of migration experienced significant changes as southern Africa increasingly became a region on the move. This holds true for both legal and undocumented border crossings, and resulted in new forms of mobility.²⁹ Interestingly, a large number of South African nationals who had lived in exile for decades due to the white-minority rule were also among those who moved to South Africa, having finally gained the possibility of repatriation.³⁰

For the majority of people in the region the political changes during this time created new opportunities for legal as well as undocumented migration into South Africa. This coincided with intensified scholarly engagement with the country. For a long time Apartheid had delayed the influx of these forms of migration while conceptual as well as analytical debates have hitherto mostly bypassed South Africa due to the country's international isolation.³¹

²⁴ Anderson, *Migration in South Africa in comparative perspective*, 99-102.

²⁵ Klotz, *Migration after apartheid*, 831.

²⁶ Crush, Williams and Peberdy, *Migration in Southern Africa*, 9.

²⁷ Segatti, *Migration to South Africa*, 9.

²⁸ Crush, Williams and Peberdy, *Migration in Southern Africa*, 13.

²⁹ Crush, Williams and Peberdy, *Migration in Southern Africa*, 1.

³⁰ Oucho, *Cross-border migration*.

³¹ However, outward migration from South Africa to other countries does not feature as much in the debate, except with regard to the "brain-drain"-phenomenon, which refers to the departure of skilled South Africans who leave the country for destinations such as Canada, Australia, New Zealand and America.

Consequently, the rising number of African migrants in the post-Apartheid period triggered harsh police reactions, and between 1990 and 2002 this led to the deportation of over 1.7 Million migrants, many of whom were of Zimbabwean and Mozambican origin and faced more than one removal, because they had returned after their first deportation.³²

Although this paper primarily focuses on immigration into South Africa, it is of significance to mention that following the end of the Influx Control Act in 1986, an Act which aimed at restricting the number of Africans in urban areas, the country experienced a dramatic increase in domestic migration since the non-white population in South Africa was free to move and this largely influenced rural-urban migration.³³

In the 1990s this gave rise to a situation in which two streams of domestic and international migrants were competing, both displayed similar forms of behavior and expectations, albeit enjoyed different degrees of legal protection.³⁴

What was new with regard to migration in the decade following the political transition was the scale and diversity of origins of immigrants.³⁵ Additionally, Crush and McDonald point to the grossly exaggerated numbers of illegal immigrants in media and popular discourses, highlighting the fact that by far the majority of people from neighboring countries entered legally through the official border posts, equipped with the necessary documentation. There was absolutely no reason for government officials to speculate about the consequences of a rising number of migrants during the first decade after the end of Apartheid, as many of them preferred to go back to their country of origin after having fulfilled a work-related contract.³⁶

At this point, it is helpful to keep in mind that the proportion of African immigrants to the total amount of immigrants increased from 11% in 1990 to 40% in 1999. This is no surprise, because the new ANC government after 1994 discontinued the Apartheid policy of attracting skilled white people. However, the absolute number of African immigrants was even smaller in 1999 than at the beginning of the decade.³⁷ Irrespective of the skin color of the people migrating into South Africa, their overall number decreased and this therefore runs counter to the stereotype of more and more people entering the country in the first decade after the end of Apartheid.

³² Crush and Dodson, *Another Lost Decade*, 446.

³³ Bakewell/de Haas, *African Migration*, 14.

³⁴ Jonathan Crush and David A. McDonald, "Transnationalism and New African Immigration South Africa (Ontario: South African Migration Project/Canadian Association of African Studies 2002).

³⁵ Adepoju, *Migration in South Africa in comparative perspective*.

³⁶ Crush and McDonald, *Transnationalism and New African Immigration South Africa*.

³⁷ Crush and Dodson, *Another Lost Decade*, 440.

Explaining xenophobia since the end of Apartheid

South Africa has experienced flows of migration from its African neighbor-states for decades and their share of the total amount of refugees even increased in the early 1990s when the Apartheid-system came to an end.³⁸

Parallel to the rising number of people coming to South Africa from the continent, domestic anti-foreigner sentiments were growing as well. Throughout the 1990s and up to the notorious violence in May 2008, people of African origin were killed in the country because of their assumed non-South African nationality and appearance.³⁹

Already in December 1994, the same year in which the first democratic elections were hailed as a success and portrayed as the culmination of the transition process, youth groups violently expelled people of foreign descent from Alexandra.⁴⁰ After the end of the white minority regime, which exemplified the defeat of the common enemy of the region, the stereotype threat of outsiders had emerged again.⁴¹

During the years that followed a xenophobic discourse grew steadily, leading to a situation in which “South Africans [...] developed a sense of legitimate entitlement linked to their national being”.⁴² Alarmed by high levels of physical violence against foreigners, the African Peer Review Mechanism report on South Africa in 2007 warned about prevailing xenophobia in the country against people from other parts of Africa only a year before the notorious attacks took place.⁴³

Flockemann et. al. argue that over the two decades since the end of Apartheid, xenophobia became almost a banal thing that is abnormal in its normality:

This apparent ordinariness also suggests complicity involving both those who are subjected to the situation, and those who do nothing to change it.⁴⁴

In early 2008, foreigners were again subject to violence, with xenophobia reaching a new intensity that led to the death of thirteen people before the events

³⁸ Nyamnjoh, *Insiders and Outsiders*.

³⁹ Neocosmos, *From 'Foreign Natives' to 'Native Foreigners'*.

⁴⁰ Alexandra is a township in Johannesburg (Gauteng).

⁴¹ Duponchel, *Who's the alien*, 7.

⁴² Hayem, *From May 2008 to 2011*, 85.

⁴³ “APRM Country Review Report 2007 Republic of South Africa,” last modified July 14 2014, <http://www.issafrica.org/uploads/SAREPORT14MAY07.PDF>.

⁴⁴ Miki Flockemann, Kudzayi Ngara, Wahseema Roberts and Andrea Castle, “The everyday experience of xenophobia: performing *The Crossing* from Zimbabwe to South Africa,” *Critical Arts: North-South Cultural and Media Studies* 24 (2010): 249.

of May 11.⁴⁵ After the attacks intensified in May 2008, the South African army was employed in a domestic affair for the first time since the end of Apartheid.⁴⁶

There is an abundance of explanations in the academic literature used in this essay, addressing the question as to why there are such high levels of xenophobia in South African society. Possible factors that could explain the xenophobic patterns in the post-Apartheid state range from low levels of income, unemployment, as well as the political discourse within the government.⁴⁷ Undisputed is that xenophobia is the result of a long process, not just appearing overnight.⁴⁸

A very common explanation for xenophobia refers to the relative deprivation and poverty of the majority of South Africa's population, though, as Hayem argues, this provides no sufficient explanation for the start of the violence. Most of the underprivileged areas remained calm and at times even protected foreigners. There was absolutely no indication that the violence against actual and perceived foreigners was planned by a single group or an individual.⁴⁹

Despite this, the phenomenon's complexity cannot be easily distinguished from the broader reality of inequality and poverty in South Africa.⁵⁰ Therefore, many scholars favor an analysis of long-term structural reasons when explaining the rise of xenophobia in general, and the outbreak in 2008 in particular. The majority of scholars agree that with the ANC leading the country since 1994, profound changes in the nationalist discourse on citizenship have taken place. They especially point to the discourses on indigeneity that have been allowed to dominate. Here the root causes for xenophobia can be found.⁵¹

Particularly, as Neocosmos argues, a change appeared in the meaning of citizenship, "from an inclusive understanding towards an exclusive notion of citizenship with regard to foreigners from the rest of Africa".⁵² Neocosmos also suggests that xenophobia should be understood as a political discourse that is related to the manner in which the concept of citizenship has evolved during the past fifty years as exemplified by the differential treatment of foreigners.⁵³

This observation is supported by what Kohnert and Kersting describe in their respective articles as a 'second' or 'new' wave of nationalism in Africa. They distinguish between a first wave of nationalism that was prevalent when states fought

⁴⁵ Duponchel, 2013.

⁴⁶ Dirk Kohnert, "Neuer Nationalismus und Fremdenfeindlichkeit in Afrika," *GIGA Focus Africa* 7 (2008): 2.

⁴⁷ Neocosmos *From 'Foreign Natives' to 'Native Foreigners'*.

⁴⁸ Norbert Kersting, "New Nationalism and Xenophobia in Africa – a New Inclination?" *Africa Spectrum* 44 (2009): 7-18.

⁴⁹ Loren B. Landau and Jean Pierre Misago, "Who to Blame and What's to Gain? Reflections on Space, State, and Violence in Kenya and South Africa," *Africa Spectrum* 1 (2009): 105; Hayem, *From May 2008 to 2011*, 86.

⁵⁰ Duponchel, *Who's the alien*, 8.

⁵¹ Nyamnjoh, *Insiders and Outsiders*; Neocosmos, *From 'Foreign Natives' to 'Native Foreigners'*.

⁵² Neocosmos, *From 'Foreign Natives' to 'Native Foreigners'*, 106.

⁵³ *Ibid.*, 106.

against a colonial oppressor and a second wave since the early 1990s. The latter's defining feature is a notion of exclusiveness with regard to citizenship and it is directed at individuals from another country living within the concerned state.⁵⁴

This new nationalism is based on the narrative of a shared history and "focuses on internal othering and excludes social groups within the society and their access to state resources",⁵⁵ thereby revealing its intrinsic xenophobic character.

Addressing the lack of empirical research that could help to explain xenophobia, Fauvelle-Aymar and Segatti in their study establish correlations between the violence and socio-economic profiles of regions. The results offer no support for theories claiming that the poorer the people the higher the likelihood of xenophobic violence. Instead, they observe that municipalities with a high proportion of black males are more prone to anti-foreigner violence. The same is valid for areas with a high heterogeneity of language and income amidst the population. What seems to be a less decisive factor are the levels of unemployment and the proportion of foreigners with regard to the South African citizens. These findings challenge earlier explanations which presented poverty as the sole driver behind xenophobia.⁵⁶

Another empirical study pursued by Misago focused on the role of local leadership. He stresses that a prevailing xenophobic climate made it easier to mobilize collective action against actual or perceived foreigners. The nature of local leadership therefore plays a decisive role in two ways. On the one hand, it may be responsible for attacks when anti-foreigner sentiments are exploited and leaders invoke anti-foreigner discourses to secure the support of the population in the next election. On the other hand, local leaders also called upon their constituency to shield foreigners from the wave of xenophobia; thus generalizations with regard to local leadership are hard to sustain.⁵⁷

Everything considered, a narrow focus on legal and political citizenship has encouraged tendencies of scapegoating and harassing foreigners throughout the years after Apartheid, leading to seemingly omnipresent xenophobic sentiments in present-day South Africa.

Change and continuity of immigration policies since 1994

The policy developments with regard to governing migration in the post-Apartheid era did not really reflect a move away from the security-driven approach towards immigration of the undemocratic predecessor. The laws on immigration following the political transition rather replicated Apartheid policies and in gen-

⁵⁴ Kohnert, "Neuer Nationalismus und Fremdenfeindlichkeit in Afrika"; Kersting, "New Nationalism and Xenophobia in Africa".

⁵⁵ Kersting, "New Nationalism and Xenophobia in Africa", 17.

⁵⁶ Fauvelle-Aymar/Segatti, *People, space and politics*, 75-77.

⁵⁷ Misago, *Disorder in a changing society*, 97-103.

eral remained largely detached from ongoing migration dynamics, including the actual skilled-labor demand needed in the country following the brain-drain of the mid-1990s. Quite to the disadvantage of migrants, the old systems of divide and rule continued to serve as antecedents in the new South Africa, especially with regard to the perception of outsiders, irrespective of whether they be from another part of the country or another African state.⁵⁸

However, before a more detailed engagement with the continuities follows, it is important to also look at the changes in migration policy.

While previously non-white people were only legally allowed into the country if they had a migrant worker status, this situation changed completely following the end of Apartheid, with all people regardless of their race now able to apply for visas.⁵⁹ Additionally, there was another important break with the past: unlike the Apartheid state, its democratic successor was strongly committed to the ideals of international refugee protection, thus, the government became a signatory to the United Nations and Organization for African Unity refugee conventions in 1995. This exemplified the new government's move away from the old regime's refusal to establish a refugee policy.⁶⁰

Ultimately, the new Immigration Act in 2002, which was amended in 2004, constituted the clearest shift away from the old legacy. The Act was a break with earlier policies insofar as it replaced, at least on paper, the anti-immigration discourse of the old government and led to a more economically-based set of policies in order to facilitate selective skills import.⁶¹

Nevertheless, there were also striking continuities in the immediate post-Apartheid period regarding the immigration policies of the white-minority government. Unfortunately the "two-gate-policy" of white skilled immigration and black contract labor migration remained largely in place, and while the race criterion was dropped in official policies, the exploitative character was maintained.⁶² Accordingly, the post-Apartheid government had more pressing issues to confront than immigration policies and as a result no substantial shifts occurred, whereas the continuities remained inscribed in migration legislation. The protection of rights, dignity and welfare of foreigners featured very low in the government's list of political priorities, even more so in the run-up to elections in which non-South Africans cannot partake.⁶³

⁵⁸ Landau and Misago, *Who to Blame and What's to Gain?*, 107; Segatti, *Reforming South African Immigration Policy*.

⁵⁹ Pieter Kok, Derik Gelderblom, and Johan van Zyl, "Introduction", in *Migration in South and Southern Africa: Dynamics and determinants*, ed. Pieter Kok, Derik Gelderblom, John O. Oucho and Johan van Zyl (Cape Town: HSRC Press 2006), 1-25.

⁶⁰ Jonathan Crush and David. A. McDonald, "Introduction to Special Issue: Evaluating South African Immigration Policy after Apartheid," *AfricaToday* 48 (2001): 1-13.

⁶¹ Crush and Dodson, *Another Lost Decade*, 441-442.

⁶² Segatti, *Reforming South African Immigration Policy*.

⁶³ Klotz, *Migration after apartheid*; Landau and Misago, *Who to Blame and What's to Gain?*.

The similarities are even more noticeable with regard to the policing of migration which had also not changed significantly. What was introduced by policy makers did little to protect human rights and the police tactics were strongly reminiscent of those employed by the old regime's forces.⁶⁴

All this was also reverberated in South African officials' attitudes towards migration policies at the regional level. Between 1994 and the early 2000s there were three serious attempts to institutionalize a "Schengen-style" agreement by the SADC-countries in order to regulate cross-border migration and to implement the principle of free movement across all the member countries. The response by South African officials to this effort was an immediate refusal to sign, which was echoed by the delegations of Namibia and Botswana, and resulted in the ultimate rejection. Policymakers in these three countries feared that more migrants would cross their borders to benefit from relatively smooth economic conditions and thereby competing with their citizens with regard to seeking employment.⁶⁵

Klotz goes even further when he states that since the Union of South Africa was established in 1910 there has been a trajectory up until the early 2000s in which policies sought to limit the inflow of people while heavily encouraging enforcement measures. With regard to the "lost decade" since the demise of the old regime he argues that: "democratization of the policy-making process [...] opens avenues for popular influence resulting – ironically – in the persistence of Apartheid-style immigration policy".⁶⁶ Thus, the public and most members of parliament seem to have supported harsh restrictions on immigration during this period and the legislative policies that followed fueled and reflected the popular sentiment "in a mutually reinforcing process which constitutes South African identity".⁶⁷

The Aliens Control Act

In the last days of the white minority-regime the de Klerk government poured significant financial resources into policing migration as well as controlling the refugee influx of that time. The Aliens Control Act of 1991 constituted one of the final pieces of legislation that emerged from the Apartheid state and proved difficult to transcend in the years to come. The newly elected government had not been able to quickly shake off the institutional legacy of Apartheid, and the alienation and marginalization of foreigners was as a result reinforced through this lack of transformation.⁶⁸

⁶⁴ Jonathan Klaaren and Jaya Ramji, "Inside Illegality: Migration Policing in South Africa after Apartheid," *Africa Today* 48 (2001): 35-47.

⁶⁵ Oucho, *Cross-border migration*; Crush and Dodson, *Another Lost Decade*, 449-450.

⁶⁶ Klotz, *Migration after apartheid*, 832.

⁶⁷ *Ibid.*

⁶⁸ Crush and McDonald, *Evaluating South African Immigration Policy after Apartheid*; Landau and Misago, *Who to Blame and What's to Gain?*, 104.

The Act itself introduced tough measures against unauthorized migrants coming to South Africa and ascribed unprecedented powers to immigration officers and the police with regard to entry, searching and arresting of migrants. In the years following the first democratic elections in South Africa, the Act continued to be a cornerstone of the country's immigration policy.⁶⁹

The Aliens Control Act, nicknamed "Apartheid's last act", remained in place for another decade in post-Apartheid South Africa until 2002 when it was finally reformed after being declared unconstitutional.⁷⁰ It is this legislative Act that deserves more attention, because it is such an overt result of the Apartheid-era and completely at odds with the human rights-based emphasis of the democratic successor, "that its longevity will always be something of a blot on the record of the post-Apartheid government".⁷¹ Thus, the act serves as a sign for the continuity of Apartheid-style migration policies after 1994, having endured during the five years of Nelson Mandela's presidency and half of Thabo Mbeki's first term.

The Aliens Control Act must be seen as the culmination of a number of policies that were designed by the late Apartheid government to prevent the influx of migrants from neighboring African countries. During the 1970s and the 1980s civil wars were prevalent in Angola, Mozambique, Zimbabwe and Northern Namibia, and the white South African politicians feared that these conflicts would trigger large scale flows of refugees from within the SADC region.⁷²

As a result, immigration to South Africa continued to be governed by the Act throughout the 1990s⁷³ and was not repealed until 2002 when the new Immigration Act was passed by the government under Thabo Mbeki. However, even the new Act did not address continuities such as the contract labor migration system, and the overall objectives with regard to human rights were rather modest.⁷⁴ This perfectly shows the difficulties of transcending the Apartheid legacy that became deeply ingrained in the management of immigration under the new government.⁷⁵ The enduring characteristics of the old Act and its emphasis on control and exclusion, for which it was specifically designed, "has proven to be a blunt, ineffectual and often unconstitutional instrument for migration management in post-Apartheid South Africa".⁷⁶ While violence and discrimination against Africans before and during Apartheid stemmed from the institutionalized racism of the white-minority government, it is rather surprising that the act continued to be employed after the ANC-takeover in 1994.⁷⁷

⁶⁹ Oucho, *Cross-border migration*.

⁷⁰ Segatti, *Reforming South African Immigration Policy*, 38-39.

⁷¹ Crush and McDonald, *Evaluating South African Immigration Policy after Apartheid*, 6.

⁷² Oucho, *Cross-border migration*.

⁷³ Modi, *Migration to Democratic South Africa*.

⁷⁴ Crush and Dodson, *Another Lost Decade*, 446-448.

⁷⁵ Crush and McDonald, *Evaluating South African Immigration Policy after Apartheid*.

⁷⁶ Crush and McDonald, *Evaluating South African Immigration Policy after Apartheid*, 1.

⁷⁷ Neocosmos, *From 'Foreign Natives' to 'Native Foreigners'*.

Conclusion

In the literature reviewed, there appears to be a consensus that the immigration policies of the new South African government suffered heavily from an Apartheid legacy that was deeply enshrined in the legal framework, most prominently in the Aliens Control Act of 1991. The continuity in the policies as well as the practices are strikingly similar to those employed under the old regime. The policies remained very restrictive, enforcement of them harsh and the overall sentiment towards migrants rather brutish. Most of the old Apartheid-era images and stereotypes had simply been forwarded onto African immigrants as well as refugees.⁷⁸

Almost a decade after the formal end of Apartheid, the 2002 Immigration Act produced a policy framework that indeed constitutes a change. However, to call this a rupture from the Apartheid legacy would be an exaggeration.

Initially, immigrants nourished high hopes that the policies would change for the better and allow for easier entry into South Africa. However, the political transformation since the early 1990s did not address these concerns.⁷⁹

Many migrants from the region may have confused the advent of a democratic South Africa with a change in the definition of core national interests.⁸⁰ The newly elected government was predominantly concerned with a nation-building process and therefore policy responses to migration had the additional function of a symbolic labelling to identify particular categories of outsiders and insiders, or in other words, immigrants vis-à-vis legitimate South Africans.

Consequently, migration policies were employed to construct the nation-state within an increasingly transnational setting.⁸¹ Although the country no longer pursued an immigration policy based on differentiations of race, it became ever more difficult for outsiders to cross the borders. Unfortunately, in a rather cynical way, these restrictive policies reflected the hostile feelings of most of South Africa's citizens toward migrants during the first decade of democratic rule.⁸²

However, despite its obvious conservative character, the migration policies should not be criticized too much for simply echoing Apartheid-era traditions, for they were undeniably the result of "the contemporary political dispensation and popular views".⁸³

The efforts to de-racialize the political debate after the end of Apartheid led to a reinterpretation of South African citizen's identity vis-à-vis "the other", rather than being open to the rest of the region. The result is that since the 1990s a previ-

⁷⁸ Crush and McDonald, *Evaluating South African Immigration Policy after Apartheid*.

⁷⁹ Modi, *Migration to Democratic South Africa*; Ocho, *Cross-border migration*.

⁸⁰ Segatti, *Migration to South Africa*, 40.

⁸¹ Klotz, *Migration after apartheid*, 836.

⁸² Anderson, *Migration in South Africa in comparative perspective*.

⁸³ Klotz, *Migration after apartheid*, 843-844.

ously covert insider-outsider dichotomy emerged which makes almost no distinctions in public discourse between the various motives of the migrants.⁸⁴

Much more needs to be done in order to stimulate a domestic debate that can effectively reduce day-to-day practices of xenophobia toward Africans from the rest of the continent. The reoccurrence of violence in 2011 can be seen as a consequence of the government's mismanagement of the initial crisis in 2008. According to Hayem, the policies of the ANC greatly helped to transform "the national subjectivity from an inclusive participant notion of 'collectively building the nation' to a division between nationals and non-nationals".⁸⁵

While more research in this regard should be conducted, the argument made in this paper is that the initial reluctance by the post-Apartheid government to address Apartheid's continuities in migration policies of the new South Africa encouraged a growing anti-foreigner sentiment that erupted in early 2008. However, this does not mean that explanations of xenophobia rest only on single factors. Instead, a comprehensive analysis must include a multitude of political and socio-economic factors, with an engagement of the continuities of Apartheid's immigration policies as one of them.

In addition, a more spatially-oriented analysis could help reveal the connection between claims to territory and its relation to political and economic entitlement, thus adding new insights to the debate on xenophobia in South Africa.⁸⁶

Thinking of the horrible events in 2008 in which more than sixty people died due to xenophobic violence, the first decade after the end of Apartheid and the obvious political reluctance to address important issues of migration with an adequate policy framework, might indeed be called "a lost one".

⁸⁴ Klotz, *Migration after apartheid*, 843-844; Crush and McDonald, *Transnationalism and New African Immigration South Africa*.

⁸⁵ Hayem, *From May 2008 to 2011*, 96.

⁸⁶ Landau and Misago, *Who to Blame and What's to Gain?*, 100-101.