

Migration and African Foreign Nationals Incarcerated at the Westville Correctional Centre, Durban, South Africa

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ABSTRACT

This paper is founded on research that was conducted in July 2015 at a maximum-security correctional institution in Westville, Durban, South Africa. It focuses on the impact of incarceration of African (Black) migrants. The current outbreak of xenophobic violence, especially since 2008, supposedly committed by foreign nationals in South Africa, has prompted interest in the number of incarcerated migrants and migration overall. For purposes of this paper interviews were conducted randomly, using a systematic sampling technique with remand foreign nationals incarcerated at the Medium A, Durban Westville Correctional Centre. The experiences of foreign national detainees are recorded in order to augment their opinions to the discussions on crime, migration and xenophobia taking place at micro and macro levels in South Africa.

Keywords: migration, South Africa, incarcerated, corrections, foreign nationals.

1. INTRODUCTION

Migration and population movements have been an ongoing phenomenon and has received much debate since the 21st century. This has evolved over the years to become a dynamic and enormously multifaceted global phenomenon. With the weakening of the economy and intensifying political conflict, poverty and unemployment, there has been a substantial rise in population mobility over the last decade, both nationally and internationally. By the beginning of the 21st century, it was apparent that many urbanised countries worldwide have become home to migrant communities, with South Africa being no exception. South Africa, more than 21 years after democracy has become home to a number of documented and undocumented foreign migrants from all parts of Africa. Many migrants come from bordering states and the post-apartheid regime has been “soft” on migrants because through the apartheid era many South Africans obtained refugee status in these countries. Furthermore, these communities have customised and integrated themselves into the receiving country and many have obtained employment, accommodation, and access to resources as well as citizenship.

Foreign nationals within contemporary South Africa have received considerable media and political attention. This attention has varied between

negative exposure and positive empathy within television documentaries, chat shows, newspaper articles, editorials, and political speeches. In 2008 and subsequently in 2015 Black foreign nationals experienced brutal xenophobic attacks which left the country reeling in shock. Many migrants were injured and suffered fatal attacks; houses were burnt; people were arrested and incarcerated.

This paper is constructed on research that was conducted in July 2015 at a maximum-security correctional institution in Westville, Durban, South Africa. It focuses on the impact of incarceration of African (Black) migrants. These migrants have either already been sentenced for the crimes that they committed or are awaiting their trial in a section of the Westville Correctional Centre. The current outbreak of violence, and media reports on the rise in crime, especially since 2008 (and supposedly committed by foreign nationals) in South Africa, has provoked interest in the number of incarcerated migrants and migration overall. For purposes of this paper interviews were conducted randomly, using a systematic sampling technique with remand foreign nationals incarcerated at the Medium A section, Durban Westville Correctional Centre. The experiences of foreign national detainees are recorded in order to reinforce their views to the discussions on crime, migration and xenophobia taking place at micro and macro levels in South Africa.

2. A BRIEF CONTEXTUALISATION OF THE LAW AND MIGRATION IN SOUTH AFRICA

The principal legislation governing migration policy in South Africa is the Aliens Control Act, which was enacted in 1991 and consolidated into legislation with various provisions regulating the entrance and residence of foreign people (Peberdy & Crush, 1998a: 33). The Aliens Control Act of 1991 ensured that racism remained entrenched within immigration policy. This was important for two reasons. Firstly, the act maintained discrimination during the early 1990s and guaranteed that the alien (foreign) remained a black alien across that period. Secondly, it formed the basis for the 1995 Aliens Control Amendment Act. Despite certain amendments to the 1991 Act, contemporary immigration policy has been built on a racist foundation (Peberdy & Crush, 1998b).

Thus immigration policy during the 1990s necessitates a contextualisation within South African political transition from apartheid to democracy, from an authoritarian state legislated on racism to a democratic one governed by constitutional impartiality. Although the early 1990s were manifest with political transformation, and institutions such as the United Nations High Commissioner for Refugees were admitted to South Africa, immigration policy was generally manipulated by the apartheid state in a bid to 'entrench the policies of the past and set the parameters within which reform and reconstruction would take place' (Peberdy & Crush, 1998b: 33). Furthermore Peberdy and Crush (1998b: 33–34)

explain that the Aliens Control Act of 1991 ensured that racism remained entrenched within the immigration policy:

“This Act consolidated the numerous acts controlling the entry and lives of immigrants into a single omnibus piece of legislation. Many of the act's provisions were inherited from existing legislation, which had been passed by governments of the apartheid and pre-apartheid eras to serve racial and other imperatives and to extend the absolute powers of the state, unfettered by democratic checks and balances. The act also entrenched the 'two gates' policy, which distinguished between white immigrants and black migrants. Section 41 retained the exemption clauses that allowed white farmers and the mining industry to recruit migrant labour outside the country under special dispensation.”

Post 1994 in terms of immigration policy, the blatant prejudice contained in the 1991 Aliens Control Act appeared disparate and unacceptable for a new country built on democratic, non-racial principles. Subsequently, the act was overwritten by the 1995 Amendment Act, which 'has made some substantive changes to the 1991 act, by removing some of the more obvious violations of the rights of undocumented immigrants' (Peberdy & Crush, 1998b: 34). The questions surrounding the Aliens Control Amendment Act of 1995 resulted in the development of three legislative instruments to redress immigration in present-day South Africa. These are:

- The Green Paper on International Migration (1997),
- The White Paper on Refugees (1998) (enacted in April 2000), and
- The White Paper on International Migration (1999).

Broadly, the Green Paper challenged the existing focus on 'control and expulsion rather than facilitation and management understood in previous immigration policy' (Harris 2001:26). The White Papers on Refugees (1998) and International Migration (1999) have both developed out of the Green Paper on International Migration (1997). However, in the process of their development, the Department of Home Affairs (DHA) has made various amendments to the recommendations of the Green Paper. These amendments have been criticised for being conservative and punitive (Harris, 2001: 26). The Refugee Act (1998) came into effect in April 2000. The Refugee Act was principally adopted in order to domesticate the principles and standards contained in international treaties. The 1969 Convention governing the specific aspects of refugee problems in Africa was adapted by the Refugees Act 130 of 1998. Section 54 of the Refugees Act No 130 of 1998 was enacted to give effect to South Africa's international obligations to receive refugees in accordance with standards and principles established in international law (South African Government Gazette 2003).

In light of the above legislation and according to Mataboge (2013), the South African Immigration Act No.13 of 2002 provides immigration officials with rather wide-ranging powers when it comes to the arrest, detention and deportation

of illegal foreigners. In terms of this section, an immigration officer is entitled to arrest an illegal foreigner, without the need for a warrant, and deport or detain said foreigner. In doing so, the immigration official must follow certain procedures. The foreigner concerned:

- Must be notified in writing on the prescribed form of the decision to deport him or her, and the subsequent right to appeal this decision;
- May request that his or her detention for the purpose of deportation be confirmed by warrant of a Court. If such warrant is then not issued within 48 hours of the request, the foreigner shall be released immediately;
- Shall be advised at the time of the arrest or as soon as practicably possible thereafter of the above rights, and in a language he or she understands;
- May not be held in detention for more than 30 calendar days without a warrant of a court. This detention may be extended on good and reasonable grounds for a period not exceeding 90 days;
- Shall be held in detention in compliance with the standards protecting his or her human rights and dignity.

In the event that a foreigner is arrested for purposes other than deportation, he or she may not be detained for a period in excess of 48 hours. The Act also makes provision for the payment of a deposit by a foreigner subject to deportation in order to defray the whole or part of the costs of his or her deportation, detention, maintenance, and custody. If said foreigner is ordered by an immigration official to make payment of the deposit and fails to do so, he or she shall be guilty of an offence and liable for a fine or incarceration. The South African government spends at least R90-million a year on sending illegal immigrants back to their countries, most to Zimbabwe (see map). Many Zimbabweans, however, make it back into South Africa within days (Mataboge, 2013).

Thus in 2015 although the South African Human Rights Commission (SAHRC) recognised the role and effort of the police to restore law and order, it strongly condemned activities where some South African Police Services officials are seen participating in illegal activities. The South African Human Rights Commission expressed strong condemnation at the spate of violence and verbal attacks on foreign nationals across the country. Furthermore lessons drawn from the 2008 xenophobic attacks on foreign nationals, as well as other conflicts within the region, clearly show the potential of such conduct degenerating into other opportunistic attacks on fellow citizens that could weaken and indeed reverse democratic gains, the economy, South Africa's standing internationally and, most importantly, basic respect for human rights that South Africa has achieved so far. It is regrettable that the findings and recommendations by the Commission in its 2009 report on Xenophobic attacks which drew special emphasis on the need for early warning systems, heightened protection of foreign nationals, reintegration, wide education programme, access to justice and reparation based on the events of 2008 has not been responded to by the relevant government departments (SAHRC, 2015).

Map of South Africa and Neighbouring States



Source: <https://www.google.co.za/maps>

After 1994, incidences of xenophobia increased. Between 2000 and March 2008, at least 67 people died in what were identified as xenophobic attacks. In May 2008, a series of attacks left 62 people dead. Although it should be noted that 21 of those killed were South African citizens, the attacks were apparently motivated by xenophobia. On 12 May 2008, a series of riots started in the township of Alexandra (in the north-eastern part of Johannesburg (Gauteng) when locals attacked migrants from Mozambique, Malawi and Zimbabwe, killing two people and injuring 40 others. In the following weeks the violence spread, first to other settlements in the Gauteng Province, then to the coastal cities of Durban (KwaZulu-Natal) and Cape Town. Many attacks were also reported in the Southern Cape, Mpumalanga, the North West Province and Free State (Nine provinces of South Africa depicted in Map 1). In 2015 Xenophobic, violence against foreign nationals in South Africa has worsened in most of the nine provinces, especially KwaZulu-Natal. This nationwide spike in xenophobic attacks against immigrants in general prompted a number of foreign governments to begin repatriating their citizens. For example, in a newspaper article Masina and Mhofu (2015) reported that anti-immigrant violence was spurring fearful foreign nationals from neighboring countries to return home. About 400 Malawians boarded six buses and arrived in their homeland's commercial capital, Blantyre. At the time of their report, eight more busloads were expected. Hundreds of Zimbabweans were on the move, too, as were other African immigrants.

3. VIEWS THAT HAVE SHAPED THE PERCEPTION OF A FOREIGN NATIONAL

As discussed in the introduction of this paper, South Africa is Africa's most industrialised country, and it attracts thousands of foreign nationals every year, seeking sanctuary from poverty, economic crises, war and government persecution in their home countries. While the majority of them are from elsewhere on the continent, such as Mozambique, Zimbabwe, Malawi, Democratic Republic of Congo, Somalia and Ethiopia, many also come from Pakistan, Bangladesh, India and China. Views of foreign nationals by South Africans are often shaped negatively and in stereotypical ways.

The South African Commission for Human Rights maintains that xenophobia is generally defined as 'the deep dislike of non-nationals by nationals of a recipient state' (SAHRC, 2008). The locals call them "Amakwerekwere"- a derogatory term for the foreigners (from neighbouring countries) who have moved south in search of a better life, or who are fleeing political strife and economic hardship in their own countries. Foreigners have been lured to South Africa from poorer neighbouring countries by work in mines, farms and homes and also by one of the world's most liberal immigrant and refugee policies (Simao, 2008:2). Harris (2001:60–61) was of the opinion that "the state's negative attitudes to both immigrants and migrants is most evident [...] in the ways it argues non-South Africans threaten the nation by endangering its physical health, its ability to provide resources, employment and levels of crime. The language [...] is replete with images of Africans as carriers of disease".

According to the Sunday Times (2008:18), a concerned national stated, "the truth is that the situation in South Africa is not found in any other African country. Illegal immigrants from all over Africa flood into this country, on a daily basis, and the government seems very helpless in dealing with the situation. It is hypocritical not to expect ordinary South Africans to become apprehensive at this scary phenomenon. The fact that many foreigners have been found to be involved in violent crimes, like cash in transit heists, does not help matters". When the xenophobic violence in South Africa occurred especially in 2008 and 2015, the victims were not only foreigners in the sense of a different nationality that were attacked but in fact everyone not belonging to the dominant ethnic groups in the main cities, Zulu or Xhosa, was attacked. Fellow South Africans also view members of smaller ethnic groups in South Africa as foreigners. White people are not viewed as foreigners in the context of xenophobic violence. There had been attacks on South Africans who 'looked foreign' because they were 'too dark' to be South African (SAHRC, 2015).

The vulnerability of foreign nationals to exploitation, coercion, harassment and physical violence is not unique to South Africa. International comparisons, for example with the European Union states, reveal trends and patterns of xenophobia similar to those, which have emerged in South Africa over the last two decades.

4. THE SOUTH AFRICAN CORRECTIONAL POPULATION AND THE CONCEPT “REMAND DETAINEE”

As of 31 October 2015, the South African Correctional Services comprised 236 active correctional centres. Of these centres 123 were for men only; 92 accommodated women in a section of the centre; 13 were youth development centres; eight for women and seven were closed for renovations. These centres accommodate approximately 165000 inmates but has an actual accommodation capacity of 117814 as of January 2012 (latest statistics available Department of Correctional Services, 2015). The correctional facilities include minimum, medium and maximum-security services. The total number of sentenced offenders is approximately two thirds of the population, while the number of awaiting trial detainees (remand detainees [RD]) is about a third of the inmate population. The bed capacity for sentenced offenders was effectively 92814. The average level of overcrowding is 140% with different correctional facilities in different regions of the country having an overcrowding level of 100% to 400%.

The South African population is highly diverse with people from different racial backgrounds: black people account for 75% of the population, whites make up around 13%, Coloureds account for about 9% and Asians make up about 3%. The inmate population corresponds exactly to the demographic population (Department of Correctional Services [DCS], 2016). According to the World Prison Brief (2015), the top five countries with the highest number of inmates in Africa are (in descending order and proportionally per capita) the Seychelles, Rwanda, Swaziland, South Africa and Botswana.

In order to proceed with the paper and due to the fact that this paper is about awaiting trial detainees, it is imperative that clarity on the categories of awaiting trial detainees and the rationale behind the shifting from the use of ‘Awaiting-Trial Detainee’ to “Remand Detainee” (RD) be given.

The concept of “awaiting trial” inmates in South Africa has undergone interrogation. The Constitution, the Criminal Procedure Act and other laws applicable to awaiting-trial detainees, including international laws and treaties, refers to the arrested, detained and accused persons, while the Correctional Services Act, excluding the Correctional Matters Amendment Act, 2011, provides several definitions of unsentenced offenders and inmates. The White Paper on Corrections (2005) refers to the following categories of awaiting-trial detainees who are kept in custody by the DCS (White Paper, 2014:29):

- Awaiting-trial detainees who have been granted bail that they cannot afford to pay;
- Awaiting-trial detainees who have been denied bail; and
- Awaiting-trial children.

Prior to the enactment of the Correctional Matters Amendment Act, the term “awaiting-trial detainee” was used in the DCS to refer to an accused person placed

in custody before conviction and/or sentencing. The literal interpretation of the term would include the following categories of accused:

- Accused persons who have been detained after the first court appearance whose trials have not commenced, i.e., those in the pre-trial phase;
- Accused persons in detention whose cases were being heard by the courts, i.e. those who were in the trial phase;
- Accused persons detained by the DCS pending observation at designated Mental Health Establishments;
- All the accused persons who were detained in keeping with the Extradition Act; and
- All the accused persons who were convicted and awaiting sentencing.

The White Paper on Remand Detention in South Africa (WPRDSA) (2014:30) indicates that the term “awaiting trial” gave an incorrect concept that excluded from its definition very significant sectors of the population not sentenced but being held in DCS facilities, most noticeably those convicted who were neither sentenced nor awaiting trial, as their trials had been finalised. Thus the preferred term “remand” is a legal term, which has two related but distinct usages. Its etymology is derived from the Latin word ‘re’- and ‘mandare’, literally “to order.” It evolved to become remandare, or “to send back”. “Remand” (court procedure) refers to an action by an appellate court in which it sends back a case to the trial court or lower appellate court for action. Remand may also mean the “detention of suspects before trial or sentencing”. Therefore, the term “Remand Detainee” (RD) was adopted in the Correctional Matters Amendment Act and is inclusive of categories of unsentenced persons in DCS facilities awaiting further action by a court, i.e. persons awaiting trial, awaiting sentencing and awaiting extradition. The definition by its nature excludes sentenced offenders (even when returned from parole break) as well as state patients and involuntary mental health care users (where a decision by a court has already been made) and persons awaiting deportation. For the purposes of this research paper, the term RD and awaiting trial detainees will be used synonymously.

4.1 THE INCREASE IN REMAND DETAINEES

Remand detainees grew from an annual average of 23,783 in 1995 to 48,910 in 2012. This translates to a growth of more than 100% over the period of 17 years; yet, unlike sentenced inmates, they are not given any “privileges” e.g. attending rehabilitation programmes by the Department of Correctional Services (DCS, 2014:17). Foreign inmates consisted of 6, 3% of the inmate population (World Prison Brief 2015). The incarceration rate and turnover of RD inmates varies from country to country.

Table 1: *Foreign Nationals Sentenced and Unsentenced (Remand) Detainees in South Africa 2006-2010 (last available statistics).*

Year	Unsentenced (RD)	Sentenced	Total
2006	1944	3634	5578
2007	2150	3519	5669
2008	2775	4207	6982
2009	3257	4635	7892
2010	3712	4868	8580

Source: Annual Report Department of Correctional Services.

Table 1 above indicates the increase of both RD and foreign nationals in South African correctional facilities from 2006–2010. The indication is that there was a 53% increase within a 5-year period and an increase of 63% sentenced foreign nationals. Unfortunately later figures from DCS was not available. According to South African law, RDs are considered innocent until proven guilty.

Officially all facilities that keep RDs are classified as maximum facilities (i.e. facilities that house serious offenders), which is in keeping with international classification. These facilities have a relatively large turnover of detainees and ironically, they get the minimum information from the justice system about these detainees. RDs are transported in and out of the detention facilities for court appearances. In the DCS, from 2008 to the end of 2012, approximately 53 to 57% of RDs stayed for a period of three months and below while less than 6% were detained for longer than two years (DCS, 2014). The lack of their classification has led to a situation where all RDs are managed and treated as a high-risk group. This creates difficulties for the detention institutions because high-risk detainees have restrictions in terms of their movements within the facility and require a greater number of officials to supervise them. It also exposes low-risk detainees to high-risk detainees.

Some of the challenges faced by foreign nationals are documented in the White Paper on Remand Detention in South Africa. These are listed (WPRDSA, 2014:21):

- Foreigners suspected of criminal offences are investigated, prosecuted and detained without investigating their residency status or nationality;
- Bail applications as prescribed in the Criminal Procedure Act are done without regard for residence status of foreigners; and
- The detention of foreign nationals awaiting deportation in DCS and Department of Social Development (DSD) facilities.

Likewise according to *The Immigration Act, 2002 (Act No 13 of 2002)*, administered by the Department of Home Affairs (DHA) is relevant to RDs to the extent that persons arrested for violation of the Act are detained for purposes of being prosecuted. Foreign nationals who have been declared illegal or undesirable in South Africa are also detained awaiting their deportation. The DCS has frequently kept illegal immigrants (i.e. foreigners who are not charged with a

crime but are illegally in the country) in its facilities based on an arrangement that exists between correctional services and the DHA (DCS, 2015:25).

5. METHODOLOGY

This study was conducted in 2015 with remand detainees who were foreign nationals at the Medium A section, Durban Westville Correctional Centre. This section comprises of detainees who were awaiting their trial. Medium A of the Correctional centre was constructed in 1986 and is the biggest awaiting trial centre in KwaZulu-Natal. Medium A has 21 units of which C 1–6 housed only awaiting trial foreign national detainees. Prior to 2006 foreign detainees were housed with South African detainees. Due to episodic violence and infighting between South Africans and foreign nationals, the management of Medium A took a decision to separate the detainees (it should be noted that there is no correctional policy that speaks to the separation of inmates). In 2006 there was a major violent confrontation between the South African and foreign detainees which resulted in both foreign and national detainees being stabbed. According to Correctional officials during the interviews, one of the reasons for the rift among South African and foreigners was the perception that foreigners have money and they were involved in gang activities.

For purposes of this paper, in-depth interviews were conducted randomly using a systematic sampling technique. One of the main reasons for the choice of the systematic random sampling was that the remand foreign population would be evenly sampled. At the time of the research, there were 400 Black male remand detainees in C1–6. Each unit was designed to accommodate approximately 25 detainees but accommodated approximately 70 (300% overcrowded). The total remand population at the correctional facility was approximately 4000. Twenty interviews were conducted-every 40th detainee was chosen for the interview. The interviews were administered in the courtyard of C1–6. Semi-structured, open-ended questions were used.

Interviews, both telephonic and personal were conducted with correctional officials after arrangements were made with them. The data was captured in the form of transcribed taped interviews and extensive field notes. The medium of interaction was English and this was translated to the detainees in isiZulu (participants were more fluent in this language) with the assistance of the correctional officials. Furthermore, the researcher speaks and understands basic isiZulu. Prior to the interviews, it was pointed out to the detainees that participation in the research was voluntary. They were required to sign a consent form before participation in the research.

The experiences of foreign national detainees were documented so that their views on the discussions about migration, xenophobia and crime taking place at all levels within South Africa could be ascertained. Questions aimed to obtain data on why they migrated, who they migrated with, the reasons for them being

in remand detention, as well as the challenges they faced, regarding xenophobia and crime, when they entered the country. They were also asked if they entered the country legally and what the duration of their stay was.

6. ANALYSIS OF BIOGRAPHICAL DATA

In-depth individual interviews were conducted with 20 foreign nationals. Seven of them were from Nigeria, 3 Mozambique, 3 Zimbabwe, 2 Namibia, 2 Congo, 2 Botswana and 1 from Rwanda. All were Black, male foreign nationals.

Six of the interviewees lived in South Africa 8 years and more; one for 6 years, 2 for 5 years; 5 for 4 years, 2 for 3 years; 3 for 2 years and 1 for less than a year. Five were asylum seekers whereas the others came to South Africa “seeking greener pastures”.

Table 2: Interviews.

Interviewee	Alleged Crime	Age	Country of Origin	No. of years in South Africa	Length in RD
1	Assault	30	Mozambique	4years	9months
2	Theft	24	Namibia	2years	1year
3	Robbery	32	Congo	11years	7 months
4	Assault	29	Congo	4 years	5 months
5	Drugs	30	Botswana	4 years	6 months
6	Assault	22	Nigeria	9 months	3months
7	Drugs	35	Nigeria	8 years	2months
8	Drugs	32	Nigeria	4 years	2 months
9	Drugs	31	Nigeria	12 years	5months
10	Robbery	28	Mozambique	13 years	8 months
11	Drugs	38	Nigeria	6 years	9 months
12	Assault	26	Namibia	2years	1month
13	Expired visa	35	Rwanda	5years	5months
14	Expired visa	29	Nigeria	8years	10months
15	Drugs	27	Nigeria	8 years	1 month
16	Expired visa	28	Zimbabwe	5years	3months
17	Theft	24	Mozambique	3years	8months
18	Robbery	25	Zimbabwe	3years	10months
19	Drugs	28	Zimbabwe	2years	11months
20	Drugs	38	Botswana	4years	1year

Fifteen of the interviewees were employed and 5 unemployed. Furthermore, 6 had Primary school education, 8 had been to High School, 3 had Tertiary education and 3 had no formal education. Although the first language of only two detainees was English, most of them spoke this language fluently. The detainees period of incarcerated varied from 1 month to 1 year.

The alleged offences committed by the RD differed from minor offenses, e.g. theft to more serious crimes e.g. drugs and assault. The results are reported in the RDs direct verbal answers, which are presented in Italics. It is important to explain the findings in this manner, so that the voices of the foreign nationals can be 'heard' and the fundamental significances in their statements analysed.

7. ANALYSIS OF INTERVIEWS

Fifteen of the RD's migrated to South Africa in search of jobs and a better life, whereas 5 left due to political unrest in their country. There are various types of foreigners that live in South Africa: -refugees, asylum seekers, migrants (more temporary), and immigrants (those who intend to settle in South Africa). A refugee is defined as "a person fleeing from individual persecution, generalized human rights violations or armed conflict in their country of origin. While seeking refugee status the person is known as an "asylum seeker (The United Nations High Commissioner for Refugees (UNHRC), 1998: 2)." Eighteen of the interviewees entered the country legally and 2 illegally (crossed the border).

Although all the interviewees were asked the same questions, for the purpose of this paper only certain responses applicable to the questions asked will be discussed. Firstly when they were asked why they migrated to South Africa many said "*because of problems in their country; ethnic violence; for security*". One respondent said: "*Although there are some problems in South Africa, it is a very rich country. We came to find jobs so that we can look after our families. In my country, I do not have a job. My family are always going to bed hungry. That is when I decided to leave Nigeria. I am in South Africa for 8 years and I have a job with a building person. I do tiling and other work.*"

Another respondent said: "In Zimbabwe, there is a lot of political violence. We feel very scared and unsafe. I came to South Africa to seek political asylum; find a good job and for a better life for me and my family. I am here for five years now but I do 'piece jobs' (meaning whatever job that he can get on a temporary basis). I cannot get a safe job because I do not have a South African passport. I have applied but it is taking very long and cost a lot of money. Now I have no money". Furthermore one respondent said: "I came to work in South Africa and to raise my children. In Zimbabwe we can't get jobs-even if you have an education. It is very hard to work. I had no family when I came here. I stayed in Johannesburg with friends from my village. My friend brought me to Durban to work for someone who was doing building. I learnt on the job. I stayed in Durban for 3 years. I did not go home for 2 years. I am afraid that if I go back I may not be allowed to return to South Africa. In order to get South African citizenship I have to stay here for 5 years. I was still working when I got arrested for something that I did not do".

The next question that was thought to be extremely relevant and important to this research asked what the alleged offence was that they were detained for and the period that they were in remand, awaiting their trial.

One respondent said: “When I came to South Africa from Nigeria, I did not have a job. I started working on the Durban beachfront selling fruit. Once I got a little money, I started selling juice, cold drinks and sweets to people, mainly from other countries. I stayed in Durban for 8 years. I then got a vending stand and have been selling there until I got arrested 10 months ago for drugs. I am married to a South African girl and have two children. I don’t do drugs. South Africa is growing up with foreigners. We are paying water, lights and taxes.” According to South African Immigration law a foreign national is only allowed to stay for 30 days in remand detention. From the above it is evident that this is not the case. The average awaiting period is over 6 months. Nine respondents were incarcerated for almost a year awaiting their trial. The following are the words of a detainee:

“One day I was working late in the night around 10pm, a white man came and asked “where are you from?” I said I am from Nigeria. The same time that I was talking to this man, some people who said that they were from the organised crime-policemen, started hitting me, and asked what I was doing with a white man. I said that I was just working and this white man spoke to me. They looked around my vending stall, went to the back and took out three packets of drugs, cocaine. They took me to the police station. They charged me in dealing with cocaine. They said that I must give them R5000 then I can go. I insisted that I did not deal in drugs and that I didn’t have any money to give. They then asked me when I came to the country. I said that I was living in South Africa for 8 years. They did not want to listen to me...all that they wanted was money. They open a docket for me for nothing. I am now here for 10 months and don’t have money for bail. My family is suffering. I have heard so many stories about them (Police). How they maltreat the Nigerians. How they ask money from the Nigerians, they think that the Nigerians have a lot of money. I work hard, 14 hours a day to provide for my family-this is not fair. The foreigners are treated badly, especially by police officials. The police threaten Nigerians-want to put the Nigerians inside corrections. They hate us. I am not the first one here for no reason. They charge you because you are a Nigerian-you have drugs/ sell drugs-put drugs in the house, pocket. Police make different dockets- with wrong information.”

A Zimbabwean who lived in South Africa for 3 years and was in remand detention for 10 months said that he got involved in crime due to financial circumstances in the country. *“I came to South Africa with my friends to look for work and earn money. Although I have a temporary residency permit, it is very difficult to find work. I have not been employed for 2 years. I then turned to crime. At first, I started stealing small things. Then some South African friends asked me to get*

involved with them in house burglary. I was scared at first but because I had no money to support my family, I joined them to commit the crime. One day the alarm system went off at a house that we robbed. My friends got away but I was arrested and am here awaiting my trial. I do not have a lawyer or money for bail. My friends have left me to rot in this place Most of the people think that foreigners are the criminals but they don't know that foreigners are working with the South African people to steal from houses and cars."

Another detainee stated, "there are a lot of people here who didn't do any crime but are here. It is not good, it's not right. The police think that because they wear a uniform they can arrest us or demand money." This argument is in keeping with Article 9 of the International Covenant on Civil and Political Rights (ICCPR) that makes the following provision for the arrest and detention of persons (WPRDSA, 2014:21):

- Everyone has the right to liberty and security of their person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.
- Anyone who is arrested shall be informed at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
- Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to a trial within a reasonable time or to release.

The researcher asked the interviewees as well about their stay in Medium A. To this some of the responses were: "We are treated like animals in this place. The South African inmates are assaulting us-that is why we are separated. This cell is supposed to have 25 people. We are about 65 in here. The cell is locked at 4 in the afternoon and only opened around 5am. There is only 1 toilet and we all are crammed in this one room. It smell in here."

Another response was:" The officials beat us sometimes-they do not care and I think that they don't like us foreigners. They say that we cause problems in the country and commit crime." There was a plea for assistance from the RD to the researcher. "Please help us. Many of us Nigerians have not committed any crime. Everyone think that the Nigerians are dealing in drugs. The police treat us very badly. The officials think that we are drug dealers." The researcher felt helpless knowing that given the situation with RDs or inmates for that matter, there was very little that could be done.

From the above narratives, it can be deduced that many of the remand foreign detainees have come to South Africa seeking for a better life (this is also supported by media reports). Political violence and unrest is another factor causing them to leave their home country. Finding employment in their host country often poses a huge problem. Furthermore, being foreigners, they become targets of abuse by

criminal justice officials. For instance a number of the respondents were of the opinion that they were “framed” for the alleged offenses that they were incarcerated for, especially drug related offences. Similarly the foreign national RD’s were subjected to gross to human rights abuses, one of which was being incarcerated in overcrowded cells. The cells were over 200% overcrowded and the conditions under which they were kept goes against the human rights as enshrined in the Bill of Rights. The Bill of Rights, Section 9 of the Constitution (Act 108 of 1996) states: “Everybody has the right to equality and non-discrimination; everyone, including prisoners, is equal before the law and has the right to equal protection and benefit of the law; equality includes the full and equal enjoyment of all rights and freedoms; the state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.” Unfortunately this is not adhered to, both for South African and foreign RD’s.

8. CONCLUSION

Within the South African backdrop, migration and migrants have been a perpetual feature of the media and press both nationally and internationally. The unprecedented xenophobic violence experienced in 2008 and again in 2015 has brought the issue of migration under the spotlight in the country. The scale and difficulty of movement of foreign nations in South Africa during the 21st century has consequences for reception countries in that it compounds prevailing pressures and frequently creates a platform for the formation of competition of resources and opportunities between local populations and their migrant counterparts, which often results in violence. Poor socio-economic conditions coupled with political instability are the main reasons for migrants leaving their countries of origin. Apart from these circumstances, the need to support their family proved to be an important factor determining migration.

When migrants arrive in the receiving country, they more often than not have trouble in adapting, obtaining employment and finding accommodation. Despite the challenges faced (economic inequality, joblessness and poverty) that is characteristic of South Africa, the country is perceived as a refuge to those seeking ‘greener pastures’. The lures of economic stability together with a favourable social environment are incremental factors that direct migrants to South Africa. Some arrive legally, but many cross the borders illegally. The estimates of undocumented foreign nations in South Africa are unreliable. Many foreign nationals are incarcerated and then returned to their country of origin. Similarly, some are incarcerated, cannot afford bail and as a result spend a long time in corrections. The Correctional Services Act, Act 111 of 1998, defines the purpose of Corrections as being to, inter alia; contribute towards maintaining and

protecting a just, peaceful and safe society by detaining all offenders or alleged offenders in safe custody whilst ensuring that their human dignity is respected. Although the Department of Correctional Services is aware of its obligations in this regard, in reality this is not realised due to the size of the offender population (Department of Correctional Services, 2005:12).

This paper highlighted some of the experiences of incarcerated Black foreign nationals within a South African correctional institution. The encounters with the South African criminal justice system, their reasons for migrating and their incarceration are recorded in order to bring their views to the fore and make them relevant in the discussions on crime and migration and xenophobia taking place at micro and macro levels in South Africa. It is envisaged that cognisance will be taken of their pleas for assistance from the South African government. Furthermore, their experiences are documented to bring forth a more diversified understanding to curtail the violence. This new insight can be incorporated into South African policy.

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INTERVIEWS

See list of interviewees at the beginning of section 6, above.

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