



UNIVERSITY OF CAPE TOWN

CENTRE FOR
SOCIAL SCIENCE RESEARCH

**A Transnational Family-friendly State?
The position of transnational families in
the context of South African law and
society**

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CSSR Working Paper No. 367

October 2015



Published by the Centre for Social Science Research
University of Cape Town
2015

<http://www.cssr.uct.ac.za>

This Working Paper can be downloaded from:

<http://cssr.uct.ac.za/pub/wp/367/>

ISBN: 978-1-77011-354-1

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Acknowledgements:

This paper was completed with funding from the Netherlands Organisation for Scientific Research (NWO), for the Transnational Child-Raising Arrangements in South Africa and the Netherlands (TCRA-SAN) project through the University of Maastricht.

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Abstract

South Africa is a migration destination with a paradoxical policy environment. On the one hand it is generous – extending access to health care, education and rights for women, homosexuals and persons with disabilities to all persons within its borders. On the other hand, it is stingy and obstructive – tolerating a large informal labour market with uneven protections disadvantaging migrants, high hurdles for asylum seekers and one of the most extreme inequality rates in the world. As transnational workers, children, partners, spouses and parents expand their social, economic and physical footprint beyond their home countries they confront South Africa’s borders, laws and policies. They also encounter South Africa’s ongoing project to build a collective national identity and semblance of ‘social cohesion’, a project that has proven contentious, sometimes violent and arguably, poorly managed. With global migration trends increasingly South-South in orientation and largely inter and intra-regional, this article focuses on South Africa, examining the incentives and disincentives that influence family decisions to transnationalize to South Africa and how those decisions, in turn, shape and are shaped by law, policy and society.

‘All social life, of work, family, education and politics, presume relationships of intermittent presence and modes of absence depending in part upon the multiple technologies of travel and communications that move objects, people, ideas, images across varying distances’ (Urry, 2007: 47).

Introduction

Though study of migration and ‘the family’ have largely revolved around each other intersecting only infrequently, attention to the transnational families who occupy place in both sending and receiving countries is shedding light on how mobility and globalization create conditions for living “together-apart” with

“simultaneous imbeddedness” in more than one nation state (Glick Schiller *et al.*, 1995: 48; Portes *et al.*, 1999; Vertovec, 1999, 2001; Mazzucato & Schans, 2008: 1). Transnational migration discourse situates migrants at the center of multiple social fidelities – some in the home country, others in the host country – and is concerned with unpacking the negotiations, transformations, roles and rationale that occupy people maintaining those multiple social fidelities. Efforts to contextualize and understand transnational migrants – those individuals and families who maintain relations, networks and activities in two or more countries – are tackling transnationalism from migration, gender, economic and identity perspectives (Levitt, 2001; Bryceson & Vuerela, 2002; Mazzucato *et al.*, 2014). Technology and globalization loom large in situating and better understanding transnational families, encouraging mobility and allowing for easy, cheap, regular communication across distance.¹ And though migration is often assumed to be largely from Southern countries to Northern ones and from ‘developing’ countries to ‘developed’ ones, overall migration trends are increasingly inter-regional and South-South in orientation. Predictably, proximity also supports transnationalism in cross-border livelihoods and lifestyles of convenience. Recognizing the growing frequency and impact of inter-continental and regional migration in Africa, this article examines the incentives and deterrents that influence family decisions to transnationalize to South Africa and how those decisions, in turn, shape and are shaped by law, policy and society.

Situated on historical trading routes and one of the economic powerhouses of Africa, South Africa has long played host to migrants and their families seeking opportunity, adventure, transit and refuge.² With the end of apartheid, South Africa’s policy towards foreign nationals underwent dramatic reconfiguration from one designed to sustain the apartheid regime to one that addresses a new reality, that of a nation struggling to maintain growth and competitiveness, and manifest a national identity and cohesion, while honoring constitutional commitments to rights and equality for all. The result, explored and discussed throughout this paper, is a system with multiple personalities: sometimes generous – extending access to health care, education and rights for women and homosexuals, protection of children and persons with disabilities – and

¹ In the current migration crisis unfolding in Europe, for example, charging stations for migrants’ mobile phones are integral components of humanitarian operations at border crossings. Those same phones are being used to maintain contact with family and friends, contact smugglers, consult maps, plot routes and stay current to emerging policies moment by moment.

² South Africa’s robust trade union system got its start as early as 1881 when the first trade union - representing mainly skilled foreign mine workers – emerged. See, ILO, “National Labour Law Profile: South Africa.” Available at: http://www.ilo.org/ifpdial/information-resources/national-labour-law-profiles/WCMS_158919/lang--en/index.htm

sometimes stingy – tolerating a large informal labour market with uneven protections for its (mostly poor) workers, maintaining high barriers for asylum seekers and one of the highest inequality rates in the world (World Bank, 2011). The social foundation too seems schizophrenic: the post-apartheid transformational rhetoric espouses equality in a rainbow nation, while communities can be cruel – exacting punishment for being foreign and ill, pregnant or successful in business.

South Africa's current web of law and policy echoes a wider global shift towards restrictive migration control, encouraging in-migration of skilled and temporary workers (with limited benefits), limiting entry by those deemed to be a burden to the state, and placing a high priority on national sovereignty and state security. As foreign workers, children, partners, spouses, parents and siblings expand their social, economic and physical footprint beyond their home countries, they enter into relation – whether intentionally or by default – with South Africa's boundaries, laws and policies. They also confront South Africa's ongoing project of building a collective national identity and general 'social cohesion', a meeting that has sometimes proven contentious and arguably, poorly managed.

Transnational migration is “a pattern of migration in which persons, although they move across international borders, settle and establish ongoing social relations in a new state, maintain ongoing social connections with the polity from which they originated” (Glick Schiller & Fouron, 1999). Accordingly, we speak of transnational families maintaining “continuous and practical links to two or more states” and “living their lives across international borders” (Crush, 2003; Rabo, 2011). In this globalizing world, with migration becoming something of a norm rather than an exception, transnational families increasingly impact national deliberations previously limited to the voting constituency. In countries the world over, transmigrants and their families exercise expanding political agency through their presence, networks, activism, formal and informal labour, cross border activity, consumption, and exercise of their rights.

Exploration of the transnational family experience in South Africa perhaps merits comparison to the conditions for migrants so recently highlighted by the events of 2014 in Paris. In both South Africa and France the legal foundation is considered generous and would initially have seemed to support conditions for an integrated migrant population. The reality, however, is that we still know relatively little about social cohesion, the concept of “successful integration”, identity formation in migrant communities and how globalization is affecting society and national identity. This article aims, ultimately, to contribute to that discussion.

Analysis of transnational families in South Africa will ask whether policy and planning takes these families into account, capitalizing on or sacrificing them in the service of greater national objectives. This paper examines the factors that support and discourage transnational familyhood specifically in the South Africa context: the choices families make in sending a member abroad, the aspects that make transnational familyhood appealing or difficult in South Africa, and the impact on family members involved in the transactions of daily life. In order to do so, this paper queries how conditions, systems and structures shape the experiences of transnational families in the South Africa context and goes on to ask where social norms and legal frameworks contest or reinforce implicitly agreed upon principles?

Organization of the paper

The first part of the paper looks at the demographics of foreign persons in South Africa and aims to outline some trends including the types of migrants found in South Africa, the reasons they are here and some of the problems for collection and analysis of migration data in South Africa. Next, the paper explores the laws that impact transnational families in South Africa, taking a close look at what the legal framework is intended to do and how the laws and policies play out in implementation and the lived experience of transmigrants in South Africa – accessing services, interacting with communities and institutions responding to resistances. The final part of the paper offers some observations about transnational familyhood as a site for understanding national and individual identity and conceptions of belonging and entitlement in an ever more mobile world.

Reflecting on previous work investigating the situation of Nigerian, Ghanaian and Angolan immigrants in the Netherlands, this paper occasionally draws on examples of migrants from those three countries to illustrate how transmigrants and their families experience South Africa law and policy. While the majority of South Africa's immigrants are from neighboring countries in the Southern Africa Development Community (SADC) region, Nigerians, Angolans and Ghanaians consistently figure into the top receivers among African countries receiving permits to enter South Africa.

A note about terms: frequent conflation of terms including foreigner, illegal, un/documented migrant, refugee, alien, economic migrant, irregular migrant, asylum seeker, and non-national contributes to confusion around rights, misinterpretation of entitlements and misplaced bias with respect to non-nationals. In order to minimize such confusion this paper refers to transnational families as those family units maintaining relations and linkages in two or more

countries. Transmigrant is used here to describe an individual outside of the home country who maintains connections to at least one other country. To maximize readability, immigrant is also used interchangeably with transmigrant.). Refugee, asylum seeker, unaccompanied minor, orphan, labour migrant and irregular migrant are used according to their international legal definitions.³

Part 1: Demographics and migration to South Africa: an analysis of survey and administrative data

In what follows, I try to answer sets of empirical questions about transmigrants in South Africa: where do they come from and under what guises? I also ask how they enter the country and what limitations they face in doing so. In addressing these questions, I outline possible data sources, echoing the conclusions of scholars and researchers who consistently find that available national data to count and characterize migrants is limited. In closing, I suggest that South Africa's sub-optimal data leaves the country ill-positioned to the task of informing public policy and, by contributing to rather than countering nationalist sentiment and protectionism, undermines the greater project of national development.

History, geography and political economy each have a hand in shaping migration trends and South Africa's migration policy development. Like all things, migration policy was closely woven into the institutional fabric of apartheid and distinct pre- and post-apartheid migration policies aimed to achieve different outcomes. Throughout, however, nation building and national identity have been intimately tied to immigration policy, particularly during periods of political consolidation with immigration generally, and sometimes specific groups of immigrants, viewed as a threat to the project of constructing national identity (Peberdy, 2009). The real or fictionalized figures representative of documented and undocumented immigration (and how they change over time) are, therefore, a key component to how the state and its citizens understand the presence of non-South Africans in their midst.

South Africa's economic development was fueled by decades of labor migration, which was biased in terms of sectors and gender both exploitative and racialized (Dept. of Labour, 2012). Mining jobs drew the large part of contract migration to South Africa and strategic bilateral arrangements with businesses and governments ensured that South African mines remained staffed

³ See, for example: International Organization for Migration's (IOM) Glossary on Migration. http://publications.iom.int/bookstore/free/IML_1_EN.pdf

with foreign workers, mostly from Lesotho, Mozambique and Botswana, though significant numbers of Angolans were also brought to work in mines of South Africa between the 1940s-1980s (Dept. of Labour, 2007; Crush & Williams 2010). Most labour migrants were men and labour and immigration regulations prohibited family members from accompanying temporary workers to South Africa. One of the most marked changes in immigration demographics predictably occurred in conjunction with the end of apartheid when immigrant streams from Western Europe were almost wholly replaced with migrants from neighboring countries in the South African Development Community (SADC) and, to a lesser extent, other regions in Africa. At the same time, large numbers of skilled South Africans emigrated for destinations abroad.

Compared with the period pre-1994, migration to South Africa today is characterized as more informal and individual in nature as families choose to relocate members in search of opportunity, both uncertain and unknown (Landau, 2011). Viewed as one of the most stable, if not secure, countries in Africa, asylum seekers fleeing conflicts in Zimbabwe, the Democratic Republic of Congo, Mozambique, Somalia, Angola, Nigeria, Ethiopia, Eritrea and Sudan, among others, seek refuge in South Africa as well. Simultaneously, the post-apartheid state has instituted restrictive policies and strict enforcement practices that seem to contradict “the state’s commitment to building its relationship with the rest of Africa [and] African migrants...seem to be the target of these new immigration anxieties” (Peberdy, 2009: 178).

Managing their own store of anxieties, the decision for one or more family members to migrate is often made collectively, by the household, in an effort to diversify income-generating opportunity and spread risk (Fauvelle-Aymar, 2014). Some of the considerations influencing decisions to migrate include age and dependence of children, availability of alternative care for younger and elder family members, access to basic needs in the destination country, health and age of the primary breadwinner, existence of transnational networks, levels of education, and developments in technology that allow migrants, today more than ever, to maintain close ties to those back home (Urry, 2007; Rabo, 2011; Fauvelle-Aymar, 2014). While some transmigrants travel alone, others travel as couples or in larger groups. Some families travel at the same time, others move to join family members at a later date, and many family configurations remain fluid with members traveling back and forth, merging and morphing roles according to the demands of labour market shifts, law and family circumstance.

Academics and policy makers agree that migration data in many southern countries are “in need of serious overhaul in terms of availability, timeliness, quality, and cross country comparability” (Ratha & Shaw, 2007). South Africa is no exception. Data on migration to South Africa is weak and inconsistent both

because collection and migration management systems are generally poor and because the borders are porous and capacity to control them is weak (Landau, 2011).⁴ Official statistics demonstrate wide margins with little regularity. In South Africa, some of the better migration data analysis is SADC-focused, making it only marginally relevant to understanding migration from non-contiguous or non-regional countries, or as part of a global picture. As for relevance to the transnational families who make their way to South Africa, the paucity of reliable statistics fuels speculation and alarmism about the suspected, rather than actual, social and economic impact of migrants (Misago *et al.*, 2009). In 2010, the World Bank reported 30.6 million African people were living in countries other than that of their birth (Ratha *et al.*, 2011).⁵ Data show that migrants are as likely to move from one developing country to another as to wealthier Northern countries, and the majority of African migrants move from one African country to another (Ratha & Shaw, 2007; Ratha & Shimeles, 2011).⁶ The largest South-South movement of people in the world takes place in Sub-Saharan Africa, accounting for almost 65 percent of total emigrants globally. According to the World Bank, the principal determinants of South-South migration are proximity and networks, with almost 80% of documented South-South migration taking place between countries that share a border.

⁴ The Migrating for Work Research Consortium (MiWORC) has made significant effort to analyze immigration data with respect to labour migration. See assessment of available data sets and their usefulness, including Quarterly Labour Forces Survey, Census, Tourism statistics, Department of Home Affairs (DHA) documented migration track and trace system, DHA asylum seekers and refugees statistics, National Income Dynamics Study (NIDS), the Employment Bureau of Africa (TEBA), Department of Labour (DOL) Employment Equity reports, and the DOL unemployment insurance fund at: Budlender, D. (2013) *MiWORC Report No.2. Improving the quality of available statistics on foreign labour in South Africa: Existing data sets*. Johannesburg: African Centre for Migration & Society, University of the Witwatersrand; Budlender, D. (2013) *MiWORC Report No.3. Improving the quality of available statistics on foreign labour in South Africa: Strategic recommendations*. Johannesburg: African Centre for Migration & Society, University of the Witwatersrand; and, Budlender, D. (2013). *MiWORC Report No.4. Improving the quality of available statistics on foreign labour in South Africa: Suggestions for a Quarterly Labour Force Survey migration module and municipal level surveys*. Johannesburg: African Centre for Migration & Society, University of the Witwatersrand. Other frequently cited sources include: the African Cities Survey (FMSP), the Health Environment and Development Study, the Unaccompanied Minors' Study (FMSP), and the Agincourt Database (Wits), the Migrant Rights Monitoring Project (FMSP). Though not generated specifically to elicit information about foreign-status or migration, these data sets collectively provide insight into the same.

⁵ Despite being one of the most reliable sources for African migration data, the World Bank highlights serious flaws in using data on African migration citing data that are “missing, out of date, or inconsistent with definitions used in other countries,” further explaining that both basic and disaggregated migration data, such as seasonal and transit migration, is often not captured in official statistics.

⁶ Of all emigrants from countries in Africa, roughly 25% of them moved to South Africa, this up from 19% recorded in 1990 (Ratha *et al.*, 2011: 121).

Migration is also spurred by environmental disaster and conflict (World Bank, 2005). Where men were once the vast majority of labour migrants worldwide, women comprise “a growing proportion of the African migrant population...particularly from neighboring countries and women are replacing men as the foreign employees of choice in some low-wage sectors of the South African economy, such as agriculture” (Palmary, 2009; Crush, 2010; Budlender, 2013).

Actual estimates of the total foreign-born population in South Africa span a wide range, from a high of 7-8 per cent of the total population to a low of around 2 per cent (Crush & Williams, 2001; Landau, 2011). Most recently, the World Bank calculated a foreign born population of around 1.9 million people, roughly corroborated by the 2011 Census which suggests a foreign born population of 3.3 per cent or 1.7 million people (Budlender, 2013; World Bank, 2013).

Table 1: Percentage of migrant population in select countries

Country	Population (2013)	Migrant stock (as a percentage of total population, average 2010-2014)
Angola	21,471,618	0.3
Nigeria	173,615,345	0.7
South Africa	52,981,991	3.7
Botswana	2,021,144	5.8
Ghana	25,904,598	7.6
United States	316,128,839	10.3
Netherlands	16,804,224	10.5
Germany	80,621,788	13.2
United Kingdom	64,097,085	13.8
Australia	23,130,900	21.4

Source: World Bank International Migrant Stock, 2014⁷

Ever-increasing levels of trans-border trade, shifting availability and need for labor, and the persistence of unauthorized migration despite strict immigration controls have led many countries to adopt migration management strategies in place of more narrow immigration control policies. Correspondingly, there is increasing recognition that international migration creates economic benefit and social dividends for both sending and receiving countries (Ratha *et al.*, 2011).

⁷ The World Bank’s data on international migrant stock reflects the number of people born in a country other than that in which they live, and includes refugees. Figures in the table represent the average during the period 2010-2014.

Countries such as Thailand and Brazil, for example, factor immigration into the national economic growth strategy (Landau, 2011). Meanwhile, South Africa employs defensive immigration policy with government increasingly militarizing its borders and instituting new regulations on certain classes of migrants.⁸

More needs to be known about the informal economy, where transmigrants seem to play a significant role but which is only marginally accounted for. A recent study of migrant entrepreneurship in Southern Africa observes, “In the context of increasing mobility globally, one of the major activities of cross-border activity is not a search for formal employment but rather to trade informally”.⁹ The same study found migrant informal business owners in Johannesburg more likely to employ South Africans than South African informal business owners and confirmed that crime and police harassment affect informal migrant business owners across the countries studied. It also established that more women than men are involved in informal cross-border trade between Zimbabwe and South Africa and that across the countries studied women face challenges specific to their gender including different familial and cultural expectations when it comes to economic participation.¹⁰

As the face of migration to South Africa changes to include more women, there is much to learn about the economic and social factors that shape their participation in the transnational migration milieu: How do their family obligations, roles and expectations differ from conventional male migration streams? How are children and other family members affected and what does that mean for the States concerned? Of particular interest is what potential women’s participation in transnational households presents for reducing urban poverty in both sending and receiving countries.¹¹ Each of these issues point to the urgent need for a stronger commitment to data collection. This means directing more skill and resources at collection and analysis systems, as well as bolstering capacity within local and national government to utilize migration data and analysis. Lawmakers will need to demonstrate an understanding that high quality, reliable migration data is not merely the responsibility and interest of the Department of Home Affairs but is vital to national and local level

⁸ Operation Feila, or “Clean Sweep”, was initiated by South Africa’s inter-ministerial committee on migration following April 2015’s outbreak of violence against foreign nationals. It has been criticized by migrant advocates for allegedly targeting of foreign nationals and for fueling the perception that migrants are to blame for the country’s social and other problems. See also: <https://www.opendemocracy.net/chris-mcmichael/re-militarisation-of-south-africa%E2%80%99s-borders>.

⁹ Growing Informal Cities Conference Report: 4.

¹⁰ Id. at 8.

¹¹ Crush, Skinner & Chikanda: 5.

planning and management – for better public health outcomes, improved social cohesion, more robust regional integration and economic development, and for the well-being of all persons in South Africa and throughout the region.

Part 2: Legal framework impacting transnational families in South Africa

With the end of apartheid, South Africa adopted one of the world’s most progressive constitutions, extending human rights and civil rights protections to all individuals within its borders, with few limitations. The post-apartheid Constitution distinguishes South Africa from countries around the world in its recognition of full rights for the many stakeholders to its anti-apartheid movement including homosexuals, women, trade unionists and various religious, ethnic and national groups.¹² Furthermore, an ideologically generous asylum regime acknowledges the country’s long and intimate history with exile and protection in other lands.

A wide range of South African laws touch on the lives of transnational families in South Africa. South Africa’s embrace of international law acknowledges both minimum standards and aspirational commitments. Immigration law plays a central role in determining physical and legal access to rights and protections in South Africa, outlining who may legally enter the country, for what purpose and for how long. It also dictates who can be detained and deported as a result of suspected immigration violation and instructs on treatment of asylum seekers and children in the system. Legislation addressing citizenship, access to health and education, children, and social security are immediately relevant, as are laws addressing core life events such as birth, work and death. Finally, laws relating to banking and finance and the emergence of international financial regulation as a tool for fighting terrorism influence the choices transnational families have and how they weigh the costs and benefits of having family member(s) living, working or studying in South Africa. While far from exhaustive, this section explores some of the most relevant laws in turn.

International law

¹² A deep rift exists, however, between the commitment to protect human rights and the evolution of migration policy in South Africa, the main cause of which is an overwhelming lack of understanding about the global migration dynamics and the “impact of mobility on livelihoods and poverty” (Landau, 2011).

South Africa has signed most, though not all, of the fundamental instruments of international law, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention relating to the Status of Refugees (1951 Convention), the Convention on the Rights of the Child (CRC) and its protocols, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, the Geneva Conventions, the International Convention on the Elimination of All Forms of Racial Discrimination and others.¹³ It has similarly ratified the African Charter on Human and Peoples' Rights, the Convention Governing the Specific Aspects of Refugee Problems in Africa and the African Charter on the Rights and Welfare of the Child.

Many of the nation's laws aim to meet standards set by international and regional instruments and in some cases South African law surpasses international norms. In that regard, the Constitution has been heralded for its attempt to boldly bridge a distinctly unequal period in history with an ambitiously democratic and egalitarian one, embodied in the 'rainbow nation' ethos.¹⁴ The reality, however, is that in most areas South Africa's ability or political will to implement and achieve the enumerated protections is uneven or wholly unrealized (Palmary, 2011).

The Constitution

For all persons in South Africa, the Constitution is the legal cornerstone of rights and entitlements. Transnational families from less stable, less economically secure or less democratic countries stand to benefit, for example, from South Africa's protections for homosexual and disabled people, children, the poor, workers and women. The Bill of Rights extends the protections of fair labour practices, the right to emergency medical care, the right to education and freedom of movement, for example, to everyone within the country's borders (Sections 23, 27(3), 29(1), 21). Full analysis of the Constitution's applicability to migrants is available elsewhere.¹⁵

¹³ South Africa has not signed the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

¹⁴ Attributed to Arch Bishop Desmond Tutu, he first used the term to describe post-apartheid South Africa following the country's first democratic election in 1994.

¹⁵ See Crush & Mojapelo, 1998. *Beyond Control: Immigration and Human Rights in a Democratic South Africa*. Cape Town: Queen's University/Idasa; Human Rights Watch, 2007. *Keep Your Head Down: Unprotected Migrants in South Africa: The Legal Framework*. New

Immigration law

Perhaps most impactful on the status of transnational families is South Africa's immigration law and the Immigration Act of 2002. Indeed, many migrants' first interaction with South African law is with immigration regulation, which determine eligibility for entry and the status by which entitlements and duration of stay are determined. At one end of the spectrum is permanent residency which carries with it most of the provisions extended to South African nationals, including the right for a bona fide partner and other family members to accompany and to apply for permanent residence as well. At the other end are provisions to facilitate large-scale contract labour supply to mining and agricultural sectors, which have long been a feature of immigration law and are generally restrictive in the benefits and rights they attach.

In May 2014, the government of South Africa issued a batch of regulatory changes to the Immigration Act, many of which impact transnational families and the choices available to them. They include extended processing times for permit renewal, reduced burden for relationship-proving component of permanent residence applications, and further restrictions on asylum applicants.¹⁶ Perhaps the most dramatic change is DHA's decision to outsource visa handling and processing to a private company, Visa Facilitation Services (VFS). The new handling procedure is intended to speed up processing times by bypassing chronic organizational inefficiency in DHA but it remains to be seen whether that will be the case. VFS charges an additional per application fee of up to R1350 in addition to the regular DHA applications fees, creating an additional hurdle in an already difficult process for many transmigrants and their family members. VFS is not mandated to offer advice or assistance and permitting determinations remain entirely within the DHA. As do asylum and refugee adjudications and processing for Zimbabwean Special Dispensation

York: Human Rights Watch; Palmary, 2009. *For Better Implementation of Children's Rights in South Africa*. New York: UNICEF.

¹⁶ Acknowledging DHA's inability to process renewal applications within the previous 30-day time limit, the period has been extended to 60 days. The 'relationship-proving' period for spouses and partners applying for temporary or permanent residence is reduced from five to two years, greatly reducing the burden associated with this type of visa. Partners are subject to separate, simultaneous interviews in order to establish the validity of the relationship. The Department's approach to asylum applications remains problematic, requiring asylum seekers to obtain an Asylum Transit Visa at a port of entry and then to present at a Refugee Reception Office (RRO) within the five-day permit validity period. Often finding themselves in highly volatile circumstances upon arrival, asylum seekers may not have the resources to secure their living situation and reach an RRO in the allotted time. Furthermore, RROs are limited in number and geographic distribution with queues and processing times presenting significant barriers to access.

Project applications.¹⁷ In what follows, I examine specific aspects of various permits types relevant to transnational family members. Overall numbers of Nigerian, Ghanaian and Angolan nationals granted entry into South Africa are eclipsed by those from Zimbabwe, India, China and the UK, but select figures for Nigerian, Ghanaian and Angolan permit recipients offer a link to recent related research conducted by UCT and the University of Maastricht.¹⁸

Permanent residence permits

Permanent residency applications may be based on relative, employment, investor and other specific categorizations and currently take several years to process. Requirements for police clearance, qualification or skills verification, and proof that salary, benefits and contract provisions are in line with those offered to an otherwise qualified South African are similar to work permit stipulations in other countries. Permanent residents are among the few permit holders authorized to bring spouses and children to live with them in South Africa. The vast majority of approved permanent residence permits (PRP) are in the relative category. Roughly 10,000 PRP were issued in 2011, 1,200 in 2012 and 6,800 in 2013, illustrating an inconsistency and volatility generally characteristic of DHA's procedures and strategy. Nigerian nationals were issued 470 permanent residence permits in 2013 or 6.9% of the total PRP issued, making it the third highest African country recipient of PRP behind Zimbabwe and DRC (StatsSA, 2013). Of Nigeria's total recipients, the highest percentage of permits was for relative (62.3%) followed by work (34.9%) and business (2.3%) permits. Angolans received 38 and Ghanaians 74 PRP respectively (StatsSA, 2013).

Temporary Residence Permits

Temporary residence permits offer more limited rights and services and are issued in far higher numbers than permanent residence permits. Authorized activities under the temporary residence permit are strictly limited and permit

¹⁷ The Dispensation of Zimbabweans Project was initially implemented in April 2009 to facilitate status regularization for Zimbabweans who had been living without status or on fraudulent identity documents in South Africa. The first batch of Zimbabwean Special Dispensations permits (ZSP) expired at the end of 2014 and a new round of applications was announced; permits issued under the new project will remain valid until the end of 2017.

¹⁸ The joint project discussed here: <http://www.cssr.uct.ac.za/ssu/projects/households>. This research was elaborated at a two-day symposium, see: https://www.uct.ac.za/usr/calendar/2015/Symposium%20Overview_15%20March%202015.pdf

holders are not generally authorized to bring accompanying family members. The number of temporary residence permits issued is somewhat more stable than permanent residence permits with a total of 101,910 approved in 2013, down from 106,173 in 2011 and 141,550 in 2012. 10.1% or 10,265 TRPs were issued to Nigerian nationals in 2013 (StatsSA, 2014). Only Zimbabwe received more temporary residence permits (18.5%) than Nigeria. Angolans received 2,596 or 2.5% of all temporary residence permits while Ghanaians received 1,958. 47% of all permits were issued to individuals between the ages of 20-34 and 12% to children below the age of 15 (StatsSA, 2014).

Table 2: Temporary residence permits issued by type and select country, 2013

	Angola (per cent)	Ghana	Nigeria
Visitors	23.7	43.4	37.7
Work	13.2	19.0	11.6
Relatives	6.4	28.2	29.7
Study	38.1	7.2	16.3
Business	0.7	0.6	3.1
Medical	17.4	0.8	1.3
Waiver	0.0	0.8	0.2
Retired Persons'	0.5	0.0	0.0
Treaty	0.0	0.1	0.1
Exchange	0.0	0.0	0.0
Total	100.0	100.0	100.0

Source: Documented Immigration 2012, Department of Home Affairs.

Of 2013 entrants, international applicants received mostly visitors' (34.1%) and work (30.0%) permits, but only 6.4% study and 2.6% of business permits (StatsSA, 2014). Trends among African countries show a fairly even distribution between visitors', relatives', study and work permits with 31.2%, 24%, 22.2% and 18.3% respectively (StatsSA, 2014). Nigerians received 11.7% of all visitor's permits, 5.0% of work permits, 12.8% of relatives' permits, 10.9% of study permits and 16.6% of business permits in 2013. Angola received a whopping 32.1% of medical treatment permits, while Nigeria received 9.2%. In terms of age distribution, the margins are small with Nigeria and Ghana falling in the middle of the range at 32 years and Angola at the lowest end with a median age of 28 years, partially due to the fact that Angolans also had the second highest percentage of people between the ages of 0-15 years from Africa receiving temporary permits, behind only Zimbabwe (StatsSA, 2014).

The Refugees Act

The Refugees Act of 1998 underwent major amendment in 2008 and 2011 ostensibly to remedy out of date provisions and adjust to some of the changing dynamics of South Africa's asylum seeker landscape. The Act entitles refugees and asylum seekers to most of the same rights and services as South African citizens, regardless of citizenship (Refugees Act No 130 of 1998; Amendment Act No. 33 of 2008). The first step for an asylum seeker arriving in South Africa is to apply for an Asylum Transit Visa at the port of entry. The applicant must then present at a Refugee Reception Office (RRO) within five days and apply for an asylum seeker permit. RROs are limited in number and geographic distribution with queues and processing times presenting formidable barriers to asylum in South Africa.

South Africa's asylum system is one of extremes with reports suggesting that the country receives among the highest number of asylum applications of any country in the world.¹⁹ In 2014, there were approximately 66,000 recognized refugees in South Africa with another 232,000 pending asylum applications, making South Africa's asylum backlog one of the largest and longest in the world (UNHCR, 2014).²⁰ Without sufficient integration of the role of refugee affairs within the larger international migration setting in South Africa, the country has arguably ended up with a refugee policy similar to its immigration policy – internally inconsistent, unaligned with national development planning and often challenged with respect to its compatibility with international standards and obligations (Landau, 2011).

The Children's Act & South African Schools Act

¹⁹ Other reports debunking that claim point to the broader problem of obtaining reliable migration and asylum data in South Africa. See for example: Africheck, *Is South Africa the largest recipient of asylum seekers?* <http://africacheck.org/reports/is-south-africa-the-largest-recipient-of-asylum-seekers-worldwide-the-numbers-dont-add-up/>

²⁰ It has been claimed that South Africa receives the highest number of applications but figures are considered highly unreliable. The number of refugees and asylum seekers reported by government routinely differs from that found by UNHCR, and even among government officials, with the minister of Home Affairs reporting 78,000 newly arrived asylum seekers in 2012, the deputy minister of Home Affairs reporting 85,000 and UNHCR reporting 61,500 for the same time period.

Section 28 of the Constitution is elaborated in the Children’s Act of 2005, which guarantees protection of all children in South Africa regardless of nationality or immigration status. The basic rights of all children in South Africa include “basic nutrition, shelter, basic health services and social services” [and] “to be protected from maltreatment, neglect, abuse or degradation” (Constitution, Section 28). The Children’s Act provides guidance for application of the best interests of the child principle as the standard for child protection and the Act specifically recognizes the vulnerability of children who have been trafficked, sets out standards for determining the need for and means of providing alternative care for children, and empowers all Magistrate courts to function as children’s courts. South African law recognizes a child as anyone under the age of 18, a feature that expands protection for children coming from countries where the age of maturity is set lower or according to custom or customary law.

The Constitution establishes the right to basic education for all children (Section 29(1)) and under the South African Schools Act, schools are required to admit children without discrimination, including based on nationality, legal status or inability to pay fees. In contexts where migrant parents feel that public education institutions in South Africa are superior to those at home, parents may opt to bring their children with them or to send their children – sometimes with others, sometimes alone – to South Africa specifically to access education. Others report feeling that South African schools are substandard but that they have no other educational options available to them (FMSP, 2007; SAMP/OSISA, 2011). Others may have no choice but to bring young children with them when they move to South Africa seeking work or safety.²¹

The Births and Deaths Registration Act

The Births and Deaths Registration Act makes it a criminal offence to fail to report births and deaths occurring in South Africa. Children born in South Africa are accorded varying status depending on the immigration status of their parents but birth registration, like so many other issues, can be prohibitively bureaucratic for South Africans and foreigners alike due to inefficiency and red tape inherent to DHA processes. It is not difficult to imagine, however, that an individual unlawfully in the country may be reluctant to report either birth or death for fear of triggering detection and punishment. In the case of birth, reporting may raise questions as to the parent’s presence in the country, or worse, conflicts over parentage or custody, in which non-national parents may have limited agency against a South African national or a competing claim. While it is universally recognized that birth registration for all children is the

²¹ For further detail see: Crush & Tawodzera, 2011; Vearey & Richter, 2008.

most basic element of child protection and a right of all children, complex and unclear custody regimes lead many individuals to opt out of registering a birth.

Some of the most complex cases implicating transborder family law questions are those arising from custody disputes between parents of different nationalities.²² In many of these cases cultural and historical norms create bias toward the father (or male) party to the conflict. In this regard, transnational women and mothers have much to fear particularly where their own legal standing, documentation and financial independence are precarious. In South Africa, custody and protection questions are to be resolved according to the best interest of the child. Recently, however, the country has seen cases of children ordered returned to South Africa into unclear guardianship situations or deported into equally murky circumstances due to discrimination, misapplication of the law, lack of coordination between immigration and social service departments (Shreier, 2011). These outcomes suggest that South African law is both unprepared for the complexity of international family legal questions and unconvincing in its prioritization of the best interest of the child standard in resolving such questions.

The South African Citizenship Amendment Act

Among the most highly publicized issues involving family law in South Africa is that of marriages undertaken for the purpose of gaining permanent residency and ultimately, South African citizenship. Once a foreign spouse gains permanent residence he or she may enjoy the right to bring their foreign children and other family members into the country legally. Though the hurdles of proving a marriage are significant, the benefits are enticing, evident in the practice of charging high fees or “rent” for fraudulent marriage schemes and the trend of foreigners brokering marriages with young, poor South African women. Previously, fraudulent marriages were subject to nullification or the non-South African party could be deported. Adopted in 2013, the South African Citizenship Amendment Act aims to send a stronger message, dictating a penalty of up to 15 years in prison for anyone engaging in a marriage of convenience.

Social Security

²² See: Hellum, Ali & Griffiths (eds.). 2011. *From Transnational relations to Transnational Laws: Northern European Laws at the Crossroads*. UK: Ashgate.

Article 27(1)(c) of the Constitution declares “everyone has the right to have access to- social security, including if they are unable to support themselves and their dependents, appropriate social assistance”. In *Khosa and Others v Minister of Social Development and Others; Mahlaule and Another v Minister of Social Development* (*Khosa* case), non-nationals challenged the state’s exclusion of non-nationals from receipt of social assistance in the form elderly and child support grants. The Constitutional Court found that the word ‘everyone’ in section 27(1) of the Constitution cannot reasonably be construed as referring to citizens only, and therefore the rights contained in section 27(1), including to social security (in section 27(1)(c)), apply to everyone. In taking its decision, the Court recognized, “it is necessary to differentiate between people and groups of people in society by classification in order for the state to allocate rights, duties, immunities privileges, benefits or even disadvantages and to provide efficient and effective delivery of social services,” but the Court went on to reject financial and immigration related concerns raised by the state, concluding that denial of access to social security may relegate permanent residents to the margins of society and deprive them of the other rights vested to them under the Constitution including dignity and equality, which, the Court stressed, are “founding values of the Constitution and lie at the heart of the Bill of Rights”.²³ According to Millard, the *Khosa* case “signaled a departure from the introspective and nationalistic approach towards social assistance that previously characterised the South African system” (Millard, 2008: 42).

Distribution of social assistance grants in South Africa has expanded four-fold since 1994, reaching over 16 million people in 2015 (South African Social Security Agency, 2015). The Social Assistance Act 13 of 2004, replacing the Social Assistance Act 59 of 1992, guides implementation of the right to social security, defining a number of types of long-term grants and eligibility for them. The Act applies to permanent residents and citizens only (Section 5(1)(c)). Eligibility is mostly means tested and applicants must submit additional documentation such as children’s birth certificates and a South African ID book, either of which may present difficulty for immigrants who do not have birth certificates for their children, whose children do not have the same surname as the parent, or when DHA fails to issue ID books in a timely fashion. Individuals excluded from formal social security systems, South African and non-South African alike, sometimes adopt strategies creating what have been called ‘informal social security’ arrangements (Dekker & Olivier, 2003:6).

Access to Health

²³ *Khosa*. Mokgoro, J. delivering the judgment of the court: 34.

Section 27 of the Constitution accords everyone in South Africa the right to access to health care services. Giving effect to the Bill of Rights, the National Health Act of 2003 guarantees every person in South Africa the right to health care and – regardless of immigration status – access to life saving care. The National Patients Rights Charter further articulate the range of health rights from the right to a healthy environment and adequate water supply to the right to timely emergency care regardless of ability to pay and provision for individuals with special needs including newborns, pregnant women, disabled persons and older people, all without discrimination and with dignity (National Patient Rights Charter). Despite these far-reaching and lofty assurances, the national health system is overwhelmingly understaffed, underfunded and in a state of disrepair (SAMP, 2009). That South Africans are largely disillusioned with the quality of the care they receive is no surprise; that they resist and resent attempts by non-nationals to access scarce services is equally predictable. Arguably little has been done to minimize the perception that migrants travel to South Africa to access high quality, or free health care. On several occasions the Department of Health has issued directives in attempt to clarify entitlement to health care but training and sensitization for health care officials and providers have proven successful only to a degree. Much of the burden for sensitization and training falls to advocacy NPOs working on behalf of children, women, certain types of immigrants or refugees. Many of who also argue that the burden to correct these misperceptions rests with the government as part and parcel of its Constitutional obligations to provide access to health.

The contrast between Constitutional entitlements to health care for all and the sentiments of a nation that cannot fully provide health care for its own citizens is also illustrated in the National Strategic Plan for HIV/AIDS. Without offering much in the way of evidence, the plan highlights migration as a potential risk factor, identifies migrants as a high-risk group, suggests that labour migrants may have higher number of sexual partners and that refugees may have higher needs due to disruptions in access to health care due to flight, war, etc. The plan aims to reduce transmission rates by facilitating education, social cohesion and testing, and emphasizes the importance of communication between children and parents, interventions for young women and the special needs of pregnant women and high-risk populations.

Access to housing

The Constitution guarantees “[e]veryone has the right to have access to adequate housing” (Constitution, Article 26(1)). The Housing Act of 1997 establishes government’s obligations and roles in executing its duty, while the National Norms and Standards lays out the physical details required to meet the

requirement of adequacy. The National Department of Housing implements subsidy and other housing schemes intended to tackle South Africa's housing problem from a number of angles.²⁴ Programmes target gender equality, persons earning less than a specified threshold and previously disadvantaged racial groups, but all programmes are limited to citizens and permanent residents only, therefore excluding most migrants.

Like other provisions in the Bill of Rights, the government's obligation to provide adequate housing is subject to available resources and progressive realization; its devotion to this obligation has been the subject of much debate. In *Government of the Republic of South Africa v Grootboom* the Constitutional Court found that a housing programme that excludes a significant segment of the society (in this case, the homeless) does not pass the reasonableness test as required by section 36(1) of the Constitution.²⁵ Though the exclusion of migrants from government housing schemes, particularly marginalised migrants, may seem inconsistent with the decision in *Grootboom*, the decision strives to balance state obligation with the principle of progressive realization, recognizing the burden on the state not as one requiring immediate fulfillment of a universal right to adequate housing but rather requiring the state to justify its reasonable rationale for non-fulfillment of certain socio-economic rights given limited resources.

Shelter is a core component of urbanisation worldwide and deeply tied to the legacy of apartheid in South Africa (Todes *et al.*, 2010). Stark racial and class disparities persist in housing equity and related service provision, with Black South Africans more likely to inhabit informal housing with substandard services (Mathews *et al.*, 2014). Some migrants rent or purchase government-subsidized houses from South African citizens, a practice which emerges as a cause for concern and conflict with citizens claiming they have been deprived of housing as a result (Jost *et al.*, 2012).

Labour law

Like other provisions of the Constitution, Section 23 provides that "everyone" has the right to fair labour conditions. The Basic Conditions of Employment, Employment Equity and Labour Relations Acts are among the legislation that

²⁴ For additional detail and analysis see, for example: South Africa Human Rights Commission. 2004. *The Right of Access to Adequate Housing*. http://www.sahrc.org.za/home/21/files/Reports/4th_esr_chap_2.pdf

²⁵ *Government of the Republic of South Africa and Others v Grootboom and Others*, 2000 (11) BCLR 1169, Para 41.

applies to workers in South Africa. The Basic Conditions of Employment Act sets a minimum wage and contains protections for pregnant women and children, prohibiting employment of children under the age of 15 and barring any work deemed to be ‘inappropriate’ for their age or that threatens their physical, mental, spiritual, developmental or educational well-being (Section 43-48). Inevitably some lower-income families, South African and non-national alike, are flying below the radar, dependent on young family members to contribute to the collective effort to make ends meet. Expectant and nursing mothers are entitled to maternity leave and are protected from performing work that is hazardous to health (Section 25,26). Gauging the real relevance of these protections to migrants is difficult because reliable information about migrant participation in the informal employment market, and in any case, migrants may be reluctant to raise employment issues for fear of jeopardizing their livelihood or future employability.

In *Discovery Health Ltd v Commission For Conciliation, Mediation and Arbitration and Others*, the Labour Court of South Africa considered the question of whether a foreign national was an ‘employee’ for purposes of the Labour Relations Act (LRA) despite the fact that he was not in possession of a work permit and therefore his employment contract was invalid (Discovery Health Case, 2008). The Court affirmed the decision of the CCMA Commissioner that the LRA envisions an “employment relationship that transcends contract” and extends the protections of the LRA to unauthorised workers” (Discovery Health Case, 2008). The ruling suggests that immigrants employed under informal conditions may also qualify for labour protections.

Application of the law and its associated protections remain a thorny area, however, particularly with regard to informal employment such as domestic work, street vending and waste picking. In its statistical snapshot of women and men in informal employment, the International Labour Organization (ILO) cautions that domestic, home-based, street vending and waste picking workers are disadvantaged by insecure work, low and erratic earnings, operating outside the reach of government regulations, protection and largely invisible in official statistics (ILO, 2013). South Africa is unique among African countries for its comparatively low levels of informal employment but 15% of urban workers are street vendors, with women making up 68% of them. Domestic work represents 23% of urban informal employment with 96% of urban domestic workers being women. Figures on domestic work paint only a partial picture, however, in that the official data collection code excludes housekeepers and child-care workers and a portion of domestic workers are considered formally employed in South Africa due to the fact that their employers contribute to health or old age pensions (ILO, 2013).

The Business Licensing Bill, introduced in 2013, institutes new regulations requiring that foreigners must be in possession of a business permit (granted by DHA) in order to be issued a license to operate a business. Applicants must apply for business permits prior to entering South Africa and must show that they have a minimum amount to invest in South Africa (starting at R2 million). Advocates caution that despite the fact that “foreign migrants play an important role in South Africa’s informal economy,” including by employing South Africans and making certain goods available to poorer consumers few non-nationals currently operating in the South African informal economy will qualify (WIEGO, 2014). The Bill also takes the controversial step of tasking community-based and non-governmental organisations with working with the licensing authorities to enforce the bill’s provisions. As migration specialist Jonathan Crush notes, “this sounds suspiciously like an attempt to get South Africans on board to assist the police in identifying and rooting out foreign traders” (Business Day, 2013). The Bill remains under deliberation but aptly illustrates how the lines between economic and migration policy, whether intentionally or unintentionally, become blurred serving mutual aims through different mechanisms.

Banking and finance

Financial control laws are also used to control human behavior, and have increasingly been used with respect to monitoring and containing undesirable activity and unwanted entrants. While we may not immediately consider banking regulation when we think of families and children, the most basic activities of earning, receiving and distributing money directly impact the family members who rely on transmigrant relations making their living in South Africa. Being able to safely and efficiently remit funds to dependent family members at home is critical. South Africa’s principal terrorism financing and anti-money laundering laws are the Financial Intelligence Centre Act of 2002 and the Protection of Constitutional Democracy Against Terrorism and Related Activities Act of 2004. South Africa maintains exchange control regulations (capital controls) limiting the amount of money that can be transferred out of the country and treating residents and non-residents differently in terms of their ability to purchase foreign currency required to make an electronic cross-border financial transaction. For those keeping their earnings in-country, safeguarding money in the sometimes insecure environment of informal settlements is a challenge for non-nationals and South Africans alike. With the required identification, asylum seekers, refugees and business permit holders are permitted to open bank accounts in South Africa but banks have been known to refuse poor foreign applicants nonetheless (Landau & Segatti, 2009).

Part 3: Experiencing transnational familyhood in South Africa

Challenges to realizing safe, dignified and productive transnational familyhood in South Africa range from physical danger and denial of services to lack of documentation and failure of legal protection. The duplicity of promises encapsulated in the legal framework is experienced by South Africans and foreigners alike; with one of the world's highest inequality measures South Africa has an entrenched system of two-tiered access and entitlement – one for those who can pay and another for those who cannot, regardless of aspirations for equity. Discussion of inequality, racialized dimensions of poverty, entrenched power hierarchies and corruption are regular features on national talk radio and among scholars and politicians alike. Largely inhabiting the lower socio-economic echelons of society, and thereby frequently in the unable-to-pay group, transmigrant families are further challenged by discrimination at almost every turn.²⁶ Discrimination against migrants is evident in government offices, neighborhoods, public service points and emerging legislation. The regularity and acceptance of anti-foreigner bias creates conditions where transmigrants may opt to conceal their identity, forgo documentation, avoid accessing basic services, decline to report crimes or protection needs, and acquiesce to illicit systems that charge higher rents or unauthorized fees-for-service. While maintaining a flexible identity can be a highly effective component to crafting a protective environment, the ability to freely access vital public services, however, is vital to the safety and well-being of the more vulnerable individuals, particularly children, the disabled, elderly, infirm and marginalised.

Despite the impediments to dignified transnational familyhood in South Africa, prospects for work, safety from war, access to education and health care, and a quality of life not available in countries of origin continue to draw transmigrants to South Africa – a trend not likely to abate anytime soon. While basic needs and legal protections are central to the day-to-day choices that transnational families make, transnational familyhood also invokes fundamental questions about identity, difference, childhood, urbanization, gender and nationalism. Internal migration – that is, movement of citizens from one part of South Africa to another – plays an increasingly important role as well, with scholars investigating the comparative impact of cross border and domestic migration in terms of unemployment, well-being and social cohesion (Landau, 2009; Mazars,

²⁶ This is not to suggest that no migrants inhabit higher socio-economic positions. Indeed, many South Africans will report that their migrant neighbors are wealthier or more privileged and some transnational families have seen considerable success in business or work, have brought funds to South Africa with them, or maintain ties with transnational families abroad.

2013; Fauvelle-Aymar, 2014). This section explores some of these issues further, with specific attention to the South Africa context and suggestions for future research.

Access to services – health care, education & housing

Regrettably, settings for the most intimate individual and family life events are also the places where transnational families experience discrimination, violence and denial of rights in South Africa. Birth, emergency medical care, care for young children, shelter and access to legal documentation are all places of potential conflict. Some transnational families' earliest experience of discrimination is at birth. Women awaiting refugee status determination are entitled to health care, including reproductive care, and all children, including infants born to asylum seekers, are entitled to health care as well, though services are often administered with a heavy dose of discrimination (Mazars, 2013). Investigation of migrants' access to medical care and specifically, the treatment of women and infants during the birth process, suggests that pregnant and laboring women are the recipients of targeted abuse. Zimbabwean women interviewed about their experiences giving birth in South African hospitals report abuse and neglect by hospital staff. One woman testified: "[the nurse] insulted me and said Zimbabweans were a big problem. She said we should go back to give birth in our own country...[after giving birth squatting in the hospital hallway]...my baby was still lying on the floor. I was very weak, but I had no choice but to pick up my baby." Another woman was told: "Zimbabweans are increasing [the nurses'] work load and love getting pregnant on South African soil" (Bulawayo, 2014). Similar patterns are reported amongst transmigrants from various countries in locations throughout South Africa (Vearey & Richter, 2008). According to IOM, "migrant women are in a more disadvantaged position, as they may be unable to access continuous antenatal care, safe delivery facilities/assistance and contraceptives, and experience specific vulnerabilities due to the mobile nature of their livelihoods" (Mazars *et al.*, 2013: 25). Intimidation around access to services can detrimentally impact mother-child transmission of HIV and subsequent long-term care needs (USAID, 2013).

The quality of health care throughout South Africa is extremely varied with obvious discrepancies between services available in rural, border and urban areas, among government funded health care facilities, and between those who can and cannot pay. Despite the fact that many South African citizens struggle to access anything beyond the bare minimum of medical care in under-resourced community clinics, it is widely assumed that migrants come to South Africa specifically to consume free health care (SAMP 2009). Some migrants do come

to South Africa seeking medical care. It is not clear that they seek health services in South Africa in large numbers or because care is any less expensive than in the home country (Polzer, 2008). Struggling to manage one of the highest HIV infection rates in the world, South African has been central to public debate about access to free and low cost anti-retroviral treatment (ART) (UNAIDS, 2013). Lawyers for Human Rights (LHR) has documented service provision violations at government hospitals, including denial of ART to foreign patients regardless of identification (LHR, 2008). Unchecked assumptions around migration-for-healthcare feed discriminatory practices such as unauthorized demand for identification or fees and subsequent refusal of medical care for vulnerable transnational family members.

As with health care, education operates on a two-tiered basis – one set of options for those who can pay and a dramatically inferior one for those who cannot. Government schools are frequently under-resourced, teachers unqualified or unwilling to show up, classrooms non-existent or overcrowded, books unavailable and children unfed. Given the very limited chances of obtaining quality early education, the presence of foreign children in the classroom is often seen as a threat to what many South African parents feel is their child’s one slim hope for a better future (SAMP, 2009). Researchers at the Forced Migration Programme at the University of Witwatersrand caution that the widespread denial of access to education for non-nationals threatens to create a population of long-term immigrants who are underemployed and vulnerable “with negative effects for the entire society” (Cormsa, 2007).

Like education and health care, safe shelter is at the core of family life. The task to provide adequate housing for millions of South Africans living in informal or sub-standard conditions is an ongoing challenge. Transnational families live among local residents, renting from South African owners and sharing urban spaces. Few transmigrants, however, report that their homes or neighborhoods are safe places for them or for their children. Those with tenuous legal status are particularly vulnerable to predatory rental practices or unlawful evictions. Some landlords raise rents when their migrant renters are seen to be succeeding in work or business. For migrant parents, high levels of violence in low-income residential areas and informal settlements present a source of constant anxiety, wondering whether children will make it to school safely, whether salaries will be stolen or whether they will be evicted from their home. South Africa’s legal system does make it possible to pursue redress when legal matters arise involving valid rental agreements but against crime and anti-immigrant social behavior in their neighborhoods, non-nationals have limited recourse.

Documentation & the long shadow of the department of home affairs

The Department of Home Affairs and its authority over the most fundamental decisions affecting persons in South Africa: legal presence and identification, cast a looming shadow over the experience of transnational families in South Africa. Within DHA, the post-apartheid period is characterized by lack of communication between policy makers, management and departmental officers, conflict between immigration functions and other duties such as voter registration, employees lacking competency to carry out basic duties, an institutional culture of poor discipline and low morale, and a performance metric focused almost exclusively on deportation (Vigneswaran, 2012). Immigration policy development seems to take place in absence of clear understanding of South Africa's migration situation or immigration objectives resulting in a control-oriented approach utilizing detention and deportation as its primary tools (Vigneswaran, 2009). In 2012-13 DHA reported 75,000 deportations, projected to increase to 90,000 in 2014-15 with no correlation to the number of migrants, legal or illegal, present in the country (Mthembu-Salter *et al.*, 2014). For transnational families, heavy handed immigration enforcement, inept and poorly managed immigration services and immigration policing by citizens create an overwhelmingly hostile environment, even for those attempting to remain above board and correctly documented.²⁷

Transnational parents struggling to hold down multiple or informal jobs, those who live far from DHA offices or who have complex cases to present are frustrated by the countless and time consuming visits required to apply for permits. The most basic processes – application for change of status, permit renewal, birth registration – are plagued by delay, mishandling and obstruction within DHA. As a result, transmigrants frequently find themselves unable to access social services they are entitled to – unable to register children for school, unable to report to police in the case of mishap and even unable to depart the country if their child remains without the proper registration leading to risk of detention and deportation (Ndayikengurukiye, 2013). Both children and parents suffer the consequences of an environment of such instability; not only has South Africa's immigration policies made otherwise straight forward tasks more difficult for struggling families, the risks of failing to successfully navigate those hurdles are potentially grave.

²⁷ South Africa's Draft White Paper on International Migration (*Government Gazette*, Vol. 406, 1 April 1999)) and the pending Licensing of Businesses Bill (*Government Gazette*, No. 36265, 18 March 2013) suggest a citizen role for policing undocumented migrants.

Asylum seeker families face similar barriers navigating the lengthy and complex status determination process, which is the gateway to international refugee protection in South Africa. Geographic distances between Refugee Reception Offices (RRO) make accessing an asylum officer expensive, time consuming and even dangerous. Asylum seekers report violence and bribery schemes endemic to the queues at RROs (AU Shadow Report, 2014). Women, children and other vulnerable individuals routinely queue overnight, without food or shelter, enduring weather, abuse and violence in attempt to access DHA asylum proceedings. Those who do succeed are few in number: according to the department of Home Affairs, only 1 in 20 applications were approved in 2012-2013 (DHA, 2013). The Immigration Inspectorate is empowered with a wide mandate to enter, search, seize, arrest and detain suspected illegal foreigners, and both police and immigration officials have the right to detain persons suspected of being in the country illegally (Mthembu-Salter, 2014). This includes any asylum seeker whose transit permit expires before they reach a RRO.²⁸ While proper documentation is no guarantee of safety, services or security, life without documentation is even more precarious (Cormsa, 2011). Refugees and asylum seekers frequently try to appear ‘South African’ in order to avoid the attention of police and South African citizens alike, so while legal refugee status is a vital link to international protection, day to day identification as a refugee is not necessarily desirable or beneficial (Clacherty, 2005). Securing status has implications for identity formation, perhaps most acute in the case of children, what it means to be South African versus ‘other’ and finally, the overarching project of facilitating social cohesion.²⁹

It should also be mentioned that the steady inflow and occasional influx of individuals entering South Africa from Zimbabwe has placed additional strain on South Africa’s asylum environment. Precise figures for the number of Zimbabweans in South Africa at any given time vary widely and while the majority of Zimbabweans do not qualify for refugee status, their presence, government’s ambiguity toward them and societal discrimination against them seems to have hardened attitudes against all refugees and asylum seekers in South Africa.³⁰

²⁸ Approximately 5,700 Angolans are among the recognized refugees present in South Africa. Many fled their country during the civil war, which came to an end in 2002, and for some families the current cessation process will mean returning to Angola where they have never been, do not speak the language and feel they have diminished opportunities for a productive, or even safe, life (IRIN, 2013).

²⁹ Landau describes a transnational articulation of identity that “demonstrates a willingness to engage a plurality of cultures, openness to hybridity, and multiple identities” (Landau, 2010: 9; *citing* Hannerz 1990: 239).

³⁰ For a recent summary of arguments, sources and projections about the number of Zimbabweans in South Africa see Africheck, 2013.

Specific challenges for transnational families with children

Transnational children in South Africa experience discrimination based on nationality, race, religion, economic and geographic circumstance, as well as frequent violence both in and outside of the home (South Africa Human Rights Commission, 2011). As part of the migration experience everywhere, migrant and transmigrant children find themselves lacking the security of familial or community safety nets, previously present in the home country but absent or altered in the host country.³¹ Often transit itself can be gravely risky. In the host country, some transnational families employ strategies to remain under the radar in attempt to avoid detection both by authorities and by hostile citizens. Together, these make for a situation where transmigrant children are rendered invisible to protective services – both state and community-based. Invisibility, intentional or otherwise, makes it virtually impossible to detect children in need of protection and puts children at higher risk of economic and sexual exploitation, forced labor, trafficking, neglect and other abuse. Child rights and child protection advocates caution that while foreign children often suffer disproportionately, they are in fact part of a widespread systematic failure to protect and serve children throughout the country (Save the Children, 2009; Community Law Centre, 2014).³² Research does show, however, that migrants without children tend to fare better in South Africa in terms of economic and household stability than their colleagues with children.³³ While it is difficult to pinpoint the exact reason, the cumulative challenges of destabilization and transit coupled with the costs of securing legal status, food, shelter and livelihood for larger households offer at least part of the answer.

The National Action Plan on Orphans and Vulnerable Children (OVCs) instructs that the Department of Social Development is responsible for delivery of services to OVCs and outlines procedures for identification of at-risk children, intervention for psychosocial needs, legal protection measures and policies for dealing with child-headed households. South African legislation recognizes OVCs, national and non-national alike, among South Africa's most vulnerable

³¹ It is equally the case that some children move precisely to flee violence and abuse in the home country, including violence in the home. Whichever the case, children in new places experience some measure of upheaval, uncertainty and risk inherent to the migration process. The effect is multiplied when children move alone.

³² Reports point to corruption, failure of management, lack of political will, slow to advance pro-child policies, low education levels or lack of training among child protection officials, and lack of correlation between child protection policies and the resources to effectively implement them.

³³ The African Cities Survey shows that $\frac{3}{4}$ of migrants travel without members of their families and analysis of the 2001 census suggests those without children earned up to twice as much as those with children. See http://www.unicef.org/southafrica/SAF_resources_migrantchild1.pdf

individuals (AU Shadow Report, 2014).³⁴ Where children are the sole migrant members of transnational families and therefore present in South Africa alone, these provisions become immediately relevant. Unaccompanied and undocumented minors – children in the country without documentation or without a parent or guardian – face real challenges obtaining identification necessary to access the social grants, education and protection they need. It is common to find Department of Social Development (DSD), law enforcement and immigration officials unaware of or unresponsive to the rights of non-national children in South Africa (Shreier, 2011). Some are unwilling or ignorant of their mandated duty to open a Children’s Court Inquiry (CCI) on behalf of at-risk children, the precursor to a child entering the child protection system and non-national children who come into contact with child protective services are often referred to refugee aid organizations rather than handled according to routine child protection procedures and the best interests principle (Shreier, 2011). Health care providers report that children presenting for medical treatment in border areas are routinely and illegally detained and deported by law enforcement (Save the Children, 2009). Institutional confusion and mismanagement leads to delays and creates additional risks for children in need of services or protection.

Let us not forget the children of transnational families who remain in the home country, living with relatives or on their own, dependent on the legal status, employability and health of the parent or family member abroad and their ability to remit funds and maintain communication. Research has looked into relationship, generational shifts and cultural aspects of transnational familyhood in the Americas, Europe and Australia but relatively little is known about how transnationalism affects children in Africa and Southern Africa specifically.³⁵ South African scholars continue to explore the country’s high levels of inequality, poverty and violence with relation to the “breakdown of community

³⁴ It should be noted that it is not only migrant or foreign children who suffer; protection services, procedures and staff responsible for implementation of all child protection services lack capacity and coordination and are dramatically under-resourced. Foreign children are doubly impacted when their migrant status exacerbates the risks they are subject to, often due to diminished visibility, lack of community or family and weak integration with social service apparatus.

³⁵ See: Baldassar, L. & L. Merla (eds.). 2014. *Transnational Families, Migration and the Circulation of Care: understanding mobility and absence in family life*. Routledge Transnationalism Series; Mazzucato, Schans, Caarls & Beauchemin. 2014. Transnational Families Between Africa and Europe. *International Migration Review*, first published online: 18 Nov 2014.

and family structures” due to apartheid era institutions, urbanization, migrant labour systems, the HIV pandemic and gender inequality (Children’s Institute, 2014). More needs to be known about changes in family structure resulting from migration, including gender roles, the impact of technology and feasibility of communication for maintaining ties between children and parents, effect of transnational familyhood on community and family cohesion, long term mental health impacts for children, and changed expectations as a result of new opportunities or limitations resulting from transmigration.

Xenophobia & identity

Violence is a daily reality for many in South Africa, particularly those in the poorest neighbourhoods and informal settlements, spaces occupied by numerous documented and undocumented transnational families. On top of drug, gender and economic-driven violence, the threat of anti-foreigner or xenophobic violence complicates the daily lives of transnational families in South Africa. As recently as April 2015, reports of attacks against non-nationals in Soweto, Gauteng and other KwaZulu-Natal and Western Cape townships cast a shadow on the aspirations of migrant communities to conduct their home and work lives in safety (Associated Press, 2015).

The xenophobic violence that took place in South Africa in 2008 claimed the lives of 62 people, some of whom were not immigrants. Another 670 were wounded and 150,000 were displaced, some for years after. Not all affected were non-nationals but it is widely speculated that the violence was the result of competition between citizens and foreigners for work and for local economic and political power (Polzer, 2010; Cormsa, 2011). The violence against non-nationals was by no means a new occurrence, rather its ferocity and magnitude was unique, arguably emerging in a climate that has long tolerated violence against foreign nationals creating a perception of impunity for perpetrators. That threats and attacks against non-South Africans continue suggests that government has failed in its efforts to address the underlying causes of xenophobia in the country.

Landau situates xenophobia in the space between development and migration observing, “in societies with ailing economies, poor educational systems, and chronic unemployment that are now undergoing profound socioeconomic transformation as a result of integration into world systems of trade and services, the voiceless and marginalized often turn to violence” (Landau, 2012). South Africa is far from alone in experiencing popular uprisings against foreigners and in countries as diverse as Kenya, Germany, the United States, Greece, and Israel citizens are mobilizing around disillusionment with the presence of non-

nationals, perceived dilution of national identity and critiques of failed integration policy. Political parties are profiting from nationalist, xenophobic, protectionist messages and in certain places large-scale demonstrations have disrupted public order. In some countries asylum space is shrinking as a result.

Transnational families in South Africa report daily discrimination in their neighborhoods, such as being required to pay for routine maintenance to rental homes and to provide food for their landlord's children, and refused intervention by police when targeted in anti-immigrant crimes. Transmigrant children find themselves the target of abuse and neglect at the hands of neighbors and classmates, as well as those tasked with protecting them – teachers, doctors and police (UNHCR, 2008). Violence also affects transmigrants en route to South Africa and those returning home as transit routes and border crossings are plied by criminals targeting migrants in vulnerable situations, especially women and children (Global Movement for Children, 2010).

In the face of widespread discrimination and bias against foreigners in South Africa and in absence of effective policing and social protection systems, “migrants create their own informal systems of social protection,” such as neighborhood security networks, childcare arrangements, job and housing referral networks, and community leadership structures (Landau & Palmary, 2011; Mpedi & Smit, 2011). For transnational families these organic networks serve as a beacon during preparation, travel and arrival and as a reference point during settling in (Crush, 2011). Many transmigrants report settling in a specific location or finding their first job through a family connection or distant relation, though fidelity to national identity remains fluid depending on the benefits and risks of affiliation (Landau, 2010). A transnational approach suggests “the individual and his/her support networks as the proper unit of analysis,” but it is important to note that those networks may be multiple and malleable (Portes *et al.*, 1999; Crush & Williams, 2002). The transnational perspective has helped to expand migration scholarship beyond the limitations of assimilation and ethnic pluralism theory, allowing for greater consideration of the complexity of the transnational experience (Rios, 1999). Within that complexity, immigrants “construct their identity within multiple contexts” manipulating their ethnicity to advance their interests and satisfy needs” (Laguette, 1984). Scholarship is expanding to investigate important linkages between identity, migration and development, particularly including the triangular dynamic of domestic migration, international migration and local citizen relationships (Dodson & Oelofse, 2002). Transmigrants and their families must be included and contextualized within South Africa's ongoing nation building project if the root causes of xenophobia and steps toward social cohesion are to be meaningfully advanced.

Women, gender and transmigrancy

Increased attention is being paid to relationships between gender, migration, work and development (Mazars, 2013; WEIGO, 2014). While migration may result in greater independence or freedom from social or cultural constraints for some women, female migrants also report discrimination within their home communities and obstacles in accessing credit, banking systems, property ownership and equal labour market entry necessary to transform transnationalism into sustainable gains (Dodson & Crush, 2006; Dodson, 2007). Furthermore, women's emergence as primary wage earners and heads of their transnational households has not diminished their responsibilities elsewhere: women retain the "double burden of care", responsible for caring for ill and dependent family members and generating income (Nunez-Carrasco *et al.*, 2011)

The fact that women experience limitations with respect to labour market participation, from lower wages to more precarious employment and job related risks including gender based violence, has wide ranging effects on care relationships and family health, both physical and economic. Research finds that while remittances from women workers are generally smaller than those of men, women remit a greater percentage of their wages raising questions as to whether their contribution to their families is at greater expense to their own well-being (Dodson, 2007). The emergence of a global caring economy has further challenged conventional notions of women's employment as their role expands to encompass both care within the nuclear family as well as the global marketplace in a migration-based industry of care (Yeates, 2005). With women – including non-nationals - providing the majority of informal domestic labour in South Africa it is necessary to consider the status of child both accompanying and remaining behind when mothers migrate.³⁶ Transnationalism, then, does not eliminate the public-private dichotomy; rather, it opens new avenues for inquiry into gender roles assumed in the home, in public, in the home country, in the host country and in the workplace.

³⁶ Limited research has considered internal migration and mothering in South Africa. See, for example: Posel, D. & G. Van der Stoep. 2008. Co-resident and absent mothers: *Mothers and labour force participation in South Africa*. Paper presented at the Annual African Econometrics Society Conference, Pretoria; and, an unpublished draft by Katherine Hall entitled *Migrant mothers and mobile children*, observing that children are often left behind (commonly) in the care of a grandparent, with the additional support of a social grant and often in under-resourced areas. The research raises questions about how mothers are making parenting choices and the limitations presented by child care options, inadequate housing options and lack of safety in cities.

Work & money matters

The long-standing tradition of employing foreign mine and agricultural workers in South Africa remains driven largely by multinational corporations and industry – mining and agriculture are the major players – though it reflects obvious structural changes since the end of apartheid. Statutory benefits such as overtime pay, disability leave and compensation and pension accompany certain types of work but even legal migrant workers find themselves unable to secure benefits due to contract limitations such as the limited time period they have to exit the country upon expiration of their contract. Today the informal economy also exerts a powerful draw on transmigrants, attracting traders and other informal workers who come to South Africa with both temporary and more permanent settlement in mind. While the unemployment rate in South Africa is often higher than in those countries sending migrants to South Africa, relatively low barriers to entry make participation in the informal market appealing to many despite deterrents ranging from predatory rental prices, extortionate protection premiums, and anti-foreigner crime and violence.³⁷ The Growing Informal Cities survey found the majority of migrant entrepreneurs surveyed were in South Africa legally and over 60% reported starting their own business as one motivation for moving to South Africa.³⁸

A 2014 *Migrating Out of Poverty* report finds that immigrants in South Africa are almost twice as likely to be employed in the informal sector as domestic migrants and non-migrants, and far more likely to be engaged in precarious employment such as work in private homes and casual or day labour where social benefits and protections such as contracts, pensions, workplace injury compensation and social security are not usually on offer (Fauvelle-Aymar, 2014).³⁹ The families of those working in the informal economy, as such, will not benefit from benefits accrued and are at risk of losing their source of livelihood on short or no notice, coping with workplace injury without compensation and enduring potentially abusive or coercive conditions. Naturally, informal labour situations do not provide a legal avenue for workers

³⁷ According to the International Labour Organisation, 2013 unemployment rates for Angola, Ghana, Nigeria and South Africa were 8.4%, 4.5%, 7.5% and 25.3% respectively (ILO, 2013).

³⁸ Tawodzera, Chikanda & Tengeh. Growing Informal Cities (GIC) dissemination workshop, UCT. 9 February 2015. The survey, part of the GIC project at UCT's African Center for Cities (ACC), surveyed 518 migrant entrepreneurs in Cape Town who operate informal businesses.

³⁹ Precarious employment expands the informal sector pool to include persons over the age of 15 and working in private households, unpaid in a household business, or working for someone else but not eligible for basic benefits from their employer and having no written contract.

to bring family members with them, nor do they allow for statutory home leave, holiday or sick days, which can take a heavy toll on family cohesion. The potential for transnational families to benefit from labour protections is further diminished by the reality that few unauthorized workers are prepared to raise complaints against employers, lacking the resources or knowledge to do so, fearing retribution, feeling compelled to endure whatever abusive or unlawful conditions accompanies the work they can find, or deciding that the threat of arrest or deportation outweighs the potential benefits of a labour complaint.

Table 3: Employment trends among domestic migrants, international migrants and non-migrants according to the Quartely Labour Force Survey (QLFS) Q3, 2012.

	Unemployed (excluding discouraged job seekers) (%)	Unemployed (including discouraged job seekers) (%)	Engaged in informal sector (%) ⁴⁰	Engaged in precarious employment (%) ⁴¹
Non-migrants	26.2	34.6	16.6	30.3
Domestic-migrants	32.5	39.3	18.0	28.7
International migrants	14.7	18.5	32.7	53.3

Source: Adapted from Fauvelle-Aymar, 2014. MiWORC Brief No. 6.⁴²

⁴⁰ The report analyses the migration module piloted by Statistics South Africa in the Quarterly Labour Force Survey (QLFS) of the third quarter 2012, which determines informal sector activity according to (non) payment of taxes and number of employees (fewer than five).

⁴¹ The QLFS expands its previous scope of precarious employment to include persons working in private households, doing unpaid work in a private business, or working for pay but not entitled to basic benefits or lacking a formal contract (QLFS, 2012). MiWORC’s analysis, presented in this table, includes agricultural workers but excludes individuals working in private households. With so many limitations, the figures and analysis presented by MiWORC can be taken as but one version of the full picture and points to the need for a far more robust effort to track and analyse the informal sector in general and the participation of international migrants specifically.

⁴² The MiWORC report highlights several weaknesses in the applicability of the QLFS to analysis of migrants, perhaps evidence of the fact that the survey is not designed to examine migration variables: the survey ignores circular migration (where place of residence does not change, as in temporary migration), the sample is considered low to accurately assess various dimensions of migration (QLFS sample size: domestic permanent migrants = 1,080 individuals; international migrants = 1,319 individuals; total sample size = 85,760 individuals), and roughly 50% of reported international migrants were actually born in South Africa. They are counted among international migrants, pointing to a definitional rather than an accuracy problem.

Remittances and the prospect of earning salaries sufficient to generate surplus income in order to send money back home play a central role in many families' decision to send individuals abroad in search of work or other opportunity. Formal remittances to Africa quadrupled between 1990 and 2010 to USD \$40 billion that year, and are projected to rise to over USD \$41 billion in sub-Saharan Africa alone by 2016 (FDI) (Ratha *et al.*, 2011a; World Bank, 2014). While South-North migration matters and North-South remittance patterns have been the focus of extensive research, South-South migration and remittance channels are garnering attention particularly with respect to interest in informal remittance channels, regional mobility regimes, the shifting role of previously aid-receiving countries to aid-sending countries and the need to attract immigrants to sustain economic growth. It should also be noted that South-North migration is generally characterized by larger income disparities between the sending and receiving countries, whereas South-South migration usually evidences less of a gap in income between the sending and receiving countries (Ratha & Shaw, 2007). It must be said that the flow of money is not one-way – some transmigrants also rely on money sent by family members in other countries.⁴³

For transnational families benefiting from earnings in South Africa, exchange control, anti-money laundering and anti-terrorism financing laws impact the amount, frequency and security of funds remitted to family members back home. Capital controls can erode wired amounts up to 20 per cent and for informal workers proving the source of funds - usually by producing a pay cheque or bank statement – may be impossible. As a result, many migrant families resort to informal money transfer systems. The volume of remittances transferred via the informal market is on par with that reported in official remittance figures (Ratha *et al.*, 2011a). Costs associated with both formal and informal money transfers diminish the development impact of remittances in receiving countries, a fact which cuts both ways considering the outflow of South African workers to other countries (the so-called brain drain) who also send money home via international money transfer systems. For casual workers earning R100-R200 per day the fees can be crippling. The simple *hawala*-type system involves a much lower transaction fee, perhaps 2%, but by definition places the sender in a less secure position regarding the security of the transaction.⁴⁴ An even more informal mechanism, with an accompanying higher level of risk, is to simply send money home in the hands of a bus or taxi driver,

⁴³ The GIC survey, for example, found that 60% of migrant informal business owners surveyed remit more than once per year, amounting to roughly R10,000 in total, while 6.7% receive remittances.

⁴⁴ *Hawala* money transfer system operates in parallel to transitional money lending institutions, in absence of a legal environment, involves no promissory instrument and relies on trust between *hawaladars*, or brokers.

or another associate making the cross border trip. Ultimately, *hawala* transactions may be so popular with migrants due to the fact that funds are made available almost immediately and virtually free from bureaucratic hurdles.

In South Africa, formal money transfer organizations (MTOs) – namely Western Union and Moneygram – thrive in a regulatory environment that allows them to maintain exclusivity agreements with banks and other agents, thus ensuring that the market remains unfavorable to competition. Throughout Africa, MTOs charge some of the highest money transfer rates in the world, up to four times rates in other countries (Ratha & Shaw, 2007). The average transfer fee in Africa runs a stiff 12%, whereas Latin America and Asia report 4.4 and 6 per cent respectively (Ratha & Shaw, 2007). Money transfer companies are so few and their ability to form exclusive partnerships with banks that authorize their activities result near-monopoly conditions are the norm. MTOs usually require both sender and receiver to produce identification and even proof of address, both of which can prove impossible in the fluid migratory environment.

Separating remittances transferred through informal channels versus formal money transfer systems, and remittances earned in informal versus formal markets remains a challenge despite exhaustive efforts by governments and international institutions naturally interested in quantifying remittance flows. Estimated transfers through informal money channels range from 50 – 250% of those sent via formal money transfer systems (Freund, 2005). The African Development Bank reports that 55 percent of Sub-Saharan Africa's GDP and 80 percent of its labour force is in the informal economy (ADB, 2013). South African research firm Adcorp reports that in 2013 employment in South Africa's informal economy eclipsed the formal economy in terms of new jobs added, though once again, wide variance between findings of the 2011 census and South Africa's quarterly labour force survey leave unemployment rates and the exact size of the informal market almost wholly unresolved (Adcorp, 2013).

Conclusion

Reading the legal framework from a perspective of incentives and disincentives it is apparent that South Africa presents significant motivation for families in Africa to transnationalize, making their way South. Despite anti-foreigner sentiment and barriers to access to rights and services, South Africa remains an attractive place to find work or refuge, and in doing so, to sustain ones self and family members. To be sure, transmigrants express ambivalence about living and raising their families in South Africa – ranging from dismay at the quality of education and housing, to disdain for perceived South African cultural norms and liberal social practices, to gratitude for employment or business success. South

Africans too, express ambivalence about the presence of their transmigrant colleagues – from acceptance to violent rejection.

Looking forward, it is possible to imagine a future where migrants in South Africa are healthier, more educated, and better off than the average South African. Workers, both low and high skilled, will increasingly exercise their ability to choose countries that promise a high quality of life, strong social protections and other factors that improve the outlook for their children. As globalization marches on, transnational families will become more the norm than the exception making it necessary to reconceptualize migration and transnational familyhood as a choice reflecting agency as opposed to a status of last resort and as integral to national and regional development rather than a threat to it.

While the effects of globalization are beginning to challenge conventional wisdom, which so often blames migrants for ‘stealing’ jobs and services, bringing disease and crime, and placing strain on limited national resources, international migration is still intimately tied to discourse about ‘authentic’ national identity and the social cost/benefit of immigrants and immigration. While the discussion in South Africa has yet to reach the nationalist pitch of recent anti-immigration demonstrations in European countries, resistance grounded in economic-related concerns and anger with market participation by foreigners is strong. At present, the South African government seems to be taking a hands-off approach with the sizeable and growing informal economy, and the many transmigrants participating in it. If anything, the Business Licensing Bill suggests that policy makers have opted for a hostile rather than encouraging response to foreign traders and business people. It is unclear whether this is in response to purposeful policy decisions, to popular politics, or both. Either way, progress needs to be made in sorting through the double standards evident in the intersection between the law on the books and the way transnational families experience life in South Africa each day. It goes without saying that this task goes hand in hand with the duty to increasingly realize the rights to which everyone in South Africa is entitled and which so many live without.

In the hierarchy of transnational families in South Africa, those without documentation, living largely under the radar with access to few social protections, find themselves at the bottom. Lack of legal status affects every facet of family life from access to health care to the freedom to walk on the street and the ability to return home. The prospect of being detected without documentation leads many to avoid contact with service providers for fear of abuse, bribery, detention or deportation. Transnational families with children are also among those at the bottom, reporting lower than average income levels

coupled with the added stress of keeping children fed, housed, clothed and safe under precarious conditions in what can be a hostile society. More also needs to be known about the children, disabled, elderly and other dependent members of transnational families who stay behind when wage earners migrate, and how these pieces coalesce influencing national development in both sending and receiving countries.

The extent to which poor migration data hobbles South African policy makers cannot be overstated. Failure to gather reliable, consistent, high quality data suggests an anemic understanding both of the importance of immigration to national development and the role that lack of information plays in destabilizing society. Absence of demographic information leaves local government with the impossible task of planning for unquantifiable housing, health and education needs, unable to anticipate potential social stressors and possible points for fostering cohesion. With no reason to expect that transmigrants will stop arriving in South Africa's municipalities, local government is destined for planning in crisis mode for the foreseeable future.

South Africa's legal framework, when compared with the political and economic priorities of the electorate, puts migrants in the firing line between real, vested interests to deny migrants' rights and sideline the needs of transnational families, and legal commitments to uphold their rights. This makes for a brewing legislative and political conflict in South Africa, which, unaddressed, will increasingly pit the rights of migrants against the will of citizens, further straining social cohesion and national identity. As South Africa strives to assume (or retain) the role of standard-bearer in Africa – whether as peacemaker, economic powerhouse, favorite of foreign investors, stalwart of democracy, health trailblazer or human rights authority – a more comprehensive understanding of the interplay between the migration and development in South Africa is vital. Periodic re-emergence of xenophobic violence threatens the country's standing in each of the above roles and persistent avoidance of the extent and impact of migration demonstrates a willingness to throw both local lawmakers and transnational family members to the lions as municipalities struggle with planning, social dynamics and service provision in the absence of crucial information and resources.

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