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STUDIES PROGRAMME
AT WITS UNIVERSITY

One Burden Too Many?

A Cost-Benefit Analysis
of Immigration Policing
in Gauteng

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Policing Research at the Forced Migration Studies Programme

South African policing stands at a critical juncture. The police have negotiated more than a decade of democratic change. Still, there is growing uncertainty about whether the South African Police Service (SAPS) remains capable of meeting the challenges of building an open democratic society. On the one hand, the police are responsible for addressing a crime problem that is now of a scale and character with few international parallels. On the other, we find that public confidence in the police is low. High-profile stories, such as the charges laid against former Police Commissioner, Jackie Selebi, have dominated the headlines. However, negative public perceptions of everyday encounters and relationships with local police officers are equally concerning.

For several years now, the Forced Migration Studies Programme (FMSP) has been working with the police and communities in South Africa. Our work has primarily been motivated by a need to address the challenges that international migrants present for domestic policing and crime-fighting initiatives. As part of these efforts, we have identified a range of problems between the police and migrants, including:

- Non-nationals' failure to report crimes;
- The relationship between cross-border mobility and criminal activity;¹
- The protection of migrants' rights when they are arrested for immigration offences;² and
- The impact of immigration enforcement responsibilities on police work.

Over the last year, the last issue on this list has emerged as a more central feature of our research. This has largely been a result of increasingly reliable evidence that migration policing – already recognised for its negative impacts on the Department of Home Affairs (DHA)³ – might also be affecting SAPS' capacity to fight crime.

Unfortunately, much of the work on these issues has ignored SAPS' views. Given this, we initiated a project to study the police experience from the 'inside'. The project involved work in five stations across Gauteng. At each of these stations we have worked with a large number of police officers to understand the nature of their work and the principles which guide their everyday practice of policing.

This research has produced a vast amount of primary data and – we believe – a range of new and more constructive insights into the changing face of policing in South Africa. In addition to providing us with policy-relevant guidance on immigration policing, the study looks more generally at the nature of 'informal policing'. These insights will be presented over the coming months in a series of reports.

1: T. Araia. 2009. 'Human Smuggling Across the South Africa/ Zimbabwe Border', Forced Migration Studies Programme: MRMP Occasional Report, Johannesburg, available at <http://www.migration.org.za/>, retrieved on 15 September 2009.

2: Consortium for Refugees and Migrants in South Africa. 2009. 'Protecting Refugees, Asylum Seekers and Immigrants in South Africa,' available at <http://www.cormsa.org.za/research/cormsa-reports/>, retrieved on 15 September 2009.

3: D. Vigneswaran. 2007. 'Undocumented Migration: Risks and Myths [1998-2005]', Chapter 3 in L. Landau and A. Wa Kabwe-Segati (eds.) *Migration in Post-Apartheid South Africa: Challenges and Questions to Policy-Makers*, Agence Française de Développement, D. Vigneswaran (with the assistance of Tesfalem Araia, Colin Hoag and Xolani Tshabalala). 2010. 'Criminality or Monopoly? Informal Immigration Enforcement in South Africa', *Journal of Southern African Studies*, 36, (in press).

Report One: One Burden Too Many? A Cost-Benefit Analysis of Immigration Policing in Gauteng

In the first report, which follows below, we look specifically at how SAPS' responsibility to enforce the Immigration Act (n. 13 of 2002) impacts upon its capacity to fight crime. The prerogative of ordinary police officers to investigate suspected immigration offences leads to large numbers of deportations from South Africa, deterring unwanted migration, upholding South African laws, and helping to combat certain categories of illegal immigration activity. At the same time, this activity:

- Draws large amounts of human and financial resources away from visible policing strategies;
- Creates an irresolvable tension between SAPS' responsibility to police communities and its responsibility to protect South African borders; and
- Impacts negatively on police integrity.

The report uses these findings to arrive at a set of specific policy recommendations for SAPS in Gauteng, which have broader relevance for SAPS nationwide:

- Clarify the responsibility of the police under the Immigration Act in order to limit the discretion of individual officers;
- Incorporate immigration policing into provincial and national budgetary estimates and planning processes; and
- Change immigration policing strategy from localised, ad hoc policing of immigration laws to the development of targeted policing initiatives to combat transnational crime.

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One Burden Too Many? A Cost-Benefit Analysis of Immigration Policing in Gauteng

Introduction

The new ANC administration is committed to the more effective use of public resources. Initiatives emanating from the Office of the Presidency, which include the National Planning Commission – spearheaded by former Finance Minister, Trevor Manuel – and Jacob Zuma's own Presidential Hotline, form part of a recent drive to transform the way in which the South African government does business. As part of these reforms, the South African Police Services (SAPS) is rolling out its own plans to improve performance in the 'war against crime'. While the media has focused on the proposed changes to police officers' use of force under section 49 of the Criminal Procedure Act, Minister Nathi Mthethwa and Police Commissioner Bheki Cele have been focusing on the need for increased professionalism. This report engages with this spirit of renovation and reform, by weighing up policing performance and strategy in an area that has received little attention thus far: SAPS' enforcement of the Immigration Act (n. 13 of 2002).

There are many good reasons why senior police officials have not been concentrating on immigration policing. Immigration offences are not listed in SAPS' schedule of priority crimes. Police officers only participate in immigration policing activities on an ad hoc basis. The Department of Home Affairs (DHA) is the primary implementing agency of the Immigration Act, not the SAPS.

This report shows why **SAPS cannot continue to wait for an improved approach to immigration issues from the DHA**. More specifically, we suggest that SAPS Gauteng must take a more proactive role in determining its position on immigration enforcement. Despite instructions from senior officials suggesting that immigration enforcement is not a priority, police officers in Gauteng continue to do the bulk of the work of immigration control – involving surveillance, detection, arrest, detention and transportation. To put this in numbers, SAPS GP accounts for about half (54%) of the nation's immigration arrests and spends about one quarter (26%) of its human resource budget on immigration policing. Our conservative estimate is that **SAPS Gauteng spends approximately R 350 million per annum on immigration policing**. If we value the commitment and sacrifices of our men and women in uniform, then we must ensure that their time and energy is being effectively deployed. In a period of economic downturn, we must make sure that every rand of SAPS funding is being well spent.

Ultimately, it will be up to the Ministry of Police, in consultation with the DHA and other stakeholders, to decide how these findings should affect policy on the complex and multi-faceted issue of immigration policing. In this report, we provide the data and insights needed to make these decisions in a more strategic and critical manner. More specifically, we attempt to weigh up the costs and benefits of SAPS GP's immigration policing activities by examining how these activities contribute to the Department's core purpose of 'creating a safe and secure environment for all people in South Africa.'

Drawing upon a range of materials collected by the FMSP in consultation with Gauteng Strategic Management, we show that SAPS' involvement in immigration policing has the following by-products:

- Incremental rise in the number of deportations from South Africa;
- Deportation of individuals involved in crime from South Africa; and
- Use of immigration policing laws to instigate other forms of criminal investigation.

While each of these by-products is measurable and substantive, we also note that their value may be tempered by the fact that **a) deportees often return to South Africa; b) organised criminals are seldom caught; and c) station-level officials lack the capacity to use immigration laws to develop other forms of criminal investigation, arrest and prosecution.**

Using the same materials, we have balanced these by-products against the following costs for SAPS GP:

- **Significant diversion of material from visible policing to immigration policing;**
- **Reduced reporting of crime by foreign nationals;**
- **Long-term negative impacts on police human resources, particularly as regards integrity and expertise.**

Based on these findings, the report considers a range of potential options for reform. Should SAPS a) GP put more resources into immigration policing; b) scale back and refine its commitments; or c) completely withdraw from this type of approach?

This report consists of four parts. Section One answers the question Why do police officers enforce immigration laws? Here, we show that the Immigration Act provides ordinary, street-level police officers with a great deal of power to decide whether they want to enforce immigration laws. We identify the environmental, strategic, training and incentive-based factors that encourage officers to investigate and arrest suspected illegal foreigners. We argue that the combined weight of these factors makes it very difficult for Provincial and station-level decision-makers to determine how or whether officers use their Immigration Act powers. Section Two builds on this analysis by exploring The By-products of Immigration Policing. Here we show how and why SAPS Gauteng officials tend to use their Immigration Act powers and explore the potential impacts of these activities on the policing of priority crimes. Our overall assessment is that the benefits of immigration policing are, at best, ambivalent, generating a growing number of deportations but neither seriously addressing the problem of cross-border crime (drug smuggling, trade in stolen cars, etc) or migration-related crimes (document fraud, human trafficking, etc), nor the range of other crimes which SAPS is ordinarily required to police (murder, burglary, domestic abuse, etc). Section Three, The Costs of Immigration Policing, uses a range of new data to estimate the financial, human-resource and crime combating costs of immigration policing to SAPS. Departing from the tendency of academics and NGOs to focus on human rights issues, we show how these activities impact upon SAPS Gauteng's capacity to serve its essential functions. Section Four, Towards a New Approach, draws out the implications of these findings for policy makers. Here we suggest how immigration laws can be better used to help SAPS fight crime.

This report is the product of an extensive, in-depth study of policing in Gauteng. Our team has spent over 100 days conducting in-depth field research across six police stations, leading to over 400 pages of single spaced, typed notes.⁴ Using a slightly different observational approach, called 'incident reporting,' we systematically observed interactions between police officers and civilians in an inner-urban, high-density migrant area ($n = 110$).⁵ We have conducted in-depth interviews and consultations with police officials at senior and junior ranks ($n \rightarrow 50$).⁶ We have also consulted extensively with international migrants, and draw upon surveys of a) Lindela detainees' experiences in the arrest and deportation process ($n = 444$);⁷ b) inner-city residential livelihoods ($n = 1022$);⁸ c) inner-city migration patterns and social change ($n = 847$);⁹ and d) asylum seekers' experiences at South Africa's Refugee Reception ($n = 608$) and Refugee Status Determination

4: See Report Two in this Series: Beyond 'Good Cop' / 'Bad Cop': Understanding Informality and Police Corruption

5: D. Vigneswaran. 2009. 'Incident Reporting: Experimental Data Collection Methods and Migration Governance', International Migration Institute, University of Oxford, Working Paper Series, 16.

6: D. Vigneswaran. 2008. 'Enduring territoriality: South African immigration control' Political Geography, 27(7).

7: FMSP Report on Lindela detention centre to be released 2010.

8: [Draft Only] Jean Pierre Misago, Veronique Gindrey, Marguerite Duponchel and Loren Landau. 2009. 'Alexandra and Central Johannesburg Vulnerability Pilot Survey', Forced Migration Studies Programme.

9: Jacobsen, K., and L. B. Landau. 2003. «The Dual Imperative in Refugee Research: Some Methodological and Ethical Considerations in Social Science Research on Forced Migration.» Disasters, 27 (3): 185-206.

(Backlog) Offices (n = 680).¹⁰ Our research has not been exclusively focused on the police. We have conducted in-depth research at DHA offices and health clinics, as well as reviewing case files of detainees held at the offices of legal service providers. In order to ensure that this report is succinct and accessible, we have chosen, with one important exception, to refer the reader to other texts for more detailed descriptions of our methodological techniques. The one exception is our methods deployed to develop a budgetary estimate of the costs of immigration policing for SAPS Gauteng. Since Provincial officials have specifically requested more detail on this issue, we have incorporated a step-by-step account of our methodological reasoning and techniques in the main body of this report.

10: Forced Migration Studies Programme. 2009. National survey of the refugee reception and status determination system in South Africa, available at <http://www.migration.org.za/report/national-survey-refugee-reception-and-status-determination-system-south-africa>, retrieved on 15 September 2009.

SECTION ONE: Why do police officers enforce immigration laws?

Our first task in this study was to explain why SAPS officials enforce immigration laws. On the surface, the answer to this question may seem obvious. SAPS has been on the front line of immigration policing for so long that few of us recognise that the police have no legal obligation to arrest and detain suspected illegal foreigners. The key legislative provision covering SAPS' immigration role is s. 41 of the Immigration Act:

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

This provision empowers police officers to undertake several immigration enforcement jobs, including:

- Asking a person to verify their identity;
- Making judgements regarding a suspect's immigration status; and
- Taking a suspected offender into custody.

However, s. 41 does not oblige police officers to do any of these things. The words that we have highlighted in bold above suggest that **police officers may decide a) whether or not they want to investigate a suspected immigration offender; and b) whether or not they want to take a suspected offender into custody.** The drafters of the Act clearly contemplated that police officers would take up and utilise these powers. However, it is equally clear that the drafters sought to limit the role of the police in immigration enforcement. Hence, the police are prevented from exercising powers to monitor entries into the country (s. 36), enter premises to search for suspected illegal foreigners (s. 33), verify the immigration status of suspected illegal foreigners (s. 2), and deport illegal foreigners (s. 34).

Police officers are not only limited by the law. Over the years, officials within SAPS have developed a range of more ad hoc internal policies to prevent its officials from exercising s. 41 powers. For example, the SAPS Provincial Commissioner has issued instructions ordering that immigration policing should no longer be regarded as a priority for SAPS. During the xenophobic violence of May 2008, SAPS and the DHA, placed a series of temporary moratoria on the arrest and deportation of suspected illegal foreigners. At least one Station Commander we spoke to in Gauteng has gone further, by ordering his officers not to arrest suspected illegal foreigners for an ongoing and indefinite period.

Despite this series of orders, many SAPS officials across the province regularly use their s. 41 powers. As we report below, SAPS Gauteng officials working in visible policing spend about 1 in every four work hours searching for, arresting, processing, guarding and transporting individuals who are suspected of immigration offences.¹¹ In the remainder of this section, we seek to develop some preliminary explanations for why they police in this way.

11: SAPS border police spend a great deal more time engaged in this activity..

1. ENVIRONMENT: Officers work in an environment where there are large numbers of suspects.

The population in Gauteng features the nation's largest proportion of international migrants.¹² The province also hosts the largest proportion of recent international migrants, a group that often lacks valid immigration documents. This issue is complicated by the inability of the DHA to issue both South Africans and international migrants with valid documentation. Due to these factors, ordinary police officers are likely to meet a large number of undocumented people in the course of their daily work. In some cases, officers working in the Johannesburg inner-city may reasonably expect that 1 in 5 persons they meet will not possess valid documentation.¹³ So, **in many areas, GP police officers are simply working with large numbers of potential suspects.**

2. OPPORTUNITY: SAPS' crime prevention strategies create opportunities for officials to exercise s. 41 powers.

The main focus of SAPS' crime prevention strategy is visible policing, which aims to 'discourage all crimes by providing a proactive and responsive policing service that will prevent the priority crime rate from increasing.' The financial and human resources devoted to visible policing far outweigh all other programmes within the SAPS.

Visible policing often results in encounters between individual officers and civilians. Each of these encounters represents a potential opportunity for the police officer to begin an investigation into the civilian's immigration status. Table 1 provides a numerical representation of the number of these opportunities.

Table 1: Visible Policing Activities in Which s. 41 powers may be exercised

| Actions carried out ¹ | Number |
|----------------------------------|------------|
| Operations | |
| Vehicle patrols | 1 354 304 |
| Stop-and-search operations | 1 006 186 |
| Farm visits | 410 685 |
| Roadblocks | 42 601 |
| Cordons and searches | 20 490 |
| Searches | |
| Persons searched | 11 667 505 |
| Vehicles searched | 4 121 994 |
| Premises searched | 489 934 |

So, **SAPS officials are not simply working in areas where they are likely to encounter suspected offenders, they deploy a lot of strategies which create opportunities to investigate these offenders.**

12: L. Landau & V. Gindrey. 2008. Migration and Population Trends in Gauteng Province, 1996-2055, Forced Migration Studies Programme Working Paper Series, 41.

13: This is due to the fact that the migrant population is not evenly distributed across the province, but tends to be concentrated in particular areas.

3. TRAINING: Using s. 41 powers is simpler and less constrained by oversight than other investigative processes.

The detection and prevention of crime is rarely a straightforward process. Policing strategies do not ensure that officers are placed in situations where they will automatically detect all types of crimes or criminals. Rather, even in highly targeted operations – such as a raid on a specific building that is known to harbour criminals or the placement of a roadblock on a corner where taxis are known to systematically flout traffic laws – success depends heavily on individual officers' skills and intuition. Police officers must use a range of skills to:

- a) Develop means of discriminating between suspected offenders and ordinary civilians;
- b) Initiate an investigation which will allow them to gauge the reasonableness/validity of that suspicion; and
- c) Collect the relevant evidence to ensure that, if guilty, the appropriate charge can be made in a court of law.

In some cases, particularly at the beginning of a career, a police officer will operate with a very limited selection of such skills. In this context, they will generally rely on the most straightforward and easily deployed investigative procedures. s. 41 are often one of these techniques. They offer:

- a) By way of profiling suspects on the basis of ethnic or racial appearances: an easy and accessible means of discriminating between potential suspects and civilians; and
- b) By way of checking the validity of documentation: a straightforward means of testing this suspicion and developing the evidence which could be used as grounds for an arrest.

In contrast, for ordinary officials who attempt to investigate priority crimes like car theft, the procedures may be far more complex. Here, the official may need to look for a range of other less obvious visual markers for suspicion (nervousness, distractedness, signs of tampering, etc) and/or to match the suspect with a criminal record or act through the use of centralised identity and registration databases. In practice, determining an individual's immigration status may also prove to be a difficult process.¹⁴ However, ordinary police officers will never have to finalise investigations into immigration offences, and will rarely face repercussions for making an incorrect initial assessment or evaluation (as they might, via their detective service, in a flawed murder investigation). Hence, they do not have to worry much about the strength of their suspicions when making a s. 41 arrest.

4. INCENTIVE: Officers can use arrests of illegal foreigners to boost performance indicators.

The SAPS currently uses a performance-oriented approach to the management of human resources. This approach requires human resource managers to regularly and accurately appraise the performance of their staff. They are also required to consider performance records when making decisions about promotion. The number of arrests an officer makes is one of the key indicators in deciding whether an individual officer or specific unit is performing adequately. For officers who have under-performed, this can create pressure to develop techniques which artificially raise their quantity of arrests. This sometimes means that officers will attempt to make large numbers of arrests by arresting individuals suspected of non-priority offences. In this respect, **immigration enforcement can serve as an easy way of artificially improving one's performance indicators.**

¹⁴: This may require sophisticated and nuanced interrogation techniques and a process of matching an individual's claims and documents against multiple identity databases (i.e., Movement Control System, Population Register and the Asylum Seeker Database).

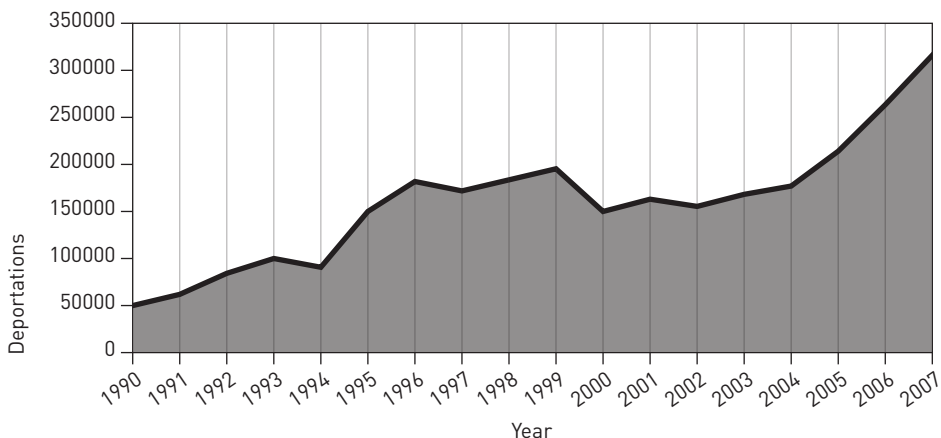
Summary and Conclusions

When taken together, these four factors – environment, opportunity, training and incentive – help explain why SAPS officials enforce immigration laws. These factors also help us to understand why, in some cases, junior SAPS officers continue to engage in immigration policing activities, even after their senior officials have ordered a different approach. Put simply, **police officers in Gauteng consistently find themselves in situations where they are encouraged and inclined to utilise their s. 41 powers**. Perhaps policy-makers wish to encourage this consistent tendency to enforce immigration laws: after all, if SAPS officials were consistently and independently arresting car thieves, it is unlikely that we would want to interfere. However, the case for immigration enforcement is not as clear-cut. Do immigration offences lead to security and safety problems? Should they be a SAPS responsibility? What does immigration policing achieve? In order to provide some clarity on the way forward, the remainder of the report works through some of the pros and cons of placing the responsibility for immigration enforcement on the shoulders of police officers.

SECTION TWO: The By-products of Immigration Policing

The persistent engagement of SAPS Gauteng in immigration enforcement brings tangible and direct benefits to the DHA in the form of increased numbers of immigration arrests. Over the last decade, and primarily due to the efforts of SAPS, South Africa has seen a steady increase in the numbers of people being arrested for immigration offences. These arrests have led to a growing number of deportations. As one would expect, this is an output which regularly features in DHA Annual Reports, but not in the equivalent SAPS documents.

Figure 1: Annual Deportations from South Africa



The SAPS does not report on this specific category of arrests because immigration offences are not listed on their schedule of priority crimes. The most basic and common immigration offence – that of being illegally present in the country – is widely seen more as an administrative offence than a criminal one. It is also not clear how immigration policing activities contribute to SAPS' core objectives, particularly the objective of preventing and combating priority crimes. In the immediate aftermath of the transition to democracy, many analysts and policy-makers simply assumed that immigration policing would help to deal with growing problems of transnational crime, and crimes that were specifically known to involve substantial proportions of non-national minorities.¹⁵

¹⁵: A. Minnaar. 1999. «A Symbiotic Relationship? Organised Crime and Corruption in South Africa» [paper presented at the 9th International Anti-Corruption Conference: Durban, H. Solomon. 2003. *Of Myths and Migration: Illegal Immigration into South Africa*, UNISA Press: Pretoria, A. Minnaar and M. Hough. 1996. *Causes, Extent and Impact of Clandestine Migration in Selected Southern African Countries with Specific Reference to South Africa*, Human Sciences Research Council: Pretoria.

Since these early studies, South Africa has had a long time to experiment with different approaches to immigration policing, and to gauge the effectiveness of these approaches. Scholars have also been able to familiarise themselves with new international migration populations, patterns and dynamics. One result of this newfound experience has been to develop a more accurate understanding of the relationship between migration and crime. There is now a widespread consensus amongst SAPS, migrant groups and researchers that:

- a) **The vast majority of foreign nationals and 'illegal foreigners' present in the country did not come here to perpetrate crime and are not involved in criminal activities;**¹⁶
- b) Much like any population, there are members of South Africa's foreign-born population who are involved in criminal activities; and
- c) There are certain forms of criminal activity, particularly certain categories of organised cross-border criminal activity that involve higher proportions of certain foreign national groups.¹⁷

Beyond this, **there is little publicly available information or reliable scholarly analysis on the linkages between migration and crime.** It is perhaps for this reason that the Institute for Security Studies has recently made the suggestion that we need more focused and in-depth studies on this issue – and sought to rectify this problem.¹⁸ Nonetheless, we can already begin to assess some of the potential benefits of SAPS' immigration policing activities, simply by using the available information about migration, crime and enforcement. In total, there are three ways in which immigration policing might contribute to crime prevention and crime combating.

INVESTIGATION TYPE A: Detection and prevention of immigration offences.

The first and most obvious way in which immigration policing contributes to SAPS' core agenda is through the prevention, detection and prosecution of the offences outlined in the Immigration Act. While the simple act of being in the country illegally may be regarded as a relatively petty or administrative offence, there are a range of offences which stem from migrants' efforts to enter and illegally remain in the country, which we might want to regard as more 'criminal' in nature. It is difficult to draw a fine line between non-criminal and criminal offences because the Act itself makes no such distinction. However, by carefully examining the way in which penalties are ascribed in the Act, we can begin to gauge the legislative opinion on this matter. The clearest and most consistent trend in the table below is the attachment of heavier penalties to those offences which involve a) the intentional planning, organisation and facilitation of illegal migration (**shaded in grey**), than b) intentional or negligent, individual and isolated actions of migrating illegally (not shaded). This general principle is endorsed in newer human trafficking legislation which focuses penalties on criminals who traffic migrant workers across borders, rather than on the migrants who cross borders illegally to work.

¹⁶: ISS Workshop: Perceptions of foreigners and crime in South Africa 27 August 2009, Seminar Room, ISS Pretoria.

¹⁷: M. Shaw. 2002. 'West African Criminal Networks in South and Southern Africa', *African Affairs*, 101, pp. 291-316.

¹⁸: ISS Workshop: 'Perceptions of foreigners and crime in South Africa', 27 August 2009, Seminar Room, ISS Pretoria.

Table 2: Penalties for Immigration Act Offences

| Offence | Penalty |
|--|--|
| Overstaying permit | Fine up to R 3000 |
| Negligent production of incorrect certification to obtain a permit | Fine up to R 8000 |
| Failure to land at a port of entry | Fine up to R 10 000 |
| Illegal entry/ illegally remaining | Fine or 3 months max |
| Escape from custody | Fine or 6 months max |
| Failure to depart when ordered | Fine or 9 months max |
| Smuggling | Fine or 12 months max |
| Employing an illegal foreigner | Fine or 12 months max [repeat offences up to 36 months max] |
| Wilful or grossly negligent production of false documentation | Fine or 12 months max |
| Aiding and abetting an illegal foreigner (providing tertiary education, services etc) | Fine or 18 months max |
| Failure to abide by terms of permit | Fine or 18 months max |
| Government official failure to report person receiving services | Fine or 18 months max |
| Unsuccessfully bribing or threatening an official | Fine or 18 months max |
| Producing fraudulent documentation | Fine or 24 months max |
| Successfully bribing or threatening an official | Fine or 36 months max |
| Conspiracy to repeatedly offend | Fine or 48 months max |

Many of the activities in which police officers engage as part of their visible policing responsibilities may lead to potential arrests for the more serious category of various offences. For example, farm inspections may result in the detection of employers who are violating labour laws. Stop-and-search operations may lead to the detection of document fraud, and if followed up by careful investigation, may result in the detection and prosecution of groups involved in the production of fraudulent documentation. We know that this type of policing is occasionally carried out by the DHA, but we lack the statistical data to show how commonly these sorts of policing are conducted by SAPS.

INVESTIGATION TYPE B: Initiation of investigations into the non-immigration criminal activities of suspected illegal foreigners.

Police officers can also creatively use immigration laws to initiate investigations into a range of other more serious offences. Police officers are not simply neutral enforcers of society's laws. One of the key 'arts' of successful policing is the ability to creatively use laws relating to minor offences in order to:

- a) Create a scenario in which a civilian suspected of other offences, but on less clearly established grounds, may be held for questioning;
- b) Establish the pretext for the search of a person, vehicle or premises; or
- c) Develop 'leverage' that can be used to extract information from an individual regarding other crimes which he/she may have been involved in or a witness to.

In this sense, it is worth noting that in South Africa, the Immigration Act constitutes one of the few and most straightforward grounds upon which a police officer can ask an individual to identify him/herself in the course of everyday policing. This may constitute a useful means of initiating other forms of criminal investigation. Again, it is difficult to determine to whether s. 41 laws are being practically utilised in this way.

EXCLUSION: Deportation of criminal offenders

The other way in which SAPS' involvement in the arrest and deportation system may contribute to its core objectives is through the deportation of criminal offenders. A significant proportion of foreign nationals detained at the Lindela repatriation centre (9.1% n = 438) were originally arrested on criminal charges. Some of the serious charges cited by more than one respondent in the research in question are robbery/theft, murder/homicide, drug possession and assault. Although it is impossible to prove, it may also be the case that some of the individuals deported purely for immigration offences have nonetheless committed criminal offences while on South African territory. Thus, a further possible by-product of the deportation system is that criminal offenders of this nature are returned to their countries of origin.

FACTORS MITIGATING POSITIVE BY-PRODUCTS

As discussed above, **s. 41 powers offer the police a means of**

- **detecting and prosecuting organised immigration offences;**
- **developing the power to investigate other non-immigration but more serious criminal offences; and**
- **deporting criminal offenders.**

These tools add to the legislative armoury available to the police, enhancing their capacity to prevent and combat crime. However, the ability of SAPS to maximise these benefits has been constrained by several factors.

MITIGATING FACTOR 1: Limited investigative expertise of individual officers

The first constraining factor is that the **officers who are most likely to be involved in immigration policing duties are unlikely to use these powers to positive effect.** Immigration enforcement is widely regarded within the service as 'dirty' work, which does not involve the policing of 'real' crimes. Given this, it is therefore unsurprising that this work is often left to lower ranking members such as student constables, and in some cases reservists. Furthermore, officers of all ranks rarely attempt to familiarise themselves with the detailed provisions of the Immigration Act. The fact that some officers struggle to deploy the basic procedures surrounding s. 41 is revealed by the high number of people who are falsely arrested. For example, 1 in every 4 detainees at Lindela (28.8% (n = 372) claim that they possessed a valid permit saying they could be in South Africa when they were arrested.

These findings need not be read as a condemnation of junior police officials. Perhaps it is merely recognition that it is unrealistic to expect SAPS to possess adequate expertise to implement immigration legislation. Not only is immigration peripheral to their core business, but the DHA sometimes changes the rules without informing police stations.¹⁹ Furthermore, those who make a profit by obtaining and/or producing fraudulent documents regularly invent new ways of beating the system.

MITIGATING FACTOR 2: Section 41 powers can provide officers with a reason to avoid beginning a criminal investigation.

While police officers may use their s. 41 powers as the entry point into a wider investigation, we have more often found cases of the opposite dynamic at play. Police officers work in a quantitatively measured, performance-oriented environment. Hence, they face pressures to minimise the time that they spend dealing with individual cases. As a result, **police officers engaged in visible policing are less likely to want to extend an investigation into the background and record of a suspected illegal foreigner as a potential perpetrator of other crimes.** Instead, they are more likely to use a finding of guilt for an immigration offence as grounds to begin 'processing' the suspect for deportation. Apart from the pressures of performance evaluation, the dangers involved in visible policing also create incentives not to pursue a criminal investigation further. Police officers working at roadblocks, in raids or on foot patrol in Gauteng regard their personal safety and that of their fellow officers as the most important consideration in their interactions with members of the public. In an environment where many South Africans carry firearms, police officers regard physical inspections of the contents of vehicles or database checks on criminal records as potentially high-risk endeavours. In this context, s. 41 powers can substitute for these more risky tasks, providing the officer with a form of inspection that is less invasive and poses less potential risks for the hypothetical criminal offender. In both of these ways, police officers can use s. 41 powers as means of avoiding, instead of initiating, more in-depth investigations of suspected criminal offences.

MITIGATING FACTOR 3: The 'Real' Criminals Can't Be Detected Using Section 41 Powers.

Perhaps the most significant barrier to the successful use of s. 41 in crime control is that organised criminals often have access to high-quality fraudulent documentation. It has been almost a decade since Mark Shaw exposed the linkages between trans-continental criminal networks, the traffic in illicit goods, and the production of fraudulent documentation.²⁰ Organisations like Interpol, the United Nations Office on Drugs and Crime, the International Organization for Migration and the Southern African Regional Police Chiefs Cooperation Organization have all endorsed this position, emphasising the close linkages between international smuggling in goods and people. These criminal networks, or networks of this sort, have even developed linkages with officials in the DHA, and have used these connections to obtain South African passports and IDs.²¹ Police officers waiting at roadblocks, cordoning off down-town city blocks and stopping civilians on the street might fortuitously encounter powerful drug dealers and/or human traffickers who are also illegal foreigners. However, in all of these cases the officer will rarely be unable to justify an arrest using s. 41 powers, because **the criminal suspect will in all probability possess documents which appear to be valid.**

¹⁹: The level of confusion around the current dispensation towards Zimbabweans is the most recent example

²⁰: M. Shaw. 2002. 'West African Criminal Networks in South and Southern Africa', *African Affairs*, 101, pp. 291-316.

²¹: Ibid.

²²: T. Araia, op cit.

MITIGATING FACTOR 4: Deportees Return

The final and most unavoidable flaw in the use of the Immigration Act as a means of dealing with criminal offenders is that deportees often return to South Africa illegally, particularly from neighbouring countries. The conditions at the border are the subject of another report,²² and won't be specifically considered here, but for the foreseeable future it seems unlikely that SAPS Gauteng will be capable of using deportation as a means of permanently removing unwanted criminal offenders.

Summary and Conclusions

In this section we have shown how s. 41 powers can be used creatively and purposively in ways that appear to assist SAPS Gauteng in its 'war against crime'. While these potential by-products are several, they are also severely mitigated by the fact that officials commonly do not possess the skills and incentives to maximise the use of s. 41 powers. Ultimately, these findings do not provide us with the way forward, but lead to important policy-relevant questions. Most importantly: how can we hone and refine SAPS' use of s. 41 powers to turn low-priority immigration offences into convictions of organised criminals? This is a pivotal issue which would demand sustained research, lessons drawn from international examples, and rigorous piloting in the field. Unfortunately, too often we have embarked on new policing initiatives without first considering what they might eventually cost: in terms of human resources, institutional capacity and, most crucially in present circumstances, money. Hence, before exploring some of the potential options for SAPS officials, the next section will run through a detailed analysis of the current costs of immigration enforcement for SAPS Gauteng.

SECTION THREE: The Costs of Immigration Policing

Over the past two decades, South Africa has gradually but dramatically increased its capacity to deport foreign nationals to their countries of origin. During the 2007-2008 reporting year, the country deported 312,733 persons – six times more than deportations for 1989-90. It is difficult to consistently achieve a feat of this nature without attracting some attention and incurring some costs. For the government as a whole, these outlays include the costs of:

- Finding suspected illegal immigrants;
- Checking documents and verifying them against government databases;
- Taking suspects into custody;
- Transporting suspects to the police station;
- Holding suspects in police cells or prisons;
- Transporting offenders to Lindela;
- Feeding suspects, attending to their health needs and allowing for visitation rights while in detention;
- Adjudicating cases in the courts;
- Organising the return of offenders with countries of origin through diplomatic channels; and finally
- Transporting offenders to their countries of origin.

All this has to be done for an annual number of deportees that is the same size of the population of Bloemfontein. Given these considerations, it is somewhat surprising that no-one has attempted to estimate how much the whole endeavour costs. The DHA reports on the costs of its various programmes and sub-programmes, specifically making note of expenditures on the up-keep of Lindela. However, to our knowledge, no one has specifically attempted to gauge the costs for the SAPS. Ideally, this analysis would be conducted by an insider: a government office or private auditing consultant with full access to government records, budgetary data and a range of other statistical databases. The FMSP has received considerable assistance from SAPS GP to obtain some of this material. However, what follows still remains a very preliminary attempt to develop baseline estimates and analyses. We cannot pretend to provide a full picture of the various costs to SAPS GP, or to the country at large. In recognition of these limitations, we have aimed to be deliberately conservative in our estimates. The analysis will begin with an attempt to estimate the direct financial and human resource costs to SAPS before moving on to consider some of the indirect costs for departmental performance and crime prevention activities.

FINANCIAL COSTS

This section estimates the total amount of SAPS' annual budget used in immigration policing activities. During the 2007/2008 fiscal year, the DHA reports that 77,780 foreign migrants were admitted into detention. In practice, these illegal foreigners are arrested either by the DHA or by SAPS. In order to develop an estimate of the costs to SAPS GP of making these arrests, we have focused only on those costs which could reasonably be converted into savings or directly diverted to other activities if SAPS GP was not enforcing immigration laws. Hence, we have not included fixed costs for expenditures on infrastructure (prison cells, station buildings, etc), support costs (administration, legal budget, etc), training, or materials (uniforms, firearms, stationary, etc). Instead, we have focused on three specific activities which police officials undertake under s. 41, and the outlays associated with these activities:

23: The yearly costs calculations are based on the reported SAPS budget over the 2007/2008 fiscal year.

Table 3: Steps in SAPS' Immigration Enforcement Activities

| Step | Type of cost | Activity |
|------|--------------|--|
| 1 | Labour | Officers search for, discover, interview, arrest the suspected 'illegal foreigner' during random searches or targeted operations, and take him/her to the station and fill in the paperwork to process the detainee. |
| 2 | Custody | The station keeps the suspected illegal migrant in a cell; in theory, if the suspect can prove his/her immigration status is in order, he/she is released. |
| 3 | Transport | The station transports the undocumented migrant to the Lindela Detention Centre to await deportation. |

Each of the steps in the deportation process generates a specific category of costs for SAPS Gauteng. The following sections explain how we estimated the costs associated with each step.

STEP 1: Labour up to detention in a Police Cell.

The main cost of this step stems from the use of human resources for migration policing activities. In practice, police officers arrest undocumented migrants, process the documentation needed to keep someone in detention, and guard suspects in station cells. Finally, officers drive and man transports of undocumented migrants to the Lindela Detention Centre. Our aim was to develop a reliable estimate of the average amount of time that police officers tended to devote to these activities during a standard shift. We intended to use this figure to estimate the proportion of SAPS' human resource budget that was being spent on policing immigration offences.

In order to develop an estimate of the time spent by SAPS GP officers on immigration policing we developed a questionnaire (Annex I), which we distributed to six police stations in Gauteng. Working from the assumption that visible policing would assume the bulk of the responsibility for s. 41 duties,²⁴ we only distributed questionnaires to officers engaged in visible policing.²⁵ During the process, a lot of questionnaires were lost by respondents. We suspect that more conscientious officers were more likely to complete and hand back their forms. This is a possible source of sampling bias. The data was collected from mid-July to mid-August 2009 and covered 464 12-hour shifts. 60% of the shifts covered were day shifts while 40% were night shifts.²⁶

Using the data collected in the six police stations, we estimate that police officers spent an average of 3.55 hours per 12-hour shift dealing with undocumented migrants. However, we decided to base our calculation on a more conservative estimate of 3.1 hours.²⁷ We applied weightings in order to make our sample representative of the SAPS workforce. Each observation is weighted depending on the level of the officer (1-16) and the size of the station compared to the total size of the visible policing staff.²⁸ The bar charts below illustrate the difference in the time spent with undocumented foreigners by officers depending on salary scale and station.

²⁴: Some special units can also arrest these individuals and, once in the station, may hand over undocumented foreigners to officers in other departments.

²⁵: Senior officers distributed the questionnaires to junior officers at the beginning of shifts. Officers answered questions relating to their last completed 12-hour shift, including information on activities performed during their shift and how much time they spent with foreigners. In some instances, it appears that officers misunderstood the question and reported 12 hours spent with foreigners, which is very unlikely unless they transported undocumented migrants to Lindela. If the respondents did not tick 'transport of detainees' as one of his/her last shift activities, the questionnaire was dropped from the analysis altogether (64 questionnaires were eliminated).

²⁶: Based on this sample, we could determine no clear difference in day or night shifts in terms of the average time spent by officers dealing with undocumented migrants.

²⁷: This was the lower bound of the estimation interval.

²⁸: Level 1 to 2: 8.4%; Level 3 to 5: 41.8%; Level 6 to 8: 45.3%; Level 9 to 12: 4.1%; Level 13-16: 0.4%. The weight applied to the observation depending on the level of the officers corresponds to the percentage of employees by salary scale as given in the SAPS 2007/2008 salary scales. The weight is also applied depending on the probability of the station to be selected depending on the size of the visible policing in number of staff. Details of staff for each station were provided by SAPS GP Provincial office.

Figure 2: Hours Spent enforcing immigration laws, by officer rank

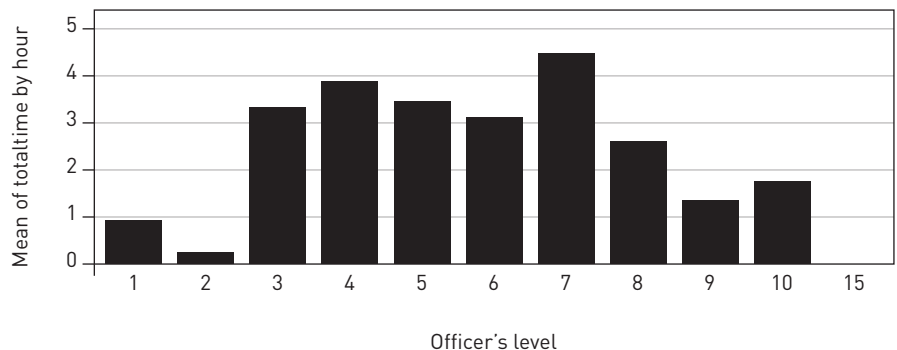
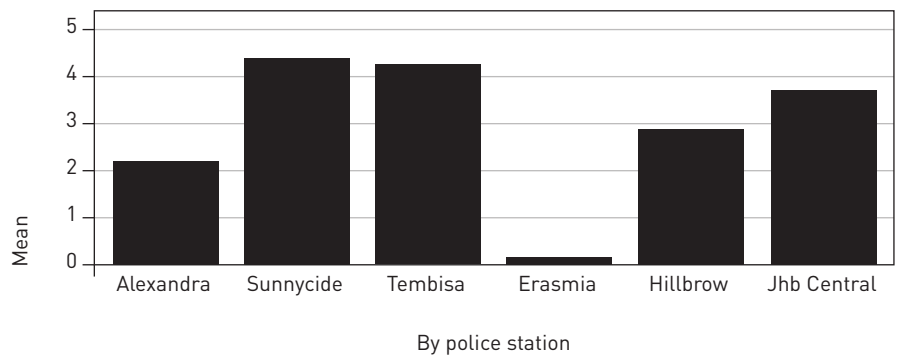


Figure 3: Hours spent enforcing immigration laws, by station



The national budget (2007/2008) for visible policing amounts to R 11,383,543,000 in compensation of 89,993 employees. Salaries plus overtime hours amount to R 8,315,795,000. The estimated budget in compensation of employees for 14,336 SAPS officers deployed in visible policing in Gauteng is thus R 1,324,717,000. The 14,336 staff members do not include those that are part of the Gauteng SAPS Head Office and that belong to special units (e.g. Flying Squad, Dog unit, Public Order Policing, etc).

Table 4: SAPS Personnel costs by Programme (in thousands of Rand) (Source: SAPS Annual Report 2007/2008)

| Programme | Total expenditure (Rands) | Compensation of employees | No. of employees |
|--------------------------------|---------------------------|---------------------------|------------------|
| Visible Policing | 15,332,583 | 11,383,543 | 89,993 |
| Administration | 12,063,129 | 6,954,981 | 32,255 |
| Detective services | 5,978,782 | 4,672,366 | 30,596 |
| Crime intelligence | 1,299,424 | 1,086,680 | 6,806 |
| Protection & security services | 1,712,187 | 1,425,077 | 13,591 |

Figure 4: Employees, by programme

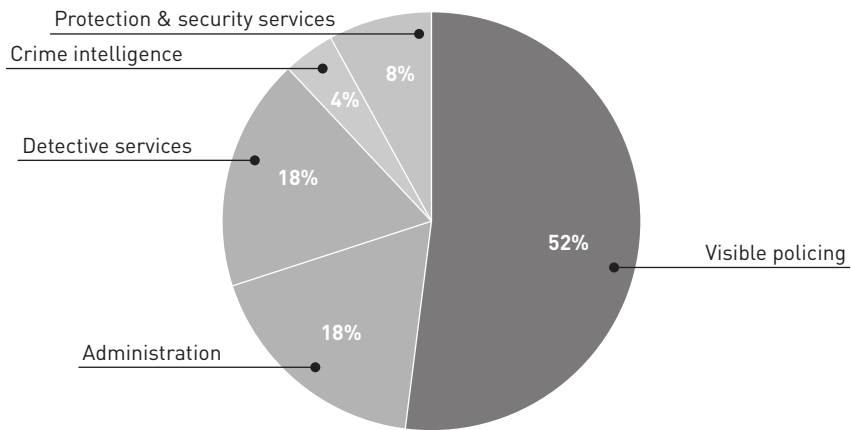
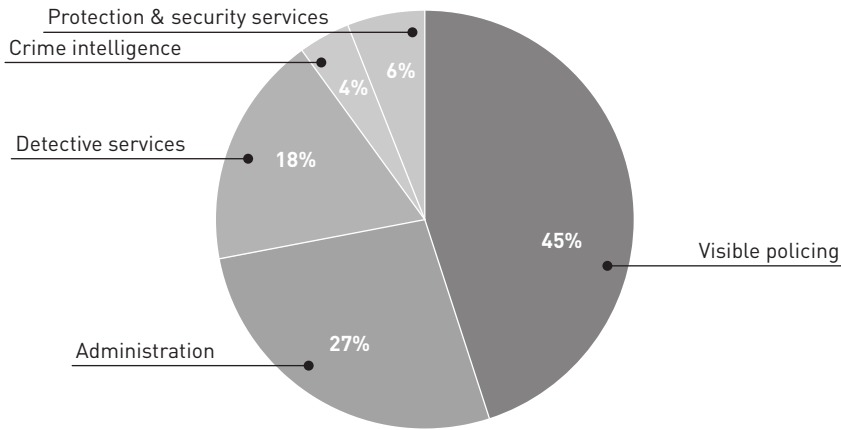
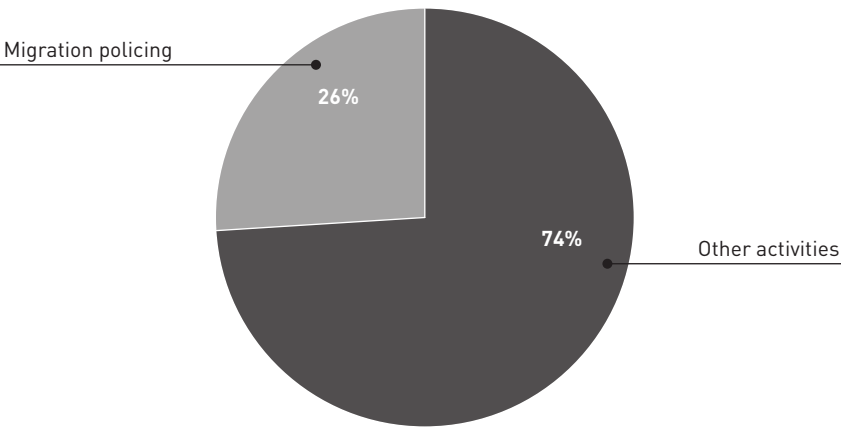


Figure 5: Compensation of employees



Using an estimate of 3.1 hours spent by officers in immigration policing per shift, the total amount spent in officer salaries on this activity is R 342,219,000.

Figure 6: SAPS Gauteng: part of the budget of visible policing diverted to migration policing activities



STEP 1: R 342, 219,000 yearly in salaries

STEP 2: Detention in Police Cells

As noted above, SAPS makes the majority of the arrests of illegal foreigners in South Africa. The majority of detainees at Lindela (93.3%) were taken to a police station before being transported to Lindela. The costs associated with keeping suspected illegal foreigners in custody represent a further outlay for SAPS. In order to estimate the cost of detention we needed to know a) how many people are being held in SAPS GP cells; b) for how long on average; and c) at what unit cost?

(a) No. of detainees x (b) Average detention period x (c) Unit cost = Detention Cost

To make the first calculation, we sought to determine what proportion of suspects sent to Lindela for deportation was originally arrested by SAPS GP. For the period corresponding to the previous SAPS Annual Report (1st April 2007 - 31st March 2008), the DHA reported that 77,780 foreign migrants were admitted to be detained at Lindela. Using the August 2007²⁹ record of accommodation in Lindela³⁰ which states the stations responsible for originally arresting detainees, 54.4% of the people admitted during that month were arrested by SAPS GP.³¹ The rest were arrested by the DHA or by SAPS in other provinces. On this basis, we estimated that 42,334 migrants who were brought to Lindela in the 2007-2008 reporting year were first arrested by SAPS GP.

To determine the average detention period, we asked detainees at Lindela to identify how long they were held in police cells before being transferred to Lindela. Detainees arrested in Gauteng report they were held for an average of 6.25 days. If we combine this with our annual figure for the number of detainees, this is equivalent to 264,588 detention days (42,334 x 6.25).

In order to develop an estimate of the unit cost of detention, we have used the daily cost of holding an individual in the Lindela Detention Centre. The amount paid by the DHA to the contractor that operates Lindela is R 65 per detainee per day. Using this estimate of the cost of holding an individual in detention, we have arrived at a final cost estimate for detention:

a) 42,334 detainees x (b) 6.25 days x R 65 per day = R 17, 886, 115

STEP 2: R 17,886,115

STEP 3: Transport from Police Station to Lindela

In principle, the DHA should take suspected illegal foreigners into custody as soon as possible after an arrest, and then assume responsibility for transporting suspected illegal foreigners to Lindela. In practice, SAPS almost always transports the detainees it has arrested to the detention centre. These costs of transportation represent an additional outlay, adding to the costs of STEP 1 and STEP 2.

To estimate the cost of transport we needed to know a) how many convoys SAPS makes to Lindela each year; and b) what is the unit cost of each convoy?

(a) Convoys x (b) Unit cost = Transport Cost

The August 2007 record of accommodation at Lindela registered 471 convoys of detainees from SAPS GP stations to Lindela. Extrapolating from the August data over a year of activity, we estimate that SAPS GP convoys detainees from police stations to Lindela 5,528 times each year.

To develop our estimate of the unit cost of a convoy we began by examining how many people were transported in an average convoy and estimating how many vehicles this would involve. During August 2007, 7,577 detainees were transported to Lindela detention centre. Among those, 4,124 were brought by SAPS in 471 convoys, being an average of 9 persons per convoy (convoy sizes vary from 1 to 40 detainees). On this basis we assume that on average at least two cars are used in each convoy to Lindela. In order to calculate the cost for each vehicle in the convoy, we used as a reference the distance between Lindela and Wits University in Braamfontein, Johannesburg (78km). With an average of two vehicles, each convoy would cover approximately 156 km. Thus, SAPS GP vehicles travel a total of 862,472 km per annum to transport detainees to Lindela. Using the standard R 2.92 per km cost at which the university reimburses vehicle use, this amounts to R 2,518,418.

²⁹: August does not show any particular pattern in terms of migration or arrest statistics. Hence, it is believed to be a non-biased basis for calculation and this percentage is used to extrapolate over the period of focus.

³¹: Document provided by South African History Archive and obtained under the auspices of the Promotion of Access to Information Act (n. 2 of 2000).

³²: This percentage is very close to the ones obtained using the Lindela data collected by SAPS. Indeed, 47% of respondents reported having been arrested by SAPS. However the data sample is much smaller.

STEP 3: R 2,518,418

STEP 1+ STEP 2+ STEP 3= R 362,623,533

Based on these calculations, we estimate that **the yearly cost of immigration policing to SAPS amounts to over R 362.5 million**. In addition, we believe that this is certainly an underestimation of the actual costs. Using the SAPS salary scale, the total cost of immigration policing for SAPS is equivalent to the yearly salaries of 4,300 constables (Level 5) or 1,680 superintendents (Level 10).

INDIRECT COSTS 1: Foreign Minorities Under-Report Crimes

The substantial deployment of police resources to immigration policing functions also has significant indirect effects on core policing functions. One of the most significant impacts has been on police-community relations. Ever since the transition to democracy, SAPS has sought to develop genuine partnerships with citizens towards a shared goal of community safety and security. Apart from this being essential to the broader objective of developing a government administration that is responsive to civilian concerns, strong and trusting relationships with the community are essential in enabling SAPS to 'do its job' of combating crime. Community members are responsible for reporting crimes to the police, in some cases providing vital information that can lead to the arrest of suspected offenders.

It is therefore of serious concern that **members of South Africa's foreign-born community regularly choose not to report crimes to the police**. In the Johannesburg inner-city, foreign nationals who had been a victim of a crime were less likely to report to a police station (63.6%) than South African victims (72.6%). There are many reasons why this might be the case, including migrants' negative experiences of policing in their countries of origin. However, one of the major causes for this distrust is the fact that non-nationals are consistently regarded by the police as suspected immigration offenders, rather than potential sources of intelligence. Crucially, whereas all groups surveyed (including South African citizens) noted that they wouldn't go to the police because it 'wouldn't help,' Mozambicans consistently identified their fear of being arrested on the basis of their papers as a reason for not reporting. Indeed, other research with Mozambican nationals living in inner-city Johannesburg has suggested that foreign nationals may be developing precisely the opposite perception of the police than we might want to foster. When researchers asked Mozambicans to identify what it meant to feel safe or have a good life, almost all identified not being subject to police inspections for immigration offences as their main priority.³⁴ This suggests that many foreign nationals fear the officials who are there to protect them, possibly more than they fear the many criminals who operate in their neighbourhoods.

Importantly, this should not be taken as a statement that the police have been entirely insensitive towards foreign nationals' concerns. Initiatives in Yeoville and Hillbrow to establish 'Foreigner Forums', which run in parallel to Community Policing Forums (CPFs), are evidence of these positive intentions. The Station Commander at the CSC in Hillbrow has instructed his officials not to ask any clients to prove the validity of their identity documents when they come to ask for help or to report a crime. This is further evidence of SAPS GP's aim to reduce the level of distrust between foreign nationals and the police. The problem, it would seem, is that it may be difficult to encourage non-nationals to report offences in the CSC, when they are still consistently being treated as suspected immigration offenders by officers operating in areas outside the police station.

³⁴: This material was obtained from Elena Ostanel.

INDIRECT COSTS 2: Risks for Police Integrity

We open this discussion of the last cost of immigration policing with some degree of trepidation. For some time now, it has been an open secret that 'petty' corruption is common within some parts of SAPS, and a particularly common feature of police interactions with foreign nationals. Triangulating from a range of different methods, we can support the finding that **corruption is a common feature of immigration policing**:

- While conducting embedded research in a particular set of sectors in one station, we observed many instances of bribery involving foreign nationals paying officials to avoid being arrested for immigration offences.
- 8.7 % of asylum seekers (n = 771) report that they had paid a bribe to avoid arrest or get out of jail.
- 1 in every 6 detainees at Lindela (17% n = 53) reported that colleagues/friends who had been in their company at the time of arrest, had secured their release by paying a bribe.
- 1 in every in 3 observed interactions between a police officer and civilian in a high-density migrant area involved solicitation of a bribe.

Since conducting the pilot phase of this study, we have presented these findings to SAPS officials at national, provincial and station levels, and all have accepted the validity of these findings. Recognising the problem of corruption, its long-term effects on police integrity, and the need to develop solutions to minimise or eliminate it from policing practice, they encouraged us to extend our research into this area.

Following on from these meetings, we have conducted in-depth research which shows that bribery is by no means peculiar to the enforcement of immigration laws. In a separate report: Beyond 'Good Cop' / 'Bad Cop': Understanding Informality and Police Corruption in Gauteng' [Embargoed Until Further Notice] we argue against simplistic representations of corruption as an activity which involves either a few 'bad' officers seeking personal benefits or a few 'cunning' migrants seeking to escape the law. Instead, we suggest that corruption needs to be understood as caused by deeper structural and cultural factors of policing in South Africa which encourage, condone and in some cases even necessitate informal and sometimes corrupt exchanges between officials and civilians.

This position informs our understanding of why bribery seems to be such a common feature of immigration policing. To put it simply and briefly, the immigration system and its framework of penalties strongly encourages the police to 'turn a blind eye' to immigration offences while also encouraging undocumented foreigners to offer bribes in exchange for their freedom. This stems from the fact that immigration laws occupy a relatively unique place in the criminal justice system. As a general rule, the assumption within most criminal justice systems is that high-priority crime ought to also attract a higher penalty in the form of larger fines or longer prison sentences. This issue can be summed up in the statement that 'the punishment should fit the crime.' However, immigration offences attract penalties that are comparatively high when compared to their level of prioritisation. In addition to the fines and prison sentences outlined in Table 2, individuals who are found to be in the country illegally will lose work, belongings and social networks, will spend time in a detention centre, and will be deported back to their country of origin with substantially lowered chances of migrating again. This relatively unique positioning of immigration laws in the criminal justice deterrent system is illustrated in the table below.

Table 5: Prioritisation and Penalisation in the Criminal Justice System

| | Low Priority | High Priority |
|--------------|---------------------|------------------|
| Low Penalty | Public Drinking | Traffic Offences |
| High Penalty | Immigration Offence | Murder |

This dynamic does not necessarily mean that immigration policing will involve corruption. However, it does mean that suspected ‘illegal foreigners’ face significantly elevated incentives to pay bribes. Meanwhile, police officers have substantially lowered incentives to refuse. This makes it tremendously difficult to reform corruption in the service by simply improving oversight or internal policing measures, because the problem does not simply stem from officer morality, pay issues, etc, but from the incentive structure of immigration policing.

Summary

This brief review has identified a range of potential costs involved in immigration policing for SAPS GP. Obviously, this review could go further, to think through

- a) Additional financial implications for SAPS GP (fixed costs, support costs, etc);
- b) The total costs of immigration policing for SAPS nationwide (costs in other provinces, costs of border control, etc);
- c) Costs of immigration enforcement for the South African government (DHA costs, army, justice, etc); and
- d) Indirect costs for the South African government and economy (burdens on the refugee system, transaction costs involved in hiring new staff, etc).

We have decided to leave these broader considerations out of the report because they do not directly impinge on SAPS GP’s core objective of developing a provincial approach to this important issue. Nevertheless, the picture painted above is a serious one and suggests that SAPS must begin to consider whether the benefits of asking its officers to use their s. 41 powers is worth the huge amount of money and resources being spent and the impacts that immigration policing has on police integrity and public relations. As stated in the introduction, it is not the aim of this report to determine what SAPS GP should make of these findings, but in the next section we begin to consider some of the alternatives.

18: Using a slang expression, she meant money.

SECTION FOUR: Towards a New Approach

It is worth summarising the main findings of this report. Section 41 of the Immigration Act empowers SAPS officials to detect, arrest and detain suspected undocumented foreigners. SAPS policy-makers and decision-makers have not specifically ordered their members to use these powers. Nevertheless, police officers engaged in visible policing tend to arrest undocumented foreigners because they are consistently interacting with civilians in high-density migrant neighbourhoods, have been trained to use IDs as the entry point to investigations, and are pressured to produce high numbers of arrests. Police use of s. 41 powers has made several positive contributions to South Africa's crime prevention and combating strategy, leading in some instances to further criminal investigations and convictions, and the deportation of criminals. However, these benefits are at best ambivalent because police officers often use their s. 41 powers to avoid other types of investigative work, and organised and savvy criminals can evade immigration enforcement on the streets and at the border. Whatever benefits immigration enforcement has for SAPS GP are balanced by some large and concerning costs. Immigration enforcement has a heavy cost in terms of money, human resources, police integrity and community relations. Based on these findings, one assessment that we can all accept is that **it is worth beginning a discussion about SAPS GP's role in the immigration enforcement system.** The mere finding that SAPS is spending upwards of R 350 million on this type of policing warrants a considered and reasoned debate. With that in mind, and on the basis of what we have discovered so far, we run through some of the plausible options to address this situation.

OPTION ONE

Increase Enforcement: Provide Police Officers with the Resources Needed to Arrest all Illegal Foreigners.

For some, the problem remains one of ensuring that illegal foreigners are sent back to their countries of origin. If one holds to the position that there is an intrinsic link between illegal migration and crime, it may be reasonable to suggest that we need to be prepared to increase our level of resources devoted to this cause. From this perspective, the problem of corruption might be solved by increasing the importance attached to policing immigration and thereby reducing the incentives for officers to engage in corrupt behaviour. This policy would require, at a minimum, preparations for a massive increase in expenditure on policing. At present, SAPS Gauteng spends approximately R 8,566 for every illegal foreigner arrested in Gauteng. Hence, **if there are plans to remove all illegal foreigners who are currently resident in Gauteng, the province would need to think terms of billions of Rands.** Crucially, if this option was chosen, we would also need to add fixed costs to the budget, because additional arrests and detentions would require more buildings, more police officers, more vehicles, and corresponding administrative and support structures. Moreover, we should also prepare ourselves for some of the likely indirect effects. Driving illegal foreigners further underground would forestall hopes of improved relations with South Africa's minority groups and increase the incentives for both organised criminals to provide smuggling services and fraudulent documents and for undocumented migrants to bribe officials.

OPTION TWO

The Status Quo: Individual Officers Continue to Decide When and Where to use s.41 Powers

SAPS Gauteng may decide, on the basis of the available evidence, that the outputs are worthwhile and the costs tolerable. If this is the approach then it would seem that some minor investments in honing the policy would be an astute approach. Here, SAPS Gauteng might consider ensuring that efforts are made to maximise the benefits and reduce the costs (particularly the indirect costs) of the current approach. This might involve further examination of the linkages between s. 41 powers and successful investigation and prosecution of criminal offenders. What are the best practices in this area and how can we ensure that these powers are more helpful in the war against crime?

SAPS Gauteng might also consider developing auditing measures to gauge whether the costs of immigration enforcement are increasing dramatically in relation to the number of criminal prosecutions produced through these measures.

OPTION THREE

Minor/Strategic Reforms: Ensure Officers Transfer Resources to the Development

SAPS Gauteng may conclude that the costs are not worth the benefits and that it needs to scale back its involvement in immigration enforcement. This may involve issuing an instruction specifically preventing officers from exercising s. 41 powers unless this constitutes part of an investigation of a criminal offence. While not specifically preventing officers from using s. 41 powers, this might involve earlier transfer of s. 41 responsibilities to the DHA. This may involve a scenario where SAPS officials are responsible for reporting suspected offenders to the DHA but not for taking the offenders into custody. With the considerable savings that are likely to result from this approach, SAPS may consider a range of alternative spending options. Importantly, it is not likely that problems of corruption and poor police-foreigner relations will simply fade away. However, there may be more room in this context to deploy anti-corruption initiatives and regenerate relationships with minority communities in ways that isolate criminals and promote more effective and expansive police investigations.

OPTION FOUR

Major Change: Removal of Section 41 powers

SAPS Gauteng may, working in conjunction with officials at the National level, decide that policing crime and policing immigration are two functions that cannot be successfully married. This approach, which has been followed by many local governments in the United States, may involve removing reference to police officers in s. 41 of the Immigration Act. This approach would require significant collaboration and consultation with the DHA and the range of other stakeholders who provide services to South African citizens, to ensure a comprehensive approach. The national government would need to seriously reconsider the nature of South Africa's immigration enforcement policy, and the types of approaches that the DHA is capable of implementing on its own. **SAPS GP would also need to plan for the huge amount of resources, particularly human resources, that would become available if such an approach were pursued, and how its visible policing could be redeployed to maximize impacts on crime.** Over the longer term, SAPS may consider the value of reordering its budget to transfer these human resource expenditures into other projects with the SAPS.

ANNEX I

Please answer questions regarding your last **COMPLETED** 12-hour shift
(yesterday or in case you were off the last day worked).

Make sure you answer **ALL** questions as accurately as possible.

This questionnaire will remain completely anonymous

| | |
|---|---------------|
| Date | 2009/ mm / dd |
| Time | __ : __ |
| Was your last COMPLETED shift a day or night shift? | |

| | |
|-------------------------------|-------|
| What is your rank? | |
| What is your level (1 to 16)? | __ |

| | | |
|---|----------------------------------|-------------------------------|
| Tick the activities in which you were involved in during your last COMPLETED shift: | | |
| Roadblocks | Inspections of vehicles or staff | Witness interrogation |
| Foot patrols | Building searches | Firearm checks |
| Farm visits | Vehicle patrols | Communication with colleagues |
| Guarding detainees | Transport of criminals | Paper work |
| Other activities Please specify: | | |

| | |
|---|--|
| <p>During your last 12 hours shift, how much time did you spend dealing with foreigners who had NO DOCUMENTATION?</p> <p><small>This includes during people searches, vehicles searches, premises searches, arrests, processing of arrests, transport of prisoners, etc.</small></p> | <p>__ hours and __ minutes Out of 12 hours</p> |
|---|--|

Thank you for your time