

‘Getting angry with honest people’: The illicit market for immigrant ‘papers’ in Cape Town, South Africa

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Abstract

South African Department of Home Affairs (DHA) officials ‘seem to get angry with honest people’, shared a Congolese immigrant from the Kivu region who now resides in Cape Town. Some DHA officials get money through illicit transactions for ‘papers’ and they become visibly frustrated with immigrants who try to obtain documents by lawful means. While there has been much focus on xenophobia associated with immigration in South Africa, there has been little attention paid to the illicit market in immigrant papers such as asylum seeker permits (Section 22 permits), refugee status permits (Section 24 permits), and work permits. These immigrant documents assist individuals—namely those who otherwise lack status, or ‘papers’, or both—to obtain abilities to work, travel safely, register themselves or their children for school, access non-emergency healthcare, and gain banking privileges. In providing an account of the market in immigrant papers, the article focuses on how these documents relate to status and survival. By purchasing papers in Cape Town, immigrants (referring to asylum seekers, refugees, and cross border migrants) aim to secure their legal status and gain productive agency in their lives. This paper is based on an ethnographic research methodology and participant observation, and shows how immigration challenges South Africa’s post-apartheid, constitutionally-mandated socio-economic rights and democratic aims and has fostered an illicit market in immigrant documents. This work furthers debates on immigration governance in the global south, corruption in state institutions, and the vulnerability of immigrants.

Keywords: immigration documents, asylum-seekers, refugees, law, South Africa

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1. Introduction

South African Department of Home Affairs (DHA) officials ‘seem to get angry with honest people’, shared a Congolese immigrant from the Kivu region who now resides in Cape Town. This immigrant from the Democratic Republic of Congo (DRC) explained that because some South African officials get money through illicit transactions for ‘papers’, they become visibly frustrated with immigrants who try to obtain documents by lawful means (Focus Group 23 March 2015). A security official in Cape Town confirmed this corruption and said that he believes that ‘85 per cent of the DHA is corrupt with a couple of people trying to survive’ (Interview, Security Official, 11 April 2015). These views echo Olivier de Sardan’s contention that the ‘embeddedness of corruption’ among civil servants can lead them to ‘reprimand’ anonymous users who are not informed of ‘practical norms’ (de Sardan 2014: 70, 73). It is within this context that immigrants seek papers in order to survive in South Africa. Moreover, inconsistent and obtuse immigration policies have not only confused immigrants, the general public, government administrators, and lawyers, but have also normalized the population to ambiguity in laws that apply to foreign nationals. In this confusion, opportunities for safe mobility and residence become commodities mapped to legal status, realized in immigrant documents, and sold in an illicit market.

South African parlance furthers this confusion because most immigrants are referred to as ‘refugees’ regardless of whether they have achieved this legal status. In South African law, the term ‘refugee’ refers to a person who is fleeing political or social persecution in his or her home country. Such a person applies for an asylum seeker (Section 22) permit that can be renewed numerous times before the DHA makes a final refugee status determination and grants or denies a Section 24 (refugee status) permit. Through their many applications, renewals, and appeals, refugees become conflated with economic migrants, internal South African migrants, medical tourists, and wealthy foreigners. The resulting confusion supports a market in various immigrant documents commonly and generically referred to as ‘papers’.

This article provides an account of the market in different types of immigrant papers, drawing evidence from the anger that officials exhibit towards certain immigrants, the alleged corruption, the ambiguity of laws and regulations, and the prices of papers. Through its papers, this illicit market both suspends immigrants in temporary status—ensuring their continued consumption over periods of ‘imposed waiting’ (Andersson 2014: 215)—and engages immigrants in ‘controlling processes’ that influence and persuade individuals and groups to participate in their own domination (Nader 1997: 712).

The DHA is mandated to rid the nation of illegal foreigners and keep South Africa safe.¹ Emphasis on this mandate contrasts with an operative ‘business model’ of migration (Koser 2011: 265) in which DHA functionaries participate in an illicit market of immigrant documents. Scholars of immigration and xenophobia in South Africa are attuned to such processes, noting how xenophobic violence stems from ‘demons within’ (Landau 2011: 1–3) and motivates official responses that putatively aim to render the population ‘safe’ rather than to confront questions of justice (as outlined in the South African Constitution Section 7, Rights, and Section 10, Human Dignity). We argue that South African laws and norms are orchestrated to compel participation in the illicit market. The presence of this

illicit market is a significant challenge to global migration governance. As Alexander Betts observes, 'global migration governance can be characterized by a fragmented tapestry of institutions at the bilateral, regional, inter-regional, and multi-lateral levels' (Betts 2011: 1). We present the South African context with attention to both the limitations of local institutions in this fragmented tapestry—including corruption—and more specifically, to the strategies that migrants use as consumers of papers.

Scholars of international migration have defined many core issues of global migration governance by focusing on sending areas, receiving areas, and the migrants themselves (Gamlen 2010: 415). In providing an account of the market in immigrant papers, we focus on how documents relate to status and survival (Betts 2010)—tangible qualities of existence that correspond to dignity and productive agency as core rights (Gewirth 1996: 109). By purchasing papers in Cape Town, immigrants aim to secure their status and gain productive agency. In doing so, they participate in South Africa's 'illegality industry' and its rhythms as they await contacts, money transfers, handlers, and—above all—papers of their own (Andersson 2014: 215; Andersson 2016: 2).

This article is based on an ethnographic research methodology and participant observation. Between February and May 2015, we conducted 35 open-ended interviews with individual participants² in Cape Town, South Africa. We developed a list of questions before the project began and refined them as we conducted the interviews.³ Given the nature of the topic, we opted to interview immigrants with whom we had developed trust over several meetings and assured them that we did not want to speak to their contacts or see their papers. As the project unfolded, we confirmed that people are afraid to talk about this topic and risk losing their 'contact(s)'. At the same time, we motivated participants to speak with us in the hope that exposing DHA corruption might stop illicit practices. The participants expressed being tired of seeing honest people forced into criminal behaviour for a perceived sense of security. Our research aimed to understand the individuals who may seek illicit documents—the demand side of the market for immigrant documents. We arranged two focus group meetings in March and April 2015. We then followed up with several of the immigrants for clarification and additional information.

We also tried to interview government officials, including representatives of DHA and the South African Police Service, whose duties include allocating and controlling official status documents as well as taking action against fraud—the supply side of the illicit market. We approached DHA's Anti-Fraud Unit and high-level officials, but we received no response (see telephone and email communications with the DHA national spokesperson, 25 March 2015). One security official spoke with us but was visibly frightened during the discussion. We believe that we have exposed just the 'tip of the iceberg' with this initial inquiry.

In full recognition that our study could not afford assistance to its vulnerable participants or protection against detention, deportation, or other potential harms to individuals lacking valid claims to immigration status, our methodology was conservative. We neither sought nor obtained verifiable evidence that would place a participant at risk of reputational harm, criminal or civil liability, or deportation. We avoided conversations that would lead to explicit admission by any participant of lacking legal status or a valid claim to legal status, and we express no opinion about the validity of participants' asylum claims. The ethics of balancing the benefits and harms of research participation

precluded doing otherwise. This reduces the verifiability of the research data, which are also limited for purposes of statistical significance by the small sample size. Nevertheless, we believe that participants engaged with us in good faith, were honest and truthful in sharing information, and were reserved and partial in their responses—where appropriate—to protect their private interests. The common threads in participants' responses to our questions indicate a rich and shared discourse on the illicit market in papers, one that shapes expectations and behaviours among immigrants and within their communities. Their stories illuminate how the long-term goals of global migration governance depend on meaningful engagement with the desperation of immigrants who lack papers and those who wish to regularize their status.

2. Between control and authority

Under South African immigration policies, some DHA officials ignore court orders⁴, abuse their power over immigrants and become actors in an illicit economy. These officials' actions (and inactions) prevent opportunities for good governance and transformative democracy in South Africa. As a case study, the immigrant document market in South Africa speaks to 'modes of governance in Africa' more generally and to the diversity of practical and official norms (de Sardan 2014: 77). The South African case is theoretically important because, as Tara Polzer and Aurelia Segatti explain, 'non-citizens in South Africa enjoy relatively extensive formal rights under the Constitution, which could arguably be seen as an opportunity for progressive post-national membership', yet practical difficulties in claiming rights burden everyday life for immigrants (Polzer and Segatti 2011: 202).

The South African case further commands practical importance. According to a report of the UN Human Rights Commission, South Africa had, 'by a large margin, the highest reported number of applications pending at any stage of the asylum procedure' at the end of 2015 with more than one million pending cases (UNHCR 2016: 44, 45). The next largest number of claims, 420,600—fewer than half the South African total—was reported from Germany. The report notes that South Africa is particularly attractive to asylum seekers from Zimbabwe, who represented 29 per cent of new claims in 2015. Approximately 84 per cent of new claims were made by individuals from across sub-Saharan Africa, including asylum seekers from Ethiopia, Nigeria, and the DRC in addition to Zimbabwe.

The size of South Africa's foreign population in relation to its citizenry is difficult to estimate. According to *Statistics South Africa* (2012: 44), 3.3 per cent of the national population was 'non-South African citizens' in 2011. In 2010, South Africa hosted an estimated 1.6–2 million foreign nationals (Polzer 2010: 3), which sensitized native-born South Africans to the increasing number of foreign-born residents. An estimated 20,000 non-nationals were displaced in the Cape Town area by xenophobic violence in 2008 (Cohen 2013: 63), and the number of undocumented immigrants nationwide was estimated at around three million in 2011 (Budlender 2013). In the Western Cape Province, 3.3 per cent of residents were non-South African in 2011 (*Statistics South Africa* 2012: Figure 2.11). However, Budlender suggests that this number may be conservative, possibly because foreigners not in the country legally may be unwilling to be counted. According to a report

on foreign labour, 'provincially, [the] Western Cape has the highest omission rate for both individuals (18.6 per cent) and households (17.8 per cent)' (Budlender 2013: 50).

In this and other respects, the situation in South Africa relates to comparative contexts around the globe, contributing to the challenges of global migration governance. As political, social, and environmental upheavals disrupt the lives of millions of people around the world, refugees and indigent migrants seek to settle in viable, if unfamiliar, places. International media reports document the perilous journeys of Syrians, Iraqis, Afghans, and Africans moving north across the Mediterranean Sea because of dire push factors at home such as war, famine, and poverty. Latin Americans flee drug violence and femicide via migration to the USA and Canada. The United Nations High Commissioner for Refugees (UNHCR) estimated in October 2015 that globally, there are currently more than 60 million asylum seekers and internally displaced persons (UNHCR 2015). In this context, South Africa has become an attractive destination because of its progressive constitution and the absence of refugee camps.⁵ Moreover, stories of South African wealth and economic opportunity travel throughout the African continent.⁶ In turn, South Africa faces acute, internal issues of immigration governance, including how to verify who is arriving, how to categorize immigrants in terms of legal status, and how to use the nation's limited resources to deny entry, detain, and deport persons who lack lawful status.

Bridging legal categories of asylum seekers and refugees and social science notions of 'mixed migration' and the 'migration-asylum nexus' (Van Hear, Brubaker and Bessa 2009: 2), this paper adopts the term 'immigrants' to include asylum seekers, refugees, and cross-border migrants who are not eligible for refugee status. For their part, immigrants need papers to access work, schools for their children, medical care, and banking services. Their demand corresponds to the pursuit of dignity and productive agency as rights. For immigrants to survive in Cape Town, their opportunities for residence and mobility map to papers in these material ways. If immigrants cannot obtain documentation through legal channels, they can turn to the illicit market. This market—rooted in supply and demand for asylum seeker permits, refugee status documents, and work visas—renders each type of document a commodity. And given the complexity of immigrants' lives and the vulnerabilities of their populations, scholars have only begun to sketch the dynamics of this immigrant document market and the sense of protection that its commodities offer.⁷

The closing of the Cape Town Refugee Office⁸ in 2012 to newcomers and asylum seekers with permits issued from other refugee reception offices (RROs) in South Africa increased demand in the illicit immigrant document market. Some of the documents are fraudulent, while others cannot be identified as fraudulent because they are actually produced by the DHA and bear numbers that correspond with the National Refugee Database.⁹ These are, instead, documents generated through illicit means. Some immigrant men from Cameroon referred to these documents as 'illegal legal' documents. They said, 'as long as the document they receive is in the system, how it was obtained [we] . . . don't worry about it' (Interview, Cameroonian Immigrant, 22 April 2015).

The diversity of these documents speaks to how migrants are both dominated by—yet also resist—the illicit market. Some are considered criminals for seeking fraudulent documents. Others are criminalized by a lack of alternatives. Some are precluded from livelihood by official norms, others by exclusion from the offerings of corruption. Their lives are controlled, and their market participation is coerced. From our research, it appears that

immigrant documents, licit and illicit, are differentiated by price, each holding a market niche. The higher the price one pays, the higher quality, authenticity, and efficacy of the document. To better understand the supply and demand of immigrant documents, we sought to interview market participants and to locate their participation in Cape Town's broader illicit economy.

The ambiguity of South African immigration laws, regulations, and DHA practices has normalized a mix of lawful and illicit means of obtaining and renewing asylum seeker documents, refugee status, and work permits—the context in which the market for immigrant documents has emerged. At a broader level, borders and boundaries are increasingly porous and reflect postcolonial nation states' attempts to govern. Didier Fassin explains what governance means in this context by observing how it 'relates the power and administration of the state to the subjugation and subjectivation of individuals. It relies on political economy and policing technologies' (Fassin 2011: 214). Such forces are at work in Cape Town, and their incompleteness is linked to the market in immigrant papers. As the state deems individuals without papers or with expired papers—the undocumented—to be 'illegal immigrants', it compels them to enter the illicit market in order to secure their status.

Despite a common presumption that asylum seekers and refugees need to and must renew their permits in a timely manner before expiration, there are often mitigating circumstances—inadequate funds to travel to an RRO, the inability to take time away from work, sick dependents, or one's own illness. In short, 'one can say that the state creates illegal immigrants by making and enforcing the laws whose infraction constitutes illegality of residence' (Fassin 2011: 217). The nexus between weak governance and illegality has in this way become 'integral to depiction of postcolonial societies' and 'stereotypes of underdevelopment' (Comaroff and Comaroff 2006: 17). The desire for legal status and the perceived security it promises draw immigrants into what John and Jean Comaroff argue to be 'criminal economies [that] are often the most perfect expressions of the unfettered principle of supply and demand [as] great profit is to be in the interstices between legitimate and illegitimate commerce' (Comaroff and Comaroff 2006: 16).

The analysis that follows is divided into three sections (Sections 3, 4, and 5). The first describes the historical context of documents and their importance in South Africa. This section outlines the ambiguities of law applicable to foreign nationals. The second analyses the demand side of documents and how market demand is created. The third, drawing on ethnographic work conducted in 2015, examines the working of the immigrant document market with attention to its participants and products. By interpreting how and why immigrants purchase documents, the article underscores the presence of controlling processes within South Africa's governance of immigration, a presence manifest in DHA corruption and the immigrants' pursuit of status and security in a host country challenged by xenophobia.

3. The makings of the market in papers

From a historical perspective, the role of identity documents in the current context can be traced to the South African apartheid regime. Breaking with the country's history as it certified the new South African Constitution in 1996, the Constitutional Court noted that

the Bill of Rights states: 'everyone shall enjoy the universally accepted fundamental rights and civil liberties, which shall be provided for and protected by entrenched and justiciable provisions in the Constitution ...'.¹⁰ The Constitutional Court also explained that the drafters of the Constitution '... were avowedly determined ... to create a new order in which all South Africans will be entitled to a common South African citizenship in a sovereign and democratic constitutional state in which there is equality between men and women and people of all races so that all citizens shall be able to enjoy their fundamental rights and freedoms'.¹¹

Throughout the Bill of Rights and large parts of the Constitution, the term 'everyone' is used to describe the rights enshrined to those residing in South Africa and this stems from the institutionalization of racism. In *Makwanyane*, Judge Mahomed wrote: 'The past was redolent with statutes which assaulted the human dignity of person on the grounds of race and colour alone ... and the Constitution expresses in its preamble the need for a 'new order ...'.¹² Although this new order was designed to ensure equality and dignity for everyone, the current state of immigration suggests that South Africa has fallen short in this aspiration among foreign nationals. The lack of dignity with which immigrants are treated is documented in asylum seeker and refugee cases that challenge the DHA. These cases prompted our inquiry and our interest in the market demand for papers.

The DHA's physical presence in the Cape Town area has also evolved over the last two decades since the end of apartheid. Its RRO was first located at Customs House on the Foreshore from 2000 to 2007. In 2008, during the xenophobic violence, it was temporarily located to the fifth floor of the downtown DHA building in Barrack Street and then shifted to Nyanga until 2009. Subsequently, the office was relocated to Voortrekker Road in the suburb of Maitland from late 2009 until June 2012. While the office was located in Maitland—and after alleged complaints by local residents—the landlord finally terminated the lease and DHA moved the RRO back to Customs House on the Foreshore in central Cape Town. For non-refugee matters, South Africans and foreign nationals can go to DHA offices in Barrack Street in Cape Town or to Wynberg. Moving the RRO office led to ongoing confusion about where asylum seekers and refugees can receive services and the chaotic nature of its processes involved.

Today, in order to obtain asylum seeker status, an applicant needs to go to one of four RROs—Musina, Durban, Pretoria, and Port Elizabeth¹³—that accept new applications to receive a Section 22 permit. With this permit, the individual can remain in South Africa legally and move about the country freely until a hearing to determine whether his or her situation fits the definition of a refugee fleeing persecution due to race, tribe, religion, nationality, political opinion, social group, external aggression, and/or disturbing public order. After this first hearing, the asylum seeker can be granted refugee status or deemed unfounded (a determination subject to appeal) or manifestly unfounded. If the individual is found to have a manifestly unfounded, fraudulent claim, then he/she needs to leave the country within 30 days or face deportation. At the expiration of the 30-day period, the individual then becomes 'illegal' if he or she remains in South Africa. The sequence associated with adjusting legal status in South Africa thus introduces potential confusion for almost everyone—asylum seekers, immigrants, police, officials in detention centres, and the general public. Moreover, one's legal standing does not seem fixed, as one might anticipate, but is subject to swift change. This is important to note not only for deconstructing

the use of the terms—refugee, asylum seeker, and illegal foreigner—but also because it shapes how South Africans interact with foreign nationals.

The DHA released ‘Asylum Statistics’ 2013 in which it indicates that a ‘total of 70,010 new arrivals were registered as asylum seekers between January and December 2013. The data were broken down by region with 58,465—84 per cent—from the African continent.’¹⁴ The report also indicates that 68,241 registered asylum seekers were adjudicated in 2013, and 35,402—52 per cent—were deemed manifestly unfounded, abusive, and fraudulent asylum claims.¹⁵ Another 25,553—37 per cent—were deemed unfounded asylum claims,¹⁶ and a mere 7,286—11 per cent—were approved.¹⁷ These statistics are summarized in [Table 1](#) and [Figure 1](#).

In the examination of the DHA asylum statistics in 2012–2013, 68,241 out of 70,010 asylum seeker cases were adjudicated.¹⁸ Of these cases, 89 per cent were rejected. The largest immigrant populations are listed to illustrate that many of the cases can be mapped to primarily four sending states—Somalia, Zimbabwe, Ethiopia, and the DRC. This high rejection rate establishes a need among immigrants—whether asylum seekers, refugees, and/or economic migrants—to find alternative means of securing status, papers that afford or appear to afford the conditions of the possibility to enjoy rights to dignity and productive agency in South Africa.

4. The market niche of immigrant documents in Cape Town

Anthropologists Jean and John Comaroff have examined the growing global market in counterfeit documents to describe how the demand for personal identity documents among cross-border migrants creates a situation in which ‘official “papers” take on a magic of their own. . . . Thus, a huge industry has evolved, especially outside the West, for the fabrication of false credentials. . . . [that] . . . are expertly counterfeited by means that wrest control over the production of the insignia of civic personhood from the state . . .’ ([Comaroff and Comaroff 2006](#): 12). From the apartheid passes to the ‘magic’ of official documents, the DHA’s 89 per cent rejection rate has clear implications for South African society. Who has legal standing and who does not? Why should so many apply when rejection seems inevitable? Is there value in the status of waiting for adjudication? Indeed there is. The immigrant document market flourishes with its offerings of papers for liminal status. Yet the value of these papers is further complicated by South African police detentions of individuals deemed ‘illegal foreigners’ regardless of the papers they may hold. There are numerous accounts of legitimate asylum seekers who possess Section 22 permits only to have these permits torn up by police officers for no apparent reason. The asylum seekers are left vulnerable to detention and deportation.

Our interviews indicate that the socioeconomic circumstances of each individual immigrant shapes his or her decision about what to do when faced with an expired permit, a DHA rejection, or a need to register a child for school, get access to healthcare, unfreeze a bank account, or live with the security of legal status. Perhaps most importantly, we found that the relevant socioeconomic factors cut across immigrant groups and could not be

Table 1. Department of Home Affairs Asylum Statistics for 2013

Asylum outcomes by country of origin		
Asylum outcome	Number of cases	Percentage of cases
Total approvals	7286	11%
Somalia	3579	
Ethiopia	2055	
DRC	1104	
Other	548	
Total rejections	60935	89%
Manifestly unfounded	35402	52%
Zimbabwe	13679	
Nigeria	5794	
Mozambique	3175	
Other	12754	
Rejected as unfounded	25533	37%
DRC	5214	
Ethiopia	5148	
Bangladesh	3685	
Other	11486	
Total	68241	100%

easily generalized among or within immigrant groups. Each group tends to have its own contacts who work between an immigrant community and the DHA, and our interviews with study participants revealed that these contacts play pivotal roles in the immigrant document market.

Table 2 outlines the function of various immigrant documents, the illicit price of each, and what the document purports to allow its immigrant bearer to do. A Section 22 permit allows an immigrant to open a bank account, work, send his or her children to school, and access healthcare; however, this permit is often short term. The authentic asylum seeker permit will have a functioning bar code that is linked to the South African National Refugee Database. The refugee status (Section 24) permit is similar to the Section 22 permit in its benefits but is issued for a longer duration, thereby offering more stability for the immigrant. Although we heard about the work permits, student visas, and permanent residency visas, the prices and functionality seemed to be at a 'higher level' than many of our participants could afford or had familiarity with. The majority of our participants had or knew of first-hand market experiences with asylum seeker permits and refugee status documents described in the top two rows of Table 2. We also learned about the destruction and removal of rejection letters as explained by a Nigerian immigrant.

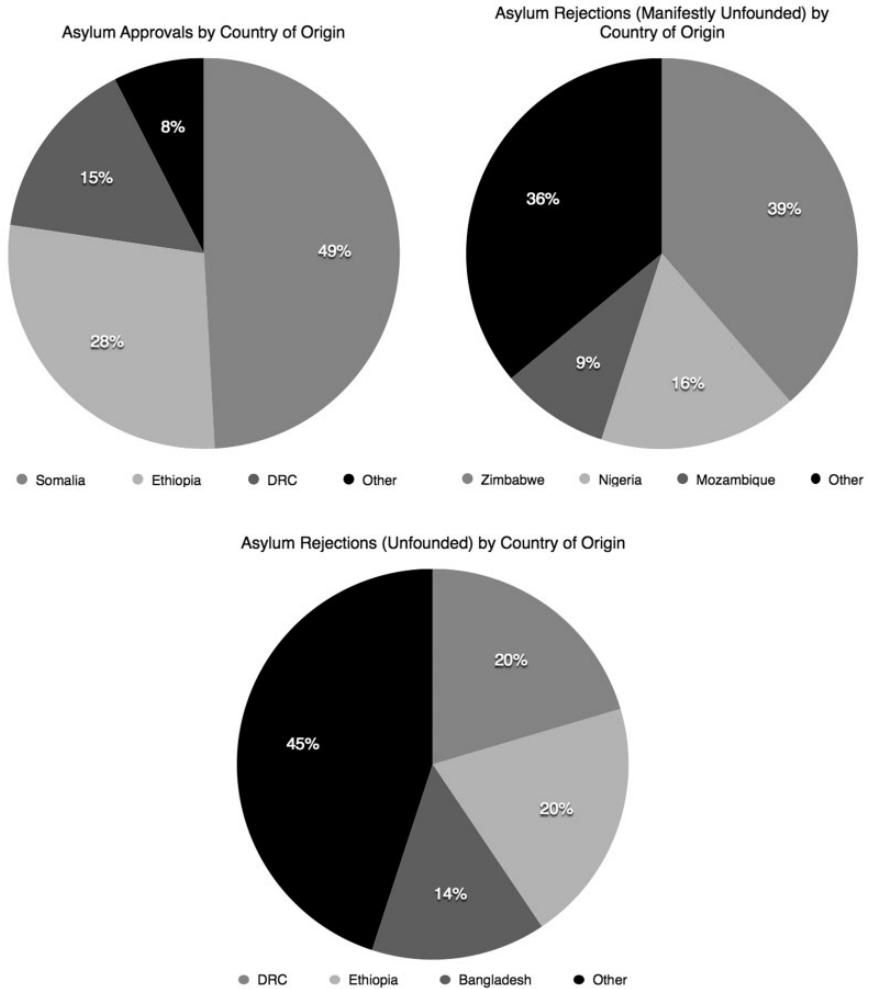


Figure 1. Department of Home Affairs Asylum Statistics for 2013.

The immigrant document market includes ‘contacts’ providing the interface between supply and demand of illegally obtained documentation in Cape Town. Depending on where one sits within the community, one may come across any number of these individuals. We were told that an individual can go into the RRO entrance in Cape Town appearing desperate and may be approached by several contacts. For a price (and depending on how much cash one has at hand), the contact can either get an individual to the front of the queue (in exchange for a payment to a security guard) or place a phone call to his or her DHA contact who can guarantee production of the otherwise elusive document.

Table 2. Illicit market of immigrant documents

Type of documentation	Reported prices in illicit market	Product value—functionality
Asylum seeker permit Section 22	High: R2,000 to R6,000 Low: R150 to R800 Average illicit price: R2,000–3,000	<ul style="list-style-type: none"> • Useful to open a bank account, work legally, attend school, access health and non-emergency care • Often issued for short-term (months) and needs to be renewed until final status determination
Refugee status document Section 24	High: R30,000 Low: R2,500 Average illicit price: R5,000-8,000	<ul style="list-style-type: none"> • Useful to open a bank account, work legally, attend school, access health and non-emergency care • Issued for a longer period than asylum seeker permits (years) and subject to renewal.
Work permit	High: R30,000 Low: R2,000 Average illicit price: R8,000	<ul style="list-style-type: none"> • Useful for work authorization • Valid for period of years
Permanent residency	R24,000	<ul style="list-style-type: none"> • Useful as an identity-verification document for comprehensive purposes; does not permit voting • Valid indefinitely
Green barcoded South African ID	No data	<ul style="list-style-type: none"> • Basic government issued identification document for South African citizens
Section 22 renewal if expired	R2,500	<ul style="list-style-type: none"> • Usefulness tracks with underlying document above.
Section 22 renewal if about to expire	R1,250 to 2,000	<ul style="list-style-type: none"> • Usefulness tracks with underlying document above.
Section 22 or section 24 final rejection removed/deleted from records	R1,500–3000 Average illicit price: R2,500	<ul style="list-style-type: none"> • Returns beneficiary to status prior to rejection, often expired versus rejected.

Data source: 35 interviews conducted in 2015 and 2016

For individuals with more economic means, there are ‘outside’ contacts to which friends, relatives, or a ‘concerned’ worker at a civil society organization (CSO) might offer a connection. These contacts may even look legitimate from the outside, working in up-scale offices or calling themselves immigration lawyers. All an individual needs to do is follow the contact’s instructions to arrive at the RRO on a certain day and time, wear a particular colour, give the security guards a ‘look’, and then be directed or escorted straight to the DHA official who has the required documents ready and waiting. These contacts are from different African countries, Asia, Eurasia, as well as South Africa. Each charge a different fee depending on the quality of the product required. If money is a problem, agents with other ‘businesses’ (often illegal) may allow an individual to pay by prostituting to their clients or acting as a drug mule.

One immigrant from the DRC who works in club security claimed that the profit from a work permit costing R6,000 would be split between DHA officials and the contact. A corrupt DHA functionary in Cape Town would receive R1,000 for each document processed, and the contact would make between R2,500 and R3,000 from each client (Interview, DRC Immigrant 4 May 2015). Lacking the ability to verify these data, we could not determine who receives the largest portion of the profits, how the profits are allocated, and who decides on the split. If one cannot afford the fees of those agents who have connections inside the DHA, there is little choice but to buy a forged document from someone or some group making counterfeit copies. Some of these contacts have access to actual DHA forms and/or paper, but they are unable to load a unique registration number into the system, so the documents have limited application; yet, they look legitimate to an untrained eye. Others use cruder means like photocopying fake documents. Although reasonable scrutiny reveals the documents to be fraudulent, they nevertheless command value and are used for limited purposes by the desperate and the very poor. A CSO in Cape Town, People Against Suffering, Oppression and Poverty, documented corrupt practices witnessed by 11 monitors over two weeks (28 March–8 April 2011) at the Cape Town RRO. They found a ‘large group of men who walk from the car park to the road [and] who make money by selling fake papers’ as well as anecdotal evidence showing ‘connections on the inside who share in the profits’ (People Against Suffering, Oppression and Poverty 2011: 7–8).

The sample of immigrants interviewed in our study suggests that three levels of the immigrant population are in need of papers. The documents they seek correlate to the price ranges reported in Table 2. As in many other jurisdictions around the world, immigrants to South Africa who have economic means typically work with lawyers to obtain lawful asylum seeker permits, refugee status documents, work visas, student visas, and tourist or volunteer visas. The first level includes many Zimbabweans, Nigerians, Somalis, Pakistanis, and Chinese. The second level includes a large group of immigrants who arrive with more modest economic means and/or less knowledge about how to navigate the South African system through legal channels or illicit means, such as ‘queue jumping’ and ‘bribes’. In Cape Town, Zimbabweans seem to compose the largest group of immigrants who have this second-level knowledge and ability to work between the legal and illegal options. A third level includes indigent migrants who are both economic migrants—such as Malawians and Zimbabweans sometimes from rural areas who have lower educational backgrounds—and bona fide asylum seekers who have often fled the Kivu region of the DRC, Burundi, and Rwanda.

As part of our research, two staff members went to locations known for homeless immigrants and inquired about their knowledge of asylum seeker permits and the importance of permit renewals. During these visits, the staff members brought bread and fruit because the immigrants indicated on the first visit that they had not eaten in days. By their appearance, we did not doubt them. Many have experienced significant trauma. The group included immigrants who had crossed into South Africa by foot or by bus and who are often unaware of South African immigration laws and how to apply as new applicants for asylum seeker permits in Cape Town. Given the breadth of experiences and backgrounds among such immigrants, it is understandable that the DHA would struggle to adjudicate their cases and make legal determinations as to whether an individual is fleeing from persecution at home or merely fleeing economic hardship, which would preclude qualification for refugee status.

By contrast to Zimbabwean and Malawian immigrants in Cape Town, Nigerian immigrants are perceived to be well versed in how to navigate the South African system.¹⁹ In an interview, a Nigerian immigrant said that getting a work permit depends on 'who you know' and costs R8,000. A person could get a package deal of an asylum seeker permit at a cost of R2,000 to get immediate legal status (for example, open a bank account) and then a work permit for another R8,000. However, one would learn if the numbers assigned on the asylum seeker permit and the work permit were valid only when travelling. She explained the risk, such as being barred from re-entry to South Africa if a number is determined to be invalid. She further explained how lawyers at an office in downtown Cape Town (no names were given) make the arrangements for the package deal and contact the DHA officials to get the needed documents (Focus-Group Interviews 9 March 2015).

When we asked about obtaining refugee status or a Section 24 permit, most of the immigrants responded with the term 'status' and said that it costs approximately R8,000 (approximately \$960 at the time of the interview) (BBC News, 30 October 2012), although one of the civil society organizations (CSO) indicated a possible price of R5,000, depending on the nationality of the immigrant (CSO Meeting 24 March 2015). To help put these responses in perspective, 30 per cent of South Africa's population was unemployed in 2012, and the average annual salary for black South Africans was R60,600 (BBC News, 30 October 2012). Therefore, for an immigrant to purchase refugee status on the illicit market is roughly the equivalent of 1.5 months' salary. One woman from eastern DRC mentioned that it cost between R4,000–4,500 for status that would be valid for four years (Interview, DRC Refugee 23 March 2015). At the highest end of the spectrum, a South African permanent residency can be purchased for R24,000 according to a woman from the DRC.

Cape Town's middle-level immigrants seem to come mainly from Zimbabwe, followed by the DRC and Congo-Brazzaville. The situation for Zimbabweans is particularly complicated because a special permit introduced under the Dispensation of Zimbabweans Project (DZP) allowed qualified Zimbabwean nationals to work, conduct business, and study in South Africa. An estimated 1–3 million Zimbabwean nationals were living in South Africa in 2009, prompting the project (Chiumia 2013). On 12 August 2014, however, the DHA closed the DZP, and it expired on 31 December 2014. The Zimbabwean Special Dispensation Permit (ZSP) replaced the DZP, and the new ZSP permits will be valid until 31 December 2017. As with the DZP permits, the ZSP will allow Zimbabweans to live, work, conduct business, and study in South Africa for the duration of the permit

(Independent Schools Association of South Africa 2015). However, only Zimbabweans who hold the DZP permit are eligible to apply for the ZSP.

According to a leader in the Zimbabwean community who is based in Johannesburg, there are currently 208,000 undocumented Zimbabweans living in South Africa (Phone Interview 9 March 2015). However, there are many Zimbabweans outside the DZP and ZSP programmes who are likely unaccounted for in this estimate. Many of the undocumented Zimbabweans who have been previously rejected from ZSPs, for example, may now be living without papers in South Africa. Facing such circumstances, some are marrying South Africans for R2,000–3,000 with the intent to live legally in the country. However, marriage to a South African citizen does not automatically afford a foreign spouse authorization to work (Phone Interview 9 March 2015).

On the topic of work authorization, one of our Zimbabwean participants said that after he applied for his work permit in 2012, it never arrived. He suspected that DHA officials had sold it because he could never get an answer as to what happened to his permit in Cape Town. He indicated that a two-year work permit could be purchased for R2,000 (\$240). This young man decided to go to Musina to obtain an asylum seeker permit and hoped to be able to renew it until an interview determining his refugee status. His bank account with R1,500 had been frozen because his asylum seeker permit had expired. During the interview, he expressed his surprise with how well DHA officials treated him in Musina in February 2015 and how adept the officials were in communicating with the Shona and Ndebele speakers. His surprise came from his own past experience as a ‘runner’ for the Zimbabwean gangs, and he joked that the Zimbabweans taught South Africans about corruption. He noted with seriousness that the people ‘were made into crooks to survive’ by standing in the DHA queues (Interview, Observatory 12 March 2015). He also described the level of corruption at the DHA as a ‘food chain’—a metaphor repeated by other immigrants with whom we spoke.

Six immigrants from Nigeria, Zimbabwe, Malawi, the DRC, and Rwanda expressed frustration with the level of corruption at DHA and their (and families’ and friends’) personal difficulties complying with the law keeping up-to-date asylum seeker and refugee permits (Focus-Group Interviews 9 March 2015). They described how each community had a ‘contact’ who would call a person inside the DHA on behalf of ‘clients’ waiting outside. Once the connection had been made, the asylum seeker would be escorted inside to collect his/her finished document. The cost to get an asylum seeker permit ranged from R2,000–R2,500. A Nigerian immigrant said it cost R2,000 for an asylum seeker permit, whereas a woman from DRC reported a cost of R2,500 and a validity period of up to four years. The interviewees from Zimbabwe and Malawi indicated that the cost was R2,500 for an asylum seeker permit. A Nigerian immigrant also reported the R2,500 cost for a Section 22 permit. However, a permit with a shorter period of validity could be purchased at a lower price of R1,250 or R2,000. DHA functionaries exercise discretion to determine how long permits can be issued for—one month, three months, six months, and so on. A woman from Rwanda indicated that asylum seeker permits could be purchased in Retreat for R150, and there was also someone in Woodstock selling them for R300–R500. When we asked if the documents looked real, she said ‘yes’. However, in speaking to local immigrant advocates in the community, we heard that asylum seeker permits can go for as little as R200–300, but they looked ‘terrible’ and would expire within

two months. This market seems to suggest that some immigrants are desperate and do not understand that they are purchasing an illicit document that can potentially create more problems than it solves. But this is only something that people well informed about South African immigration law could understand.

Another issue with these documents relates to the unofficial use of DHA paper bearing watermarks and security features. This issue came to our attention during a discussion with a local CSO and was then followed up unexpectedly with a Nigerian immigrant. DHA officials would take blank papers and print out, at home, a Section 22 permit, but there would be no way to track these cases since there would be no bar codes printed on the documents (Interview, 15 April 2015). The immigrant from Nigeria related a specific incident in 2009 and also mentioned that DHA officials will destroy a final rejection letter for R3,000. The consequence of this is that the immigrant may be able to prolong his or her asylum seeker status by buying another six months from the DHA official on the Section 22 permit. The immigrant can then reopen his or her bank account and begin the extension process from the start (Interview, 15 April 2015). This aspect of the illicit document market not only provides immigrants with putatively authentic documents, but it also feeds rejection of asylum seeker and refugee applications. The closing of the Cape Town RRO to newcomers and those with existing permits issued by RROs in other parts of the country has exacerbated this type of market demand. Reflecting on the closure and its impact, this immigrant felt that the illicit market had become the best option, especially for Malawians, and that the market should not be tampered with. This comment reflects the insidiousness with which the illicit market is integrated among immigrant communities.

Perhaps the most disturbing situations were about women forced to have sex to either obtain an immigrant document or to pay off a debt for a document. Through our interviews, we became aware of suspicions that a man who had worked at one of Cape Town's local CSOs in recent years had promised that he would assist women with obtaining asylum seeker permits in return for sexual favours. One of our participants from the Kivu region of DRC reported that she had been a victim of this man (Interview, 23 March 2015). When we inquired further, several individuals independently confirmed having heard and/or sharing suspicions about this person. The man eventually left the position at the CSO. Whether he also received payments in cash from DHA, or made them on behalf of immigrants, is unclear. Desperation is also manifest in the stories we heard from different women from various immigrant groups being so concerned about enrolling their children in school (some South African schools demand to see a parent's asylum seeker permit before registering their children) and/or getting access to healthcare that they would borrow money from a gang to get a Section 22 or Section 24 permit. The gang would then require the woman to prostitute herself to lawyers or DHA officials or others. If they refused to participate in prostitution, they would be forced to sell drugs (Focus Group Interviews, 9 March 2015 and follow-up interview, 16 March 2015).

At approximately the same time as we began our research, the online media site *GroundUp* (based in Cape Town) reported a case on 22 December 2014 of a Somali refugee who was so desperate for papers to show a local hospital that he 'paid R2,500 for papers for his first son's documents because he [the son] was sick and needed urgent medical care' (Xi 2014: 2). This story of a bona fide refugee purchasing papers from DHA officials for access to healthcare is commonly acknowledged among refugee service providers. These stories of

desperation are increasingly common, given the inability of new asylum seekers and refugees to obtain permits in Cape Town and consequently needing to go to Musina, Durban, Pretoria, or Port Elizabeth. Another option, of course, is simply not getting papers and living ‘illegally’ with expired permits or with no papers at all. A Malawian man whom we interviewed believed that the vast majority of Malawians—95 per cent—take this approach to living in Cape Town specifically and South Africa generally.

5. Conclusion

This account of the market for immigrant documents in Cape Town shows normalization to the ambiguity of the laws, regulations, and practices applicable to foreign nationals in South Africa and reveals how immigrants are compelled to purchase papers. Whereas the state is largely concerned with securing the safety of South Africans, immigrants—the objects of xenophobia—seek papers to survive and participate in South African society. These immigrants participate in the illicit market to secure status and improve their own potential livelihoods, dignity, and options. Yet participation in the illicit market also implicates participation in one’s own domination, even though immigrants often rely on community-based contacts who have grasped a market niche in making illicit connections among immigrants, DHA officials, and the distribution of immigrant documents.

If corruption and the need to purchase immigrant documents persist as accepted norms in local and continental contexts, increasing numbers of immigrants will be compelled to participate in the illicit market of immigrant documents to secure their status. The papers immigrants may purchase are not, however, a substitute for the lawful adjudication of immigrant status. Honest immigrants and bona fide asylum seekers and refugees will continue to make functionaries angry by attempting to use official legal channels and aspiring for just outcomes. A core contradiction observed by Hannah Arendt thus persists, namely the ‘discrepancy between the efforts of well-meaning idealists who stubbornly insist on regarding as “inalienable” those human rights, which are enjoyed only by citizens of the most prosperous and civilized countries, and the situation of the rightless themselves’ (Arendt: 1951, 1966: 279). The behaviour of DHA functionaries illustrates this contradiction. The illicit market shows that inalienable rights among vulnerable immigrants have a material form in papers and a price. South African laws and norms are orchestrated as controlling processes in which the migrants are compelled to participate in an illicit market and thereby undermine the potential of global migration governance.

As Lawyers for Human Rights advocate David Cote observes, ‘since 2010, half of the country’s refugee reception offices have been closed, leaving the southern two-thirds of the country with no official services for new asylum seekers. This has resulted in increased queues at the remaining offices with a concomitant decrease in access and rampant corruption’ (Cote 2015: 2). In a *Mail & Guardian* article, a senior government official predicted that ‘refugees seeking asylum will be confined to camps . . . designed to make life uncomfortable for those thinking of heading south’ (Mataboge and Hunter 2015: 3). Yet as Gilles Bapyna, who owns a stall on Greenmarket Square in downtown Cape Town and lives in nearby Milnerton theorized, ‘I won’t say the people are xenophobic, but the government is xenophobic’ (Tswanya, Makhafola and Peters 2015: 2). If we accept Fassin’s premise that

'immigration . . . [is one of the] most crucial sites where democratic states are put to the test' (Fassin 2011: 218), then post-apartheid South Africa is being tested now. Increased raids on illegal immigrants and deportations will amplify immigrant insecurity and further drive the demand for immigrant documents.

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Notes

1. Under its Strategic Objective 2.1, DHA aims 'to ensure a secure, responsive and flexible immigration regime in support of national security, priorities and interests.' *Department of Home Affairs Annual Report (2012–2013)*, (DHA 2014).
2. We adapted an informed consent form and asked the participants to circle 'yes' or 'no' to acknowledge their rights to participate in the project. We did this to protect the participants' anonymity.
3. The list of questions is on file with the authors and can be provided upon request. The questions were vetted by the University of Cape Town Faculty of Law Research Ethics Committee on 26 February 2015 (L2-2015).
4. Roni Amit argues that in reviewing 90 legal challenges to immigration cases, the cases 'reveal a government department that routinely violates its constitutional duties and its legislative obligations under both the Refugees and Immigration Acts. DHA's actions also display a general contempt for the legal process' (Amit 2012: 7).
5. This could be changing with recent pronouncements by ANC General Secretary Gwede Mantashe, who said that the 'solution to so-called xenophobia in the country is establishing refugee camps' (Wicks 2015).
6. Writing about post-colonial migrations in Africa, Abdoulaye Kane and Todd Leedy note that while South Africa has 'long attracted labor migrants', the 'end of the apartheid system made the country a desirable destination for long-distance intra-African

- migrants from outside the region, including West and East Africans' (Kane and Leedy 2013: 2).
7. Vigneswaran, Araia, Hoag, and Tshabalala, drawing on John Torpey's analysis, argue that the South African 'monopolization of legitimate means of movement' creates a parallel structure of 'mid-level and street-level officials' who are 'protective of their discretionary authority' (Vigneswaran et al. 2010: 466).
 8. *Minister of Home Affairs v. Scalabrini Centre, Cape Town (735/12 and 360/13)* [2013] ZASCA 134 (27 September 2013), paragraphs 7, 89.
 9. 'It is important to keep in mind that at present asylum-seekers are registered in a national refugee database administered by the [DHA]. This national refugee database exists separately from the National Population Register; in other words, despite being issued with identity documents that have a thirteen-digit bar-code number, as is the practice with citizens and permanent residents, recognized refugees are not included in the National Population Register' (Belvedere et al., 2008: 276, n. 100).
 10. *Certification of the Constitution of the Republic of South Africa* 1996 (10) BCLR 1253 (CC) para. 48.
 11. *Certification of the Constitution of the Republic of South Africa* 1996 (10) BCLR 1253 (CC) para. 48, n. 45.
 12. *S. v. Makwanyane* 1995 (3) SA 391 (CC) para. 65.
 13. *Minister of Home Affairs & others v Somali Association of South Africa & another* (831/12) [2015] ZASCA 35 (25 March 2015).
 14. 'Asylum Statistics', DHA (March 2014), p. 3.
 15. Applications Rejected as Manifestly Unfounded, Abusive and Fraudulent in terms of Section 24(3)(b) or the Refugees Act No. 130 of 1998. 'Asylum Statistics,' DHA (March 2014), Table 2, p. 5.
 16. Applications Rejected as Unfounded in terms of Section 24(3)(c) of the Refugees Act No. 130 of 1998. 'Asylum Statistics,' DHA (March 2014), Table 3, p. 6. According to Section 26(1) of the Refugees Act, 'any asylum seeker may lodge an appeal with the Appeal Board in the manner and within the period provided for the in the rules if the Refugee Status Determination Office has rejected the application in terms of section 24(3)(c)'.
 17. Applications Approved and Refugee Status Granted in terms of Section 24(3)(a) of the Refugees Act No. 130 of 1998. 'Asylum Statistics,' DHA (March 2014), Table 4, p. 8.
 18. *Asylum Statistics*, DHA (March 2014), Table 1, p. 3.
 19. Immigrants (African, North American, and European) who enter South Africa with a tourist or volunteer visa need to return to their country of origin to renew their visas. However, in one interview we learned of lawyers in Cape Town who offer a service priced at around R25,000 to handle the visa renewal without leaving the country. According to the interviewee, the usual fee costs R40,000 to pay the DHA and then fly home, but this agent was willing to do it in Cape Town at less than the cost of plane tickets, charging a fee of R25,000 (Interview 28 March 2015).

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Interview, Observatory, Cape Town, South Africa, 15 April 2015.
Interview, Security Official, Cape Town, South Africa, 11 April 2015.
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Focus Group Interviews, Observatory, Cape Town, South Africa, 23 March 2015.
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