

## Immigration Protocols and Extralegal Demands: A Comparison Between the U.S.-Mexican Borderlands and South Africa

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### Abstract

This paper presents a comparative case analysis arguing that undocumented immigrants in the U.S.-Mexican borderlands and in South Africa become criminalised by navigating host and recipient country legal protocols and norms. The immigrants (often bonafide asylum seekers and refugees) live in host countries without the necessary legal immigrant papers and therefore lack legal status. Illegality attaches to this status and creates economic demands satisfied by those who produce immigrant papers whether authorised or not. At times, government functionaries participate in these extralegal economies, adding to the robustness of the illicit economies and further harming this vulnerable population of cross-border migrants, refugees, asylum seekers, and undocumented immigrants. (For this paper, the term immigrants is an umbrella term for all the migrants.) The criminalisation of immigrants is rooted in the actions or inactions of government actors in the Global North and Global South who deny immigrants legal standing in the host country or in transit. These government functionaries and their smuggler counterparts, in turn, create extralegal demands for papers and profit from restrictive immigration protocols.

**Keywords:** Immigrants; corruption; criminalisation; the U.S.-Mexico borderlands; South Africa

### Introduction

Stories of Central Americans from Guatemala, Nicaragua, and Honduras (often referred to as the Northern Triangle) escaping gang recruitment, food insecurity, hurricane devastation, and unemployment have become part of the United States (U.S.) immigration narrative. Accounts

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of immigrant caravans of 6,000 people migrating from the Mexican-Guatemalan border city of Tapachula to the U.S.-Mexican border fill the media (Torres and Diaz 2022). Immigrants such as these are often delayed in Mexico while traveling in route to the U.S., creating a broad U.S.-Mexican borderlands. Similarly, African migrants trying to reach South Africa travel through Zimbabwe, experience migratory nation-states of colonial origins with inherently porous though dangerous borders and checkpoints. The U.S., Mexico and South Africa criminalise these migrant populations by 1) forcing lawful presence to be contingent on immigrants obtaining authorising documents such as asylum seeker permits— the QR code visas and/or la Clavé de Registro de Población (CURP) in Mexico and Section 22 and 24 permits in South Africa; and 2) failing to address the inability of immigrants to access immigration documents lawfully. Immigration protocols and their limits – including gaps and shortcomings – in the U.S., Mexico, and in South Africa create extralegal demands in illicit markets for immigrant documents. For immigrants to survive and reach their intended destination, they have no viable option but to participate in criminal behaviour – despite all three nation-states being signatories to the 1967 Protocol (building on the 1951 Refugee Convention) that grants those immigrants fleeing persecution to be adjudicated as asylum seekers or refugees<sup>5</sup>. The Refugee Convention also includes the principle of *non-refoulement*, which prohibits states from returning refugees and asylum seekers to a country where they face serious threats to their life or freedom. Although human rights accords speak to protections, these accords are not meaningful for these immigrants without adherence by signatory states. The immigrants are therefore compelled to make individual choices for their own survival and livelihood.

Immigration protocols are composed of the statutes and regulations and implementation processes that are to be followed with respect to immigrants who cross a nation-state border. These protocols vary by nation-state and have differing norms with respect to how they are practiced. For this paper, the authors use immigration protocols to describe how laws are practiced (or not practiced) to compare Global South countries, and how government functionaries can simultaneously follow immigration protocols and undermine the efficacy of immigration governance. By interrogating this seemingly contradictory behaviour, readers can examine how immigration protocols shape and inform illicit practices.

What has become the most valuable commodity for immigrants is the immigrant document establishing legal status to work and live in a host country or in a transit country (Alfaro-Velcamp et al, 2017). Immigrant governance controls how, when, and to whom immigrant papers are awarded. And when the level of demand for immigration documents exceeds the supply available, the state actors become the best positioned to profit from an illicit economy (Felbab-Brown, 2010: 177). Furthermore, global governance fails because states are uncoordinated, uncooperative in sharing commitments at international and global levels, and lacking in commitment and accountability for immigrant displacements in national laws or policies.

The criminalisation of immigrants is rooted in government actors in the Global North and Global South who, acting on the basis (or absence) of immigrant documents, deny immigrants legal standing in the host or in transit country. Some of these functionaries are known to prey

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<sup>5</sup> Mexico and NTCA countries signed the 1951 Convention on the Status of Refugees and the 1967 Protocol. The U.S. is party to the 1967 protocol only, which incorporates and expands the terms of the 1951 Convention. Mexico also adopted the 1984 Cartagena Declaration on Refugees, which broadened the definition to include people fleeing generalised violence.



on immigrants, asserting these immigrants bear ambiguous legal status when, in fact, many of the immigrants are bona fide refugees fleeing persecution. Through the denial of refugee status and the human rights attached to this status, government functionaries contribute to the formation of an illegal and a criminal class of people. Moreover, global geopolitical problems are becoming more acute, with 84 million refugees worldwide, excluding recently displaced Ukrainians (UNHCR, 2023). By confronting nation-states and their functionaries in host and transit countries with demands to uphold human rights accords regarding refugee reparations for displacements caused by military intervention, people in the Global North can change how refugees are received, treated and supported in finding meaningful livelihoods. However, in the short-term, the corruption of the functionaries needs to be acknowledged and linked to the punitive aspects of immigration. Recent works by Herda and Divadkar and Dzordzomenyoh analyse how immigrant-crime stereotypes are often mapped to immigrants who are forced into the illicit economy, and how these perceptions relate to immigration protocols in the U.S. (Herda and Divadkar, 2023: 72, 83 and Dzordzomenyoh (2022): 42, 44). When and where functionaries participate in this illicit economy by filling the demand for immigrant papers, they contribute to illegality. And with this demand for legal papers or status, human trafficking, drug trafficking and kidnapping become routinised activities by which the nation-state excludes immigrants from admission and formal membership in the nation (Esquivel, 2022).

This paper is organised in three parts. The paper begins with a brief discussion of its sources and research methodology, followed by its theoretical intervention. Part I discusses Mexico in relation to the U.S.-Mexican borderlands, and how immigrants from the Northern Triangle have often been trapped in Mexico while trying to reach the United States. While in Mexico, these immigrants often have no viable option and are forced to participate in an illicit economy of drug and human trafficking. Part II of the paper examines how immigrants in South Africa are compelled to purchase immigrant papers from sources including government functionaries at the South African Department of Home Affairs (DHA) in order to work and access basic health services. The last section of the paper discusses the relationship between Global South nation-states and the Global North in regard to immigration governance, and the criminalising of immigrants who seek basic human rights to gain safety. By definition, a refugee is someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, *The Convention and Protocol Relating to the Status of Refugees, The 1951 Refugee Convention*, 16). The U.S.-Mexican borderlands and South Africa provide a compelling comparison of contexts in which experience the blurring of immigrant protocols is punitive to immigrants. Although the paper cannot fully explore what anthropologist Josiah Heyman describes as ‘the relationship between capitalism and the territorial state’ (Heyman, 2012: 264), the impact of these protocols and their limits have led to extralegal demands not supplied through global immigration governance. Building on the notion of convoluted lines between governments regarding immigration (Koulish et al., 2020: 7), this paper examines how government functionaries exercise enormous discretion within nation-states and feed an illicit part of capitalism.

This multi-disciplinary paper uses historical and ethnographic research. It draws from research conducted at the Mexican National Archives, the Mexican Migration Institute (Instituto Nacional de Migración [INM]) and the U.S. Immigration and Naturalization Service records. The lead author spent 2016-2017 volunteering at the International Rescue Committee’s

Northern California Immigration Program assisting Central Americans applying for the Central American Minors Program. Three of the authors have been working directly with immigrant clients for more than ten years each. Social media as well as mainstream Spanish and English language media, and grey literature inform the analysis herein.

For the South African section, research was based on an ethnographic method of participant observation. Between February and May 2015, the lead author and a team of researchers conducted 35 open-ended interviews with individual participants in Cape Town, South Africa<sup>6</sup>. A list of questions was developed before the project began and refined as interviews were conducted (Alfaro-Velcamp, 2017)<sup>7</sup>. Given the nature of the topic, interviews were conducted with immigrants with whom trust had been developed over several meetings. The research team assured the immigrants that the team did not want to speak to their contacts or see their papers. The participants expressed being tired of seeing honest people forced into criminal behaviour for a perceived sense of security. The research aimed to understand the perspectives of the individuals who may seek illicit documents—the demand side of the market for immigrant documents.

As with many comparative projects, differences of local context require adaptation of research strategies. The techniques employed to best accommodate these contexts can seemingly yield an unequal treatment of the regions. Questions often arise as to how to quantify and the illicit economy surrounding immigrant papers, and how to extrapolate meaningful analyses from grey literature, press accounts, and interviews with immigrants. Such questions have relevance both in the Mexican and South African cases. This paper aims to explore how the economy of immigrant papers has created a burgeoning illicit economy in two Global South contexts with complicit government actors and others.

## **Theoretical Intervention**

Nation-states are governed and exercise power through their laws and norms. These norms often include an illicit component when techniques of governance do not produce results, especially when resources are scarce. Laws and norms become especially challenged at the margins like physical borders or in programs of support for vulnerable people. As philosopher Albert Memmi notes, when poverty is systematic—‘corruption is universal and affects everyone and everything...but the greatest corruption frequently accompanies the greatest poverty’ (Memmi, 2006: 8,73) The more restrictive nation-states become by not allowing immigrants—economic migrants, asylum seekers, and refugees—into their countries, the higher the price of legal status becomes, leading to corruption in all arenas.

Taking poverty as a point of departure, a nexus of colonialism and immigration has been explored by scholars such as historian Aviva Chomsky (Chomsky, 2021) and historian Achille Mbembe (Mbembe, 2000). For instance, U.S. foreign policy in Central America (arguably neocolonial in its impact) has destabilised the Salvadoran, Honduran and Guatemalan societies creating ‘narco-states’ known for emigration (See Farah and Meacham, 2015). Attorney General Merrick B. Garland called former Honduran president Juan Orlando Hernández of running Honduras as a ‘narco state’ (Weiser and Suazo, April 2022: A18). And

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<sup>6</sup> There was an informed consent form that asked the participants to circle ‘yes’ or ‘no’ to participation in and acknowledgment of their rights to participate in the project. This was to protect the participants’ anonymity.

<sup>7</sup> The list of questions is on file with the lead author and can be provided upon request. The questions were first vetted by the University of Cape Town Faculty of Law Research Ethics Committee on 26 February 2015 (L2-2015).



in the case of South Africa, colonial maps continue to determine African nation-state boundaries and complicate peoples' migration and self-determination. Such colonial and neocolonial histories often map to exclusionary immigration policies. Historian Toyin Falola writes that, although the 'colonial masters have exited, the structural and systemic arrangements they put in place still lives with us [Africans]' (Falola, 2022: 2-3). These arrangements linger in how immigration governance is practiced by government functionaries and how citizens respond (or fail to respond) to these structures. When current circumstances dictate that the most valuable commodity is legal status in a host country or a country of transit—embodied in documents—government officials can easily identify this demand and make or enable a profit in the extralegal economy.

Anthropologist Olivier de Sardan has argued 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 and in the U.S.-Mexican borderlands. The public in Global South countries become normalised to the ambiguities in immigration protocols that apply to foreign nationals.

By shedding light on how international norms have failed immigration governance, individual nation states can expose illicit practices among government functionaries and extralegal actors within and beyond their borders. Nation-states have observed 'as long as they do not hold one another to account for breaking international norms, there is no one other than their own citizens to stop them' (Fisher, 2022: A9). This paper contends that if citizens become aware of these extralegal practices, they can, in turn, pressure their governments to make change (Chomsky, 2021: 8, 220).

### **Part 1: Central Americans Migration – Mexico, the U.S. 'Una vida mejor' (a better life)**

'*Una vida mejor*', looking for a better life, is a common saying among migrants aiming to come to the United States, reports journalist Óscar Martínez. In *The Beast*, Martínez follows various Central American migrants through Guatemala, Mexico and the U.S. describing the role of *narcotraficantes* (drug dealers), humanitarian workers, Mexican police, Mexican army, and Mexico's INM (Martínez, 2014). Central Americans have long migrated to the United States for various reasons. In the 1980s, Guatemalans escaping the genocide of indigenous peoples left many displaced in southern Mexico. Salvadorans and Nicaraguans also fled because of the military junta in El Salvador in the 1980s, and then the Sandinista Revolution in Nicaragua beginning in 1978. Aviva Chomsky traces Central American migration from the 1980s until the present, and she argues that the notion of U.S. settler colonialism has tended to welcome white immigrants over indigenous and African Latin Americans (Chomsky, 2021). During the 1990s, global monetary institutions pushed Latin American governments to embrace neoliberal reforms and austerity programs that contributed to increased poverty levels throughout the region (Chomsky, 2021: 188). This is the context in which migration has evolved and led Central Americans to be desperate to leave their homelands at any cost. Unfortunately, these immigrants have sometimes found themselves trafficked or forced to traffic drugs to pay their smugglers or kidnappers (who are often associated with the drug cartels) (Esquivel, 2022: 107).

From a historical perspective, the diplomatic jockeying between the U.S. and Mexico with respect to Central American immigrants is built on the Mexican government's attempt to control foreigners. The Mexican government established a registry of foreigners over 15 years of age under the Ley de Migración de 1930. Increasing anti-foreign sentiment, combined with tough economic times during the 1929 Depression gave immigrants the incentive to register with the Mexican Migration Department through which they could become lawfully present and begin the process of naturalization. Under the law, non-compliance was an act of disobedience. Penalties ranged from suspension of employment for a month for the immigrants (Chapter XVIII, Article 137 to paying a 1,500 peso fine and Article 143, Ley de Migración de 1930). Subsequently, among many pieces of legislation affecting immigrants and foreigners, three major immigration laws were passed in 1974, 1996, and 2000. A population law in 1990 was enacted to address the large influx of Central American refugees, primarily Guatemalan immigrants from the Civil War (1960-1996). All foreign nationals were obligated to appear before the proper authorities and show their personal identification papers. The SEGOB (Ministry of the Interior) oversees immigration through the General Registry of Population and Personal Identification (General del Registro de Población Identificación Personal). Although the INM determines the admissibility of immigrants (Instituto de Migración, 2004), it has been unable to process 130,744 asylum seekers cases in 2021 (SEGOB 2021a: Gráfica 2, 15).

On 23 October 1996, CURP was adopted to give those living in Mexico and to Mexicans living abroad an identification card for tax filings, for company and school records, membership in government-run health services, and for passport applications. The CURP number is now used in all Civil Registry individual records (birth and death certificates). This card (or *cédula*) can be obtained at the Mexican Civil Registry, and other government services. A new CURP can only be applied for in person at the appropriate government office. It remains unclear whether the use of CURP biometrics helps to avoid possible duplication and falsification undertaken to smuggle immigrants into Mexico and/or falsify the identity of criminals. In the comparable South African case, Asylum 22 permits have been fraudulently produced.

Within Mexico, an immigrant can apply for asylum by either going to Comisión Mexicana de Ayuda Refugiados (COMAR) or an INM office. It is the COMAR staff who oversee the asylum cases, and the INM act as intermediary in many areas where there are no COMAR offices. At the time of application, the asylum seeker should be issued a *constancia*, a legal document, that is valid during the process and protects against deportation. *Constancias* are to be issued immediately, but they are often delayed for weeks because of administrative delays. Under law, the COMAR staff has 45 days to make a decision or 90 days under exceptional circumstances. Currently, application review and decisions are taking COMAR up to 6 months to a year for cases. While waiting for the final decision, an asylum seeker should be issued a *constancia*, which documents temporary legal status, and a CURP ID.

By early 2019, many migrants realised that the process for requesting asylum could take many months or, in some cases, never come to completion. Many voluntarily returned home, and thousands applied for visas to live and work in Mexico for a one-year period (Kallen, 2020: 19). Then, between August and December 2021, it was reported that 30,000 to 50,000 U.S. bound immigrants had been stuck in Tapachula. The Mexican government (in line with the Biden Administration) had allowed smugglers to move large volumes of people in small



distributed parties in order to evade authorities—this is called an ‘ant operation’ (Bensman, 2022: 1). The Mexican government then adapted a ‘QR code visa’ in which immigrants voluntarily report to a Mexican immigrant office in a particular city by a specified date to apply for permanent residency cards. Some argue that this program by Mexican President Andrés Manuel López Obrador (AMLO) overtly welcomes immigrants, while simultaneously holding them in Mexico. Journalist Carmen Aristegui noted that these migrants were, in fact, using their QR code visas to continue to the U.S., and the notion of slowing immigrants to the border was not working (Aristegui, 2021).

In Mexico, an ‘illegal entry’ is designated as a civil offense as opposed to a crime. Therefore, the individuals apprehended are handed over to the authorities, locked up in detention centers, and then deported to their countries of origin. The number of people apprehended in Mexico who originate in the Northern Triangle countries has increased progressively in recent years—likely both because more people are leaving the region and because of more targeted enforcement by Mexican authorities (*No Way Out*, 2020: 31).

Immigrants who encounter enforcement are detained in one of the 60 long-and short-term detention center facilities in Mexico which are concentrated in the south. It is estimated that between 2014 and 2019, the country detained on average more than 150,000 people annually. In 2019 alone, it was estimated that 182,940 migrants were detained in Mexico<sup>8</sup> (Global Detention Project, 2021: 6-7). This level of detention suggests that since 2010, Mexico has shifted from a transit country to an intercepting state. President AMLO decided to support the U.S. enforcement effort and deployed almost 30,000 National Guard troops to its northern and southern borders (Human Rights Watch, 2023). That deployment alone exceeds the roughly 20,000 agents that the Border Patrol has to patrol the U.S. borders.

Policy efforts to control the influx of these Central American as well as Cuban, Ukrainian and other immigrants into the U.S. dates back to the January 2019 Migration Protection Protocols (MPP), these protocols are also known as ‘The Remain in Mexico’ program. Under pressure from the Trump Administration, President AMLO agreed to MPP. Under MPP, the U.S. returns to Mexico certain citizens and nationals of countries other than Mexico while their U.S. removal proceedings are pending. MPP applies to those who arrive from Mexico by land. With a change in U.S. presidential administration, by June 2021, the U.S. Secretary of Homeland Security determined that the MPP should be terminated and issued a memorandum to that effect. Then, on 30 June 2022, the U.S. Supreme Court ruled on *Texas v. Biden* 2021 that the termination of the MPP did not violate federal immigration law (Liptak, 2022: A13).

Immigrants have therefore been stranded in Mexico both because of MPP and the U.S. Title 42 health restrictions (42 U.S.C. § 265) that states persons with communicable diseases are removable from and not admissible to the U.S. – implemented due to COVID-19. While stranded in Mexico, some immigrants have tried ‘doing things right’, but they have found that even Mexican authorities are working with smugglers. Corrupt officials and cartels cash in on migrants by taking advantages of policies initiated under President Trump and continued under President Biden (Chaparro, 2022).

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<sup>8</sup> For data on Mexican migrant entries, see SEGOB, 2021b.

With the U.S. Border Patrol apprehending, expelling, and rejecting those individuals deemed inadmissible immigrants at a rate of more than 1.7 million individuals at the U.S.-Mexican border in 2021 (U.S. Customs and Border Protection, 2023), smugglers and traffickers are responding to the large demand for entry into the United States. For instance, one smuggler from Ciudad Juarez, Mexico, noted that after the U.S. sends migrants back to Mexico under Title 42 or MPP, some migrants ‘end up being turned over to his organization by officials from Mexico’s National Institute of Migration, or INM’ (Chaparro, 2022). This smuggler elaborated that INM then ‘gives us back our own migrants. When they escape our safe houses or if they are caught when trying to get across or if they are returned by US immigration, they contact us and deliver them back to us but ‘not before taking his 2,000 pesos [\$100] for each migrant they return to us’ (Chaparro, 2022). A Cuban immigrant at a shelter in Ciudad Juarez corroborated how INM handed him and several others over to his smuggler ‘for a second try’.

Between March and July 2014, a surge of children migrants came to the U.S.-Mexican border trying to enter the United States. In response to the 2014 youth migrant surge, President Barack Obama (2009-2017) issued an executive order for the Central American Minors Program in November 2014 that allowed children of lawfully present parents or legal guardians to apply to bring their single (under 21) children (or step children) to the U.S. to join them. The program was suspended on August 15, 2017 (when President Donald Trump came into office, 2017-2021) and then re-started on September 13, 2021 (Phase 2). It is estimated that between 4,000 and 6,000 Central American youth qualified as either refugees or parolees through the program.

Between October 2018 and April 2019, there were a total of six recognised migrant caravans from Central America. Honduran Bartolo Fuentes, ex-Deputy of Libertad y Refundación organization, used Facebook to organise an October 2018 caravan from Pedro de Sula, Honduras to the U.S. Migrants were fleeing violence from gangs and the presidential administration of Juan Orlando Hernández (who is now under indictment in the US for drug trafficking) (Buschschlüter, 2022). Bartolo’s use of Facebook combined with others who use Facebook groups and WhatsApp to identify caravans and smuggling routes have become part of the migration strategy (Carrasco, 2018).

Social media has been used to both facilitate migration and also to foster xenophobia. In 2018, a Facebook group (Sief and Partlow, 2018) in Honduras said a caravan was leaving for the United States. One woman said, ‘I didn’t have the money to pay for a coyote, so the caravan was the only way’ (Kallen, 2020: 8). A WhatsApp chat group named Caravana Santa Ana advised the travellers to pack ‘two pairs of pants, three shirts, a sweater, water, and medicine. The caravan message went viral. Within a few days large groups of people were assembling at bus terminals, town squares, and other central meeting points with plans to band together and walk north through Mexico to the US border’ (Kallen, 2020: 8). By the time Irma Rosales, an immigrant, heard about the caravan in El Salvador, the migrants were already nearing the Guatemala border. Her husband had been murdered a year earlier, she said, and after she reported the crime to the police, the MS-13 threats began naming her. As a large mobile group, the caravan offered women like her and their children a comparably safe way to migrate and without necessarily relying on a *coyote* (a smuggler).

Along at the U.S. border, U.S. Border Patrol have been known to use social media and private texts to express their dislike of immigrants. For instance, there is a ‘Facebook Group of roughly 9,500 Border Patrol agents that circulated degrading postings of migrants (Sullivan,





2021: A14). One posting of 'P'm 10-15' referred to a law enforcement code for undocumented immigrants in custody (Sullivan, 2021: A14). 10-15 tends to more broadly refer to a suspect and a prisoner in custody. This use of social media to perpetuate the criminalisation of immigrants and xenophobia is not uncommon, and has become reflected in larger policy discussions.

As the U.S.-Mexican borderlands fortifies its ports of entry, INM employees earn less than 14,000 pesos (\$700) a month, work overnight, and serve 10-hour shifts a day in bad weather conditions. Immigration activist, Luis García Villagrán, notes that because of these poor labour conditions INM employees often succumb to 'robbing and extorting migrants'. The INM is charging immigrants for documents to travel freely inside Mexico and is 'the biggest human trafficking cartel in Mexico', according to Villagrán (Chaparro, 2022). He concludes: 'Mexico is under a huge immigration crisis, and the corruption inside INM and the fact that many of its employees are working hand-to-hand with smugglers is only making it worse' (Chaparro, 2022). According to journalist Martínez, Grupo Beta officials, the INM humanitarian protection service for migrants, 'used to charge 200 pesos a head on the migrants...when the narcos got wind...they offered the agents a monthly salary to lay off the crossing tax' (Martínez, 2014: 177). What are immigrants to do when Mexican INM functionaries are using extralegal demands to make the officials' own standard of living? The immigrants become criminals by purchasing documents to travel and/or pay bribes as they try to avoid being robbed or deported. Martínez describes how some migrants in Tijuana would pay 'a minimum of \$3,500 for false papers, hoping to walk through the port of entry and fool a border guard' (Martínez, 2014: 149).

Other journalists, such as Jacobo García, report that the drug cartels are in reality human trafficking rings. According to Mexican Ministry of Foreign Affairs, Marcelo Ebrard the cartels via smugglers charge \$5,000-\$6,000 for Guatemalan immigrants and \$15,000 to Ecuadorian immigrants. Ebrard claimed it was a \$14 billion annual business (García, 2021). Villagrán notes that these cartels are often working with the Mexican authorities to maintain their business interests in this extralegal demand—to emigrate to the U.S. In 2020, Santiago Nieto, then head of the Mexican Financial Intelligence United (Unidad de Inteligencia Financiera de México [UIF]) reported that the Guanajuato-based Santa Rosa de Lima drug cartel had moved into the \$15 billion human trafficking business (*Infobae*, 2020). Nieto added the Mexico City's Unión Tepito has also branched out into trafficking sex services.

According to the 2020 MSF report, it is estimated that the human-trafficking businesses run by criminal organisations in Mexico have substantial capacity to adapt to changes in the migrant population's flow and profile. 'In 2019, for example, the price charged for adults traveling without their family reportedly increased to around US\$11,000 per person. About half the fee is used to pay off criminal groups and public officials in Mexico, which helps ensure that human traffickers operate with impunity' (*No Way Out*, 2020: 16-17). The drug cartels in the U.S.-Mexican borderlands have become so emboldened that, these criminal groups 'understand that they have more power than anyone else, the government [Mexican and U.S.] or the businesses they extort' (Abi-Habib, 2022: A9). In addition to the drug cartels, Cuban immigrants using the U.S.-Mexican border crossing, complained: 'they rob you—the police, the smugglers, They rob you' (Abi-Habib, 2022: A9).

As one immigrant shared with journalist Óscar Martínez 'the guy in charge of the migration unit told me that if I slept with him, he'd let me go' (Martínez, 2014, 2013: 84). According to

a Mexican National Commission of Human Rights report, ‘it’s not uncommon that a migration official abuses a woman in custody’ (Martínez, 2014, 2013: 84). As a trafficking prosecutor explains, ‘the National Institute of Migration often plays a leading role in preventing human trafficking victim testimonies from a getting a course hearing’ (Martínez, 2014, 2013: 84-85).

Ultimately, passage through the U.S.-Mexican borderlands systematically turns immigrants, especially the most vulnerable who are often bona fide refugees, into criminals through kidnapping and human trafficking. The links between drug cartels and INM functionaries are forged of profits at the expense of immigrants.

## **Part 2: South African-Zimbabwean Border**

Many African immigrants, similar to their Central American and Mexican counterparts, believe opportunities exist beyond their immediate border, and many look to South Africa. African migrants trying to reach South Africa often travel through Zimbabwe, experiencing migratory nation-states of colonial origins, inherently porous and boundaries and borders comparable to those of Mexico and the U.S.-Mexican borderlands.

With Robert Mugabe (of Shona background) becoming the first prime minister of independent Zimbabwe on 29 February 1980, he targeted the Ndebele and in particular their territory Matabeleland. Throughout Mugabe’s rule until his death in 2019, he controlled Zimbabwe through his Zimbabwe African National Union – Patriotic Front (ZANU-PF) party and thereby limited options for Ndebele social mobility. In 2000, Mugabe implemented land reform through seizing properties from white land owners and redistributing it to ZANU-PF officials without compensation. Not only did the international community impose sanctions, but there was a white Zimbabwean exodus to South Africa and abroad (Simpson, 2021: 398-399). Zimbabweans were fleeing political violence and an economy that had shrunk 40 per cent between 1999 and 2007. Journalist Richard Rowden contends that ‘the collapse of the Zimbabwe is estimated to have cost South Africa some \$2.6 billion a year’ (Rowden, 2009: 151). This economic cost was compounded by Mugabe’s attack, called Operation Murambatsvina (‘Drive Out the Rubbish’), in which 700,000 people in informal settlements were driven from their homes around Zimbabwean cities in 2005. It is estimated that there is between one to three million Zimbabweans who presently work and live in South Africa. Like their Central American counterparts, as they arrive in South Africa, they maintain ties to their home country and send remittances.

The South African-Zimbabwean border also absorbs immigrants from across the African continent who wish to enter South Africa. Refugees and economic migrants fleeing the Democratic Republic of Congo (DRC), Congo-Brazzaville, Cameroon, Malawi, Nigeria, Mozambique, Angola, and others from nation-states cross this border. One immigrant shared how he paid R10,000 to have his partner smuggled into South Africa from the Harare airport in 2015. The smugglers asked for additional money at each stop in the journey which was arduous. They had the immigrant’s partner dress in layers to crawl under the fence in Musina. Once they entered Musina, officials provided the immigrant with a Section 22 permit, and they travelled to Cape Town. How such immigrants, including Zimbabweans, fare in South Africa varies by and depends on their immigrant papers.



To obtain asylum seeker status, an applicant needs to go to one of the four refugee reception offices (RROs)—Musina, Durban, Pretoria, and Gqeberha (Port Elizabeth) (*Minister of Home Affairs & others v Somali Association of South Africa* March 2015)—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 (Refugees Act [No.130 of 1998] Section 3). 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. On 1 January 2020, section 21 was amended, and asylum seekers were instructed to apply ‘within five days’ of entry into South Africa. If they do not apply within this time period, they can be denied asylum and this contradicts earlier court rulings in Abdi, Bula and Ruta (Vos, 2021). And as stated in the court case of Saidi v Minister of Home Affairs, ‘without a temporary permit, there is no protection’ (*Saidi v Minister of Home Affairs*, 2018).

The process of applying for asylum seeker status has become more cumbersome with the closing of the Cape Town Refugee Reception Office (RRO) in 2012 to newcomers and asylum seekers with permits issued from other RROs in South Africa. This closure of the RRO in Cape Town presented significant access issues for over a decade. As of this writing, the Cape Town RRO has been chronically delayed in reopening to new applicants (Washinyira 2022). Prior to COVID, immigrants could go to one of the four remaining RROs; however, with COVID, the DHA extended permits through online services. In April 2021, the DHA started offering an online extension service to holders of an asylum seeker visa (section 22) or a refugee status permit (section 24). This would allow qualifying asylum seekers and refugees the ability to renew expired visas without having to physical go into a RRO and before the existing blanket expiration date of 30 April 2022 (UNHCR, 2022). Unfortunately, only persons whose permits and visa expired since March 2020 can apply for renewal through the online system. For others, they become ‘illegal’ for the inability to apply for asylum seeker status in Cape Town, and this has increased demand in the illicit immigrant document market in the Western Cape. Ambiguities persist as the South African High Court works to interpret whether lapsed permits indicate abandonment of asylum applications (Broughton 2023).

Immigrants, like those entering Mexico and the U.S., need immigrant papers to access work, schools for their children, medical care, and banking services. When their permits expire or they receive a rejection from DHA, their bank accounts become frozen, they are unable to register a child for school, get access to healthcare, and fear getting picked up by the South African Police Services (SAPS). They become criminalised by a lack of alternatives and are precluded from a livelihood by official norms. In short, immigrants’ lives are controlled by and restricted to an illicit market in immigrant documents.

Reliance on immigrant documents for survival has created a system of ‘illegal legal’ documents. It was described, ‘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). There are also other documents—fraudulent ones—produced through illicit means. Some

immigrant papers cannot be identified as fraudulent because they are actually produced using DHA resources and bear CTR numbers that correspond with the National Refugee Database.

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 n100).

For instance, during the ethnographic work on which this analysis is based an immigrant from the Kivu region of the Democratic Republic of Congo (DRC) who resided in Cape Town, described DHA functionaries as ‘seem[ing] to get angry with honest people’. He went on to explain that some South African officials get money through illicit transactions for ‘papers’, and the functionaries 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 they believe that ‘85 percent of the DHA is corrupt with a couple of people trying to survive’ (Interview, Security Official, 11 April 2015).

The immigrant document market includes ‘contacts’ who provide 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. According to a research participant interviewed prior to the COVID pandemic, an individual could 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 could 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.

For individuals with more economic means, there are ‘outside’ contacts to whom friends, relatives, or a ‘concerned’ worker at a non-governmental organisation (NGO) might offer a connection. These contacts may even look legitimate from the outside, working in up-scale offices or calling themselves immigration lawyers. An individual “just needs” to 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 charges 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 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, it was unclear 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 are of limited use; 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.

An immigrant from Nigeria related a specific incident in 2009 in which DHA officials destroyed a final rejection letter for R3,000. The consequence of this was that the immigrant was able to prolong their asylum seeker status by buying another six months from the DHA official on the Section 22 permit. The immigrant could then reopen their 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. It suspends immigrants in temporary status, ensuring their continued consumption of and dependence on the products of the illicit market. As noted above, the closing of the Cape Town RRO to newcomers and those with existing permits issued by RROs in other parts of the country exacerbated this type of market demand. Reflecting on the RRO 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.

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. And this confusion of legal status and the inconsistency and arbitrariness of the DHA rulings confounds everyone—employers and service providers including doctors and nurses. Such individuals are not well positioned to monitor individuals' statuses on which access to work and healthcare depend. The illicit immigrant document market flourishes within this context. The issue of legal standing becomes further compromised by South African police detentions of individuals deemed 'illegal foreigners'. 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.

As a result of South African immigration protocols, it appears that some DHA functionaries abuse their power over immigrants by forcing immigrants to become actors in an illicit economy. These officials' actions (and inactions) prevent opportunities for good governance and transformative democracy in South Africa. The illicit 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 government actors participate in 'the development of regularized networks of corruption and extortion in the issuing of documentation and the policing of immigration' (Landau and Monson, 2010: 156) which, in turn, leads to the profiting from the vague immigration protocols.

Furthermore, unlike the Mexican Constitution, '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' (Polzer and Segatti, 2011: 202). From a historical perspective, the role of identity documents can be traced to the South African apartheid regime. With the 1996 South African Constitution, 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....’ (*Certification of the Constitution* 1996: para 48). 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’ (*Certification of the Constitution*, 1996: para 48). However, practical outcomes from debates about *who* should be entitled to human rights and under what circumstances can be elusive with economic constraints and progressive realisation. Immigrants are pushed by the extralegal demand of immigration papers to purchase asylum seeker permits and refugee status and become criminals.

One of the consequences of this criminalisation has resulted in a 2021 ‘put South Africa first’ mantra led by Nhlanhla Lux Dlamini. This patriotic movement posts hashtags under #OperationDudula (Centre for Analytics and Behavioural Change 2022). Six years earlier, a WhatsApp text, through its encrypted messages, instructed millions of African immigrants in South Africa to go home in 2015 (Alfaro-Velcamp and Shaw, 2016). The message morphed xenophobia and afrophobia into a criminal discourse about African immigrants in South Africa. Global discourse of xenophobia and criminalising immigrants in the Americas and Africa defines and describes immigrants as breaking the law by illegally crossing a sovereign border and becoming illegal foreigners. Having entered the country without authorisation (‘papers’), these foreigners become perceived criminals.

Although the DHA is mandated to rid the nation of illegal foreigners and keep South Africa safe, this mandate contrasts with an operative ‘business model’ of migration (Koser, 2011: 265) in which DHA functionaries participate in extralegal market and make a profit. The ambiguity of South African immigration laws, regulations, and DHA practices have normalised 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. 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).

Similar to the Mexican case, women are often forced to have sex to either obtain an immigrant document or to pay off a debt for a document. Desperation, a theme of these accounts, is also manifest in the stories 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 (asylum seeker) or Section 24 permit (refugee status). 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).

Finally, one option, of course, is simply not getting papers and living ‘illegally’ with expired permits or with no papers at all. A Zimbabwean man believed that the vast majority of Malawians—95 percent—take this approach to living in Cape Town specifically and



throughout South Africa generally. This is also the case for approximately 11 million immigrants living in the United States.

## Conclusion

As government actors of a nation-state allow individuals without papers or who hold expired papers—the undocumented—to be deemed or to become ‘illegal immigrants’, they effectively compel immigrants to enter the illicit market in order to secure their status. In accordance with this model, functionaries in the U.S.-Mexican borderlands and South Africa participate in and contribute to an illicit market based in immigration protocols. The criminalisation of immigrants increases under the prevailing conditions in these countries. These case studies show how the need to purchase immigrant documents has become an accepted norm in local and continental contexts in the Global South.

The MSF 2020 report describes how ‘the US strategy of punishment and deterrence has taken precedence over a humanitarian response and denies the basic human rights enshrined in the 1951 Refugee Convention and its 1967 Protocol’ (*No Way Out*, 2020: 25). In November 2019, the United Nations High Commissioner for Refugees (UNHCR) issued a rare public rebuke of U.S. asylum policy, noting an approach ‘at variance with international law that could result in the transfer of highly vulnerable individuals to countries where they may face life-threatening dangers’ (UNHCR, 2019). Although there was this international condemnation, illicit practices among government officials and extralegal actors were not explicitly exposed.

The lack of commitment among nation-states to refugees and asylum seekers ‘has always been more conditional and self-interested than it was presented to be’. Moreover, ‘governments have also learned that, as long as they do not hold one another to account for breaking international norms, there is no one other than their own citizens to stop them’ (Fisher, 2022: A9). The corruption of the functionaries needs to be acknowledged and remedied with attention to the punitive aspects of criminalising immigrants. When and where the functionaries contribute to illegality, they simultaneously contribute to an illicit demand for immigrant papers. And with this demand for legal paper or status, human trafficking, drug trafficking and kidnapping become inextricably linked to migration and the illicit economies in the Global South.

If citizens become aware of extralegal practices and reject them, they can, in turn, pressure their governments to make change. At a broader level, borders and boundaries—like those of the U.S.-Mexican borderlands and South Africa—are increasingly porous, reflecting their own postcolonial nation states’ attempts to govern, and yet are also increasingly similar and comparable.

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- Bula v Minister of Home Affairs 2012 (4) SA 560 (SCA)
- Minister of Home Affairs v Scalabrini Centre, Cape Town (735/12 & 360/13) [2013] ZASCA 134 (27 September 2013)
- Ruta v Minister of Home Affairs 2018 ZACC 52
- Saidi v Minister of Home Affairs 2018 (4) SA 333 (CC); 2018 (7) BCLR 856 (CC)
- Texas v. Biden, No. 2:21-cv-067, 2021 WL 3603341 (N.D. Tex. Aug. 13, 2021)

