

Exploring the impact of South Africa's immigration policy (2000-to 2006) on the
medical doctors' shortage—A critical realist perspective

Yiying / Zhou / ZHXYIY002

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COMPULSORY DECLARATION

This work has not been previously submitted in whole, or in part, for the award of any degree. It is my own work. Each significant contribution to, and quotation in, this dissertation from the work, or works, of other people has been attributed, and has been cited and referenced.

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Abstract

South Africa is facing a severe shortage of medical doctors and has a government that is sceptical of reliance of foreign skills known as skilled immigration. The government and the national Department of Health (DoH) have implemented a variety of intervention measures in order to alleviate the negative impact of this shortage caused by medical skills shortage in the sector. However, the DoH's reluctance to recruit foreign medical doctors, and particularly its prohibition on the recruitment of doctors from South Africa's neighbouring countries, undermines the government's effort to increase the number of doctors in the health system.

Skilled immigration, the importation of scarce skills from outside the country, made little progress with the enactment of the Immigration Act 13 of 2002. The priority of South Africa's immigration policy is still focused on controlling skilled immigration, as is underlined by its protectionism and restrictiveness. The Department of Home Affairs' (DHA) immigration policy and its counter-productive approach to attracting skilled foreign labour has drawn criticism from a wide range of people including academics, politicians and businesspeople. The DHA itself has in its white papers of 1999 and of 2017 admitted that its inflexible approach to immigration has resulted in the country's failure to attract skilled foreign workers.

In this study, I use archived parliamentary meeting minutes and parliamentary documents as the primary data source to understand the deliberations of stakeholders on skilled immigration which resulted in the Immigration Act 13 of 2002. The Act had a direct effect on the DoH's approach to the recruitment of foreign medical doctors. More specifically, this dissertation aims to explore how stakeholders who were involved in the drafting process of the Immigration Act 13 of 2002 deliberated on the existing cultural and structural conditions that resulted in the Immigration Bill which preceded the Act. By exploring the changes in the immigration policy, the dissertation aims to understand the impact of the immigration policy and institutional xenophobia on the recruitment of foreign doctors. Margaret Archer's (1995) morphogenetic/morphostatic cycle is used to understand the development of South Africa's immigration policy from 2000 to 2006 as this was the period in which the discussion of the Immigration Bill started. I argue that institutional xenophobia which is manifested in South Africans' antagonism towards foreign nationals, the deeply-entrenched employment equity policy that promotes national workers, the weakened state of the civil society, and the consolidated power of the government in decision-making all contributed to the DoH's decision to restrict the recruitment of foreign medical doctors. In the absence of government's support, it is unlikely that there will be a conducive environment to put in place a skilled immigration policy that can harness skilled foreigners' skills and facilitate skilled foreigners' entry. This dissertation suggests that the government critically review its immigration policy which is deepening South Africa's skills gap in the medical field. This dissertation

further recommends the government to consider the option of allowing foreign doctors to work in the private sector. This would not only increase the overall number of doctors in the health sector, it would also dispel the public's concern that the employment of foreign doctors would cost a hefty amount at the expense of the public.

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Abbreviations & acronyms

AEC	African Economic Community
AIPSA	Association of Immigration Practitioners of South Africa
AMU	Arab Maghreb Union
ANC	African National Congress
AU	African Union
BRICS	Brazil, Russia, India, China and South Africa
BSA	Business South Africa
BUSA	Business Unity South Africa
CDE	Centre for Development and Enterprise
CENSAD	Community of Sahel-Saharan States
COMESA	Common Market for Eastern and Southern Africa
COSATU	Congress of South African Trade Unions
DA	Democratic Alliance
DHA	Department of Home Affairs
DoH	Department of Health
DoL	Department of Labour
EAC	East African Community
ECCAS	Economic Community of Central African States
ECOWAS	Economic Community of West African States
FEDUSA	Federation of Unions South Africa
FMFPA	Foreign Marriage and Family Protection Association
IEASA	International Education of Association of South Africa
IFP	Inkatha Freedom Party
IGAD	Intergovernmental Authority on Development
LHR	Lawyers for Human Rights

LSNP	Law Society of the Northern Province
MP	Member of Parliament
NACTU	National Council of Trade Unions
NCR	National Consortium of Refugees
NUM	National Union of Mineworkers
OECD	Organisation for Economic Cooperation and Development
PMG	Parliamentary Monitoring Group
PWC	PriceWaterhouseCoopers
SADC	Southern Africa Development Community
SAHRC	South African Human Rights Commission
SAMP	Southern African Migration Project
SAUVCA	South African Universities Vice-Chancellor's Association
UN	United Nations
WB	World Bank
WHO	World Health Organisation

Chapter 1 Introduction

Overview

This chapter is an introduction of this dissertation. It outlines the key research concepts of what this dissertation will be exploring and studying, namely, doctors' shortage and skills shortage as well as the causes of difficulty to implement a skills-driven immigration policy in South Africa which had led to the national Department of Health's (DoH) restrictive recruitment measures placed on foreign doctors. This chapter begins with a brief overview of South Africa's shortage of doctors and a discussion about the country's need for more doctors. In spite of this shortage, this chapter moves on to reflect on how the government's protectionist stance towards employing skilled foreigners has impeded South Africa's immigration system from proactively attracting skilled foreigners. The same protectionism applies to the health sector. The chapter then briefly describes the DoH's restrictive policy on the recruitment of foreign doctors against the backdrop of a huge demand for doctors and a severe crisis of a doctors' shortage in South Africa. The DoH's restrictive policy document, *Policy: Recruitment and Employment of Foreign Health Professionals in the Republic of South Africa* implemented in 2006, is highly restrictive towards the recruitment of foreign doctors. The terrains overlap between the DoH's discouraging stance on the employment of foreign doctors and the government's lack of long-term vision about skilled foreigners' participation in South Africa's economy. It is this lack of vision which has led to a concomitant lack of progress in skilled immigration. This leads to the research question for this dissertation: how did that deliberations around the creation of an immigration policy for South Africa influence the DoH in its recruitment policy in towards the employment of foreign doctors? These deliberations began with the Department of Home Affairs's green and white papers on international migration in the late 1990s, the Immigration Bill (enacted in 2002) as well as its amendments of 2004 and 2006 and they and their outcome reshaped the country's perception on skilled immigration?

Overview of literature: Examining key concepts

This section outlines and discusses some of the key concepts around the subject being studied in this research dissertation. These concepts include the demand for doctors in South Africa, the doctors' shortage in South Africa, the definition of skilled immigration as well as the difficulty to recruit foreign doctors for South African health employers. These concepts provide the background of this research study and lead people to ponder: why is it that the national Department of Health (DoH) is not engaging in proactive recruitment of foreign doctors despite of the huge demand for doctors in South Africa? What is the influence of the immigration policy over the DoH's stance in recruiting foreign doctors?

Demand for doctors in South Africa

In South Africa, the demand for doctors and healthcare services is high. There is a high percentage of key types of diseases such as HIV and AIDS and Tuberculosis, high maternal neonatal and child morbidity and mortality among its citizens (ECONEX, 2013: 21; [DoH], 2019: 10). According to the DoH's *National Health Insurance Policy: Towards Universal Health Coverage* in 2017, the combined impact of these diseases contributed significantly to the mortality rate for South Africans.

The combined impact of these epidemics has influenced the doubling of the death rate between 1997 and 2006 in our country. HIV, AIDS and TB have contributed the most in this increased death rate. In 2012, an estimated 6.4 million people living with HIV resided in South Africa. The estimated number of new HIV infections in South Africa was 1.08% in 2012. According to the UNAIDS estimates, the national HIV prevalence among the general adult population aged 15 – 49 years old has remained stable at around 17.3% since 2005 and the estimated number of people living with HIV and AIDS is 6.4 million in 2012 ([DoH], 2017: 10).

In addition, the high rate of crime and injuries and trauma caused by violent crimes in South Africa further increases people's demand for doctors. South Africa has an injury rate of 158 per 100 000. Interpersonal violence is identified a leading cause of Years of Life Lost (YLL) in the most recent South Africa Burden of Disease data DoH, 2019: 11). For instance, in the Western Cape, the Community Safety MEC Albert Fritz stated that

Between midnight Friday and 06:00 today, there were 55 unnatural deaths which resulted from gunshot wounds and sharp objects in the Province, 33 of which were in the Metro West region. We are indeed facing a crisis. In June 2018, there were 344 alleged murder admissions; however, in June 2019, there were 448. Of the 448 admissions, 369 were in the Metro (Thebo, 2019).

The expected accomplishment of policy frameworks such as the National Development Plan 2030 requires sufficient doctors in the health sector. The government has stated in the National Development Plan that by 2030 the life expectancy of an average South African should reach 70 years. In relation to that NDP's objective, ensuring sufficient doctors to provide healthcare services to people is of paramount importance. As for now, achieving the objective set in the NDP framework looks bleak. In 2016, the life expectancy of a South African man was 50.7 years and a South African woman 48.7 years, so the government still has a long way to go.

The magnitude of these diseases such as HIV and TB and increasing violence-related trauma and injuries and government's policy framework all are indications of South Africa's demand for more doctors in the health sector. But the reality in South Africa is that there is an insufficient number of doctors to accommodate for its population.

Doctor shortage

South Africa has a lower doctor to population per 100,000 ratio than other countries in the world. Using the doctor population per 100,000 ratio as one of the formulas to determine healthcare standards, South

Africa's low ratio of 70 physicians against 100,000 people according to the World Bank's data of 2012 indicates that there is a severe doctors' shortage in the country needed to meet its growing population's demands. On the Continent, World Bank's indicator shows that South Africa ranks above some larger economies such as Nigeria and Egypt but lags behind countries such as Algeria and Tunisia in terms of the doctor to population ratio. At the international level, data show that the physician/population ratio of South African is significantly lower than those of the Organisation for Economic Co-operation and Development (OECD) countries and is also lower than those of the BRICS, an association comprising Brazil, Russia, India, China and South Africa. World Bank's 2012 data show that South Africa's 70 physicians per 100,000 citizens is in stark contrast to the world average of physicians (149.8 per 100,000) people and those of the OECD countries (UK 280, Canada 250, Australia 330). Among BRICS countries, data from the World Health Organization (WHO) also show a similar pattern. South Africa ranked as last in terms of its physicians per 100,000 citizens ratio being at 81.8 physicians to 100,000 people in 2016 compared to Russia's 397.5 per 100,000 populations in 2015, Brazil's 185.2 in 2013, China's 181.2 in 2015. These figures have shown that South Africa lags significantly behind other countries in its number of doctors in the health sector. Hence, it is evident that South Africa faces a doctors' shortage crisis.

In South Africa, the shortage of doctors' crisis is such that it makes it even more difficult for poor people to access healthcare services. In addition to the country's overall doctors' shortage, the shortage in the public health sector and in rural areas on which the majority of South Africa's poorest population is dependent is even worse. Data shows that there were 25.1 general practitioners and 5.6 specialists for per 100,000 population in the public sector against 92.5 and 86.5 respectively in the private sector in 2013 (Wildschut, n.d.; ECONEX, 2015: 6). More urbanised and affluent areas such as the provinces of the Western Cape and Gauteng enjoy a significantly higher density of health professionals than poorer, rural regions such as Limpopo does (Komape, 2013:7; ECONEX, 2015: 7; Ntuli & Maboya, 2017). This disparity of doctors' distribution implies that the crisis in doctors' shortage is even worse in the public health sector and in rural areas. At the Presidential Health Summit in 2018, it was revealed by the HPCSA that only 14 046 which is less than half of the 29 310 health practitioners in South Africa were working in the public sector in 2018 serving 84% of the country's population (Shisane, 2018). Poverty, as a result of South Africa's apartheid history, has the implication that the majority of its population who live in urban areas are dependent on public health services and those in rural areas can only access health facilities in their areas of residence. Both are characterised by a shortage of doctors which has the implication that poor people may not be able to receive quality healthcare services when needed. In fact, both the former and the current health ministers Dr Aaron Motsoaledi and Dr Zweli Mkhize have made similar remarks that South Africa's health system does not benefit the poor ("Inequality in health...", 2018). In a country where 85 percent of the population do not have access to health professionals in the private sector,

ensuring sufficient number of doctors working in public sector and in rural areas is paramount to people's health (Biermann, 2006; Wildschut, n.d.).

Skilled immigration in South Africa

Over two decades ago, Gaillard and Gaillard (1997) noted the pattern of that new waves of well-educated scientists and technicians that are poised to capitalise full opportunities of globalisation. These "well-educated scientists and technicians" constituted the first wave of skilled immigrants. For the last two to three decades, the composition of skilled immigrants expanded and skilled immigrants are now seen as human capital that are pivotal to the economic development of receiving countries (Kapur & McHale, 2005).

Competition to attract the brightest minds has become more intense globally in the knowledge-based modern world that is on the brink of the fourth industrial revolution. Policymakers worldwide, cognizant of the important role that skilled immigrants play in the economic development of receiving nations, increasingly devises immigration policies and programmes to attract those highly skilled immigrants. Globally, particularly developed countries such as countries of the Organisation for Economic Co-operation and Development (OECD), have historically attracted the largest proportion of high-skilled immigrants (Artuç et al., 2014). H1-B visas in the US, Blue Cards in Europe, and points-based systems in Australia, the UK, and Canada are some of the examples of skilled immigration policies that politicians in those countries use for recruiting high-skilled workers (Chaloff & Lemaître, 2009).

The *White Paper on International Migration in South Africa* which was published in 1999 is South African government's acknowledgement of the global competition for skills and its attempt to participate in the knowledge-based economy. Although the White Paper of 1999 recognised the priorities of importing skills, Boynton (2015: 38) argues that it nevertheless placed strong emphasis on immigration control with the aim to contain the number of foreigners' population in South Africa. Nevertheless, there are a growing number of organisations and individuals calling for government to facilitate the movement of skilled foreigners as South Africa has been experiencing an increasing skills deficit. The Department of Higher Education and Training (DHET) published *Skills Supply and Demand in South Africa* in 2016, a document which asserts that the level of education in South Africa, although improved since 1994, remains lower than most economically productive countries (DHET, 2016: 86). Public policy organisations that advocated for skilled immigration such as Centre for Development and Enterprise (CDE) point out that there is a rise in the exodus of critical skills professionals' exodus since 1994. Between 1989 and 2003, South Africa had lost an estimated 120,000 skilled people and the number of skilled people leaving the country was larger than the number entering South Africa by an average of 9000 skilled people per year between 1994 and 2003 ([CDE], 2000; 2010: 43). These figures all demonstrate that there is a

massive skills shortage crisis in South Africa. A call for the government to engage in a vigorous skilled immigration policy is heard consistently from stakeholders such as the private sector and research and academic organisations in order to get those scarce skills from outside the country.

Skilled immigration will be possible only if the government were to remove unnecessary regulations in the immigration policy such as the restrictions on employing foreigners and would adopt an unambiguous immigration policy that encourages and welcomes skilled foreigners. Despite South Africa's urgent need for scarce skills, South Africa's stance to skilled immigration is paradoxical and rhetorical. On the one hand it acknowledges the need to attract skills immigrants for economic development, while on other hand, because of South Africans' lack of resources, particularly among those who were previously disadvantaged, redress imperatives present huge pressure on the government to place maximum limitations on the entry of immigrants¹ (Kahn, 2015: 384). No remarkable progress has been made in South Africa's immigration policy to make the country an attractive destination for skilled foreigners because its continued national sovereignty-oriented control approach in managing migration.² Instead, the national sovereignty-driven immigration policy derived from the government's own institutional xenophobia has cost the country its opportunity to keep up with the global migration dynamic such as harnessing scarce and critical skills that South Africa needs for the development of the country.

The three most pertinent factors that characterised South Africa's society prior to the discussion of South Africa's first immigration policy in the post-apartheid era were skills shortage in the country, high unemployment facing South Africa citizens as well as the high antagonism that citizens had towards foreign nationals (Fallon & de Silva, 1994; [DoL], 1998; May & Govender, 1998; Klasen & Woolards, 1999; Crush, 2004; 2008; 2014). These factors were key societal characteristics that were instrumental in the shaping of the immigration policy. As antagonism and high domestic unemployment tended to push the government into adopting a restrictive immigration policy, skills shortage presented a challenge to the government to consider and carefully calibrate its immigration policy. A well-balanced immigration policy was needed to attract skilled foreigners to fill the skills shortage gap but also to ensure that skilled foreigners' presence would not jeopardise South Africans' work opportunities and interests. Given the huge pressure to address societal equity challenges in South Africa, despite that there have been attempts to advance more effort and emphasis directed towards skilled immigration, the call for immigration policy reform faced tough resistance from the opposition bench led by senior ANC politicians

¹ The *White Paper* states that the best way to manage immigration, is to have in place "maximum possible limitation on the entry of any immigrant" ([DHA], 1999: 9).

² The Department of Home Affairs recognises in its 2017 White Paper that South Africa's immigration policy has so far failed to attract skilled immigrants because of its continued focus on a national sovereignty-oriented border control policy, despite of its declaration in its 1999 *White Paper* which attempted to build a skills-driven immigration policy (DHA, 2017).

and trade unionists (Trimikliniotis et al., 2008; Segatti & Landau, 2011; Klotz, 2012). Because of these politicians' and trade unions' influence in the political arena, any major reforms to immigration policy were stalled. In the absence of the support of powerful political alliance, an enabling immigration policy that is in favour of attracting skilled foreigners is difficult to advance. The situation in the health sector is one that demonstrates South Africa's lack of enthusiasm to pursue a skills-driven immigration system.

Difficulty in recruiting foreign doctors in the South African context

Despite of the looming doctors' shortage crisis and its devastating impact on the poor the DoH's *Policy on the Recruitment and Employment of Foreign Health Professionals* in 2006 discouraged the recruitment and employment of foreign doctors which could otherwise alleviate this shortage. Its revised version in 2010 is even more restrictive categorically outlined more types of foreign doctors in detail and prohibits them from legally working in South Africa ([DoH], 2010: Clauses 31, 32 & 35). The policy prohibits the recruitment of foreign doctors from up to 110 countries, of which mostly are doctors developing countries who are interested in working in South Africa, against the backdrop of a looming doctors' shortage crisis ([DoH], 2006; Breier, 2009 ; Segatti, 2014; Mahlathi & Dlamini, 2017). Even for those foreign doctors who are already in the system, the NDoH through this policy imposed various restrictions on foreign doctors' work conditions. For example, the contract for foreign health professionals, in line with the requirements set out in the DoH's policy, restrict their workplace and area of service in the public sector and in rural or underserved areas. Their contracts are temporary, non-renewable and to a maximum period of three years. In addition, foreign applicants face difficulties in sorting out their paperwork at the DHA, the DoH and their registration at the Health Professions Council of South Africa (HPSCA) (Segatti, 2014: 88).

The difficulty for an individual foreign doctor to legally work in South Africa against the backdrop of a doctors' shortage crisis has led some scholars to argue that the DoH's discouraging stance towards employing and proactively recruiting foreign skilled workers should be understood in the DoH as well as the government's lack of enthusiasm towards skilled immigration and its own institutional xenophobia (Breier, 2006 [CDE], 2010; Segatti, 2014: 46). When the DoH included in its Strategic Framework in 2006 to control and limit the number of total foreign health workforce including foreign doctors to under 5 per cent, media speculated and stated that it was a protectionist policy to preserve jobs for South Africans (Monare, 2006; Kassiem, 2006; Stent, 2006; Urbach, 2006; Bateman, 2006). In South Africa, protectionism to preserve jobs for citizens, in spite of skills shortage, stalls the progress to reform the country's immigration policy in order to attract more skilled foreigners. The opposition of skilled immigration is a powerful political alliance (Segatti & Landau, 2011). Some high profiled African National Congress politicians and public servants, the pervasive influence of organised labour and some South African citizens from previously disadvantaged background whose livelihoods have not been bettered

since the end of apartheid forged a powerful opposition alliance that resisted any attempt to promote the employment and recruitment of foreign skilled labour and stalled the progress for skilled immigration (Crush, 2008; Desai & Walsh, 2010; Segatti & Landau, 2011; Klotz, 2012). These stakeholders believe that their primary interests in promoting low-skilled workers and creating avenues for previously disadvantaged populations to access resource are at loggerheads with the presence of foreign nationals. For these stakeholders that opposed skilled immigration, there was a popular belief shared amongst them that enabling skilled immigration would undermine the employment opportunities of South African workers (Chairperson of the Home Affairs Committee Ms Maggie Maunye on *White Paper on International Migration*: hearing, 16 May 2000, Source: PMG). Under the circumstance, objecting to immigration is a predominant narrative in the government.

Oppositions of skilled immigration are more in favour of addressing the skills shortage crisis by supporting training and developing skills among local workers than sourcing skilled labour from overseas (Kahn, 2015). The DoH's intervention is evident of this view. The DoH addresses doctors' shortage crisis with a range of financial and non-financial incentives to retain existing health workforce and uses a variety of measures to increase South Africa's training capacity (Crush et al, 2014 ECONEX, 2015). These strategies included building more medical schools and putting medical students on Nelson Mandela/Fidel Castro Medical Collaboration Programme. All of these strategies aim to build local capacity of medical skills in order to address the shortage crisis. But the DoH constantly ignores the option to access an existing pool of foreign doctors. Recruiting foreign labour, even in scenarios where the skill is desperately needed such as doctors' medical skill, is seen as undesirable by the DoH. Politicians that opposed skilled immigration had also made similar remarks that it is better to train locally rather than source workers from overseas so that employment opportunities would be reduced and jobs will not be lost to foreigners (Centre for Development and Enterprise [CDE], 2010; Bernstein, 2014). The DoH's reluctance to recruit foreign doctors is an example of South Africa's lack of enthusiasm to foreign skills.

The objection to importing scarce skills which are needed for South Africa, as seen here in the health sector, is a result of South Africa's immigration policy. Thus, the immigration policy is the major driver that influenced the DoH's stance towards the recruitment of foreign doctors.

Research problem

Despite all that the government and the DoH have done to capacitate South Africa's health system, it has been reported by many newspapers and the media generally that an existing pool of foreign doctors are

finding it difficult to work legally in South Africa due to 'red tapes' in the DoH's policy³ (McLean & Prince, 2010; Green, 2014; Watkins, 2016; Govt 'obstructs' more than 200 foreign doctors from working in SA", 2017). The DoH's objection towards immigration caused further concern by imposing restrictions to prohibit and discourage the recruitment and employment of foreign doctors. In addition, the DoH's discouraging stance has had damaging consequences. Not only does it counter the country's objective to increase the number of doctors in the sector, it also has significant damaging effect on health of the poor who are dependent on public health system (Segatti, 2014). Those who have opposed skilled immigration indicated that their opposition was based on their belief that enabling skilled immigration would have a deteriorating impact on the employment opportunities for South African citizens and that it is their intention to promote South Africans' interests, yet their discouraging stance towards recruiting foreign doctors seems only to deepen the doctors' shortage crisis with its negative consequences on the poorest. It needs to be noted that developed nations such as the U.K., Australia and New Zealand are excelling by developing competitive schemes to attract foreign doctors and retain foreign medical graduates (Woodcock, 2005; Gorman & Brooks, 2008; WHO, 2015; OECD, 2016; Kentish, 2018). Many South African medical doctors are considering or have already taken full advantage of those schemes and have settled in their new countries (Bezuidenhout et al, 2009; Breier 2009; Crush, 2014; Crush, Chikanda, Bourgeault, Labonte & Murphy, 2014). The emigration of those South African doctors, as a result of the better conditions offered by those developed countries, has further exacerbated the doctors' shortage crisis in the South African health sector. Given the complexity of the circumstances, doctors' shortage and the DoH's objection towards employing foreign doctors, it begs the question: how did South Africa's immigration system impact the DoH's policy on the recruitment of foreign medical doctors?

Overview of research theory—morphogenetic/morphostatic cycle

The formation of immigration policy is a complex process. It involves the participation of many actors and the influence of domestic and international contexts. There are two commonly used migration theories regarding immigration, one of these theories is micro-level one, the other macro-level (Iosifides, 2011:18-32). Micro-level theories primarily focus on the analysis on the factors that resulted in migrants' rational choice to migrate. With macro-level theories, migration is seen as movements motivated by the disparity between economies in different regions. But theorists such as Castle (2010), Bakewell (2010), Iosifides (2011) and De Haas (2016) argue that neither of the approaches can fully explain migration.

In order to understand immigration policy, these theorists propose an integrated approach which combines both micro-level and macro-level theories. Moreover, the model which they propose focuses

³ McLean & Prince, 2010; "Slow, unresponsive and unconcerned: How the Health Professions Council hurts patients" in *GroundUp*, 2013; "HPCSA's inertia sinks foreign medics" in *Mail and Guardian*, 2014; Watkins, 2016; Govt 'obstructs' more than 200 foreign doctors from working in SA" in *Medical Brief*, 2017

on examining the interaction between migration actors (agency) and the contextual factors in which migration takes place. In addition to these scholars' proposition that migration studies should take an integral approach that includes both structure and agency, the formation of South Africa's immigration policy, which is the focus of the study, is an evolving process. Margaret Archer's (1995) theory of morphogenetic/morphostatic cycle provides a useful framework to capture the evolution of South Africa's immigration policy from 2000 to 2006 which is the central focus of this dissertation. Its three-phased analytical approach begins with contextual factors that conditioned the migration process. Its middle phase focuses on the interaction between agents and structure to describe how agents such as politicians, members of the private sector, etc. deliberate upon contextual factors and act to modify or to reproduce the existing structures in order to make changes. It ends with the examination of the effects that changes have on agency and structure. Through those three phases, Archer's (1995) theory of morphogenetic/morphostatic cycle is able to describe not only the stakeholders (agents) that were involved in the drafting process of the immigration policy, the contextual factors (structure) which those stakeholders deliberated and acted upon, as well as the effect of the changes in the immigration policy had on the DoH's recruitment and employment of foreign doctors.

Therefore, this research dissertation will employ Archer's (1995) theory of morphogenetic/morphostatic cycle which is an integral approach that incorporates both agency and structure to explore and understand South Africa's immigration policy. It will focus on examining the stakeholders and their positions on skilled immigration, the contextual factors upon which the drafting process of the Immigration Bill took place, and the amendments to the Immigration Bill. By studying these components, this research dissertation will then attempt to explain how the immigration policy influenced the DoH in its discouraging stance towards the recruitment and employment of foreign doctors.

Research design and research question

Many studies in the migration area have explored immigration in South Africa. Crush's (2008; 2014) studies as well as Nyamnjoh (2006), Neocosmos (2006) and Peberdy (2009) are focused on understanding South Africa's xenophobic issue as well as some of the possible causes such as citizens' lack of resource that could explain South African society's antagonism towards foreign nationals. Other studies such as Erasmus and Breier (2009), the Centre for Development and Enterprise (2010), Segatti and Landau (2011) and Bernstein (2014) place more emphasis on how South Africa's immigration policy deters the country from attracting skilled foreigners and alleviate its skills shortage crisis. This dissertation continues their work, but it intends to explain more specifically the impact of South Africa's immigration policy from 2000 to 2006 on the DoH's recruitment of people with scarce medical skills. It draws on parliamentary documents to explore stakeholders' views on skilled immigration and to track the changes

to the immigration policy from 2000 to 2006 in order to determine which stakeholders had a more decisive influence in shaping South Africa's immigration policy. The more influential stakeholders and their views on skilled immigration were more likely to have influenced the DoH in its own decision on the recruitment of foreign doctors. Hence, it explains South Africa's discouraging stance towards the recruitment of foreign doctors, particularly foreign African doctors against the backdrop of a doctors' shortage crisis.

The formulation of the immigration policy was a collaborative and widely consultative process among all sectors of society in the early 2000s. The initial policy document the *White Paper on International Migration* of 1999 and the Immigration Act 13 of 2002 had both invited the public to comment. Hence, the Act passed in 2002 and its amendment Acts passed in 2004 and 2006 were the outcomes of careful calibrations of the interests amongst all stakeholders (Trimikliniotis et al., 2008; Segatti & Landau, 2011). It is imperative to compare the changes to the immigration policy in relation to stakeholders' deliberations on immigration in order to determine which stakeholders played a more decisive role in the final outcome of the Immigration Bill (Archer, 2019, personal communication 28 March). Since the DoH's discouraging stance towards recruiting foreign doctors was more likely to have been influenced by those stakeholders who played a more decisive role, they had a direct impact on the DoH's restrictive policy on the recruitment of foreign doctors in 2006. Since the drafting process of the immigration policy and later amendments of the Immigration Bill coincided with the DoH's policy on foreign health professionals, I have decided to locate the examined time period on immigration policy in between 2000 to 2006 for this dissertation.

The central research question is: How did the deliberation on South Africa's immigration policy from 2000 to 2006 among key stakeholders influence the national Department of Health's (DoH) restrictive approach to the recruitment and employment of foreign medical doctors?

In this dissertation, stakeholders' deliberation will be assessed from parliamentary documents such as stakeholders' submissions to the Department of Home Affairs (DHA) and parliamentary meeting minutes which contain nuanced details of stakeholders' rationale and motives for supporting and opposing skilled immigration. Scholars such as Scott (1990), Carter (2000) and Prior (2003) all assert that archival records of parliamentary discussions are documents that contain rich and useful materials for social science researchers to understand the formation or emergence of social reality. Thus, parliamentary documents will be useful not only to understand stakeholders' positions on skilled immigration, but also to understand the process which all stakeholders had gone through which resulted in the Immigration Act in 2002 as well as its amendment in 2004 and those proposed in the Immigration Bill of 2006.

Following the main research question, the sub-research questions are

1. What does academic literature say about skilled immigration in South Africa?
2. Who were the main stakeholders involved in the policy discussion from 2000 to 2006 and what were their interests and agendas in relation to skilled immigration?
3. How did the stakeholders involved respond to the contextual factors and what outcomes contained in the Immigration Act passed in 2002 and its subsequent amendment in 2004 and the Bill deliberated in 2006 pointed to those responses?
4. How did the amendments to the Immigration Act impact the DoH's recruitment policy on foreign health professionals?

Significance of the study

This research dissertation contributes to the migration scholarship in two ways. One is in its content which provides a deeper understanding of the obstacles for the government to pursue skilled immigration in South Africa and their implication to the doctors' shortage in the country. The other is in the application of Archer's (1995) critical realist theory morphogenetic/morphostatic cycle approach of this study which demonstrates how her three-phased analytical approach can be effectively used to track the changes in South Africa's immigration policy and thus analyse the DoH's reluctant recruitment stance towards employing foreign national doctors.

The dissertation examines two prominent societal phenomenon in South Africa: the shortage of doctors' and the national Department of Health's (DoH) reluctance to recruit foreign doctors in relation to South Africa's immigration policy and the government's protectionism to pursue an economically driven skilled immigration policy. Its focus is on the analysis and the consequent understanding of the DoH's reluctance through the lens of the government's immigration policy. By locating the time period between 2000 to 2006, this dissertation investigates how stakeholders from different sectors of South African society had deliberated on the skills shortage crisis and high unemployment and also explores their own sentiments towards foreigners, all of which resulted in the Immigration Act 13 of 2002. Furthermore, this dissertation aims to compare the parallels between protectionism in the immigration policy and the DoH's restrictive recruitment policy of foreign doctors to explain the impact of the immigration policy on the DoH's recruitment of foreign doctors. Nyamnjoh (2006: 1) describes that migration is an inevitable part of globalisation. It is marked by accelerated flows and dissolving boundaries for capital, goods and electronic information, but it is also marked by its intensification and the actualisations of borders, divisions and violent strategies of exclusions. This research dissertation explains how the intensification and actualisation of borders, divisions and violent strategies of exclusion which characterise South Africa's immigration policy is the product of South Africa's powerful and influential opposition to skilled immigration. The opposition to skilled immigration and the slow progress in the reform of immigration

policy have contributed to a severe skills shortage. The doctors' shortage is a significant example of a country's protectionist immigration policy which aims to contain migration flows and preserve jobs for its own citizens. In the light of the doctors' shortage that is endangering the health of the South African population, it is important that scholars and leaders attempt to understand why the DoH had adopted its policy in 2006 to restrict the recruitment and employment of foreign doctors in the first place so that these implications may be addressed in the future.

From the social theory perspective, this dissertation operationalises Archer's (1995) critical realist theory and morphogenetic/morphostatic approach to explain the development of South Africa's immigration policy from 2000 to 2006. The approach that this dissertation takes acknowledges the distinct roles and the 'conditioning effect' that stakeholders (agency) and social conditions such as antagonism towards foreigners, high unemployment and skills crisis (structure) each played in the formulation of South Africa's immigration policy (Archer, 1995). Hence, it offers a different perspective of analytical framework for social science research to study the evolution of a social event.

Outline of chapters

The structure of this research dissertation is outlined and briefly explained below.

Chapter 2 is a detailed account of critical realism and Margaret Archer's morphogenetic cycle to define all the key concepts that inform the design of the research dissertation. Chapter 3 is the research methodology chapter which discusses the types of data collected for this research, the rationale for data selection, data analysis method as well as ethical concerns. The literature review in chapter 4 delves deeper into the doctors' shortage crisis and the DoH's measures to address the shortage issue. Then it leads up to the question: Why is the DoH so reluctant to recruit foreign doctors despite of all the efforts made to boost the number of doctors in the sector? The chapter then delves into South Africa's immigration politics. Chapters 5, 6 and 7 are finding chapters dedicated to explain the stakeholders' involvement in the drafting process of the immigration policy. The discussion chapter constitutes phase three of Archer's framework which aims to answer the main research question. Chapter 9 concludes the thesis and contains my own reflection on the employed methodology, social theory and the contribution of this study.

Chapter 2 Morphogenetic/morphostatic cycle approach on migration

Overview

This chapter discusses Margaret Archer's (1995) morphogenetic/morphostatic cycle theory, the social theory used in this research dissertation. It draws on migration theorists' work to critically review the existing theoretical attempts to theorise migration—micro-level theories and macro-level theories, pointing out that the methodological deficiencies in them render them unsuitable to attain a holistic understanding in migration studies (Castles, 2010; Iosifides, 2011: 18-31; Bakewell, 2010; De Haas, 2016). In the pursuit of such a holistic social theory to study migration, there is an emerging theoretical trend that shows an integration of incorporating both micro-level and macro-level theories vis-à-vis human agency and social structure in migration studies. Moreover, this trend distinguishes the distinct roles that human agency and social structure play in migration and emphasises on seeing migration as a social phenomenon produced by the interaction between human agency and social structure. Archer's theory of morphogenesis/morphostasis is able to fulfil this function and it illustrates the distinct status and agency and structure as well as distinguishes the stratified, emergent and transformative nature of social reality.

Rationale: Using Archer's morphogenetic/morphostatic cycle approach to theorise South Africa's immigration policy

Since the purpose of the research question is to understand the deliberation of South Africa's immigration policy from 2000 to 2006, it involves stakeholders and the external factors on the basis of which they had deliberated in relation to the immigration policy. The interaction between human agency and social structure determined by the research question indicates that the study for this research question will require a social theory that features the roles of both human agency and social structure on migration.

There have been various theoretical approaches to migration (Castles, 2010; Iosifides, 2011: 18-32; De Haas, 2016; Pahl, 2016). Existing theories either regard migration decision-making as an individual rational choice seeking to maximise utility (micro-level approaches) or as behaviour determined by external structural conditions such as the global North-South migratory pattern (macro-level approaches) (Iosifides, 2010; Pahl, 2016). Whilst micro-level theories are criticised for their neoclassical economic sense and methodological individualism, macro-level theories have been criticised for their presumptuous Global South to North migratory pattern. Because of the lack of robustness and rigour in the methodology in migration studies, findings and conclusions generated by migration research are highly fragmented and conflicted (Fawcett & Arnold 1987: 456; Goss & Lindquist

1995: 325-6; Castles, 2010; Iosifides, 2011: 18-31). Hence, to address these highly fragmented and conflictual theories that were used to theorise migration, findings produced under such circumstances tend either to be focused overly on explaining the role of structural factors of migration or on the role of human agency to migration.

Anthony Giddens's (1984) structuration theory is an early theoretical attempt in the social theoretical realm to resolve the impasse of the structure versus agency theorisation. Although not necessarily successfully, to a certain extent it separated human agency and social structure and paved the path for future social theorists to work on (King, 2010; Bakewell, 2010). Giddens's (1984) theory uses the word 'structuration' to refer to the actual change or reproduction of social reality. His theorisation of structure and agency asserts that

- Agency is dictated or patterned by structures and acts in the world to reproduce or change the social structures in which they encounter (King, 2010: 253-4).
- Structures and agency always operate to either change or transform the society in coherence because when agents instantiate structure into practice, they simultaneously affirm not only the structures of rules but also of the system itself (Giddens, 1984: 19).

Although Giddens (1984) should be given credit for bringing new insight into the social theory realm, his theory is far from satisfactory to explain the relation between agency and structure and has been criticised for its lack of clear ontology for social structure from scholars such as Danermark et al. (2002: 179-80), King (2010: 254) as well as Bakewell (2010: 1705). These scholars argue that the existence of social structure is virtual and is dependent on the instantiation of human agents' modification of structures in Giddens's theory (Halfacree, 1995; Danermark et al., 2002: 179-180). Because of the virtual status of structure of social reality in Giddens's theory, agents' freedom in relation to structure is always consistent with the objective to either change or to transform society (Halfacree, 1995; King, 2010: 254). For Giddens, agency actions and social structures are the two aspects of the same thing – social practice. Thus, although Giddens' structuration theory does separate human agency and social structure, it fails to appreciate the distinct roles that agency and structure play in the formation of social reality.

A number of scholars such as Bakewell (2010: 1705) assert that despite the structure-agency impasse in the migration theory which is yet to be resolved, over the years, there is an emerging trend that shows using an integrated approach by combining micro- and macro-level factors and place equal emphasis on both structural and agential factors could be the way forward for migration studies (Castles, 2010; Bakewell, 2010; Iosifides, 2011; De Haas, 2016). Bakewell (2010: 1705) suggests that a critical realist analysis of the relationship between structure and agency, using Archer's theory of

morphogenesis that accepts analytical dualism between structure and agency, can provide a much more sophisticated theoretical basis for understanding processes of migration and social changes. This approach to theorise migration, of which Archer's morphogenetic cycle approach features, resolves the difficulty in migration theories bordering into neoclassical thinking. It also sees macro factors and micro factors as, respectively, the human agency driver on migration and social structure's contextual effect driver for human migration and that both factors are equally important in shaping migrants' trajectories. It emphasises that migration is not only determined by migrants themselves, it is also determined by the external factors that influenced migrants, most importantly, migration is a phenomenon produced by the interaction of human agency deliberating on external social factors. Margaret Archer's morphogenetic/morphostatic cycle approach is thus an ideal theoretical framework to answer the research question. Firstly, its analytical dualism retains the relative independence of structure and of agency avoids producing theories which are bordering on either being biased towards structural-focused or towards agential-focused. Analytical dualism is an important component which defines Archer's theory of morphogenetic/morphostatic cycle.

Secondly, Archer's morphogenetic/morphostatic cycle approach has great explanatory power that recognises the development of the event that is, the formulation of immigration policy. Through Archer's three phases approach consisting of conditioning, interaction and elaboration, it could explain the evolution of a social issue capturing both the roles that social structure and human agency play in migration. Since immigration is a complex and evolving process, the three-phased development approach used in analysis will help track the development of the immigration policy in South Africa.

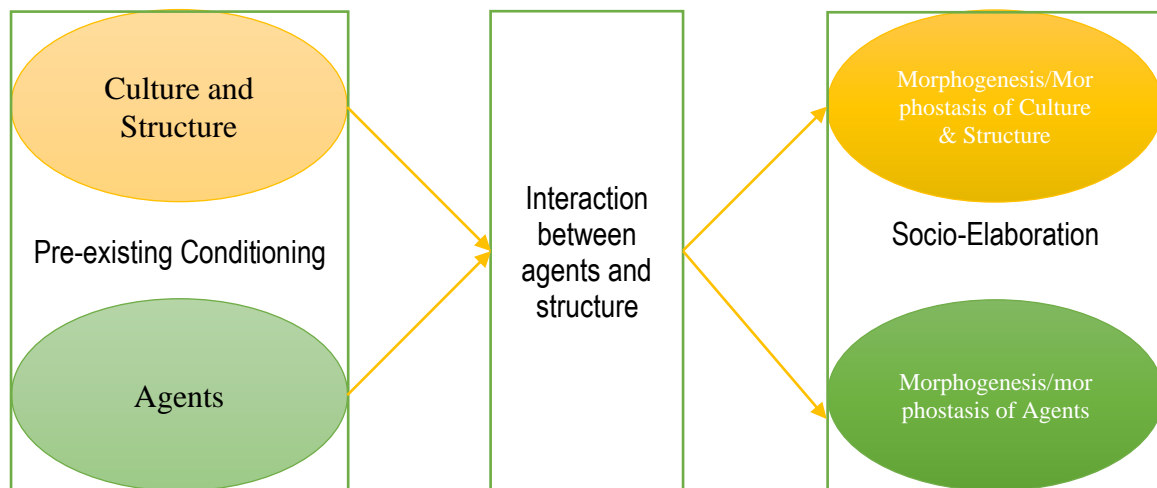
Thirdly, Archer's morphogenetic/morphostatic espouse the differentiation not only between human agency and social structure. Within social structure, it further distinguishes between cultural and structural external factors. Archer (1995: 179) argues that these three factors which all play a role in the development of a social event all have their own "emergent properties". She defines

- A Structural Emergent Property (SEP) is primarily dependent on material resources.
- A Cultural Emergent Property (CEP) is primarily dependant on logic and ideas (Archer, 1995: 179)

Hence, employing Archer's morphogenetic/morphostatic cycle approach could sufficiently explain the role of antagonism towards foreigners (CEP), high unemployment and a skills crisis (SEPs), as well as the contribution of various stakeholders, in the shaping of South Africa's immigration policy from 2000 to 2006.

Applying Archer's morphogenetic/morphostatic cycle theory

Archer (1995) explains social changes by describing how human agency deliberates on existing social structure after which it either keeps the social structures' status as quo (reproduction) or modifies social structures (transformation). This social change takes place through a three-staged development process, namely, stage 1 conditioning; stage 2 interaction; stage 3 elaboration. This process which Archer describes is illustrated below. The table illustrates the morphogenetic/morphostatic cycle in three sections. The first stage is called the pre-existing conditioning which comprises cultural and structural conditions as well as the conditions of agency. The second stage is called the interaction between agents and structure (culture and structure). The final stage is called the social elaboration stage in which cultural, structural and agential conditions are either transformed into new forms or reproduced in its former forms.



To contextualise Archer's theory into practical application in order to explain the research question, the dissertation needs to examine these following questions.

- Who were the stakeholders that participated in the drafting of the Immigration Bill?
- How did those stakeholders deliberate on the antagonism towards foreign nationals (CEP) and the existence of high unemployment and skills shortages (SEPs) which informed their support or opposition towards skilled immigration?
- Since those stakeholders had different levels of influence over policy makers, the more decisive stakeholders and their views on skilled immigration had shaped the government's narrative towards recruiting skilled foreigners which thus impacted on the recruitment of foreign doctors.

Stage 1: Conditioning (T¹) -- Stakeholders involved in the drafting of the Immigration Bill

There are two objectives at stage one of Archer's morphogenetic/morphostatic cycle. One is to identify structural and cultural conditions which constitute the pre-existing social structure. In this dissertation, the pre-existing Cultural Emergent Property (CEP) and Structural Emergent Properties (SEPs) are South African's antagonism towards foreign nationals, high unemployment and skills shortage, respectively. Together, they constitute the pre-existing social structure prior to the drafting of the immigration policy.

The other objective is to identify the relevant human agents involved. Carter (2000: 99) in his application of Archer's morphogenetic/morphostatic cycle approach suggests the identification of agents could start by assessing agents' motives (projects) and trace empirically their efforts used to achieve their motives. Archer (1995: 198, 2000: 4) uses the term 'concern' to refer to the 'commitments constitutive of who we are, which are an expression of our identity'. It is through agents' reflexive deliberations that they prioritise their most important 'concerns' which she calls their 'ultimate concerns' and accommodate subordinate ones to devise a project through which they believe that they can realise their ultimate concerns (Archer, 2000: 4). For instance, the private sector was one of the main stakeholders that was involved in the drafting of the immigration policy. The private sector consisted of many businesses, ranging from multi-national corporations to small businesses as well as self-employed entrepreneurs. There would be a whole range of concerns for every single individual and organisation that falls under the 'private sector'. The most pertinent 'concern' in relation to skilled immigration for this sector was the impact of the skills shortage that was stalling the growth of businesses. Thus, this sector deliberated on the skills shortage and came to the conclusion that supporting skilled immigration would solve such a shortage, which would then contribute to business growth. The private sector's deliberation on the skills shortage led the sector to uniformly agree with pursuing a skills-driven immigration system that could attract and expedite the entries of skilled foreigners.

The identifications of structural and cultural conditions and relevant agents constitute stage one of the morphogenetic/morphostatic cycle. By completing these identifications, Archer (1995) provides the background for both social structure and human agency prior to the actual interplays between structure and human agency take place. In this dissertation, the end of stage 1 means that the background information for social structure and human agency are adequately provided and is fully-fledged to move to the next stage of analysis.

Stage 2: Interactions (T²-T³) –Stakeholders’ deliberation on skilled immigration

At stage 2: This is the stage where agency responds to the constraining or enabling conditioning factors. For example, skills shortage, a structural condition, might be seen by organised labour as a constraining factor which compelled trade unions to pursue a more restrictive immigration policy in order to look after the interests of South African workers whereas it might be seen as an enabling factor for private sector to pursue a more enabling immigration policy. The main objective of this stage is to track the strategies that each interest group used to influence policy direction and to determine which group is the most decisive in shaping the compromise reached at the next stage elaboration (Archer, 1995).

The drafting of South Africa’s immigration policy was a well-negotiated process which involved all sectors of the society (Trimikliniotis, Gordon & Zondo, 2008; Segatti & Landau, 2011). Immigration Act 13 of 2002 as well as its amendments in 2004 and the proposed Bill in 2006 were the final outcomes of the deliberations among stakeholders and government (Immigration Act. 13 of 2002, 2002; Immigration Act, 13 of 2002, as amended, in 2004; Immigration Amendment Bill, 2006). The Bill and amendments to the Act were the outcomes of the deliberation process between stakeholders and pre-existing social structure (antagonism, high unemployment, skills crisis). According to Archer (personal communication 2019, 28 March), after knowing how stakeholders responded to structural constraints or enablement, it is then important to determine which stakeholders had a greater decisive role in the shaping of South Africa’s immigration policy. This will involve comparing the proposed immigration strategies of stakeholders against the outcomes which were shown in the changes in the immigration policy.

Stage 3: Elaboration (T³-T⁴)—Stakeholders’ roles over policy makers

Stage 3 is the elaboration stage. This will be the stage to answer the main research question: how did South Africa’s immigration policy influence the recruitment of foreign doctors? The objective of this stage is to set out the conditions under which morphogenesis versus morphostasis ensues from particular chains of socio-cultural interaction (Archer, 1995: 294). The questions that this phase should focus on are: How did Structural, Cultural and Agential Elaboration affect the DoH’s stance in the employment and recruitment of foreign doctors?

According to Archer (1995), the interplays between human agency and social structure in the preceding stage have affected and changed both. Thus, post-structure and post-human agency are different from how they were before the discussion on the immigration policy. It is imperative to provide an account of the new forms of social structure and relations between human agents which emerged after the interplays. For instance, the interplay between human agency and social structure such as

high unemployment may have aggravated the objection to skilled immigration. Then it would be necessary to lay out the conditions upon which the aggravation takes place in order to understand how changes to the immigration policy shaped the DoH's recruitment measures on foreign doctors.

Archer's theory and precepts inform this research dissertation and helps structure it. In the last chapter, I listed the central research question and its sub-research questions. Drawing on Archer's precepts which derive from critical realists' stratified, emergent and transformative social reality, I have summarised these sub-research questions into their corresponding conceptual questions structured in Archer's way.

Empirical Question	Morphogenetic Cycle Phase	Conceptual Question
What does academic literature say about skilled immigration in South Africa?	Phase 1: Conditioning (T ¹ -T ²)	What were the structural and cultural conditions that constrain or enable agents prior to the event at T ¹ ?
Who were the main stakeholders involved in the policy discussion and what were their interests and agendas in relation to skilled immigration?		Who were those agents and what were their interests and concerns?
How did those stakeholders involved respond to the contextual factors and what outcomes contained in the Immigration Act passed in 2002 and its subsequent amendment in 2004 and the Bill of 2006 have pointed to the response(s)?	Phase 2: Socio-Interaction (T ² -T ³)	How did agents mediate those cultural and structural enablements or constraints in order to advance their interests? What was the outcome at T ³ ?
How did the changes introduced in the Immigration Bill impact the DoH's recruitment policy on foreign doctors?	Phase 3: Socio-Elaboration (T ³ -T ⁴)	How did the outcome at T ³ affect the cultural, structural and agential conditions at T ¹ ?

Concluding remarks

This chapter discussed the two obstacles which resulted in the lack of a coherent and robust body of migration theory. Firstly, the two commonly used migration theories –macro-level and micro-level theories – fail to distinguish the independent status for structure and agency and to appreciate that each is irreducible to the other. Secondly, the impasse is because migration studies tend to use the neoclassical thinking which only examines the economic role of migration and thus neglects the roles of non-economic factors in migration. This chapter then discussed why Archer's morphogenetic/morphostatic cycle could resolve this impasse to study migration and answer the research question. Finally, this chapter illustrated the three-staged process of the

morphogenetic/morphostatic cycle and discussed the application of Archer's framework in approaching the research subject.

Chapter 3 Research methodology

Overview

This dissertation aims to understand how the national Department of Health's (DoH) discouragement of the recruitment of foreign doctors was influenced by the immigration policy from 2000 to 2006. In order to understand South Africa's immigration policy and the stakeholders involved as well as their various arguments for and against skilled immigration, it is critical to examine stakeholders' deliberations about South Africa's immigration policy. Through an understanding of the support for and objections to skilled immigration, this dissertation can answer how these various arguments to support or to object skilled immigration shaped the DoH's restrictive policy towards the employment and recruitment of foreign health professionals.

Archival records, recommended by scholars such as Scott (1990), Carter (2000) and Prior (2003) are a useful source of data for this study in order to understand the formation or emergence of social reality. The rich and useful information that researchers can get from documentary data motivates the use of parliamentary documents as a primary data resource for this study. The issue under investigation is the deliberation of stakeholders on South Africa's immigration policy which is a complex deliberating process. The complexity which involves examining the roles that stakeholders as well as structural factors such as high unemployment, skills shortage and antagonism towards foreigners had played to the formation of the immigration policy needs research data to be able to demonstrate the evolvement of the immigration policy process. Because parliamentary documents can fulfil that purpose, they will be used as the primary data source for the purpose of this study (Carter, 2000).

Selection of the data time period

Determined by the central research question, the time period for which I selected data is between the period of 2000 and 2006. The rationale for using this time period is related to the two events that took place in these two years. Firstly, the South African society started the discussion on immigration in the late 1990s and the *Green Paper* was developed and the subsequent *White Paper* was published for public comment in 1999. This signals the beginning of the country's discussion and drafting process on South Africa's first immigration policy since 1994. Secondly, the national Department of Health published its first formalised policy on the recruitment and employment of foreign health professionals in 2006. In 2010, the DoH revised its 2006 policy and this latest version has been in use up to date. This policy changed the ad hoc process which the DoH had used in the employment of foreign doctors prior to 2006 and stipulated stringent conditions and requirements on the employment of foreign health

professionals. Because the year in which the DoH drafted the recruitment policy was that when the development of South Africa's immigration policy took place, it was important to know how the whole process of the development of South Africa's immigration policy had influenced the DoH's opposition to the recruitment of foreign doctors.

Data collection: Archived parliamentary documents

The research question asks how the deliberations about South Africa's immigration policy influenced the DoH's recruitment of foreign doctors. In order to answer the research question, this dissertation uses parliamentary documents to understand stakeholders' views and opinions on skilled immigration.

Documentary data in this study refers more specifically to parliamentary data as the collected data mainly comprise parliamentary documents. Documentary data is a form of social science research data that have been widely discussed and recommended by many scholars (Bailey, 1982; 1994; Treece & Treece, 1982; Webb et al., 1984; Scott, 1990; Polit & Hungler, 1991, Silverman, 1993; Denscombe, 1998: 163; Carter, 2000; Prior, 2003). Documentary data provides rich and useful information that reveals and captures authors' thoughts and deliberations at the time when those documents are produced. Because of this unique function, documentary data could be a useful source of data to help social researchers understand the formation and the emergence of the social issues that researchers plan to study (Scott, 1990; Carter, 2000; Prior, 2003). Thus, by using parliamentary data to analyse stakeholders' views on skilled immigration, I could re-visit and study the history of the subject and what stakeholders were thinking of at the time of the drafting process of South Africa's immigration policy which is nearly twenty years before the time that I write this dissertation. From understanding stakeholders' views on skilled immigration and comparing those views to the actual policy changes, I can gain a deeper understanding on which stakeholders were more influential and had influenced the DoH on its reluctance to recruit foreign doctors.

The study comprises of data from these sources:

- 1) Parliamentary meeting minutes from the two Portfolio Committees –Health and Home Affairs from 2000 to 2006.
- 2) Submissions from stakeholders on the *White Paper on International Migration* from 2000-2002.
- 3) Submissions from stakeholders on the Immigration Bill 2002.
- 4) Submissions from stakeholders on the Immigration Amendment Act in 2004 and the Immigration Amendment Bill in 2006.
- 5) National media and newspaper reports from 2000 to 2006.

The first section of data comprises archived parliamentary meeting minutes and can be obtained from the Parliamentary Monitoring Group's website. The Parliamentary Monitoring Group

(PMG) is an organisation that provides detailed accounts of the proceedings of South African parliamentary committees to the public. The second to the fifth sections of the research data could be accessed from the Sabinet Legal Database and Sabinet Reference –SA media database. Sabinet Legal Database includes ministers’ speeches at parliamentary portfolio meetings, copies of stakeholders’ submission to parliament as well as correspondence between politicians and those stakeholders. The Sabinet Reference –SA Media Database is a database which stores all the South African national newspapers. I have attached the list of parliamentary documents that I have collected for the purpose of this dissertation in Appendix I. Below is a table to indicate the number of documents consulted in this dissertation. As the table below outlines, the dataset consists of 66 parliamentary meeting minutes that were obtained from the website of Parliamentary Monitoring Group’s (PMG), 32 documents of policy related documents from the Sabinet Legal Database as well as 51 written submissions submitted to Parliament which were also obtained from the Sabinet Legal Database. About 20 documents were collected from newspaper and media via the Sabinet Reference Database. The least number of newspaper sources was probably because of the lack of attention that the topic of recruiting foreign doctors was received by the media. It shows the lack of attention and negative perception that the society at large places on the value and contribution of foreign skilled labour to a certain extent. The bulk of my analysis was based on the first three document sources with newspaper sources providing only supplementary information.

Document Type	Document Source	Number of documents
Parliamentary meeting minutes	Parliamentary Monitoring Group (PMG) website	66
Policy, speeches, draft bills, regulations	Sabinet Legal	32
Submissions from stakeholders	Sabinet Legal	51
Newspapers	Sabinet Reference –SA Media	20

Since the data collection method for this dissertation is desktop research via websites and various databases such as Sabinet Legal and Sabinet Reference –SA Media, the key searching terms which were used to find those data were: the Immigration Act 2002, the Immigration Amendment Act 2004, the Immigration Amendment Bill of 2006, skilled immigration, foreign doctors, etc.

Data coding and analysis

Thematic analysis is a method for identifying, analysing, and reporting patterns (themes) within data as well as interpreting various aspects of the research topic (Braun & Clarke, 2006). As Spencer, Ritchie

and O'Connor (2003: 209) state, qualitative data in its raw form is unwieldy and tangled but also rich in descriptive detail and explanatory evidence. Its thematic analysis can reorganise the messiness of data and illuminate its richness into its conceptual categories that are instrumental in answering research questions. Braun and Clarke (2006) suggest a six-step process for thematic analysis: 1) familiarise with data; 2) generalising initial codes; 3) search for patterns amongst codes; 4) review validity of themes; 5) define and name themes; 6) write up report. This six-step process of thematic analysis has been adjusted slightly to accommodate this study and is illustrated below.

Step 1: Familiarise with data

De Walt and De Walt (2011: 80) as well as Miles, Huberman and Saldana (2014) recommend that familiarising with raw data could help build a brief understanding of data. Miles and Huberman (1994: 51) also point out that familiarising could also assist in developing a start-list of codes prior to fieldwork. It can not only reduce the chances of data overload, it could serve as a gradual step to begin with data selection process as Miles and Huberman argue that data coding process is a form of data selection process. Following their advice, I had spent two months from November 2018 to January 2018 to familiarise myself with the collected parliamentary documents which comprised of Home Affairs portfolio meeting minutes and stakeholders' submissions on *White Paper on International Migration* of 1999, Immigration Act 2002 and its Amendment Act in 2004 and the Immigration Bill of 2006. In addition to that, any sporadic thoughts that had sprung up during the first round of data familiarisation were recorded in a written memo. Glaser (1978: 83-4) explains memo as a 'write-up of ideas about codes and their relationships as they strike the analyst while coding'. As Miles and Huberman (1994: 75) describe, 'memos are designed to capture thoughts on the fly', I found keeping a written memo particularly helpful for conducting regular reviews and double checks on my data.

Step 2: Generalising initial codes

At step 2, this is the process where researchers need to create codes. To begin with, Miles and Huberman (1994: 58) advise researchers to always begin with a provisional list of codes that are directly informed by research questions. The research questions that guided the provisional coding list were

- Who were the stakeholders that had been involved in the drafting of the immigration policy and what stances they had towards skilled immigration?
- How did those stakeholders deliberate on the contextual factors (high unemployment, skills shortage and antagonism towards foreign nationals) which led to their decisions to either support or oppose skilled immigration policy?

For example, the first sub-research question emphasises the role of stakeholders. Thus, the code *stakeholders* was created. Similarly, the second sub-research question points to stakeholders' stances towards skilled immigration. Drawing on Reudin's (2019:210) codebook on immigration policy, languages that are negative, nationalistic and monocultural discourse were coded as *opposing immigration* whereas progressive, cosmopolitan and multicultural discourse was coded and defined as *supporting immigration*. Thus, two stances from different stakeholders emerged and these stances can be expressed as either support or opposed skilled immigration policy. Furthermore, Strauss (1987) suggests coding for 'conditions', 'interactions among actors', 'strategies and tactics' and 'consequences' as a provisional coding list to start with. I found Strauss' (1987) provisional list very helpful as it also closely aligned with Margaret Archer's three-phased approach on morphogenetic/morphostatic cycle.

Many researchers adopt a two-step scheme in data coding. A more general etic coding to a more specific emic coding is recommended by qualitative researchers such as Miles and Huberman (1994: 61) and Adair and Pastori (2014: 36). Adair and Pastori (2014: 36) explain that when creating etic, codes developed can be more transferrable and applicable to multiple settings whilst at emic coding, codes have to be more content specific.

Step 3: Search for pattern amongst codes

Research method theorists suggest researchers should go beyond the analysis of codes and focus on the analysis at the broader scale such as the relations between codes, themes and different levels of themes (Miles & Huberman, 1994: 69; Braun & Clarke, 2006). Miles and Huberman (1994: 69) call it 'pattern coding' which is a way of grouping summaries that are generated from the preceding step into a smaller number of sets, themes or constructs. As more data is coded, processed and classified, De Wet and Erasmus (2005: 33) argue that pattern coding can also help researchers to gain a deeper level of understanding through identifying patterns and relationships in the data to construct an argument that supports answering the research question. For instance, it was during the pattern coding that followed the first-level coding, that I discovered the conflict on skilled immigration between the private sector and organised labour. There was a pattern within the codes for trade unions that pointed to the trade unions' objection to skilled immigration as well as their critical response to the business sector's supporting skilled immigration. This pattern was then coded *conflict with private sector* which became an important element of my argument in this thesis that highlighted trade unions' anti-skilled immigration stance. It was the trade unions' stance towards immigration that directed this thesis to explore whether the DoH shared the same sentiment towards skilled immigration and whether the cause of the DoH's discouraging stance towards recruiting foreign doctors was of the same cause as stakeholders that objected to skilled immigration.

Coding software has improved the actual process of entering data and applying codes dramatically since its inception. Management of the wealth of this massive amount of data was made possible with the aid of new generation Computer Assisted Qualitative Data Analysis Software (CAQDAS). De Wet and Erasmus (2005: 5) also concur that CAQDAS provides researchers a way of expediting a systematic and more accurate data analysis. For this dissertation, I opted for NVivo software (QSR International 2011) as a tool with which to organize, code and analyse my collected documentary data. The experience of data coding made me agree that CAQDAS is a much more effective and efficient tool for researchers. All data sources were imported and saved on Nvivo software prior to coding and analysing.

Step 4: Review validity of the pattern codes

Braun and Clarke (2006) suggest researchers should review the validity of pattern codes and filter out those that are not widely supported by evidence. Within this process, some pattern codes may collapse into others while others may not be pattern codes relevant to the research question. For instance, first-level coding resulted in some irrelevant codes such as 'medical permit' which were repeatedly discussed during the White Paper and Immigration Act 2002 processes, but these codes were deemed irrelevant to the objective of this study and were thus filtered out. Also, some codes such as 'giving international students/visiting scholars/relatives of South Africans certain work rights' were collapsed and recategorized under the broader code 'foreigners' work rights'.

Step 5: Narrating pattern codes

The fifth step is to define and to name pattern codes. Braun and Clarke (2006) explain that this is the phase when researchers need to review and further refine the pattern codes that they will present for analysis. They suggest that pattern codes need to be organised into a coherent and internally consistent account, with an accompanying narrative.

Since this study drew on parliamentary documents about and analyses of South Africa's immigration policy, it was useful to use the Event Listing method which orders data by time and sequence, thus preserving the events chronology and illuminating the subsequent processes (Miles & Huberman, 1994: 110). Drawing on Miles and Huberman's (1994: 110) guide on building the event listing display, the following table was drawn up. To effectively use the table below for analysis, these questions were helpful in filling it out.

- Which year did the event take place?
- What were the contributions or inputs from stakeholders in that year?

- How did stakeholders respond to the constraining or enabling cultural or structural factors (skills shortage, high unemployment, antagonism towards foreigners)?
- Which courses of action were stakeholders pursuing?
- What was the outcome?

The use of the form below is described:

A1 to A4: stakeholders who appeared in the dataset are filled into their corresponding block according to the time that their inputs were made;

B1 to B4: how stakeholders responded to society's antagonism towards foreigners

C1 to C4: how stakeholders responded to skills shortage in the country

D1 to D4: how stakeholders responded to domestic high unemployment amongst citizens

		Time Period			
		White Paper on International Migration (2000 to 2002)	Immigration Act 2002 (2002 to 2004)	Immigration Amendment Act 2004 (2004-to 2006)	Immigration Amendment Act 2006 (2004-to 2006)
Human Agency	Stakeholders	A1	A2	A3	A4
Social Structure	Antagonism	B1	B2	B3	B4
	Skills shortage	C1	C2	C3	C4
	High unemployment	D1	D2	D3	D4

Archer's (1995) morphogenetic/morphostatic cycle tracks changes in policy in order to determine which stakeholders played a more decisive role in the formation of the immigration policy. It is necessary, however, to establish how the changes take place. The 'how' is conceptualised by Archer (1995) as how cultural, structural and agential factors shaped by the changes in the immigration policy affected the DoH in its decision-making and resulted in the policy on foreign doctors. In order to answer this question, the role that each sphere of factor (cultural, structural and agential) played in the formation of the Immigration policy needs to be analysed separately. The above table can display and fulfil this role to show the changes in the immigration policy more clearly. As Miles and Huberman (1994: 113) point out, event listing can not only ground researchers' understanding of a complex flow of events, it also lays the basis for further causal analysis: what events led to what further events and what mechanisms underlay those associations.

Step 6: Write up report

The final step of thematic analysis is to write up the report. It is important to provide extracted data embedded within an analytic narrative in relation to the research question. Data display gradually

develops theoretical typologies based on data analysis and it determines the ways in which the dissertation can be structured (Braun & Clarke, 2006; Miles & Huberman, 1994).

The typologies, namely, Archer's theory on culture, structure and agency as well as the three-phased morphogenetic/morphostatic approach, structure the dissertation into three sections which became its findings chapters and the discussion chapter. The first part deals with the identification of agents that were involved in the drafting of the immigration policy as well as the attitudes of these individuals' and organisations' towards skilled immigration. Part 2 of the findings examines how stakeholders responded to South Africa's antagonism towards foreign nationals. It further compares the changes in the immigration policy with the stakeholders' positions on skilled immigration in order to determine which stakeholders were more influential and decisive in shaping South Africa's immigration policy. Similarly, Part 3 of the findings continues with the modality of Part 2 and explains how stakeholders responded to the structural conditions –skills shortage and high unemployment. It also determines which stakeholders emerged to have played a more decisive role in shaping the immigration policy by comparing those stakeholders' positions with the changes in the Immigration Bill. The answer to the research objective 'to explain the effect of the changes in the immigration policy on the DoH's restrictive recruitment measures on foreign doctors' constitutes the last phase of Archer's (1995) morphogenetic/morphostatic framework: elaboration.

Research ethics

The research ethics of this study strictly adhered to the requirements of the University of Cape Town Ethics Committee as well as my own understanding of them after I consulted Neuman's (2006) *Basics of Social Research: Qualitative and Quantitative approaches*. Neuman (2006: 48) defines ethics as 'concerns, dilemmas, and conflicts that arise over the proper way to conduct research' It is important for social researchers to balance potential benefits such as advocating the understanding of social life, improving decision-making, or helping research participants deal with potential costs such as the loss of dignity, self-esteem, privacy or democratic freedom. As this study involved no human subject participation and all collected data are available to the public, the need to obtain informed consent was not applicable here.

Limitations of methodology

Wetherell, Taylor and Yates (2001) comment that since all research work is goal-oriented, so they cannot be completely impartial because the work carries value. It is inevitable that my research could in some respects show bias in the data analysis process and this needs to be acknowledged. Prinsloo (2015) agrees with them and further explains that she rejects the false belief that any research techniques or a deeper engagement with research materials would in any way absolve the hermeneutist from drawing on

the researcher's own experience in the data analysis process. Hence, it is advised to acknowledge that all research projects, including this research dissertation, contain a research bias and that the only strategies that can be done is to mitigate but not eliminate the research bias (Prinsloo, 2015: 63).

As a researcher conducting this study independently, I was mindful of the research bias that could be generated in the researching process and used the two methods suggested by Prinsloo (2015: 63), namely, memos and praxis, to mitigate the inaccuracy that my findings could have. Archer's (1995) morphogenetic cycle approach involves much guesswork over the deliberations of agents to analyse the relations between themselves and the structure. Questions like 'why did agents do what they did' often came up. Although documents themselves may allude to or suggest certain possibilities, it still depends on a researcher's own reflexivity to interpret and construct an argument based on the codes and themes presented. It is in this process of reflexivity, Angen (2000: 383) argues, that bias may incur since it is not possible nor desirable to create objective distance when working in this perspective. Also, my social activism in immigration as well as the many traits that I share with the agents that supported skilled immigration – such as the belief in equality and rights – may make me become too one-sided in the data coding and analysis process. My effort in shedding light on the influence of the DHA's immigration policy on the DoH's foreign health professional recruitment policy inevitably included my own interpretation and views on skilled immigration and the recruitment of foreign doctors.

Keeping a written memo which tracks and records the reflective thoughts on data periodically helped me to regularly reflect on my data coding schemes and regularly revise and update codes for improvement. Glaser (1978: 83-4) explains memoing in the most classical tone.

[A memo is] the theorising write-up of ideas about codes and their relationships as they strike the analyst while coding...it can be a sentence, a paragraph or a few pages... it exhausts the analyst's momentary ideation based on data with perhaps a little conceptual elaboration.

Memos are thoughts of researchers on the fly and thus need to be dated and organised. Through constant comparison and scrutiny, some of the ideas may be related and linked and theories and arguments may be produced in this process. I found memo writing very helpful in cohering researcher's thoughts and ideas and efficient in generating new arguments and findings. The other strategy that I used is called praxis. Prinsloo (2015: 63) explains that praxis allowed her to be mindful of her own perspective whilst distinguishing and respecting those of other people's perspectives. For instance, in the coding process, one area that I constantly had to check and re-check was around the interpretation of words, what words and sentences should be coded as anti-immigration? Since the interpretation of codes and themes may differ because of different personal experience between me and other people, I would flag those parts of the data and ask my friends or colleagues to read data and inform me of their coding and compare the inconsistency.

By keeping handwritten memo, I was able to review my coding framework regularly and come up with new insights on the relations between codes and discover new findings. Using praxis, I can communicate with others such as my colleagues in the department to hear their views on my codes, research methodology and analysis so that I can be more informed of other perspectives. Although research bias cannot be eliminated, by regularly reflecting on my interpretations of coding framework and consulting with colleagues, it reduced research bias and thus the research findings will be more objective and closer to the truth.

Chapter summary

This chapter discussed the selection of data, the thematic analysis method employed to analyse and to code data as well as the limitations of the research method. During the pattern coding and event listing steps of the thematic analysis, this chapter highlighted how Archer's social theory – a morphogenetic/morphostatic cycle approach – was used to provide a data coding framework that efficiently categorised data and assisted in seeing the links among data clusters and explained how the morphogenetic/morphostatic cycle was used to structure the rest of the thesis.

This chapter also introduced the use of documentary data in social science studies. It showed and explained how documentary data obtained from parliamentary documents and meeting minutes could be useful to analyse policy changes, namely, South Africa's immigration policy.

The chapter concluded with a discussion of research ethics and the limitations of the research method. It argued that although research bias was inevitable, measures such as memos and praxis could help in its reduction.

Chapter 4 Literature review

Overview

This chapter draws on literature to discuss the government's view on skilled immigration. It begins with a discussion of the history of South Africa's immigration policy, revealing that throughout the history black African foreigners have always been seen as undesirable and thus denied the right to make legal and permanent settlement in South Africa. Further, South Africa's resistance to Africa's regional integration is elucidated. The development of South Africa's immigration policy and South Africa's stance towards the movement of nationals from its neighbours have prompted people to ask what the rationale has been behind the government's anti-immigrationist stance. This chapter then explains the roles that skills shortage in South Africa, high unemployment among citizens and its people's antagonism towards foreigners have played in the government's deliberations on South Africa's immigration policy. More specifically, this chapter explains the weak political alliance promoting immigration and how the governing African National Congress's (ANC) protectionist policy is used to preserve jobs for South Africans stalls progress and inhibits any attempt to reform the immigration system. Finally, the chapter explains how the restrictions imposed by national Department of Health (DoH) on the recruitment and employment of foreign doctors was caused by its objection to a skilled immigration policy and its agenda to preserve jobs for South Africans.

History of South Africa's immigration policy

In the discussion of South Africa's immigration policy, post-apartheid migration scholars usually analyse and describe the development of South Africa's immigration policy into three time periods, namely, its pre-1994 immigration policy, the immigration policy from 1994 to 1999 (when the government's policy paper, the *White Paper on International Migration* was issued), and from 2000 onwards (Crush, Williams & Peberdy, 2005; Neocosmos, 2006; Peberdy, 2009; Segatti & Landau, 2011; Klotz, 2012; Boynton, 2015; Van Lennep, 2019). Throughout the development of South Africa's immigration policy, the government has consistently put measures in place to make legal immigration difficult for foreigners.

Prior to 1994

There is a long history of labour migration between South Africa and its many neighbouring countries, long before the current borders of South Africa were drawn (Crush, Williams & Peberdy, 2005). At least for the past 150 years, migrant workers came from Lesotho, Zimbabwe, Mozambique, Zambia, Swaziland, etc. to work on the Kimberly diamond mines and the Witwatersrand gold mines. The regulation of those mine workers was managed through the Employment Bureau of Africa (TEBA). Besides mines,

commercial farms, factories, domestic service, transportation and construction sectors were also the main sectors for migrant labourers. It was estimated that at their peak, these sectors had attracted around 600,000 migrant workers (Crush, Williams & Peberdy, 2005). Thus, legal labour migration to South Africa is a longstanding feature of the southern African labour market and this system is deeply entrenched in South Africa's later economic development and is reflected in its immigration policy.

Due to South Africa's labour migration history, for most of the twentieth century, South Africa's immigration system was operated on a 'two-gate policy' (Crush & McDonald, 2000; Neocosmos, 2006; Peberdy, 2009; Segatti, 2011; Boynton, 2015). The 'two-gate policy' operated as a dual system in the admission of foreigners. The front gate opened for foreigners who met the criteria of attractiveness as defined by the governing minority, whilst the back gate prevented unwanted foreigners from entering but also allowed cheap foreign labour from neighbouring countries to enter South Africa for the purposes of contract labour (Segatti & Landau, 2011: 34). Peberdy (2009: 172) argues that immigration policy always reflects transitions 'in the shape and form of the nation, and consequently the national building project and therefore the state's national vision'. The 'two-gate policy' admitted those foreigners who were seen as desirable, these mainly being white immigrants who were recipients of the state's immigration incentive programmes because of the state's vision to preserve the dominance of the country's white population (Schwartzman & Taylor, 1999: 113; Peberdy, 2009; Segatti, 2011: 36; Klotz, 2013; Crush, 2014).⁴ Also, the 'two-gate policy' excluded those, mainly black African nationals, who were seen as undesirable (Crush et al., 1992). Although black foreign nationals were allowed to work in the agricultural and mining sectors in South Africa,⁵ these workers were prohibited from bringing their families to make permanent settlement in South Africa (Boynton, 2015: 31). The ideal was for them to work in South Africa to supply its own labour shortage on mines and farms but they will return home when their work had been completed or their contracts had expired.

It is evident that under the 'two-gate policy' system, the state's immigration policy was selective. White immigrants were favoured prior to 1994 and had been given financial incentives for settlement. Black African foreigners were denied their rights to make permanent settlement in South Africa but were still allowed to do contractual work for South Africa's mining and agricultural industries. Hence, prior to 1994, black foreign nationals, as a result of racial discrimination, were the primary targets of exclusion in South Africa's immigration policy. The 'two-gate policy' acted as an obstacle to their legal entry to South Africa.

⁴ Between 1961 to 1991, several incentive programmes were implemented to make provisions for the settlement of thousands of European immigrants. This amount, according to Landau and Segatti (2011: 36), reached R3.6 million in 197-73 and went up to R8 million in 1991.

⁵ Of the 434,000 black foreigners working in South Africa in 1970, 81% were working in the mines, 9% in agriculture and 4% in manufacturing and construction (Budlender, 2013: 23).

Post-apartheid 1994 to 2000

Although 1994 had witnessed South Africa's first democratically elected government, the immigration policy in the country continued to exclude black African foreigners, albeit more implicitly. During this time period, two major events unfolded which had significant relevance to the course of South Africa's immigration policy. The first major event was the passing of the Refugee Act in 1998 and the second was the Department of Home Affairs' (DHA) drafting of green and white papers on international migration aiming to draft the first immigration bill in post-apartheid South Africa. Both of these had a significant influence on foreign nationals' rights and situations in the country.

The Refugee Act was passed in 1998 and implemented in 2000. It was hailed as a significant and progressive moment in South Africa's immigration policy. The Refugee Act of 1998 formalised asylum procedures and policies and aligned South Africa's national attitude towards refugees with its Constitution and international obligations. The Act also offered and formalised numerous protections for refugees which included their right to work, to travel and to access health and educational resources.

In the meantime, the Department of Home Affairs (DHA) also began its immigration policy drafting process from as far back as the end of 1997. An independent task team had been commissioned by the DHA to draft South Africa's first immigration policy after apartheid and to make inputs to the DHA (DHA, 1997). The Green Paper recognised South Africa's need for more skilled foreigners and recommended that the DHA facilitate and harness those skills which skilled foreigners possessed. In addition, the Green Paper also offered an immigration perspective which emphasises foreign nationals' legal rights and rebuts the country's past immigration policies which had been exclusively focused on excluding black foreign nationals. The Green Paper resulted in the finalisation of the *White Paper on International Migration* in 1999 which recognised South Africa's urgent need to attract skilled foreigners (DHA, 1999).

Despite of the momentum shown and the progress made by that those actions had made, there is evidence that points to black African nationals' disappointment in being let down by South Africa's first democratically elected and black majority government in respect of its unchanged immigration policy and lack of protection and promotion of black African foreign nationals' rights (Landau & Segatti, 2011: 40; Boynton, 2015: 34). The newly-elected government followed its predecessor's controlling approach to immigration which limited the number of black African foreigners in the country. Like its predecessor, the new government had no enthusiasm for welcoming black African nationals into South Africa. This lack of enthusiasm was in stark contrast to how the apartheid government had facilitated European immigrants' arrival through various incentives. Whilst the Refugee Act must be recognised for its progressiveness and the government's commitment to honour the democratic values of the Constitution of 1996, Boynton (2015: 37) argues that much of the wording in

the Act, such as 'abusive application for asylum', 'fraudulent application for asylum' and 'manifestly unfounded application' do not deflect from the country's negative discourse around and perception of foreign nationals and refugees. Klaaren (1998: 128) argues that the Refugee Act was unable to shift from a paradigm which is built on stringent immigration control and an outdated notion of national sovereignty.

Boynton (2015) further points out that the huge discrepancies between the DHA's green and white Papers on international migration show the government had reversed many foreigner-friendly suggestions which were initially made in its green paper of 1997. In most of the White Paper, what is discussed at length is the negative impact of illegal immigrants, immigration inspection and deportation systems and also perpetuates the narrative that only citizens, not foreigners, are entitled to protection under the Constitution. As a consequence, the White Paper was criticised by the country's refugee organisations which expressed the uncertainty as to whether the new Immigration Act which was derived from the White Paper would supersede the Refugee Act and negatively diminish the rights of those refugees who lived in South Africa.

The new government did not open up South Africa for foreign nationals, especially for African foreign nationals. It also failed to protect foreign nationals' rights and dignity. South Africa's immigration policy was argued by many scholars to be largely unchanged and not democratised (Neocosmos, 2006; Nyamnjoh, 2006; Van Lennep, 2019). The continued approach which the new government adopted from its apartheid predecessor has drastic consequences on immigration and particularly on black African foreigners. As a result, the permanent immigration of those that have secured permanent residency permits in South Africa, dramatically decreased since 1994 whereas reports on human rights violations on foreign nationals drastically increased (CDE, 2000; 2010; Neocosmos, 2006; Segatti & Landau, 2011; Crush, 2014: 216; Boynton, 2015: 23; Van Lennep, 2019).⁶ In the meantime, irregular immigration arose as a result of the limited means for black African nationals to apply for an immigration status in South Africa⁷ (Crush & Williams, 2005). Because they were undocumented, black foreign nationals were even more vulnerable to abuse and exploitation, thus worsening their predicament.

Immigration Act 2002 and its amendments in 2004 and 2006

The Immigration Act 13 of 2002 was the first Immigration Act that was passed by the new government in post-apartheid South Africa. The Act allows some flexibility for foreign nationals to work

⁶ In early 1980s, on average, 30,000 foreigners per year became permanent residents. However, since 1994, the number of immigrants who received permanent residence has been around or below 5,000 per year and in 2012 only 1,000 permits were allotted (DHA *Annual Reports* 1994–2004; SSA, 2014: 36).

⁷ Crush & Williams (2005) argue that partly due to the relative absence of legal mechanisms for entry and work in South Africa, there is an increasing trend of irregular migration from 1990s. The primary foreigners are nationals from Mozambique, Lesotho and Zimbabwe.

in South Africa. For example, the Act created provisions for foreign nationals to apply for permanent residency as well as a number of temporary permits that allowed them to work on a full-time basis in South Africa. The Act also made certain provisions to ensure that all immigration matters would be carried out in a manner which is in line with basic human rights. The Act outrightly rejects and condemns xenophobia and dedicates the department's resource to combat xenophobia in the society. The Act's later amendments in 2004 and a proposed draft Amendment Bill of 2006 further aimed to make the immigration policy more flexible in order to attract skilled foreign nationals.

Despite all the advances, there were major pitfalls that fell short of attracting skilled foreigners in the Immigration Act. First, the Immigration Act passed in 2002 as well as its amendments in 2004 and the draft bill of 2006 did not refrain from internal controls and its emphasis on the identification, detention and deportation of foreign nationals. The most authentic critic of this policy came from the DHA itself. When self-reflecting and commenting on its preceding White Paper, the DHA's *White Paper on International Migration* of 2017 acknowledged that its 1999 White Paper and its later Immigration Act are largely focused on national-sovereignty driven control and the containment of foreigners (DHA, 2017). Numerous sections in the Act are focused on the identification of undocumented immigrants which were considered as controversial by human rights activists and organisations. For instance, the Act makes it compulsory for everyone in South Africa to report any suspicious illegal foreigners. The Act also holds business accommodation owners liable for registering their guests' nationalities and checking their visa statuses. These irregular clauses were evidence that point to the control approach of the Immigration Act and were in contravention of the 'innocent till proven guilty' judiciary principle (South African Human Rights Commission's submission, 2000). Secondly, both Boynton (2015) and Bernstein (2014) criticised the approach in the Act adopted on the recruitment of foreign skilled workers as it does not facilitate the admission into the country of skilled foreign workers. Instead, the bureaucratic and lengthy and complex administrative procedures made the employment of foreign nationals difficult. Two mechanisms in the immigration policy, the labour impact assessment test and the quota system, are particular aspects which underline the protectionism of South Africa's immigration policy.

In terms of the Immigration Act, an employer is able to hire a foreigner under a general work permit once she/he has completed a 'diligent search' and was consequently 'unable to employ a person in the Republic with qualifications equivalent to those of the applicant' (Immigration Act, 2002: s34). This is known as the labour impact assessment to ensure that citizens' employment opportunities are not undermined by the employment of foreigners.

The Immigration Bill in 2002 created a quota visa. This was the suggestion from the White Paper which stated that in order to determine which types of foreign nationals are needed for the

country, the DHA would need to determine quotas for foreign skills needed for each skills category after the consultation with the Department of Labour and the Department of Trade and Industries (DHA, 1999). Bernstein (2014: 35) argues that this quota system decreases the flexibility of the job market and confines the volatile economy entirely to central planning. Not only is this notion logically problematic as it is impossible to predict the demand for various kinds of employees more than two or three years in advance (CDE, 2010: 14), there is also evidence to support the view that there is a lack of coordination in the calculation of skills and quotas at the inter-departmental level as well as huge discrepancies between official figures of quotas and quotas calculated and estimated by independent agencies (Breier, 2009; CDE, 2010: 15-22; Segatti & Landau, 2011: 75). Thus, the accuracy and credibility of the quotas and skills provided that the National Master Scarce Skills List and Work Permit Quota List needs to be questioned. Although there is an expansion of work permits in the Act catering for foreign workers, the government's emphasis on detecting and deporting foreign nationals as well as its protectionism towards national workers' employment opportunities increased bureaucracy unnecessarily and undermined the efficacy in attracting skilled foreigners. The policy's focus on securing national sovereignty to detect and deport illegal foreigners resulted in numerous incidents of human rights violations against foreigners. Further, its protectionism towards national workers which led to administrative burden for them further deterred skilled foreigners' from coming to South Africa. Hence, it is accurate to say that post-apartheid South Africa's immigration policy fails to use immigration to capitalise skilled foreigners' movements and continues using it as a tool to exclude 'undesired populations' in order to preserve resources such as jobs for nationals.

South Africa versus regional organisations in Africa

The member states agree to adopt, individually, at bilateral or regional levels, the necessary measures, in order to achieve progressively the free movement of persons, and to ensure the enjoyment of the right of residence and the right of establishment by their nationals within the Community. For this purpose, member states agree to conclude a Protocol on the Free Movement of Persons, Right of Residence and Right of Establishment. Abuja Treaty, establishing the African Economic Community, Chapter VI, Article 43.

The quotation above indicates many African states' aspiration to establish a free-movement zone similar to the modality of the European Union (EU) with greater movements of their nationals across borders for work, trade, and education. But South Africa's migration policy towards the movements of nationals of its continental neighbouring countries is also marked by its refusal to participate in regional organisations' call for lesser restrictions and more integration in movements.

Regional integration by gradually lifting border restrictions in the region was the shared consensus among regional organisations. The African Union (AU) and the eight regional organisations that constituted the African Economic Community (AEC) established in the 1991 Abuja Treaty, Arab

Maghreb Union (AMU), the Economic Community of West African States (ECOWAS), the East African Community (EAC), the Intergovernmental Authority on Development (IGAD), the Common Market for Eastern and Southern Africa (COMESA), the Economic Community of Central African States (ECCAS), Southern African Development Community (SADC) and the Community of Sahel-Saharan States (CENSAD), all aspire to see regional integration on immigration by gradually breaking down national barriers in movements of persons, goods, services, and capital and the right of residence and establishment (Oucho & Crush, 2001; Mudungwe, 2014; DHA, 2017: 14). AU's NEPAF Programme encourages member states to address the inevitable challenges brought by immigration on the continent through collaborative work and cooperation (Mudungwe, 2014: 27).

Calling for greater levels of regional integration not only benefits member states economically, it was also proposed as a collaborative strategy to address brain drain impact on the African continent. The New Partnership for Africa's Development (NEPAF) programme and Strategic Plan for 2004 to 2007 both suggest that all African countries need to work collaboratively together by building and retaining the critical human resources and skills within the continent as well as utilising skills gained by Africans in the diaspora in order to turn the brain drain into a brain gain (AU, 2004: 7). In addition, there is whole body of treaties, ratifications, declarations from organisations on the African continent, such as the Treaty of Lagos of 1975, the Abuja Treaty of 1991, the ECOWAS Treaty in 1993, the OAU African Economic Community, the Preferential Trade Area for Eastern and Southern African States of 1991, that demonstrate the aspiration for more integration across borders (Oucho & Crush, 2001). All these treaties, ratifications and organisations have expressed their hope in the gradual removal of borders.

Within the SADC region, although it does not have an explicit immigration framework, it is nevertheless implied in the SADC Charter of Fundamental Social Rights which is aligned with African Union's NEPAD Programme and African Union's Strategic Plan for 2004-2007 for regional integration and the aspiration to gradual removal of borders in trade, goods, services, capital as well as movements of persons and their right of residence and establishment (Klavert, 2011; Mudungwe, 2014: 27). One of the key objectives of the SADC's Charter of Fundamental Social Rights is 'to promote labour policies, practices and measures which facilitate labour mobility'. Similarly to that within the continent, treaties and frameworks in the SADC region also call for aim to eventually result in a framework that is similar to that of the European Union in which citizens of member states will be allowed to work within the region with less visa restrictions.

In the 1990s, as one of the economic hubs and the largest economies on the African continent, South Africa's exceptionalism made it reject any attempt by regional bodies to make movements easier for African nationals in the region (Nyamnjoh, 2006). The South African government displayed a very

reluctant and oppositional approach to resist more freedom of movement within the region in response to those calls for regional and continental integration on immigration (Oucho & Crush, 2001; Nshimbi & Fioramonti, 2014; Van Lennep, 2019). Oucho and Crush (2001) argue that the South African government had successfully thwarted an attempt in 1995 initiated by the SADC region, known as 1995 Draft Protocol on Free Movement of Persons in SADC, to gradually develop the region into a free movement zone which resembles the one that operated in the EU. Together with the help of Botswana and Namibia, this initiative was replaced with an alternative version of the South African Draft Protocol on the Facilitation of Movement in 1997 which completely changed the content of its original 1995 protocol which emphasised free movement amongst their citizens. Contrary to the modality of member states in the EU which surrender member states' domestic immigration matters to supranational institutions, the new alternative proposal put forward by South Africa emphasises the absolute priority of the national sovereignty of SADC member states on the management of migration issue and the member states' flexible and voluntary acceptance of the agreement (Crush & Oucho, 2001: 149; Nshimbi & Fioramonti, 2013: 84). It even offered an exit route for member states who did not feel committed to the regional integration cause. South African government's lack of commitment and enthusiasm is vividly displayed in the process, it also shows that the government's strong grip on its immigration laws is to 'keep criminals out' or to 'expel undesirable elements from the country' (Nshimbi & Fioramonti, 2013: 84). The South African government's attitude towards skilled immigration has been negative, as can be seen from the development of South Africa's immigration policy as well as the country's refusal to agree to regional integration. The negative perception around immigration inevitably influenced policymakers and people's perspective on skilled immigration. Foreigners in South Africa are bearing the consequences of citizens' and policy makers' hostility which is translated into immigration policy restrictions which make their admission to the country more difficult.

Why did the government oppose skilled immigration

There is a substantive body of academic literature that speaks to the challenges that are inhibiting South Africa's progress towards implementing a skills-driven immigration policy (Crush, 2008; 2014; Breier & Erasmus, 2009; CDE, 2000; 2010; Segatti & Landau, 2011; Amit, 2011; Klotz, 2012; Konanami & Odeku, 2013; Bernstein, 2014; Rasool & Botha, 2014; Kahn, 2015). During the late 1990s to the early 2000s, which is the time period under investigation in this thesis, these studies explain how the characteristics of its society (skills shortage, high unemployment and antagonism towards foreigners) constituted the main factors in the deliberation of South Africa's immigration policy. Furthermore, these studies emphasise how the government's and the governing party's weak political willingness and its protectionist stance towards immigration inhibit South Africa's implementation of a robust skills-driven immigration policy that could benefit South Africa's economic development. As a result of this

protectionist approach, the progress of skilled immigration is limited and does not yield to any significant outcome that meaningfully changed the skills crisis in South Africa.

Skills shortage

The South African labour force is characterised by its oversupply of unskilled workers and post-apartheid South Africa shortage of skilled workers at the end of 1990s leading up to the discussion of the immigration policy (Barker, 2007: 205; CDE, 2010; Crush, 2014: 212-3). The low level of apartheid education for majority of the population, the low number of Science, Technology, Engineering and Mathematics (STEM) university enrolment and graduation rates as well as the large number of South African skilled professionals' emigration left a huge skills deficit for the country. (Barker, 2007; CDE, 2005; Barker, 2007: 214-218; Kahn, 2015: 375). A number surveys show that many high-end skills demand vacancies were not being filled because of a skills shortage⁸ (Lewis, 2002: 748; Bhorat & Lundall, 2004: 1048, as quoted by Barker, 2007: 224). Skills shortage was, as a result, a major factor that stakeholders and policy makers had to deliberate on in relation to skilled immigration. Kingdon and Knight (2005) suggest that the 1994 new government's economic policy favoured a neoliberal approach which intended to bring South Africa's industries on par with global powers. However, this economic policy failed its original objective to reduce poverty and unemployment amongst South African citizens because of a poorly educated and under-skilled working age population (Segatti & Landau, 2011: 68; Crush 2014: 212-3). Skills shortage continued to be one of the key structural challenges that stalled the economic growth of South Africa. The government had hoped that the new immigration policy could be a means for South Africa to bring in more skilled foreigners to address skills shortage for economic development (DHA, 1999).

Despite government's initiative to address skills shortage via a more enabling immigration policy, academics such as Crush (2014), Segatti (2011), Kahn (2015) and many others observe that South Africa's immigration policy since its inception in 2002 had been configured in a way that only envisaged immigration as a short-term relief to the skills shortage in the country (CDE], 2010; Klotz, 2012; Bernstein, 2014; Rasool & Botha, 2014; Mateus, Allen-Ile & Iwu, 2014). The overall sentiment in the government was that immigration, regardless of foreigners' skills, was undesirable. The sentiment was also shared by citizens. Southern African Migration Project (SAMP)'s surveys show that citizens' view on foreigners bringing skills to South Africa has been on a decline since 1999. The proportion who felt that migrants bring skills needed by South Africa plummeted from 58 per cent in 1999 to 34 per cent in 2010 (Crush,

⁸ A survey conducted by the World Bank in 1999 discovered that 80% of the 325 large firms within the Greater Johannesburg Metropolitan area had experienced some levels of difficulty ranging from moderate to extreme in finding managerial and professionals staff; 70% of the firms reported to have experienced extreme to moderate levels of difficulty in finding service and craft skills (Lewis, 2002: 748; Bhorat & Lundall, 2004: 1048, as quoted by Barker, 2007: 224). Even for semi-skilled workers, 40% of the firms reported experiencing difficulty in finding "operators" (Barker, 2007: 224). Only in the category of non-skilled labourers did the country not have difficulty in finding suitable workers.

2014: 8). Segatti and Landau (2011: 73) argue that having in place an aggressive immigration recruitment system to reverse to the impact of brain drain has never been the government's position. Instead, it has adopted measures to ensure that no foreigner overstays a moment longer than is needed. In addressing the skills shortage, the government believes that its role is to ensure skills needs are met by increasing the local production of skills, not through acquiring skills from skilled foreigners.

High unemployment

There is consensus among scholars that unemployment rate in South Africa had increased since the end of apartheid (Fallon & de Silva, 1994; [DoL], 1998; May & Govender, 1998; Klasen & Woolards, 1999; Kingdon & Knight, 2007; Barker, 2007; Von Holdt, 2010). The Department of Labour (DoL) (1998: 12) stated in its policy document that South Africa's unemployment rate in 1998 was at 20 per cent if the 'narrow' definition of unemployment were used, and 29 per cent if using the 'broad' definition of international standards. This unemployment rate was high compared to most first-world countries. Black South Africans were particularly vulnerable and had the highest percentage among the unemployment population in South Africa.⁹ Unemployment amongst South African citizens was compounded by rising poverty. As more people became unemployed and more people reaching working age were unable to find employment, the poverty rate grew. Black and Coloured South Africans made up nearly 90 per cent of South Africa's unemployed population (May & Govender, 1998: 2).¹⁰

The deliberation on South Africa's immigration policy inevitably involved weighing the pros and cons of the presence of foreigners' in the South African labour market. At the heart of post-apartheid South Africa's approach to immigration is the belief that every job occupied by a non-South African deprives a South African of a job (DHA, 1997: 14; Crush, 2014: 212).¹¹ Given the extremely high unemployment rate amongst local citizens, government believed that there was no need for any employer to hire a non-South African except in the most specialised and skilled positions. Under the

⁹ Klasen and Woolards's (1998) study shows that Black South Africans had the highest percentages of unemployment rates in 1993, 1994 and 1995. See Appendix III

¹⁰ *The Poverty and Inequality Report*, commissioned by government in October 1995, describes About 18 million people live in the poorest 40% of households and are thus classified as poor, and 10 million people live in the poorest 20% of households and are thus classified as ultra-poor. Most of the poor live in rural areas: 45% of the population is rural, but the rural areas contain 72% of those members of the total population who are poor. The poverty rate (the proportion of people falling below the poverty line) for rural areas is 71%. Poverty is not confined to any one race group, but is concentrated among blacks, particularly Africans: 61% of Africans and 38% of Coloureds are poor, compared with 5% of Indians and 1% of Whites (May and Govender, 1998: 2).

¹¹ *The Green Paper on International Migration* ([DHA], 1997: 14) states that 'current policy assumes that every job occupied by a non-South African means one job less for a South African; in other words, that the labour market is zero-sum. At all levels of the labour market, from the least to the most highly skilled, foreigners are being denied temporary work permits or are meeting with obstructions on the basis of the unproven assumption that in every case their mere presence would disadvantage South Africans'.

circumstances, politicians were not enthusiastic at the prospect of supporting immigration for fear of alienating and agonising their constituencies and voters (Kahn, 2015: 385). Segatti and Landau (2011: 67) assert that South Africa opposed immigration from 1994 to 2002. The political atmosphere was more concerned with reversing the historical discrimination against Black, Coloured and Indian South Africans through its employment equity policy under the rubric of Black Economic Empowerment and its subsequent Broad Band Black Economic Empowerment than promoting skilled immigration (Barker, 2007; Brier & Erasmus, 2009). Hence, there was a strong oppositional influence towards skilled immigration in the deliberation of the immigration policy.

Antagonism towards foreign nationals

If we as South Africans are going to compete for scarce resources with millions of aliens who are pouring into South Africa, we can bid goodbye to our Reconstruction and Development Programme. – Mangosuthu Buthelezi, the then Minister of Home Affairs to the House Assembly 9 August 1994 (Parliament, House Assembly, 1994).

A huge number of scholars assert that there is a pervasive influence of antagonism towards foreign nationals in post-apartheid South Africa (Neocosmos, 2006: 2; Nyamnjoh, 2006; Trimikliniotis, Gordon & Zondo, 2008; Crush, 2004; 2008; 2014; Peberdy, 2009; Standing, 2012; Facchini, Mayda & Mendola, 2013; Kahn, 2015; Alfaro-Velcamp & Shaw, 2016). The Southern African Migration Programme (SAMP) has regularly used survey methods to quantitatively document anti-immigration sentiment in South Africa since 1996 (Crush et al., 2008). Its analysis of successive national attitudinal surveys since 1996 shows that since the end of apartheid, antagonism towards foreign national is on a rise due to underlying economic hostility towards foreigners¹² (Crush, 2014: 7).

A number of studies reveal that a lack of commitment in the condemnation and punishment for xenophobia is a result of the pervasive influence of this antagonism. The antagonism to immigration dominates the political arena which has shaped people's ideological perception on immigration (Amit, 2011; Konanani & Odeku, 2013; Vahed & Desai, 2013). In an SAMP 2005 survey, many South Africans indicated that they did not want foreign nationals to have rights to legal protection, police protection, and access to social services such as education, housing, health care, etc. (Crush, 2008: 28). This sentiment was actively perpetuated and echoed by influential politicians and public servants. Some politicians even deny xenophobia in the society or justify it as citizens' defensive mechanism (BL Masetlha, Home Affairs Director-General, Presentation to the Portfolio Committee on Home Affairs, 15 April 2000; Vahed & Desai, 2013: 152; Crush, 2014). Crush (2014: 25) argues that it is almost customary that South African politicians would spring up and label xenophobic attacks as 'opportunistic

¹² Southern African Migration Project's (SAMP) periodic surveys show that between 1999 and 2010, the proportion of South Africans who agreed that migrants use up resources increased from 59% to 63%. Those agreeing that foreigners deprive South Africans of jobs remain at around 60%. (Crush, 2014: 7).

crimes' committed by 'criminal elements' Under the political reality and climate, government did not actively participate in stemming the tide against antagonism. This resulted in citizens – and even government officials – who either directly or indirectly were involved in xenophobic attacks – getting away with impunity because they feel that they are not strictly bound by the law, have few disincentives for violation and are largely unaccountable for their legal violations (Amit, 2011; Konanani & Odeku, 2013; Vahed & Desai, 2013: 160).

The magnitude of South African citizens' and politicians' antagonism towards foreigners described above is deeply rooted (Segatti & Landau, 2011). In Crush's (2014: 26-7) SAMP report, he lists quite a few number of prominent politicians who have made anti-immigrant remarks in the past. Those names included a senior official at the DHA, the then National Police Commissioner Bheki Cele, former Deputy DTI (Department of Trade and Industry) Minister Elizabeth Thabethe, ANC Secretary-General Gwede Mantashe, as well as Minister Rob Davies. In the deliberation of the immigration policy, this antagonism as well as its wide support invariably affected the course of South Africa's immigration policy.

Shaping of the immigration policy

Under the circumstances discussed above, the lack of political support to drive immigration reform and the ANC's protectionism are frequently being discussed among migration scholars (Polzer, 2005; 2008; Neocosmos, 2006; Amit, 2011; Ellis & Segatti, 2011; Klotz, 2012; Konanani & Odeku, 2013; Vahed & Desai, 2013; Crush, 2014; Bernstein, 2014; Reudin, 2019). South Africa's immigration policy not only features the government's and people's strong antagonistic attitude towards foreigners, it has also failed to address the skills shortage crisis and the challenges of high unemployment plaguing the country and its citizens. Furthermore, the predominant antagonism towards foreigners led to the absence of vision in the South African political arena on immigration and resulted in the governing party's protectionist view on immigration. Thus, the lack of political support and the ANC's protectionism are inhibiting South Africa from having a skills-driven immigration policy to recruit skilled foreigners.

Scholars such as Neocosmos (2006), Amit (2011), Klotz (2012) and Konanani and Odeku (2013) describe South African immigration politics as 'strong rights and weak allies; they argue that South Africa's stance on immigration is a paradox. On the one hand, human rights advocates and organisations' victories helped produce a progressive regime on paper and on the other side these protections and policies stand in stark contrast to police, policy makers, and the population as a whole. Despite the progressive rights guaranteed in the Constitution, the absence of consequence management and appropriate law enforcement to stem the tide against the anti-immigration sentiment give people a sense of impunity (Amit, 2011; Vahed & Desai, 2013: 160). This impunity results in the

rising xenophobic attacks in post-apartheid South Africa (Crush & Ramachandran, 2014: 13). Also, it resulted in politicians' lack of duly attention given to the important issue of skilled immigration. Reudin (2019: 211) discovers that prior to 2004 none of the political parties had made any reference in their party manifestos to immigration. Although the Democratic Alliance had made reference to immigration in one sentence, comprehensive and robust immigration policy in electoral party manifestos were absent among all political parties. As a result of the immigration vacuum in politics, officials and citizens alike felt that they were not bound by the law and could act against foreign nationals because they could get away with it. Despite the strong rights guaranteed in the Constitution, Segatti and Landau (2011: 55) describe that foreign nationals in their dealings with Home Affairs are still particularly vulnerable to the DHA officials' coercive and abusive practices. Because of the lack of political willingness and a drive to treat foreigners with dignity and respect as well as to recognise foreign nationals' value to the host society, it is unlikely that any meaningful immigration reform that facilitate the movements of skilled professionals will take place..

Although strong rights are guaranteed in the Constitution, South Africa's immigration affairs are characterised by the almost unchecked power of the state and very little power wielded by foreigners and those organisations that protect foreigners' legal rights (Neocosmos, 2006; Van Lennep, 2019). On the issue of immigration, the government has had a significant decisive role in the shaping of the immigration policy whereas the power and influence of the non-governmental sector is more insignificant in comparison. Vahed and Desai (2013) as well as Konanani and Odeku (2013) argue that the weak political allies for foreign nationals in South Africa have resulted in a predicament, in that the organisations that have defended them are not sufficiently powerful to enforce the strong rights stipulated in the Constitution. Although courts have often sided with immigrants on matters of disputes, the antagonism and attacks carried out against foreign nationals have not reduced significantly (Amit, 2011). In order to push forward a more rights-based skilled immigration policy, Klotz (2012) suggests that supporters for immigration needed stronger political allies.

Further, the ANC's protectionism and lack of vision about the long-term benefits of skilled immigration impeded the government's progress in implementing a skills-driven immigration system (Segatti & Landau, 2011). Protectionism denotes the view that jobs should be preserved for South Africans only given their scarcity. As South Africa has an extremely high unemployment rate and a large number of poorly educated and unskilled working-age adults, employing local nationals should be the priority and foreigners should only be hired under strict conditions such as in the most specialised and skilled fields where there is absolutely no chance of finding South African candidates. Nshimbi and Fioramonti (2013: 84) point that this notion is demonstrated in the immigration policy that non-citizens

are only allowed to work in South Africa in areas where there is an insufficient number of nationals working.

The ANC's protectionist view on skilled foreigners and skilled immigration is also consistent with the views of its constituencies which reflected the more predominant and internalised ideology among South Africans (Segatti & Landau, 2011). Despite the urgent necessity for South Africa to get more skilled professionals into the labour market, there was the constant fear that the presence of foreigners' in South Africa would destabilise the country, increase criminal activity and deprive more South Africans of jobs. As Crush and Williams (2005) argue, there is a surge of irregular foreigners entering South Africa through clandestine means since the end of apartheid, many of whom are unskilled, this, compounded by South Africans' negative perception of foreigners, has further triggered the fear of the government and its major constituents that citizens' jobs and livelihoods were under threat. Because, as said above, immigration is seen as a zero-sum game by the government and that every job occupied by a non-South African means one fewer job for a South African. The goal of the government is to ensure that South Africa's future skills needs are met by increasing the local production of skills, not acquiring them from abroad (Crush, 2014: 212). Segatti (2011: 45-6) rightly argues that this form of security and sovereignty-centred agenda favoured by the majority in the ANC and by departments' bureaucratic strata made it almost impossible to shift the immigration paradigm beyond conversations about the loss of low-skilled jobs caused by foreigners in South Africa (Fauvelle-Aymar, 2015; Niyimbanira & Madzivhandila, 2016; Alfaro-Velcamp & Shaw, 2016). The outcome of the lack of support in the political arena to push forward skilled immigration policy and the government's protectionism on the matter led to the government's Immigration Act 13 of 2002. Bernstein (2014: 35) describes that the preceding bill did not escape the predominantly exclusionary notion towards foreign nationals and is bureaucratic and rigid, making the employment of foreign nationals very difficult. As a result, it fails to attract skilled foreigners and the actual number of work and business permits issued do not compensate for the skills deficit lost in the country (Nshimbi & Fioramonti, 2013: 64). In some scenarios, foreigners could not maximise their skills to work in South Africa because of the legal challenges imposed by the DHA's immigration policy. There is substantial evidence to indicate that a great number of qualified African nationals are working as waiters, newspaper sellers and parking attendants in South Africa (Crush, 2001: 33; Ellis & Segatti, 2011). Hence, it is important to build coalition in the political arena and to dismantle protectionism as a political ideology in the governing party in order to reform the immigration policy if the goal is to harness skilled foreigners' skills and to make them contribute to South Africa's economic development.

Skilled immigration and doctors' shortage in South Africa

The ANC's protectionist stance towards skilled foreigners and the weak political alliance to push forward a robust skills-driven immigration policy had a pervasive influence on the government. The National Department of Health (DoH) exemplifies the government's protectionism and the weak political influence of skilled immigration. In the healthcare sector in South Africa, the DoH's attitude towards the recruitment and employment of medical doctors against a massive doctors' shortage in the country reflects the government's stance towards skilled immigration in spite of the DoH's claim of its support for ethical recruitment. Studies suggest that government's priority to preserve jobs for South Africans was the cause behind the DoH's not adopting a proactive measure to recruit and employ foreign doctors, despite of its ethical recruitment claim (Breier, 2008; [CDE], 2010; Bateman, 2013; Crush, 2014; Segatti, 2014).

Policy on the recruitment and employment of foreign doctors

The DoH has a policy regulating the recruitment and employment of foreign doctors. Its policy is presented in its *Recruitment and Employment of Foreign Health Professionals in the Republic of South Africa*, first implemented in 2006 and revised in 2010. Although the policy had changed the ad hoc recruitment mechanism which the DoH had used prior to 2006 in respect of recruitment, the formalised procedure was nevertheless more restrictive on the recruitment and employment of foreign doctors and had a negative impact on many foreign doctors who wanted to work in South Africa (Segatti, 2014: 38). The policy makes the recruitment and employment process lengthy and bureaucratic and further prohibits the recruitment of foreign health professionals from up to 110 countries, all of which are developing countries (Segatti, 2014: 46). With such a policy in place, less and less foreign doctors are eligible to work and become less enthusiastic at the prospect of working in South Africa.

Scholars point out that loss of South African health professionals by emigration, limited training capacity of South Africa's medical schools, staff moratorium and the restrictions on the employment of foreign health professionals, in particular the prohibition of foreign health professionals from developing countries, are all contributory causes towards the shortage of doctors in the country (DoH, 2006; DoH 2010; CDE, 2010; Pepper & Slabbert, 2011; Eagar, 2013; Rondganger, 2013; Crush et al., 2014; Segatti, 2014; ECONEX, 2015; Rural Health Advocacy Project, 2017; Pillay, 2018; Crush & Chikanda, 2018; Hoosen, 2018; Matlala, 2019). In response to and targeting at these causes, the DoH proposed and developed two intervention strategies 1) to retain South African health professionals and 2) to increase South Africa's training capacity in order to increase the number of doctors in the health sector (Crush et al., 2015; ECONEX, 2015 Van Dyk, 2017; Zuzile, 2019). The effectiveness of these interventions is argued to be insufficient to make a meaningful difference caused by the doctors'

shortage in the short-term (Bateman, 2013; Bloom, 2015; Crush et al., 2015; ECONEX, 2015; Kahn, 2018; Wessels, 2018). What is absent in the government's intervention strategies is the lack of a mention of the recruitment of foreign doctors. Although recruiting foreign doctors is a viable option, the DoH continued the governing party's protectionist approach and restricted the recruitment of foreign health professionals including foreign doctors from 2006. The DoH announced in 2006 that it would contain the number of foreign health professionals in the workforce to under 5 per cent. Although the recruitment of foreign doctors could be a viable strategy to alleviate doctors' shortage in the sector, the DoH overlooks it.

Currently, there are two types of recruitment processes allowing foreign doctors to work in South Africa. The first option is the government-to-government agreements and the DoH uses this option to recruit foreign doctors from countries such as Cuba and Tunisia in order to serve the rural population in South Africa. The other option is for individual foreign doctors to apply to work in South Africa in his/her own capacity (Segatti, 2014: 38). It is the latter type of recruitment that is burdened with cumbersome and bureaucratic procedures for foreign doctors of which the main aim is to control and reduce the number of foreigners employed in the health sector. As shown in the policy, it gives the right to work in the health sector to only a small fraction of qualified doctors from developed countries. With the exception of foreign doctors who are already permanent resident permit holders by the time they apply for registration at the Health Professions Council of South Africa (HPCSA), the majority of foreign doctors from South Africa's neighbouring countries are ineligible to work in South Africa ([DoH], 2006: s4.7; 2010, 4; Segatti, 2014: 46). Since many foreign health professionals who are willing to come to South Africa are from these developing countries such as India, Sri Lanka, Bangladesh, Nigeria, Uganda and Zimbabwe, by disqualifying them on the merit of their nationalities, significantly reduces the pool of foreign doctors who can work in South Africa and further exacerbates the shortage crisis in the health system (Kassiem, 2006). The restrictions on the employment of foreign doctors from those countries whose doctors are most likely to work in South Africa display the DoH's intention to discourage the recruitment of foreign doctors and reveal its own discouraging stance towards skilled immigration.

Furthermore, in terms of work conditions, the policy imposes numerous restrictions on foreign doctors such as on the conditions of service, the place of work, as well as the number of total foreign doctors allowed in the health system as measures to make the work environment more difficult for foreign doctors to disincentivise them from working in South Africa. These restrictions open up gaps which could cause foreign doctors to unfair division of labour, precarity and exploitation (Segatti, 2014: 66). The national DoH's policy states that foreign health professionals can only be employed on fixed-term contracts and the duration of the employment period cannot exceed a maximum period of three

years that cannot be extended (DoH, 2006, 14.1; DoH 2010: 14.1). The DoH further restricts foreign health professionals' right to workplaces. Under this clause, they do not have the right to work at any healthcare facilities other than the one that is stipulated in the original endorsement letter (DoH, 2006, 14.1; DoH, 2010: 14.1). The discretionary powers retained by health employers to change quotas and conditions of foreign health professionals' service subject them to exploitation and uncertainty. Furthermore, the DoH's *The Strategic Framework for Human Resource* released in 2006 aims to limit the number of foreign health workforce to under 5 per cent of the total health workforce in South Africa (Monare, 2006). The imposition of these various restrictions on foreign doctors is an indication of the government's protectionism and that foreign doctors are not welcomed in South Africa which thus explains the double standards in their employment conditions.

The DoH's restrictive recruitment policy on foreign health professionals makes the registration of these professionals more difficult. The difficulty for foreign doctors to legally practise medicine leads to a decline in the number of foreign medical doctors coming to South Africa (Segatti, 2014). Data between the years of 2014 to 2017 shows a decline in the number of critical skills visas issued to foreign health professionals. In 2014, 2,000 critical skilled visas had been issued to foreign health professionals, while the figure declined to less than 700 in 2017 (Hoosen, 2018). Because of DoH's restrictive policy, fewer foreign health professionals are willing to work in South Africa which further results in doctors' shortage.

Foreign doctors' situation in South Africa

The decreasing number of visas issued to foreign doctors is the result of the tighter control of the DoH on the recruitment and employment of foreign doctors. It also is an indication that illustrates how the anti-skilled immigration narrative within the government had been played out and how that has affected the recruitment of foreign doctors. As a result of the DoH's strict control of the recruitment of foreign doctors, there is very limited space for foreign doctors to legally work in South Africa. As a result, those foreign doctors who are rejected by the DoH to grant them legal a work right in South Africa are settling and working in developed countries. This is a loss of medical resources to Africa. However, for those others who do not have the opportunities to work in those developed countries, the highly-restrictive DoH's policy only made them work in South Africa through clandestine means, Segatti's (2014) study reveals that some foreign doctors have either quit trying South Africa as a destination country in which to work and have entered the health markets in developed nations, or they are working in South Africa illegally due to the restrictions and limited legal means for them to work.

Due to ethical recruitment,¹³ South Africa is obliged not to proactively recruit medical professionals from developing countries to avoid draining those countries' health human resources, more commonly known as the 'brain drain effect'. As a result of the protocol, foreign doctors from 110 countries are ineligible to work in South Africa (Segatti, 2014: 46). The DoH also explicitly states in its policy that it will not endorse any foreign doctors from developing countries to work in South Africa. As a result of these restrictions, foreign doctors have very limited legal grounds of entry to work legally in South Africa. Hence, some studies have shown that foreign health professionals who are turned away by the South African health system would seek employment beyond the African continent and set their eyes in OECD countries (Crush, 2002: 148; Clemens & Pettersson, 2008; Segatti, 2014). When they are offered jobs in those countries, it is nevertheless a loss to not only the country from which they come, but also to the African continent.

Approximately 65,000 African-born physicians and 70,000 African-born professional nurses were working overseas in a developed country in the year 2000. This represents about one fifth of African-born physicians in the world, and about one tenth of African-born professional nurses. The fraction of health professionals abroad varies enormously across African countries, from 1% to over 70% according to the occupation and country (Clemens & Pettersson, 2008).

So it [administrative challenges with the HPCSA and the DHA] chases you away and I might be leaving actually. I reached a certain stage when I thought like: Is this going to be my life onwards? I have been patient for like almost 10 years. Now how long more can you be patient before... I got the experience, I got the qualifications, why can't I just go and work in the UK? Now on Friday I am traveling to finalize my registration. So this chases you away, so really that's the thing that frustrates one, which is one of the reasons I am leaving (Segatti, 2014: 79).

In preventing foreign doctors from developing nations from working in South Africa, has not, in fact, solved the problem of the brain drain in those developing countries. International and regional organisations, when commenting on the brain drain effect, often advise countries to build regional capacity such as in the recommendations of the WHO's 2010 Code of Practice as well as of the SADC and AU in order to alleviate the effect of doctors' shortage (Klavert, 2011; Mudungwe, 2014: 27; Segatti, 2014: 39). The selective approach which the DoH took, adopting the non-recruitment part of those international and regional organisations' advice but neglecting the collaborative work part of it, is the tip of the iceberg that points to the driving force behind the DoH's restriction on the employment of foreign medical personnel. It shows that it was only its determination to preserve jobs for South Africans rather than ethical recruitment that made the DoH adopt such a position.

As Segatti's (2014) study reveals, the DoH's determined stance to preserve jobs for South Africans has made the working conditions of foreign doctors from developing countries who are working in South Africa very precarious. Many foreign doctors are clandestinely functioning as locum tenens or

¹³ A form of cooperation in which a country agrees not to actively recruit health professionals from countries that have shortages. The policies of World Health Organization's 2010 Code of Practice, Southern African Development Community (SADC), Treaty 1992, Protocol on the Facilitation of Movement of Persons signed in 2005 and African Union's (AU) recommendations all discourage countries to engage actively in the recruitment of health professionals from other developing countries to prevent the brain drain effect (World Health Organisation [WHO], 2010; Tjadens, Weilandt & Eckert, 2013).

using asylum permits to work in the health system with the secret approval of the DoH.¹⁴ Whilst locum tenens is allowed, many foreign doctors who are engaged in this form of work are not registered with HPCSA and thus this makes their work illegal. An asylum permit is another loophole that some foreign doctors are using to circumvent the DoH's ban on their countries of origin. They firstly apply for asylum in order to get their applications endorsed by the Department of Health. Then they proceed to apply for formal refugee status. Once the refugee status is recognised, they may apply to work in the health sector as provisions are made for refugees in terms of the Immigration Act and Refugee Act.

It is clear that, the scenarios under which foreign doctors are working in South Africa are highly exploitative. Foreign doctors are likely to be underpaid, overworked and exploited (Segatti, 2014: 12&39&57). Segatti (2014: 82) describes that the differential treatments meted out to foreign and South African doctors show 'a sense of a system based on double standards: South African doctors for the better off and the urban, African foreign doctors and Cubans for the rural poor'. The differential treatments of local versus foreign doctors imply that for the DoH, the presence of foreign health professionals is tolerated and the DoH could also overlook their activities that are in contravention of the law as long as their presence does not pose a threat to local health professionals. In doing so, the DoH allows for the exploitation of foreign health professionals to continue.

The DoH's deliberate obliviousness to those illegal activities practised by foreign health professionals who are working in South Africa indicates that the DoH's official explanation for its recruitment ban is a ruse to hide its real intention. The DoH's attitude in practice to foreign African doctors who work in South Africa seems to be one of acceptance as long as these foreign doctors do not pose as any risk to South African doctors and whether or not they are working in the health sector seems to be irrelevant. Since South African doctor would not be interested in working in those highly exploitative work environments, those foreign doctors' activities are not likely to deprive of South African doctors of work opportunities. So the real intention of the DoH's attitude towards foreign doctors, as some argue, is its concern that foreign health professionals could compete with South African health professionals for jobs and the purpose of its policy is to preserve jobs for South African health professionals (Brier, 2009; Bateman, 2013; Crush 2014; Segatti, 2014; ECONEX, 2015 Segatti's study (2014: 41) reveals that a senior official in the national Department of Health was hostile to the idea of employing foreign doctors.

[t]he department has worked hard to improve salaries in the public health sector and must allow time for South Africans to fill these posts. No self-respecting country in the world prioritises foreigners over its own.

¹⁴ Locum tenens is a standard practise regulated by the Health Professions Act. It is the process of hiring the temporary services of a medical practitioner as a replacement: a registered medical practitioner hires a replacement for a period of time not exceeding six months while he or she is prevented from working (maternity leave, increase in workload between different practices, etc.) (Segatti, 2014: 68).

Antagonism towards foreigners is prevalent at health facilities in South Africa and in the DoH. The department's intransigence regarding the recruitment of foreign medical doctors has resulted in their placing greater priority on preserving jobs for South Africans than addressing the concern of a doctors' shortage crisis. Segatti (2014: 40) reveals that the antagonistic attitude at health facilities was so influential that it overrode hospital managers' concern to find sufficient health personnel to deliver quality healthcare service to patients. Almost all of Segatti's research respondents claimed to have experienced hostility from government officials because of their non-citizen status. The restrictions on foreign doctors' employment and recruitment, the highly-exploitative working conditions of foreign doctors as well as the loss to the continent of more African doctors point to the fact that the DoH's reluctance to employ foreign doctors is because of its anti-immigrationism the resultant restriction on foreign doctors needs to be understood within the context South Africa's immigration environment.

The DoH's stance: Institutional xenophobia and anti-skilled immigration

Although South Africa is bound by ethical recruitment protocol to not proactively recruit foreign doctors from developing countries, the government's prohibitionist stance to not recruit them contradicts the very same protocol's emphasis on building regional capacity in order to solve doctors' shortage in Africa (Crush, 2002; Bateman, 2013; Brier, 2009; Crush et. al, 2014; Segatti, 2014; ECONEX, 2015). Segatti (2014: 10) points out that the selective approach the DoH adopts to exclude foreign doctors from developing countries is not aligned with international and regional policies and negates the very collaborative element in these treaties. The collaborative approach in those treaties emphasises the importance of countries to use an international or regional approach to build regional capacity in order to solve the doctor shortage crisis. As studies by Clemens & Pettersson (2008) and Segatti (2014) both show, foreign doctors who are rejected by the South African government are welcomed by developed countries and are quickly absorbed into their health systems. The overall outcome of rejecting African foreign doctors is the loss of more doctors to the African continent.

Institutional xenophobia, as Schnek (2010: 109-10) explains, refers to the nationalist rhetoric which the state employs to describe and demonise foreign nationals with the supposed purpose of protecting national security. The presence of foreigners is deemed as a threat and this perception has been institutionalised in South Africa (Lettinga & Van Troost, 2016: 102). Vanyoro and Ncube (2018: 78) argue that institutional xenophobia in South Africa manifests itself most clearly through 'the exclusion and discrimination of foreigners in various institutions like banks, hospitals, the Department of Home Affairs, police, and social service providers'. This exclusion had a rippling effect, as argued by Vanyord and Ncube (2018), that xenophobia became institutionalised in practises of policy makers since 1994 because of the perceived threat that foreigners pose to South Africans. Government officials, although bound by obligations and the Constitution, are not allowed to directly endorse xenophobic activities or express

xenophobic sentiments, they are nevertheless human beings living in the xenophobic environment (Neocosmos, 2008: 589). As a result of that, Vigneswaran (2011: 150-1) argued that officials may tacitly endorse acts of xenophobic exclusion or renege on their duties to protect South African citizens, both of which had shaped institutional xenophobia at the governmental level. The DoH, as a governmental department, invariably saw the recruitment of foreign doctors as a threat rather than necessary assistance that would deprive South African doctors their own employment opportunities.

Hence, because of the institutional xenophobia, the DoH undoubtedly repressed the option of recruiting and employing foreign doctors despite the shortage of doctors' in South Africa. Despite government and officials having never condoned violence against foreign nationals and indeed having regularly condemned xenophobic attacks, the political slogans without any advocacy in ensuring foreign nationals' rights created the anti-skilled immigration environment which inevitably led to the exclusion of foreign doctors in South Africa's labour market. In fact, many of the interventions followed by the various xenophobic attacks in post-apartheid South Africa were of humanitarian nature, very few ventured into the realm of advocacy or political contestation attempting to address the underlying causal issues for the exclusion of foreigners, particularly the exclusion of skilled foreigners (Peberdy & Jara, 2011; Pugh, 2014: 228). These interventions did not provide a long-term sustainable solution for foreign nationals in the country. As a result, foreign doctors, in the absence of the government's support, faced severe exclusion in their employment. Since 2006, there had been a series of the DoH's directives and policies aiming to contain and discourage the number of foreign doctors working in South Africa (Kassiem, 2006). These policies include limiting the total number of the foreign workforce to under 5 per cent and subject foreign health workers including doctors to a maximum of three-year, non-renewable work contracts. All the restrictions imposed on foreign doctors invariably mirror the DoH's objection towards the recruitment and employment of foreign doctors. The DoH drafted its policy on the recruitment and employment of foreign health professionals in 2006. This happened against the background of the enactment of the Immigration Act four years earlier. It led to the research question: how did the whole deliberation on the Immigration Bill affect the DoH's decision not to recruit foreign doctors?

Chapter Summary

This chapter examined the discussion in academic literature around South Africa's development of a skilled immigration policy and its connection to the DoH's discouraging stance towards the recruitment of foreign doctors. The development of South Africa's immigration policy and its position on greater freedom of movements on the African continent illuminate the South African government's anti-immigration sentiment.

Any progress to develop a skills-driven immigration policy has stalled because of policy makers' concern for immigration's impact on high unemployment domestically and people's antagonism towards foreigners. At the same time, the lack of skills in South Africa has made the need for skilled foreigners more pressing than ever. It has been argued in the chapter that any attempt to advance a skills-driven immigration policy is impeded by the lack of political alliance and the ANC's protectionist resolve to preserve jobs for citizens.

Finally, this chapter explained that the DoH's *Policy: Recruitment and Employment of Foreign Health Professionals in the Republic of South Africa* was a clear indication of its objection to skilled immigration. The DoH shared with the government its protectionism. It leads into to the research question which will be explored in the following chapters, namely: How did the deliberation on the immigration policy affect the DoH's decision to discourage the recruitment of foreign doctors?

Chapter 5 Finding I: Stakeholders and their attitudes towards skilled immigration

Overview

This chapter aims to answer the second sub-research question: Who were the main stakeholders involved in the policy discussion and what were their positions on skilled immigration? This chapter maps out the political landscape of the people and organisations that were involved in the deliberations on the immigration policy during the period of 2000 to 2006. It also summarises and categorises the views of stakeholders on skilled immigration.

The first section of the chapter provides an overview of the stakeholders who had made submissions and who had appeared in parliament to influence government's immigration policy. The second section provides an account of these stakeholders' positions on skilled immigration and whether they supported or opposed it. It offers a brief overview of the stakeholders before it moves to a more in-depth analysis in the following two chapters which explain how these stakeholders, having different positions on skilled immigration, responded to the skills crisis, high unemployment and opposition within the immigration context.

Who were the main stakeholders?

The 2002 Immigration Act was the product of the government's urgency to replace the Aliens Control Act, one of the last pieces of apartheid legislation remaining in the statute book. Its legislative process followed a period of long and wide consultation process. The Aliens Control Act's strong symbolic association with apartheid regime was the motivation for the new government 'to replace it with a new immigration law. In line with democratic South Africa's Constitution, the drafting process of the bill which preceded the passage of the Act involved a wide range of stakeholders from every sector of South African society (Trimikliniotis, Gordon & Zondo, 2008; Segatti & Landau, 2011; Klotz, 2012; Gordon, 2015). The outcome of the bill was indicative of a careful calibration of the interests of those stakeholders and the government. Data collected from the Sabinet Legal Database and the Parliamentary Monitoring Group (PMG) shows that the following stakeholders were involved in the deliberation and drafting process of the immigration policy.

The first and foremost are those who were directly involved in policy making, such as government officials and ministers in the executive and members of parliament in the legislature. Collectively, the people who worked in those two branches of government are referred to as "politicians" in this dissertation as they have the power and authority to directly influence and pass legislation on immigration. The predominant pattern among the politicians in my dataset were their

objections to skilled immigration. These came largely from the African National Congress (ANC) and Inkatha Freedom Party (IFP). This seems to agree with the argument of Segatti and Landau (2011: 3) that the governing party has a very anti-immigrationist stance, with the exception of a few prominent ANC politicians who had fairly liberal views on immigration and supported immigration reform.¹⁵¹⁶ The concerns of the majority of those politicians that objected to skilled immigration were that

- South African workers' training opportunities would be compromised should employers find that tapping into the foreign labour market for skilled foreigners was an easy option;
- This trend of employing skilled foreigners would not benefit the high unemployment rate of South African workers and would further widen the skills shortage gap

So among politicians, the tightening of the regulations and restricting immigrations, including the granting of employment opportunities to skilled foreigners had enjoyed wide support among the majority of them.

In addition to those within the government, stakeholders from the non-governmental sector also played an important part in the shaping of the immigration policy. These stakeholders included organised labour, the private sector, the higher education and research sector, human rights organisations and many ordinary citizens. Their views on immigration generally, and on skilled immigration in particular also varied. Their different views also subsequently shaped the different courses of action they took to either support or to oppose skilled immigration (Archer, 1995). Nevertheless, stakeholders can be categorised into those that supported immigration and those that opposed immigration.

Those who supported skilled immigration were drawn from the private sector, higher education and research sector, human rights organisations as well as some politicians.

- Academic institutions and research organisations that participated were the Centre for Development and Enterprise (CDE), individual academics from the Universities of Venda and the Witwatersrand, the Southern African Migration Project (SAMP), the International Education Association of South Africa (IEASA), the South African Universities Vice Chancellor's Association (SAUVCA) and the Committee of Technikon Principals (CTP).
- Private sector participants in the process were Business South Africa (BSA), PowerhousewaterCoopers (PwC), the American Chamber of Commerce, the World Bank and

¹⁵ Robert Davies criticized the DHA's immigration policy in 1995. He highlighted the prominent role that immigration played in the history of South Africa.

¹⁶ Penuell Maduna, the then ANC Deputy Minister for Home Affairs, expressed these views in 1995:

- legal immigration is a source of income for South Africa;
- undocumented migrants' constitutional rights need to be respected (Segatti, 2011: 51-2)

Business Unity South Africa (BUSA). Members of this group are made up of business leaders, senior managers and employers.

- Human rights organisations represented another group of agents. In this dissertation, the term used to describe rights advocacy groups that defend human rights, refugee organisations and non-governmental organisations (NGOs). This group consisted of the South African Human Rights Commission (SAHRC), Lawyers for Human Rights (LHR) and the National Consortium of Refugees, the Association of Immigration Practitioners of South Africa (AIPSA), the Law Society of the Northern Provinces (LSNP law firm Sonnenberg Hoffmann and Galombik and some refugee representatives from Congo and Zimbabwe.

The individuals and organisations mentioned above supported the inclusion of skilled immigration in the immigration policy. Academic institutions, research organisations and private sector supported skilled immigration because of their belief that immigration could help address the skills crisis shortage.

The World Bank's submission, for example, illuminated the important link between the bringing of skills to South Africa via migration and economic development.

In many respects the new system of migration control which the South African Parliament is expected to pass on May 8, 2002 will represent an advanced status of that "progressively higher level of liberalization" referred to in Article XIX of the GATS. In fact, South Africa realized that in order to capture its full potential for economic growth it must increase its available level of skills and reach a critical mass of skilled and productive people and consumers (World Bank's submission to Parliament on Immigration Bill, dated 15 April 2002, Source: Sabinet Legal Database).

The Centre for Development and Enterprise (CDE) also argued in its 2000 submission that skills obtained through immigration would be invaluable to South Africa.

- The entry of skills will increase the capacity of the South African economy to expand and provide more job opportunities for all residents;
- The entry of skills is necessary to expand the capacity of the country to train and educate all its citizens to world class standards... (CDE's submission to Parliament on the *White Paper on International Migration*, dated February 2000, Source: Sabinet Legal Database)

Human rights organisations supported immigration on the grounds that South Africa has a humanitarian duty to not only uphold human rights but also to assist refugees from its neighbouring countries. The South African Human Rights Commission, as seen in the quotation below, suggested that South Africa should adopt a human rights approach to managing migration.

A more effective approach would be to adopt a humane management-orientated approach to migration policy which recognises both our moral and historical ties to the region. This could be

achieved by ensuring that our development policies take into account our regional obligations... A further solution would be the implementation of bilateral agreements between South Africa (SAHRC's submission to Parliament on White Paper on International Migration, dated 11 January 2000, Source: Sabinet Legal Database).

Human rights organisation Black Sash also endorsed the view that migration should be managed in accordance with human rights. Most rights that are guaranteed in South African Constitution should be applicable to foreigners and refugees.

It is essential for legislators to keep in mind that most of the rights enshrined in the Bill of Rights in our Constitution are extended to people who will be considered as foreign under the Immigration Bill, given that most of the rights are bestowed on everyone (Black Sash's submission to Parliament on Immigration Bill 2002. Dated April 2002, Source: Sabinet Legal Database).

Opponent stakeholders supported stricter immigration control and emphasised the need to prioritise employment opportunities and opportunities for South African workers. For example, two members of parliament, as shown below, expressed the view that South Africa should focus on training but not immigration to get skills

Ms Maggie Maunye (ANC) asked why the CDE not recommends to businesses that they train South Africans, rather than inviting skilled people from outside of the country.

Mr Chikane (ANC) remarked that the country should focus on training, rather than immigration. Mr Chikane (ANC) reminded Committee Members of their responsibility to the electorate and to the process of building now to develop assets for the future (Portfolio Committee Hearing on White Paper on International Migration, dated 16 May 2000, Source: PMG).

Among the stakeholders that objected to skilled immigration were organised labour or trade union organisations, African National Congress members of parliament, public servants and South African citizens from previously disadvantaged backgrounds. Within trade union organisations, the Congress of South African Trade Unions (COSATU), the National Council of Trade Unions (NACTU), the Federation of Unions of South Africa (FEDUSA), and the National Trade Union of Mineworkers (NUM) had made submissions to the government regarding the immigration policy.

Parliamentary records did not show any form of engagement between medical professionals' associations in the dataset such as the Health Professional Council of South Africa (HPCSA), Democratic Nursing Organisation of South Africa (DENOSA) and South African Medical Association (SAMA) and the Department of Home Affairs. As members of these associations are the people who are directly affected by a skills shortage in the health sector, they are more likely to be affected by overwork which could result in catastrophic consequences such as medical malpractices (Pepper & Slabbert, 2011; Segatti, 2014). Submissions from those medical organisations such as HPCSA would have offered a more nuanced and objective understanding of the pros and cons of recruiting foreign doctors and would have provided a deeper understanding as to whether South Africa needed foreign

doctors. However, there is no data from these medical associations in the Sabinet Legal Database. Nor could any data related to these organisations be found on PMG's meeting database.

What were those stakeholders' attitudes towards skilled immigration?

This section outlines stakeholders' positions on skilled immigration from the dataset. Stakeholders that appeared in the dataset are from academic and research institutions, business groups from the private sector, human rights organisations, organised labour and trade unions, private South African individuals and politicians. Although stakeholders are not homogenised groups uniformly sharing the same attitude or position on skilled immigration, putting them into a collective group for analysis in this dissertation follows Archer's (1995: 185 & 260) concept on corporate agents. Archer (1995: 185 & 260) defines primary agents as passive and aggregated groups or individuals who are inarticulate in their demands and unorganised in their pursuit of a goal. On the contrary and depending jointly on conditional influences and how these mesh with social factors influencing the cohesion within collectivities, primary agents can transform into corporate agents. Archer defines corporate agents as agents who have the emergent powers to promote organisation and articulate interests. For example, private sector groups and individuals share the same interests in promoting their business interests, placing them in the same group makes the analysis easier. These stakeholders' positions towards skilled immigration shaped their proposed immigration strategies to either devise an immigration policy to facilitate foreigners' movements or to make immigration more restrictive by adding more bureaucratic measures.

In terms of their positions on skilled immigration, stakeholders could be categorised as those that supported and those that opposed immigration. Ruedin's (2019: 210) sentence-to-sentence codebook provided detailed definitions on what constituted *support* or *objection* of skilled immigration. Ruedin (2019: 210) asserts that when reading a sentence, if the topic is about immigration restriction and characterised by a pro-nationalist and monocultural discourse it should be coded as anti-immigration, whereas if the sentence is about immigration integration characterised by progressive, cosmopolitan and multicultural discourse, then it should be coded as pro-immigration. In the dataset, those that objected to skilled immigration tended to favour the addition of more regulations in the immigration policy in order to protect what was thought to be in the best interest of South African workers. Conversely, stakeholders that supported skilled immigration tended to endorse fewer regulations for skilled foreigners in order to expedite the immigration process and get skilled foreigners in South Africa as quickly as possible.

A thematic analysis that draws upon Ruedin's (2019: 210) codebook shows that supporters of skilled immigration consisted of academic and research organisations, the private sector and human rights organisations whereas opponents of skilled immigration were drawn from organised labour,

some individual South Africans as well as a large number of politicians. Although among the South African population and politicians, there were people such as Mr Mike Waters and Mr Skohasana who supported skilled immigration, arguing that an immigration system to facilitate the movement of skilled foreigners very much in the minority. The predominant sentiment among them was an objection to skilled immigration. This analysis is consistent with migration studies' findings which assert that the South African population's xenophobic attitude and politicians' role perpetuate an anti-immigration narrative (Neocosmos, 2006: 2; Nyamnjoh, 2006; Trimikliniotis, Gordon & Zondo, 2008; Crush, 2004; 2008; 2014; Peberdy, 2009; Du Toit & Kotze, 2011; Standing, 2012; Facchini, Mayda & Mendola, 2013; Kahn, 2015; Alfaro-Velcamp & Shaw, 2016). Vahed and Desai (2013: 162) point out that many officials at the DHA are antagonistic towards foreigners themselves. Hence, politicians and individual South Africans will be categorised as anti-immigrationist in this study.

Academic and research organisations were of the view that a strategic management of immigration was in South Africa's national interest. South Africa, as explained earlier, has been plagued by a 'brain drain'. As most individuals from this sector are involved in high-end research or professional skills, they are the most credible source for they possess first-hand data regarding the skills shortage. This sector supports the use of skilled immigration as a strategy to address the challenges of skills shortage and high unemployment faced by the country.

The University of Venda is restricted by some aspects of the White Paper. The current policy is discriminatory in the sense that it is impossible for the University to keep its foreign scholars for long periods of time. Scholars are given only 12 month permits that are renewable annually... The homeland education did not produce many highly skilled people and the few that there were have preferred to move away due to lucrative job offers and other reasons. The result is that the university has to attract skills from other countries (Prof Nkondo, Vice-Chancellor of the University of Venda, 2 August 2000, Parliament Hearing on White Paper on International Migration, Source: PMG).

In many instances South African universities lack skills, and need the services of foreign academics for short periods of time (up to three months). Such academics also need multiple entry visas, but current policy states that a person cannot work when granted with a short-term visiting permit. South African higher education institutions need to appoint foreign academics in many research areas as the necessary skills are lacking in South Africa. The problem is that it takes very long for the needed permits to be granted (Dr. Kishun, Director: International Office at the University of Natal, 4 August 2000, Parliament Hearing on White Paper on International Migration, Source: PMG).

The private sector directly participates in the economy and possessed first-hand experience and data on the negative economic impact of the skills shortage. This sector was facing stagnation in business growth due to many scarce skills which were unable to be sourced in South Africa. Enabling skilled immigration thus became the main focus that the private sector advocated.

South African is not producing enough skilled people, while a high level of skilled people are needed to stimulate economic growth. The entry of skills is necessary to produce growth and increase the expansion of the economy in South Africa. 4000 people emigrate per annum from South Africa. In future, HIV and AIDS will have a major impact on skilled people in South Africa.

Every week, 3 to 4 teachers die of AIDS in Swaziland (Ann Bernstein, 16 May 2000, Parliament hearing on White Paper on International Migration, Source: PMG).

The mining industry need assurance that the present legal migration will continue. The market grows as you introduce skills. BSA does not advocate the total free movement of skills but it must be remembered that South Africa is not a very desirable place for foreign skilled labour. America would have been backward if no foreign skills were introduced. Skilled immigrants create jobs. In South Africa, within 10 years, 50% of jobs as we know them would have disappeared. This is true especially for the service sector. South Africa is presently in urgent need to import skills and it is not possible to train the needed skills internally in order to satisfy the need. South Africa must use the built up skills of other countries to drive the economy (Mr V Esselaar, Chairperson of Task Group on Migration: Business South Africa, 17 May 2000, Parliament Hearing on White Paper on International Migration, Source: PMG).

Human rights organisations' focus was on' justice and the violation of human rights. The humanitarian nature of these organisations determine that their concern is that a restrictive immigration policy might result in the lack of rights for non-citizens in South Africa. They supported immigration because of their shared belief that the Bill of Rights should apply to everyone regardless of citizenship. The South African Human Rights Commission (SAHRC) in its submission to the *White Paper on International Migration* of 2000 shows how human rights organisations supported immigration and were against the opposition to foreigners.

In terms of the Universal Declaration of Human Rights, immigrants and migrants are afforded the protections as pledged by the member states. The pledge includes the intention to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms. Under international law, according to Article 2 of The International Covenant on Economic, Social and Cultural Rights and Article 13 of The International Covenant on Civil and Political Rights, once a state has admitted aliens into its territory (documented immigrants), it must treat them according to internationally determined standards. International human rights law gives many rights to lawful aliens (SAHRC's submission to Parliament on White Paper on International Migration, 11 January 2000, Source: Sabinet Legal Database).

Some politicians were supportive of skilled immigration. These included the Democratic Party's ¹⁷ Mike Waters and the ANC's Mr Skhosana.

Mr Waters stated that South Africa is participating in a global economy and must compete. He argued that South Africa cannot isolate itself. He agreed that the unemployment rate is high but submitted that attracting foreign skilled people would create jobs (Mr Mike Water, Member of Parliament, White Paper on International Migration: Hearing, Source: PMG Database, 16 May 2000).

Mr Skhosana urged people to see skilled foreigners as assets that could contribute to South Africa's economic development and not the other way around.

Mr Skhosana (ANC) commented that whereas South Africans feel threatened by skilled foreigners, it should be the other way around and South Africans should see that the foreigners are helping the country on its path to development (Mr Skhosana, Member of Parliament, White Paper on International Migration: Hearing, Source: PMG Database, 16 May 2000).

¹⁷ Democratic Party was succeeded by the current Democratic Alliance.

Organised labour is shown to be one of the most vocal opponents of skilled immigration. As organised labour represented workers' rights and their interests, prioritising workers' employment opportunities has the implication that they would oppose immigration. For instance, COSATU's joint submission with NACTU and FEDUSA shows that trade unions believed that if immigration were made easier for skilled foreigners, national workers would be sacrificed and would not receive the upskilling and training that they otherwise would if immigration were difficult. Thus, they objected to skilled immigration, calling it an 'overemphasis' which they fear would jeopardise the training of local South African workers.

We are concerned about the impact that the overemphasis on highly skilled workers will have on national programmes prioritising the development of local skills. Although we welcome provisions requiring that corporates provide training programmes for South Africans, this in itself is not sufficient. Strategies must be developed both to retain and develop local skills in areas of shortage. Failure to do so will only further entrench dependence on foreign skills and will discourage local skills development (COSATU] [NACTU, FEDUSA, 2001: 4).

Trade union members were also found to have a pattern of using negative language to describe foreigners.

There is no proper screening of persons with academic qualifications who enter SA. Many people with false CV's enter South Africa. Truckloads of unlawful goods come in through border posts and are sold illegally. The selling of illegal goods is killing the South African industry (Mr A Nebe, Chairperson of COSATU North West, White Paper on International Migration: Hearing, PMG, 1 Aug 2000).

Not all stakeholders attend public hearings and therefore the White Paper should follow the Nedlac route. Farm workers in the North-West are being replaced by foreigners for lower wages. Government has no control over the informal sector of street sellers. The country's tax laws are not respected by migrants. They do not fill in tax returns and there is no control over those who sell their goods in the street and they are evading the by-laws of the municipality. Asylum seekers with section 41 permits are also tax evaders (Mr S Mokoena, Secretary of COSATU in the North West Province, White Paper on International Migration: Hearing, [PMG], 1 Aug 2000).

At last, opposition to immigration enjoyed steady support among economically excluded South Africans and ANC politicians. Factors that compelled them to resent foreigners include both xenophobic sentiments and their fear for losing resource to foreign nationals. Even the White Paper itself contains language that negatively depicts foreign nationals as a collective burden who were draining the country's resources.

I do not believe that we have a serious problem of xenophobia in the RSA. We have several ethnic or cultural groups of Whites in this country. On top of that we have even more ethnic and cultural-groups of people of colour... (Director-General Mr BL Masetlha, Presentation to the Portfolio Committee of Home Affairs, 15 April 2002, Source: Sabinet Legal Database).

It has been noted that illegal aliens have the following negative impact on the provision of services and on our society:

- ⇒ they compete for scarce resources with millions of South Africans living in poverty and below the breadline;
- ⇒ they compete for scarce public services, such as schools and medical care, infrastructures and land, housing and informal trading opportunities;

- ⇒ they compete with residents and citizens for our insufficient job opportunities, and offer their labour at conditions below those prescribed by law or the applicable collective bargaining agreements
- ⇒ a considerable percentage of illegal aliens has been involved in criminal activities; and
- ⇒ they weaken the state and its institutions by corrupting officials, fraudulently acquiring documents and undeserved rights and tarnishing our image locally and abroad (DHA's White Paper on International Migration, 1999: 18).

Bishop Tolo (ANC) said he was aware that illegal immigrants are selling goods outside shops. They do not pay rent, their goods are sold much cheaper and they do not pay tax. Shop owners are closing their shops and opening spazas so that they can also avoid paying tax. Road-side trading is also a contributory factor to urban decay. He asked what is the solution to this problem.

The Chair, Mr D Mokoena (ANC), added that the illegal traders also sell fake goods and this is undermining legitimate entrepreneurs (White Paper on International Migration: Hearing, 18 May 2000, PMG).

Knowing who those stakeholders were and what views they held on skilled immigration could facilitate the process before moving to the next stage of data coding –to track how those stakeholders who held different positions on skilled immigration used the immigration policy to address skills shortage, high unemployment and antagonism towards foreigners in the country.

Chapter summary

This chapter answered sub-research question 2: Who were the main stakeholders involved in the policy discussion and what were their interests and agendas in relation to skilled immigration? Through the examination of data, it showed that the drafting process of the White Paper in 1999 and the Immigration Bill in 2002 involved a wide range of stakeholders from outside the governmental sphere. These stakeholders all had different interests and views around skilled immigration and expressed their opinions on supporting or opposing immigration.

Chapter 6 Finding II: Stakeholders' responses and the Immigration Act: Antagonism towards foreigners

Overview

This chapter and the next are guided by and speak to sub-research question 3, namely how did stakeholders involved in the drafting process of the Immigration Act respond to the contextual factors (skills shortage, high unemployment and antagonism towards foreigners) and what outcomes contained in the Immigration Act and its subsequent Amendment Act of 2004 and the Bill of 2006 pointed to those response(s)? In order to answer this sub-research question, this and the following chapters will firstly provide an account of each stakeholder's proposed strategies on skilled immigration. What follows will be the tracking of the changes which took place in the Immigration Act from 2000 to 2006. Finally, this chapter will attempt to analyse and determine which stakeholders, whether pro-immigration or anti-immigration, played a more decisive role in the shaping of the immigration policy.

It needs to be noted that the general sentiment towards foreigners with which stakeholders were confronted during the process was the one of antagonism. A thematic analysis shows that they responded to this antagonism in two distinct ways –either using it to push for stricter immigration control or resisting it by pushing for a humanitarian approach in the handling of the immigration issue. Both can be seen in their participation records in Parliament as well as the written submissions made to Parliament's Portfolio Committee on Home Affairs. Drawing on stakeholders' records and submissions, this chapter explains how stakeholders responded towards society's antagonistic attitude towards foreigners to either support foreigners' integration and manage immigration in accordance with human rights standard or to push government to enforce stricter immigration control. A series of amendments made to the 2002 Immigration Act in 2004, as shown in this chapter, indicate that the DHA and the stakeholders that pushed for stricter immigration control gained the upper hand. From 2000 to 2006 South increasingly rigid immigration controls despite frequent calls to respect foreigners' human rights. This heightened antagonism came especially from some citizens, politicians and organised labour. This heightening antagonism is instrumental in exploring the DoH's discouraging stance towards the recruitment of foreign doctors because it was in this ideational environment that the DoH drafted its policy on the recruitment and employment of foreign doctors.

What were stakeholders' responses and their proposed strategies towards skilled immigration?

Since antagonism is a cultural condition borne out of stakeholders' ideological belief (Archer, 1995; Carter, 2000), negative, nationalistic and monocultural discourse were coded and defined as opposing immigration whereas progressive, cosmopolitan and multicultural discourse was coded and defined as supporting immigration (Reudin, 2019: 210).

There are two processes through which those non-governmental organisations could influence the direction of the government's immigration policy. One is for these non-governmental stakeholders to use Parliament's hearings, invitations for comments on Green and White Papers, as well as various other methods to communicate with politicians and express their views to them in order to influence the immigration policy. This is the process guaranteed in the Constitution which requires governmental departments to consult members of the public (Tremikliniotos, Gordon & Zondo, 2008; Segatti, & Landau, 2011). The other is for non-governmental organisations and activists to challenge via the judicial system on immigration decisions that are considered in contravention of the country's Constitution. A number of studies (Crush, 2001; Landau, Ramjathan-Keogh & Singh, 2005; Landau, 2006; Neocosmos, 2006; Amit, 2011; Kapindu, 2011; Haile, 2012; Odeku, 2013; Rapatsa, 2015; Van Lennep, 2019) assert that South Africa's judicial system has been proactive in defending foreigners' rights. What is shown below falls under the first process -- the stakeholders' engagements with Parliament's members through attending portfolio meetings and making written submissions to Parliament on the immigration policy from the period 2000 to 2006.

Below is a detailed account of the key quotes from the dataset. It will first provide a series of quotations from stakeholders that supported immigration, then it provides key quotations from stakeholders that objected to immigration. Finally, this section ends with government's proposed strategy on immigration. The purpose of outlining these quotes is to compare and help understand stakeholders' and government's different proposed strategies on immigration.

Stakeholders that supported immigration

Stakeholders that supported immigration resisted the predominant nationals' antagonistic attitude towards foreigners. These stakeholders consisted mainly of human rights organisations such as the Black Sash, the South African Human Rights Commission (SAHRC) and Lawyers for Human Rights. Confronted by a predominantly antagonistic culture against foreigners, these organisations resisted antagonism by arguing it was morally and legally wrong since it was in contravention of South Africa's Constitution and its values in upholding human rights (Immigration Bill: Hearing, 22 April 2002, PMG). They supported a humanitarian approach to managing immigration affairs by fast-tracking and

admitting certain categories of foreigners, by acknowledging foreigners' rights in South Africa, and utilising foreign human resources and giving foreign nationals' more flexibility such as the right to conduct limited work in the case of foreign students' (Prof Martin West, International Education Association of South Africa (IEASA) with members of parliament, Immigration Bill: Hearing, 22 April 2002, PMG).

The South African Human Right Commission pointed out that antagonism towards foreigners was almost directed towards foreign African nationals in post-apartheid South Africa. SAHRC's Commissioner remarked that it was very rare that foreigners of Asian and Eastern European origins were ever picked up from off the street and be detained. Hence, SAHRC supported an immigration system that would clearly stipulate what rights in the Bill of Rights are applicable for foreigners. In the below quote, the SAHRC's Commissioner, Ms Majodina, emphasised the importance for the government to respect foreign nationals' human rights in the regulation of immigration.

[I]n the submission there was a look at the history of immigration legislation. The Aliens Control Act gave permanent residence or citizenship if the person can be assimilated into the white population. The law was deeply rooted in racism. Today the undocumented migrants are mainly from African countries. The migrants do not only come from nearby countries but from far so they are clearly visible on the basis of their physical features and the clothes they wear. In many instances people are physically manhandled and abused. The SAHRC feels that the Bill does not do enough to combat this behaviour by the officials and the public. There are many Asians and Eastern Europeans who are illegals but they are not picked up from off the street and cannot be found in the detention centres. She added that the Bill of rights is for all the people in the country. The only rights that are excluded are the civic rights. SAHRC has nothing against managing the movement of people in a fair and just way (Ms Majodina, SAHRC Commissioner, SAHRC with Members of Parliament, Immigration Bill: Hearing, 22 April 2002, Source: PMG database).

As quoted below, the United Nation's Human Rights Commission (UNHRC) made submissions expressing its concern about the position of refugees since there was an impression that the 2002 Immigration Act could overrule the provisions the Refugee Act of 1998. enacted to protect refugees It flagged the issue to draw the government's attention in an effort to protect refugees' rights in South Africa.

Clause 55(1) calls for a restructuring of the Department. UNHCR is concerned that in the new structure refugee protection will fall under the general framework of migration control and administration. The UNHCR suggests that Clause 55 be reworked to ensure that the Refugee Act is not undermined (Ms Bemba Donkoh, a United Nation's representative at the UNHRC branch in Pretoria, UNHRC with Members of Parliament, Immigration Bill: Hearing, 22 April 2002, Source: PMG database).

The Western Cape Immigration Practitioners Forum (WCIPF) raised the concern that the experience of foreign nationals and those who worked closely with foreign nationals such as immigration practitioners were ignored.

Immigration legislation in this country has a long history of being a square peg for a round hole. We believe that the public, the foreigners, the "consumers" of the services of the Department of Home Affairs, should have the opportunity to provide their input in improving this situation. Without

the benefit of the experiences and perspective of the foreigner it will be naive to believe that a dispensation can be developed which to the foreigner is reasonable, consistent and efficient...([WCIPF]'s submission to Portfolio Committee on Home Affairs on Immigration Amendment Act 2004, 22 July 2004, Source: Sabinet Legal Database).

It further suggested having stakeholders' consultations that included foreigners and listened to their interests and views on immigration policy.

A database is developed by the Immigration Advisory Board, in terms of which interested parties are registered, and are offered the opportunity to make representations on proposed Regulations and Policy prior to their consideration by the Board and the Board presenting its advise to the Minister (Apart from Immigration practitioners, it envisages that this database should also include interested foreigners, schools, language schools, associations of the model agencies, film and photographic industries, universities, medical institutions and multinationals that are always directly affected by these Regulations and Policies)... (WCIPF's submission to Portfolio Committee on Home Affairs on Immigration Amendment Act 2004, 22 July 2004, Source: Sabinet Legal Database).

The International Education Association of South Africa lobbied for more flexibility for foreign students to undertake some forms of limited part-time work. In the quotation below, IEASA cited that allowing holders of student permits to undertake limited part-time work was not only in line with international practice, it also could help students, the majority of whom from other African countries, to cover some of their living expenses. Here, the IEASA advocated for foreign students to be given more flexibility in the Immigration Bill to be able to work.

That holders of student permits should be allowed to undertake limited part-time work, to be prescribed by regulation. This is again in line with best international practice where foreign students can undertake limited work. This is important for many foreign students from developing countries, notably from Africa, who sometimes struggle to meet incidental living expenses (Prof Martin West, International Education Association of South Africa (IEASA) with Members of Parliament, Immigration Bill: Hearing, 22 April 2002, Source: PMG database).

It is evident that human rights organisations, academic research institutions and the private sector all spoke out against society's antagonism and lobbied for government to recognise and protect foreigners' rights. The concerning issues that these stakeholders raised were the unfair xenophobic and racist attacks that were particularly directed at black African foreigners, the legal status of Refugee Act No. 130 of 1998, limited part-time work rights for foreign students and the lack of foreigners' participation in immigration policy discussion. These concerns led to those stakeholders' demands to ask the government to recognise and protect foreigners' legal rights. Below is a summary that illustrates the stakeholder, the stakeholder's response towards this antagonism as well as the stakeholder's proposed immigration strategy.

Sector	Stakeholder(s)	Constraint/enablement	Proposed Immigration Strategy
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Human rights organisations	South African Human Rights Commission (SAHRC)	Resisted the antagonistic sentiment towards foreigners and upheld human rights	Managing immigration within the confines of human rights; stipulating the rights that are applicable to foreigners in the Bill of Rights.
Human rights organisations	United Nation's Human Rights Commission (UNHRC)	Resisted the antagonistic sentiment towards foreigners and upheld human rights	Refugees' rights must be protected.
Human rights organisations	Western Cape Immigration Practitioners Forum (WCIPF)	Resisted the antagonistic sentiment towards foreigners and upheld human rights	Putting foreigners and immigration practitioners on the Immigration Advisory Board (IAB); Listening to foreigners' and immigration practitioners' views on immigration policy.
Higher education	International Education Association of South Africa (IEASA)	Resisted the antagonistic sentiment towards foreigners and upheld human rights	International students should be allowed to undertake part-time work to make ends meet.

Stakeholders who opposed immigration

Objection to skilled immigration came from trade unions sector, high-profile African National Congress politicians, public servants and some individual citizens from the previously disadvantaged groups such as the black South African population (Mr Mthuthuzeli Khaye, a business person White Paper on International Migration: Hearing, PMG, 16 May 2000; Mr Matshiane, an ordinary South African, White Paper on International Migration: penultimate report, PMG, 31 Oct 2000; Dr Sehlare Makgetlaneng, a senior research specialist at the Africa Institute of South Africa, Immigration Bill: Hearing, PMG, 22 Apr 2002; Mr S Mokoena, Secretary of COSATU in the North West Province, White Paper on International Migration: Hearing, PMG, 1 Aug 2000; White Paper on International Migration: Hearing, 18 May 2000, [PMG]; BL Masetlha, Home Affairs's Director-General, Presentation to the Portfolio Committee of Home Affairs, 15 April 2002). These stakeholders used society's antagonism towards foreigners to lobby for government to impose more immigration restrictions on foreigners. The above stakeholders, all groups

and individuals opposed to immigration, believed that foreigners do not have rights under the South African Constitution due to their non-citizen status. For instance, below are two quotations extracted from the dataset that point to the views of the stakeholders who opposed skilled immigration. One was the then Home Affairs' Director-General's introductory speech to Parliament, the other is the remark made by a high-profiled politician in a parliamentary hearing meeting.

The Department was of the view that this was in line with the Constitution' as the Constitution determines in Section 21(3) that Citizens have the right to enter, remain and stay anywhere in the RSA, Furthermore, Section 22 gives the right to exercise one's profession to citizens only. There are several rights, which are given only to citizens. The Constitution itself therefore discriminates or differentiates between citizens and non-citizens (BL Masetlha, Home Affairs' Director-General, Presentation to the Portfolio Committee of Home Affairs, 15 April 2002).

The Committee Chair, Mr Mokoena (ANC), pointed out to the Foreign Marriage Family Protection Association's representative, Mr William Chapman, that aliens have no right to remain in South Africa and that the government has no constitutional obligation to issue visas to them. In short, the Constitution of South Africa does not guarantee any rights for aliens (White Paper on International Migration: Hearing, [PMG], 5 May 2000).

In the first quotation provided above, the Director-General of Home Affairs stated that it was the Constitution that discriminated against foreigners and people on the ground were merely following the Constitution. This view was shared by the Chairperson of the Parliament's Home Affairs Committee who stated, as shown in the second quotation above, that foreigners do not have a right to remain in South Africa even if that person is married to a South African citizen. This notion of a 'non-existent right' for foreigners, as shown above, provided justification for transgressions and human rights violations against foreigners. Desai and Walsh (2010) assert the dominant form of narrative produced by the dominant and influential class such as politicians and high-profiled public servants such as the Director-General excludes migrant and refugee voices. On the one hand the emphasis on citizenship, legality and human rights perpetuated by the government creates and reinforces a nationalistic discourse which positions citizens as the only bearers of rights (Walsh & Desai, 2010). While on the other the attacks on those who are not citizens are justified. This belief that foreigners do not have rights created a hierarchy in which nationals had the sense of superiority to assert their domination status over foreigners. Because of this sense of superiority or South African exceptionalism as astutely pointed out by Nyamnjoh (2006), there was a sentiment that South African citizens' rights, particularly black South Africans' rights, must be prioritised whereas foreign nationals' legal rights did not matter. The quotations below illustrate stakeholders' antagonism towards foreigners and how these stakeholders used this antagonism to pursue a restrictive immigration policy. For instance, Mr Khaye, a South African citizen, opposed immigration because immigrants have deprived of South African citizens' their job opportunities in the security, hotel and catering industries (Mr Mthuthuzeli Khaye, a businessperson, : White Paper on International Migration: Hearing, PMG, 16 May 2000). He blamed the liberal human

rights organisations and their advocacy in upholding human rights for indigenous South Africans' deprivation of resources such as employment opportunities. In his view, the advocacy for human rights was deliberately misused to protect foreigners' interests which caused South African citizens', especially black South Africans' poverty and joblessness. The quote below illustrates Mr Khaye's antagonism towards immigration and particularly his concern that more immigration would hamper the interests of black South African citizens.

South Africa's policy has been very liberal and many immigrants have been allowed in, probably because of pressure from human rights organisations. He said that the impact on the indigenous population has been denied. He argued that there are many unemployed people for whom no one speaks...[t]he SA security industry, hotel and catering industries are full of immigrants there are many cases of refugees who are arrested for having committed crimes a few months after entering the country. These immigrants work as hawkers and take the space that should rightly be occupied by indigenous people...(Mr Mthuzeli Khaye, a business person White Paper on International Migration: Hearing, [PMG], 16 May 2000).

Mr Khaye believed that the government should be placing restrictions on the employment of foreign nationals, in the security, hotel and catering industries at least. Immigrants employed in these sectors are taking jobs away from South Africans and adding to the high unemployment crisis in South Africa.

Mr Matshiane, who also described himself an ordinary South African, suggested that South Africa's high crime rates was caused by the high presence of foreigners (Mr Matshiane, an ordinary South African, White Paper on International Migration: penultimate report, [PMG], 31 Oct 2000). He remarked that 'illegals [undocumented immigrants] kill our people [South Africans]'

Illegals kill our people. The Immigration System must be implemented at local level and will provide employment opportunity for people. Communities should be educated in looking for illegals and what immigrants' papers and documents should look like (Mr Matshiane, an ordinary South African, White Paper on International Migration: penultimate report, [PMG], 31 Oct 2000).

Mr Matshiane supported an immigration system that would focus on detecting suspicious foreigners at the community level.

Dr Makgetlaneng believed that it was because of wealthy foreigners' entry that caused the poverty for black South Africans.

If wealthy people are allowed to enter the country, the skewed economic reality inherited from apartheid would be more disparate that leads to where wealthy foreigners buy more land and thus monopolise land in South Africa. It would negatively impact on the land accessibility of poor Africans in South Africa (Dr Sehlare Makgetlaneng, a senior research specialist at the Africa Institute of South Africa, Immigration Bill: Hearing, [PMG], 22 Apr 2002).

Dr Makgetlaneng's case needs to be flagged for its uniqueness. It differs from the usual anti-immigrationists' narrative in which the primary objection towards immigration was centred around the potential negative impact on foreign workers with low-end skills and little capital such as views given above by Mr Khaye and Mr Matshiane. Dr Makgetlaneng objected to the immigration of high-end, wealthy foreigners because the wealthy foreigners monopolise the market thus repressing black South Africans which would further deprive them of opportunities to grow and be self-sufficient. Although the

academic and research sector are usually considered to be supporters of immigration, Dr Makgetlaneng's remark is an exceptional case. It needs to be understood in the context of the exclusion of black South Africans in the labour market as studies affirm that black South Africans were bearing the brunt of unemployment and shared a disproportionately high unemployment percentage in relation other population (May & Govender, 1998: 2; Klasen & Woolards, 1999: 12).

Mr S Mokoena, a trade unionist from COSATU in the North West province, expressed his displeasure at foreign nationals' depriving South African citizens of their employment opportunities. He described that foreign workers' presence in South Africa had compromised and undermined the existing wage and working conditions for local workers. In the North West, workers in the agricultural sector were being replaced by foreigners for lower wages. As shown in the quotation below, it seems that Mr Mokoena suggested that there was needs to control the foreign population in the agricultural sector and to monitor their activities in the informal sector. Mr Mokoena said that '[f]arm workers in the North West are being replaced by foreigners for lower wages' and that foreigners were exploiting the country's 'tax law loopholes in the informal sector' as well as fraudulently obtaining fake asylum permits (Mr S Mokoena, Secretary of COSATU in the North West, White Paper on International Migration: Hearing, PMG, 1 Aug 2000).

There was a view which was shared by some politicians such as members of parliament. The quotations provided below are the remarks made by two ANC politicians that depicted foreigners in a negative way.

Bishop Tolo (ANC) said he was aware that illegal immigrants are selling goods outside shops. They do not pay rent, their goods are sold much cheaper and they do not pay tax. Shop owners are closing their shops and opening spazas so that they can also avoid paying tax. Road-side trading is also a contributory factor to urban decay. He asked what is the solution to this problem? The Chair, Mr D Mokoena (ANC), added that the illegal traders also sell fake goods and this is undermining legitimate entrepreneurs (White Paper on International Migration: Hearing, 18 May 2000, PMG).

Both Bishop Tolo and Mr Mokoena suggested the government to strictly monitor informal traders who are not citizens. They both believed that foreigners gained an unfair disadvantage over local traders in the informal sector by not paying rent and tax. They also believed that foreign traders in the informal sector are profiting themselves illegally by selling illegal or fake goods.

A uniform theme is seen in these quotations: stakeholders that are opposed to immigration had negative perceptions of foreigners and believed and actively perpetuated this narrative that foreign national are engaging in criminal activities and depriving South Africans of their resources. To summarise the above quotations of the stakeholders that opposed immigration, the table below shows the sectors to which stakeholders belong, the stakeholders that tried to influence immigration policy, the constraint or enabling factors as well as their proposed immigration strategies.

Sector	Stakeholder(s)	Constraint/enablement	Proposed Immigration Strategy
Private individual	Mr Khaye (South African citizen who spoke for the disadvantaged)	Antagonism towards foreigners	restrictions on the employment of foreign nationals in the security, hotel and catering industries
Private individual	Mr Matshiane (private South African individual)	Antagonism towards foreigners	Detecting suspicious foreigners at the community level
Research and academic sector	Dr Sehlaré Makgetlaneng (Senior research specialist at the Africa Institute of South Africa)	Antagonism towards foreigners	Reject wealthy foreigners' immigration
Organised labour	Mr S Mokoena (trade unionist from COSATU in the North West province)	Antagonism towards foreigners	Control the foreign population in the agricultural sector and monitor their activities in the informal sector
Politician	Bishop Tolo (ANC Member of Parliament)	Antagonism towards foreigners	Strictly monitoring informal traders who are not citizens
Politician	Mr D Mokoena (ANC, Chairperson of Home Affairs Committee in Parliament)	Antagonism towards foreigners	Strictly monitoring informal traders who are not citizens

Government's approach on skilled immigration

Government's approach to immigration is displayed by its antagonism which can be seen in three ways. The first is that government raised the entry requirement in the immigration policy to preclude more foreigners eligible to migrate to South Africa. Processes such as charging exorbitant amounts of money to apply for visas, results in more foreigners becoming undocumented for the lack the financial means to apply for a legal immigration status. For a person to have been eligible to apply for a retired person's permit in the early 2000s, Regulation 29 of the Immigration Regulations required the person to have a minimum monthly pension of R20,000 or a net worth should be no less than R 12 million providing an income of no less than R15,000 per month (Immigration Act, No 12 of 2002, reg. 2003: 29). Meanwhile in the same year (2003, the mean and the median salary for an average South African citizen were only R5517 and R3,187 respectively (equivalent to R 66,204 and R38, 244 per annum respectively)(Isaacs, 2016). The huge contrast between the average earning of a South African citizen and the requirement in the immigration policy for a foreigner to obtain a retired person's permit is evidence of government's

intention to preclude more foreigners from coming to South Africa. The Cape Town Regional Chamber of Commerce and Industry and PriceWaterhouseCoopers both made the following comments,

restriction is being introduced through the regulations which would suggest that only the rich are welcome to stay in South Africa. It will certainly discourage foreign nationals from settling in South Africa and drive out many thousands of people who have settled here but do not have an income of R25 000 per month or able to demonstrate a net worth of R15 million (Deputy Director of Cape Town Regional Chamber of Commerce and Industry to Portfolio Committee on Home Affairs, 21 February 2003, Source: Sabinet Legal Database)

Even by international standards, R15 million (over US\$1,5 million and GBP 1 million) is a large amount of net assets, and therefore only millionaires may apply. Very few individuals will be able to satisfy the condition, thereby precluding many bona fide foreign nationals from retiring in South Africa (PwC's submission to Portfolio Committee on Home Affairs, 20 February 2003, Source: Sabinet Legal Database).

When Parliament was questioned by the Foreign Marriage and Family Protection Association (FMFPA), an organisation to protect foreign spouses' rights in South Africa, about the exorbitant fees charged for foreigners, the responses from members of parliament reveal that there was a uniform sentiment in the political arena that immigration should be made more difficult. If the entry standard had been dropped, South Africa would face a catastrophe by being overwhelmed by foreigners. Hence, Mr Sikakane and Mr Sikhosana, both ANC MPs, suggested that FMFPA's questioning was suggesting immigration to South Africa was an easy for all. The below quotes show that both MPs questioned FMFPA whether or not immigration should be free and insisted that there was a need to keep the bar high in order to control the number of foreigners that have the resource to enter South Africa.

Mr Sikakane (ANC) agreed that the fee of over R10 000 to immigrate into South Africa was exorbitant, but went on to ask how the flow of people in and out of the country would be controlled. Would it not be a "free for all"?

Mr Sikhosana (ANC) remarked that a system such as the one the Foreign Marriage Family Protection Association is advocating could be seen as an "easy road" to South Africa for foreigners (White Paper on International Migration: Hearing, 15 May 2000, PMG).

Furthermore, the government also had the intention to contain and possibly reject the admission of refugees into South Africa. Black Sash is a human rights organisation in South Africa which, among others, advocates for refugees' rights. During the parliamentary discussion, the organisation's representative, Ms Isobel Frye, was lambasted by members of parliament for the organisation's defence of refugees' rights to enter South Africa (Black Sash with members of parliament, Immigration Bill: Hearing, 22 April 2002, PMG). The below meeting minutes record shows that MPs expressed concern at the huge number of foreigners in the country and the lack of the DHA's mechanism to correctly identify true refugees in response to a humanitarian crisis. MPs believed that the country's refugee system could not withstand the test from disingenuous and opportunist refugees who strove to sneak into South Africa. All MPs did not accept that refugees should be allowed into the country without screening and agreed that South Africa should not let refugees in as easily as the Black

Sash had suggested. Narratives advanced by IFP member of parliament Mr Smith reveals the government's anxiety of being overwhelmed by foreigners.

Ms Mars (IFP) commented that SA would have to deal with many more asylum seekers and the process would be formidable. People will just say that they are seeking asylum and then they will have to be allowed entry. The matter needed some thought.

Mr Smith (IFP) said that he understood that 4 million illegals were in the country. If the recommendation is accepted, then there would be 4 million people saying that they want to be processed as asylum seekers. After 14 days these people will not be seen again. It is certainly easier than crawling under a fence.

An ANC member said that she had a problem with the recommendation of Black Sash as it would be a problem for the country.

Ms Frye reiterated that SA has an obligation in terms of international law. Even if persons do not qualify for asylum they will still enter.

The Chairperson asked for international examples of how refugees are dealt with.

Ms Frye said that she could only speak of the UK.

The Chairperson asked what happened to an asylum seeker at a port of entry in the UK. Ms Frye replied that she did not know.

The Chairperson said that the Members did not want SA to be used as an experiment. He thought the presenter could back up what she was saying but she does not know.

Ms Frye explained that Regulation 2(2) of the Refugee Act allows asylum seekers 14 days to apply for asylum. She just wanted the right clarified in the immigration bill.

Mr Lekgoro (ANC) said that the presenter raises valid questions but that the solution was a problem (Black Sash with Members of Parliament, Immigration Bill: Hearing, 22 April 2002, PMG).

Despite the fact that South Africa was obligated by domestic and international treaties to take in refugees, there was a strong indication from politicians that the system which governed and admitted refugees into the country needed to be reviewed (Refugee Act, No 130 of 1998, 1998: s3). The purpose of doing that was to contain the number of refugees in the country as the minutes have shown that all Members were concerned about the overwhelming presence of refugees in South Africa.

Thirdly, government also exhibited hostility towards human rights organisations and activists for their role in defending foreign nationals' rights. In the government's view, the interference of these organisations and activists were hampering government's responsibilities to manage immigration. Below are the comments of the then Director-General of Home Affairs, Dr Mbatha about immigrants using attorneys to defend their rights. The connotation expressed in the following quotation reaffirms a prevalent belief among the government officials that foreigners do not have rights and thus should not be able to hire attorneys to defend their rights.

The work of the Department is tampered with when some illegal immigrants via their attorneys and via some Government officials claim that during their arrests their rights were abused and therefore demand an extended stay in the Republic (Director-General Dr Mbatha, Committee meeting on White Paper on International Migration, 25 Oct 1999, Source: PMG Database).

It was confirmed by an official from the DHA, Mr Schraivesande, that the SAHRC and the Public Protector often interfered in the Department's process to deport foreigners. Below was the conversation recorded at a Committee Hearing meeting between an MP and a Home Affairs official on human rights activists and organisations' roles in 'hampering' the process of the DHA from regulating migration.

Mr K Meshoe (ACDP): Is there a perception that the South African Human Rights Commission (SAHRC) and the Public Protector are interfering with the process of the Department when an application has been refused. Secondly, if the Department has discovered the problem of bribery by casual workers in the airports, why can't they train full time people?

Response (Mr Schraivesande from the Department of Home Affairs): Yes the SAHRC and the Public Protector hamper our processes. The problem is that when all the paperwork is in order, we then have to stop the removal process. I must also say their co-operation with us is good but it stops the removal of persons every time. And yet I am not aware of any case where they have overturned us. On the issue of casual workers, we use them because of the restriction on funds. It is far cheaper to employ them than employing permanent workers. We simply do not have the funds (Committee Meeting on White Paper on International Migration, 25 Oct 1999, Source: PMG Database).

It clear that the government's proposed immigration strategies were aimed at raising the entry requirement for foreigners and placing restrictions and strictly screening refugees. Government also expressed its frustration over human rights organisations' role in defending foreigners' rights.

Outcomes: What were the changes in the immigration policy from 2002 to 2006

The amendments made to the Immigration Act in 2004 and the draft bill Immigration Amendment Bill of 2006 are the outcomes of the deliberations of stakeholders and government on South Africa's immigration policy. Since Archer's objective at this phase is to determine which stakeholders were more decisive in shaping the final outcomes, it was important to review and track the changes to the immigration policy in order to determine which stakeholders played a more decisive role in the formulation of the immigration policy (personal communication 2019, 28 March). These changes show that the antagonism towards foreigners has played a decisive role in shaping South Africa's immigration policy. Thematic analysis shows that there are three major amendments made to the Immigration Act from 2002 to 2006 which point to the DHA's and the government's intention to further restrict immigration and undermining foreigners' legal rights. These amendments were:

- the removal of public inputs in policy formulation in Preamble (c) and the changes made to s 4(k) on the composition of the Immigration Advisory Board (IAB) and their responsibilities;
- the removal of the DHA's responsibility to combat xenophobia as per Preamble (m); and
- changes to restrict and undermine foreigners' rights in s1(xvii) in terms of the definition of foreigners, s 8 which granted immigration officers the power to arrest foreigners without a warrant, and s 40 which implemented community enforcement approach to identify foreigners.

These changes in the immigration policy unanimously show how antagonism towards foreigners had dominated the narrative in the shaping of the immigration policy and the notion of equality and human rights advanced by stakeholders such as human rights organisations were overshadowed and diminished by this pervasive narrative of antagonism. Thus, stakeholders who held antagonistic attitudes towards foreigners had played a more decisive role in the shaping of the immigration policy. All these changes outlined above which took place during the 2004 Immigration Amendment Bill process and was later enacted had the effect of exposing foreigners to greater vulnerability and precariousness and weakening their political position through various immigration control restrictions. This antagonism also indicated the tendency in the government to make immigration more restrictive for foreigners. Such whittling down of foreign nationals' rights would simultaneously affect governmental departments such as the DoH whose recruiting policy on foreign doctors were affected. The three changes illustrated below explain how they result in non-citizens' lack of rights and are pertinent to foreigners' precarious situation. Foreigners' precarious situation, being brought about by those changes in the immigration policy, shows the government's antagonism towards foreign nationals and the DoH's reluctant and discouraging stance to recruit foreign doctors.

Change 1: Preamble (c) and s 4(k)

Since a large number of stakeholders in the non-governmental sector such as the private sector, higher education sector, and human rights organisations all supported immigration and called for more recognition and respect for foreigners' legal rights, the undermining of foreigners' position came about during the 2004 amendment process. The amendments made to Immigration Act 13 of 2002 in 2004 removed the DHA's obligation to respond to public stakeholders' inputs and comments on government's policy in Preamble (c). Secondly, the amendment of s4(k) also reduced the number of civil society members sitting on the Immigration Advisory Board (IAB) and the IAB's power in adjudication and review procedures. Both changes are indications that the non-governmental sector's influence was diminishing.

Preamble (c), Immigration Act, No. 13 of 2002	Preamble, Immigration Act, No. 13 of 2002, as amended, 2004
Interdepartmental coordination constantly enriches the functions of immigration control and that a constant flow of public inputs is present in further stages of policy formulation, including regulation making.	Interdepartmental coordination constantly enriches the functions of immigration control.

First, as shown above, the DHA removed the Department's responsibility to respond to 'public inputs' from Preamble (c). The then Home Affairs Minister explained that the amendment to Preamble (c) was motivated by delay of almost two years for the Immigration Bill to be passed into law in the National Assembly. Furthermore, the then Director-General justified it by stating that the public consultation process had been built into the legislation-making process via public hearings thus there was no need for the DHA to respond to public inputs (Director-General responding to a Member of Parliament from Democratic Alliance Mr Swart, PMG, 2 August 2004).

Secondly, as seen below, the amendment 2004 reduced the power of the Immigration Advisory Board (IAB) and reduced the number of civil society members sitting on the Board. Section 4(k) of the 2002 Immigration Act states the composition of the Immigration Advisory Board consists of five members from the civil society. The Board's functions were prescribed in s 5.

Section 4: Immigration Advisory Board in 2002 Immigration Bill	Amendment of s 4 of Act 13 of 2002
<p>...</p> <p>(k) up to five persons from civil society, including one representing organised labour and one representing organised business, appointed by the Minister after the Minister has given notice in the Gazette soliciting public nominations of such persons...</p> <p>Section 5: Functions of Board prescribed that</p> <p>The Board shall advise the Minister in respect of—</p> <p>(a) the contents of regulations made in terms of this Act;</p> <p>(b) the formulation of policy pertaining to immigration matters;</p> <p>(c) the implementation of immigration policy by the Department;</p> <p>(d) the reviewing of a decision of the Department in terms of section 8 if and when requested by Minister;</p> <p>(e) such other matters relating to this Act on which the Minister may request advice (Immigration Act, No. 13 of 2002, 2002, ss4&5).</p>	<p>5. Section 4 of the principal Act is hereby amended—</p> <p>...</p> <p>(iv) a person representing organised business;</p> <p>(v) a person representing organised labour...</p> <p>Substitution of section 5 of Act 13 of 2002</p> <p>6. The following section is hereby substituted for section 5 of the principal Act:</p> <p>Functions of Board</p> <p>The Board shall—</p> <p>(a) advise the Minister in respect of—</p> <p>(i) the contents of regulations that may be made in terms of the Act;</p> <p>(ii) the formulation of policy pertaining to immigration matters and</p> <p>(iii) any other matter relating to this Act on which the Minister may request advice; and</p> <p>(b) serve as the interdepartmental cooperation forum for all immigration matters (Immigration Act, No. 13 of 2002, as amended, 2004: ss4&5).</p>

In the amendments the number of members of the IAB from civil society was reduced from five to only two members., namely, one person from organised labour and one from organised business. In

addition, the amendment also relieved the IAB of its power to review immigration decisions that were related to s 8, the adjudication and review procedures.

These changes in the amendment illustrate the extent to which the position of foreigners was weakened, as was those of the non-governmental sector which had for long been the supporter of a more relaxed immigration policy. The 'non-governmental sector' in this dissertation refers to stakeholders who are not government officials or politicians such as Members of Parliament. A pattern in the Immigration Bill which is illustrative of the way in which the power of the non-governmental sector was being undermined and neglected and that of the Minister consolidated. The reduction of the number of civil society representatives on Immigration Advisory Board meant that their influence on the government's immigration policy was reduced, thus severing the link between government and the non-governmental sector and undermined the interests of the non-governmental sector.

There is a wealth of evidence in the dataset that shows non-governmental sector's willingness to participate in the immigration discussion as immigration matters are closely related to and inevitably affect their own sectors. For instance, the Vice-Chancellor and Dean of Science and Technology at the University of Venda flagged during the White Paper discussion period that higher education sector had not been adequately consulted on immigration.

In the era of globalisation, it is good that the White Paper provides an opportunity of movement especially for highly skilled people... The White Paper does however not fully appreciate the exodus of skills from South Africa and this problem is extremely big. The White Paper does not properly appreciate the impact that HIV and AIDS will have on the human resources of South Africa. Some restrictions imposed on foreign students may be discriminatory. The White Paper promote the impact of economic growth and unfortunately the White Paper make no mention of the role of higher education in the development of human resources (Professor M Nkondo, Vice Chancellor and Dean of Science and Technology: University of Venda, Hearing on White Paper on International Migration, 2 August 2000).

Human rights organisations such as the Association of Immigration Practitioners of South Africa (AIPSA) even suggested that consultations on immigration take place between foreigners and the DHA. The quotation that follows shows that some immigration activist groups were not happy with the absence of foreigners in the drafting process of an immigration policy pertinent to their daily lives.

Immigration legislation in this country has a long history of being a square peg for a round hole. We believe that the public, the foreigners, the "consumers" of the services of the Department of Home Affairs, should have the opportunity to provide their input in improving this situation. Without the benefit of the experiences and perspective of the foreigner it will be naive to believe that a dispensation can be developed which, to the foreigner, is reasonable, consistent and efficient (AIPSA's submission on Immigration Amendment Act 2004, 6 August 2004).

In addition, stakeholders representing business interests of the non-governmental sector such as the American and British Chambers of Business and one of the Big Four global auditing companies, PriceWaterhouseCoopers (PwC), felt that the business sector had not been consulted adequately

during the deliberations around the immigration policy given the sector's close interest and frequency in managing skills transfer and professionals' relocation across borders. The two business chambers and PwC articulated that the issues raised by it remained unresolved.

The Department of Home Affairs has studiously avoided over the last three years the continuous representations by American Chamber and for that matter other foreign chambers including the British Chamber of Business, both to this Parliamentary Committee and to the Acting Director of Home Affairs regarding the inclusion of a tax of 2% on the annual salaries of skilled ex-patriate employees who are granted permits by Home Affairs (McLaughlin from British and American Chambers of Business, 2003).

We previously provided suggestions and recommendations on the draft Immigration Act during the public hearings held in April 2002. A number of these matters remain unresolved and therefore these are included again in addition to our comments on the proposed amendments (PriceWaterHouseCoopers [PwC]'s submission on Immigration Amendment Act 2004, 13 July 2004).

As the non-governmental sector expressed the feeling that their input into the country's immigration policy was ignored, they also felt that the DHA's involvement in immigration seemed to have expanded. Business Unity South Africa (BUSA) even raised objection to the amendment's implication which would see an increase in the DHA's power over this matter. The quote below shows BUSA's scepticism over the DHA's greater discretionary power in the 2004 Amendment Bill.

The department has, unfortunately, over the years lost much of its credibility. It needs a long time and a lot of work to regain it. That is why we cannot support an emphasis on greater administrative discretion. The department cannot point to its record and say you can trust us. That is also not what the rule of law requires...The main complaint is that a detailed transparent process of appeal has been removed from the Act regarding matters of status carrying formidable consequences for any individual's life, resources and well being. It applies to work permits, visitor's permits, medical permits, retired person's permits, permanent residence, declaration as being undesirable or prohibited, production of documents and all other cases where the Department exercises an almost unfettered discretion (Business Unity South Africa's submission to Immigration Amendment Bill 2004, 2 August 2004).

Trade unions such as those represented by the Congress of South African Trade Unions (COSATU) and the National Union of Mineworkers (NUM) also objected to the amendment which reduced the number of Immigration Advisory Board members from civil society. In the quote below, it shows that COSATU and NUM shared the sentiment with all other stakeholders outside the government over the more centralised approach in the immigration decision-making process of the DHA.

We believe that the wording authorising the Director General to cancel temporary residence permits does not lay down qualifications on the exercise of this power. Accordingly, we are calling for the insertion of an amendment making this subject "good cause" as reflected below in the agreement reached at NEDLAC:

Labour expressed concern at the extent of the discretion of the Director-General to cancel temporary residence permits and it was therefore agreed to include the words "For good cause," at the beginning of section 10(9). (COSATU & NUM's submission on Immigration Amendment Bill, 5 August 2004).

Despite the fact that stakeholders from outside the government asked to have greater roles in the formulation of the immigration policy, these requests were ignored. The amendment adopted in 2004 removed responding to public inputs as part of the DHA's responsibilities. The amendment means that the influence of the non-governmental sector was weakened as was its negotiation strength with government on immigration policy. Meanwhile, the diminishing influence of the non-governmental sector was accompanied by the increasingly consolidated power of the state as represented by the DHA. The Minister and the Director-General of the DHA were given more discretionary power in the decision-making process. The relation on the roles of immigration affairs between the non-governmental sector and the government resembled what Neocosmos (2006) describes a 'strong, authoritarian state and weak civil society'. In such a society, civil society is powerless to hold the government to account. The implication of such a society is that transgressions on foreigners' rights committed or perpetuated by government officials, as argued by Vahed and Desai (2013: 161), are also likely to be dealt with negligently or overlooked with impunity (Amit, 2011; Vahed & Desai, 2013; Konanani & Odeku, 2013). The position of foreigners thus became more precarious and vulnerable. Government would have a greater and more influential role in deciding and shaping policies that would affect foreign nationals.

Change 2: Removal of 'combating xenophobia' in Preamble (m)

Although systemic xenophobia was deeply rooted in South African society as argued by many scholars, the removal of its responsibility to combat xenophobia from Preamble (m) in 2004 is an indication of the DHA's lack of determination and dedication to combat xenophobia (Neocosmos, 2006: 2; Nyamnjoh, 2006; Trimikliniotis et al., 2008; Crush, 2004; 2008; 2014; Peberdy, 2009; Du Toit & Kotze, 2011; Standing, 2012; Facchini, Mayda & Mendola, 2013; Kahn, 2015; Alfaro-Velcamp & Shaw, 2016). Section 2(1) (e) of the Immigration Act 13 of 2002 reads that the DHA has the responsibility of 'preventing and deterring xenophobia within the Department, any sphere of government or organ of State and at community level'. This section was deleted in the 2004 Amendment Act.

In response to the public's probing, the Minister said that,

xenophobia must be combated at all levels of society, and while the Department would be keen to play a role, the concern was expressed that if this were included in legislation the Department would then be made responsible for combating xenophobia in society as a whole. This would create difficulties and possibly even lead to legal situations (Director-General of DHA, Presentation of Immigration Amendment Act 2004, [PMG], 1 August 2004).

The Minister's explanation may have had its merits, but the removal of its role in combating xenophobia from a legislative bill had its consequences. Whether the department itself had intended to or not, as a result of the DHA's indication, xenophobia was reported more frequently by migrants and refugee

individuals and organisations. Many foreigners reported frequent incidents of police brutality. Ms Burchmans, a representative from the Refugee Forum of Congo, described the gruesome treatments that black African foreigners often received at the hands of South African police.

On 24 January 2004, the Cape Times reported on an incident in which eight elements of the SAPS viciously kicked three Congolese refugees in Nyanga and called them makwerekwere. In other incidents, police failed to respond to calls made by refugees and said refugees should sort out their problems themselves. Refugees are being killed in cold blood or at gunpoint, beaten in their residences, specifically in townships and other areas such as Salt River and Woodstock in the Western Cape, Berea, Soweto, Hillbrow, Yeoville in Gauteng and other areas around the country for merely being makwerekwere (Burchmans from Refugee Forum of Congo, Parliament, 26 Aug 2005).

A rampant increase in xenophobic behaviour in society was documented in subsequent years (Crush & Ramachandran, 2014: 13). According to Crush and Ramachandran (2014: 13), there has been at least 250 documented xenophobic attacks against foreign nationals and refugee businesses in different locations around South Africa from 1994 to August 2014. Because of the inadequacy of SAMP's data access, this number could be even higher given that some xenophobic attacks may not have received adequate attention by the public and not have been covered in the media, so the actual tally could be even higher.

Furthermore, the DHA itself was characterised by its systemic xenophobia and was actively perpetuating antagonistic feelings towards foreign nationals, both as a government department and among its employees. Evidence points directly towards the amoral and discriminatory behaviour and conduct of DHA employees and officials (Burchmans from Refugee Forum of Congo, Parliament, 26 Aug 2005). The below quote shows that refugee women are subjected to sexually predatory behaviour and conduct from Home Affairs employees.

Last week, I heard of a lady who was denied a refugee status because she could not give to the request of a Home Affairs officer at Cape Town Reception office, who asked for sex so that the unfortunate woman could qualify for a status (Burchmans, Parliament, 26 Aug 2005).

The removal of 'combating xenophobia' shows the DHA's own institutional xenophobic attitude towards foreign nationals. This was not about the DHA's lack of resource to enforce the law as it claimed, but it was about the DHA's refusal to cooperate anti-xenophobic movements. Murray (2003: 453) argues that the DHA is known for 'dragging its feet [about their treatment of foreign nationals and immigrants] partly because of the political sensitivity around the rights of foreigners'. Vahed and Desai (2013: 162) describe that the department itself is actively perpetuating and reinforcing the view that immigration is overwhelming South Africa and thus denies local South Africans a better life. Barballi's (2009: 132) research also supports the view that there is institutional racism that permeates in the DHA amongst its officials. The DHA's removal of its responsibility to combat xenophobia should not be excused by the Minister's explanation that addressing xenophobia should not be the DHA's work alone.

It should rather be seen as the DHA's own antagonistic attitude towards foreigners which prompted the department to withdraw its responsibility from combating xenophobia in the 2004 Amendment Bill. The amendment shows that the antagonism towards foreigners had again prevailed and the influence of it more prevalent than South Africa's support for equality and its Bill of Rights and Constitution.

Change 3: Section 1(xvii), s 8, s 34 and s 40 which imposed stricter conditions on foreigners

Migration scholars assert there is a lack of rights secured for foreigners in South Africa's immigration policy (Pieterse, 2000; Kapindu, 2011; Segatti & Landau, 2011; Klotz, 2012; Gordon, 2015). Machinya (2016) further argues that restrictive immigration enforcement brought about by restrictive immigration policy negatively affect migrant workers and gives legal legitimacy over the control of unfree foreigners and deprives them of their legal rights. This deprivation of rights severely undermines foreign nationals' position and security in South Africa, exposes them to more vulnerable situations and leaves them unable to defend themselves. The amendments made to sections 1(xvii), 8, 34 and 40 of the Immigration Bill during the 2004 amendment process are such changes that have had negative implications to the legal rights foreign nationals of non-South African residents in and exposed foreign nationals to greater uncertainty and vulnerability. These amendments included:

- section 1(xvii) including permanent residents into the category of foreigners;
- section 8 reduced time for foreigners to prepare and appeal adverse immigration decisions which may affect them;
- section 34 granting law enforcement agencies the right to arrest foreigners without a warrant;
- section 40 community enforcement approach on accommodation premises;

The adoption of the amendments is an indication of the role that the prevailing influence of antagonism played in the shaping of the Immigration Bill. These amendments further contributed to the lacking of rights of foreigners in South Africa.

- Section 1(xvii): Permanent residents as foreigners

The amendment made to s 1(xvii) subjected permanent residency holders to uncertainty and possibly to the kind of treatment meted out to foreign nationals. In the Immigration Act 13 of 2002, s1 (xvii) defines a foreigner as 'an individual who is neither a citizen nor a resident, but is not an illegal foreigner' (Immigration Act, No. 13 of 2002, 2002: s1(xvii)). In 2004, the amendment changed it to 'an individual who is not a citizen' (Immigration Act, No. 13 of 2002, as amended, 2004: s 1(xvii)). It consequentially placed permanent residents within the same category as other types of temporary residents who were subjected to various immigration restrictions.

This amendment was not supported by human rights organisations such as Law Society of the Northern Provinces (LSNP). The LSNP explained the amendment's negative implications for Permanent Residency holders. LSNP argued that s 25(1) of the Immigration Bill clearly distinguishes the distinction between foreigners and permanent residents and has granted permanent residents privileges that ordinary foreign nationals do not enjoy. These rights were affirmed by Constitutional Court decisions such as *Khosa V Minister of Social Development Cct 18/03 (Handed Down on 4 March 2004)* and *Larbi-Odam V MEC for Education (North West Province) 1998 (1) SA 745 (CC) @ para 24* and expressed in the following quotation

It may be reasonable to exclude from the legislative scheme workers who are citizens of other countries, visitors and illegal residents, who have only a tenuous link with this country. The position of permanent residents is however quite different to that of temporary or illegal residents Like citizens, they have made South Africa their home (LSNP's submission on Immigration Amendment Act, 2 August 2004).

Thus s 25(1) of the Immigration Act and Constitutional Court's decision both affirm that permanent residency holders should not be treated as other categories of foreigners with temporary permits. However, the amendment to the definition of foreign nationals states the opposite. LSNP outlined some examples of how the amendments may negatively affect permanent residents.

Examples of where permanent residents and temporary residents have been treated alike, are found in

- (a) Clause 10 re section 9 (4) which would require a permanent resident to have a passport valid for 30 days before he or she can return home.
- (b) Clause 11 re section 10A (1) which would require a permanent resident to have to produce a visa to be allowed to enter the RSA
- (c) Clause 30 amending Section 29 (1) (a) which appears to have the consequence of rendering permanent residents illegal foreigners should they contract a prescribed infection, disease or virus.
- (d) Section 38 (4) would, in the light of such an amendment, require an employer to report the termination of a permanent resident's employment to the Department and that a failure to do so would expose the employer to criminal sanctions in terms of Clause 45 amending section 49 (6) of the Act (LSNP's submission on Immigration Amendment Act, 2 August 2004).

In light of that, the LSNP questioned whether the DHA's intention was to 'water down the rights of permanent residents'. The intention to include permanent residents in the foreign nationals' category indicates the role of antagonism in shaping the Immigration Bill because it further restricted more categories of non-citizen in the population. By not integrating permanent residents as part of South Africa's population, the amendment aimed to alienate and exclude more foreigners and thus contain them. Therefore, the amendment to s1(xvii) shows that antagonism had played a more decisive role in the shaping of the Immigration Bill.

- Section 8: Reducing the number of days given to foreigners to appeal adverse rulings

The DHA's amendment to s8 of the 2002 Immigration Bill which was drafted to provide foreigners sufficient time to prepare for appeal has undermined foreigners' rights to a just and fair trial and is against the Promotion of Administrative Justice Act 3 of 2000. The amendment reduced the number of days for foreigners to appeal adverse immigration decisions against them from the original 20 days to 3 days. In the original Immigration Act 13 of 2002 s 8 sets out clear adjudication and review procedures for foreigners who are affected by an adverse immigration decision (Immigration Act, No. 13 of 2002, 2002: s8).

Immigration Act, No. 13 of 2002, 2002: s8	Immigration Act, No. 13 of 2002, as amended, 2004: s8
<p>Adjudication and review procedures</p> <p>8. (1) Before making a determination adversely affecting a person, the Department shall notify the contemplated decision and related motivation to such affected person and give such person at least 10 calendar days to make representations, after which the Department shall notify such person that either such decision has been withdrawn or modified, or that it shall become effective, subject to subsection (2).</p> <p>(2) Within 20 calendar days of its notification, the person aggrieved by an effective decision of the Department may appeal against it—</p> <p>(a) to the Director-General, who may reverse or modify it within 10 calendar days, failing which the decision shall be deemed to have been confirmed; or</p> <p>(b) within 20 calendar days of modification or confirmation by the Director- General, if any, to the Minister, who may reverse or modify it within 20 calendar days, failing which the decision shall be deemed to have been confirmed, and be final, provided that in exceptional circumstances or when such person stands to be deported as a consequence of such decision—</p>	<p>Substitution of section 8 of Act 13 of 2002</p> <p>9. The following section is hereby substituted for section 8 of the principal Act:</p> <p>"Representations to Director-General</p> <p>8. (1) An immigration officer who refuses entry to any person or finds any person to be an illegal foreigner shall inform that person on the prescribed form that he or she may in writing request the Director-General to review that decision and—</p> <p>(a) if he or she arrived by means of a conveyance which is on the point of departing and is not to call at any other port of entry in the Republic, that request shall without delay be submitted to the Director General; or</p> <p>(b) in any other case than the one provided for in paragraph (a), that request shall be submitted to the Director-General within three days after that decision.</p> <p>(2) A person who was refused entry or was found to be an illegal foreigner and who has requested a review of such a decision—</p> <p>(a) in a case contemplated in subsection (1)(a), and who has not received an answer to his or her request by the time the relevant conveyance departs, shall depart on that conveyance and shall await the outcome of the review outside the Republic; or</p> <p>(b) in a case contemplated in subsection (1)(b), shall not be removed from the Republic before the Director-General has confirmed the relevant decision." (Immigration Act, No. 13 of 2002, as amended, 2004: s8).</p>

This original section 8 of the 2002 Immigration Bill provided a foreigner who was affected by an adverse immigration decision with a ten calendar-day period to make representation and a 20-calendar day period to prepare to appeal against the adverse decision. The rationale behind this section was to ensure that foreigners would have adequate time to prepare for appeal. In contrast, the amendments 2004 substituted s 8. The 10–calendar days provided in the 2002 bill was reduced to 3 days (s8 of the Immigration Act, 13 of 2002, as amended, 2004:). The Amendment Act further required foreign nationals who are adversely affected by a decision to wait for the outcome of the review outside the country.

The Immigration Practitioners Association of South Africa (AIPSA) said that this shortened time period provided foreigners with no other mechanism in the Immigration Bill to repeal against an adverse immigration ruling.

If a person is seeking to enter or apply for a status, Section 8 of the Act allows the applicant to be informed of a potentially adverse decision and to make representations, i.e. to supplement his/her application or to correct any misunderstandings regarding the application. In terms of Section 8 of the Bill this procedure is no longer available and there are no other provisions for this situation (AIPSA, 2004: 3e).

Furthermore, the Western Cape Immigration Practitioners Forum (WCIPF) also viewed the amendment to section 8 countering Administrative Justice and human rights.

Another major change in this Bill is the deletion of Section 8 of the Act. It is always tricky to balance the need for efficiency in Immigration Control and Administrative Justice and Human rights, especially when one has to legislate the movement of people, it is however an issue that, in this Bill, remains obscure and draconian and certainly falls short of the Preamble of the Bill states "immigration control is performed with the highest applicable standards of human rights protection" ([WCIPF]'s submission to the Portfolio Committee on Home Affairs on Immigration Amendment Act 2002, 22 July, 2004).

Human rights organisations raised the concern that the amendment which replaced the original s8 of the 2002 Immigration Bill not only eliminated foreigners' rights to be informed and make representations on an adverse immigration decision, it also falls short of regulating immigration control with the highest standards of human rights protection. The government's decision to go ahead and replace s8 severely undermined foreign nationals' rights and is a display of the government's antagonism towards foreigners.

- Section 34: Arresting foreigners without a warrant

Section 34 of the Immigration Act 13 of 2002 allows immigration officers to arrest any illegal foreigners in the country without a warrant. It also made it the obligation of all citizens' to identify themselves as

either a citizen, a permanent resident or a foreigner when requested by an immigration or police officer (Immigration Act, No. 13 of 2002, 2002: s34).

Section 34 of the Immigration Act 13 of 2002	Section 34 in 2004 Amendment Act
<p>Without need for a warrant, an immigration officer may arrest an illegal foreigner or cause him or her to be arrested, and shall, irrespective of whether such foreigner is arrested, deport him or her or cause him or her to be deported and may, pending his or her deportation, detain him or her or cause him or her to be detained in a manner and at the place under the control or administration of the Department determined by the Director-General</p>	<p>Without the need for a warrant, an immigration officer may arrest an illegal foreigner or cause him or her to be arrested, and shall, irrespective of whether such foreigner is arrested, deport him or her or cause him or her to be deported and may, pending his or her deportation, detain him or her or cause him or her to be detained in a manner and at a place determined by the Director-General (Immigration Act, No. 13 of 2002, as amended, 2004: s34).</p>

It is evident that the DHA's is firm in its stance to grant law enforcement officers the power to arrest foreigners without a warrant' despite illegality around the matter. According to s 34, any person could be picked off from the street and be arrested. Nyamnjoh (2006) and Crush (2008) both note that black African foreigners are bearing the most negative effect of this type of arrest. Vahed and Desai (2010) also note that a number of cases have indicated that some South Africans were mistakenly wrongfully arrested.

Compared to s 34 of the 2002Bill, Director-General's increased. The 2004 amendment to s 34 granted the Director-General the sole power to determine the place and manner in which undocumented foreigners could be detained.

Foreign nationals faced with 'an obscure and draconian procedure that certainly falls short of the Preamble of the Bill which states "immigration control is performed with the highest applicable standards of human rights protection"(Association of Immigration Practitioners of South Africa AIPSA, 2004:3).

AIPSA was of the opinion that foreign nationals should be afforded the same privileges as citizens in terms of bail conditions when they are found to have committed certain low-level criminal activities. Arresting foreigners without a warrant or denying foreigners bail on the basis of nationalities is discriminatory. In the quote below, AIPSA suggested for foreigners having found to have committed lesser crimes be given the option of bails just as citizens did.

We believe that any foreigner that is suspected of a contravention of the Act must at the very least be treated equally to a suspected low level criminal offender and the Immigration Officer must be entitled to require an "Immigration Bail" for an illegal foreigner. If any foreigner has a status, but is suspected of being in contravention thereof, and he/she or she is able to pay a fixed security deposit (or provide a written indemnity by a South African citizen) and provide proof of residence at

a physical address (equivalent of bail) he/she or she should be granted an Immigration Bail, subject to any other necessary conditions such as regular reporting at an office of the Department, and thereby have the opportunity to appeal the decision, or make representations to the Director General, without being threatened with detention. We submit that this approach would be consistent with Judge Pagan's recent report on our prisons, that our prisons and detention facilities are overcrowded, and that it is prudent to consider alternative means to detention whenever possible. We also believe that a person, who then wants to pursue his remedies in terms of the review procedures, would have to timeously pursue his review, and strictly comply with the conditions of his bail, failing which the bail will be forfeited and he/she will then be deported. We believe that this will be an appropriate procedure that will generate a lot of income for the Department and will discipline applicants in a suitable way to maintain the validity of their residence in the Republic (Association of Immigration Practitioners of South Africa [AIPSA]'s submission to the DHA on Immigration Amendment Bill, 2004).

In its submission, the Western Cape Immigration Practitioners Forum (WCIPF) drew attention to the motivation for not renewing one's visa in a timeous manner. It could be possible that a foreign national who was so busy with work and making a contribution to South Africa and forgot to renew visa. It could also be someone which defrauded the DHA officers when entering the country. WCIPF believed that the government needed to make a distinction between them.

Different considerations and procedures should apply in each situation. It can hardly be appropriate that a father or four who has had an own business temporary residence permit for four years in respect of an IT company, who is found helping his/her neighbour building a wall, or who simply forgot to renew his permit timeously, should be subject to the same risk of arrest, detention and review procedures as a person seeking to enter a port of entry with a counterfeit passport (Western Cape Immigration Practitioners Forum [WCIPF]'s submission to Portfolio Committee on Home Affairs on Immigration Amendment Act 2004, 22 July 2004).

Both quotations shown above reiterate what migration scholars have described as the lack of rights secured for foreign nationals in South Africa (Pieterse, 2000; Kapindu, 2011; Landau & Segatti, 2011; Klotz, 2012; Gordon, 2015). Foreigners are treated differently to South African citizens after they are found to have committed crimes. Whereas the arrest of foreigners without a warrant is unconceivable for South Africans as it would be regarded as a violation of the South African's constitutional rights, the Immigration Act permits foreigners to be arrested without a warrant. The government's refusal to heed the advice of stakeholders such as WCIPF and AIPSA indicates that antagonism towards foreigners had outweighed the respect for equality and Constitution and this section means that, unlike citizens, when foreign nationals are found to have committed a crime, they are subjected to a different set of standards which are in contravention to what equality and the Constitution stand and discriminatory.

- Community enforcement approach

A community enforcement approach aims to detect and report suspicious foreigners to law enforcement agencies. , There was an attempt by senior officials within the Department, as part of the DHA's internal migration control policy, to advance a community enforcement approach as a method to control and

regulate migration in South Africa from 1998 to 2004 (Vigneswaran, 2008: 784). The method aims to shift the DHA's administrative and policy focus from 'border control to community and workplace inspection'. The provision is articulated in s40 of the Act. It makes it compulsory for all accommodation businesses to keep a register on their guests' nationalities and to record the type of visa they have (Immigration Act. 13 of 2002 s40). By requiring all guests to indicate their nationalities and for accommodation establishments to keep a register, this section effectively turns these business and accommodation establishments into de facto immigration agents. Furthermore, section 40 also contains a penalty charge holding business owners responsible should any illegal foreigners were found on their premises. Hence, it hypothetically presumed that all business owners were privy to foreigners' visa information and consequently shall be responsible for any illegal alien on the premises. premises. Although the DHA's rationale behind the community enforcement approach was due to its limited resources and was thus unable to patrol South Africa's porous borders effectively, section 40 is nevertheless a drastic measure for accommodation owners (DHA] 1999; Vigneswaran, 2008: 784).

The amendment made to Section 40 of the Immigration Bill in 2004 took the community enforcement measure one step further. It added more detailed prescribed punishment to owners providing accommodation whose premises were found to have undocumented foreign nationals, effectively turning accommodation establishments into sharing the role of an immigration officer. Section 40 of the Immigration Bill in 2002 stated that

Accommodation

40. (1) Any business offering overnight accommodation shall make a good faith effort to identify its customers as citizens or status holders and shall report in the prescribed form to the Department any failure to effect such identification.

(2) When subsection (1) is not complied with and an illegal foreigner is found on any premises referred to in that subsection, it shall be presumed that such illegal foreigner was harboured by the person who has control over such premises, unless prima facie evidence to the contrary is adduced.

The 2004 amendment substituted the above, specifically adding that business owners would be liable for any undocumented foreigners found on their premises. This addition forced all accommodation owners to check their tenants and residents' nationalities and visas.

Substitution of section 40 of Act 13 of 2002

39. The following section is hereby substituted for section 40 of the principal Act:

"Keeping of registers of lodgers by certain persons

40. (1) The occupier of any premises, whether furnished or unfurnished where lodging or sleeping accommodation is provided for payment or reward shall, if those premises fall within a prescribed class, in the prescribed manner keep a register of all persons who are provided with : lodging or sleeping accommodation thereon, and every such person shall sign the register and furnish therein the prescribed particulars regarding himself or herself.

(2) Every occupier of premises referred to in subsection (1) shall, when required to do so by an immigration officer or police officer, produce the register referred to in that subsection for inspection.

(3) Any person who—

(a) contravenes or fails to comply with a provision of subsection (1) or (2);

(b) gives false or incorrect particulars for the purposes of subsection (1); or

(c) hinders any officer referred to in subsection (2) in the performance of his or her functions shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months.

Opponents of the community enforcement approach, such as those in the quotations below, argued that the policy would create a police state in which human rights would be violated. It would also exacerbate the xenophobia endured by foreign African nationals. The consequence of such a policy would mostly be borne by black South Africans and black African migrants, given the large number of migrant workers from neighbouring countries such as Mozambique and Zimbabwe. As most citizens are not trained immigration officers, the mechanisms that they would use to identify foreigners would incite unnecessary fear amongst people and resulted in racial profiling on the basis of physical attributes such as skin colour, vaccination marks, style of dress, , accent, etc. It is highly likely that such methods of identification could result in mistakes. Furthermore, foreigners may pose health risks to the South African population for concealing their medical history to avoid being victims of community enforcement (submission to the DHA on the *White Paper on International Migration*, [SAHRC], 11 January 2000; submission to the DHA on Immigration Bill, Lawyers for Human Rights [LHR], 2002; Mr Esselaar from Business Unity South Africa, Immigration Amendment Bill: Hearing, [PMG], 3 August 2004).

This policy is firmly based on the apartheid policy where people were constantly harassed to assert their right to be in South Africa. Because of the nature of xenophobia in South Africa, as practised by both citizens and authorities, the largest number of people falling foul of this enforcement policy will be black South Africans. In particular, people who are darker skinned will more often be accused of being illegal immigrants and therefore subject to institutionalised harassment. To enact legislation which institutionalises this policy will fall foul of the Constitution and be open to Constitutional challenge (Submission to DHA on White Paper on International Migration, [SAHRC], 11 January 2000).

We also note with concern that the Department of Home Affairs wants to create “a climate of cooperation with other organs of the state...to encourage them to take responsibility” in the implementation of the Bill and further “create a climate of cooperation with community organs of civil society...to encourage them to cooperate with the Department”. I am here referring to the objectives as set out in section 29 of the Bill. These intentions, we argue could only reflect the Departments vision to encourage communities and organs of the state to become “informers” by detecting and reporting on suspected illegal foreigners, The provisions also risk, as highlighted by the Johannesburg Child Welfare, to turn all government structures, including the children’s court and those responsible for justice, welfare and education into “snitch” organisations (Submission to DHA on Immigration Bill, Lawyers for Human Rights [LHR], 2002).

Despite the objections from human rights activists and organisations, s 40 was implemented. The implementation of the clause in the immigration Bill again reiterates the lack of rights for foreigners in South Africa as foreigners are deprived of their human rights and thus subjected to surveillance in

the communities in which they live (Pieterse, 2000; Kapindu, 2011; Landau & Segatti, 2011; Klotz, 2012; Gordon, 2015).

Stakeholders' positions on antagonism vis-à-vis immigration policy changes

The policy changes discussed above are clear evidence of the government's antagonism to foreigners, thus further reducing their rights and increasing the precariousness of their lives. The government's antagonism towards foreigners, regardless of foreigners' skills level, was a factor that impacted the immigration policy. It was this antagonism that pervaded the government and shaped the ideational environment which Archer (1995) refers to as 'cultural elaboration' and in which the DoH found itself when the recruitment policy on foreign doctors was drafted.

These policy changes had implications for foreigners in South Africa. First, the removal of public inputs as stated in the Preamble (c) and the changes made to the composition of the Immigration Advisory Board (IAB) show that there was a deliberate effort by the government to weaken the influence of the non-governmental sector and to undermine foreigners' rights collectively. A number of sectors, namely, the private sector, human rights organisations, higher education and research sectors supported immigration but, despite this this government became less accountable as it pursued its strategy for the government to push forward a more restrictive and national sovereignty oriented immigration policy.

Secondly, with the removal of the Department of Home Affairs' obligation to combat xenophobia in its 2004 Amendment Bill, this opened up more loopholes for xenophobic attacks to take place. Crush and Ramachandra (2014) note that attacks on foreign nationals appear to be on the increase since 2005. Ms Burchmans from the Refugee Forum of Congo presented anecdotal evidence given by refugees on how they were abused by the South African law enforcement agencies and that a Home Affairs employee had asked a female refugee to trade sex for refugee status (Burchmans from the Refugee Forum of Congo Parliament, 26 Aug 2005). It thus could be well appreciated that systemic xenophobia was prevalent among law enforcement and government employees. The removal exacerbated the systemic xenophobia that foreigners bore the brunt of the injustice and discrimination.

Finally, the various amendments that restrict foreigners' rights have undermined their position. The removal of the DHA's responsibility to respond to public inputs and the reduction of the number of members from civil society to serve on the Immigration Advisory Board undermined foreigners' rights collectively. The restrictions that subject permanent residents to foreign visa rules; reduction of the period in which foreigners may appeal an immigration decision; the justification for arresting foreigners without a warrant; and the requirement of the community to point out foreigners, all undermined the rights of the individual foreigner. Foreigners were henceforth subjected to more restrictions in their daily

lives. These policy changes show that in the formulation of South Africa's immigration policy, the greater influence was wielded by those that opposed immigration. Although there were some that advocated for immigration and a more humane treatment of foreign nationals, they were not powerful and influential enough to make a meaningful difference to the immigration policy. Without support and empowerment, the conditions for foreigners such as their right to work and to be employed remained highly restrictive. Of all the stakeholders, the most important and the most decisive role was determined by the government and Through the examination of those amendments mentioned above, it becomes clear that immigration policy became more restrictive and the lack of rights for foreigners more evident. Government's approach to immigration, as described above, shows that the DHA itself was antagonistic towards foreigners and was proactively taking steps to reduce the chances of having more foreigners in the country. The antagonism towards foreigners shared by both the government and opponent stakeholders implied that the creation of facilitating immigration system for skilled foreigners such as foreign doctors had to overcome the ideational antagonism as negative perceptions about foreigners were still the predominant narrative shaping South Africa's immigration policy. In order to attract skilled foreigners, the lack of rights for foreigners in South Africa must be addressed and the management of foreign nationals must be done within the confines of human rights (Pieterse, 2000; Kapindu, 2011; Landau & Segatti, 2011; Klotz, 2012; Gordon, 2015).

Chapter summary

This chapter presented the findings on stakeholders' attitudes and positions on immigration and how stakeholders responded to society's antagonism towards foreigners. Also, this chapter presented notable changes in the immigration policy. By showing stakeholders' attitudes on skilled immigration and the notable changes, it sought to illuminate the powerful influence of antagonism towards foreigners that predominated South Africa's immigration policy as well as government's role in perpetuating that antagonism.

The findings showed that there were two contrasting types of responses from stakeholders in response to society's antagonism towards foreigners. The first category of stakeholders rejected society's antagonistic attitude towards foreigners and immigration. Those stakeholders included academic and research organisations, the private sector, human rights organisations as well as a small number of politicians. The other category of stakeholders used society's antagonism towards foreigners to push for stricter immigration control. These stakeholders included organised labour, some individual South African citizens as well as a number of ANC and IFP politicians and some high-profiled public servants.

Notable changes in the findings showed that a heightened level of antagonism towards foreigners from the government occurred during the deliberations about the 2004 Amendment Bill as immigration policy became more restrictive from 2002 to the Amendment Act in 2004. This chapter analysed and summarised three changes in the immigration policy which had the effect of undermining foreigners' rights in South Africa. These indicate that the DHA and the government's restrictive approach to immigration. When comparing the changes in the immigration policy in relation to stakeholders' positions on immigration, it becomes evident that the predominant society value – antagonism towards foreign nationals, had a more decisive role in shaping the Immigration Bill from 2000 to 2006. The ideational environment, the strong antagonism towards foreigners and the rejection of their being in South Africa, was shared by those stakeholders that wanted stricter immigration control and the government. It provided the ideational environment in which the DoH drafted its policy in 2006 which discouraged the recruitment and employment of foreign doctors.

Chapter 7 Finding III: Stakeholders' responses and the Immigration Act: Skills shortage and unemployment

Overview

Following the previous chapter, this chapter continues to speak to sub-research question 3. It aims to describe and outline how stakeholders involved in the drafting process of the immigration policy responded to two structural conditions, namely, the skills shortage and high unemployment, in order to pursue or to object to skilled immigration in the immigration policy during the period of 2000 to 2006. This chapter first present a detailed report of different stakeholders' positions and responses to address the society's structural conditions –skills shortage and high unemployment, then it outlines those stakeholders' immigration solutions to tackle the challenges. Thereafter, this chapter compares those stakeholders' immigration solutions with the policy changes in order to determine which stakeholders had a more decisive role in the shaping of the final policy. By means of the stakeholders' responses, this chapter discovers amendments which were made to the Immigration Act such as the quota work permit, the extension of s 19 (5)'s intra-company permit, the removal of a yearly limit to the issuance of a permanent residency permit as per s 27 were indications that showed the government's dilemma in supporting a skilled immigration policy whilst assuring the pervasive opponents of skilled immigration that national workers' interest would not be affected. Furthermore, the labour certification process and the Training Permit Fee were both protectionist measures to ensure that national workers' job opportunities were prioritised. Through the findings, this chapter shows that although the government was engaging in a skilled immigration policy, its effort was constrained by forces such as organised labour and high-profiled ANC politicians who objected to skilled immigration. Thus, it was difficult for the DHA to implement a purely skills-driven immigration policy that only taking into account the pursuit of economic interest.

What were stakeholders' responses and their proposed strategies towards skilled immigration?

This section analyses how stakeholders' attitudes towards skilled immigration were reflected in their interaction and responses towards the two structural conditions in society –high unemployment and skills shortage. The evidence presented below show stakeholders' engagements with government through Parliament's hearings and written submissions to Parliament as well as government officials' approaches to skilled immigration as shown by Members of Parliament's comments and remarks and the Minister's speeches. The purpose of presenting these evidences is to understand:

- Who were those stakeholders?
- How did these stakeholders respond to skilled immigration facing South Africa's skills shortage and high unemployment?
- What was the stakeholder's proposed immigration solution?

As explained in previous chapters, the South African labour force was characterised by its oversupply of unskilled labour and a shortage in the supply of skilled workers (Barker, 2007; [CDE], 2010; Crush, 2014). Whereas the number of skilled foreigners entering South Africa has been on the decline since 1994, there is a steady increase in the number of skilled South African professionals leaving the country ([CDE], 2000). In the medical field, Clemens and Petterson (2008: 11) record that about 7363 South African doctors were working overseas in eight major destination countries¹⁸ in 2000. This number accounted for 21 per cent of the total of South African registered doctors registered at HPCSA in that year. Crush's (2014: 7) record shows that this figure increased to 13,000 in 2005. The high number of doctors leaving the country, compounded by a low number of skilled foreigners entering South Africa, implies that there is a skills deficit in the health sector and that there was a need for the government to use a robust immigration policy to attract more foreign doctors.

In addition to the skills shortage, South Africa also faced high unemployment rate (Fallon & de Silva, 1994; [DoL], 1998; May & Govender, 1998; Klasen & Woolards, 1999; Knight & Kingdon, 2005; Barker, 2007; Von Holdt, 2010). Black South Africans are shown to make up the bulk of the unemployed population (May & Govender, 1998: 2). The government's approach to address high unemployment was to implement an employment equity policy to address skewed racial imbalances within the labour force (Landau, 2011; Bernstein, 2014; Kahn, 2015). Since high unemployment was also caused by the large number of unskilled workers in South Africa who could not meet the demands of a growing number of knowledge-based industries, government also embarked on intensive skills development programmes such as the establishment of the Sectors Education and Training Authority (SETAs) to upskill and empower the South African workforce in order to change the situation (*Skills Supply and Demand in South Africa* DHET, 2016). Key stakeholders' inputs between the stakeholders that supported skilled immigration and those that objected to skilled immigration show that stakeholders' positions on skilled immigration diverged because of stakeholders' views on these two structural conditions and the appropriate strategies to deal with those two conditions.

¹⁸ These eight countries were Australia, Belgium, Canada, France, Portugal, Spain, United States and the United Kingdom.

Stakeholders who supported skilled immigration

Those stakeholders who supported skilled immigration asked the government to devise an immigration policy that could make foreigners' entry easier and less bureaucratic. In their view, an enabling immigration system that could attract skilled foreigners was a viable way to supply skilled labour for the domestic labour market and fill the skills shortage gap. Furthermore, as more skilled foreigners are participating in South Africa's economy, skills transfer would also simultaneously happen which could accomplish the objectives of skills development among the domestic workforce. As more South Africans are upskilled and economy grows, the high unemployment rate among its citizens will also drop.

The quotations below show the two Members of Parliament, Mr Waters and Mr Skhosana, who were among the few politicians that supported South Africa to implement a skilled immigration policy and also outlined the reasons for their giving such support. Mr Waters argued that South Africa needed to compete with other countries for talents in a globalised economy. Facilitating the movements of skilled foreigners would also create jobs and reduce unemployment for South Africans. Mr Skhosana urged people to see skilled foreigners as assets that could contribute to South Africa's economic development and not as a drain on the country's resource

Mr Waters stated that South Africa is participating in a global economy and must compete. He argued that South Africa cannot isolate itself. He agreed that the unemployment rate is high but submitted that attracting foreign skilled people would create jobs (Mr Mike Water, Member of Parliament, White Paper on International Migration: Hearing, Source: PMG Database, 16 May 2000).

Mr Skhosana (ANC) commented that whereas South Africans feel threatened by skilled foreigners, it should be the other way around and South Africans should see that the foreigners are helping the country on its path to development (Mr Skhosana, Member of Parliament, White Paper on International Migration: Hearing, Source: PMG Database, 16 May 2000).

The academic and research sector also supported skilled immigration. The quotation below from the Centre for Development and Enterprise shows that this public policy research organisation believed that by enabling skilled immigration, skilled foreigners would bring their expertise to the country and simultaneously address both skills shortage and high unemployment. Although there were suggestions, mostly argued by stakeholders who objected to skilled immigration, that it should not be promoted because government should place more emphasis on local skills development in order for South Africa to become sustainable to supply its own labour force, the CDE rejects this argument and states that training South African workers and upskilling workforce takes time and that although local skills development is necessary, it cannot deliver an immediate solution to address the skills shortage challenge.

Although there is a need to train more people in SA this will take time. SA needs as much skilled people as possible for the next five to 10 years from abroad. CDE is not in favour of a point system as foreigners will be more expensive to employ. Disadvantaged communities will not lose out because of skilled immigrants. The SA economy should not be seen as a fixed cake. A growing cake (economy) with bigger slices for everyone is needed. The only way to achieve this is through the importation of skills. Skilled immigrants should be regarded as fixed capital of investments. Internal training must improve but entrepreneurs are urgently needed. It is also very problematic that there is a falling number of matriculants that have mathematics and science on higher grade (CDE's response to *White Paper on International Migration*, February 2000).

The higher education sector also supported skilled immigration because of the shortage of skills that institutions in it had experienced in sourcing qualified employees (Ms A Daly, an academic personnel manager from the University of the Witwatersrand, *White Paper on International Migration: Hearing*, Source: PMG Database, 31 July 2000). Ms A Daly asserted that South Africa needed to attract skilled foreigners to fill the skills shortage gap. She also very astutely pointed out that the government's political atmosphere that focused on the pursuit of an employment equity policy to recruit black South Africans further exposed and deepened the severity of skills shortage. Because of the rigged Bantustan education under apartheid, a large percentage of the black South African population had been trained to work in labour-intensive industries which resulted in the lack of qualified black South African candidates to fill the positions that required a Master's or a PhD degree in the higher education sector (Barker, 2007). Although every effort had been made to advance local skills development, Ms Daly expressed the similar view to that of the CDE that the training of skilled workers would take time before South Africa could 'reach a self-sufficiency' in terms of skills supply and demand.

There are two primary reasons why universities need to be able to employ foreigners

- (a) The first is the lack of suitably qualified black South Africans. The pool of black academically qualified people that they sometimes command salaries three times greater than universities can offer. Few students, black or white pursue an academic career, and the secondary education system, as yet, has failed to produce the critical mass of black students required. While Wits is making every effort to enlarge the pool of black academics through targeted undergraduate programmes and increased postgraduate intake, it will take some years before reaching a degree of self-sufficiency. In the meantime the only way to provide role models for black students is by recruiting black non-South Africans...
- (b) The second reason why universities need to employ non-South Africans is the basic need for intellectual renewal. To participate fully in international debate it is necessary to bring foreign academics to South Africa, as well as enabling South Africans to gain experience overseas (Ms A Daly, an academic personnel manager from the University of the Witwatersrand, *White Paper on International Migration: Hearing*, 31 July 2000).

The private sector, among supporter stakeholders of skilled immigration was instrumental in supporting skilled immigration because of their own predicaments. The lack of skills in South Africa stagnated the development of many businesses and the bureaucracy around the immigration policy made it a time-consuming and frustrating experience should businesses consider importing professionals with scarce skills from outside the country. Business South Africa, a business association

representing the private sector, pointed out that the lack of skills was the reason behind South Africa's inability to grow the economy in knowledge-based industries (Business South Africa's submission to *White Paper on International Migration*, 9 May 2000).

BSA is of the opinion that South Africa cannot attract enough skilled migrants to make up for the present brain drain. If our knowledge-based industries and commercial enterprises do not grow they will train fewer people under our SETA-based schemes and businesses will not be able to absorb those that are trained. We shall then effectively export our own labour by purchasing the product from outside South Africa instead of creating it here with skills from whatever source is available (Business South Africa's Submission to *White Paper on International Migration*, 9 May 2000).

With the slow growth of South Africa's economy, unemployment would rise because the economy could not absorb the trained professionals. Hence, the business sector argued that the importation of foreign skilled workers could broaden South Africa's skills pool, accelerate its economic growth and create more work opportunities that could then reduce the unemployment rate.

This table on the next page summarised the above stakeholders' views and their inputs and comments on skilled immigration. It also includes what those stakeholders' proposed immigration strategies were to address skills shortage and high unemployment. As the table below illustrates, politicians such as Mr M Water and Mr Skosana were concerned by the skills crisis which prompted them to propose strategies that support skilled immigration. Research organisation CDE and Ms Daly from the higher education sector, shared the same concern on skills shortage and also proposed strategies that support skilled immigration. For the private sector, the table below indicates that Business Unity South Africa was concerned about the lack of skills and its impact on business growth. This led them to support strategies of skilled immigration.

Sector	Stakeholder(s)	Enablers/Constraints	Proposed Immigration Strategies
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Politician	Mr M Water, MP	South Africa was losing in the global competition for talents (skills shortage)	Attracting skilled foreigners to create jobs
Politician	Mr Skosana, MP	Skilled foreigners can help SA to develop economy (high unemployment)	Attract skilled foreigners
Research organisation	Centre for Development and Enterprise (CDE)	Training and upskilling workforce takes time (skills shortage)	Attracting skilled foreigners to transfer skills
Higher education sector	Ms A Daly (Wits University)	Lack of qualified black South African candidates (high unemployment)	Importing skilled foreign professionals to fill the skills shortage gap
		Importance of intellectual renewal (Skills shortage)	
Private sector	Business Unity South Africa	Struggle to grow knowledge-based industries because of skills shortage (skills shortage and high unemployment)	Importing skilled foreigners to grow knowledge-based industries

To sum up, stakeholders that supported skilled immigration believed that by removing restrictions on employing skilled foreigners and deregulating bureaucracy in South Africa's immigration policy, South Africa would then be able to attract more skilled foreigners to fill up skills shortage gap. Skills development for local citizens will also take place simultaneously while skilled foreigners are filling in the skills shortage gap. As more skills are transferred to South African workers and the economy grows, more jobs will be created and unemployment amongst citizens would decrease.

Stakeholders that opposed skilled immigration

Conversely, there were stakeholders who opposed skilled immigration. These stakeholders emphasised to using the training of South African workers instead of immigration as a strategy to address the skills shortage and high unemployment. These stakeholders embraced a nationalist narrative and asked government to prioritise the training of local workers and to place restrictions on the employment of foreign nationals. The purpose of imposing restrictions on skilled foreigners was to ensure that employers would exhaust their means to train South African workers. Should skilled foreigners become a labour force that was easily accessible, these stakeholders believed that it would result in an overreliance on foreign skilled labour and diminish national workers' job opportunities. Employers would be disincentivised to train local workers if skills could be sourced from outside the country easily. So by making skilled immigration more difficult, the intention of making skilled immigration more difficult for foreigners and for South African employers to employ foreign skilled labour so that national workers' interest (being upskilled and trained with skills) and job opportunities

would be prioritised. The DHA's White Paper in 1999, as seen in the quotation below, mirrored the DHA's view on immigration that skilled immigration could not be made too easy. This was an accurate description of the sentiment shared by stakeholders that opposed skilled immigration. This explains the DHA's rationale in justifying its quota system and labour certification process to ensure that measures are in place to avoid making immigration a business for all foreign nationals.

In fact, for as long as employing a foreigner is marginally and substantial more expensive and inconvenient for an employer than employing a South African, any alien employed in South Africa would by definition fill a position for which a qualified South African is not available (White Paper on International Migration (DHA, 1999: 31).

Many stakeholders who objected to skilled immigration shared what the White Paper stated, as indicated above, and believed that skilled foreigners' presence in South Africa would be detrimental to South African workers. A number of politicians such as the Members of Parliament, as shown below objected to skilled immigration (Members of Parliament, *White Paper on International Migration*: hearing, 15 May 2000, [PMG]). The quotations below show that Ms Maunye, Mr Chikane as well as two other unidentified Members of Parliament on the Home Affairs Committee expressed their view that local skills development to train South African workers was a better way to close the skills shortage gap and thus South Africa should emphasise more on training locals and not rely on foreign skills.

Ms Maggie Maunye (ANC) asked why the CDE not recommends to businesses that they train South Africans, rather than inviting skilled people from outside of the country.

Mr Chikane (ANC) remarked that the country should focus on training, rather than immigration. Mr Chikane (ANC) reminded Committee Members of their responsibility to the electorate and to the process of building now to develop assets for the future. He mentioned the importance of making sure immigrants are not criminals. He mentioned that he sees the disparities of South Africa's past are still in place, but that opening the doors to immigrants is not a solution.

A Committee Member commented that allowing skilled people to come and work in South Africa is a vicious circle, since these people tend to want to stay after their contracts have been completed.

Another Member asked how immigration would be controlled without quotas or a point system (*White Paper on International Migration*: hearing, 16 May 2000, Source: PMG).

Trade union organisations such as the Congress of South African Trade Unions (COSATU), the National Union of Mineworkers (NUM), the National Council of Trade Unions (NACTU) and the Federation of Unions of South Africa (FEDUSA) were all vocally opposed to easing restrictions on the importation of skills. Trade unions' opposition to skilled immigration was characterised by its persistency as it continued to regard the importation of foreign skills as inherently in conflict with local skills development. Given South Africa's low-skilled workforce as a result of the historical apartheid legacy, it is understandable why organised labour would be so fervently objecting to easing restrictions to facilitate skilled foreigners' movements (Lewis, 2002; Barker, 2007: 205; CDE, 2010; Crush, 2014; Kahn, 2015). Organised labour's view was that the easing of restrictions on skilled foreigners would result in more skilled foreigners in South Africa and negatively impact the employment and training

opportunities of South African workers. Hence, the quotes below were taken directly from trade unions' submissions to Parliament on the Immigration Bill and show how those COSATU-led joint submissions affirmed their opposing stance to skilled immigration because of their fear of local workers losing opportunities to be trained and upskilled.

Principle 6; Immigration policies aimed at attracting skilled workers must not jeopardise the priority of developing skills in the South African workforce and we should not compromise the Department of Labour's programme for improved skills training on the basis that attempts are being made to attract skilled labour from other countries (COSATU's submission to Parliament on White Paper on International Migration, dated 11 February 2000, Source: Sabinet Legal Database).

We are concerned about the impact that the overemphasis on highly skilled workers will have on national programmes prioritising the development of local skills. Although we welcome provisions requiring that corporates provide training programmes for South Africans, this in itself is not sufficient. Strategies must be developed both to retain and develop local skills in areas of shortage. Failure to do so will only further entrench dependence on foreign skills and will discourage local skills development (COSATU's joint submission with NACTU and FEDUSA on Immigration Bill, 18 April 2002).

Joint submissions led and made by COSATU did not show its strong criticism towards skilled immigration until 2006. In the submissions made by trade union organisations in 2000, 2002 and 2004, it was emphasised that skilled immigration should not undermine South African national workers' skills development programmes. Although the point was emphasised that skilled immigration should not undermine the country's effort in training South African workers, trade unions did not boldly state their objection towards skilled immigration policy, nor did they vent their frustration of the private sector on its support for skilled immigration until 2006. COSATU in its 2004 submission still hoped that the government would consult with key stakeholders in order to work out a 'balanced approach for labour market stability and reduce long-term reliance on foreign skills' (COSATU's submission to Parliament on Immigration Amendment Act, 2004, dated 5 August 2004, Source: Sabinet Legal Database). It was not until 2006 that trade unions' objection towards skilled immigration became evident. Government, although shown in the preceding chapter as antagonistic to foreigners, agreed with stakeholders who supported skilled immigration that the importation of skills is key to address domestic skills shortage. As shown below during the 2006 Immigration Amendment Act deliberation process, trade unions organisations expressed their exasperation at the government's focus to using skilled immigration as a strategy to deal with skills shortage and its failure to recognise the possible repercussions of a massive wave of skilled immigrants on the South African labour market. Furthermore, they felt let down by the government's failure to acknowledge their calls to prioritise South African. The quotation below also shows organised labour's direct frustration at the private sector for its supporting role behind government's skilled immigration policy.

[T]his has over time appeared to have fallen away in deference to narrow economic interests, and we would argue in direct response to lobbying by the business community...The business

community has not shown a meaningful commitment to local skills development, preferring instead to apply pressure to remove regulations that prescribe investment in local skills. This disregards the fact that the under-development of skills in South Africa and the region is rooted in apartheid and colonial history. Thus there are moral as well as economic imperatives to promoting local skills development. Accordingly, we are of the view that the targeting of foreign skills should be implemented in a manner that does not compromise local skills development or exacerbate labour market instability (COSATU & NUM's Submission for Immigration Amendment Act 2006, 10 August 2006).

Their exasperation could have been caused the government's 2006 decision in to relax the restrictions on the employment of skilled foreigners. For instance, the extension of the intra-company visa and the reiteration on its skilled immigration policy by the Minister in 2006 to the Chamber of Commerce were both demonstrations of the alliance between the government and those stakeholders who supported skilled immigration. As stated above, the trade unions organisations frustration and concern was that by allowing more skilled foreigners in, national workers' job opportunities would be adversely affected and that even the prioritisation of training local workers would be undermined.

In opposition to the stakeholders who supported skilled immigration, trade unions such as COSATU and National Union of Mineworkers (NUM) lobbied for the government to undertake a comprehensive long-term immigration policy review with the possibility to remove the immigration policy's emphasis on skilled immigration. In the submission made by COSATU and NUM in 2006 as shown below, these two organisations called for government to abandon the economic-centric skilled immigration policy.

Notwithstanding this there has been no indication as to when the Department intends to initiate the review process. Whereas the introduction of the current Bill raises questions as to whether the Department has in fact abandoned the overhaul process altogether...we had previously pursued only the most urgent reforms affecting migrant workers on the understanding that there would be space at a later stage to address further concerns in the later process. Accordingly, we urgently seek clarity from the Department as to whether the review process has in fact been abandoned and if not then what are the applicable time frames, in order that we may decide on how we pursue our concerns.

In line with this we are calling on the Department to initiate as a matter of urgency a broad public consultative process, involving all stakeholders and NEDLAC, to develop a final immigration policy framework and new Immigration Act.

It is of concern that formal immigration policy objectives, both locally and internationally, have been reduced to facilitating the importation of so-called scarce skills and addressing potential threats to internal security. This has meant the relegation of key developmental and transformative objectives that would facilitate regional socio-economic development, such as the determination and implementation of immigration policy that is compatible with progressive labour, trade and industrial policy particularly within the SADC region (COSATU & NUM's submission on Immigration Amendment Act, 10 August 2006)

Stakeholder(s)	Enablement/Constraint	Proposed Immigration Strategies
Ms Maunye, MP	Local skills development	Restricting immigration

Mr Chikane, MP		
Two other MPs on Home Affairs Portfolio Committee		
COSATU	Retain South African skilled professionals	Restricting immigration
COSATU	Over-reliance on foreign skills	Restricting immigration
COSATU	Immigration policy appeased the private sector, undermined progress to achieve transformative goals	Restricting immigration

The above table summarised some of the key findings from the stakeholders in the dataset. As the table illustrates, some high-profile members of parliament such as Ms Maunye and Mr Chikane opposed skilled immigration because of their concern that it would limit the possibilities of South African workers from receiving training opportunities and be upskilled. Similarly, trade union organisations such as COSATU also held the same view which resulted in their opposition to skilled immigration. Furthermore, as the table shows, trade unions also show their hostility towards the private sector, accusing them of being non-cooperative towards the training of South African workers. Opponent stakeholders held negative views on skilled immigration. They inherently believed that supporting skilled immigration and skills development of national workers are irreconcilable, hence, they uniformly supported a nationalistic discourse to make immigration policy more restrictive for skilled foreigners so that only those with extremely specialised skills which could not be found in the South African labour market would be employed in South Africa.

Government's approach on skilled immigration

Although immigration, borders and refugees are not directly mentioned in South Africa's Constitution, the government and the DHA was of the view that it is part of the DHA's legislative mandate to monitor and regulate the admission of non-citizens (DHA, 2014: 13). Therefore, the DHA's role in the drafting of South Africa's immigration policy was the most important. From the dataset collected during the period of 2000 to 2006, the government did agree with some stakeholders that using skilled foreigners as a strategy to boost the domestic skills pool and develop South Africa's economy. The DHA's support did not, however, deter the government from adopting certain protectionist provisions in the immigration policy which were supported by sectors such as organised labour and politicians that opposed skilled immigration and elements such as quota system and labour certification process. By putting the protectionist measures in place, the DHA appeased those anti-skilled immigration sections of the society that believed that skilled foreigners' presence would negatively affect South African workers' interests.

In a key address at the Old Assembly Chamber on the 6th and 7th July 2000, the then Minister of Home Affairs delivered a speech titled *Regulating Migration in the 21st Century: A South African Perspective* in which one of the key highlights was the acknowledgement of the urgent necessity to import scarce skills from outside the country in order to grow South Africa's economy. Minister Buthelezi mentioned how important it was to

enable our industry to acquire all the foreign skills it needs to grow - in spite of the keen international competition for skilled labour - while training South Africans (Minister of Home Affairs, Conference at Old Assembly Chamber, Cape Town, Source: Sabinet Legal Database, 6 to 7th July 2000).

South Africa's need to attract skilled foreigners was mentioned again in the Minister's presentation to the Portfolio Committee on Immigration Bill in 2002 in which he stated

we designed a system which tested the need for foreigners by relying on market dynamics, leaving employers to decide which foreigners they need, while we as a Government, would test the intensity of employers stated needs through a licencing fee. If an employer pays the licencing fee, which makes the foreigner more expensive than a national, then the foreigner would be needed, and we could raise the threshold of acceptable need by raising the licencing fee (Introductory Speech by Minister of Home Affairs on Immigration Bill, 17 May 2002, National Assembly).

In the introductory speeches to the Immigration Amendment Bill in 2004, both Minister and Deputy Minister of Home Affairs again affirm the vital role of attracting foreign skills in the formulation of the Immigration Bill thus

a sound immigration policy is vital to the country for a number of reasons. Such policy should facilitate economic development, attract foreign skills and investment and reflect our commitment to human rights and the security of those who live within our borders, both citizens and residents. Our immigration policy should be consistent with our foreign policy objectives, particularly with regard to SADC and the continent; and consistent with our commitment not to discriminate on the basis of gender (Minister in the National Assembly, 19 August 2004; Deputy Minister in the NCOP, 26 Aug 2004, Source: Sabinet Legal Database).

The then Home Affairs Deputy Minister Malusi Gigaba was quoted speaking at the Fifth Annual Services of SETA conference in 2005.

It stands to reason therefore that South Africa should also join the ranks of those countries that import scarce and critical labour, mindful of the fact that this is not just a stop-gap measure, but as part of the global economy, our country will also attract foreign skills and export skills to other countries. We can no longer sustain the false belief that the import and export of skills is a temporary sojourn that we will abandon as soon as we have developed enough local skills to fill the gaps we have (Deputy Minister of Home Affairs at SETA conference, 27 October 2005, Source: Sabinet Legal Database)

The consistent reiteration of the importance and urgent need to source critical skills from outside South Africa shows the government's direction in pursuing skilled immigration in the immigration policy despite its antagonism to foreigners as shown and described in the previous chapter. The then Deputy Minister Gigaba also stated that the DHA's vision was to envisage skilled foreigners' participation in

South Africa's economic activities in the long term. Both the Minister's and the Deputy Minister's speeches are indications that the DHA was aware of the severe impact that the skills crisis was causing to the country's economy and agreed with the policy direction that by implementing a skilled immigration policy, the challenges created by the skills shortage crisis and unemployment among citizens could be resolved.

Despite the government's vocal expressions in support of skilled immigration, little progress was made in this regard because of the pervasive influence that organised labour had exerted over the government, one that prioritised the redress of equity issues more than the country's need for more skills (Segatti & Landau, 2011; Kahn, 2015). Segatti's (2014) study reveals that in the medical field, a sector which is plagued by skills shortage, the human resource policy has been directed by the need to promote equity of employment rather than appointing qualified hospital managers and doctors. This is consistent with the view expressed by organised labour in the dataset which was characterised by its discourses to promote South African workers' employment and training opportunities. As organisations such as COSATU and NUM were powerful political actors, they constrained the DHA on its path towards building a skills-driven immigration policy (Trimikliniotis et al., 2008; Landau & Segatti, 2011; Klotz, 2012). More often, government had to listen and make concessions to trade unions in order to get their support. For instance, in the quotations below drawn from the deliberations conducted during the 2004 Immigration Amendment Bill process, COSATU and NUM expressed that the current immigration policy had placed too much emphasis on skilled immigration and sidelined the importance of the training and upskilling of South African workers. The trade unions' positions on skilled immigration was a very conservative one, in that it supported skilled immigration as long as local skills development was not undermined.

[W]e believe that a complete review of the preamble would be best left to the long-term policy review process. We have thus confined our comments to the proposed amendments regarding the General Agreement on Trade in Services (GATS) and the need for scarce skills.

This falls largely within our broad approach to the emphasis on importation of foreign skills to address local skills gaps. This we believe may only be achieved through a balanced approach entailing consultation of key stakeholders in order to provide protection for labour market stability and reduce long-term reliance on foreign skills (COSATU & NUM submission to Parliament on Immigration Amendment Act 2004, 5 August 2004, Source: Sabinet Legal Database).

The words 'reduce long-term reliance on foreign skills' in the above quotation give an indication of the trade unions' vision of the role of skilled foreigners in South Africa's economic development. Skilled foreigners should only be in the country to fill the skills gap as a temporary measure. This vision which trade unions held lacked the depth to regard skilled immigration as a long-term solution to South Africa's skills shortage crisis because expanding the breadth and depth of South Africa's skills pool would require time (CDE 2010; Crush, 2014).

Despite the trade union organisations' objections to skilled immigration and their demand for a long-term review of the immigration policy, the DHA went ahead with the policy. Minister Mapisa-Nqakula shot down the request for a long-term review of the DHA's immigration policy in the amendment process in 2006.

[The] Immigration Act provides a workable policy framework, even though it is not perfect. It is not the intention of the Department will not be making any radical changes in the near future. The report in one of our newspapers a few weeks ago that a new Immigration Act was being prepared for implementation next year is not true (Minister's speech to Chambers of Commerce, 27 June 2006).

Although the DHA's pursuit for a skills-driven immigration policy was stalled and obstructed by, among others, the politically powerful trade unions and politicians, the overall sentiment about using skilled foreigners to address South Africa's skills shortage and high unemployment was a policy that both the DHA and the government agreed on. But because of the influence from the opposition, as will be shown in the section below, government's immigration policy was never truly liberalised and thus had many red tapes that could not maximise its optimal effect in attracting skilled foreigners.

Outcomes: what were the changes in the immigration policy from 2002 to 2006 that corresponded to stakeholders' responses to skills shortage and high unemployment

The Immigration Act 13 of 2002 and its subsequent amendments in 2004 and 2006 signify the outcomes between the deliberations of stakeholders and their different approaches towards using skilled immigration to address skills crisis and high unemployment. The DHA was conflicted about skilled immigration. On the one hand the DHA's aim to promote and facilitate skilled immigration was in line with those stakeholders who shared this view. On the other hand, those stakeholders that objected to skilled immigration, most prominently trade union organisations COSATU and NUM as well as high-profile politicians such as Ms Maggie Maunye (ANC MP)¹⁹, influenced the DHA into not relaxing the restrictions on skilled foreigners. The opposition's objection towards skilled immigration was characterised by protectionism which aimed to protect South Africans' work opportunities by

¹⁹ Ms Maggie Maunye is a Member of Parliament from the ANC. She would later become Chairperson of Parliament's portfolio Committee on Home Affairs in 2011, serving as the Chairperson until 6 May 2014 (People's Assembly, n.d.). She articulated anti-immigrants' remarks that were deemed xenophobic in 2011. She eventually had to publicly apologise in the ANC caucus for this remark (Office of the ANC Chief Whip, 2011).

Really, this intake, for how long are we going to continue with this as South Africans? Is it not going to affect our resources, the economy of this country? I think that as the Portfolio Committee, we need to sit down and discuss this openly; on how long are we going to continue with the intake without the support of other countries... You know, we see on TV Spain turning refugees back to their countries, and here you will be told of human rights laws; you know the constitution is against that and all sorts of excuses, and here we have people who are living in poverty daily, people who are unemployed. We've never enjoyed our freedom as South Africans. We got it in 1994 and we had floods and floods of refugees or undocumented people in the country, and we always want to play as if no, there's nothing like that (Makinana 2011).

discouraging the promotion of skilled immigration as a key strategy to address the domestic skills shortage crisis. Hence, the changes to the immigration policy from 2002 to 2006, as illustrated below, show the DHA caught in a conundrum in its attempt to reconcile the interests of those that supported skilled immigration, its own desire to use skilled immigration to address skills shortage and high unemployment and those that opposed skilled immigration. Because of these conflicting interests the DHA could not implement a skills-driven immigration policy which purely pursues economic interests for fear of any repercussions if they were to hurt workers' interests in employment and skills development. Archer (1995: 303) describes this type of scenario as 'compromise', a term used to describe two conflictual parties whose interests are inherently incompatible, and that government has to take an approach to appease both sides of stakeholders. The outcomes illustrated below in this section are indications that point to the more decisive stakeholders in the deliberation of the Immigration Bill.

From 2002 to 2006, the outcomes of the deliberation between stakeholders resulted in

- Section 19 (1) of the Immigration Act: quota work permit which categorically lists skills and the quotas for each skills needed annually;
- Section 19 (5) the extension of intra-company permits;
- Section 27: the removal of quotas for permanent residency on specific professionals;
- Labour certification process which aims to ensure that foreigners are only recruited and employed when there is no suitable South Africans available;
- and the scrapping off Training Permit Fee.

These changes were intended to attract more skilled foreigners to work in South Africa by de-regulating unnecessary restrictions for foreigners. Those changes indicated the DHA did advance a skilled immigration idea in its immigration policy as all the abovementioned policy provisions were intended to attract skilled foreigners. However, these changes were also accompanied by provisions that inhibited the progress of skilled immigration. These provisions included the retaining of the quota system and a labour certification system for foreign skilled workers. The quota system assumes that the demand of skills can be predicted and projected which counters the volatile nature of modern economy. Labour certification, through its advertisement process, ensures that all national workers in the domestic labour market have been diligently searched for before any foreign worker can be recruited. Although it is argued that both processes are to be done at the expense of losing skilled foreigners, they could be seen as the DHA's reconciliation effort to appease the opposition in order to garner more support for its skilled immigration policy. The findings from a thematic analysis presented below point to the DHA's effort in the Bill which aimed to reconcile the conflicting interests.

Section 19 (1): Quota Work Permit

The implementation of the quota system in the Immigration Act shows that the DHA had to try to reconcile the interests of those that promoted skilled immigration and those that inhibited skilled immigration in order to begin the skilled immigration process and to satisfy the demands of those that wanted national workers' interests protected. Quota Work Permit is a category of work permit under s 19 (1) of the Immigration Act of 2002, issued to foreigners who have the skills that are on government's Scarce Skills List (Immigration Act 13 of 2002, s19). During the discussion on the immigration policy, the private sector, organised labour and politicians had contrasting views on the logic of quotas in their operation in relation to economy. The pro-immigration stakeholders, as will be seen below, believed that the use of quotas to project and determine the number of skilled professionals needed for the economy is based on the centralised planned economy which is against the volatile nature of a neoliberal economic policy, whereas against-immigration stakeholders saw it as an efficient mechanism to protect domestic workers' interests.

The private sector was against the notion of a quota system and believed that the determination of the market's demand for labour and skills should be left to the market. Their reasons are twofold. First, its members argued that the rigid quota system, as pointed out above, was against the nature of a modern economy. Secondly, they voiced their concern over the government's administrative to timely and expeditiously update and monitor a quota database. The selected quotations below from Business South Africa and PriceWaterhouseCoopers clearly indicate the private sector's lack of confidence in the DHA's capacity and its objection in using quota in the immigration policy.

Quotas of any sort are also problematical. A quota can also be used as a protectionist measure or a political weapon, neither of which is conducive to economic success. Quotas are artificial and rigid measures not amenable to modern work organisation or the encouragement of economic activity. They are necessarily based on poor historical data in a volatile new global world of work. Vested interests will suffocate the quotas to the detriment of the economy (Business South Africa's Submission to White Paper on International Migration, 9 May 2000).

However, in terms of the Amended Bill it appears that there will be no choice at all as employers are forced to use the quota permit route until the quotas are fully utilised. We are unaware of any systems put in place to monitor the issue of quota permits by the Department and are thus reluctant to proceed in this manner, particularly in instances where all criterion for the issue of an Intra-Company Transfer category of work permit would be met (PwC's Submission to Immigration Amendment Bill 2004, 20 July 2004).

Conversely, stakeholders who objected to immigration supported the quota system and were opposed to the idea advanced by pro-immigration stakeholders that the determination of quotas should be left to the market. For them, leaving the determination of quotas to the market and abandoning the quota system would result in an enormous number of skilled foreign labour coming into the country. In

their view, this would destabilise the labour market for South African workers. The quotation given below illustrates COSATU's support for a decisive role that the state should play in monitoring the admission of skilled foreigners as well as organised labour's support for the implementation of the quota system to monitor and admit skilled foreigners' arrival.

This paragraph has already prematurely predicted the failure of government to deal with those who hire illegal immigrants and to legislate on the labour market. It fails to realise the duty and responsibility of government to govern and to regulate the labour market and should therefore be deleted from the White Paper... COSATU does not share this view. The responsibility of determining who and how many people should work in the country must not remain solely with industry. The State should play a decisive role in regulating entry of foreign workers (COSATU's submission to *White Paper on International Migration*, 11 February 2000).

The outcome in the Immigration Bill was that the quota system was incorporated and implemented by the DHA, despite the call of some stakeholders to abandon the quota system (Business South Africa's submission to the *White Paper on International Migration*, 9 May 2000; PwC's Submission to Immigration Amendment 2004, 20 July 2004). What does the DHA's adoption of a quota system reveal of its attitude towards skilled immigration? The DHA's incorporation of the quota system fulfilled two roles. The adoption of the quota system allowed the DHA to proceed with its skilled immigration without its being the recipient of many objections from the opposition stakeholders. It did this by assuring them that quotas would be used to monitor skilled foreigners' entry to avoid an overflow of skilled foreigners entering South Africa. Furthermore, since quotas are updated annually, their updating would be used as leverage for organised labour to determine quotas in order to protect South African workers' interests.

Section 19 (5): Intra-company transfer permit duration

The second pattern that demonstrates the DHA's attempt at reconciling the conflicting interests of stakeholders was its amendment in 2006 that extended the duration of intra-company transfer permits from two to four years, thus allowing more flexibility for foreign skilled labour to work in South Africa. Under the work permit, s19(5) of the Immigration Act 13 of 2002 established an intra-company transfer permit which may be issued to a foreigner who is employed abroad by a business that has a branch in South Africa (Immigration Act, 13 of 2002, s19(5)). The 2002 Act provides that the duration of the permit cannot exceed more than two years (Immigration Act 13 of 2002, s19(5)). The Amendment Act of 2006 extended the period to four years which allowed foreign workers with this category of work permit to work in South Africa longer, giving them more flexibility without having to re-apply every two years (Immigration Act 13 of 2002, as amended, 2006: s19(5)).

Although the stakeholders who welcomed the government's extension of 19(5), they had wanted the government to extend it to a five-year period on par with what was allowed for tax residence. PwC,

in the quotation below, is one of the private sector organisations in the that proposed a five-year period for a s 19(5) intra-company permit.

The maximum period for an intra-company transfer permit has been increased to 4 years. This increase is welcomed. However, it still falls short of industry requirements and is not consistent with the tax laws that provide for a 5-year window of physical presence before tax residence (so as not to act as barrier for the attraction of foreign skills)... There are a number of international companies that apply a 5-year period for their international secondments, and it is recommended that intra-company transfers should be for a maximum of 5 years (PriceWaterhouseCoopers submission to Immigration Amendment Bill 2006, 22 Sep 2006).

The extension to a four-year period exemplified the DHA's reconciliation between the two conflicting interests on skilled immigration. Stakeholders that opposed skilled immigration such as organised labour opposed such an extension. The quotation below shows COSATU and NUM's opposition to this extension. In their view, this extension undermined local skills development and transfer and encouraged a reliance on foreign skilled labour.

Currently section 19(5) of the Immigration Act ...We are strongly opposed to this amendment, which is clearly directed at the importation of so-called scarce skills, raising serious concerns about the implications it has for undermining the process of local skills development and transfer. In our view, where a permit is required for a longer period then it would be more appropriate to apply for a quota work permit or general work permit under section 19(1) or (2). Accordingly, we are calling for the retention of the current two-year restriction on intra-company transfer work permits (COSATU & NUM's submission on Immigration Amendment Bill2006), 10 August 2006).

The extension of the intra-company transfer permit to a four-year period reveals two points:

- 1) It is evidence to affirm the DHA's acknowledgement of the skilled immigration policy.
- 2) The DHA had to balance the interests from both pro-skilled immigration stakeholders and against-skilled immigration stakeholders

As the DHA was well aware of the severity of the skills shortage, extending intra-company transfer permits would allow more skilled foreigners to work in South Africa for two more years and then contribute to the skills pool and economic development of the country. The government acknowledged the need for skilled foreigners to be brought into the country to address skills shortages. The pervasive influence of organised labour can be seen in the submission of COSATU and NUM in 2006 that implied that the change of policy could not be at too much of an advanced stage. Therefore, the role that the DHA took remained conciliatory in its extension of the work permit to a four-year period, not the five years requested by PwC.

Section 27: Removal of yearly limits for permanent residency

The 2006 Amendment demonstrated the government's stance and support for skilled immigration also by its amendment to s 27 of the Immigration Amendment Act 2004. It removed the 'yearly limit' prescribed for each sector of industry trade and commerce for skilled foreigners to obtain permanent

residency permits. Again, it indicates that the government recognised the value of the expertise and skills that skilled foreigners could bring to the country and was removing restrictions in order for South Africa to retain those much treasured foreign skills.

In order to retain foreign skills and strengthen the link between those skilled foreigners and South Africa, section 27 of the Amendment Act 2004 stated that issuing of permanent residency could be given to a foreigner of sound character who possesses skills falls within

Residence on other grounds

27. The Director-General may issue a permanent residence permit to a foreigner of good and sound character who—

(a), has received an offer for permanent employment, provided that—

(i) such foreigner has proven to the satisfaction of the Director-General that the position exists and that the position and related job description was advertised in the prescribed form and no suitably qualified citizen or permanent resident was available to fill it;

(ii) the application falls within the yearly limits of available permits prescribed for each sector of industry, trade and commerce, after consultation with the Departments of Trade and Industry, Labour and Education; and... (Immigration Amendment Act 19 of 2004, s28).

In the 2006 amendment process, this section underwent change and the DHA removed the yearly limiting quotas placed on the issuance of such permanent residency permits.

Amendment of section 27 of Act 13 of 2002, as amended by section 28 of Act 19 of 2004

8. Section 27 of the principal Act is hereby amended—

(a) by the substitution in paragraph (a) for subparagraph (ii) of the following subparagraph:

"(ii) the application falls within the [yearly limits of available permits prescribed for each sector of industry, trade and commerce, after consultation with the Departments of Trade and Industry, Labour and Education] specific professional category or within the specific occupational class contemplated in section 19(1)... (Immigration Act 13 of 2002, as amended, 2006: s27).

This change was not supported by organised labour. It drew opposition and criticism from this sector since organisations such as COSATU and NUM believed that by making it easier for skilled foreigners to enter and be offered permanent residency permits, the purpose of developing and training skills amongst local workers would be undermined. So in their 2006 submission, they stated their objection,

Section 27(a)(ii) of the Immigration Act currently provides for the issuing of permanent residence permits to foreign employees according to pre-determined annual limits determined on a sectoral basis. Clause 8 of the Bill proposes to remove the annual limits or quotas for specific professional or occupational categories. We are opposed to the removal of the quotas under this provision since once again it would have the effect of undermining local skills development (COSATU & NUM's submission on Immigration Amendment Act 2006], 10 August 2006).

Despite organised labour's objection, the amendment was included in the 2006 Amendment Act. It shows once again that the DHA's firm view on skilled immigration and that the DHA could ignore the wishes of opposition of skilled immigration such as organised labour and implemented its policy.

Training Permit Fee on employers

There was inconsistency on the part of the DHA in respect of its position on the Training Permit Fee for employers who recruit foreign workers (Linda Lamprecht, a senior consultant at PriceWaterHouseCoopers to Portfolio Committee on Home Affairs, 25 February 2003, Source: Sabinet Legal Database). The notion of levy first came up in the White Paper in 1999. A flexible mechanism was created so that two birds could be hit with one stone. In the first instance DHA would not have to deal with time-consuming administrative work to determine the length of a foreigner's stay to fill a position. The other was that it could ensure that the foreigners recruited by South African employers were absolutely needed for the economy as their employment would be more expensive than a South African worker because of the Training Permit Fee, thus ensuring the employment opportunities of South African workers not negatively affected.

[A] foreigner employed will be needed and will be employed only for as long as a South African is not available for that position, as then a financial incentive exists for the employer to shift from a foreigner to a South African, as the latter would be cheaper (*White Paper on International Migration* (DHA), 1999: 31).

In the draft Immigration Bill gazetted on 15 February 2000, this concept was translated into s 12(1)(b)(i) training permit fee. It states that an employer must be 'committed to pay into the training fund an amount prescribed from time to time as a ratio of such foreigner's remuneration' in order for a work permit to be issued to a foreigner (Draft Immigration Act, 2000: s12). The DHA's inclusion of a fee in the Immigration Bill was subsequently flagged by Parliamentary State Law Advisors for its unconstitutionality and was contested in court (correspondence among State Law Advisors AM Meyers & Z Adhikarie, 2000, source: Sabinet Legal Database). The DHA eventually relented and retracted the Training Permit Fee from its Bill. There was, however, already an inconsistency of implementation at the policy level. Since the Immigration Regulation in 2003 still included the Training Permit Fee, it caused confusion amongst stakeholders (Immigration Act, 13 of 2002. Regulations. 2003: 28(3)). PwC sought clarity from the government on the Training levy.

Special Training Levy of 2%

It was agreed to remove the "additional tax" or 2% training levy payable on the Quota permit and Corporate permit categories from the Immigration Act. However, it appears that the Director-General reintroduced the same criteria via the regulations (which were not released for Public Comment as required in the Immigration Act). The Department of Finance had also indicated that the Immigration Act is not financial legislation, and may not therefore introduce "additional taxes" (Linda Lamprecht, a senior consultant at PriceWaterhouseCooper to Portfolio Committee on Home Affairs, 25 February 2003, Source: Sabinet Legal Database)

The issue on the training permit levy was not clarified nor resolved until the Amendment Act in 2004 when it was finally clear that the Training Permit Fee was removed from the bill.

Although the Training Permit Fee did not affect foreigners, the rationale behind such a fee to make the employment of a foreign worker more expensive is itself a form of the protectionism which characterised the Immigration Bill. It was a reconciliatory gesture to reconcile the interests of those that opposed skilled immigration and those that supported it.

Almost all stakeholders that supported for the removal of Training Permit Fee which was an initiative in the Immigration Bill in 2002 were skilled immigration supporters. Business sector saw this fee as a penalisation for employers who hire foreign skilled workers. Quotations shown below from the American Chamber of Commerce, the Southern Africa Migration Project, PwC and Business South Africa indicate that the private sector viewed the training levy as a form of penalty that would impede skills development in the country.

[A] levy will inhibit opportunities to bring vital skills to South Africa. There is also no debate over the fact that South Africa lacks skills. It is difficult, in many specialist disciplines impossible, for South Africa to train and develop internally at the speed required for robust economic growth. Therefore, BSA does not think it prudent to hamper growth by barring the entry into the country of useful skills Business believes in the free movement of skills as far as is practicable (Business South Africa's Submission on Immigration Bill in 2002, 15 May 2002).

As the "quota permit" appears to refer to a category of permit, where the Department of Labour seeks to redress specific skills shortages in South Africa, it does not appear to make sense to burden employers who wish to use this category with an additional cost or tax. Such additional tax or levy will render the category ineffective as employers will prefer to follow the general work permit route (which is not subject to the levy). The training levy on this category creates the impression that South Africa is purposefully trying to prevent skilled labour from settling in South Africa, as opposed to the stated aim of facilitating the introduction of specialist skills (PwC's Submission to Immigration Regulations, 20 Feb 2003).

In previous presentations, we queried of your committee the correctness of the Dept of Home Affairs to collect and levy "taxes" and which in any case it appeared to us should be collected by the relevant SETA for the National Training Fund. In previous meetings, we quite clearly remember a request being made by the Portfolio Committee of Home Affairs to expunge this requirement. The Chairperson at the time complimented us on pointing this out. For some reason, it seems to be a requirement personally of the Policy Advisor to the Minister...cannot understand why this regulation, which is so clearly to detrimental to both labour and investment, should remain incorporated and in spite of repeated submissions that it is both unwise in terms of our long term futures and clearly obstructive, it has again been included...such revenues serve no purpose other to penalize an investor. Such a regulation does not advance South Africa's case in any way to create this our country of ours as a financial destination of choice and does not advance the cause of training other skilled persons in the same category as the expatriate. This is presumably why he or she had to be brought in the first place, since there would have been no South African to fill the post. Therefore for Home Affairs to raise a punitive tax on this event seems illogical, creating yet further bureaucratic tangles (American Chamber of Commerce to Portfolio Committee on Home Affairs, 23 February 2003 Source: Sabinet Legal Database).

The regulations pursuant to the Act introduced policies that were not sanctioned by the IA. For example, the heavy training levy on employers of foreign labour which was widely criticized by a variety of governmental and NGO stakeholders. Regulations pursuant to the Amendment Act should be entirely consistent with the Act. Hence the controversial training levy, as one example, should now automatically fall away and not be reintroduced via regulations (Southern Africa

Migration Project's submission to the Portfolio Committee on Home Affairs, 5 August 2004, Source: Sabinet Legal Database).

Organised labour's position on Training Permit Fee was ambiguous. The fee was aligned with their own interest and objectives on the development of local skills, however, the unconstitutionality of the fee of which organised labour must also have been aware was a deterrent for them not to express their support vocally. Hence, COSATU comments about the fee were vague, as is shown below,

Sections 12(l)(b) and 16(2)(a) require employers to pay prescribed training permit fees into a national training fund as a condition to employing foreign workers. The fees imposed in terms of these provisions constitute an additional amount to the national skills levy. It is unclear how this additional fee will impact on foreign workers. Further the Bill does not clarify whether this system is to apply retrospectively to foreign workers already in possession of work permits or only to new work permit holders. In principle we support the emphasis on the development of the local skills base. However, since we are unable to assess the impact of additional fees on our membership, we must therefore reserve our comments on these provisions (COSATU's Submission for Immigration Bill 2002, 18 April 2002).

The Training Permit Fee was removed from the 2004 Amendment Act. Its removal, however, was not the result of any powerful lobbying of the stakeholders that supported skilled immigration, but rather was due to its unconstitutionality. As a measure to appease stakeholders that opposed skilled immigration, and in particular to ease their fear that skilled immigration would undermine local workers' rights, the DHA suggested the use of a training permit fee imposed on employers who recruit foreign workers by making the employment of these foreigners more expensive and more inconvenient. By doing so, the DHA hoped that it would get the support from organised labour for its Immigration Bill. However, the motive behind the Training Permit Fee shows the government's insistence on promoting local workers and its willingness to sacrifice skills. This ultimately resulted in the South African skilled immigration policy's not being very effective in attracting many skilled foreign workers so far ([DHA], 1999; 2017; Nshimbi & Fioramonti, 2013; Segatti, 2014; Hoosen, 2018).

Labour certification process

In addition to the quota system, labour certification is another process in the Immigration Bill that fulfils two roles: one is to enable skills immigration and mitigate its opposition, the other is to ensure that skilled foreigners' presence would not take jobs away from South African citizens. As with the quota system, labour certification allows skilled foreigners to work in the country at posts that cannot be filled by South African workers. Through its advertisement process, its ultimate objective is to protect national workers' interest.

Labour certification was first introduced in the 1999 *White Paper on International Migration* (DHA, 1999: 31). The White Paper suggested a model in which employers wishing to recruit foreign nationals need to obtain a certificate from the Department of Labour (DoL) stating that the working conditions and

wages for the foreign national would not be lower than that of a national worker before the appointment can take place. Furthermore, in order to employ a foreign national, an employer must make an undertaking to the DoL that no foreign person is taking the employment opportunity away from a South African worker. To prove that, an employer needs to demonstrate that all means of recruitment in the domestic labour market has been exhausted. This usually takes in the form of an advertisement posting on a national newspaper or media with stringent requirements to the format of the advertisement (Immigration Act 13 of 2002, Regulation 28(6b)). The advertisement requirement is to ensure that the vacant job opportunities are made known to the South African public and to demonstrate that there is no suitable candidate in the country. Hiring a foreigner is the last resort to keep an employer's business running. It relied on the rationale that,

[I]f the labour legislation, conditions of employment and collective bargaining agreements were always as fully implemented and enforced in respect of foreign workers as they are in respect of nationals, by definition any alien employed in South Africa would not be taking a position capable of being filled by a South African. In fact, for as long as employing a foreigner is marginally and substantial more expensive and inconvenient for an employer than employing a South African, any alien employed in South Africa would by definition fill a position for which a qualified South African is not available (White Paper on International Migration, [DHA], 1999: 31).

Criticism has been levelled at this labour certification method of which the most prominent objections came from the private sector. For instance, Business South Africa, in the as shown below, suggested that any effort to manipulate the market in the recruitment of workers would not be conducive and but be counter-productive to the economy (Submission to *White Paper on International Migration*, Business South Africa [BSA], 12 Jan 2000).

The suggestion that a position which may be filled by a migrant must first be advertised or South African citizens on the basis of minimum conditions of employment determined by the DOL is simply untenable. It will make the process subject to bureaucratic entanglement, political, personal or other prejudices exercised by officials, and perpetuate the administrative morass in which the system currently finds itself... (Submission to *White Paper on International Migration*, Business South Africa (BSA) 12 Jan 2000).

The business sector saw the advertisement process as more red tape. It creates bureaucracy and reduces efficiency in sourcing foreign workers. Hence, the business sector objected to the labour certification process.

However, these criticisms did not change the DHA's course to strengthening its status in the Immigration Bill. Despite calls to retract labour certification, it still remains one of the key requirements on which a general work permit may be issued to a foreign worker (Immigration Act of 2002, s19). The government was unable to do away with it because of pressure from organised labour. Since their main interest and concern were the prioritisation and empowerment of national workers, like the quota system, labour certification was also a bargaining chip that put opposition's concern on the potential ramification

of skilled immigration at ease. Through labour certification's advertising process, it ensures that skilled foreigners would only be employed at posts that no South Africans want to work or are unable to work. It has thus enabled the government to implement skilled immigration but also undermined its effectiveness (Bernstein, 2014; Kahn, 2015).

Stakeholders' positions on skills crisis and high unemployment vis-à-vis immigration policy changes

The policy changes discussed above are aspects which point to the government's responses to addressing the challenges of skills shortage and high unemployment in the immigration policy. Faced with skills shortage and citizens' high unemployment rate, government navigated to use immigration to attract skilled foreigners as well as to make sure that the presence of foreign workers would not affect the employment opportunities of national workers. Although there were a series of changes in the immigration policy from 2002 to 2006, as shown above, there was, however, also a clear indication that government agreed with stakeholders that supported skilled immigration and their view that skilled immigration should be used strategically for South Africa's economic development. This indicates that the government was constrained by stakeholders that opposed skilled immigration on account of their belief that developing skills locally and training national workers should be the focus.

The adoption of the quota system, the extension of intra-company permit to a four-year period, the initial suggestion of Training Permit Fee, and the labour certification process are measures that the government advanced to assure the opposition of skilled immigration that the admission of skilled foreigners would be monitored strictly to avoid depriving South Africans of their employment opportunities. By putting these measures in place, further bureaucratic processes were inevitably created at the expense of protecting national workers' employment opportunities. As Kahn (2015: 384) argues, in South Africa the lack of resource has the implication that South Africa's employment equity policy which aims to redress racial and resource inequities is a huge pressure that government and those stakeholders who supported skilled immigration needed to overcome. Organised labour has persistently emphasised the importance of immigration policy to achieve 'transformative goals' (COSATU & NUM's submission on Immigration Amendment Act, 10 August 2006). Given the close political alliance between organised labour and the ANC, implementing a bold immigration policy purely in the pursuit of economic interest and skills shortage was unlikely to happen.

By implementing the quota system, the extension of section 19 (5) intra-company work permit, the amendment to s 27 on the issuance of permanent residency permits for skilled foreigners within certain categories, these measures also allowed the government to proceed with its skilled immigration policy. On this point, the government's immigration policy changes also suggest that the government

and the DHA agreed with stakeholders such as the private sector and the research and higher education sector that immigration could be used strategically to fill the skills shortage gap and to reduce the unemployment rate in the country.

Chapter summary

The following points were clarified in this chapter. First, skilled immigration is an immigration policy which was endorsed by both those stakeholders that supported skilled immigration and the DHA. Hence, it can be argued that both parties agreed on the severity of the skills shortage and the high unemployment rate and believed that by attracting more skilled foreigners, the situation would be changed.

Secondly, the influence of those stakeholders that opposed immigration was pervasive and powerful, although not enough to influence the government into overhauling the skilled immigration policy entirely, yet their sufficient to thwart the progress of skilled immigration. The DHA's decision to retain rigid quota system, the duration of intra-company permit as well as using the labour certification process are examples that demonstrate the influence of stakeholders such as organised labour that opposed skilled immigration.

When looking at the findings from the previous chapter, it becomes clear that by 2006 the DoH was faced with an immigration system that had these components:

- A powerful group of stakeholders opposed immigration due to their antagonism and supported prioritising skills development of local workers to address high unemployment and skills shortage;
- A comparatively smaller group of stakeholders that asked for the government to handle immigration within the framework of human rights and supported to use skilled immigration to address skills shortage and high unemployment;
- A DHA that although ideationally antagonistic towards foreigners, nevertheless understood that foreign skills could address the skills shortage crisis as well as the high unemployment in the country. But its management and monitoring of the migration policy was a calibration of stakeholders of different interests.

These lead to the question: how did the above points shape and influence the DoH in its recruitment on foreign doctors?

Chapter 8: Discussion

Overview

This chapter brings the whole thesis back to the main research question: how did the deliberation among stakeholders and changes to the immigration policy from 2000 to 2006 influence the national Department of Health's (DoH) restrictive approach on the recruitment and employment of foreign doctors? The preceding findings chapters can be summarised below:

- There was a heightened level of antagonism towards foreign nationals from 2000 to 2006 as suggested by additional changes to the Immigration Bill which further restricted the rights of foreign nationals. Those changes were discussed in detail in chapter 6;
- There was consensus between government and those stakeholders that supported skilled immigration of the country's need to attract skilled foreigners. Unsurprisingly, the extent to which the immigration policy could be implemented to attract skilled foreigners was constrained by the opponents of skilled immigration such as some high-profile members of parliament as well as trade union members whose influence on the government was more powerful.
- Although government endorsed the view of skilled immigration, this endorsement and the actual reality on the ground was very different. The implementation of immigration regulations was heavily burdened by cumbersome bureaucratic practices such as the quota system and labour certification process. Archer's (1995; 2019) explanation of compromise which is used in scenarios when two parties have conflicting views and have to settle on a compromise to reach an agreement is illustrated in practice by the extension of the intra-company permit in s19(5) and the amendment to s 27 of the Immigration Bill. In both cases, the DHA had to listen to both opponents and supporters of skilled immigration and adopted a midway approach in its immigration policy.

Drawing on findings in the preceding chapters as well as the associated literature, this research dissertation aims to examine the implications of those abovementioned changes had on the DoH in its decision to discourage the recruitment and employment of foreign medical doctors, particularly foreign doctors from African countries. This chapter constitutes the final phase of Margaret Archer's (1995) morphogenetic cycle, namely, social elaboration. For Archer, the objective of the phase is to examine the effect that the deliberation on the immigration policy had on the national DoH and its policy makers in order to answer the research question. This chapter argues that the heightened antagonism towards foreign nationals in the country, the deeply entrenched employment equity policy in the recruitment and employment of foreign skilled workers and the diminishing influence of civil society together with the

state's centralising power on immigration all influenced the DoH policy makers and their decision to restrict the recruitment of foreign health professionals in its policy.

Answering the research question: Phase three: Social structural elaboration

The last phase in Archer's morphogenetic/morphostatic cycle is called social structural elaboration (Archer, 1995: 294). Archer (1995: 294) explains that this is the stage for researchers to determine and explain the conditions upon which morphogenesis or morphostasis takes place as well as to illustrate the forms in which this morphogenesis or morphostasis occurs. The 'forms' refer to the DoH's recruitment measures on foreign doctors. Archer (1995) asserts that after the socio-interaction phase, culture, structure and agency will either transform or reproduce. Morphogenesis means that culture, structure or agency is transformed after interaction and morphostasis means that they remain the same and are being reproduced. Therefore, the post-cultural, structural and agential relations all play a role in shaping the final outcome—the NDoH's restrictive policy on the employment of foreign doctors.

The discussion and drafting process of the Immigration Bill as well as the amendment process of the Immigration Bill in 2004 and in 2006 reconfigured the relations between stakeholders as well as changed the cultural and structural conditions. For instance, as indicated in chapter 6, the amendments made to Preamble (c) and (m) of the Immigration Act and the reduced number for members from civil society on the Immigration Advisory Board both weakened civil society's power to negotiate and bargain with the government in order to protect foreign nationals' rights. Such amendments which were outlined in the preceding chapters undermined stakeholders such as human rights activists and organisations. The preceding findings chapters suggested that culturally there was a heightened antagonistic sentiment towards foreigners. This sentiment was prevalent as it not only came from ordinary South Africans but also from government officials. They also suggested that there was consensus between government and stakeholders to implement skilled immigration to attract skilled foreigners, but the extent to which the policy could facilitate the entry of foreigners was premised on ensuring that South African workers' interests would not be undermined. Hence, bureaucratic procedures such as the quota system and the labour certification process became part of the immigration process to protect South African workers' employment opportunities.

In the following sections, I explain the effects that the changes to the immigration policy from 2000 to 2006 and examine the influence of these changes to the DoH on foreign health professionals.

Heightened antagonism towards foreigners: Cultural elaboration

This section explains how the last phase in Archer's morphogenetic/morphostatic cycle at the cultural level: cultural elaboration influenced the DoH's stance on the employment of foreign doctors.

There was a trend of antagonism of the nationals towards foreign nationals from 2000 to 2006 and this played a key role in moulding the DoH's decision to prohibit the recruitment of foreign doctors in its recruitment policy. Chapter 6 has shown that although antagonism towards foreigners had always existed within South African society, the discussion on immigration policy between 2000 and 2006 shed more light on the negative consequences such as limited jobs and resource distribution. These were what stakeholders who objected to skilled immigration feared would be undermining South African citizens' employment prospect if there was a large influx of foreigners into the country. This fear unified South Africans and resulted in a heightened level of antagonism directed towards foreign nationals. Stakeholders' particular concern was competition from foreigners' in the labour market and competition especially from black African nationals, exacerbated South Africans' antagonism towards them. The rising unemployment hovering above 20 per cent of the population and the largely excluded black population bore the brunt of unemployment caused anxiety and fear in the government that the situation would worsen should there be an influx of more immigrants entering the country (Department of Labour [DoL], 1998: 12; Klasen & Woolards, 1999: 12; Barker, 2007: 174; Crush, 2008). This is corroborated evidence in surveys and literature produced by scholars i that a major factor inhibiting South Africa's skilled immigration policy was the government's and people's concern whether relaxing immigration would be detrimental to nationals' interest (Rasool & Botha, 2014; Fauvelle-Aymar, 2015; Niyimbanira & Madzivhandila, 2016). The concern for nationals' jobs and the exclusion of black African immigrants are both manifested in the DoH's prohibition in its recruitment policy.

Politicians, panicking over their failure to deliver jobs to people, saw the public sentiment towards foreigners as something that they could use to their advantage to shield their constituencies from holding themselves accountable. In the findings chapter, therefore, there are datasets that displayed politicians' negativity about foreigners such as the comment of the Chairperson of the Home Affairs' Parliamentary Committee and COSATU secretary *White Paper on International Migration*: Hearing, PMG, 5 May 2000; Mr S Mokoena, Secretary of COSATU in the North West Province (PMG), 1 Aug 2000). On both occasions, these two politicians expressed negative views about foreign nationals, describing them as law-breaking individuals and explicitly stated that foreigners do not have constitutional rights in South Africa.

As have discussed in the literature review chapter, this type of institutional xenophobia had a profound impact on foreign nationals and is the direct cause of foreigners' vulnerable position in South Africa. When witnessing the public's anger towards foreign nationals, those politically connected furthered fumed this antagonism by expressing sceptical and negative views about black foreign nationals and questioning whether their motives for entering South Africa was to drain South Africa's resources. It is even not uncommon for politicians to implicitly condone nationals who attack foreign

nationals (BL Masetlha, Home Affairs Director-General, Presentation to the Portfolio Committee of Home Affairs, 15 April 2002; Member of Parliament, Immigration Bill: Hearing, 14 April 2002). Konanani and Odeku (2013) criticise the fact that government officials' lack of action and their deliberate intention of flouting laws in some cases are the key causes of the rampant attacks on foreigners. The state apparatuses, with politicians' lobbying and support, entrenched the narratives to describe foreign nationals as 'others' who are depriving South Africans –the rightful beneficiaries of the country's resources such as jobs – and incited heightened antagonism amongst nationals towards foreigners. To exclude those 'others', some state immigration interventions such as 'citizenship', 'deportation' are techniques deliberately concocted by the government, according to some migration scholars, to create divisions between people and reinforce the existing boundaries between 'us' and 'others' (Peberdy, 2009; Anderson, Gibney & Paoletti, 2011). This ultimately contributed to heightened antagonism amongst the local population. The coping mechanism of the politicians was to mobilise the public to exclude foreign nationals' participation in South African society and to impose laws to restrict their freedom to conduct economic activities.

In the health sector, the exclusion of foreign nationals most particularly from developing countries was almost synonymous to the exclusion of black foreign nationals in the workforce (Segatti, 2014; Rural Health Advocacy Group, 2017). Given the large population of black foreign nationals in South Africa and South African nationals' deprivation of jobs, the threat which immigration and foreigners were perceived by South African fuelled South Africans' antagonism. This antagonistic sentiment made black foreigners a scapegoat for South Africans to blame for their joblessness (Walsh & Desai, 2010; Vahed & Desai, 2013; Konanani & Odeku, 2013). South African exceptionalism, which Nyamnjoh (2006) uses to describe South Africans' complacency in looking down at her neighbours, made South African nationals believe that black foreigners from countries with failing economies are in South Africa to take what should belong to the nationals. In South Africa's health sector, the majority of foreign health professionals that had been working in the country prior to and around 2006 were medical professionals from developing countries such as India, Sri Lanka, Bangladesh, Cuba, Nigeria, Uganda and Zimbabwe (Kassiem, 2006, Breier, 2008; Segatti, 2014). Many of these doctors openly admitted that they were incentivised by South Africa's better remuneration, better professional environment and the political stability in the South African health market (Kassiem, 2006). The straining labour market and few job opportunities in the health sector, together with foreign doctors from developed countries who were incentivised by the remuneration offered by South Africa's health sector, prompted government to use policy to restrict the employment of foreign doctors so that the interests of newly-graduated South African doctors can be addressed. Alfaro-Velcamp and Shaw (2016) pertinently

note that the common approach by South Africans to black African foreigners in South Africa is 'please go home and build your own country'.

In contrast, white immigrant doctors are more likely to be treated marginally better. In Segatti's (2014: 47 & 67) study, she shows how a white British surgeon was deferred by the examination board members in comparison to his two Zambian applicants and an incident in which a medical trainee of European origin was given preference ahead of other black African interns in internship placement. As some scholars have argued, institutional racism has always existed in the health sector (De Wet & Erasmus, 2003; Breier, 2008; Segatti, 2014). Whiteness is often regarded as the image of authority in the health field, whilst blackness was seen as inferior and less authentic. This discussion of the immigration policy from which the antagonism emanated further heightened antagonism and this antagonism was almost exclusively directed at black foreigners, exacerbated this discrimination exposing black medical doctors to face discriminatory treatment, not only on the accord of their nationality but also on ethnicity. Migration scholars have thus commonly observed and argued that xenophobia towards foreigners has been targeting black foreign nationals in particular in post-apartheid South Africa (Neocosmos, 2006; Nyamnjoh, 2006; Crush, 2008; Peberdy, 2009).

Therefore, the DoH's recruitment policy and its prohibitive stance for recruiting foreign doctors from developing countries, particularly the ban of recruitment of foreign doctors from African countries, was invariably embedded in the predominant antagonism in South Africa towards foreign nationals, especially black Africans nationals. The discussion and drafting process of the immigration policy reignited nationals' anxiety about South Africa's scarce jobs and resource distribution. The large number of black African nationals in South Africa, the large percentage of unemployed South Africans, politicians' political manoeuvring of the narrative and the already existing racism and discrimination in the health sector caused by institutional xenophobia all contributed and affected the national DoH's decision in its resistance to the recruitment of medical doctors from developing countries.

Employment equity policy: Structural elaboration

This section explains how structural elaboration as referred in Archer's (1995) last phase of the morphogenetic/morphostatic cycle influenced the DoH in its resistance to the recruitment of foreign doctors. By the end of chapter 7 of this thesis it became clear that government's acknowledgement that it would use skilled immigration to address the skills shortage and high unemployment resulted in the DHA's implementation of an employment equity policy to ensure the preservation and prioritisation of the employment opportunities for South African citizens. On the hand, the employment equity policy allowed skilled immigration to be included in the immigration policy and assured opponent stakeholders that national workers' interests were prioritised. On the other hand, the implementation of an

employment equity policy created more bureaucracy in South Africa's immigration policy, thus negatively affecting the policy's effort in attracting skilled foreigners. The employment equity policy takes the form of labour certification and quotas.

- Under the quota system, the DHA in collaboration with other key government departments such as the Department of Trade and Industries and the Department of Labour, would develop a database and update it annually to determine the number of foreign skilled labour and the categories of skills needed for South Africa's economic development (DHA, 1999: 30).
- Under labour certification, employers have to demonstrate that the type of skills that they need cannot be found in the South African labour market. This demonstration takes the form of an advertisement in the national newspaper or media. The search for a foreign candidate may only begin after there is no response to the advertised position.

Both measures were in place to prevent an overflow of skilled foreigners as well as to ensure that foreigners' presence would not be depriving citizens of their jobs. The ultimate objective was to preserve jobs for South African workers. Furthermore, what was noted in the finding chapters was that stakeholders that opposed skilled immigration often did not differentiate between skilled foreigners and those foreigners who are unskilled or whose skills can be easily sourced within the country. For instance, stakeholders referred to in chapter 6 such as Mr Khaye, Mr Matshiane and MP Bishop Tolo had exclusively referred to the negative labour market impact that would be brought about by unskilled foreigners (Mr Mthuthuzeli Khaye, a business person *White Paper on International Migration: Hearing, PMG, 16 May 2000*; Mr Matshiane, an ordinary South African, *White Paper on International Migration: penultimate report, PMG, 31 Oct 2000*; *White Paper on International Migration: Hearing, 18 May 2000, PMG*). Hence, their opposition to skilled immigration was because of the incorrect perception of foreign nationals being unskilled, therefore negating the population of skilled foreigners who could make a contribution to South Africa. Hence, government's approach towards skilled immigration adopted a blanket approach which was to use restrictive measures to ensure that the employment of foreigners would not have any impact on South African workers' rights and interests despite that these measures can be argued unnecessary and time-wasting as many of those scarce skills cannot be sourced inside the country (Lewis, 2002: 748; Bhorat & Lundall, 2004: 1048, as quoted by Barker, 2007: 224).

In the health sector, the labour certification and the quota were both translated into the DoH's recruitment policy that imposed various restrictions on the employment of foreign medical doctors in order to preserve jobs in the sector for South African doctors. The DoH's policy states that the DoH will only allow health employers to recruit foreign health professionals if they have presented sufficient

evidence to prove that there is no qualified South African to fill the vacancy (DoH, 2006: 5.1.1, 2010: 45). It further requires health employers to monitor quotas on the total number of a foreign workforce at health facilities. When there is sufficient number of health professionals available, the recruitment of foreign health professionals needs to be put on hold (DoH, 2010: 14). Under the policy, the employment of South African medical doctors took precedence over foreign doctors despite the severe shortage in the system in which there are no national doctors available, nor apparently has any concrete evidence been found to show that South Africa's supply of doctors would be sustainable in the near future (Breier & Erasmus, 2009; Segatti, 2014). For the DoH, in order to fulfil the employment equity policy, Black Economic Empowerment (BEE) and Broad- Based Black Economic Empowerment (BBEEE), the prioritisation of national doctors' employment outweighs the urgent need for medical skills in the health system. Furthermore, the DoH imposes restrictions to deliberately sabotage or demotivate foreign medical doctors' enthusiasm to work in South Africa. These restrictions included their non-renewable fixed-term contract, the quota percentage for the total foreign workers in the health workforce, the certainty of their employment being left to the discretion of employers and HR officers ([DoH, 2010, s6 & 14; Segatti, 2014: 67). The Strategic Framework for Human Resource released in 2006 aimed to limit the number of foreign health workforce to under 5 per cent of the total health workforce in South Africa (Monare, 2006).

The restrictions imposed on the recruitment of foreign doctors show that although skilled immigration has been included in the country's immigration policy, the government still lacked commitment to pursue a skills-driven immigration policy in order to achieve its optimal effect in attracting skilled foreigners. Bernstein (2014) and Crush (2014) both assert that immigration as a recruitment strategy for scarce skills has not been a priority on government's agenda. Instead, as can be seen, the employment of foreign doctors has been relegated to the last-ditch option instead of seeing the option constructively as something that could contribute to the South African health sector. Government wants the employment of foreigners to be short term and wants to make sure that all South Africans are employed before any foreign candidates can be considered and labour certification and the quota system come into operation.

Scholars have argued that these measures designed to prioritise national workers can inhibit the progress of skilled immigration (Barker, 2007; Erasmus & Breier, 2009; Segatti, 2014; Kahn, 2015). Because these mechanisms aim to prioritise workers by nationality, they function in a way similar to that of employment equity policies such as Black Economic Empowerment (BEE) and Broad- Based Black Economic Empowerment (BBEEE). Though they could achieve the goal to redress skewed employment distribution, these equity policies nevertheless defeat the objective of skilled immigration and do not help expand the skills pools in South Africa (Breier & Erasmus, 2009). Employers are often

faced with a predicament. Because of the lack of qualified black South Africans to fill vacancies because of the inequalities caused by apartheid, they often have to choose between promoting immigration or employment equity. The former and the latter are seen as irreconcilable and the promotion of the former would be detrimental to the latter (Barker, 2007; Erasmus & Breier, 2009). South Africa chooses to promote equity at the expense of skills development. As a senior health official was quoted saying 'the department has worked hard to improve salaries in the public health sector and must allow time for South Africans to fill these posts. No self-respecting country in the world prioritises foreigners over its own' (Segatti, 2014: 41).

Confronted by South Africa's skills shortage and high unemployment rate, the government enabled the skilled immigration approach and had labour certification and quota system in place to ensure that foreign recruitment would not undermine the employment opportunities of local workers. As both mechanisms were designed to prioritise national workers' interest, the protectionist approach was the dominant theme that rendered the recruitment of any foreign skilled labour as the last option. Hence, the DoH's recruitment of foreign health professionals policy continued this trend to treat the recruitment of foreign doctors as the last resort. Despite the DoH's putting in place measures such as using a range of financial and non-financial incentives to retain South African doctors as well as building more medical schools, partnering with the private sector and utilising the Nelson Mandela/ Fidel Castro Medical Collaboration programme to increase training capacity, the doctors' shortage issue is far from being resolved (Crush et al., 2015; ECONEX, 2015; Van Dyk, 2017; Crush & Chikanda, 2018). The effect that these measures would accomplish will not happen immediately, moreover, some interventions may fall short of the objective to produce more doctors' output for the health sector (Bateman, 2013; Bloom, 2015; Crush et al., 2015; ECONEX, 2015; Kahn, 2018; Wessels, 2018). Thus, the DoH's strict monitoring of foreign doctors' total percentage in the workforce to restrict foreign medical professionals' number in South Africa's health system further exacerbated the doctors' shortage issue.

Power dynamic between supporters and opponents of immigration: Agency elaboration

The DoH's resistance towards the recruitment of foreign medical doctors exposed those stakeholders who were opposed to skilled immigration and their pervasive influence on the government and the country. The deliberation and the drafting process of the immigration policy reveal the powerful influence of stakeholders that resisted skilled immigration, but it also shows that there is a small but steady group of stakeholders who supported it. However, in terms of their influence on government, that of supporter stakeholders of skilled immigration was insufficient to make a breakthrough difference. They assert that what is needed is an efficient immigration policy that will attract skilled foreigners,

however, it was facing huge difficulty to push through such a policy because of its lack of support from within the government as well their own weakened position after the enactment of the Immigration Amendment Act in 2004.

Without support from the government, the application of skilled immigration in South Africa remains weak and the rights for foreign nationals continue to be at risk of being undermined (Amit, 2011; Klotz, 2012; Konanani & Odeku, 2013). Segatti and Landau (2011: 2) assert that sections of the governing African National Congress (ANC) and the lower- to mid-level of government departments have pursued an agenda that is centred on security and sovereignty and is based on a narrowly defined notion of national interest. This approach bore many resemblances to that pursued by the apartheid regime. It is this section of the society that held most of the power in drafting policy on immigration matters. The lack of support from it resulted in a lack of political willingness to push forward a skills-driven immigration policy. Furthermore, as the ANC is a member of a tripartite alliance of which organised labour COSATU is a partner, trade unions' opposition to skilled immigration made any attempt to steer the immigration policy in a direction towards the pursuance of skills and a thriving economy more difficult.. Trimikliniotis et al (2008) argue that trade unions are anti-immigration in South Africa because of their interest in protecting national workers and their jobs, therefore inevitably resulting in their anti-immigration stance. Cerna (2009) observes that countries with high union density always struggle to push forward an immigration system that could best attract skills. In South Africa, similar to what those scholars astutely observe, the powerful role that organised labour enjoys in the political arena and its tripartite relationship with the governing party mean that implementing an immigration system that could best attract skills is difficult.

The powerbase of the opposition to skilled immigration, compounded by the weakened civil society, which was demonstrated in the preceding chapters, resulted in its pervasive anti-skilled immigration stance adopted by the DoH. Although skilled immigration was repeatedly affirmed by the DHA as a key pillar that drove South Africa's immigration policy, the DoH did not follow the DHA's lead and it never recognised the need for skilled immigration due to the shortage of skills in the South African health sector. In the absence of the DoH's acknowledgement of skilled immigration, its recruitment policy regarding foreign health professionals in 2006 and its more recent version in 2010 do not show any signal that is aligned to the DHA's skilled immigration policy. Instead a range of other strategies such as building more medical schools and utilising the Nelson Mandela/ Fidel Castro Medical Collaboration programme were pursued whilst the DoH was wilfully oblivious of the contribution that foreign doctors could make to the sector.

Both versions of the policy discourage the recruitment of foreign doctors. The policy imposes stringent requirements in regulations to rule out possible potential applicants. For instance, the DHA

exempts employers from advertising vacant positions for persons who possess specific skills, which are listed in the government's Scarce Skills List, as part of skilled immigration policy. 'Medical doctors and qualified practitioners' had always been on the exemption list from advertisement for the DHA from 2002 to 2004 (Immigration Act 13 of 2002, Regulation, 2002: 68; Immigration Act, No. 13 of 2002, Regulation, 2003: 68; Immigration Act, No. 13 of 2002, Regulation, 2004: 70). However, this situation changed in 2005 as this occupation was not included in the DHA's scarce skills list of 2005 and (later) of 2006. According to the report in the *Cape Times*, the Joint Initiative for Priority Skills Acquisition (Jipsa) which was in charge of updating the Scarce Skills List for the DHA published the list only after having consulted with the Departments of Labour and Trade and Industry without having consulted the DoH (Immigration Act of 2002, 8 February 2006, Gov Notice No. 28480; James & Waller, 2006; Centre for Development and Enterprise, 2010: 16). From that it can be seen that despite of the urgent needs for the country to ramp up skilled immigration, particularly in the health sector, the DoH was unenthusiastic about collaborating with other government departments to speed up skilled immigration in its own sector. Instead, the DoH's recruitment policy in 2006 and its revised policy of 2010 insisted that all health employers need to go through the advertisement process before they could recruit foreign doctors from outside the country (DoH, 2010: S45).

The DoH's recruitment policy in respect to foreign health professionals is a clear indication of the power dynamics between stakeholders supportive of skilled immigration and others in opposition. The lobby in opposition to skilled immigration was so influential that their view was shared by the DoH. The DoH, under the influence of those that objected to skilled immigration, discouraged the recruitment of foreign medical doctors, particularly of doctors from South Africa's neighbouring countries. Despite some support from stakeholders that advocated for immigration reform to attract foreign skills, because of the lack of government support, their effort did not result in any fruitful breakthrough reform in the immigration policy or was able to convince the DoH to adopt a proactive stance in recruiting foreign doctors.

Concluding remarks

This chapter continued and completed Archer's morphogenetic cycle approach: Phase three: Social Elaboration. The objective of Archer's phase three is to examine the effects on agency and structure. This chapter analysed and explained the implications of the changes to the Immigration Act 13 of 2002 to the DoH's recruitment policy in respect of foreign medical doctors (Immigration Act 13 of 2002). It answered the central research question, namely, how did the deliberation among its stakeholders and changes to the immigration policy from 2000 to 2006 influence the national Department of Health's (DoH) restrictive approach to the recruitment and employment of foreign health professionals? The

chapter described how much the discussion on and the drafting process for the immigration policy from 2000 to 2006 had changed the stakeholders' and government's view of the skills crisis, rising unemployment and South African's antagonism towards foreigners. It resulted in institutional xenophobia which has heightened South African's antagonism towards foreigners, resulted in the national employment equity policy as well as strengthened the pervasive influence of the opposition forces against skilled immigration with all three factors converging and influencing the DoH in its decisions to discourage and restrict the recruitment of foreign doctors.

Chapter 9: Conclusion

Overview

This chapter concludes this research dissertation with a summary of the key issues raised in the findings and discussion chapters. It then reiterates the importance of Archer's morphogenetic/morphostatic cycle approach and the use of archived documentary data as primary data sources for social science research. Finally, this chapter provides valuable insights into South Africa's immigration and health systems. It points out the issues at stake to enable skilled immigration and affirmed South Africa's need for more foreign doctors. This last section concludes this chapter by putting forward a methodological suggestion to use the quantitative method to test the robustness of the findings generated from this study and recommends future researchers to explore the feasibility of the DoH's allowing foreign doctors to work in the private sector as a strategy to increase health workforce capacity.

Essence of the dissertation

This dissertation successfully demonstrated the great demand for medical doctors in South Africa and analysed the DoH's policy of discouraging and prohibiting foreign doctors, particularly African doctors from South Africa's neighbouring countries from working in South Africa and thus contributing to the alleviation of the medical doctors' shortage crisis in the country. It is argued that the DoH's reluctance to employ these skilled medical professionals was a reflection of the government's institutional xenophobia of which its opposition to skilled immigration derived. By examining South Africa's immigration policy from 2000 to 2006, this dissertation has established that institutional xenophobia is manifested in South Africa's immigration policy. The perception of seeing foreigners as a threat may have been the cause of the DoH officials' reluctance to explore the lucrative resource of foreign medical doctors in the country. As a matter of fact, despite the urgent need for more medical doctors, the government's approach to recruiting foreign doctors was largely characterised and eclipsed by the country's protectionist immigration policy which regarded the use of immigration as the last resort to solve the crisis of the skills shortage. To understand South Africa's restrictive immigration policy on foreign nationals, this dissertation has further unpacked how the restrictive immigration policy came into being.

First, South Africans' antagonism towards foreign nationals had been in existence since the end of apartheid. The deliberation and drafting process of the immigration policy refreshed South Africans' memories of the apartheid history and reminded South Africans of why they should not allow foreigners to enter the country for fear that they would take jobs away from South Africans. This

antagonism was not diminished by the era of democracy but was rather significantly heightened during the process of the debate and drafting process of the immigration policy. This dissertation has argued that this heightened antagonism was a driver for the DoH's institutional xenophobia to exclude foreigners and resulted in its recruitment policy that placed high bars in restricting the recruitment of foreign doctors.

Secondly, prior to the drafting of the immigration policy, South Africa's employment environment was characterised by its lack of high-end skills and rising unemployment. These two factors resulted in an agreement among policy makers in which jobs must be prioritised for South African citizens. The employment of foreigners should only be allowed and they should only be employed in those highly specialised fields with their tenure be temporary as a short-term method to address those skills gaps in the high-end skills fields. The overall emphasis and priority for the government were to build local capacity, whilst the potential skills contribution that skilled foreigners could bring to the country were not considered an integral part of building skills development (Crush, 2014; Kahn, 2015). Hence, the government's and the DHA's approaches on utilising foreign human resources shared its short-termness, characterised by a sense of hope that South Africa's dependence on foreign skilled labour would be for a relatively short period of time and South Africa would be skills sufficient very soon. Under such a vision, the incorporation of skilled immigration policy and envisioning skilled foreigners as an integral part of South Africa's economic development was very difficult to achieve.

Thirdly, the opposition stakeholders and forces towards skilled immigration were both powerful and pervasive. Further, such opposition significantly eclipsed the influence of stakeholders that supported skilled immigration. The dissertation has demonstrated that a large number of stakeholders with close political connections with government such as organised labour were all lukewarm towards skilled immigration. Even in scenarios such as the highly-specialised fields that do require foreign skilled labour, these stakeholders did not prioritise the attraction of skills but rather adopted a conservative approach preferring to have measures such as the quota system and labour certification process put in place in order to protect the interest of South African workers. In the absence of steadfast support within the government, there was little leverage for supporter stakeholders of skilled immigration to advance skilled immigration and to implement skilled immigration policy. Because of the alliance between government, organised labour and its constituencies, protecting unskilled workers' rights and interests became the priority not only for the trade unions but also for the government. Any attempt to liberalise and introduce a skilled immigration policy faced major political resistance under such powerful political alliances.

Overall, this dissertation has argued that these three factors, which were discussed above, created an environment that shaped the DoH's recruitment policy which discouraged the recruitment of foreign medical doctors. The recruitment of foreign medical skills was left out on the agenda on account of the DOH officials' antagonism towards foreigners and the DoH's shared belief that addressing unemployment should begin with prioritising the employment of local citizens in the health sector regardless of the scarcity of medical skills and the lack of South African doctors in the country.

Reflection on the study

This research dissertation has illustrated the operationalisation of the highly abstract morphogenetic cycle approach in social science research through tracking the development and formulation of South Africa's immigration policy from 2000 to 2006. It also demonstrated the value of archival documentary data in conducting social science studies. By reviewing archived parliamentary documents, key stakeholders' thoughts and the courses of actions that those stakeholders took to influence government's immigration policy could be understood. This helped interrogate the question which asked how this deliberation among stakeholders influence the DoH and in its recruitment of foreign doctors.

Margaret Archer's (1995) morphogenetic cycle allowed me to conduct the research and analyse data through the separate examinations of human agency and social structure. As her theory is derived from critical realism, it distinguishes social structure and human agency and the independent roles they play in the formation of social events. Since critical realists such as Archer argue that real causal relations can only be found in the analyses between the relations of social structures and human agency (Sayer, 2000; Danermark et al, 2002; Fleetwood, 2014: 207), the socio-interaction phase is then explained by the changing interrelationship between the structures of resource distributions and of material and ideal vested interest groups (Archer, 1995: 297). By examining the relations between various stakeholders and their responses to the conditioning influences (antagonism, skills shortage and high unemployment), the preceding finding chapters identified key changes to the Immigration Bill during the deliberations between stakeholders about the immigration policy. These changes to the immigration policy affected the DoH in its decision on the recruitment of foreign health professionals.

In addition to showing the operationalisation of Archer's morphogenetic cycle approach, this research dissertation had demonstrated the value of using parliamentary archived data as research data to conduct social science study. Prior (2003) and Scott (1990) both assert that documentary sources of information could be useful in exploring people's deliberation in social science studies. This study relied on archived parliamentary data to analyse and understand the development of South Africa's immigration policy and to understand the various relations between stakeholders and structural

and cultural conditions. All of these created a framework to answer the main research question. Since documentary data is highly relevant to the study of history, Carter (2000) argues that what documentary data could offer is its usefulness in giving social scientists an understanding the formation or emergence of social reality. Furthermore, since what underlines her approach is its three phases that follow a chronological order of events, using documentary data was most efficient in assisting me to conduct this study.

Contribution to scholarship

This research dissertation highlighted the obstacles at stake which prevented and slowed down South Africa's progress to skilled immigration. Because of the dire skills shortage in the medical field and across all sectors, an enabling immigration system is a viable solution to address the shortage. The DoH's recruitment policy mirrors the stance of South Africa's immigration policy and the stakeholders who crafted the policy. The study argued that institutional xenophobia which underlined South Africa's ineffective immigration system had been manifested in South Africa's antagonism towards foreigners, its employment equity policy which promotes national workers and the powerful influence of the opponents to skilled immigration (Segatti, 2011: 67). This ineffective immigration system and the negativity about foreign nationals that in turn underpins institutional xenophobia influenced the DoH in its decisions and thus resulted in the restrictive policy on the recruitment of foreign health professionals.

Furthermore, South Africa needs more doctors to build a sustainable society of healthy people. Despite the measures put in place to increase doctors' output in South Africa, the effectiveness of these measures is debatable and is unlikely to solve the shortage of doctors' in the short term (Bateman, 2013; Bloom, 2015; Crush et al., 2015; ECONEX, 2015; Kahn, 2018; Wessels, 2018). This research dissertation coincided with the appearance of the COVID-19 pandemic which has affected hundreds of thousands of South Africa. Due to the shortage of doctors, there has been much speculation and many projections about the government's ability to cope with the outbreak. The estimate provided by the South African Centre for Epidemiological Modelling and Analysis (Sacema) based at Stellenbosch University, in conjunction with the National Institute for Communicable Diseases (NICD) projects that 87,900 people could die at an infection rate of 10 per cent of the population; 176,000 people could die at 20 per cent of the infected population and at 40 per cent 351,000 people could die should there be no intervention to curb the outbreak (Cowan, 2020; Dinham, 2020). But any intervention to curb the spread of the infectious disease would have to rely on an adequate supply of health professionals. The magnitude and severity of this virus will eventually expose the incapacity of the South African healthcare workforce of which one of the key challenging area is the lower number of doctors in the country, particularly the lack of doctors in the public sector. Data released by the World

Bank (2017) records that physician to patient ratio for Spain, Italy and South Africa were 4.1 per 1000 patients, 4.1 per 1,000 patients and 0.9 per 1,000 patients in 2017. If Covid-19 could wreak such havoc in countries like Spain and Italy and severely strain their health systems which are far more advanced than that of South Africa, there is no doubt that South Africa would be facing an unprecedented devastation should the pandemic continue to spread in the country. Hence, this dissertation also gives credence to the DoH's need to lift the ban on the recruitment of foreign doctors.

Finally, this dissertation also made a valuable contribution to civil society's role in promoting skilled immigration. It has explained why, despite South Africa's advanced and human rights-based Constitution, xenophobia still thrives and foreigners' legal rights continue to be undermined. Most importantly, it has emphasised that the lack of political support to promote skilled immigration at the governmental level and the negative perception on foreign nationals has left those in civil society the only ones to promote skilled immigration. Unless civil society could work more collaboratively with the government to advocate for the benefits of skilled immigration, it is unlikely that any major breakthrough in this regard to happen.

Limitations and recommendations

Despite the many analytical advantages that Archer's (1995: 261) morphogenetic/morphostatic cycle approach offered, the major criticism directed at Archer's work is her dichotomy between primary agency and corporate agency. Karlsson (2020) argues that Archer's distinctions on primary and corporate agencies falsely assume that agents' objectives and agents' planned courses of action are always consistent thus negating the scenario in which agents' objectives and agents' courses of actions are inconsistent. Karlsson (2020) draws attention to the gap which points to scenarios in which the objectives and courses of action are inconsistent. It could be possible when agents' objectives are absent but there are courses of action taken unintentionally but nevertheless the unintended consequence itself is moving towards achieving the objectives. Also, there could be a possible scenario in which agents' objectives were present, but there are no courses of action taken by those agents. In those scenarios, Archer's theory appears limited and insufficient to produce a more rounded explanation for social reality. To transpose Karlsson's (2020) work into the context of this dissertation means that there could be stakeholders whose actions to influence immigration policy were unintended but were nevertheless effective. The roles which were played by those stakeholders were not adequately analysed and captured in the dataset.

Furthermore, as with all qualitative research, Crankshaw (2014) argues that a common criticism of the results of this qualitative or intensive research is that findings generated by a qualitative research method is that they do not show the extent to which that the antagonism towards foreigners,

the deeply entrenched employment equity system and the powerful influence of the opposition to skilled immigration has influenced the DoH's recruitment policy. For social science research relying solely on a qualitative method, it is obvious that findings generated by such methodology needs to be tested for its robustness. In order to estimate the extent of the operation of the causal mechanisms that I have discussed, further research can employ quantitative survey methods in order to test the theories developed in this dissertation. An obvious solution is to use a quantitative research method, such as a questionnaire survey conducted among DHA and DoH employees, to estimate the extent of the operation of a causal mechanism. However, as Crankshaw (2014: 512) cautions against falling into the delusion that the use of such a quantitative method itself implies the use of statistical evidence to establish causation, he argues that a descriptive method that only estimates quantities in a population be used. To quote Sayer (1992: 192): 'When our knowledge of causal mechanisms is good, quantitative methods can play an important role in estimating the extent or size of a group or a causal process in a large population.'

In addition, further research in the dire doctors' shortage in South Africa, can explore the option of the DoH to allow foreign medical doctors to practise in the private sector and what related issues are at stake to enable it. Given that the DoH's rationale in recruiting and employing foreign health professionals is solely focusing on capacitating rural and underserved areas of which hospitals are public-funded, it may make more sense if foreign health professionals would be allowed to practise medicine in South Africa if they are self-funded and are practising in the private sector.

This dissertation has shown that the antagonism that South Africans directed at foreign nationals was the frustration felt by South African's on account of the state's limited resources and the distribution of those few resources. A more practical solution to assist with moving forward is thus suggested here. This would be to treat foreign doctors as investors bringing their own funding and medical equipment to open a private practice. In this way, their presence would not undermine South African's access to state resources such as work opportunities and more South African doctors may be available to work in the public sector if the DoH could offer competitive remuneration and comparable work conditions. However, the feasibility of this proposition can be an area of further research for interested researchers.

Concluding remarks

This chapter has concluded this dissertation with a succinct summary of the key discussions and answered the central research question.

Furthermore, it has reflected on the methodology and social theory employed. It has highlighted that although qualitative research, such as in the case of this dissertation, may produce an

in-depth result, it will need quantitative research to test the findings' robustness in order to complement the shortcoming of qualitative research method.

In addition, this chapter has emphasised the key contribution that this dissertation has made to the migration scholarship since it highlighted several issues such as the role of the employment equity policy and the pervasive influence of organised labour in the shaping of South Africa's immigration policy. It emphasised that these are the issues at stake that have prevented the government from putting into practice a skilled immigration plan.

Finally, this dissertation has suggested a field of research which is highly relevant to the current national dynamic. It has recommended that future researchers should consider reviewing the feasibility of the DoH to allow foreign doctors entering the country in a self-funding model, essentially treating them as foreign investors. It suggested that this model could be a solution to build capacity and address the shortages in the health sector.

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Appendix I: List of Collected Meeting Reports, Parliamentary Documents and Bills

Date	Meeting/Documents	Type	Source
25 Oct 1999	White Paper on International Migration: Hearings	Meeting	PMG
16 Nov 1999	White Paper on International Migration: Hearings	Meeting	PMG
2000	Notes on Immigration Bill	Document	Sabinet Legal
11 Jan 2000	South African Human Rights Commission (SAHRC)'s submission on White Paper on International Migration	Document	Sabinet Legal
12 Jan 2000	Business South Africa (BSA)'s submission on White Paper on International Migration	Document	Sabinet Legal
Feb 2000	Centre for Development and Enterprise (CDE)'s submission on White Paper on International Migration	Document	Sabinet Legal
11 Feb 2000	COSATU's submission on White Paper on International Migration	Document	Sabinet Legal
15 Feb 2000	Immigration Bill (draft) Government Notice No. 621 of 2000 Gazette No. 20889	Meeting	Sabinet Legal
14 April 2000	Migration Policy, Deputy Minister on Electoral Bill: Briefing	Meeting	PMG
8 May 2000	South African Human Rights Commission (SAHRC)'s submission on White Paper on International Migration	Document	Sabinet Legal
15 May 2000	White Paper on International Migration: Hearings	Meeting	PMG
16 May 2000	White Paper on International Migration: Hearings	Meeting	PMG
18 May 2000	White Paper on International Migration: Hearings	Meeting	PMG
11 June 2000	Foreign Spouses Ruling: Briefing	Meeting	PMG
6&7 July 2000	Regulating migration in the 21 st century-a South African perspective: keynote address by Mangosuthu Buthelezi	Document	Sabinet Legal
2 Oct 2000	White Paper on International Migration: Input by Ministry	Meeting	Parliamentary Monitoring Group (PMG)

3 Oct 2000	Outline of the presentation of DHA to the portfolio committee of Home Affairs on the White Paper on International Migration	Document	Sabinet Legal
29 Oct 2000	Committee Report on White Paper on International Migration	Meeting	PMG
31 Oct 2000	White Paper on International Migration: penultimate report	Meeting	PMG
2001	Report of the Portfolio Committee on Home Affairs on the study tour of Namibia, Botswana, Zimbabwe and Mozambique	Document	Sabinet Legal
7 May 2001	Briefing by the Minister	Meeting	PMG
8 May 2001	Minister's presentation to Portfolio Committee of Home Affairs	Meeting	Sabinet Legal
14 May 2001	Briefing by Director General on Departmental Activities	Meeting	PMG
22 May 2001	Minister's speech on Home Affairs Budget Debate	Meeting	Sabinet Legal
5 June 2001	Select Committee on Social Services Briefing by DHA on White Paper on International Migration	Meeting	Sabinet Legal
Aug 2001	CDE's submission to the Immigration Bill 29 June of 2001	Document	Sabinet Legal
20 Aug 2001	Letters exchange between Minister and House Speaker	Document	Sabinet Legal
10 Sep 2001	Immigration Bill, Births and deaths Registration Amendment Bill; SADC Committee Report	Meeting	PMG
20 Sep 2001	Parliamentary Media Briefing	Meeting	Sabinet Legal
24 Sep 2001	Immigration Bill, Director-General's contract: Discussion	Meeting	PMG
8 Oct 2001	Status of Immigration Bill [B46-2001], Tabling of Revised Immigration Bill [B79-2001], Director-General's contract	Meeting	PMG
23 Oct 2001	Immigration Bill: deliberation	Meeting	PMG
29 Oct 2001	Immigration Bill: Deliberations	Meeting	PMG
30 Oct 2001	Immigration Bill: Deliberations	Meeting	PMG
22 Jan 2002	Immigration Bill: Deliberations	Meeting	PMG

11 Feb 2002	Programme for processing Immigration Bill	Meeting	PMG
11 Mar 2002	Programme for processing Immigration Bill [B79-2001]; Summary of constitutional decisions affecting DHA	Meeting	PMG
17 March 2002	Programme and process of dealing with Immigration Bill	Meeting	PMG
18 March 2002	Immigration Bill: Briefing by Minister	Meeting	PMG
19 March 2002	Minister's Remark Portfolio Committee on Home Affairs	Meeting	Sabinet Legal
April 2002	Black Sash's submission on Immigration Bill	Document	Sabinet Legal
12 April 2002	PriceWaterHouseCoopers (PwC) submission on the Immigration Bill	Document	Sabinet Legal
12 April 2002	World Trade Organisation & World Bank joint submission on the Immigration Bill	Document	Sabinet Legal
14 Apr 2002	Immigration Bill: briefing	Meeting	PMG
15 April 2002	Immigration Bill: Briefing	Meeting	PMG
15 April 2002	Presentation of DHA of the Migration System in South Africa (Director-General)		
16 April 2002	Immigration Bill: Hearings	Meeting	PMG
16 April 2002	South African Revenue Service's submission on the Immigration Bill	Document	Sabinet Legal
17 April 2002	Immigration Bill: Hearings	Meeting	PMG
18 April 2002	COSATU, NACTU & FEDUSA joint submission on the Immigration Bill	Document	Sabinet Legal
21 April 2002	Immigration Bill: Briefing by Chairpersons; Hearings	Meeting	PMG
22 April 2002	Immigration Bill: Hearings	Meeting	PMG

22 April 2002	South African Police Service's submission on the Immigration Bill	Document	Sabinet Legal
23 April 2002	Immigration Bill: Departmental Briefing and Deliberations	Meeting	PMG
23 April 2002	International Education Association of South Africa (IEASA), South African Universities Vice-Chancellor's Association (SAUVCA) and the Committee of Technikon Principals (CTP) submission on Immigration Bill	Document	Sabinet Legal
23 April 2002	National Consortium for Refugee Affairs submission on the Immigration Bill	Document	Sabinet Legal
23 April 2002	South African Human Rights Commission submission on the Immigration Bill	Document	Sabinet Legal
23 April 2002	United Nations High Commissioner for Refugees submission on the Immigration Bill	Document	Sabinet Legal
24 April 2002	Immigration Bill: Deliberations	Meeting	PMG
25 April 2002	Immigration Bill: Deliberations	Meeting	PMG
25 April 2002	Department of Justice and Constitutional Development's submission on Immigration Bill [B79-2001]	Document	Sabinet Legal
25 April 2002	Lawyers for Human Rights's submission on Immigration Bill	Document	Sabinet Legal
28 April 2002	Immigration Bill: Deliberations	Meeting	PMG
29 April 2002	Immigration Bill: Deliberations	Meeting	PMG
05 May 2002	Immigration Bill: Deliberations	Meeting	PMG
14 May 2002	Immigration Bill: Deliberations and Voting	Meeting	PMG
17 May 2002	Minister's speech Second Reading of the Immigration Bill [B79-2001]	Meeting	Sabinet Legal

20 May 2002	Budget and Programmes 2002/3: Briefing by Director-General	Meeting	PMG
27 May 2002	Department Budget: Discussion	Meeting	PMG
03 June 2002	Department Budget: Discussion with the Department	Meeting	PMG
11 June 2002	Minister's speech Home Affairs Budget Debate	Meeting	Sabinet Legal
20 August 2002	Minutes of Portfolio Committee on Home Affairs	Meeting	Sabinet Legal
26 Aug 2002	Implementation of Immigration Act; Refugee Affairs and Operation of legal services directorate: Discussion	Meeting	PMG
25 November 2002	Immigration Regulation. Gazette No. R7524 449(24100)	Bill	Sabinet Legal
28 Jan 2003	Immigration Regulation: Briefing	Meeting	PMG
18 Feb 2003	Immigration Regulation: Briefing	Meeting	PMG
19 Feb 2003	Minister's remark on Immigration Regulation	Meeting	Sabinet Legal
20 Feb 2003	PriceWaterHouseCooper (PwC)'s submission on Immigration Regulation	Document	Sabinet Legal
21 Feb 2003	Immigration Regulation, Government Gazette No. 24952, Government Notice 487 of 2003	Bill	Sabinet Legal
21 Feb 2003	Cape Town Regional Chamber of Commerce and Industry's submission on Immigration Regulation	Document	Sabinet Legal
23 Feb 2003	Email exchange between American Chamber of Commerce and Parliament	Document	Sabinet Legal
24 Feb 2003	Immigration Regulation: Briefing	Meeting	PMG
25 Feb 2003	Minor adjustments to Immigration Regulations	Document	Sabinet Legal
3 March 2003	Immigration Regulation: Discussion	Meeting	PMG

24 March 2003	Letter from Minister on Immigration Regulation: Court Case	Meeting	PMG
31 March 2003	Court Case on Immigration Regulations: Briefing by Minister	Meeting	PMG
14 April 2003	Minister's remark on Immigration Regulation	Meeting	Sabinet Legal
27 June 2003	Immigration Regulation, Government Gazette No. 27725, Government Notice No. R 616	Document	Sabinet Legal
8 Sep 2003	Minister's remark on Immigration Regulation	Meeting	Sabinet Legal
6 March 2004	Immigration Regulation, Government Gazette No. 26126, Government Notice No. 352 of 2004	Bill	Sabinet Legal
24 May 2004	Committee Programme	Meeting	PMG
7 June 2004	Department Capacity and Immigration Regulation: Briefing by Minister	Meeting	PMG
24 June 2004	Immigration Amendment Bill, Government Gazette No. 26507 of 2004	Bill	Sabinet Legal
26 June 2004	Immigration Amendment Bill (draft)	Bill	Sabinet Legal
13 July 2004	PriceWaterHouseCooper (PwC)'s submission on the Immigration Amendment Bill	Document	Sabinet Legal
22 July 2004	Western Cape Immigration Practitioner Forum's submission on the Immigration Amendment Bill	Document	Sabinet Legal
1 August 2004	Immigration Amendment Bill: Briefing overview	Meeting	PMG
2 August 2004	National Economic Development and Labour Council (NEDLAC)'s agreement on Immigration Amendment Bill [B11-2004]	Document	Sabinet Legal
2 August 2004	Minister's remark on the presentation of the Immigration Amendment Act	Meeting	Sabinet Legal
2 August 2004	Presentation to the portfolio committee on Home Affairs on Immigration Amendment Bill	Meeting	Sabinet Legal

2 August 2004	Business Unity South Africa (BUSA)'s submission on Immigration Amendment Bill	Document	Sabinet Legal
2 August 2004	Law Society of the Northern Provinces (LSNP)'s submission on the Immigration Amendment Bill	Document	Sabinet Legal
2 August 2004	Sonnerberg Hoffman's submission on the Immigration Amendment Bill	Document	Sabinet Legal
2 August 2004	Immigration Amendment Bill: Briefing by DHA	Meeting	PMG
3 August 2004	Immigration Amendment Bill: Hearing	Meeting	PMG
4 August 2004	Immigration Amendment Bill: Hearings	Meeting	PMG
5 August 2004	Southern African Migration Project (SAMP)'s submission on the Immigration Amendment Act	Document	Sabinet Legal
5 August 2004	COSATU and NUM's joint submission on the Immigration Amendment Bill 2004	Document	Sabinet Legal
6 August 2004	Association of Immigration Practitioners of South Africa (AIPSA)'s submission on Immigration Amendment Bill	Document	Sabinet Legal
10 August 2004	Immigration Amendment Bill: Deliberations	Meeting	PMG
11 August 2004	Immigration Amendment Bill: Deliberations	Meeting	PMG
12 August 2004	Immigration Amendment Bill: Voting	Meeting	PMG
19 August 2004	Minister's speech on the Immigration Amendment Bill, 2004, to the National Assembly	Meeting	PMG
26 August 2004	Deputy Minister's speech on the Immigration Amendment Bill, 2004, to the National Council of Provinces	Meeting	PMG
18 Oct 2004	United Nations High Commission for Refugees: Briefing	Meeting	PMG
17 May 2005	DHA's presentation to the Portfolio of Home Affairs	Meeting	Sabinet Legal

18 May 2005	Budget Vote Speech	Meeting	Sabinet Legal
21 June 2005	DHA National Immigration Branch's presentation to the NCOP select Committee on Social Services	Meeting	Sabinet Legal
27 June 2005	Immigration Regulation, Government Gazette No. 27725, Government Notice No. R616 of 2005	Document	Sabinet Legal
8 August 2005	The Africa's Children rights Presentation in Parliament	Meeting	Sabinet Legal
8 August 2005	Refugee's presentation to the National Assembly: In need of Protection	Meeting	Sabinet Legal
10 August 2005	Lindela Refugee Centre Activities; Refugee stakeholder meeting: Committee Planning	Meeting	PMG
24 August 2005	Minister's speech to the Portfolio Committee	Meeting	Sabinet Legal
26 August 2005	Law Society of South Africa's submission on refugee laws	Document	Sabinet Legal
26 August 2005	A Congolese's presentation to Parliament	Meeting	Sabinet Legal
29 August 2005	Plight of refugees in South Africa: Hearings	Meeting	PMG
30 August 2005	Zimbabwe Exiles Forum's submission to the Portfolio Committee of Home Affairs	Document	Sabinet Legal
7 Sep 2005	Committee Reports	Document	Sabinet Legal
12 Sep 2005	Immigration Service Delivery and Staff shortages; Security at Lindela Detention Centre	Meeting	PMG
13 Sep 2005	DHA's presentation to the Committee of Home Affairs	Meeting	Sabinet Legal
23 November 2005	DHA's response to questions relating to refugee matters	Meeting	Sabinet Legal
8 February 2006	Specific Professionals Categories and specific occupational classes	Document	Sabinet Legal
25 May 2006	Xenophobic Attack in Plettenberg Bay: Report by Wester	Meeting	PMG

10 August 2006	COSATU and NUM's joint submission on the Immigration Amendment Bill 2006	Document	Sabinet Legal
5 September 2006	Civil Union Bill, Films and Publications and Immigration Amendment Bills: Briefing by Minister	Meeting	PMG
6 September 2006	Presentation to the Portfolio Committee: Immigration Amendment Bill 2006	Document	Sabinet Legal
7 September 2006	Minister's remark on the presentation of the Civil Union Bill, 2006, the Immigration Amendment Bill, 2006	Meeting	Sabinet Legal
12 September 2006	Civil Union Bill, Films and Publications and Immigration Amendment Bills: Briefing by Minister	Meeting	PMG
22 September 2006	PriceWaterHouseCooper's submission on the Immigration Amendment Bill 2006	Document	Sabinet Legal
11 October 2006	Business Unity South Africa (BUSA)'s submission on the Immigration Amendment Act 2006	Document	Sabinet Legal
16 October 2006	Civil Union Bill, Films and Publications and Immigration Amendment Bills: Hearing	Meeting	PMG
23 October 2006	Immigration Amendment Bill: Submission by Trade Unions, deliberation and adoption	Meeting	PMG
23 October 2006	Summary of Submissions on the Immigration Amendment Bill [B28-2006]	Document	Sabinet Legal
19 June 2007	Implementation of the HRH plan: overview of progress with implementation	Document	Sabinet Legal
24 August 2004	National Department of Health (DoH) human resources for health	Document	Sabinet Legal
2 October 2001	Presentation on HPCSA to the Portfolio Committee on Health	Document	Sabinet Legal
15 May 2001	DoH's presentation	Document	Sabinet Legal

28 February 2001	Priorities for 2001 National Department of Health	Document	Sabinet Legal
17 March 2000	DoH's annual budget report	Document	Sabinet Legal
1 April 2006	Recruitment and employment of foreign health professionals in the Republic of South Africa	Document	Sabinet Legal
2010	Employment of foreign health professionals in the South African health sector	Document	Sabinet Legal
26 May 2006	Mbeki takes stick over SA's red tape	Newspaper	Sabinet Reference
21 December 2006	Avoidable disaster	Newspaper	Sabinet Reference
20 December 2006	Rural health care time-bomb as doctor shortage looms	Newspaper	Sabinet Reference
20 December 2006	Foreign doctors hold key to saving rural healthcare from collapse	Newspaper	Sabinet Reference
26 August 2006	No African doctors for SA	Newspaper	Sabinet Reference
27 June 2006	For better healthcare, we need to go private	Newspaper	Sabinet Reference
19 June 2006	Limiting foreign doctors will worsen chronic shortages	Newspaper	Sabinet Reference
12 June 2006	Warning on move to limit the number of foreign doctors	Newspaper	Sabinet Reference
12 June 2006	SA plan to cut foreign doctors in country	Newspaper	Sabinet Reference
12 June 2006	Plan to cut foreign doctors slated	Newspaper	Sabinet Reference

6 July 2006	Failing to grasp the medical nettle	Newspaper	Sabinet Reference
5 June 2006	The benefits of exporting and importing health services	Newspaper	Sabinet Reference
18 April 2006	Faltering start in luring skills	Newspaper	Sabinet Reference
16 April 2006	Cuban doctors' bleak future	Newspaper	Sabinet Reference
15 April 2006	Plan to keep African doctors out of SA	Newspaper	Sabinet Reference
14 April 2006	Partnerships are crucial if health crisis is to be addressed	Newspaper	Sabinet Reference
10 April 2006	SA may put a curb on foreign doctors	Newspaper	Sabinet Reference
10 April 2006	African medical brain drain to SA to be ended	Newspaper	Sabinet Reference
7 April 2006	Plan to give SA's health sector a new lease of life	Newspaper	Sabinet Reference
7 April 2006	Hopes to heal the divide	Newspaper	Sabinet Reference

Appendix II

Litigation expenses 2011/12 to 2014/15

(a) (i) Department of Health (national)

No.	Financial Year	Amount
(aaa)	2011/2012	R30 554 000.00
(bbb)	2012/2013	R6 149 000.00
(ccc)	2013/2014	R4 587 000.00
(bb)	2014/2015	R5 160 000.00

(ii) Limpopo Department of Health

No.	Financial Year	Amount
(aaa)	2011/2012	R2 163 000.00
(bbb)	2012/2013	R7 000 000.00
(ccc)	2013/2014	R5 000 000.00
(bb)	2014/2015	R44 979 000.00

Free State Department of Health

The Department does not budget for litigation, only budget for legal costs. Damages are paid from the suspense account at Loss Control.

North West Department of Health

No.	Financial Year	Amount
(aaa)	2011/2012	R160 306.00
(bbb)	2012/2013	R5 481 155.00
(ccc)	2013/2014	R8 627 455.00
(bb)	2014/2015	R10 143 311.00

Mpumalanga Department of Health

No.	Financial Year	Amount
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(aaa)	2011/2012	R9 000 000.00
(bbb)	2012/2013	R9 540 000.00
(ccc)	2013/2014	R10 224 000.00
(bb)	2014/2015	R10 838 000.00

Northern Cape Department of Health

No.	Financial Year	Amount
(aaa)	2011/2012	Not available
(bbb)	2012/2013	Not available
(ccc)	2013/2014	R4 164 000.00
(bb)	2014/2015	R2 269 000.00

Eastern Cape Department of Health

The Department does not budget for legal claims. Each institution pays for the incident that took place in the said institution.

(b)(i) National Department of Health

No.	Financial Year	Amount
(aaa)	2011/2012	R34 963 642.96
(bbb)	2012/2013	R14 591 772.64
(ccc)	2013/2014	R4 019 425.11
(bb)	2014/2015	R3 590 903.37

(ii) Limpopo Department of Health

No.	Financial Year	Amount
(aaa)	2011/2012	R3 863 017.12
(bbb)	2012/2013	R7 308 503.41
(ccc)	2013/2014	R20 116 859.24
(bb)	2014/2015	R30 871 283.16

Free State Department of Health

No.	Financial Year	Amount
(aaa)	2011/2012	R5 473 097.65
(bbb)	2012/2013	R2 935 534.00
(ccc)	2013/2014	R673 373.00
(bb)	2014/2015	R16 500 000.00

North West Department of Health

No.	Financial Year	Amount
(aaa)	2011/2012	R753 602.57
(bbb)	2012/2013	R7 899 232.50
(ccc)	2013/2014	R12 959 528.18
(bb)	2014/2015	R25 119 377.36

Mpumalanga Department of Health

No.	Financial Year	Amount
(aaa)	2011/2012	R17 614 054.79
(bbb)	2012/2013	R11 310 058.70
(ccc)	2013/2014	R44 408 386.64
(bb)	2014/2015	R5 529 663.88

Northern Cape Department of Health

No.	Financial Year	Settlement amount of Litigation claims
(aaa)	2011/2012	R10 287 277.90
(bbb)	2012/2013	R218 560.00
(ccc)	2013/2014	R12 249 662.00
(bb)	2014/2015	R6 132 184.49

Eastern Cape Department of Health

No.	Financial Year	Settlement amount of Litigation claims
(aaa)	2011/2012	R68 558 445.27
(bbb)	2012/2013	R94 689 268.23
(ccc)	2013/2014	R134 570 588.97
(bb)	2014/2015	R91 942 415.20

KwaZulu-Natal Department of Health

No.	Financial Year	Settlement amount of Litigation claims
(aaa)	2011/2012	R49, 221, 493.92
(bbb)	2012/2013	R56, 806, 519.72
(ccc)	2013/2014	R208, 460, 451.50
(bb)	2014/2015 (as at 6.03.2015)	R209, 054, 884.73

Appendix III

Unemployment rates using broad and narrow definitions

	Broad Unemployment Rate	Narrow Unemployment Rate
1993		
Black	37.7%	15.7%
Coloured	20.9%	15.1%
Asian/Indians	11%	7.1%
White	4.6%	3.2%
Total	29.4%	12.7%
1995		
Black	40.6%	25.6%
Coloured	23.1%	19.1%
Asian/Indians	16.7%	14.2%
White	5.7%	4.1%
Total	32.1%	20.2%
1995		
Black	36.2%	36.2%
Coloured	21.8%	21.8%
Asian/Indians	13.2%	13.2%
White	4.6%	4.6%
Total	28.5%	16.3%