CHAPTER 2

CIVIC-STATE INTERACTIONS AND THE POTENTIAL FOR STRUCTURAL CHANGE

Jeff Handmaker[1]

On 31 January 2008, South African police officers raided the Central Methodist Church in Johannesburg. Employing heavy-handed tactics, allegedly including pepper spray and dogs, the police proceeded to round up suspected undocumented migrants, who they claimed had no permits to stay in South Africa.[2] Among those arrested were Zimbabwean asylum-seekers who had fled growing violence in Zimbabwe, and had managed to avoid detention at a notorious detention facility in Musina on the South Africa-Zimbabwe border, before seeking refuge in Johannesburg.[3] These asylum seekers had a legitimate right to stay in terms of national and international laws that the South African government was legally obliged to respect.

In the months that followed the January raid, a growing number of reports in the media highlighted widespread abuses of asylum-seekers and refugees by the police and the Department of Home Affairs (DHA). Civic organisations stepped up their advocacy and launched a series of further public and legal challenges.[4] Civic organisations insisted upon the government's accountability to migrants and asylum-seekers in general, and condemned the police raids on the Methodist church.[5]

---

[1]   This chapter is adapted from Handmaker (2009) 'Conclusion', in *Advocating for Accountability: Civic-State Interactions to Protect Refugees in South Africa*, pp. 191–211. Antwerp: Intersentia.

[2]   'Raid Highlights Migrant Abuse', 2008.

[3]   As explained by Hermes (2008) and others, the growing number of asylum-seekers from Zimbabwe was due to growing state-organised violence by Mugabe's authoritarian regime, which peaked in 2005, in the context of Operation Murambatsvina, and again in April 2008, following the Zimbabwe government's rejection of the 29 March 2008 elections.

[4]   Lawyers for Human Rights (LHR) and the Consortium on Refugees and Migrants in South Africa (CoRMSA) issued a series of press releases condemning the behaviour of the South African police and the DHA. Later, this series of public challenges was posted on their websites: http://www.lhr.org.za/news and http://www.cormsa.org.za/press/. Last checked on 31 December 2008.

[5]   Burger, 2008.

In May, local and international media began reporting a wave of attacks against foreigners, mainly in township areas. Houses and shops were looted. People were beaten and even set on fire in the street. By 31 May 2008, at least 62 people had been killed, and many more forced to flee.[6] The violence was so widespread that the government was compelled to establish emergency relief centres to protect the victims of xenophobic violence. However, in August 2008 the government threatened to close the relief centres,[7] while at the same time, the government refused to close the detention centre in Musina, which had developed a reputation for widespread abuses, including allegations of torture.[8]

Civic organisations responded to these developments with co-ordinated responses and legal challenges that illustrated a growing sophistication in advocating for accountability. Lawyers for Human Rights (LHR) – supported by numerous other civic organisations, including the Treatment Action Campaign (TAC), Consortium on Refugees and Migrants in South Africa (CoRMSA) and others – launched constitutional challenges to the closure of the relief centres.[9] After South African civic organisations repeatedly appealed for the closure of the Musina immigrant detention facility – run by the South African Border Police, in co-ordination with the DHA – LHR found itself supporting the Director-General of the DHA, who eventually agreed that the facility should be closed. LHR issued a press release on 20 November 2008:

> [LHR] supports the call by the Director-General of the Department of Home Affairs for the closure of the detention facility in Musina for foreign nationals … The facility is run by the South African Police Service with no safeguards to prevent unlawful detentions, the deportation of refugees or independent monitoring of the conditions of detention.

LHR described the conditions at the Musina detention facility, making extensive reference to international law and South African law:

> We have found large numbers of children, often unaccompanied, detained along with adults in contravention of both the Constitution and the Children's Act … South Africa has been cited for its mistreatment of detainees in immigration detention by the United Nations Working Group on Arbitrary Detention … [including] abusive handcuffing, beatings with hosepipes and in one incident, detainees were forced to roll in urine on the floor. Such treatment is not only a criminal offence, but a violation of South Africa's obligations under the UN Convention Against Torture.

Reflecting on a lengthier study that looked at more than a decade of civic advocacy for government accountability for refugee rights in South Africa,[10] this chapter will revisit the following research question: how can the dynamics of civic interactions to advocate state accountability to promote, protect and fulfil refugee

---

6   'Xenophobic Attacks Plague the Country', 2008; 'Xenophobia Death Toll Hits 62', 2008.
7   Bell, 2008.
8   Mbelle and Dissel, 2008.
9   IRRI, 2008.
10   Ibid, footnote 1.

rights in South Africa be strengthened; under what circumstances do civic-state interactions lead to structural change; and what do these interactions teach us about the potential and pitfalls of realising rights in general?

Discovering answers to this question will help to explain the emergence of civic capacity, the strategic importance of recognising the structural boundaries of the state, and the role of civic actors in mediating the translation of global rules into local contexts, which can lead to structural change.

This chapter presents the findings of a study of civic-state interactions to protect the rights of refugees in South Africa, conducted between 2004 and 2008, which explains how civic actors have interacted with governments through both co-operation and confrontation. Secondly, it explains the context in which civic actors have acquired capacity to advocate for government accountability, and how this has shaped the possibilities for realising refugee rights in South Africa. Thirdly, the chapter explains the importance of respecting structural boundaries in a culture of constitutionalism. Fourthly, it explains how civic actors translate global rules into their locally relevant contexts. Finally, this chapter explains how civic capacity to realise rights travels across time and space: across time, in terms of the ongoing relevance of social justice strategies from one historical period to the next; and across space in terms of the global relevance that social justice strategies in one country have for similar struggles in different countries.

1   CIVIC CAPACITY, STRUCTURAL BOUNDARIES AND THE SCOPE FOR STRUCTURAL CHANGE

Civic-state interactions in the fourteen years that have passed since the South African government ratified the international refugee conventions have reaffirmed the capacity of civic actors to hold states accountable for their human rights obligations, clarified the structural boundaries of civic-state interactions, and revealed the scope for these interactions to lead to structural change.

In seeking to better understand the potential for civic action to lead to structural change, I have tried to explain the dynamics of civic interactions to advocate state accountability in promoting, protecting and fulfilling refugee rights in South Africa; the circumstances under which civic-state interactions lead to structural change; and the potentials and pitfalls of these interactions in realising rights in general. Civic interventions to promote the South African state's accountability for its human rights obligations are principally understood through the country's culture of constitutionalism. Carefully honed in the struggle against apartheid, civic actors – including lawyers and legal advocacy organisations in the post-1994 democratic era – have wielded both 'shield' and 'sword' in their advocacy of new human rights issues (including refugee rights), advocating a new kind of 'politics by other means'.[11]

---

[11]   Abel, 1995.

In contrast to the pre-democracy era, in which challenges to a government decision were almost unthinkable, administrative law has proven to be a dynamic mechanism, available to challenge a government directly on the content of its policies. It has been a powerful shield against ill-informed, biased or arbitrary decisions made in individual applications for refugee status. It has also become an effective sword, both in halting restrictive policies for admission to the country, and in advocating for economic and social rights, such as the right of refugees to study, receive social grants, and work in particular employment sectors.

Beyond explaining the civic potential for realising refugee rights, I have questioned how such a role could be strengthened. Further, I have asked what this has taught us about the potential of civic interventions in realising rights in general. Civic advocacy for refugee rights in South Africa demonstrates how state accountability can be promoted, or in more limited circumstances enforced, by way of co-operative and confrontational interactions between government and civic actors. The principal means of explaining the nature of the relationship between civic actors and the state in these interactions is what Kidder has referred to as social distance, as measured by divergences in interests, meanings and political positions; in other words, the externally grounded reasons for participating in a given civic-state interaction.[12]

Civic-state interactions in refugee policymaking

The first example of civic-state interactions discussed in the longer study involved civic actors engaged in the development of national policies to protect refugees in South Africa. These interactions revealed various opportunities and challenges for civic actors. In many respects, South Africa is a model of participatory democracy, in which the government has a duty to ensure that there has been some level of civic involvement in the policymaking process. While the courts in South Africa have determined that some specific civic involvement duties are enforceable, it is generally a matter of discretion as to what form this public involvement takes.[13]

Where a process was too one-sided in terms of the dominant role played by civic actors, the South African government questioned the legitimacy of the process, as was shown by its reluctance to follow-up on the Refugees Green Paper. Similarly, when the government neglected to consult civic actors, as was the case in the development of the Regulations to the Refugees Act, civic actors contested the outcome of that process, labelling it illegitimate. By contrast, where civic actors participated actively in a government-led policy initiative – as was the case in the Refugees White Paper process – the legitimacy of the process, as well as the possibilities for its implementation, was correspondingly enhanced.

---

[12]   Kidder, 1979.
[13]   Hoexter, 2007: 75–76, commenting on the Doctors for Life case (2006) and the Matatiele case (2007).

Broadly speaking, government and civic actors alike welcomed the outcome of the White Paper process – the Refugees Act.

Clarity regarding the respective roles of civic and state actors has made it possible to explain the motivations for the participation of each in a policymaking or implementation process at a particular historical moment. This has in turn illustrated how the presence of social distance, at that moment, defined the strategic possibilities for a desirable outcome at a particular time, at least from the perspective of civic actors participating in a given policy or implementation process.

In the formation of the Refugees Act of 1998, it was notable that both civic and government representatives in the White Paper Task Team (as well as most observers of the process) recognised the need for the Department of Home Affairs (DHA) to set policy, as long as appropriate consultation also took place. In other words, the opportunities for exercising civic agency were conditioned by administrative and legal structures already in existence. Furthermore, there was a common understanding that the South African government was obliged to give effect to its ratification of the international refugee conventions. However, this common understanding did not mean that the views of all civic actors were the same. Indeed, there were many differences of opinion as to the extent to which the Refugees White Paper and Bill needed to make explicit reference to the rights of asylum-seekers and refugees, and to the obligations of the government.

And yet it was still possible to advocate structural change (in Archer's terminology, 'elaboration') in the DHA's legal and administrative structure. The legal structure that emerged from the White Paper process incorporated international law principles regarding the status determination procedure, as well as due process principles contained in South Africa's constitution. The administrative structure included various possibilities for internal appeal, as well as for oversight by the Standing Committee and Refugees Appeal Board.

Civic-state interactions in refugee policy implementation

Unlike in the refugee White Paper policymaking process, the possibilities for civic actors to influence the direction of the DHA's policy were more limited in the context of the second example, namely civic involvement in an ostensibly government-led project to regularise the legal status of former Mozambican refugees. This second example of co-operative civic-state interactions was informed by South Africa's historical involvement in the violent civil war in Mozambique, and the legal and administrative structure that had denied these refugees a formal status.[14] By the same token, the desire of the South African

---

[14]   According to Rupiya and others (1998), the previous South African government's support for the right-wing, opposition RENAMO forces that were fighting the once-Soviet-backed, left-wing FRELIMO government forces formed part of South Africa's regional destabilisation campaign. The civil war in Mozambique generated millions of refugees, many of whom sought refuge in countries throughout the region, including South Africa.

government to *repair* this injustice to the government and people of Mozambique meant that it was possible for civic actors to promote a *correction* of this injustice, and to elaborate the legal and administrative structure by granting these former refugees legal residential status. Unfortunately, the actual implementation of this project severely constrained the possibilities for civic agency due to the role of the leading civic actor, a Dutch NGO known as AWEPA.

As far back as the early 1990s, a Tripartite Commission consisting of the governments of Mozambique and South Africa, together with the UNHCR, aimed to resolve the situation for the hundreds of thousands of Mozambican refugees who ended up in South Africa.[15] The commission's two main commitments were to repatriate those who wished to return to Mozambique, and to regularise the legal status of former Mozambican refugees (FMRs) who wished to remain in South Africa.

When civic actors (and particularly AWEPA) expressed an interest in facilitating the implementation of the regularisation project, it was clear that the structural conditions favouring administrative due process were hardly in place for this to happen. The marked lack of political will on the part of the DHA, and the shaky legal and administrative structure that finally emerged to implement the project (which involved extensive closed-door involvement by AWEPA) created a situation in which the ability of local civic actors and FMRs to exercise their agency was highly circumscribed.

Particularly uncomfortable for local civic actors was the role that AWEPA played in conflating its interests with that of the South African government. The AWEPA co-ordinator's lack of distinction between his organisation's interest and the interests of the DHA – coupled with AWEPA's central co-ordinating role – artificially reduced the social distance between the DHA and local civic actors. This situation made it extremely difficult for local civic actors to challenge the behaviour of DHA officials, and ensure that administrative due process was being respected.

Furthermore, the significance of a credible monitoring presence was under-emphasised, as were concerns about 'survival fraud'. Finally, a moratorium on deportations was first downplayed and then sidelined altogether by the government, with no objection from AWEPA. To make matters worse, when civic actors eventually did raise concerns about the project's implementation, AWEPA openly undermined them. This combination of factors both compromised the independence of local civic actors and had catastrophic results for thousands of FMRs, who were denied regularised status in structural circumstances that failed to comply with basic standards of administrative due process.

---

[15]   The forming of the Tripartite Commission followed a 1992 peace agreement in Rome between the two main parties to the Mozambican conflict.

Litigation and shaming by civic actors

While co-operative interactions represented something relatively new to civic actors, emerging as they did from political struggle, and later from a negotiated constitutional transition that led to an accountable government, confrontational measures – through litigating and shaming the government into fulfilling its obligations to refugees – have been far more familiar territory for civic advocates.

The history of the anti-apartheid struggle mapped out two specific directions for civic actors, which to some extent continued in the post-1994 dispensation, although the experience of advocating refugee rights has tended to stress one particular direction over the other. As civic actors accustomed to litigating refugee rights took advantage of expanded opportunities for judicial review of administrative decisions, as provided for in the constitution, there have been correspondingly fewer efforts to publicly shame government. On one level this is surprising, given that advocacy efforts that have combined litigation with a civic mobilisation campaign (and strategic use of the media) have tended to lead to more favourable outcomes. On another level, this might be explained by the facts that (1) the DHA was obliged to radically transform its administrative structure; and that (2) the opinions of the general public – and the media – were generally unsympathetic to refugees and migrants.

The potential for structural interdicts to precipitate concrete and lasting improvements – or structural elaboration, in refugee protection standards – remains to be seen. Structural interdicts create a special relationship between the court, government and civic actors in which this elaboration can take place. However, this relationship also contains underlying tensions. The first (and more obvious) source of tension is between the government and civic actors, as acutely observed in the case of *LHR (2001)*, in which the credibility of civic actors and their ability to challenge government decisions were explicitly brought into question. The second source of tension is between government and the courts; civic groups and individuals have only recently been permitted to comprehensively challenge decisions of the government on the grounds of whether they have acted in a 'reasonable' manner. Hoexter sums up the problem well:

> More than any other ground, review for reasonableness exposes the tension between two conflicting judicial emotions: the fear of encroaching on the province of the executive arm of government by entering into the merits of administrative decisions, and the desire for adequate control over the decisions of administrative authorities.[16]

In other words, the courts in South Africa have faced the structural dilemma of maintaining what Klaaren has referred to as a 'delicate balance' between, on one hand, allowing government to fulfil its role in determining the content of policy

---

[16] Hoexter, 2007: 293–294.

and its implementation, and, on the other, acting as a constitutional check on government abuse of power.[17]

From structural conditioning to structural change: translators, social distance and public law

These three examples of civic-state interactions explain how the opportunities for civic agency have specific historical roots – which have conditioned civic agency to promote, protect and fulfil human rights, but have also allowed for structural elaboration (or structural change). Civic actors have fulfilled an important mediating role in the translation of global rules into the development, implementation and challenges of national policies. This study of civic advocacy for refugee rights in South Africa has also emphasised the importance of social distance as a strategic factor for civic actors, when assessing the possibilities for interacting with government in promoting state accountability towards refugees. Finally, this study highlights the usefulness of public (administrative and constitutional) law as a means of translating global rules into their local, vernacular contexts, and enforcing state accountability to international human rights norms.

As the following sections explain, civic interactions to advocate state accountability for respecting refugee rights can be explained through three theoretical propositions. Firstly, the capacity of civic actors to promote and impose state accountability is shaped by structural changes in the normative international and national legal frameworks. Secondly, boundaries which define the structural relationship between civic actors and the state shift in very specific ways; these must be understood by civic actors (agents) if they want to be strategic and successful in their advocacy efforts. And finally, civic actors play a crucial role in mediating the translation of international legal norms into local contexts.

2 CONTEXT SHAPES THE POSSIBILITIES FOR CIVIC-STATE INTERACTIONS

The social and political context from which civic actors have emerged has shaped both the nature of civic organisations and the possibilities for civic actors to influence state policies, mobilise for their enforcement, and hold states accountable. In South Africa, two distinct types of civic actors emerged from a long political struggle against racist governmental policies. The first mobilised in strategic, proactive ways to resist the apartheid regime. The other type of civic

---

[17] Klaaren, 2006b.

actor supported this resistance, mainly by engaging in 'politics by other means'[18] through a range of legal interventions, from providing protection to those facing potential torture in the course of police interrogations, to challenging forced removals by blocking the implementation of the Group Areas Act.

Since the country's first democratic elections in 1994, civic actors have operated in a rapidly shifting context that has challenged civic actors, and especially legal advocates, to develop new strategies. With the emergence of a constitutional culture, and a correspondingly accountable government in South Africa, civic actors have not only had to challenge government in order to hold it accountable; they have also been obliged to engage in policymaking and implementation programmes, supporting government when it has demonstrated a willingness to move in a progressive direction.

Where co-operative interactions have failed, confrontational strategies by civic actors have tried to fill the gap in legal protection. However, litigation on its own tends to provide little guarantee of a productive outcome. Well co-ordinated civic advocacy strategies, combining public shaming and mass mobilisation with legal interventions, have produced the most successful outcomes.

The process of developing refugee policy in South Africa has drawn upon global policy discussions on refugee protection. In particular, the refugee policy discussion in South Africa has engaged in debating whether refugee law ought to be 'reformulated' in order to correspond better with state interests, or, alternatively, 'reinvigorated' in order to correspond better with its original intentions. The dominant position advocated by civic organisations in the process of refugee policy formulation in South Africa has more closely reflected Goodwin-Gill's view that mechanisms to encourage compliance need strengthening, and that NGOs play an important role in this respect.[19] Refugee rights are the product of contestation, and civic actors have endorsed the need for institutional strengthening to ensure state compliance. Furthermore, the process of forming a refugee policy has demonstrated that the principal medium through which these rights are realised is the field of administrative law.

Pressures on the DHA to produce a new refugee policy came both internally and from outside, partly because of its ratification of the UN and OAU Refugee Conventions in 1996. With the ratification of these documents, and South Africa's increasing prominence in international relations, the DHA came under particular pressure both from the UNHCR and other arms of government, including the Ministry of Foreign Affairs and ANC parliamentarians, to give

---

[18] Abel, 1995, *passim.*
[19] Goodwin-Gill, 1999.

permanent effect to these international commitments. However, the opportunities for civic interaction were constrained by structural factors from within the then-Government of National Unity. Buthelezi, of the opposition Inkatha Freedom Party, remained Minister of Home Affairs for some years, and openly clashed with the ANC on the government's policy towards refugees and migrants.

Consequently, as Crush and McDonald argued, 'progressive immigration reform was ultimately held hostage to the broader politics of IFP appeasement' in the Unity government.[20] In some cases, civic actors used this to their advantage, as when lawyers challenged the DHA's crude 'safe third country' policy.

Furthermore, the DHA (following the advice of US government officials who drafted many of the Regulations to the Refugees Act) has appeared to follow the mantra of 'irregular migration', which holds that explicit provisions to protect refugees lead to abuse of the procedure. If this assessment is correct, it explains the reluctance of the DHA to engage civic actors in the development of the Regulations. Whatever the reasons, this proved to be a strategic miscalculation on the part of government. While civic participation in the development of the Refugees Act created a basis for co-operative civic-state interactions, the DHA's lengthy and non-consultative development of the Regulations, set the Department on an inevitable path of confrontation with civic actors.

The contextual challenges faced by civic actors in promoting a comprehensive administrative law regime (by way of co-operative interactions that translate South Africa's global human rights obligations appropriately) have been considerable. As Klaaren has noted,[21] the asylum-determination procedure in South Africa – and the rule of law in general – have operated for some time in a climate in which opportunities to claim rights have been decidedly limited – particularly prior to 1994. Although structural shifts have been noted with regard to the policy itself, implementation of the asylum procedure has become steadily more restrictive since its introduction in 1993.

Civic-state interactions must be seen as a cumulative process demanding ongoing reflection, possible co-operation, and (potentially) confrontation as well. By explicitly translating South Africa's international obligations and the rights contained in the constitution into the Refugees Act, civic actors have promoted a situation in which the DHA is obliged to correct its own behaviour. Where this has not succeeded, civic participation has advocated government accountability through a string of legal challenges to the DHA's policies.

---

[20]   Crush and Mcdonald, 2001: 9.
[21]   Klaaren, 2006b.

3   RESPECTING STRUCTURAL BOUNDARIES IN A CULTURE OF CONSTITUTIONALISM

The strategic importance of civic actors in respecting structural boundaries is especially important in a country that respects a culture of constitutionalism. As mentioned earlier, this creates a primary tension in which civic actors may (1) support government as it expresses a desire to move in a progressive direction, but in addition (2) would want to maintain their critical independence. In this section, the structural conditioning of civic actors is explained in relation to the possibilities for structural elaboration, followed by a discussion of the circumstances in which civic actors make strategic choices on the basis of their assessment of the state-created structural boundaries with which they interact.

Structural conditioning of civic actors and the possibilities for elaboration

It has been possible to explain the outcome of civic refugee rights advocacy from a structure-agency view that draws on Archer's approach of analytical dualism. This approach assumes that specific historical events determine state-created structures, and that the exercise of civic agency has been conditioned by these structures. This approach also assumes that civic actors are able to elaborate these structures through a strategic assessment, thereby contributing to structural change.

On one hand, the three main illustrative examples of this study have demonstrated that civic advocacy interventions have played a significant role in holding states accountable. On the other hand, these same examples have confirmed that state accountability is by definition state-centred; civic actors that place themselves too centrally in a civic-state interaction – such as in the Refugees Green Paper policymaking process, or the AWEPA-led regularisation project – risk eclipsing this essential role of the state or government. Consequently, while the role of civic actors in promoting legal and social normative compliance is important, it should not be over-emphasised. The principal responsibility for realising rights always remains with the state.

Civic actors played key roles in the process of negotiated transition, and continue to fulfil multiple roles in South Africa's participatory democracy by making oral and written contributions to parliamentary hearings, participating in policy task teams, and even engaging in joint civic-state implementation projects. As Arnstein argues, assessment of whether this participation is 'meaningful' and 'likely to have an impact' depends from which rung of the ladder the civic actors make contributions. These range from the state avoiding civic participation

altogether, through forms of manipulation, to 'token' consultation, and finally to 'partnership, delegated power and citizen control'.[22]

In navigating the narrow but significant channels for advocating state accountability, civic actors have assessed and made strategic decisions, based on their growing knowledge of global standards of refugee protection, to interact with government on the basis of structural boundaries on which civic actors believe the government might be prepared to compromise. A strategic consideration of this principal conditioning factor increases the likelihood that a civic-state interaction will lead to structural change.

Civic agencies' capacity to interact with and elaborate the country's legal and administrative structure providing for the reception of refugees and the determination of their legal status arises from specific historical events. In the context of refugee rights protection in South Africa, these events were related to a long-fought social justice struggle for dignity and self-determination, which was ultimately overtaken by a process of negotiated transition, during the course of which the state abandoned minority rule, and a democratic, accountable government came into being.

As South Africa has emerged from international isolation and begun to re-engage with the international legal and political order, the new government has been obliged to change its approach to refugees. Even during the apartheid era, the government demonstrated a willingness to allow applications for refugee status on an individual basis, beginning with the Russian applicants. Post-1994, the democratic government also welcomed critical civic voices in the elaboration of a comprehensive refugee policy through a new legal and administrative structure – at least initially. This openness changed as government took a more defensive stance against civic criticism; but as the White Paper process illustrated, possibilities still remained for structural elaboration of the refugee policy and its implementation.

Structural boundaries and strategic choices

Successful civic-state interactions depend on the strategic choices made by civic actors on the basis of a sober appreciation of state-created structural boundaries that not only condition their agency, but also allow for structural elaboration. By extension, the roles and responsibilities of both civic and state actors must be clear. This applies to any such civic-state interaction, whether it is the development of a nationally enforceable human rights policy, participation in an implementation project to realise human rights, or the enforcement of human rights obligations against a state. In all instances, the principal responsibility lies with the state and its government, although civic actors often play a complementary role as 'translators' of global rules in local contexts.

---

[22]   Reference to Arnstein in Hoexter, 2007: 79–80.

By drawing on the knowledge of the specific historical circumstances surrounding a government department that is the focus of a civic interaction, a variety of strategic responses can be made. In Archer's assessment, taking time to assess the structural challenges in which a civic interaction will take place is essentially about 'being human', not least because civic agency itself produces structurally conditioning factors. As Archer claims: 'people are indeed perfectly uninteresting if they possess no personal powers which can make a difference.'[23] This entails a careful consideration as to who is representing a government department, what particular issue is at stake, how the government has handled itself in the past, what resources are available to the government to respond to the claims against it, and why government may be motivated to take action at all.

For example, individual government officials may have particular views or experiences that shape their interpretation of a particular policy. The issue of asylum-seekers' right to work will be an especially sensitive one for the DHA, which also represents the interests of South African citizens. This is just one example of the kinds of meanings, interests and/or political positions that shape how government officials frame, interpret and enforce a particular policy. Civic actors must always bear these in mind when formulating strategy.

In making strategic choices, civic actors may (and should) assume that it is always primarily government's task to develop policy, not just as a matter of good governance, but in order to facilitate greater *buy-in* to that policy. Of course, this is not to say that civic organisations should not play a role. Indeed, governments often consult civic actors as experts or as concerned stakeholders. In some cases, there may even be a legal obligation to consult. Civic actors also participate in policymaking processes by confronting the state with their obligations during a legislative process.

Just as it is primarily government's responsibility to make policy, it is also primarily the responsibility of government to implement it. Civic actors can (and often do) participate in policy implementation projects. They train officials, advise on implementation frameworks, and even provide services on behalf of government. Civic actors do this in order to encourage and support government when it has displayed a willingness to move in a progressive direction. Such interventions ought not to be conducted uncritically, since there is always the danger of governmental and civic responsibilities becoming blurred. While civic actors have recognised the utility of supporting government in carefully defined circumstances, they have also learned the pitfalls of becoming unwitting apologists for maladministration.

Finally, enforcement of policy is (or ought to be) also primarily the responsibility of government, through self-corrective mechanisms. These may be components of the *trias politica*, with the elected legislative and independent judicial branches of government holding the executive accountable without the

---

[23]   Archer, 2000: 19.

need for civic intervention. Enforcement may also take place though an independent, constitutionally protected institution such as an ombudsman, semi-autonomous commission, or auditor-general. Unfortunately, more often than not, such mechanisms are inadequate, and so the roles of civic actors have become crucial complements in national and global efforts to hold states accountable to their international obligations. These may include initiating a claim through judicial review in the courts, appealing to a global institution such as a human rights treaty body, publicly shaming the government through generating attention in the media, or communicating a strong, collective message by way of mass mobilisation.

The elaboration of the legal and administrative structures that define South Africa's refugee policy also illustrates how these structures are cultural systems that are susceptible to change. As the next section explains, civic translators have played an important role in the process of elaborating these cultural systems.

4 MEDIATING THE TRANSLATION OF GLOBAL RULES INTO LOCAL CONTEXTS

In this study I have tried to illustrate how civic actors have contributed to a culture of constitutionalism, which has both national and international dimensions that highlight the utility of administrative law as a principal medium for translating global rules into local contexts. Furthermore, the examples provided in this study of civic advocacy for refugees have shown how civic actors can mediate the translation of global norms into local contexts, critically engaging within the external relationship – as measured by social distance – that always exists between civic actors and the government, represented by divergent interests, meanings and political coalitions. From different disciplinary perspectives, these illustrative examples have shown how civic actors could have an influence – at least in a modest way – on the content of laws and policies to protect refugees in South Africa, and on the manner in which they are implemented.

Legal culture and civic translators

As socio-legal scholars maintain, legal culture is itself an object of investigation. This can be either the 'internal legal culture'[24] of legal academics and practitioners, courts and other institutions, or how the legal culture is shaped by external factors. As Cotterrell has put it:

> participants in law are not just lawyers but all those who seek to use legal ideas for their own purposes, to promote or control the interests of others … understand legal ideas in practical terms … legal ideas are a means of structuring the social world.[25]

---

[24] Friedman, 1975.
[25] Cotterrell, 1998: 192.

Evaluating the role of civic interventions to enhance state accountability for promoting and respecting refugee rights in South Africa entails a critique of many different variables that characterise the legal culture in which civic actors operate. This study has considered the approaches and means, as well as the mechanisms, adopted by civic actors to promote the South African government's accountability to refugees in terms of its global and constitutional legal normative obligations. As already shown, the government had clear interests, demonstrated by its inviting civic participation in the White Paper Task Team. Clear – though distinctly different – interests motivated civic actors' participation in the refugee policymaking process. Consequently, the task team became a highly productive mechanism through which the competing interests of civic actors, the state and other bodies such as the UNHCR and Section Nine institutions (most notably the South African Human Rights Commission) could be mediated.

A less productive mechanism was employed by AWEPA and the DHA to regularise the status of FMRs, in which the interests of civic actors were far less clear – and in some cases, inextricably linked with those of the government. As a result, the potential of South African civic actors to exercise their agency was not only attenuated, but the due process of FMRs themselves became dangerously compromised, as there was no critical monitoring presence or independent mechanism of appeal.

Moore determined three decades ago that semi-autonomous social fields exist in which social actors are affected by legal norms, but that they also adapt by establishing their own social norms. In other words, each semi-autonomous social field is capable of producing its own rules, but is also vulnerable to external forces.[26] Merry's development of Moore's ideas into a theory that explains how global norms become translated or 'vernacularised' into local contexts provides a useful explanation for how rights translators have emerged, translating global rules through contributions towards policymaking processes, including (in South Africa) co-operation in refugee policymaking and implementation projects.[27]

By participating in global refugee protection discussions, a number of South African NGOs and academics became familiar with international rules designed to protect refugees; in other words, they became trans-national elites. However, their participation in the refugee policymaking process in South Africa remained conscious of local realities, which included the manner in which the refugee policy had been implemented since 1993. Consequently, they possessed what Merry terms a 'double consciousness'.[28] This made them effective translators of global rules, drawing on human rights as a resource both in terms of their substantive content (as a tool) and in the possibilities for the realisation of these rights (their consciousness). In addition, these legal translators had access to various legal enforcement institutions. Furthermore, by employing extra-legal

---

[26]   Moore, 1978.
[27]   Merry, 2006b.
[28]   Merry, 2006b: 217.

mechanisms, such as using the media to shame government when necessary, they created more space to engage with government on a critical basis.

Appreciating the value of social distance

Evaluating interactions in terms of social distance is another means of assessing civic participation, for the purpose of understanding the potential of civic interventions in realising refugee rights in South Africa, and in realising rights in general. As this study of civic advocacy for refugees has illustrated, the corresponding social distance between government lawmakers and civic actors has narrowed or widened according to the strategic decisions taken by civic actors, with various consequences.

The externally grounded reasons for civic participation in the process of refugee policy reform in South Africa diverged from those of the government, in terms of interests and meanings, but there were important areas of convergence in terms of political positions. During the refugee policymaking process, there were disagreements on the explicit wording of entitlements that refugees would be given as protected persons, in accordance with the country's constitutional and international obligations. On the other hand, the government generally agreed to implement refugee status determination through a hearings-based procedure, as proposed by civic actors. Therefore, the degree of social distance created by whether or not civic actors and government diverged or converged in their political positions on a particular policy issue varied considerably throughout the policymaking process, although convergence of political positions was clearly necessary before government would be willing to adopt a particular measure. Government always had the last word.

During the implementation of a status regularisation project for former Mozambican refugees (FMRs), the social distance or externalisation between AWEPA and the South African government was initially very great, as civic actors raised multiple concerns about how the project ought to be implemented. However, the interests, meanings and political positions of civic actors and the government became almost indistinguishable as the project took final shape and a critical monitoring presence was abandoned. What began as an ostensibly government-run project became known as the AWEPA project. In the absence of a credible monitoring presence, this social distance remained narrow throughout the project's implementation, resulting in limited space for critical responses by civic actors, and an administrative justice deficit for the FMRs.

Where refugee rights have been litigated, the social distance between civic actors and the government (as measured by their respective interests, meanings and political positions) has remained substantial, as civic actors have affirmed their role as an independent critical voice. And yet, even in these circumstances, it has not always been possible to hold the government accountable.

The courts have often proven reluctant to question the merits of a government's policy or exercise of discretion. But even where judges have found against the government, lawyers have often had to return to the courts, sometimes repeatedly, in order to secure compliance with an order or to argue a virtually identical case to one litigated earlier. In short, a high degree of social distance, or independent critical voice, has not been a reliable indicator of success. Not all legal challenges necessarily produce results.

However, a distinction should be made between litigation aimed at restraining government behaviour, in which more social distance exists, and cases aimed to promote good behaviour, which tend to involve a narrowing of the social distance. Put simply, the first type of case negatively insists that a certain policy be stopped, and tends to be more likely to succeed, while the other positively encourages the government to improve itself, which has proven to be more problematic. As one lawyer has argued:

> confrontations are necessary ... [and] it is easier to engage in public interest litigation when trying to stop something from happening; for example, seeking to stop the deportation of an asylum-seeker by way of an urgent interdict. It is not so easy to insist that something happens.[29]

Structural interdicts may offer new possibilities in the latter type of case. Where structural interdicts have been ordered to encourage good government behaviour, social distance has narrowed, as competing interests and political positions between government and civic actors have been replaced by structural undertakings by government to the court that it will take deliberate steps to improve a situation. Civic actors in such cases have made contributions in helping the government to improve its behaviour. In the access cases, for example, process engineers who were hired by the DHA, on the basis of a consent order, to improve management and procedures at the Refugee Reception Offices, spent considerable time interviewing the civic actors who had brought the case against the government. While it is still too early to assess its lasting impact, the structural interdict may yet prove to be a significant tool to ensure positive compliance, since the process of reporting back to the court recognises both the legitimate interests of both civic actors and the government, and the essentially voluntary nature of human rights implementation.

---

[29]   Interview with S. Magardie, 2006.

Mobilising
Social Justice

Conference
23/24th Nov, 2009

Venue
Oxley Centre, Law School,
WITS Univ, JHB

Ultimately, social distance can explain the potential for civic interactions to lead to structural change within the government by assessing the extent to which government has conceded to demands by civic actors in sharing their meanings, interests or political positions. This deserves further empirical study. In recent years, the DHA has faced persistent demands for reform from civic organisations, which have grown more sophisticated in their advocacy. Civic actors representing various groups and interests have protested – often simultaneously – to the media, parliament and courts about abuse by government officials, departmental inefficiency, corruption and mismanagement.

The DHA has responded to a considerable extent to these demands from civic organisations, and has initiated a consultative process to amend the Refugees Act. A draft bill was released for public comment in 2007.[30] Following public hearings in South Africa's parliament that involved several civic organisations,[31] and responding to long-standing criticisms from civic organisations about gaps in the refugee policy and its implementation, the government released a further draft bill in March 2008.[32] The government has also responded to the concerns raised by civic actors by calling for the closure of the Musina detention facility, as described above. Furthermore, the DHA initiated a 'turnaround strategy' that has involved participation from a number of civic actors, and the Minister has responded directly to questions regarding mismanagement of the DHA.[33]

With these acknowledgements from the government – to some extent, in response to the demands of civic actors – the social distance between civic actors and the government has narrowed as their respective interests in refugee protection and meanings about what this protection entails have converged, but not to the point that civic organisations have abandoned their critical monitoring role. Drawing on specific obligations contained in international and South African law, CoRMSA's June 2008 Annual Report comprehensively addresses the obligations of South Africa's local and national government to protect refugees and migrants, from the role of government in addressing the root causes of xenophobic violence to its role in facilitating access to employment and basic services.[34] As the report confirms, while to some extent the interests and meanings of civic actors and the government may have converged, their respective political positions continue to diverge, as civic actors remain focused on holding the South African government – and especially the DHA – accountable for its legal obligations to protect refugees and migrants.

---

[30] Government of South Africa, 'Publication of the draft Refugees Amendment Bill 2007', General Notice 730 of 2007, Government Gazette No. 29976, 7 June 2007.

[31] Parliamentary Monitoring Group, 'Refugees Amendment Bill: Public Hearings', Audio and written transcripts available at: http://www.pmg.org.za/print/11282. Last checked 29 August 2008.

[32] Government of South Africa, 'Refugees Amendment Bill', Government Gazette No. 30835, B11-2008, 4 March 2008. Available at: http://www.pmg.org.za/files/bills/080313b11-08.pdf. Last checked 29 August 2008.

[33] 'DHA Turnaround Strategy', 2007.

[34] CoRMSA Annual Report, 2008.

5   CIVIC CAPACITY TO REALISE RIGHTS IN GENERAL

The interactions explored in this study concern the role of South African civic actors in developing the government's refugee policy, implementing policy, and, in certain cases, forcing government to comply with its policy through litigation. However, these civic-state interactions hold universal lessons for realising rights in general, across time (at different points in South Africa's history) and space (in other countries and as part of other human rights struggles). In applying these generalisations, the notion of the state in terms of its more formal institutions, such as the courts and Parliament, might need to be distinguished from the 'less cuddly', less caring and occasionally violent aspects of the state, such as the police and municipal governments that directly threaten civic action and fail to provide public services.[35] At the same time, one must be cautious about over-essentialising these aspects of the state; not all police officers are violent, and not all municipal government officials are necessarily uncaring towards refugees and migrants.[36]

Realising rights across time (in South Africa)

This study of civic advocacy for refugees provides vivid illustrations of the interplay between civic actors and the state in promoting a culture of constitutionalism for *all persons* (in the language of the Constitution) and not just South African citizens. Refugees and asylum-seekers who demonstrated in front of Union Buildings in 1996, demanding that the UNHCR and South African government respond to their predicament, did not merely generate interest in the media. Just as the defiance campaigns in South Africa from the 1950s mobilised thousands of South Africans to re-examine their position and resist apartheid, the July 1996 demonstration critically engaged South Africans in re-examining their relationship with refugees; and it precipitated a response from civic organisations.

The July 1996 refugee demonstration took place at a historical moment. Having just brought into being the country's final constitution, South Africa was at a crossroads. Other external factors certainly also played a role, particularly the government's obligations acquired as the result of having assented to international refugee conventions. Rather than only holding government accountable, the demonstration spurred on South African civic actors, mobilising them not just to provide assistance, but also to advocate wide-ranging improvements in the way refugees were received and integrated at that time. In the months and years following the demonstration, South African lawyers, churches and other civic organisations were eventually instrumental in achieving a good refugee policy, sound implementation and a more accountable government.

---

[35]   As observed by Peter Alexander at the *Mobilising Social Justice* conference in Johannesburg on 23 November 2009.

[36]   As observed by Darshan Vigneswaran at the *Mobilising Social Justice* conference in Johannesburg on 23 November 2009.

South Africa now has a government policy that has translated international human rights obligations towards refugees, joint refugee-NGO initiatives that have secured key rights for refugees, and a number of landmark legal challenges through the South African courts, with which to confront the government with its obligations towards non-South Africans in general, and refugees in particular.

Of course, the picture has not always been so positive. As legal advocates have paid more attention to this issue, reports have emerged of arbitrary detention and ill-treatment at the hands of the police and immigration officers, poorly motivated refusals to grant refugee status, and allegations of corruption and abuse of power.

Ten years after South Africa became party to the international refugee conventions and the country's final constitution came into being, the government faced another crossroads. Building a culture of constitutionalism has demanded responses at multiple levels. At the local level, municipalities have begun to see migrants from other countries, including asylum-seekers and refugees, as *citizens* of Cape Town, Durban and Johannesburg. Confronted by lawyers and as-yet-unfulfilled obligations created by structural interdicts, national government has begun to respond seriously to technical, process and management-related problems in implementing a fair and efficient status-determination procedure. Most notably, the government has accepted the need to develop and improve policy through amendments by way of parliamentary process rather than through *ad hoc* administrative regulations.

Finally, at a global level, South Africa has been actively engaging in global policy discussions on migration that are edging towards containment, with so-called irregular migration as their centrepiece.[37] On the other hand, South Africa has noted the highly unproductive and even violent consequences of maintaining a restrictive policy that unduly prioritises national interests over its international obligations to protect migrants in general, and refugees in particular.

Realising rights across space (other struggles in different countries)

Recalling the measures used to hold the government accountable in the past on the basis of international human rights norms also resonates with other social justice struggles in different countries. The importance of clear roles and responsibilities and strategic recognition of structural boundaries both have global application beyond the South African scenario. The strategies and moral resonance of South Africa's anti-apartheid struggle have motivated accountability advocates around the world, and not necessarily because what happened in the country was unique. South Africa's struggle against racial injustice, and the efforts

---

[37] Ghosh, 1998, *passim.*

that have been made to achieve social transformation, reflect universal principles that define any social justice struggle engaged in advocating for accountability.

For example, civic actors in Eastern European countries, many of whom are recent member-states of the European Union (EU), have mobilised for better protection standards for refugees and migrants by recognising EU-determined structural boundaries, and by translating global refugee protection standards into national advocacy efforts to protect refugees.[38] Civic actors in Eastern Europe, whose activities prior to the early 1990s were highly constrained, have also participated in the development of refugee policies.[39]

In the Middle East, civic actors also play important roles in refugee protection. A deeply problematic geo-political situation and ongoing military occupation prevent a local, rights-based solution to the plight of Palestinian refugees, and serious structural constraints make it virtually impossible to advocate for the accountability of Israel, especially concerning Palestinian refugees. Consequently, civic actors around the world – including academics, lawyers, church leaders and pressure groups – have managed to generate widespread global awareness concerning the issue of historical, and continuing, dispossession of Palestinians. Furthermore, may of these groups have responded to a call by Palestinian civil society organisations for the economic, social, cultural and political isolation of Israel through boycotts, divestment and sanctions (BDS).[40] Furthermore, by recognising structural limitations and shifting to supra-national mechanisms instead, civic actors have advocated strategically for recognition of Palestinian residency and refugee rights to particular UN agencies' international legal processes. Lacking impact at the local level, civic actors have translated Palestinian rights to UN organisations and treaty bodies, including the UN Committee on the Elimination of Racial Discrimination.[41] Third states have also become an important forum for civic actors, making legal claims against companies that participate in violations of Palestinian refugee and residency

---

[38] As Lavanex (1999) has argued, refugee rights advocacy and policy development in Eastern European countries has been intrinsically linked with their desire to become part of the European Union. With the possibility of gaining admission to the EU taking on greater momentum, countries such as Bulgaria have steadily brought their country's policies into line with EU expectations, including the European Union's human rights requirements, while simultaneously having to contend with great political uncertainty regarding the gradual harmonisation of asylum policies at the level of the EU. Much of this work has been conducted together with the European Council on Refugees and Exiles. See http://www.ecre.org. Last checked on 29 August 2008.

[39] UNHCR, 'Summary report of the Varna joint meeting', Bulgaria, 28 February 2002. Available at: http://www.unhcr.bg/events_records/2002/varna_workshop/summary_ report_varna. pdf. Last checked on 29 August 2008.

[40] For example, the Badil Resource Centre on Palestinian Residency and Refugee Rights has worked with grass-roots activists and solidarity partners around the globe to advocate respect for international law towards Palestinian refugees. See www.badil.org. Last checked on 6 September 2008.

[41] Committee on the Elimination of Racial Discrimination, Concluding observations of the Committee on the Elimination of Racial Discrimination, Consideration of reports submitted by states parties under Article 9 of the Convention Israel, Seventieth session 19 February–9 March 2007, CERD/C/ISR/CO/13, March 2007; Badil Resource Centre on Palestinian Residency and Refugee Rights, *Survey of Palestinian Refugees and Internally Displaced Persons 2006–2007*, Bethlehem, 2007.

rights,[42] and against individuals who have committed war crimes against civilians in refugee camps.[43]

Whether in South Africa, Eastern Europe or Palestine, and regardless of whether civic actors are engaged in a political struggle or a process of social transformation in co-operation with government, all these events can be seen as various forms of social justice struggle. In any social justice struggle, the key to civic actors being able to hold states and governments accountable for their human rights obligations lies in civic actors making strategic choices.

Making strategic choices has various implications for civic actors, as this study of realising refugee rights in South Africa has illustrated. First, civic actors must appreciate the social, political and legal context in which they operate; this historical appreciation reveals certain structural boundaries to realising rights that are nearly always imposed by the state. Second, civic actors must critically assess the structural boundaries that condition their behaviour, but also have the potential for structural change or 'elaboration', through civic interaction with the state in formal (and also informal) interventions. Third, civic actors must appreciate the social distance that always exists between themselves and the government, measured by divergences in meanings, interests and political positions. Through a critical engagement in this 'external' relationship, it is possible for civic actors to capitalise on these divergences in advocating a state's accountability for realising human rights. Whether the social distance ought to be narrowed or broadened at a particular moment depends on (1) the context in which this takes place, (2) the structural boundaries that exist, and (3) the desired outcome.

A critical engagement with the government allows civic actors, including legal advocates, to take advantage of that narrow, but significant space for achieving structural change. In this social, political and legal space, the potential for advocating the accountability of a state to promote, protect and fulfil human rights can flourish.

References

Abel, R (1995) *Politics By Other Means: Law in the Struggle Against Apartheid, 1980–1994*. New York: Routledge.

Archer, MS (2000) *Being Human: The Problem of Agency*. Cambridge, U.K.; New York: Cambridge University Press.

Bell, A (2008) 'South Africa: Refugee Camps Still Open As Court Reserves Judgement', *SW Radio Africa*, 20 August 2008.

---

[42] In 2007, a lawsuit was brought against the French company Veolia for their participation in the construction of a light-rail system in Palestinian territory that had been illegally annexed by Israel. See Mccarthy and Chrisafis, 2007.

[43] Machover and Maynard, 2006.

Burger, S (2008) 'Government Urged to Think Again on Immigration Policy', *Business Day*, 11 February 2008.

Cotterrell, R (1998) 'Why Must Legal Ideas be Interpreted Sociologically?', *Journal of Law and Society* 25(2): 171–192.

Crush, JS and McDonald, DA (2001) 'Introduction to Special Issue: Evaluating South African Immigration Policy after Apartheid', *Africa Today* 48(3): 1–13.

'Department of Home Affairs Turnaround Strategy' (2007) *Ministry Briefing*. 14 November 2007.

Doctors for Life International v Speaker of the National Assembly, (1) SA 474 (SCA) (Supreme Court of Appeal 2006).

Friedman, LM (1975) *The Legal System: A Social Science Perspective*. New York: Russell Sage Foundation.

Ghosh, B (1998) *Huddled Masses and Uncertain Shores: Insights into Irregular Migration*. The Hague; Boston: Martinus Nijhoff Publishers.

Goodwin-Gill, GS (1999) 'Refugee Identity and Protection's Fading Prospect', in Nicholson, F *et al* (eds) *Refugee Rights and Realities* (220–249). Cambridge: Cambridge University Press.

Hermes, P (2008) 'The Unfolding of the Political Process in Zimbabwe After the "Harmonised Elections" of 29 March 2008: Perspectives on Change.' *ISS Development Research Seminar Series*. 23 September 2008.

Hoexter, C (2007) *Administrative Law in South Africa*. Cape Town: Juta.

Interview with Sheldon Magardie, Attorney (2006) Interviewed by Jeff Handmaker in Johannesburg, 29 March 2006.

IRRI (2008) 'Civil Society Demands Protection of Targeted Foreigners in South Africa', *Refugee Rights News* 4(6): 5–7.

Kidder, RL (1979) 'Towards an Integrated Theory of Imposed Law', in Burman, S *et al* (eds) *The Imposition of Law,* pp. 289–305. New York: Academic Press.

Klaaren, J (ed) (2006) *A Delicate Balance: the Place of the Judiciary in a Constitutional Democracy*. Cape Town: SiberInk in association with the School of Law, University of the Witwatersrand.

Lavanex, S (1999) *Safe Third Countries: Extending the EU Asylum and Immigration Policies to Central and Eastern Europe*. Budapest: CEU Press.

Machover, D and Maynard, K (2006) 'Prosecuting Alleged Israeli War Criminals in England and Wales', *Denning Law Journal* (2006): 95–114.

Matatiele Municipality v President of the Republic of South Africa, (1) BCLR 47 (CC) (Constitutional Court 2007).

Mbelle, N and Dissel, A (2008) 'How to stop police torture', *Independent Online*, December 11, 2008.

McCarthy, R and Chrisafis, A (2007) 'PLO Disputes Jerusalem Rail Plan', *The Guardian*, 26 October 2007.

Merry, SE (ed) (2006) *Human Rights and Gender Violence: Translating International Law into Local Justice*. Chicago: University of Chicago Press.

Moore, B (ed) (1973) *Black theology: the South African voice*. London: C. Hurst & Co.

Moore, SF (1978) *Law as Process: An Anthropological Approach*. London; Boston: Routledge & K. Paul.

'Protecting Refugees, Asylum Seekers and Immigrants in South Africa' (2008) Johannesburg: Consortium on Refugees and Migrants in South Africa.

'Raid Highlights Migrant Abuse' (2008) *IRIN News*, 1 February 2008.

Rupiya, M (1998) 'Historical Context: War and Peace in Mozambique', in Armon, J *et al* (eds) *The Mozambican Peace Process in Perspective* (Vol. 3: Accord). London: Conciliation Resources.

'Xenophobia Death Toll Hits 62' (2008) *Sapa-AFP*, 31 May 2008.

'Xenophobic Attacks Plague the Country' (2008) Johannesburg: Consortium on Refugees and Migrants in South Africa.