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**INTERNATIONAL MIGRATION AND DEVELOPMENT:  
DYNAMICS AND CHALLENGES IN SOUTH AND  
SOUTHERN AFRICA\***

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\* The views expressed in the paper do not imply the expression of any opinion on the part of the United Nations Secretariat.

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## **A. INTRODUCTION**

International migration is a relatively new subject on the public and policy agenda of the South African government and has come to prominence as a result of a protracted and controversial process of drafting new immigration policy and legislation.<sup>1</sup> One of the key obstacles to the drafting and finalisation of new immigration policy and law has been the lack of definition and agreement on its objectives. So for example, the Draft Green Paper on International Migration (a preliminary discussion document) proposed that migration policy should be refocused as a tool of development.<sup>2</sup> However, the subsequent Draft White Paper on International Migration (a draft policy document authorized by the adviser to then Minister of Home Affairs, Mangosutho Buthelezi) shifted the focus of migration policy away from development to illegal immigration, control and enforcement.<sup>3</sup>

South Africa's migration policy and legislation has also been developed in the context of a process that has been in motion since 1993 to draft a development-oriented Protocol on the Facilitation of Movement of Persons in the Southern African Development Community (SADC). The Protocol has deadlocked several times and has no immediate prospect of being finalised, but has important development implications for South Africa and the SADC region as a whole.<sup>4</sup>

South Africa's development programmes and policies, including those that are directly related to, or impacted upon by migration must be understood in the context of the African continent in general and the SADC in particular. While it is true that in global terms, South Africa is a developing country that faces the myriad of issues that other developing countries around the world are faced with, in continental and sub-regional terms, South Africa often takes on the role of a 'developed' country and this has particular implications in terms of international migration.

In the most recent thinking on South Africa's immigration policy priorities, there is growing recognition of the need for migration policy to give effect to South Africa's developmental commitments to the continent as expressed primarily through the New Partnership for Africa's Development (NEPAD) as well as South Africa's foreign policy objectives.<sup>5</sup> By the same token, the new policy framework also implicitly recognises that international migration has the potential to assist South Africa in meeting its own development needs. But, the challenge to South Africa is to explicitly develop programmes and mechanisms to harness the benefits of international migration while minimising its negative impacts.

This paper provides background information on the scope of immigration to and emigration from South Africa, with a particular focus on skilled migration. It then assesses the development implications of international migration for South Africa in the context of the African continent and the SADC sub-region, including a description of continental and sub-regional institutions that have international migration, or have the potential to include international migration on their agenda.

## **B. THE POST-APARTHEID MIGRATION REGIME**

South Africa has been a migrant-receiving country for many decades.<sup>6</sup> The majority of those migrants were, and are, from neighbouring countries within the Southern African region. And, until 1994, South Africa was also an important destination for (white) immigrants from Europe.<sup>7</sup>

The most significant changes in the last twenty years have been the virtual cessation of immigration from Europe and a dramatic increase in the numbers of skilled migrants leaving South Africa for overseas destinations. South Africa has continued to receive migrants from neighbouring countries, but in progressively greater numbers. Migrant streams have also become far more diverse. For example, South Africa has begun to receive migrants from developing countries further a field, including the rest of Africa and Asia.

Since 1994, there has been a seeming hardening of public attitudes to migrants and immigrants in South Africa, or a rise in xenophobia. These changing attitudes are a reflection of changes in the political dispensation, including a new nation-building project, a situation where whereby the majority of South Africans and the fact of changing migration streams and their perceived threat to citizens' rights and interests.<sup>8</sup> Most troubling, given the Mbeki government's growing commitment to the region and the continent, is the fact that African migrants appear to be most affected by intolerance and xenophobia.

South Africa provides an extremely pertinent case study of the challenges that face a national government burdened with the legacy of an immigration system that was racially exclusive, ignored its location in Africa and exemplified all the worst features of temporary labour migration. At the same time, the government is faced with the legacy of apartheid on its own existing population and developing a policy which reflects its new commitment to the continent and region.

The challenges of managing migration in South Africa are rendered more complex by the fact that the end of apartheid opened up the country to new forms of global, continental and regional migration. As the Southern African mine labour system has gone into a prolonged period of decline, so the South African government has had to confront a regional migration regime that has become more varied. Before examining the development challenges of the new migration regime, it is important to review the changes in migration that have occurred in the last 10-15 years. This section of the paper draws attention to several new trends accompanying globalization, the collapse of apartheid and changing economic realities in Africa that are changing the shape of migration to South Africa.

### ***1. The foreign population of South Africa***

The exact number of non-citizens in South Africa at any one time is unknown. This is primarily because the country is host to a large, unenumerated undocumented population. Quite how large the numbers are is a point of considerable debate. For most of the 1990s, the South African government regularly cited figures in the 8 to 10 million range. The only basis for this figure was a seriously flawed study by the South African Human Sciences Research Council (HSRC). Both the study and the numbers were publicly withdrawn by the HSRC in 2001.

Census 2001 recorded the foreign-born population of South Africa as 1,025,072, or 2.3% of the total population (Table 1). Of these, 22% were born in Europe (largely a legacy of immigration in the apartheid era). Of the rest, 687,678 (or 67%) were born in neighbouring SADC countries. Only 41,817 (or 4%) reported being born in the rest of Africa and 40,889 (or 4%) in Asia. Even allowing for error and misreporting, the Census strongly confirms the continued importance of intra-regional migration to South Africa. The numbers from the rest of Africa are certainly not consistent with the popular view that the country has been flooded by impoverished Africans from other countries. Nor do they show how long the foreign-born have lived in the country. Further analysis of the Census data needs to be undertaken to build a more nuanced profile of the foreign-born population.

Table 1. Total people born by region outside of South Africa, by province and sex

Province	SADC Countries		Rest of Africa		Europe		Asia		North America		Central & South America		Australia & New Zealand		Total
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	
Eastern Cape	7359	8066	2242	1284	5996	5952	1392	1119	210	246	369	377	103	125	34840
Free State	25125	18299	1284	187	1676	1447	746	491	71	54	153	137	26	29	48928
Gauteng	201017	104442	14522	7117	58092	55359	11569	8870	2076	2079	2259	2967	1025	979	473073
KZN	24 324	20 368	7 117	2089	18293	18928	2 837	2406	614	705	852	781	385	397	96 764
Limpopo	40 194	33 390	2 089	388	1 147	991	1 700	827	135	123	124	100	33	21	79 840
Mpumalanga	48 502	26 933	653	389	2 503	2 291	569	300	110	92	145	135	33	38	82 693
N. Cape	5 274	5 617	196	56	441	380	98	68	19	24	73	48	12	11	12 317
North West	58 484	21 486	793	361	2 245	1 715	1 233	705	98	100	236	179	43	29	87 707
Western Cape	20 153	18 645	4 305	2296	25211	25651	3 418	2541	1141	1252	1545	1610	532	610	108910
Total from region	430432	257246	27650	14167	115604	112714	23562	17327	4474	4675	6456	6334	2192	2239	1025072
Total from region (males and females)	687 678		41 817		228 318		40 889		9 149		12 790		4 431		1025072

Source: SA Census

The causes of the seeming growth in migrant movement to South Africa from the SADC region and the rest of Africa are various and complex, historical and contemporary. One economic analysis of the South African labour market concluded that the potential labour supply from the SADC is “enormous and elastic.”<sup>9</sup> Some of the push factors promoting migration are specific to some countries (the aftermath of the civil war in Mozambique for example); others are more generalized (growing trade imbalances between South Africa and its SADC neighbours, structural adjustment programmes, domestic economic policy, drought and ecological degradation). Only a systematic household migration survey in the supplier states, would allow us to move beyond a general recounting of push-pull factors in explaining the supply-side pressures for migration. SAMP is currently undertaking two such household surveys in 6 SADC countries – the Migration and Remittances Survey (MARS) and the Migration and Poverty Survey (MAPS). The results of both surveys are due in late 2005 and should provide unprecedented insights into the contemporary dynamics of migration at the household level.

## 2. Legal (Im)migration

South Africa was traditionally a country of (white) immigration.<sup>10</sup> Racist immigration policies and practice were unacceptable after 1994. However, the new government did not adopt a new immigration policy immediately. The inherited Aliens Control Act (ACA) of 1991 remained in force until 2002, when it was replaced by a new Immigration Act. The latter was amended in 2004. The ACA was designed to control and prevent migration, not facilitate it.<sup>11</sup> As a result, migrants and their employers both became increasingly frustrated at the inability to gain legal access to South Africa to work. The Immigration Act of 2002 is designed to reverse this situation and to actively facilitate temporary in-migration at the upper end of the labour market.

There has been an enormous increase in legal temporary cross border traffic from the rest of Africa to South Africa (particularly the SADC). Between 1990 and 2000, for example:

- total visits to South Africa increased from 1 million to 5.1 million
- African visits to South Africa increased from 550,000 to 4 million
- SADC visits to South Africa increased from 500,000 to 3.7 million

The numbers cited here reflect the number of times the border is crossed rather than the number of individual border crossers. A survey conducted by SAMP in the late 1990s showed that the purpose of most recent entry to South Africa varied markedly from country to country (Table 2). In the case of Mozambique, some 67% of entries were work-related, compared with 29% from Zimbabwe, 25% from Lesotho and only 10% from Botswana. Business (including trading and shopping) was the predominant reason for entry amongst Zimbabweans (49%) and Botswana (32%).

In contrast to the post-apartheid explosion in temporary intra-regional movement, legal immigration to South Africa has been on the decline. There was a consistent drop in the number of immigrants to South Africa in the 1990s (defined as those obtaining permanent residence status) (Table 3). There was a significant shift towards the rest of Africa as a source region with the proportion of immigrants climbing from 11% in 1990 to nearly 40% by 2002. The absolute numbers are, however, not large and do not substantiate the claim of some that there has been a massive “brain drain” from the rest of Africa to South Africa since 1990.

Table 2. Reasons for entry to South Africa (%)

<i>Reason for Entry</i>	<i>Botswana</i>	<i>Lesotho</i>	<i>Mozambique</i>	<i>Namibia</i>	<i>Zimbabwe</i>
<i>Employment related</i>					
Work	7	17	45	11	15
Look for work	3	8	22	2	14
<i>Business related</i>					
Business	6	2	2	8	7
Buy and sell goods	2	3	2	2	21
Shopping	24	19	4	1	21
<i>Other reasons</i>					
Visit family	23	34	12	13	39
Medical	5	6	4	4	2
Holiday	14	2	5	19	3
Study	3	1	1	3	2
Other	12	8	2	12	3

Source: SAMP database

Table 4 provides a supplementary breakdown of the major African sources of immigrants during the 1990s. First, it is clear that the initial post-1990 movement of African skills to South Africa tapered off from most countries. The most obvious example is Zimbabwe (from 1,637 in 1990 to 237 in 1997). Second, there was a temporary surge of immigration from the DRC to South Africa in the mid-1990s which has fallen off since. Third, the majority of the movement, such as it is, was from neighbouring countries within SADC and not the rest of Africa.

Table 3. Immigration to South Africa, 1990-2002

<i>Year</i>	<i>Legal Immigrants</i>	<i>African Immigrants</i>	<i>% African</i>
1990	14,499	1,628	11.2
1991	12,379	2,065	16.7
1992	8,686	1,266	14.8
1993	9,824	1,701	17.3
1994	6,398	1,628	25.4
1995	5,064	1,343	26.4
1996	5,407	1,601	29.6
1997	4,102	1,281	31.2
1998	4,371	1,169	26.7
1999	3,669	1,504	40.1
2000	3,054	831	27.2
2001	4,832	1,419	29.4
2002	6,545	2,472	37.8
Total			

Table 4. Immigration from African Countries to South Africa

<i>SADC</i>	<i>1990</i>	<i>1991</i>	<i>1992</i>	<i>1993</i>	<i>1994</i>	<i>1995</i>	<i>1996</i>	<i>1997</i>
Botswana	81	46	31	34	48	28	50	28
DRC	40	42	230	243	244	78	93	71
Lesotho	175	167	126	261	227	222	233	124
Malawi	95	128	75	54	68	85	98	45
Mauritius	91	97	64	46	38	39	51	43
Mozambique	115	81	32	41	45	41	53	39
Swaziland	114	124	62	81	110	83	97	71
Zambia	n/a	141	62	66	75	66	69	61
Zimbabwe	1,637	889	379	642	244	405	394	237
<b>Other African</b>								
Ghana	6	11	39	46	72	n/a	149	n/a
Kenya	17	20	16	35	38	24	47	n/a
Nigeria	3	8	4	27	25	n/a	n/a	n/a
Uganda	2	12	16	21	12	n/a	51	n/a
Other	47	42	41	36	48	255	146	490

A number of reasons have been advanced for the absence of a major post-apartheid “brain drain” to South Africa from the SADC region and Africa as a whole since 1990. The first is the effect of the more general immigration policy of the post-apartheid government. This has been labeled restrictionist and anti-immigrationist. The reasons for this restrictionism have been discussed at length elsewhere but basically relate to the imperatives of nation-building, job protection for South Africans and rampant intolerance of outsiders, bordering on xenophobia.<sup>12</sup> Hence it has become extremely difficult for Africans with skills to get permanent and even temporary residence permits in South Africa through official channels.

The argument is sometimes heard that South Africa, as a matter of policy, will not denude other African countries of their skills base. But there is very limited evidence that this is the reason why foreign Africans have found it so difficult to settle in South Africa. For example, in no speech or policy document from the Department of Home Affairs since 1994 is this mentioned as a significant

policy consideration. Only in one case does there appear to have been concern about skills loss from other African countries. At the request of the Zimbabwean government, South Africa informally undertook not to recruit health professionals from that country in the mid-1990s.

Third, there are various push or “repulsion” factors that make South Africa a less attractive destination than might, at first, appear. Levels of xenophobia are extremely high in South Africa and are directly particularly at other Africans.<sup>13</sup> This intolerance and resentment touches the foreign business executive in the boardroom as well as the foreign trader on the street. While only 5% of skilled foreign residents of South Africa reported that that had negative or very negative relations with South Africans, stories of the hostile climate in South Africa inevitably reach home countries and have a dampening effect on chain migration.

Finally, there is the impact of social and political conditions in South Africa. In a survey of foreign Africans in South Africa conducted by SAMP, respondents were asked to compare conditions in their home country with those in South Africa (Table 5). It is clear that economic factors such as cost of living, income, and employment availability are key benefits of South Africa, as are education, health care and other services. However, only 16% felt that their personal or family security was better in South Africa. This is an extraordinary finding given stereotypes about the rest of Africa. The perception is rooted in personal experience. As many as 59% reported being robbed, 45% being harassed and 23% being assaulted in South Africa.<sup>14</sup> South Africa’s uncontrolled crime situation therefore exercises a clear deterrent effect on immigration.

Table 5. Comparing South Africa with home country

<i>Personal Economic Conditions</i>	<i>Total</i>	<i>White</i>	<i>African</i>	<i>Other</i>
Job	57	46	75	36
Job security	33	19	50	36
Level of income	46	27	71	36
Cost of living	58	47	75	32
<b>Taxation</b>				
Present level of taxation	16	11	22	16
Relative share of taxes compared to others	14	8	23	16
<b>Education and health care</b>				
Medical services	36	11	71	32
Education for children	27	8	51	24
<b>Standard of services</b>				
Upkeep of public amenities	34	8	67	36
Customer service	33	9	61	48
Future of children in South Africa	20	5	39	16
<b>Safety and security</b>				
Personal safety	8	1	16	8
Family’s safety	7	1	16	4

Source: McDonald and Crush, *Destinations Unknown*..

More surprising for a country experiencing rapid economic growth and reconnection to the global economy, was the decline in the 1990s in the number of temporary work permits issued and, therefore, the number of travellers entering for work purposes. Table 7 shows that temporary work permits still go predominantly to people from Europe which is probably a function of the hiring practices of foreign-owned firms operating in South Africa.

Table 6. Work permits issued and renewed, 1990-2000

<i>Year</i>	<i>New Work Permits</i>	<i>Renewals</i>	<i>Total</i>
1990	7,657	30,915	38,571
1991	4,117	32,763	36,880
1992	5,581	33,318	38,899
1993	5,741	30,810	36,551
1994	8,714	29,352	38,066
1995	11,053	32,838	43,891
1996	19,498	33,206	52,704
1997	11,361	17,129	28,490
1998	10,828	11,207	22,035
1999	13,163	10,136	23,299
2000	6,643	9,191	15,834
<b>Total</b>			

*Source:* DHA Annual Reports

Table 7. Travellers to South Africa for work purposes, 1998-2000

	<i>1998</i>	<i>1999</i>	<i>2000</i>
Africa	14,118	13,258	11,061
Europe	28,030	26,660	23,528
Asia	7,211	7,284	7,025
North America	7,322	6,912	6,150
Australasia	1,635	1,688	1,360
Middle East	489	465	470
South America & Caribbean	1,093	787	967
<b>TOTAL</b>	<b>59,898</b>	<b>57,054</b>	<b>50,561</b>

*Source:* Unpublished data, Department of Home Affairs, 2001.

Although there was a significant decline in the number of work permits issued and the number of travellers declaring entry for work purposes, the number of people declaring entry for “business” purposes increased during the 1990s. Africans significantly outnumber other business visitors, it should be remembered that the table records the number of times the border is crossed, not the number of individuals, or the number of permits issued.

A significant proportion of these “business” visits, particularly from Africa, are related to trade. Since, 1994, informal sector cross border trade (or SME trade) between South Africa and neighbouring countries has increased significantly. Many of these traders hold visitors permits to enter South Africa to enable them to shop for their businesses in their home countries, and/or to sell goods brought from their home countries.<sup>15</sup> While these traders may not strictly count as migrants or immigrants, they constitute a significant component of traffic through South Africa’s borders.



Table 8. Travellers entering South Africa for business purposes, 1998-2000

	1998	1999	2000
Africa	476,665	414,916	431,075
Europe	115,863	141,083	136,915
North America	37,496	32,880	33,950
Asia	26,876	25,615	24,211
Australasia	10,274	10,227	10,281
Middle East	4,436	4,626	5,005
South America and Caribbean	3,596	2,933	3,725
<b>TOTAL</b>	<b>675,206</b>	<b>632,280</b>	<b>611,212</b>

Source: Unpublished data, Department of Home Affairs, 2001.

### 3. Migrants under contract

A significant shift in patterns of labour migration to South Africa since 1990 has been the declining importance of traditional contract migration to the South African mines.<sup>16</sup> In the late 1980s, the South African gold mining industry entered a long period of restructuring and downsizing as a result of declining ore reserves, rising costs and a stagnant gold price (Table 9). At the time of the 1987 Strike, 477,000 migrant workers were employed on the mines. By 2003, the figure had more than halved to 200,000. Retrenchments have exacerbated poverty in many rural mine-sending areas, shutting off remittances to many households and denying young school-leavers the chance to migrate to the mines.

Table 9. Mine labour recruitment, 1990-2000

Year	South Africa	Botswana	Lesotho	Mozambique	Swaziland	% Foreign	Total
1990	199,810	14,609	99,707	44,590	17,757	47	376,473
1991	182,226	14,028	93,897	47,105	17,393	49	354,649
1992	166,261	12,781	93,519	50,651	16,273	51	339,485
1993	149,148	11,904	89,940	50,311	16,153	53	317,456
1994	142,839	11,099	89,237	56,197	15,892	55	315,264
1995	122,562	10,961	87,935	55,140	15,304	58	291,902
1996	122,104	10,477	81,357	55,741	14,371	58	284,050
1997	108,163	9,385	76,361	55,879	12,960	59	262,748
1998	97,620	7,752	60,450	51,913	10,336	57	228,071
1999	99,387	6,413	52,188	46,537	9,307	54	213,832
2000	99,575	6,494	58,224	57,034	9,360	57	230,687

Source: TEBA

Table 9 shows that mine migration has declined for all sending areas except Mozambique. The drop in internal migration has been particularly rapid (approximately 100,000 jobs lost to 2000). The most striking aspect, however, is the proportional increase in foreign migrants. The proportion of foreign miners has risen from around 40% in the mid-1980s to nearly 60%. Mozambique has been a particular beneficiary with more Mozambicans employed in 2000 than in 1990 (57,000 v 45,000). A quarter of all miners are now Mozambicans (up from 12% in 1990).

Union gains for migrants in the mining industry in the 1980s were systematically rolled back in the 1990s through sub-contracting. Once dominated by a handful of powerful, centralized mining groups, the mining companies began to out-source non-production and production functions to a growing number of sub-contracting companies. These companies tend to hire more vulnerable non-South African workers, particularly from Mozambique and Lesotho. Research shows that the rise of sub-contracting has had a marked impact on union strength in the mining industry and led to a marked deterioration in wages, working conditions and underground safety.<sup>17</sup>

In 1996, the South African Cabinet reached agreement with the National Union of Mineworkers (NUM) to grant permanent residence to foreign migrant miners who had worked on the mines for more than 10 years. Around half of the 200,000-strong foreign workforce (52.5%) were eligible. The NUM unsuccessfully asked for a five year period, which would have made 75% eligible. Only half of eligible miners (and 26% of the total foreign workforce) actually applied. In other words, 51,504 migrants were granted permanent residence. The evidence suggests that many have continued to migrate but use their legal status in South Africa for other reasons (including easier visiting access by families).<sup>18</sup>

One study conducted in supplier countries clearly revealed that there has been a diversification in the sectors employing migrants (Table 10).<sup>19</sup> The main sectors employing SADC migrants in South Africa (besides mining) are construction, domestic service and factory work. Here again there are important differences between countries with Mozambicans and Zimbabweans concentrated in construction, Basotho and Namibians in domestic service and Zimbabweans in factory work and unskilled labour. Migrants from all countries work in commercial agriculture, primarily in the border farming areas of Mpumalanga, Limpopo and Free State provinces. These workers exist on the margins of the South African economy with varying degrees of legality. Special arrangements with farmers organizations in border areas allow some farmers to recruit and employ workers under legal contract. In most other sectors, and on many farms, migrants are officially “invisible” with no legal or labour rights because of their “undocumented” status.

Table 10. Employment in South Africa by country of origin

<i>Job</i>	<i>Lesotho</i>	<i>Mozambique</i>	<i>Namibia</i>	<i>Zimbabwe</i>
Mining	63	44	18	9
Farmwork	3	6	5	2
Factory work	2		2	8
Domestic service	7		11	3
Construction		8	7	17
Gardening			2	6
Driver	3	4		2
Manual labour			2	6
Mechanic		7	2	
Trader			5	11
SMME		7		

Source: SAMP database

#### 4. Irregularity and migration

Due partly to the relative absence of legal mechanisms for entry and work in South Africa, irregular migration increased in the 1990s. In addition, the collapse of apartheid made South Africa a more desirable destination. The primary sources of irregular labour migrants are still Mozambique, Lesotho, and Zimbabwe. The political and economic situation in Zimbabwe has caused an increase in economic migration to neighbouring countries such as South Africa and Botswana. However, often cited numbers of 2-3 million irregular Zimbabweans in South Africa in 2004 are likely to be exaggerated. Irregular migrants tend to be most common in the construction, services and commercial farming sectors. Ownership of small enterprises in the informal sector may be another common occupation.<sup>20</sup>

The number of undocumented residents of South Africa was reduced by two immigration amnesties offered by Cabinet between 1997 and 2000: (a) legalization and permanent residence for SADC-country citizens who had entered South Africa illegally before 1990; and (b) legalization and permanent residence for Mozambicans who had settled in South Africa during the Mozambican war of the 1980s. With the exception of the miners, most of the amnesty beneficiaries were not migrants but de facto immigrants. Further amnesties are unlikely.<sup>21</sup>

One study distinguished four categories of migrant, including three categories of irregular migrant:

- lawful entrants/lawful stay including: (a) skilled migrants on renewable temporary residence visas and work permits (about 60,000 in number); (b) contract migrants in the mining and commercial farming sectors (approximately 150-200,000).
- lawful entrants/unlawful stay including (a) retrenched migrant miners who remain in South Africa and work (numbers unknown); (b) migrants who enter for a non-work related purpose (such as tourism or study) and are employed without a work permit or working in the informal sector (unknown); and (c) migrants with valid residence and work permits that have expired (unknown).
- unlawful entrants/lawful stay including (a) asylum seekers and refugees (est. 95,000); (b) successful applicants for the immigration amnesties and (c) undocumented migrants legalized under exemptions in the ACA (mainly farmworkers) (est. 20,000).
- unlawful entrants/unlawful stay including migrants who have jumped the border, acquired false documentation or been trafficked (unknown).<sup>22</sup>

The same study of irregular migration and employment deduced the following figures for the four different categories of migrant (Table 11). These figures have a high margin of error but provide some basic sense of the likely extent of violations in each category.

Table 11. Estimated volume of irregular migration and work

	1. Entry and Stay Unlawful	2. Entry Lawful Stay Unlawful	3. Entry Unlawful Stay Lawful	4. Entry and Stay Lawful
Migrants	90-120,000	300-350,000	125-140,000	200,000
Employment	90-120,000	300-350,000		10-15,000
Permission				
Contravention				

One result of the perpetuation of the ACA was that the post-apartheid state continued to pour considerable resources into a largely ineffectual deportation policy. Over 1 million people were deported from South Africa as “illegal aliens” in the decade after 1994. Two countries – Mozambique and Zimbabwe – clearly dominate the deportation league table. Citizens of both

countries have undergone a systematic and relentless campaign of harassment and arrest by the South African authorities (Table 12). The human rights violations of this form of forced migration have been exhaustively documented by the South African Human Rights Commission, amongst others.<sup>23</sup> The negative developmental implications of the deportation campaign – in terms of disruption to lives and livelihoods, remittance flows, and respect for the rule of law – have yet to be fully explored.

Table 12. Deportations from South Africa by year and country, 1990-1971

<i>DESTINATION</i>	<i>No.</i>	<i>%</i>
Mozambique	738,218	82.1
Zimbabwe	102,335	11.4
Lesotho	33,178	3.7
Swaziland	10,587	1.2
Malawi	6,418	0.7
Other Sadc	5,739	0.6
Total Sadc	896,475	99.7
Other African	946	0.1
Other Global	1,451	0.2
Totals	898,872	100

Source: Department of Home Affairs (DHA), Pretoria

### 5. Forced Migration

Prior to 1994, South Africa did not recognize the UN and OAU Refugee Conventions. The passage of South Africa's first-ever refugee legislation in 1998 (which came into force in 2000) establishing a new refugee determination system was therefore a landmark event. South Africa has experienced a significant increase in asylum-seekers from the rest of Africa and Asia since 1994. To April 2001, a total of 64,341 applications were received (Table 13), of which 17,198 were accepted.

Table 13. Refugee applications by country of origin, to April 2001

	<i>Applications</i>	
	<i>Number</i>	<i>%</i>
Zaire/DRC	7 677	11.9
Angola	6 859	10.7
India	6 385	9.9
Somalia	5 952	9.3
Pakistan	5 336	8.3
Nigeria	5 302	8.2
Senegal	4 507	7.0
Ethiopia	3 239	5.0
Burundi	2 031	3.2
Congo-Brazzaville	1 618	2.5
Tanzania	1 473	2.3
Bulgaria	1 441	2.2
Ghana	1 400	2.2
Bangladesh	1 310	2.0
Rwanda	1 203	1.9
Others	8 608	13.4
Top 15	55 733	86.6
Total	64 341	100.0

Source: UNHCR/Department of Home Affairs

The largest claimant-generating countries are those which one might have reasonably anticipated: Angola, Burundi, Zaire (DRC) and Somalia (Table 13). There have also been significant numbers of claimants from countries such as Cameroon, Nigeria, Senegal, India and Pakistan. Rejection rates are very high for claimants from these countries, perhaps suggesting that economic migrants have attempted to use the refugee system to establish themselves in South Africa (Table 14 and 15).

Table 14. Refugee applications (rejected) by country of origin, to April 2001

	#	% Total	% Applications
Angola	1 640	5.1	23.9
India	5 625	17.5	88.1
Nigeria	4 338	13.5	81.8
Senegal	3 686	11.4	81.8
Ethiopia	1 934	6.0	59.7
Tanzania	868	2.7	58.9
Bulgaria	1 217	3.8	n/a
Ghana	1 076	3.3	n/a
Bangladesh	946	2.9	72.2
Others	6 695	20.8	n/a
Total	32 199	100.0	50.0

Source: UNHCR/Department of Home Affairs

Table 15. Refugee applications (approved) by country of origin, to April 2001

	#	% Total	% Applications
Zaire/DRC	4 886	28.4	63.6
Angola	4 471	26.0	65.2
Somalia	5 330	31.0	89.5
Burundi	941	5.8	46.3
Congo-Brazzaville	661	3.8	40.9
Rwanda	604	3.5	50.2
Others	305	1.5	
Total	17 198	100.0	26.7

Source: UNHCR/Department of Home Affairs

## 6. Female migration

The final major post-1990 change in migration to South Africa is the increase in female migration. Data from the recent Census, as well as other data sets (such as refugee claimants), demonstrate that males still predominate in cross-border migration to South Africa (Table 1). Of the 687,000 SADC-born residents of South Africa at the time of the Census, 37% were women and 63% were men. The proportions were roughly similar for other African residents. In a SAMP survey in 5 SADC countries, over 60% of men, but only 16% of women had worked in South Africa, a dramatic difference.<sup>24</sup> Nevertheless, there has been an apparent increase in female migration to South Africa over the last two decades although Dodson questions whether some of it may represent “an increase in visibility rather than volume.”<sup>25</sup>

Patterns and purposes of women’s migration differ significantly from those of men. Women’s migration is more varied, complex and multi-motivational and is driven by a wide range of social and reproductive factors in addition to economic incentives. Even the economic motives for migration are gender-specific, with women going to South Africa largely to trade and men to work, most in formal sector employment.” Asked about the reason for their last visit to South Africa, 40% of men and only 10% of women said they had gone to work or to look for work (Table 16). For women, visiting, shopping (often for enterprises in their home country) and trading are far more important motivators than employment or job-seeking.

The different patterns and purpose of male and female migration shows up in the timing of actual and anticipated migration periods, with males consistently staying for longer periods. Gender differences are also apparent in the frequency and duration of actual visits to South Africa. Women make more frequent visits but of shorter duration than men. Female migrants tend to be older, married women whereas male migrants come from a wide range of age groups and all marital status categories.

Table 16. Gender differences in migration to South Africa

<i>Purpose of Most Recent Visit to SA</i>	<i>Males</i>	<i>Females</i>
<i>Employment related</i>		
Work	33	7
Look for work	17	3
<i>Other work related</i>		
Business	3	3
Buy and sell goods	4	10
<i>Other reasons</i>		
Shopping	13	23
Visit family/friends	17	38
Holiday	3	3
Medical	2	8
Other	8	5
Worked in SA at some point	63	16

Source: SAMP database

Critical gender differences in labour market opportunities for migrants need to be highlighted. The South African labour market is highly stratified by gender which provides very different incentives and opportunities for labour migration by males and females. For example, increasingly the only legal way for a SADC citizen to work in South Africa is in the mining industry. Yet, 99% of mine employees are male. There is no equivalent employment sector for women in which there is comparable ease of entry.

The feminization of poverty in many countries has prompted female household heads and other members to seek work through migration. This process coincides with a growing preference among employers for female workers. Most work has been done on the commercial farming sector. Farmers in border areas show a distinct preference for employing female migrants from neighbouring countries in the fields and canning factories.<sup>26</sup> There is evidence that child labour is also on the increase, particularly from Mozambique. In addition, studies show that when a miner is retrenched, he tends to relinquish his career as a migrant and stay home. Instead women household members are forced to migrate for work in other low-wage sectors.<sup>27</sup>

## C. SOUTH AFRICAN RESPONSES TO MIGRANTS AND IMMIGRANTS

One of the conundrums of post-1994 South Africa, given the country's stated commitment to human rights and diversity as well as its African identity, is the rise in levels of xenophobia which largely targets African non-nationals.<sup>28</sup> In 1997, the South African Human Rights Commission identified xenophobia as a major source of concern to human rights and democracy. The government has, subsequently, publicly challenged xenophobic attitudes. So, in 2001 President Thabo Mbeki called on South Africans to watch for xenophobia against African immigrants, and said that it is "fundamentally wrong and unacceptable" for South Africans to mistreat people who came to South Africa as friends.

However, xenophobic attitudes remain. The Southern African Migration Project undertook two surveys of South African attitudes to immigration between 1997 and 2000 and a third is in progress. Similar research was undertaken in five neighbouring SADC countries in 200.<sup>29</sup> This research shows, that South Africans are not tolerant of foreigners and strongly support restrictive or prohibitionist policies (Table 17). So, nearly 80 percent of those interviewed supported a total ban on immigration or very strict limits. These attitudes have hardened as support for restrictionist policies increased from 5 percent in 1995 to 78 percent in 1999.<sup>30</sup>

Table 17. International attitudes towards immigration

	<i>Prohibit people coming here from other countries (%)</i>	<i>Place strict limits on numbers of foreigners who can come here (%)</i>	<i>Let anyone in who wants to enter (%)</i>	<i>Let people come as long as there are jobs (%)</i>	<i>Don't know (%)</i>
South Africa (1999)	21	64	2	13	0
South Africa (1997)	25	45	6	17	7
South Africa (1995)	16	49	6	29	0
Namibia (2001)	10	83	3	4	0
Botswana (2001)	10	69	3	18	0
Zimbabwe (2001)	4	69	12	15	0
Mozambique (2001)	4	57	7	32	0
Swaziland (2001)	3	65	11	21	0
Lesotho (1997)	3	12	61	23	1
Russia (1995)	18	28	6	48	2
USA (1995)	8	53	5	32	0
Nigeria (1995)	6	40	18	37	3
Australia (1995)	3	39	5	52	2

Source: 1995 World Values Study; 1997, 1999, 2001 SAMP surveys.

Attitudes are most negative towards migrants from other African countries. So, some 20% think everyone from SADC countries should be sent home. These attitudes may be partly explained by South Africans perceptions of the numbers of foreigners in the country. Respondents consistently wildly overestimate the proportion of non-citizens in the country. So, most believed that foreigners made up over 25 percent of the population instead of the 2.3 percent counted in the census.<sup>31</sup> And, that of this (grossly inflated) perceived number of migrants, that 55 percent came from Southern Africa and almost 20% from the rest of Africa.<sup>32</sup> Interestingly, these attitudes, while certainly not held by all South Africans, could not be differentiated by race, class, gender or age. However, these attitudes were informed by contact with foreigners, as those with least contact with foreigners held the hardest positions. Other explanations may relate to South Africa's new status as a new democracy where citizens can for the first time make claims on the state, and therefore, for the first time, see foreigners as potential competitors for scarce resources, services and jobs.

Xenophobia takes many forms, and can include exclusion by service providers, even when migrants are entitled to the service as well as hostility experienced by migrants in their interactions

with South Africans. The latter has ranged from verbal abuse (and the use of the derogatory term, “*makwerekwere*” to physical attacks. Hostile attitudes can be found in the media, in statements by public officials as well as in the day to day lives of migrants.

Not every African has bad experiences in South Africa, however. A survey of African migrants living in South Africa found that 64 percent said their experiences had been positive with only 20 percent saying it had been negative or very negative.<sup>33</sup> However, the majority of respondents were aware of negative attitudes to their presence, and a significant minority had little to complain about in their treatment by South Africans and officials. This suggests that, notwithstanding evidence of xenophobia and negative attitudes to the presence of migrants, that there is a gap between what South Africans think and what they do.

## **D. SKILLS EMIGRATION AND THE SOUTH AFRICAN DIASPORA**

### **1. *Sizing up the brain drain***

Globalization has fundamental implications for the mobility of people in general, and for skilled persons in particular. As Iredale suggests, an increased level of mobility is one manifestation of the internationalization of the professions and professional labor markets.<sup>34</sup> Sourcing of skills from outside the boundaries of the nation-state is an increasingly important method of making up for domestic training and experience shortfalls, for compensating for “brain drains” to other places, and for countering the impact of aging populations.

The collapse of the apartheid system sparked a (primarily white) exodus from South Africa. Some of these emigrants are privileged whites who, rather than contemplate the redistribution of privilege, left for other shores. Others are people with skills that are in high demand elsewhere. South Africa has easily the most advanced higher education sector on the African continent and in many fields (particularly health, IT, education, engineering, and accountancy), the skills produced are readily transferable to, and recognized and valued in, the industrial countries.<sup>35</sup> As such, the United Kingdom, Australia, New Zealand, Canada and the United States emerged as the destinations of choice.

Official South African emigration statistics are highly misleading and give little concrete sense of the dimensions, and likely impact, of the brain drain from the country. Statistics are compiled from self-declaration at the point of exit. Citizens may not wish to give “emigration” as the reason for departure. Others leave for different reasons (e.g. further study or temporary employment) and only later decide to stay abroad.

Statistics South Africa, for example, recorded a total of 62,088 people (including 10,140 with professional qualifications) emigrating from South Africa between 1987 and 1997 to the five main destination countries. However, destination-country statistics of immigrant arrivals from South Africa paint a rather different picture: they show 32,296 professionals and 198,393 total immigrants arriving from South Africa during the same time period (Table 18).<sup>36</sup> Official South African emigration statistics therefore undercounted the loss by around two-thirds.



Table 18: Emigration from South Africa, 1987-1997

	<i>Total</i>		<i>Professionals</i>	
	<i>Departures</i>	<i>Arrivals</i>	<i>Departures</i>	<i>Arrivals</i>
Australia	17,650	28,747	2,658	4,533
Canada	6,354	18,125	1,132	3,251
New Zealand	5,979	14,009	1,344	3,214
United Kingdom	26,169	90,788	3,596	16,959
United States	5,936	46,724	1,410	4,339
Total	62,088	198,393	10,140	32,296

Source: Adapted from Brown et al, *The Brain Drain*, pp. 102-3.

By applying an undercounting formula for official data for the period 1989-2003, World Bank researchers have estimated total emigration for the period at 521,571 (compared to 130,965 in the official data).<sup>37</sup> Overall, then, between 1987 and 2003, South Africa lost an estimated 720,000 emigrants to five major developed countries. This is a significant “brain drain” by any standards.<sup>38</sup>

These figures undercount in two other ways. First, South Africans do not only emigrate to these five countries. Second, they do not take into account the impact of skilled South Africans who leave for temporary contract work overseas. In sectors such as health and education, skilled South Africans are being recruited for work overseas on fixed contract.<sup>39</sup> While it might be argued that this is a “temporary” loss, the impact on these over-burdened and under-staffed sectors within South Africa is still considerable.

Recent research by the Southern African Migration Project (SAMP) suggests that the outflow of skills is unlikely to slow in the foreseeable future.<sup>40</sup> In a sample survey of the skilled professional population in the late 1990s, as many as 69 percent had given some thought to leaving permanently. Fifty eight percent expressed a desire to leave and 49 percent said there it was likely or very likely that they would do so at some point. Although only seven percent said that it was likely they would leave within six months, 25 percent said they would do so within two years, and 42 percent within five years. The figures are also high for the prospect of temporary (less than two years) residence and work abroad. Fifty five percent had a strong desire to leave for this period and 32 percent said they were likely or very likely to do so.

SAMP calculated an Emigration Potential Score for each respondent and found the following:

- 2% of the sample fell into the “*very high*” category of emigration potential (of leaving South Africa for a period of two years or more, within two to five years).
- 10% had a “*high*” emigration potential
- 25% had a “*moderate*” emigration potential
- 28% had a “*low*” emigration potential
- 16% had a “*very low*” emigration potential
- 20% had “*no*” emigration potential at all

If only those skilled South Africans with a “very high” emigration potential in 1999 had left the country in the next five years, this would translate into a potential gross loss of around 32,000 skilled people (2% of a skilled population estimated at 1.6 million). Taking into account the margin of error, that number could be as low as 6,000 or as high as 58,000. If all of those with a high or very high potential had left, the number would jump to a massive 192,000. With margin of error, this could range from 155,000 to as high as 229,000 in the five year period.

The Emigration Potential index suggests that the popular assumption that skilled emigration is a “white” phenomenon is a grave misconception. There is absolutely no difference in the proportion of skilled whites and blacks who fall into the “very high” category (2% of either group). It is true that a higher proportion of skilled whites (11%) than skilled blacks (4%) fall into the “high” probability category. But adding the two together, the difference in proportions of skilled whites (13%) than skilled blacks (6%) with a high/very high probability of leaving the country within five years, is not nearly as great as might be expected.

Other findings from the study provide further insights into the dimensions of the ongoing brain drain:

- Of the 12 percent of the sample identified as having a very high emigration potential, 71 percent said they would go permanently, 89 percent would take their savings with them, and 57 percent were willing to renounce South African citizenship. Indicators of a possible transnational migration pattern were not much in evidence.
- Preferred countries of emigration were the big five: the United States (24 percent), Australia (22 percent), the United Kingdom (15 percent), New Zealand (12 percent) and Canada (11 percent). This suggests that these five countries will continue to both benefit from and actively recruit skilled South Africans.
- The survey surprisingly discovered little racial difference; skilled black South Africans were just as likely to want to leave as white. However, there was a distinct gender difference with males of all races more likely to want to leave than females.<sup>41</sup>

The economic impact of the brain drain on South Africa is insufficiently researched ambiguous, and deserving of more rigorous national-level study and analysis. Sectoral studies have suggested that the temporary and permanent loss of skilled people is having a negative impact.<sup>42</sup> A survey of 200 private and public sector companies (employing an estimated 101,000 people) certainly unveiled considerable private-sector concern.<sup>43</sup> The survey found that a third of the companies considered that post-1994 skills emigration had had a significant impact on their operations. Most affected was the high-tech sector (33 percent) followed by manufacturing (11 percent), education/health (ten percent), and business services (nine percent).

The magnitude of the ongoing South African brain drain can be attributed to a mix of pull and push factors. It has been argued that in many African countries the brain drain is a “vote of no confidence” in the home country. Skilled people undertake a flight from misgovernment, poor working conditions and low pay. This hypothesis does not apply to South Africa where the country’s skilled constitute a privileged labour aristocracy. In the SAMP survey, skilled South Africans were asked about their level of dissatisfaction with a range of “quality of life” indicators (Table 15).

The highest levels of dissatisfaction were with economic conditions, such as cost of living and taxation. Personal safety and security concerns rated very highly for all race groups. The vast majority were pessimistic about future economic and security conditions. Another set of questions probed levels of political dissatisfaction. Here there was a major difference by race with whites extremely alienated from the political process compared with blacks. For example, 67% of blacks but only 17% of whites approved of the performance of national government over the preceding 12 months. Eighty three percent of whites, but only 20% of blacks opposed the government’s affirmative action policies. The SAMP research showed that South Africa’s skilled population was unsettled and dissatisfied and did not perceive any immediate improvement in the situation. Those with high emigration potential were asked if anything could be done to change their minds. As many as 25% said an improvement in the safety and security situation would make a difference. Only 12% said nothing could be done.

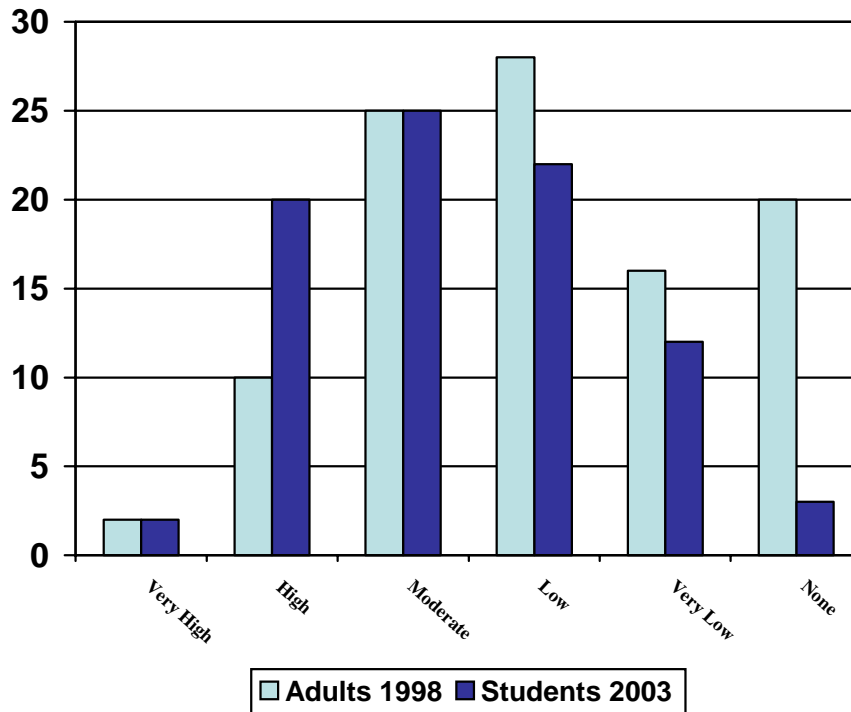
Table 19: Satisfaction with quality of life in South Africa

<i>Dissatisfied or very dissatisfied with (%)</i>	<i>Total</i>	<i>Whites</i>	<i>Africans</i>
Cost of living	71	72	64
Present level of taxation	74	75	74
Relative share of taxes paid in comparison to others	59	59	59
Personal safety	66	65	61
Family's safety	68	69	54
Upkeep of public amenities (e.g. parks, beaches, toilets)	70	79	37
Customer service	56	65	27
Future of children in South Africa	55	61	29
Availability of affordable/quality products	28	29	31
Job	23	18	39
Security of job	26	20	44
Level of income	37	30	60
Prospects for professional advancement	30	32	35
Ability to find house wanted	21	17	37
Ability to find a good school for children	27	27	27
Ability to find medical services for family	21	19	23
N=	724	522	131

*Source:* DA McDonald and J Crush, eds. 2002. *Destinations Unknown: Perspectives on the Brain Drain in South Africa*. Pretoria: Africa Institute and Southern African Migration Project.

A more recent SAMP study in 2003 looked at the emigration potential of a representative sample of final-year students in tertiary education institutions across the country.<sup>44</sup> Just over one quarter (28%) said they wanted “to a great extent” to move overseas to live and work for two years or more. One in five (21%) said that it was “very likely” that they would actually do so. Short term emigration potential appears to be even higher. Four in ten said they wanted “to a great extent” to go to live and work for less than two years. One quarter said it was “very likely” they would actually go. About one in five said that it was “very likely” that they would leave the country within six months of graduation. Smaller numbers said they would leave within two years (15%) and within five years (18%). Compared to the SAMP survey of skilled South African adults, the proportions of students with a “very high” emigration potential are exactly the same (2%) (Figure 1). However, twice as many students have a “high” emigration potential (20%) with a further 25% having a moderate potential. As many as 20% of skilled adults had zero emigration potential, compared to only 3% of students. In other words, emigration potential is *higher* among students than people already pursuing their chosen profession.

Figure I. Emigration potential of final year students and skilled adults



## 2. Diaspora links and networks

The extent to which South African emigrants form “diaspora communities”, engage in transnational migration fields, and retain linkages with home have yet to be fully explored. Certainly SAMP research amongst intended emigrants shows that few intend to permanently sever their links with home. This applies to both seasoned and apprentice professionals. Stern and Szalontai note that there is no data available on remittances and that total non-official current transfers (including remittances as a sub-category) amounted to R365 million in 2003, or 0,03% of GDP (compared to Sub-Saharan Africa as a region, where remittances alone contribute 1.3% of GDP).

While the image of the “brain drain” involving people cutting all ties with South Africa, this is not necessarily accurate. Table 16 reveals that the vast majority of professionals likely to leave said they would want to stay away for more than five years. At the same time, only one-in-ten said they would never return home. Almost 70% said they would return at least once a year or more.

Emigration involves decisions about property, savings, investments, and ultimately, citizenship. A willingness to cut all these ties indicates a strong certainty of no return. Between 80% and 90% of likely skilled emigrants said they were willing to cut all economic ties with the country (eg sell their house, take out savings and investments). A significant proportion (57%) was willing to give up South African citizenship (Table 20).

Table 20. Duration of emigration

<i>Length of stay at most likely destination (%)</i>	
Less than 6 months	1
6 months to 1 year	2
1 to 2 years	8
2 to 5 years	14
More than 5 years	71
Don't know	4
<i>Frequency of return (%)</i>	
Weekly	0
Monthly	4
Once every few months	7
Yearly	57
Once every few years	20
Never	12
Don't Know	2
<b>Note: N = 87</b>	

Yet not all likely emigrants wanted to put down deep roots in their likely country of destination. Some 36% said they did not want permanent residence, 40% did not want citizenship, and only half gave indications of a life-time stay by saying they want to retire, or be buried there.

Table 21. Links with South Africa

<b>Willingness to sell house in South Africa (%)</b>	<i>Total</i>
Very willing	35
Willing	46
<b>Willingness to take all savings out of South Africa (%)</b>	
Very willing	49
Willing	40
<b>Willingness to take all investments out of South Africa (%)</b>	
Very willing	42
Willing	42
<b>Willingness to give up South African citizenship (%)</b>	
Very willing	23
Willing	34
<i>Note: N = 87</i>	

With regard to the student sample, high emigration potential does not automatically translate into a permanent skills loss for the country. Amongst those students who definitely want to leave (those with “very high” emigration potential), the vast majority (74%) say they want to stay in their most likely destination for more than five years. However, those with “high” emigration potential envisioned a more limited stay. Although one-third (34%) of these students said they want to stay more than five years, 41% said they plan on a stay of 2 to 5 years. In addition, most respondents with either high or very high Emigration Potential plan on returning to South Africa on an annual basis. And those most likely to leave still plan on sending money home on a monthly basis.

A number of South African-based networks have been established to mobilize the skills of the expatriate South African population. Of these, the most well-known are the South African Network of Skills Abroad (SANSA) and the Homecoming Revolution. SANSA was initially a project established at the University of Cape Town, but was later incorporated into the National Research Foundation (NRF) which is a parastatal organisation. SANSA's key area of focus is to provide a forum for interaction between South Africans abroad, including the possibility of short returns home or to make a contribution to the development of South Africa from wherever they may be located.

The Homecoming Revolution was established by an Advertising Executive who had spent some time living abroad and who, upon her return to South Africa, established the organisation which is geared towards encouraging South Africans to return home. The Homecoming Revolution offers a full range of services to assist returnees to resettle in South Africa.

## **E. MIGRATION: DEVELOPMENT OR CONTROL?**

South Africa represents an interesting case study in the competing pressures for unilateralism, bilateralism and multi-lateralism in the search for workable instruments of migration governance. Historically, regional migration to South Africa was governed by bilateral accords. Unilateral instruments, i.e., immigration legislation, governed white immigration. New immigration legislation in post-apartheid South Africa is unilateral.

At the same time, South Africa has had to respond to regional initiatives for a multi-lateral approach within the SADC as well as its commitment to regional integration and cooperation for development. South Africa is also committed to regional integration and cooperation through the African Union (AU) and NEPAD. New bi-lateral agreements, which will not supercede existing bi-lateral agreements are currently under negotiation with some neighbouring states.

This section of the paper provides an overview of South Africa's new unilateral national immigration legislation and what impact it is likely to have on the country's migration regime. The section then examines the South African response to supra-national migration management proposals, including those emanating from the SADC and the AU.

### **1. *New Immigration Legislation***

The first migration related legislation to be passed after 1994, was the Refugee Act of 1998. However, the Act only became active in 2000, following the publication of regulations. It is based on the premises of the 2957 UN Convention on Refugee Protection as well as the OAU Convention on Refugees. Although the Act is ostensibly provides a positive refugee adjudication regime, regulations have been used to diminish some of its more positive aspects. However, court challenges have forced alterations to the regulations and its administration.

In 1995, the Presidential Labour Market Commission noted that South Africa had a "two gates" migration policy.<sup>45</sup> Under existing (inherited) legislation, there was one door for individual immigrants from overseas and another for regional migrants. In the case of immigrants, admission was governed by the Aliens Control Act of 1991. The new Immigration Act of 2002 replaces the ACA and promises greater ease of admission. In 2004, the new Immigration Act (IA) was amended by the Immigration Amendment Act (IAA).

The process of developing new immigration legislation was long and fraught. It started in 1997 with the development of a Green Paper, which was followed by a White Paper. The Immigration Act of 2002, however, drew little on either paper. It was developed in what has been called a "policy vacuum by a Minister and his advisors who were not members of the governing party and whose

ideas about immigration were not always consistent with government policy.”<sup>46</sup> Furthermore, the Act was hastily passed to meet a constitutional deadline, stalling debate and changes to the legislation. Hence, the introduction of the Immigration Amendment Act in 2004 following the elections of April 2004 and the appointment of a new ANC Minister. A review of regulations is also currently underway.

Although much was made of the stated intention of the Immigration Act of 2002 to facilitate stated government policy to remove obstacles to the entry of skilled migrants, the Act and the accompanying regulations were largely inconsistent with stated government policy.<sup>47</sup> And, with the exception of large employers, the IA together with regulations, largely made the process of entry more complicated and time consuming.

The IA states that in the administration of the Act, government will pursue several objectives including regulating the influx of “foreigners” to promote economic growth by (a) ensuring that South African businesses may employ foreigners who are needed; (b) facilitating foreign investment, tourism and industries which are reliant on international exchanges of people and personnel; (c) enabling exceptionally skilled or qualified people to “sojourn” in the country; (d) increasing skilled human resources; (d) facilitating the movement of students and academics within SADC for study, teaching and research; (e) promoting tourism and (f) encouraging the training of citizens and residents to reduce employer dependence on foreigners and promote the transfer of skills from foreigners to locals.

The Act therefore conceives of most migrants, including skilled migrants, as temporary residents or “sojourners.” A number of different permit categories have been designed to facilitate the entry of “sojourners.” These include (a) four different categories of work permit (quota, general, exceptional skills and intra-company transfer), (b) corporate permits; (c) business permits; (d) student and exchange permits, which allow only limited work activity under highly restrictive conditions; and (f) treaty permits. Other entry permits include (f) visitor’s permits; (g) cross-border passes; and (h) relatives permits. These explicitly prohibit work, although (f) and (g) do allow the conduct of business, including trade.

In the case of quota work permits, categories and quotas are to be determined annually “after consultations with the Ministers of Labour and Trade and Industry” (Section 19(1)). And, under Section 28(4) (e) the Department of Home Affairs may “issue a quota work permit to a foreigner who has skills or qualifications which fall within a category determined by the Minister” even if there is no prospective employer but there are “certain intense needs of the economy.” Currently, quotas (as presented on 24 February 2003) relate to experience and training rather than sectors of the economy. There are 10 categories in all, giving a total of 740,000 permits per annum. None of the categories allow residence rights for family members of permit holders.

General work permits may be issued to migrants who do not fall within the ambit of the quota permit system. Here the onus falls on the employer to demonstrate that they have first diligently searched for a qualified South African. The general work permit appears to be a catch-all for individuals who do not fall under the other categories.

Exceptional skills work permits are issued to individuals of extraordinary (but as yet undefined) skills. This is the only category of permit to include residence rights for the permit-holders family. There is no indication as yet whether family members will be permitted to work. In any event, this category is unlikely to attract a large number of applicants.

Intra-company transfer permits permit a company to bring a foreign employee into the South African branch plant for a period of up to two years. No rights of family residence are provided for.

This is effectively a “block” or “group” permit allocated to an employer rather than individual employees. In granting such a permit, Home Affairs must first consult with Labour and Trade and Industry to determine the number of foreign employees who can be hired under the permit. Management of the permit, including allocation of individual permits, becomes the responsibility of the corporation or institution.

Business permits are to be issued to individuals wishing to establish or invest in a business in which they may be employed. The criteria here are very stringent including a R2.5 million investment, proven track record, employment creation for South Africans, export potential in certain prescribed sectors, and financial viability.

Visitors’s permits and cross-border passes (for people from neighbouring countries with a common border who do not hold passports and live in border areas) are issued for short term stays of up to three months. Purpose of visit does not have to be specified but work is specifically precluded. Business activity is permitted, however, which means that cross-border trading can be carried out legally under these permits.

The creation of six new modes of entry for migrant labour has been described as “likely to prove at least unwieldy to administer, if not entirely unworkable.”<sup>48</sup> The system is therefore likely to be streamlined in the current process of revision of the regulations.<sup>49</sup> The Immigration Amendment Act also streamlined the process a little.

The Immigration Amendment Act of 2004 makes technical and legal clarifications, simplifies the more complex provisions of the Act and makes some changes to immigration governance. The preamble refers to a need for scarce skills, investment and tourism and to the role of South Africa in the region.<sup>50</sup> Notwithstanding, the preamble, the IAA tightens provisions on the issue and renewal of visitors permits and tightens existing immigration control over work-related activities.

Repatriation procedures for irregular migrants evident in ACA were largely retained by the IA and IAA. Suspected irregular migrants (usually from the SADC) can be arrested, detained (in a detention centre or police stations and prisons) and repatriated to their country of origin, without the option of appeal to a court of law. Repatriation procedures have caused some tension between the South African government and governments of neighbouring states and have been criticised by some human rights organisations.

In summary, three points need to be made about South Africa’s new framework for admission of migrant workers: (a) the new Act, which proposes to use migration as a tool of economic growth, represents a significant break from the control-oriented mindset of the past; (b) the Act facilitates temporary entry or varying periods of time but does not encourage permanent immigration; (c) the Act does not encourage family members to accompany labour migrants to South Africa.

The new framework, in effect, asserts the right of South Africa to craft its own immigration policy in the national interest. The primacy of unilateralism as a principle of migration management has therefore been established and entrenched by the Immigration Act. But does this signify a shift away from bilateralism? Does this mean that South Africa intends to abandon the bilateral approach of the “second gate”?

## ***2. Bilateral agreements***

The second “gate” identified by the Presidential Labour Market Commission was the existence of bilateral migration treaties or agreements between the government of South Africa and some neighbouring governments (Botswana, Lesotho, Malawi, Mozambique and Swaziland). The



agreement with Malawi is defunct. The others are still operative. There has never been a similar agreement with Zimbabwe. As noted above, and reflecting its foreign policy, the South African government has concluded a new bi-lateral agreement with Mozambique and is also in talks with the governments of other neighbouring countries.

The existing bilateral treaties were concluded in the 1960s (with Mozambique) and the 1970s (with the others). The full text of these agreements can be accessed at the following web address: <http://www.queensu.ca/samp/policy.html>.

The treaties specify a series of conditions and obligations on the following issues:

- Recruitment – including the right of the private sector to recruit, length of contract, time between contracts, quotas, payment of recruiting fees, the need for written contracts, and provision of facilities for recruiting and processing contracts;
- Contracts – including identification of employer and employee, home address, place of employment, contract length, minimum wage, in-kind contributions, transport to and from work;
- Remittances and Deferred Pay – provision for compulsory deduction of a proportion of wages and transfer to home country;
- Taxation – exempting contract workers from being taxed in South Africa;
- Documentation – including the need for valid contracts, passports, vaccination certificates, employment record books;
- Unemployment Insurance
- Length of Agreements
- Labour Offices – to be established in South Africa and be responsible, inter alia, for “protecting the interests of workers,” registration of undocumented workers, transfer of money, providing information on conditions of employment, and consulting on the repatriation of destitute and sick workers.

The treaties are badly outdated and no longer observed in every particular. Indeed, both sides could demonstrate numerous examples of breach. Many of the provisions have been superceded by events. Others (such as the right of neighbouring countries to have a Labour Office in South Africa to look after the interests of migrants) continue as before.

The primary beneficiary of the bilateral agreements has been the mining industry. Although the mines are not mentioned specifically, it is clear from the wording of the treaties that they were specifically designed for this industry. The bilateral treaties licensed the mining industry to pursue its own private recruiting in neighbouring countries. The mines (through TEBA) had complete control over who they would recruit and where. On the supplier side, the treaties contained provisions to ensure that some of the benefits of migration flowed back home and to make it impossible for migrants to ever become permanent residents of South Africa. In that respect, they were prototypical bilateral agreements. In the period after 1994, the Chamber of Mines lobbied hard for the continuation of the treaties. They even proposed that the treaties be extended to other sectors.

In theory, the bilateral agreements as a mode of entry could be replaced by the new corporate permits, or even quota permits. This would signal the end of bilateralism and the triumph of unilateralism in all aspects of South African migration policy. The problem here is that all of the other provisions of the treaties, including potential protections for workers, would also fall away. One of the briefest sections of the Immigration Act, and one of the most significant in terms of labour migration, is the treaty permit. These permits “may be issued to a foreigner conducting activities in the Republic in terms of an international agreement to which the Republic is a party” (Section 14(1)). The treaty permit was included in the Act as a direct concession to the mining industry and also to

ensure, in legal terms, that the Act did not breach any existing labour agreements. In policy terms, the future of the treaties themselves, is therefore, not resolved by the Immigration Act.

If the bilateral agreements are persisted with, then they need revision and updating. Indeed, they are so archaic that this would be an important opportunity to bring them into line with international best practice on temporary migration schemes.<sup>51</sup> There is a residual suspicion that the treaty permit system is at best a perpetuation of the status quo and at worst will simply duplicate the worst features of the old migrant labour system. This concern must be addressed by those favouring a revamping of the bilateral agreements.

In the end the debate is really between a unilateral, state-centred approach (in which government has the final word on every migrant who enters) or a bilateral, privatized approach (in which government continues to allow the private sector to determine who shall enter). This debate requires some kind of resolution before a decision is made on whether to revise the bilaterals or bring all migrants under the corporate or quota permit sections of the new Immigration Act. As part of this review, the relevance of protection mechanisms in bilateral treaties must also be addressed. In a post-apartheid era of new labour laws, it might be considered redundant to continue with such mechanisms. Also, the South African government will need to decide whether it wishes to pursue a bilateral approach (involving negotiation with supplier countries) or simply abandon bilateralism in favour of unilateralism for all categories of migrant.

Since 1994, South Africa has used a bilateral approach in three other situations. First, in the health sector, South Africa has favoured a strategy of importing Cuban doctors rather than hiring them from neighbouring countries. The import of Cuban doctors on temporary assignments has been regulated by a bilateral agreement between the two governments. The agreement has worked quite well although South Africa has had to deal with the challenge of Cuban doctors seeking to remain. Second, as noted above, the South African government has reached agreement with the British government that the latter will not directly recruit health workers from South Africa.

Third, South Africa has adopted a bilateral approach to the issue of migration from neighbours Mozambique and Zimbabwe. Bilateral discussions with these two governments are now well-established. And, a forum exists for both sides to share their concerns. In the case of Mozambique, agreement has been reached on one issue, but attention has also focused on the treatment of Mozambican migrants in South Africa by the South African police and employers. In the case of South Africa, attention has focused more on developing joint strategies to curb irregular migration, trafficking and cross-border crime. As befits a debate between a migrant-sending and migrant-receiving country, the priorities and concerns of both differ considerably. However, bilateral dialogue is preferable to unilateral action, so that further development of this mechanism is likely. The actual impact of these bilateral discussions on migrant flows and treatment has not been assessed.

### ***3. The SADC and multilateral approaches***

The South African Draft Green Paper on International Migration, published in 1997, advanced a strong case for a regional dimension to be integrated into a new policy framework. Not only should consultations be held with regional partners but policy should take account of South Africa's regional context and reality. However, these suggestions were essentially sidelined in the highly-politicized White Paper on International Migration. To reinforce this, the public consultation process around the White Paper and Act did not involve any regional actors or governments. The Act is therefore a product of unilateral interest and thinking, and was largely based (prior to modification by the Cabinet) on the US model.

The Immigration Act therefore makes reference to SADC only in the context of academic exchanges and student permits. This is to accommodate the SADC Education Protocol to which South Africa is a signatory, and which facilitates training across borders in the region.<sup>52</sup> The treaty permits may be seen as a de facto concession to supplier countries providing migrant mineworkers. However, South Africa's position within SADC is not explicitly factored into the new Act.

How has South Africa responded to efforts at the regional level to craft a multi-lateral, region-wide response to intra-regional migration? Three draft protocols on the movement of people were developed in the 1990s.<sup>53</sup> The first was the Draft SADC Protocol on the Free Movement of People which proposed a phased adoption of free movement between all member countries. The model was heavily based on Schengen and was rejected by South Africa (as well as Namibia and Botswana). South Africa responded with a Draft Protocol on the Facilitation of Movement of People which proposed minimal levels of harmonization on issues such as visa-free entry. This Protocol was rejected by the SADC Secretariat. A third Protocol, also called the Draft Protocol on the Facilitation of Movement of People was designed by the Secretariat. This Protocol contained many of the same proposals as the defunct Free Movement Protocol but proposed a more generous time line and a greater degree of individual state responsibility for implementation. This Protocol was shelved by the SADC Council of Ministers in 2001 following further objections from the original three opponents. In 2003-4, the Draft Protocol was re-circulated to national governments for additional comment. It is unlikely that the Protocol will be accepted in its current form.

South Africa has also agreed in principle, with other relevant SADC countries to the introduction of a Univisa. Intended to facilitate the movement of tourists in the region the visa (if and when introduced) would allow for the movement of tourists from outside the region from country to country. It can be argued, that it will therefore, allow for more freedom of movement for people from outside the region than for Southern Africans themselves.

In 2001, the IOM, SAMP and other partners formed the Migration Dialogue for Southern Africa (MIDSA). This has proven to be a highly successful RCP (Regional Consultative Process) in encouraging multi-lateral dialogue, identifying areas of common interest and raising capacity and awareness amongst SADC governments. South Africa has been an active participant in MIDSA, sending senior delegations from Home Affairs, Labour, Justice and Foreign Affairs, to participate. The most recent activity within MIDSA is a survey of national immigration legislation across the countries of SADC and debate of proposals for regional harmonization.<sup>54</sup> Incremental steps towards a multi-lateral, harmonized approach seem more likely to succeed than comprehensive multi-lateral protocols. MIDSA could play a critical role in this regard but currently acts only in an advisory capacity. One way forward might be for SADC to take MIDSA on board as a regional process.

On a continental level, South Africa is committed to the aims of the African Union (AU) and to the New Partnership for Africa's Development (NEPAD). Freer movement of people across the continent is cited as a key long-term objective of the AU. However, little analysis has been undertaken of the possibilities or desirability of this objective, and there has been no systematic discussion of the institutional mechanisms by which this might be achieved. While the development of programs and policies under NEPAD are still in their early stages, the only real mention of migration concerns the movement of skilled professionals and particularly health professionals (or brain drain migration from the continent). The South African Department of Health recently represented the position of some African countries regarding the migration of health professionals to the north at a World Health Organisation meeting in Geneva.

#### 4. *The African Union*

The value of co-operation and integration between countries in all spheres, but particularly in the political and economic spheres has been recognised and has long been a feature of political and economic life on the African continent. The formation of the African Union and the creation of the New Partnership for Africa's Development (NEPAD) represent the latest and arguably the most ambitious and substantial forms of continental co-operation and integration.

While both the African Union and NEPAD are relatively new formations, they build on previous forms of co-operation and integration and specifically on the Organisation of African Unity (OAU) that was the predecessor of the African Union and the various regional economic blocs that exist across the continent. Some examples of these economic blocs are the Economic Community of West African States (ECOWAS); the Common Market for East and Southern Africa (COMESA) and the East African Community (EAC). For the most part, these economic blocs are designed to enhance and facilitate economic and other forms of co-operation through a series of protocols and agreements.

Although the migration of Africans to other continents, and particularly Europe and North America is of significant concern to African governments, the majority of sub-Saharan cross border migrants move within the continent. Africa's history of migration and intra- and inter-continental trade stretches back many centuries. Contemporary patterns of migration, particularly labour migration, are still strongly influenced by colonial and apartheid era policies. As in the rest of the world, countries on the continent are grappling with how best to manage the movement of people across national borders. This is particularly important in the context of the importance of labour migration to many of Africa's economies, and as the continent endeavours to advance its position in relation to the rest of the world.

Despite the long history of migration on the continent, the movement of migrants and refugees in the region is controlled by nationally based legislation. Yet, Africa has had a long, if interrupted, tradition of pan-Africanism. Since 1990, there has been a renewed commitment from most African countries to rejuvenating and reinventing notions of African unity as well as to finding continental and regional solutions to African development.

The importance of migration in the context of development in African states is clearly recognised by the African Union in its *Strategic Framework for a policy on migration in Africa*, which was drafted in the wake of a series of resolutions and recommendations that were adopted by various meetings of African Heads of State and other political leaders.

The AU Framework takes as one of its key imperatives, the New Partnership for Africa's Development (NEPAD) strategy that is aimed at promoting the development of the African continent. While acknowledging that NEPAD does not consider migration as a 'sectoral priority', it nevertheless makes the point that NEPAD has the potential to contribute to the solution of many of the root causes of migration by promoting socio-economic and political development.<sup>55</sup>

In framing the need for a comprehensive continental set of migration policies, the AU document states the following:

*... [W]ell-managed migration has the potential to yield significant benefits to origin and destination States... However, mismanaged or unmanaged migration can have serious consequences for States' and migrants' well-being, including potential destabilising effects on national and regional security, and jeopardising inter-State relations. Mismanaged migration can also lead to tensions between host communities and migrants, and give rise to xenophobia, discrimination and other social pathologies.*

Migration policy is formulated at various inter-locking scales from the continental (AU/NEPAD) to local government, via the regional and national levels. A major challenge is how to get these different levels of governance to interact with one another to develop an integrated approach to policy development and migration management.

## **F. CONCLUSION**

As this report shows, South Africa has been forced to confront major shifts in the nature of migration to the country since 1990. These changes have produced profound policy challenges. The result has been a protracted period of migration policy reform. That process is likely to continue as the ANC now revisits legislation and regulations that were developed by a non-ANC Minister and his advisors. Further policy shifts may therefore be expected. What seems unlikely to change is South Africa's commitment to a more open door policy and to using immigration as a tool of economic development and growth. The mechanisms to achieve this end, as reported in this paper, may undergo streamlining and adjustment.

The process of policy reform has entrenched unilateralism as the foundation of migration policy making. At the same time, South Africa is aware of all of the policy challenges. The new unilateral South African immigration framework does provide a useful starting point and it does not preclude the development of bilateral and multilateral responses with SADC country partners. South Africa intends to revisit the bilateral treaties, for example, and to revise them where appropriate.

The South African Minister responsible for immigration has also shown a keen interest in ensuring that migration policy should reflect the South African government's commitment to co-operative development throughout the continent. In this regard, the Minister has expressed the need for the Protocol on the Facilitation of Movement of Persons in SADC to be fast-tracked and adopted as soon as possible. It is conceivable that once such a protocol is in place, South Africa will revise its own policy and legislation to give effect to the provisions of the protocol.

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