

# **South African Migration Policy: A Critical Review \***

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## 1. INTRODUCTION

Immigration to the Republic of South Africa (SA) is not a new phenomenon. Although indigenous blacks comprise over 70% of the population, SA, the most developed and resource-rich country in the region, has attracted a large number of immigrant workers from the Southern Africa region, most of whom are employed in the mining, agriculture and urban services sectors. Prior to the end of apartheid, the government exercised tight control over the numbers and skills of immigrants. With the end of apartheid, a number of important changes were implemented relating to immigration to and from the Republic.

**First**, many white South Africans left the country. Political power moved to the African National Congress (ANC)-led government dominated by blacks even though economic power remained mainly with the white minority. During its first term in office, the ANC-led government changed its long cherished socialist ideology and embraced the free market and capitalism. Although the right to property was maintained, and no private property was confiscated by the state, a large number of white South Africans nonetheless left the country. With the deterioration of law and order, many were concerned for their safety and property. Australia has been one of the main receivers of South African migrants: 4,280 South African-born settlers arrived in 1997/98 - the fourth largest intake from any country in that financial year.

**Second**, with the assumption of power by the ANC-led government, restrictions on entry from other countries in Southern Africa were relaxed. Furthermore, it is now argued that illegal immigrants are overrunning the country from other parts of Sub-Saharan Africa where per capita income is well below that of the Republic (Crush, 1999).

The arrival of illegal immigrants has become a source of conflict between the local and immigrant black workers. Given the exceptionally high rate of unemployment among black South Africans, their fears that immigrant workers will “take over” their jobs appears to be well founded. It is also alleged that illegal black immigrants are engaged in dangerous criminal activities (McDonald et al., 1999).

The ANC-led government in SA not only raised expectations for a better life among black South Africans, but also among the blacks in neighbouring countries. Many Africans considered SA as “a haven of freedom, peace and prosperity for the continent’s destitute masses” (Crush, 1999:126). Moreover, some countries whence came these illegal immigrants had been safe havens for a large number of influential members of the ANC. These persons felt obliged to repay their political debt to the “haven” nations after the post-apartheid government was formed in SA. Sinclair (1999:46) argues that there is a widely held view among the South Africans “that migrants pose a real threat in terms of employment opportunities, and that South African authorities are unable to effectively curb the growth of foreign population in the country”.

**Third**, with the collapse of socialist economies in Eastern Europe, the governments of these transitional economies withdraw restrictions on the emigration of their citizens. Declining standards of living and increased unemployment have led many citizens of these countries to emigrate, some to SA. On the other hand, emigration of a large number of whites from SA since the end of apartheid has created a shortage of professional and skilled workers, which (at least in the short term) cannot be filled by the local blacks. Until a comprehensive manpower and education policy is introduced to educate and equip the black workforce with necessary skills for employment, demand for professional and skilled immigrants in the Republic will continue.

**Fourth**, a question of credibility arises concerning estimates of illegal intake. These range from a “stock” of “under 2 million” in mid-1994 (police estimates), to “8.75 million” in November 1996 (Cohen 1997, quoted in Sinclair 1999:480). Doubts have been expressed concerning “dubious research methodologies that had been employed in the past” to calculate the number of illegal immigrants in SA (Sinclair, 1999:480). Crush (1999) assesses the credibility of these estimates.

The SA case provides a unique opportunity to study migration from both national and international perspectives. Prior to 2002, when a new Immigration Bill was introduced, the country's migration policy needed a critical and comprehensive evaluation. Crush (1999:125) described it as having been “contradictory and confused” since 1994. In order to evaluate whether the current policy is objective, relevant and comprehensive, policy-makers need soundly

based research findings on the causes and character of cross-border migration. Migration policy should also be linked to the country's population and education policies.

The main objectives of this study are (i) to critically evaluate SA's immigration policy and performance prior to the end of apartheid; (ii) examine the socio-economic impact of immigrant labour in South Africa; and (iii) analyse post-apartheid immigration and emigration policies, the aims of those policies, and the difficulties faced by the post-apartheid government in attempting to control the entry of other Africans to SA and exit of skilled South Africans to other nations.

## **2. IMMIGRATION POLICY OF SOUTH AFRICA: A HISTORICAL OVERVIEW**

Immigration to South Africa is far from being a product of the 1990s. Since the colonial era, countries, which now form the South African Development Community (SADC), have been linked through a system of labour migration. South Africa has been the main destination for migrant labour on the continent since the 19<sup>th</sup> century, following discovery of the region's natural resources. Diamonds were being mined in the Cape Province in 1867, followed by alluvial discoveries around 1869 along the Orange and Vaal rivers. Another discovery in the Kimberley region required deeper mining, attracting large numbers of labourers, as did the Witwatersrand goldfields (Adepoju, 1988:48).

As the supply of indigenous labour within South Africa was insufficient to meet the growing demand of the mines, the Chamber of Mines was formed in an attempt to increase the pool of prospective labourers and also keep employment costs down. Indigenous labourers were recruited from surrounding colonies such as Botswana, Swaziland and Zimbabwe (Adepoju, 1988:48). By 1900, the vast majority (more than three quarters) of mineworkers in South Africa were of foreign origin (United Nations, 1998:154; Kotzé and Hill, 1997:7).

Even before the apartheid era, immigration policy in South Africa was based on racial discrimination. A major aim of the first nation-wide immigration legislation passed in South Africa, the Immigrants Regulation Act of 1913, was to exclude Indian immigrants who had been attracted to the country by other Indians who had entered after 1860 as indentured labourers. The growing Indian population was considered a threat to the white government, and although the

Act did not specifically state that Indians were henceforth to be considered prohibited immigrants, this was widely understood to be the case. The Act also contributed to restrictions being placed on the movement of black South Africans (Peberdy, 1997a:3)<sup>1</sup>.

At the end of the First World War, South Africa was the destination for a rapidly increasing number of immigrants, particularly from Eastern Europe. Many were Jewish, including about 40,000 from Eastern Europe between 1880 and 1910 and another 30,000 between 1910 and 1948 (Shimoni, 1988, quoted in Horowitz et al., 2001:5-6). The Immigration Quota Act (1930), aimed to control Jewish immigration, also established the concept of discriminating between immigrants from ‘desirable’ and ‘undesirable’ countries (Peberdy, 1997a:4). Rising anti-Semitism in Nazi Germany saw an increase in the rate of Jewish immigration to South Africa. Many were highly skilled professionals, a category that the South African government was anxious to encourage whilst at the same time seeking to prevent Jewish immigration (ibid:5).

The Aliens Act of 1937 also left the door open for non-Jewish emigrants with ‘desirable’ characteristics. Until recently, all immigration legislation since this Act has been based on the principles laid down in 1937, including use of the term “alien” to describe those who were not South African nationals or British citizens (ibid:5). The Aliens Registration Act of 1939 shifted the emphasis of immigration policy. Those already in the country were subject to much greater control whereas previous legislation had aimed to control the entry of particular groups.

After 1948, immigration policy shifted once again, reflecting increasing tensions between the Afrikaans and English-speaking communities and their respective political allegiances. In 1946, the United Party government led a campaign to encourage British immigrants. This was roundly criticised by the National Party that accused the United Party of trying to increase the proportion of the English-speaking electorate. The National Party reversed this policy after its election in 1948, focusing instead on attracting German and Dutch immigrants (ibid:7-8).

The apartheid government reinforced the fundamentally racist immigration policies of earlier governments, actively encouraging the entry of skilled white Europeans whilst discouraging the

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<sup>1</sup> Most of the following observations are based on Peberdy 1997a.

generally less skilled, Roman Catholic southern Europeans. Each of the apartheid governments passed several pieces of immigration legislation and increased controls exercised by the Minister and the state (ibid:7-8). The Population Registration Act of 1950, which is still in use, classified people into four racial categories: white, black, Indian and coloured. All persons had to carry identification papers stating their race and place of birth, thus providing an instrument by which to identify (illegal) immigrants within the country. (ibid:7-8).

The early 1960s heralded the introduction of a government programme to encourage white immigration. The Sharpeville massacre, resistance campaigns and the Treason Trial, which had contributed to discouraging potential immigrants, also led to the emigration of large numbers of white South Africans. Schemes to assist white immigrants were highly successful, with white immigration increasing by 300% in three years (ibid:9).

In 1960, the Froneman Committee, whose objectives were to examine the state of foreign labour in SA, recommended that South Africa dispense with all foreign labour, including mineworkers (Jeeves, 1995:179). However, this proposal was not implemented as the Verwoerd government wished to avoid the political gamble of forcing competition between farmers and mine employers for limited labour in the face of higher wages offered by the industrialists. In fact, the number of foreign mineworkers increased through the 1960s and early 1970s.

During the mid-1970s, the attitude of the mining companies towards foreign labour underwent a significant change. In 1974, 120,000 Malawian workers were unexpectedly withdrawn from SA in reaction to a plane crash, which killed 73 Malawians (Crush, 1997c:3). The independence movement in southern Africa had already had a significant impact on immigration flows to SA, with Tanzania and Zambia, on attaining independence in 1961 and 1966, respectively, ceasing to supply labour. Mozambique's independence in 1975 created further uncertainty concerning the future flow of foreign workers to the SA mines. At this time, the world price of gold increased significantly, creating pressure to at least maintain production levels (Ricca, 1989:157).

The Bantustans were beginning to emerge as a potential source of labour, and increasing miners' wages from the rising gold price were making mining attractive to black South Africans. The apartheid government decided that the country was over-reliant on foreign labour and began a

drive to “internalise” the nation’s labour force in 1977 (UN, 1998:154). Thereafter the Employment Bureau of Africa (TEBA) gave preference to South Africans and Bantustans. From 1973 to 1983, the proportion of foreign labour in the mines declined from almost 80% to 40% (Ricca, 1989:157).

Technical innovation and the desire to increase profitability encouraged mining companies to change their policy on immigrant labour. At the time, blacks could only obtain temporary residence permits and work contracts for limited periods. The mining companies therefore sought a way around the legislative position to attract immigrants back to the mines (Ricca, 1989:158). Under the system developed by mining companies, immigrant workers were able to leave SA regularly with a certificate stating that they would be re-employed on return to SA from their country of origin (Ricca, 1989:159). The mining companies never assumed the financial responsibilities that normally accompany long-term employment: there was no provision for pension funds or for immigrants’ families to join them at their place of work.

SA has signed a series of labour agreements with the five countries that supply the majority of its foreign labour. These agreements gave the mining industry access to foreign workers outside the provisions of the Aliens Act. Together with the recent immigration legislation, these agreements form South Africa’s “two gates” immigration policy. An agreement with Mozambique in 1964 was amended in 1970. An agreement with Malawi was reached in May 1967, but Malawi also signed accords with TEBA in 1965 and 1983. Between 1970 and 1975, agreements were also signed with Botswana, Lesotho and Swaziland, although agreements signed with Rhodesia in 1966 and 1976, were denounced by Zimbabwe in 1981 (Ricca, 1989:161). The bilateral treaty negotiated with Malawi currently seems to be non-functional (Bernstein and Weiner, 1999:188).

These agreements focus on employment of foreign workers in the mines, although the Mozambique agreement also covers the agricultural sector (Crush, 1997a:4). Workers must be hired through recruitment offices, and the duration of contracts is always limited, often with compulsory breaks imposed between contracts. Contract workers must be repatriated when their contracts expire. The accords with Mozambique and Lesotho require that 60% of a worker’s wage be withheld by the employer (although the deferred pay requirement for Lesotho was

reduced to 30% in 1990), and mine workers are allowed to withdraw their deferred pay on only two occasions during their contract (Ricca, 1989:161. See also Lewis, 1996:7). Remittances in the form of compulsory deferred wages are an important revenue source for the labour exporting countries, particularly Lesotho (UN, 1998:150-151. See also Crush, 1995:172).

The 1937 Aliens Act was amended in 1986 to allow black people to legally immigrate to South Africa. The timing of this amendment, which lifted one of the major racial biases of apartheid immigration policy, was less a product of redirected ethics than of political and economic necessity. The amendment allowed South Africa to take advantage of the flow of skilled black people from the rest of Africa by allowing the legal immigration of indigenous Africans (Peberdy, 1997a:10, Ricca, 1989:159 and Jeeves, 1995:181).

The Aliens Control Act of 1991 consolidated all previous legislation and formalised the ‘two gates’ approach to immigration regulation and control. This Act provided for specific exemptions from its provisions, making room for the several bilateral labour treaties that SA has signed with neighbouring countries. An amendment introduced in 1993 stated that it was not an offence to employ an ‘illegal alien’ if the employer “had operated in good faith and could not ‘reasonably have been expected to suspect’ that the person was an ‘illegal alien’”. This amendment clearly gave more power to employers (Peberdy, 1997a:11). The Mandela government’s Aliens Control Amendment Act (1995) was an attempt to remove some of the more blatantly discriminatory provisions of the 1991 Act. However, it continues to reflect SA’s history of exclusion and domination on the basis of race. The amendments to the Act in 1995 also attempted to tighten controls on entry and to increase penalties for those who contravene it.

The ‘two gates’ policy that distinguished between white immigrants and black immigrants are no longer intact. Those who entered the country under the Aliens Control Act could in time be granted permanent residence, whilst those who came under the bilateral treaties could only ever remain contract workers (Lewis, 1996:5 see also Crush, 1997a:2). Currently however, under the new Act, there is no such distinction on the basis of race and exclusion from permanent residence can only be made in such special cases as having an infectious disease or being a known felon. White farmers and the mining industry were continuously allowed to employ

foreign labour and to recruit outside SA under the conditions of Section 41 of the previous immigration Act. This clause of the Aliens Control Act was being used to grant temporary work permits to undocumented Mozambican and Zimbabwean farmworkers, as it allowed the status of persons in SA illegally to be legalised through the issue of a short-term permit.

In sum, immigration policies in the apartheid era focused sharply on control, intentionally written to encourage immigration of skilled white people and keeping blacks out. While it was biased towards whites, Jewish and Catholic immigrants were strongly discouraged at particular times. Black workers on temporary contracts were tolerated in the mining and agricultural sectors, but legislation governing these activities resulted in the empowerment of white employers and a tacit acceptance of working conditions for black immigrants that were in many cases abysmal.

### **3. THE SOCIO-ECONOMIC IMPACT OF THE IMMIGRANT LABOUR IN THE APARTHEID ERA**

Impact on the SA economy of the immigrant labour system relates mainly to the ready supply of labour for mines and farms. Under the terms of the Bantu Laws Amendment Act of 1963, the wives and families of male immigrants were prohibited from entering SA. At the end of the contract, the worker was required to return to his home country before entering into another contract (Ricca, 1989:162 and Adepoju, 1988:51). For these reasons, the immigrant labour system would not have had significant demand effects on the SA economy. Rather, employees were brought into the country for as short a period as possible, paid as little as possible but worked as hard as possible.

The Bantu Laws Amendment Act prohibited Africans from Botswana, Lesotho and Swaziland entering South Africa unless they were employed in the agriculture or mining sectors. The Aliens Control Act of 1963 made it illegal for anyone to enter South Africa without the relevant documentation. Thus, government policy gradually restricted African immigrants from employment in all industries except mining and agriculture, the industries that South Africans apparently considered to be of low status and wages (Adepoju, 1988:54).

In negotiations regarding bilateral labour treaties, SA operated in a strong buyer's market. Not only had other countries in the region become dependent on labour migration to SA, but also there was no shortage of prospective immigrants for work in mines and on farms. SA therefore was able to enforce restrictions that were to its own advantage, but severely to the detriment of source countries and the labourers themselves. For example, Basotho labourers were not allowed to change jobs and could be dismissed from their employment for any reason (ibid:54).

The impact of the labour migration system on the South African mining industry should not be underestimated. The abundant supply of cheap labour allowed the mines to expand rapidly and produce at low cost. Were it not for the availability of labour, exploitation of mineral deposits would not have been commercially viable. The presence of cheap labour also had the effect of depressing wages, starting a vicious cycle, which entrenched the labour migration system. In turn, this may have resulted in higher rates of unemployment among black South Africans.

White employers have achieved considerable savings by being able to employ foreign workers (Adepoju, 1988:59), thus contributing to the economic and social divide in apartheid South Africa. To the extent that these savings have been used for capital accumulation projects, the economic and hence social power of the white minority has been enhanced.

Although South Africa's immigration policy during the apartheid era was undeniably racist and discriminatory, it failed to achieve its objectives. Faced with high rates of unemployment among the black population in the early 1980s (25-35%), the apartheid government was increasingly unable to maintain controls on the movement of black people within the country. In addition to the increase in population of Bantustans as a result of the inflow of Mozambican refugees, the collapse of agriculture in the Bantustans created further pressures. During the 1950s and 1960s, "influx control laws" were developed in an attempt to keep black immigrant workers in the homelands and thus away from the white townships. This system was tremendously costly to enforce. For example, has been claimed that "an average of 721 [people were arrested under the pass laws] every day non-stop for 65 years" (Weekly Mail and Guardian, March 4 quoted in Bernstein and Weiner, 1999:190).

By the late 1980s and early 1990s, it was apparent that existing mechanisms could not stop the flow of black immigration to South Africa's towns and cities. However, during their existence, the influx control laws prevented the establishment of a permanent core of Africans within the urban centres. Jeeves notes that the process of industrialisation in many countries has been accompanied by widespread rural-urban migration as part of the transition phase to an industrial society. He claims the evidence suggests that although SA was undergoing this process, it was severely retarded by the restrictive policies of the apartheid government (Jeeves, 1995:181-182).

It could therefore be argued that by artificially constraining the process of industrialisation through preventing the immigration of black people (whether of SA origin or immigrant workers) to the urban areas, the apartheid government hampered SA's rate of economic growth. It also resulted in the continued exploitation of mineral wealth, which may not otherwise have been commercially viable, distorting the principles of comparative advantage and trade theory.

#### **4. REVISION OF IMMIGRATION POLICY IN THE POST-APARTHEID ERA**

While faced with the task of building a democratic state, the SA government was confronted with severe problems of poverty and lack of skills among the black population. These were a legacy of the apartheid era and partly the result of migration policy. In 1994, the Department of Home Affairs (DHA) announced that unskilled or semi-skilled immigrants would not be permitted to work in SA. This represented a clear change of direction by the DHA, which had previously been heavily influenced by the mining industry in particular to continue to permit access by foreign workers to the lower end of the employment market in SA (Crush, 1997c:3). Now, however, the policy is clearly one of giving preference to South Africans for all employment. This is not a new idea, but it appears that in the past, a 'South Africans first' approach has not been seriously adhered to. Today, work or immigration permits are not issued to foreigners who wish to work in occupations for which there is a sufficient supply of qualified South Africans (Crush, 1997a:3-4 see also Lewis, 1996:5-6). Also, the terms of the employment have to be certified by a chartered accountant and verify that the immigrant labour will be working under the same conditions and for the same pay as South Africans in the same employment.

Since 1994, the South African government has implemented three amnesties to different groups of foreign mineworkers and undocumented migrants in an effort to regularise the immigration system. This has also assisted efforts to wipe the slate clean, to enable a fresh approach to immigration policy with entirely new, non-discriminatory legislation. These measures represent a major break from the policies inherited from the apartheid regime (Kotzé and Hill, 1997:16).

The first amnesty, announced in October 1995, offered permanent residence to mineworkers originating outside South Africa who had been working in the mining industry for at least ten years and who had voted in the 1994 national election (Crush, 1997c:6). Cabinet approved a second, more general, amnesty in February 1996, which applied to all citizens or permanent residents of SADC states who had lived continuously in South Africa for more than five years. To be eligible for the amnesty, a person had to satisfy the following criteria:

- a) had been living in South Africa for at least five years;
- b) was engaged in productive economic activity in the formal or informal sector, or was in a relationship with a South African partner or spouse, or had dependent children born or lawfully living in South Africa; and
- c) had not committed a criminal offence (Crush, 1997a:11-12. See also Crush and Williams (eds.), 1999:3).

Successful applicants received permanent residency, and were eligible to eventually apply for citizenship (Bernstein and Weiner, 1999:193). Applicants who did not meet the specified criteria, or those who did not apply, may be deported. The third amnesty, announced in December 1996, applied to Mozambicans in South Africa whose refugee status was withdrawn on the same date (Crush and Williams (eds.), 1999:4). Under the terms of the refugee amnesty, legal status would be granted to Mozambicans meeting the specified criteria, while those who wished to return to Mozambique would be assisted.

Instead of using a 'seek out and deport' approach, the amnesties offered an opportunity for illegal immigrants to regularise their status in SA. However, those who have arrived since 1991, or who did not receive amnesty, remain under the provisions of the 1991 Aliens Control Act (Crush, 1997c:11-12). When first proposed, the DHA strongly opposed the SADC amnesty and

indicated that 600,000 to 1,000,000 people would apply, thus increasing SA's population by 12 million people through the multiplier effect of family reunification (Crush and Williams (eds.), 1999:4). However, the application rate for amnesties was much lower than anticipated by the government. For the miners' amnesty, the application rate was 49% of the forecasted total. For the second amnesty, the DHA received only 201,602 applications (ibid, 1999:4). This could have been due to poor information on the number of migrants in SA within relevant categories, and/or misrecognition of the factors leading to immigration to SA, and the aims of those migrants. The South African government assumed that migrants wanted to settle permanently in SA on grounds of the higher standard of living compared with Lesotho and Mozambique. Studies conducted by the Southern African Migration Project (SAMP) have indicated that this basic assumption is of questionable validity (Sechaba Consultants, 1996:1. See also de Vletter, 1998:1). If the SAMP assumption is valid reflects poorly on the South African government's awareness of the real issues behind the high rate of immigration.

In June 1995, the SADC released a Draft Protocol for the Free Movement of Persons within Southern Africa (Crush and Williams (eds.), 1999:4), aimed at reducing controls on the movement of SADC citizens between SADC states. The South African government argued that to implement the Protocol at the time would result in a large burden on receiving states such as South Africa, Namibia and Botswana, whilst intensifying the brain drain from countries such as Lesotho and Mozambique (Bernstein and Weiner, 1999:194-195 see also Lewis, 1996:11). For these and other reasons, the Draft Protocol was retracted in January 1997.

The 1991 Aliens Control Act and its subsequent amendments no longer determine SA immigration policy, because this Act became unconstitutional in May 2002. The SA government recognised the discriminatory nature of this legislation and its unsuitability for the current economic, social and political environment. A draft Immigration Bill was released in February 2000, formalising the need for a radical reform of immigration policy in SA and a revised version of this was implemented in 2002. The new Bill formulated the establishment of a South African Immigration Service (SAIS), to not only administer immigration policy but also have powers of enforcement and policy formulation (Brand, 2000:1 see also Anonymous, 2000:1). The emphasis in the Bill is on establishing a set of objective criteria for determining visa

eligibility, but even more importantly, to address the inconsistencies and uncertainty that have surrounded immigration policy in SA since 1994 (Buthelezi, 2000:3). Retaining some of the discriminatory practices of the Aliens Control Act, while offering amnesty to some undocumented entrants, created an environment of insecurity and ambiguity for many persons living in SA, and almost certainly contributed to the large number of professionals emigrating from the country in recent years.

## **5. UNDOCUMENTED IMMIGRANTS**

One of the major problems faced by SA in formulating a new migration policy is the large number of undocumented migrants present in the country. There are several reasons for the apparently steady inflow of undocumented migrants. One is the relative economic decline of countries in the region (notably Mozambique), which can partly be attributed to the apartheid government's destabilisation policies. The severe drought in 1992 encouraged movement to SA, as did the relative strength of the SA economy and the perception that it offers much better opportunities than the migrants' home countries (Lewis, 1996:12). The move away from apartheid contributed to the flow of undocumented migrants, as SA is now considered to be more sympathetic to people from the region than previously, particularly given the perceived need to make amends for the abuses inflicted by the apartheid government on surrounding countries. SA's border control system became more lenient in the 1990s, most notably with the charge along the electrified fence being reduced to a non-lethal, but still deterrent, shock.

Most undocumented entrants are unskilled or semi-skilled. Their impact on the SA labour market is difficult to assess, due to lack of data on the size and nature of the problem. Available figures suggest that there are significant numbers of undocumented migrants working in the agriculture, hospitality and construction industries (ibid:12). The recent deterioration in the Zimbabwean economy has led to a considerable increase in labour migration from that country. Although official statistics indicate that, on average, 300 Zimbabweans emigrate each month; this is likely to be a considerable underestimate, as it includes only those persons who officially declare that they are emigrating. The sources of this problem are not hard to find: half the workforce is unemployed, inflation is at a record rate of 56%, and poverty is widespread (Njanji, 2000:1).

## **6. IMMIGRATION IN THE INFORMAL SECTOR OF THE ECONOMY**

Immigrant entrepreneurs are having a significant impact on the structure of the informal and small enterprise economy of South Africa, particularly in urban centres such as Johannesburg. The businesses established by immigrant entrepreneurs tend to be focused on retail or service areas; few engage in production and manufacture. They appear to be particularly involved in the clothing sector, especially making and selling traditional African clothing (Rogerson, 1997:1).

The informal sector generally involves very small enterprises, with the operator being self-employed and having little initial capital. These businesses are outside the regulatory framework, and are often associated with low, unstable incomes and the employment of family members (Peberdy, 1997b:2). It has been estimated that the informal sector contributes between 20% and 50% of the total GDP of African countries, Its impact in SA is highlighted by the estimate (made in 1996) that 16% of the economically active population is employed in the informal sector (ibid:2). It is difficult to estimate the number of non-South Africans involved, but a 1995 study found that 14% of traders were non-South African (ibid:3).

The impact of immigration on the South African economy is commonly believed to be that immigrants take jobs from South Africans. However, the situation appears to be quite the opposite: on average, the small and medium businesses run by immigrants create 3.33 jobs each, although businesses operated by non-SADC immigrants tend to create more employment opportunities. Overall, the trend appears to be that once the business is soundly established, it employs an increasing number of South Africans (ibid:3).

Immigrant-operated small businesses are therefore, making a direct contribution to the South African economy, a role that will increase in the future as businesses expand and employ more South Africans. Evidence accumulated by SAMP challenges many of the popular myths, and calls for the positive role of immigrant-operated businesses to be recognised (ibid:3). Interestingly, the survey suggests that most non-South Africans do not, in fact, wish to settle permanently in South Africa (ibid:3). Traders from the SADC region are involved in the cycle of

cross-border trading involving selling goods in South Africa, investing the profits in goods made in South Africa which are then taken back home and sold at a profit (Peberdy and Talibe, 1997:1). They are part of a complex web of inter-regional trade, involving Mozambique, Zimbabwe, Zaire, Botswana, Namibia and Angola. Thus, the movement of street traders is a mechanism by which South Africa can be reintegrated into the regional economy (ibid:1).

The majority of profits made by migrant-owned businesses in SA are invested within SA, and many are heavily involved in exporting from SA, an activity widely held to be favourable to the SA economy. The benefits of this are underlined when one considers that exported goods (such as electronics and household goods) are those being actively promoted by the SA government's export policy (Peberdy, 1997b:2).

Non-South African street traders are often the targets of xenophobic and nationalist intimidation whilst in SA. Newspapers have reported many cases of assaults on non-South African street traders. These attacks appear to be based on a failure to recognise that the migrant enterprises are responsible for creating many employment opportunities, and may in fact be more likely to create than to take jobs. It is not often recognised by the mainstream media that whilst in SA, immigrants contribute directly to the SA economy through their purchases of goods and services: over half the income of street traders from the region is spent on living expenses in SA (Peberdy and Talibe, 1997:1).

To-and-fro migration by street traders in southern Africa can act as a means of promoting positive changes in the societies and economies of the region (Dodson, 1998:3). Exchange of goods and services across borders is the driving force behind economic development and should be encouraged and facilitated, even at the most micro level. It assists in the development of other economies in the region, thus contributing to a long-term decline in immigration to SA. This builds further opportunities in the home countries, encouraging repatriation of immigrants (Dodson, 1998:3).

The Aliens Control Act of 1991, and amended in 1995, was clearly not a suitable strategy for regulating the involvement of migrants in South Africa's informal sector. The many restrictions

had negative implications for traders, and increased the bureaucratic structures needed to attempt to enforce the Act. Single entry visas were issued to traders, meaning that they were almost constantly requiring reapplying, a process that greatly increased the administrative burden on the DHA (Peberdy, 1997b:3).

Immigrant traders at this point were in an uncertain position with regard to the terms of their visas. The nature of their business did not allow them to qualify for business or work permits (ibid:13). Together with the complex system of tariffs imposed on their products, this created potential for exploitation by Home Affairs and Customs and Excise staff, as well as the police. Current policy needs to ensure that there is none of these ambiguities or costs and cross-border trade is promoted (ibid:3). The current bill provides a new category of temporary permit, specifically for informal cross border traders. This allows multiple entries and removes ambiguities in the present system (ibid:3).

Under the previous system, the duration of the permit was at the discretion of the issuing officer, leaving open the possibility of bribery and corruption. This also led to uncertainty amongst the trading population, who did not know, by legal means, how long their visa will be valid for until it had been issued. For non-South African street traders who wished to apply for permanent residence, their already tenuous legal position created additional difficulties and made them more vulnerable to abuses by the authorities (ibid:13). Under the immediately prior system it was also impossible to distinguish between the applications of genuine visitors, traders and persons who sought work under the pretext of a visitor's visa (ibid:13). This made it difficult for the DHA to accurately monitor the level and type of immigration to South Africa. However, at present cross border traders do not need a passport to conduct their trade but do however need papers from the DHA and are required to register with them before being able to acquire a cross border permit which acts in the same way a multiple admission visitors permit does.

## **7. XENOPHOBIA<sup>2</sup>**

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<sup>2</sup> For recent information on xenophobia in South Africa, see, Crush, Jonathan (2000), "The Dark Side of Democracy, Xenophobia and Human Rights in South Africa" in *International Migration*. pp. 106-108.

South African newspapers have recently carried many reports of increasing xenophobia among South Africans, directed mainly towards Africans. Black South Africans are also accused of xenophobic prejudices against other Africans. A report by the International Organisation for Migration (IOM) noted that “Black South Africans do not easily accept black Africans – they are at best tolerated and at worst brutalised and marginalised” (Farquhar, 2000:1).

One possible cause of the recent upsurge in racism and xenophobia in South Africa relates to the impact of the government’s affirmative action programmes on white South Africans. Young whites feel disadvantaged in employment applications because they are not black. Indeed, affirmative action programs may be also encouraging brain drain from South Africa and fostering racism amongst young people (Arkley, 1999:1).

The current sentiment is different from the xenophobia that characterised the apartheid era: today’s preoccupation is non-racialised, imposing a national label rather than an ethnic one. It is territorially based, perhaps a product of the new democracy’s preoccupation with boundaries and hence its national identity (Klotz, 2000:831-849). Xenophobic attitudes are enhanced by South Africa’s high rate of unemployment, with migrants thought to be stealing jobs and other opportunities from South Africans (Blanchfield, 1997:1). For example, during 1997, a group called the “Unemployed People of South Africa” threatened to forcibly expel illegal immigrants, who are blamed for social problems ranging from substance abuse to unemployment.

Many South Africans appear to perceive the presence of huge mobs waiting to descend on South Africa, all in search of permanent residence. A 1997 SAMP survey of South Africans’ attitudes to immigrants showed that 60% of all respondents felt that immigrants did not strengthen South African society (Constance, 1999:2), but only 4% of respondents had had any dealings with immigrants in South Africa, suggesting a considerable degree of misinformation being perpetuated by the media (Danso and McDonald, 2000:1). Because the promises of a ‘South Africans first’ immigration policy and affirmative action are not having much impact in the short run, there is considerable frustration and resentment, leading to the persecution of scapegoats.

## **8. REFUGEE POLICY**

Not all immigrants to SA are seeking work. In the 1970s, as Portuguese rule came to an end in Angola and Mozambique, many persons of Portuguese origin fled to SA. Some were granted citizenship or permanent residence; others used South Africa as a stepping-stone in their return to Portugal (del la Hunt, 1997:1). During the 1980s and early 1990s, the apartheid government sponsored civil war in Mozambique (by supporting the Mozambique National Resistance, or RENAMO), but refused to grant refugee status to Mozambicans who, ironically, had fled to South Africa to escape conflict in their home country. In October 1985, it was estimated that 63,000 Mozambicans had already fled to South Africa. In 1993, the United Nations High Commissioner for Refugees (UNHCR) estimated that there were more than 300,000 refugees in South Africa; other agencies suggested it was over half a million (del la Hunt, 1997:2).

The Mozambicans were tolerated as long as they remained in the homelands of Gazankulu and Kangwane (Crush, 1997a:6). The government accorded them refugee status in 1993, but they were never issued with identity papers or travel documents. Many were arrested in the towns and subsequently deported, with the government announcing in March 1995 that it no longer recognised Mozambicans as refugees (ibid:7). The UNHCR and the IOM attempted a voluntary repatriation programme for Mozambican refugees in 1994. This did not achieve the anticipated success in SA; only 31,074 of an estimated 340,000 refugees participated (ibid:6).

In 1993, the SA government accepted the United Nations Convention Relating to the Status of Refugees of 1951, and also the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa of the Organisation of African Unity (OAU) (Bernstein and Weiner, 1999:196 and Crush, 1997a:6). Since the 1994 election, SA has been regarded as more sympathetic to the plight of other Africans. Young men from war-torn or famine-starved African countries such as Angola, Somalia, Zaire, Rwanda and Ethiopia have come to regard SA as their logical destination. This is hardly surprising, given South Africa's relative economic strength in the region, the positive images encouraged by the end of apartheid and increasingly restrictive asylum policies in Europe and North America (del la Hunt, 1997:2). Moreover, refugees are now arriving in SA from further afield, such as Pakistan, India and Bangladesh.

Prior to a new Refugee Act being passed by the South African parliament in November 1998 (McDonald, Mashike and Golden, 1999:20), South Africa had no refugee legislation, although after recognising in 1993 the United Nations (UN) and OAU Conventions, procedures were set in place for the determination of asylum status (Republic of South Africa, 1997:16).

In 1999, the DHA proposed that reception centres be constructed for those seeking asylum in South Africa. The DHA visualised that prospective refugees should be required to remain in these centres until their applications had been processed. Under the terms of the 1998 Refugee Act, however, such centres are only an option when there is a mass influx of refugees. Whilst SA is currently receiving large numbers of refugees, it is unlikely that the present situation qualifies as a 'mass influx'. The DHA claimed that widespread abuse of the system, including corruption and other crimes, necessitated the establishment of the centers (Tshitereke, 1999:1).

This policy is questionable, and may not be in accordance with South Africa's obligations under the international conventions that it has agreed to adhere to. *Guidelines* in the UN convention state that "as a general rule asylum seekers should not be detained". Guideline 3 states that:

The permissible exceptions to the general rule that detention should normally be avoided must be prescribed by law. In such cases, detention of asylum seekers may only be resorted to, if necessary, in order... to protect national security or public order. (Quoted in Human Rights Watch Africa, 1997:5).

Given that refugees do not appear to be overwhelmingly responsible for South Africa's high crime rate, it is clearly against the terms of the international conventions that South Africa is a party for the country to establish what are effectively detention centres for refugees.

The Task Team on International Migration, which produced the Green Paper on International Migration, recommended that refugee policy be considered separately to the broader-ranging issue of migration policy. Formulation of refugee policy requires recognition of all the international legal obligations, which SA has agreed to, and so should be approached from a

different angle to migration policy in general. The human rights of refugees must be carefully guarded by the implementation of appropriate legislation. Refugees are quite different to immigrants: they have no wish to leave their homes but are forced to do so in the face of discrimination and persecution. Thus, separate legislation dealing with refugees in SA needs to be drafted, rather than bringing two very different concepts under the one umbrella (James, 1997b:1).

## **9. EVALUATION OF POST-APARTHEID IMMIGRATION POLICY**

Immigration policy in South Africa has been a product of the changing attitudes in the country towards racial discrimination. Current policy debate is based on a principle of non-racialism, whilst maintaining employment preference for South Africans (Bernstein and Weiner, 1999:190). Recent amnesties represented an effort to develop a new immigration policy for the new South Africa, yet at the same time deportations under the Aliens Control Act continued. The South African government faces a severe challenge in properly implementing its new immigration policy not only to overcome increasingly negative attitudes of South Africans towards immigrants, but also to establish a transparent and equitable immigration policy. The task of government in implementing a non-racial immigration policy has become extremely difficult due to the hostile attitude towards foreigners. Crush (2000a:105) observes that “there is a growing consensus among independent observers that South Africans are highly antagonistic to foreigners and that intolerance is widespread”.

The approach taken by the South African government towards immigration since 1994 has been at times rather confused and contradictory. Bernstein and Weiner state, “It appears as if the government has no coherent grasp of the migrant question” (Bernstein and Weiner, 1999:196). The number of different government departments involved, and the conflicting policies of the departmental heads did not facilitate the development and implementation of an entirely new immigration policy. The two departments with the highest degree of involvement in the formulation and implementation of immigration policy are the DHA and the Department of Foreign Affairs. However, these two areas were split between members of the Government of National Unity (GNU).

The ANC was given control of Foreign Affairs, whilst the Inkatha Freedom Party (IFP) was given control of Home Affairs. Whilst the primary responsibility for immigration policy rests with the DHA, Foreign Affairs handles negotiations concerning the impact of SA's immigration policy on the rest of the region, and any other international discussions (Kotzé and Hill, 1997:18. See also Bernstein and Weiner, 1999:196). Given the different emphases of the two departments, it is perhaps not surprising that there have been inconsistencies in their approaches to immigration policy. For example, Foreign Affairs is pursuing a policy of closer links with the rest of the SADC, partly due to a desire to redress wrongs perpetuated by the apartheid government. At the same time, the DHA has been advocating the adoption of a more stringent approach to immigration management (Kotzé and Hill, 1997:18. See also Bernstein and Weiner, 1999:196). This is a problem within any coalition government and is not easily overcome. Further debate is necessary to identify methods by which to reconcile SA's national interest with its obligations to the region as a whole, and particularly to other members of the SADC.

The administration of immigration policy and related issues prior to the implementation of the new Immigration Bill had been described as "chaotic". The situation was made worse by lack of communication between people at the top of the immigration policy hierarchy: the president, the minister for Home Affairs and his deputy, and the director-general of the DHA (Gordin, 1999:1). Lack of clear direction from senior officials has exacerbated mystification of processes within the DHA, thus expanding the potential for corruption and other abuses.

In June 2000, one newspaper claimed that "The ongoing turmoil in Zimbabwe and the plunging rand, coupled with spiraling crime and rampant corruption" are fuelling alarmingly high emigration rates (Power, 2000:1). The current wave appears to be mainly among skilled whites and Indians. Emigration from South Africa is made more difficult by strict exchange control; so many people do not formally declare their intention to emigrate in order to more easily remove their money from the country. This means that official emigration statistics considerably understate the true situation. Regional instability, most notably attacks by blacks on white farmers in Zimbabwe under Robert Mugabe, appears to have been a significant influence on emigration from South Africa in 2000 (ibid:1).

Immigration policy in a region where economic development has centred on labour immigration will have to take into account the history of that nation and other regional matters. Since the 1960s, southern Africa has had a labour surplus (Kotzé and Hill, 1997:23). High rates of unemployment in source countries increased the push factors behind immigration, but these people could not always be absorbed into the receiving economy (mainly South Africa, but also Botswana). South Africa's immigration policy cannot be considered in isolation; it must take account of the region-wide factors impacting upon people's migration decisions. The DHA has possibly not had the full benefit of consideration of these regional factors.

Whilst the Immigration Bill of 2002 has been a definite step towards reformation of immigration legislation in South Africa, it is not without its problems. One major drawback of the formulation of the Immigration Bill, as with any parliamentary process on which there are widely different views held within the community, is that passage of the Bill through parliament was not a quick or easy process. The bills enactment was suspended in early 2003 because some of its regulations were challenged as unconstitutional, this alone demonstrating just some of the trouble the Bill encountered. Within the Bill, communities and businesses are made partially responsible for the presence of illegal immigrants in SA, with heavy penalties for offences such as employing an illegal foreigner or even for providing such a person with overnight accommodation. It has been suggested that this is encouraging further xenophobia within SA (Brand, 2000:1).

When discussing the mining industry, Lewis (1996:13) claims "Industry sources indicate that the industry's current needs could probably be met by local workers". If this is indeed the case, one is forced to question the continuation of the series of bilateral labour treaties which have given the mining industry privileged access to foreign workers, as well as the clause in the Immigration Bill which potentially entrenches the previously discriminatory system (Crush, 2000b:3-4). Of course, one should not advocate a sudden cessation of immigrant labour – many communities are dependent upon their involvement in the SA immigrant labour system. Instead of denying access to the SA labour market by citizens of countries such as Lesotho and Mozambique (Lewis, 1996:13), the system should be revamped and streamlined to make it equitable and non-discriminatory.

Most immigrants to South Africa are males; women who immigrate tend to be married and older. Female immigrants also tend to be better educated than male immigrants. The primary incentives for men to immigrate are economic, whilst women are influenced by a variety of social and reproductive reasons. Within the sphere of economic incentives, there are further differences. Men generally go to South Africa to work, usually in some kind of formal employment, whereas women tend to go to South Africa to trade (Dodson, 1998:1-2). Understandably, this has an impact on the final destinations of men and women in South Africa, with women moving towards the towns and cities whilst men go to places of employment, especially the mines.

## **10. EMIGRATION OF THE SKILLED: BRAIN DRAIN**

From Tables 1 and 2 it can be seen that since 1993 the net migration, but more importantly the net professional migration, has been recorded as negative. In addition to this, since 1990 the total migration figures have been consistently decreasing and since 1991 net professional migration has also been decreasing. This evidence supports the claim of a “brain drain” happening in South Africa that begun in the early 1990’s, with more skilled professionals exiting the country than entering it, and as the data shows, at an increasing level. The problem of the increasing deficit does not appear to be from only the immigration levels or only the emigration levels.

As can be seen from Table 2 not only have the immigration levels of professionals been decreasing from the 1990 onwards but the emigration levels have been increasing over this period as well leading to a deeper negative professional migration. In addition to this the level of professional immigration and emigration as a proportion of total emigration and immigration has been increasing. In 1990 12.7% of immigrants were classed as professionals compared to only 8.8% in 2002 almost a 25% drop. Similarly the proportion of professional emigrants as a percent of total emigrants has risen from 20.8% to 24.7% almost a 20% increase over the same period. Therefore any policy that aimed to counteract the South African brain drain occurrence would have to be aimed at both the immigration and emigration of skilled professionals. The direction of the trend over the previous 13 years can be seen clearly in figure 1.

On grounds that the distribution of existing skills is skewed towards the white population (Cohen, 1997:1-2), it has been predicted that until at least 2005, South Africa will continue to have a serious shortage of skilled personnel. It should be noted here that investigations of this kind are hampered by lack of data. Figures on skilled emigration released by Statistics South Africa are of assistance, although as the reports clearly state, they report only self-declared emigrants and therefore do not include people who leave South Africa permanently but declare a temporary absence only (Statistics South Africa, 2000:5). The data from Statistics South Africa (SSA) is clearly underestimated when compared to the data provided by the five countries (the Australia, Canada, New Zealand, the UK and the US) that receive the most SA emigrants. Data on emigration from the statistical sources of these countries can be obtained in Table 3<sup>3</sup>.

Several inferences may be made on the basis of available data. Skilled emigration appears to peak during periods of political instability: the Sharpeville massacre and the Soweto disturbances are two historical examples, and more recently this phenomenon can be seen around the 1994 election and in the current period. After each period of upheaval, emigration decreases as public order and confidence are restored. The 1990s were associated with higher rates of emigration, particularly in 1994 (the year of the general election which brought the Mandela government to power). The net migration figures show two time spans where net migration was negative. These periods of negative net migration both followed important political events in SA history. The negative net migration in the period of 1986 to 1987 can be linked to the government's move in 1983 to allow the Indians and the blacks to have limited participation in government. This shift away from Apartheid policies reduced the certainty about the stability of SA is a suggested reason for the subsequent dramatic change in migration. Immigrants fell sharply from over 30879 persons to under 6994, a fall of over 75%. Similarly the level of emigration raised from 8126 to 13711 a rise of almost 70%. The fall in migration and subsequent negative net migration for SA in the early 1990s may be linked to the 1990 removal of bans on liberation parties and the release of political prisoners such as Nelson Mandela, which signaled the end of Apartheid and

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<sup>3</sup>If the proportions of South Africans immigrating to these countries, obtained from data by SSA, is correct then approximately 73% of South African emigrants choose these countries as their destinations. This can then be used to estimate, with the recipient countries data, an approximation to the actual amount of emigrants leaving the country, which is almost 3.5 times the level of emigration that SSA recorded over this time period.

the decline in 1994 may be attributed to the Mandela government coming into power. Therefore these events can most likely explain in part the reasons for the decrease in net SA net migration.

When questioned about their motives for leaving South Africa, the major factors given by emigrants include uncertainty about their future as members of a minority group in the new democratic South Africa, the high crime rate and high taxes (Schuler, 1998:2). Another suggested cause for the increase in the professional migration deficit could be linked to the countries that the migration is connected with. It can be seen that although the majority of the professional category emigrants from South Africa go to developed nations like the United States of America, The United Kingdom and Australia, the immigrants are coming from different areas with different developmental and skilled professional characteristics. Almost two thirds of the immigrants into South Africa come from Africa and Asia, which consist of predominantly more developing nations, and as such do not have as large a professional skill base as the more developed countries (Table 3). Therefore immigrants from these countries are probably less likely to enter in the skilled category. A traditional example of this for South Africa would be African immigrants, a large portion of which immigrated to gain work in the mining sector.

Table 4 indicates that the levels of emigration from SA increased significantly after 1994 and remained at a considerably higher level in the statistics of the receiving countries, demonstrating that the outflow of South Africans after this period has been sustained and does not appear to be a one-off period. Table 5 shows the percentage of emigrants who were classified in the professional occupational category. A proportionate rise relative to total emigration can be seen after 1994. In addition, a slight rise can be noted in the number of professionals as a proportion of total emigrants, which is a negative trend for the South African skilled labour market.

Even though South African data underestimates the number of emigrants, many more economically active people are leaving South Africa than are arriving. Although it appears that the net loss, when it occurs, is not large, in most years as many as two thirds of migrants are declared not economically active (Cohen, 1997:2 and Simelane, 1999:10). The problem seems to be worsening: the proportion of professionals and semi-professionals within the total emigration has been increasing in recent years (Simelane, 1999:10).

A significant proportion of skilled emigrants are from the education sector. This is a cause for concern as replacement rates from the African communities and the other communities disadvantaged by apartheid are slow, especially in upper secondary and tertiary institutions (Cohen, 1997:2). Whilst much attention has been given to the number of engineers who are leaving, Cohen states that South Africa is currently experiencing an oversupply of engineers, and that many declared emigrants in this category are of retirement age. Given these factors, the large number of engineers who are emigrating does not seem to warrant particular concern, although it is part of a much wider and certainly very important problem (ibid:2-3). Other sectors experiencing a significant brain drain include accounting and medical and dental professionals, with over 25% of all doctors graduating in the period of 1990 to 1997 choosing to work overseas. Over the period of 1987 to 1994 the percentage of professionals leaving South Africa as a proportion of total emigrants was consistently around 20%.

The results of one survey suggest that as many as 74% of South Africans, many of them skilled professionals, have considered emigrating (Schuler, 1998:1). Sometimes referred to as the 'chicken run', this trend has serious implications for the South African economy. While it could be argued that emigration is a positive force in the short run - the departure of (white) professionals creates new opportunities for members of the historically disadvantaged groups - this viewpoint does not recognise the economic effects of high levels of emigration of skilled and experienced professionals. If not adequately replaced, high levels of emigration lead to lower productivity and hence lower economic growth in the short to medium term. Replacement rates can be expected to reach suitable levels only in the long run, given the poor level of human resource development in South Africa (Republic of South Africa, 1997:8).

Many of those who do not emigrate regard emigrants as unpatriotic or racist, running away from the prospect of continued black leadership of the country, and leaving the country when it needs their assistance to build the fledgling democracy and promote economic development. In 1998 Nelson Mandela said that "the real South Africans are saying: I am not going to run away from my country, I am going to stay and serve my country" (Schuler, 1998:2). However, as with most popular impressions surrounding migration issues in SA, this seems to be another myth. A

survey conducted by SAMP found that 68% of people identified as having “high emigration potential” also wished to help develop SA. Even so, those who stay continue to point out the irony that many of those who are now leaving were members of groups fighting the apartheid regime, but having achieved their aim of a democratic country, they wish to leave (Schuler, 1998:3).

Although SA’s brain drain is often perceived as a white phenomenon, a recent SAMP study found that skilled blacks are just as likely to emigrate from SA as skilled whites: 68% of blacks and 69% of whites had given emigration some thought (SAMP, 2000:5). However, it is important to recognise that “thinking about emigrating” and actually doing it are vastly different, given the many obstacles that need to be overcome before leaving one’s home country. When asked whether a permanent move is very likely, 22% of whites and 15% of blacks replied in the affirmative. A temporary absence, however, is more likely for skilled blacks 15%, than for whites, 10% (ibid, 2000:5).

The finding that similar proportions of blacks and whites indicated that they had a high probability of leaving within two years (ibid, 2000:5), clearly challenges the accepted notion that brain drain is a purely white phenomenon. The SAMP study found that there were no significant statistical differences between the proportions of blacks and whites that had applied for either work permits in another country, permanent residence abroad or foreign citizenship.

## **11. EMIGRATION POLICY**

Policies for dealing with South Africa’s brain drain can be classified into four categories:

- compulsory periods of service within South Africa, either as part of the training process or for new graduates;
- creating inducements of a financial or other nature to remain in South Africa;
- replacing emigrants through training members of the local population, at a rate comparable to that of emigration; and

- recruiting abroad for skilled potential immigrants to South Africa in key sectors, as temporary or permanent immigrants (Cohen, 1997:1).

The last category has been used in South Africa with Cuban doctors being employed in rural areas, though not without difficulties as qualifications need to be assessed for comparability with those awarded in South Africa. To enhance the appeal of SA for foreign professionals, industry bodies need to continue to develop criteria for assessing foreign qualifications (ibid, 1997:3). The expanded use of “immigration shopping” would require a significant shift in immigration policy, e.g. taking the initiative and use immigration as a tool to manage anticipated long-term labour market shortages (James, 1997b:2). Local skills development is extremely important, but will need to be aided, especially in the short to medium term, by specific imports of skills.

The number of skilled South Africans living abroad can be viewed as a tremendous potential resource for promoting South Africa’s economic development. The Pretoria office of the International Organisation for Migration ran a small initiative during 1992/3 to encourage South Africans living abroad to return home (ibid:2). An important step has been the founding of the South African Network of Skills Abroad (SANSA), which provides a potential means of utilising the skills of qualified South Africans for the benefit of their home country.

Through these initiatives, migration is recognised as not being a totally negative influence on the home economy. The highly skilled expatriate community is potentially a valuable asset for the home country. Networks such as SANSA allow expatriates to continue developing links in their new environment whilst also helping the economic and social development of their country of origin (SANSA, 2001:1). This does not detract from the need to train local people in the skills that SA needs, rather, it recognises that training programs will only have a significant impact in the longer term. By mobilising the expatriate community, SA can meet its immediate needs.

Many enterprises, when faced with major skills shortages in SA, recruit foreigners as a final option. Having asked human resource managers about their experiences with the DHA, Rogerson and Rogerson (2000) concluded:

Almost without exception, there were complaints about delays, lack of transparency and obstructionism. In the case of many private sector enterprises, new growth and job opportunities for the South African economy have been either postponed or, in many instances, lost forever through what employers perceive to be the Department's inability, unwillingness or failure to expedite the entry into the country of a relatively small number of highly skilled personnel (SAMP, 2000:8).

Several enterprises reported that one requires direct contacts at DHA before the Department is particularly helpful (ibid:55). Rogerson and Rogerson (2000) described DHA as a "major obstacle to South African enterprises urgently seeking to recruit high level skilled personnel" (SAMP, 2000:55). They cite delays of 2 to 3 months before action occurs in the Department and lengthy bureaucratic processes, both of which result in substantial costs for businesses (ibid). There also appears to be a considerable lack of transparency in procedures within DHA. Decisions are not accounted for, and the decision-making process is shrouded in secrecy. Moreover, it appears that the DHA is simply not in tune with the needs of business to employ highly qualified foreigners. It also seems to be unaware of the potential benefits to SA from introducing (even only temporarily) highly skilled people from other countries (ibid:57).

The lack of transparency contributes to the potential for corruption and other abuses within the DHA. In December 1999, an immigration officer working at Cape Town International Airport was arrested for allegedly issuing visas for money. In the same month, a new director general of the DHA was appointed, seven months after former DHA head was dismissed after being found guilty of using his position to grant citizenship to members of his basketball club (Mokwena, 2000:1). The DHA's regional director for Gauteng had also been suspended on similar allegations. Whilst in any bureaucracy there will be occasional problems with corruption and other abuses, the scale of the problem suggested by these incidents suggests that measures need to be undertaken to reform the department.

Migration policy in SA prior to the introduction of the new Immigration Bill did not facilitate efforts to improve transparency. It has almost simultaneously followed two extreme views, with attempts to regularise the status of immigrants but also moves to increase regulation and

enforcement. The lack of a clear policy direction after 1994 can be attributed to a number of factors. This demonstrated an obvious need to completely rewrite SA's immigration policy; to bring the new policy direction in line with the principles of democracy and transparency.

The policy reformulation process was been hampered by shortage of accurate information about the number of undocumented migrants in SA. Given the lack of appropriate statistics, it is very difficult to conduct fruitful policy debates on the real problem, as opposed to what people believe, is wrong. It is not surprising when the media stated that there were 4 to 6, or even as many as 8, million illegal immigrants in SA in 2000, there appeared to have been a significant rise in xenophobic attitudes among SA citizens. Brain drain from SA has not been accorded the same level of media attention, and appears to have been significantly underenumerated, possibly by as much as two thirds (Mokwena, 2000:3). Policy debate needs to be based on accurate information to have any hope of reaching practical conclusions (Crush, 1997b:1).

## **12. CONCLUSION**

In many (if not all) countries, migration policy has at one time or another been the centre of highly emotive debate. South Africa is certainly no exception, policy having been influenced by the country's apartheid history, which focused on deliberately alienating certain groups in society on the basis of race. Apartheid-era migration policy served as a centrepiece of the government's attempt to control the access of black people to the white townships of SA.

Today, in the post-apartheid era, South Africa faces the task of scrutinising and refining its reformulated approach to migration policy. The country needs to find some way of balancing national interest with its obligations to the region, a task not made any easier by South Africa's economic position relative to its neighbours and to the rest of the continent. South Africa is the richest country in Africa and shares a border with the world's poorest state, Mozambique. The ratio of GDP per capita between South Africa and Mozambique is around 37 to one. In addition, South Africa's population is only a third of the total population of the Southern African Development Community (SADC) members, but South Africa's GDP is more than three times that of all other SADC states combined (Adepoju, 2001:63 see also Kotzé and Hill, 1997:5-35).

South Africa needs to embrace the concept of the global village in its immigration policy, to recognise the potential for an approach that encourages highly skilled residents of other countries to immigrate. This task would have a better chance of success if South Africa was able to draw on a global pool of skills (Crush, 1997b:4). The Centre for Development and Enterprise (CDE) argued in May 2000, that the White Paper on International Migration (1999) contradicted the government's policy of promoting high rates of economic growth. A vocal group claims that immigration is bad for the country because it takes jobs away from South Africans. CDE has pointed out that allowing skilled immigration may promote employment growth among South Africans, as skilled foreigners establish new businesses and employ them. Also, restricting foreigners' access to the South African economy contributes to income inequality, as people with rare skills can demand an exorbitant return from their employers (Matisonn, 2000:1).

At a time when immigration regimes are to becoming increasingly regionalised, SA must decide on its level of obligation to the rest of the SADC, and how best to meet these obligations. It has been suggested that South Africa is morally required to give preference to the SADC countries in return for the abuses meted out by the apartheid government. However, it appears that the previous Immigration Bills did not address this issue, which is critical given recent discussions surrounding the SADC Draft Protocol for the Free Movement of Persons within Southern Africa (Crush, 1997b:1). Interestingly, those Immigration bills included an exemption clause which appeared to be intended for the mining industry, to continue the bilateral labour agreements (including compulsory deferred pay) and so entrench a highly discriminatory aspect of the apartheid era policy regime (ibid:3-4). The root cause of SA's high immigration rate appears to be economic disparity between SA and its neighbours (Adepoju, 2001:63). However, it should be noted that the system of intra-regional migration in southern Africa both reinforces and perpetuates the patterns of economic interdependence within the region (ibid, 2001:51).

It is easy to criticise SA previous migration policy on the grounds that it perpetuated the discriminatory practices of the apartheid era. However, one must remember that in this case, the political decision-making process appears to be reflecting popular views. These views and prejudices are created and moulded by the media, and so are extremely difficult to overcome.

Previous migration policy in SA had its origins in the highly discriminatory practices of the apartheid era. From 1994 to 2002, it varied between two extremes: moves to regularise the status of certain categories of immigrants, and a push for more stringent regulation and enforcement. At the same time, SA was, and still is, experiencing considerable brain drain, which may have severe consequences for the nation's future growth and development. Although the current immigration bill may have addressed a number of areas perceived to be problematic in previous legislations, it still has some components that are thought by groups, such as the South African Human Rights Commission, to require some work concerning of xenophobia and the treatment of illegal immigrants.

While migration policy is one of the tools available to the post-apartheid government to enhance its relationships with the region and the world, reform of these policies is a highly complex issue that can be easily influenced by the weight of xenophobic tendencies. There are no easy answers to the question how to balance domestic and regional concerns. The South African government faces many challenges as it considers the effects of its new Immigration Bill, especially putting into place debated policy, which accurately reflects the country's real needs, while taking into account the special interrelationships that characterise the region.

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TABLE 1: NET MIGRATION IN SOUTH AFRICA: 1983-2002

Year	Immigration	Emigration	Net Migration
1983	30879	8126	22753
1984	28461	9562	18899
1985	17437	11020	6417
1986	6994	13711	-6717
1987	8009	10823	-2814
1988	10340	7585	2755
1989	11110	4734	6376
1990	14661	4694	9967
1991	12245	4153	8092
1992	9262	4181	5081
1993	9996	8152	1844
1994	6398	10235	-3837
1995	5064	8725	-3661
1996	5351	10347	-4996
1997	4188	8943	-4755
1998	4371	8276	-3905
1999	3669	8487	-4818
2000	3028	10280	-7252
2001	4836	12114	-7278
2002	6545	10890	-4345

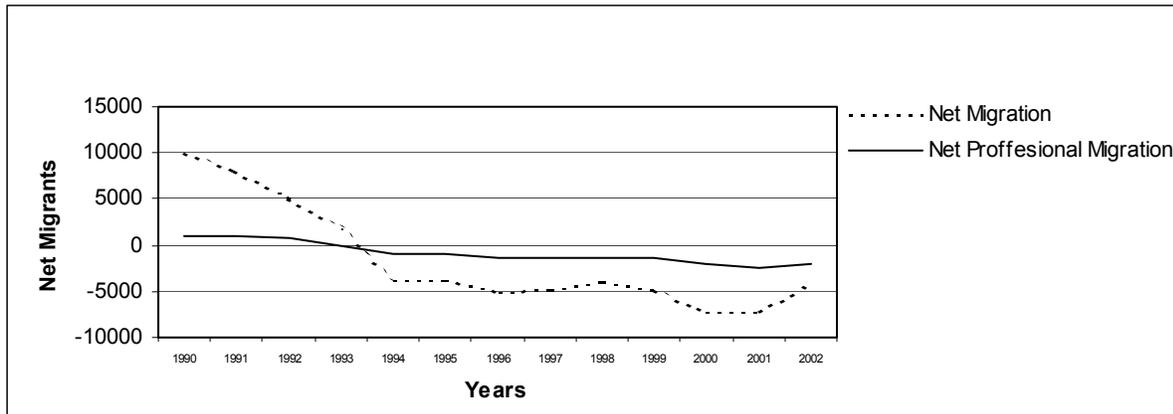
Source: Statistics South Africa (2003).

TABLE 2: NET PROFESSIONAL MIGRATION IN SOUTH AFRICA: 1990-2002

Professional Immigration	Immigrants Professional %	Professional Emigration	Emigrants Professional %	Net Migration - Professional
1863	12.7	975	20.8	888
1823	14.9	804	19.4	1019
1608	17.4	898	21.5	710
1496	15.0	Na	Na	Na
1103	17.2	1960	19.2	-857
798	15.8	1680	19.3	-882
851	15.9	2151	20.8	-1300
564	13.5	1957	21.9	-1393
449	10.3	1796	21.7	-1347
378	10.3	1855	21.9	-1477
334	11.0	2421	23.5	-2087
519	10.7	2896	23.9	-2377
576	8.8	2689	24.7	-2113

Source: Statistics South Africa (2003).

FIGURE 1: NET MIGRATION AND PROFESSIONAL MIGRATION TRENDS: 1990-2002



Sources: Derived from Tables 1 and 2

TABLE 3: SOURCES AND DESTINATIONS OF SOUTH AFRICAN MIGRANTS: 1999

Sources of Immigrants	%	Destination of Emigrants	%
Africa	40.8	Africa	13.3
Americas	3.6	Americas	14.2
Asia and the Middle East	20.1	Asia and the Middle East	4.5
Australasia/Oceania	1.8	Australasia/Oceania:	30.5
Europe	33.0	Europe:	36.1
Unspecified	0.7	Unspecified	1.4
Total	100.0	Total	100.0

Source: South African Network of Skills Abroad (2003)

TABLE 4: SOUTH AFRICAN EMIGRATION TO FIVE MAJOR RECIPIENT COUNTRIES: 1989-2001

Year	NZ	AUS	UK	CAN	USA	Total
1989	209 (1)	2424 (13)	11700 (66)	1558 (9)	1899 (11)	17790 (100)
1990	202 (2)	2084 (18)	6400 (54)	1083 (9)	1990 (17)	11759 (100)
1991	223 (2)	1274 (10)	8000 (65)	1014 (8)	1854 (15)	12365 (100)
1992	422 (4)	1021 (9)	6900 (57)	1141 (9)	2516 (21)	12000 (100)
1993	2054 (12)	1654 (10)	9400 (55)	1822 (11)	2197 (12)	17127 (100)
1994	2638 (14)	2792 (15)	8100 (44)	2910 (16)	2144 (11)	18584 (100)
1995	2046 (15)	3190 (23)	4200 (30)	1753 (13)	2560 (19)	13749 (100)
1996	2648 (12)	3211 (15)	11400 (52)	1526 (7)	2966 (14)	21751 (100)
1997	2689 (12)	4281 (19)	10988 (49)	1898 (8)	2563 (12)	22419 (100)
1998	2363 (8)	4770 (15)	20000 (65)	1157* (4)	2629 (8)	30919 (100)
1999	2179 (5)	6200 (15)	29000 (72)	1157* (3)	1710 (5)	40246 (100)
2000	2080 (6)	5320 (16)	23000 (68)	1157* (3)	2465 (7)	34022 (100)
2001	2358 (7)	5510 (16)	22000 (65)	1157* (3)	3026 (9)	34051 (100)

Sources: African Insight, (2000); National Statistics Online, United Kingdom, (2003); Statistics South Africa, (2003); United States Department of Homeland Security, (2003); Statistics Canada, (2003); Statistics New Zealand, (2003); Department of Immigration, Multicultural and Indigenous Affairs, Australia, (2003).

Notes: (a) Country estimates come from country of migrants' final destination; (b) figures in parentheses indicate of percentages of total emigration.

\* Estimated from 1996 and 2001 Census Canada (1998-2001).

TABLE 5: EMIGRATION OF PROFESSIONALS FROM SOUTH AFRICA AND % SHARE: 1989-2001

Year	NZ	AUS	UK	CAN	USA	Total
1989	60 (1)	558 (14)	2574 (67)	327 (8)	399 (10)	3918 (100)
1990	59 (2)	479 (19)	1408 (54)	227 (9)	418 (16)	2591 (100)
1991	63 (2)	295 (11)	1760 (65)	213 (8)	389 (14)	2720 (100)
1992	104 (4)	213 (8)	1518 (58)	243 (9)	528 (21)	2606 (100)
1993	551 (14)	353 (9)	2068 (54)	407 (10)	461 (13)	3840 (100)
1994	656 (16)	610 (15)	1782 (43)	677 (16)	450 (10)	4175 (100)
1995	462 (15)	765 (25)	924 (30)	421 (13)	538 (16)	3110 (100)
1996	628 (13)	696 (15)	2508 (53)	315 (7)	618 (12)	4765 (100)
1997	631 (11)	1122 (24)	2417 (47)	421 (8)	538 (10)	5129 (100)
1998	560 <sup>°</sup> (8)	1130 <sup>°</sup> (15)	4736 <sup>°</sup> (65)	274 <sup>°</sup> (4)	623 <sup>°</sup> (8)	7323 (100)
1999	475 <sup>°</sup> (5)	1351 <sup>°</sup> (15)	6319 <sup>°</sup> (73)	252 <sup>°</sup> (3)	373 <sup>°</sup> (4)	8770 (100)
2000	490 <sup>°</sup> (6)	1253 <sup>°</sup> (16)	5417 <sup>°</sup> (68)	272 <sup>°</sup> (3)	581 <sup>°</sup> (7)	8013 (100)
2001	563 <sup>°</sup> (7)	1316 <sup>°</sup> (16)	5256 <sup>°</sup> (65)	276 <sup>°</sup> (3)	723 <sup>°</sup> (9)	8134 (100)

Sources: African Insight, (2000); National Statistics Online, United Kingdom, (2003); Statistics South Africa, (2003); United States Department of Homeland Security, (2003); Statistics Canada, (2003); Statistics New Zealand, (2003); Department of Immigration, Multicultural and Indigenous Affairs, Australia, (2003).

Note: Country estimates come from country of migrants' final destination.

<sup>°</sup> Estimates from South African Statistics Sources and country data 1997-2001.

## APPENDIX:

Canadian Data from 1998 to 2001 in Table 3 was collected through the use of the Canadian 2001 census, which gave a five-year total, from which was subtracted the 1997 data, which was already attained, then averaged across the time span.

Estimates for the professionals' emigration used data in Table 3 for the five countries from 1997 to 2001. These figures multiplied by a scalar equal to the percentage amount of professionals emigrating that year according to the Statistics South Africa. These results gave an estimation of professionals entering the respective countries from South Africa for these years.

The "professionals" category of migrant includes semi-professional and technical operations but does not include management or executive operations.