

REPUBLIC  
OF  
SOUTH AFRICA



REPUBLIEK  
VAN  
SUID-AFRIKA

# Government Gazette Staatskoerant

Vol. 383

PRETORIA, 30 MEI<sup>1997</sup>

No. 18033

## GENERAL NOTICE

### NOTICE 849 OF 1997

The **DRAFT GREEN PAPER ON INTERNATIONAL MIGRATION** is hereby published by the **Department** of Home Affairs for general information and comment from interested parties. Comment must reach the Department before 30 *June 1997* at the following address:

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Date: 30 May 1997

# ***GREEN PAPER***

## *INTERNATIONAL MIGRATION*

Presented **to the Minister of Home Affairs**  
**The Honorable M. Buthelezi**

13 May 1997

Submitted by:

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## *Acknowledgements*

**The Green Paper Task Team on International Migration** would like to acknowledge the contribution of:

**Professor Jonathan Crush** of Queen's University, Canada, and the Southern African Migration Project (SAMP) for his co-ordination of the research and the preparation of draft text;

**Professor James Hathaway** of the Centre for Refugee Studies, University of Toronto, Canada, as consultant on refugee issues;

**Mr Claude Schraevesande**, Director of the Department of Home Affairs, for his counsel;

**Mr Johan Kriel**, Department of Home Affairs, for secretariat support and assistance;

**Mr Mathys Scheepers**, Department of Home Affairs, for secretariat support and assistance;

**Ms Faranaaz Veriava**, Institute for Democracy in South Africa (Idasa), for logistical support and arranging programmed and public hearings;

**Ms Janet Levy**, Idasa Media, and **Advocate Anton Katz** of the High Court, who read and remarked on the final version of the text; and

**The Government of Canada**, through the **Canadian International Development Agency (C/DA)**, who funded the research in support of the Green Paper.

## Executive Summary

There are three streams of people crossing our borders. The first are *immigrants*, individuals who would like to settle here permanently. We recommend the introduction of a labour-market based point system by which South Africa can pro-actively recruit immigrants with the skills, expertise and resources to make a contribution to the development of our country. The point-system will replace the current apparatus, including the *Immigrants Selection Board*.

The second stream are *refugees*, people who flee persecution in their own country and seek asylum here. Presently, South Africa is not a recipient of large numbers of refugees. We recommend a system of refugee protection that is simple, practical and manageable. We also believe that the burden of refugee protection in South Africa should be shared with other SADC member-states and should not therefore be our responsibility alone.

The third and most controversial stream of people are *migrants*, many of whom are not authorised to be here. We believe that the problem of unauthorised migration should in part be dealt with by giving *bona fide* economic migrants from other SADC countries, who have no intention of settling here permanently, increased opportunities for legal participation in our labour market.

The other side to the solution is to introduce more effective but rights-based enforcement of new immigration policy. Based on the Constitution and Bill of Rights, we believe that Government action should be restrained in favour of the rights of unauthorised migrants. This includes due process, administrative review and the right to information. Enforcement should be made effective within this framework, requiring a transformed *Department of Home Affairs*.

We recommend that the management of a point-based immigration system, the development of a plan for temporary SADC migrant access to South Africa's labour market and for rights-based enforcement should reside within the *Department of Home Affairs*. We further believe that the *Department* should undertake a transformation process, such that it has the proper staffing levels, expertise and professionalism to deliver citizenship, migration, refugee and immigration services to the public.

It should be pointed out that until there is greater economic parity in the SADC region, we believe that it is premature to agree to any proposal to open up our borders i.e. to have a free movement of persons. We do believe that migration and immigration can be managed and regulated properly but flexibly, in the interests firstly of South Africa, but also in the interests of our partner states in the SADC region.

# *chapter One*

## **General Principles**

### **1.1 introduction**

- 1.1.1 A planned system of immigration is in South Africa's national interest. Unauthorised migration, on the other hand, is not desirable. Planned immigration offers opportunities for the country's economic growth and development. Immigration can, in short, be viewed as being in the national interest and a potential aid rather than an impediment to nation-building. To realise the benefits of immigration, however, we need a broader vision of the role of population movement in economic growth. And to implement such a vision requires a plan that is simple, achievable and manageable.
- 1.1.2 The challenge is to develop an immigration policy that furthers four basic objectives of the South African government: (a) to enhance the country's integration into, and competitiveness within the global economy; (b) to further the process of regional integration and development within the *Southern Africa Development Community* (SADC); (c) to generate macro-economic growth and employment opportunities in the formal and informal sectors, as outlined in the Growth, *Employment and Redistribution* (GEAR) framework; and (d) to provide improved living standards for our people.
- 1.1.3 As a sovereign state, South Africa reserves the right to determine who will be allowed entry to the country and under what conditions. The design and implementation of immigration policy must, however, be faithful to the new *Constitution* and *Bill of Rights*. It must also be consistent with our commitment to upholding universal human rights, administrative justice and certain basic rights for all the people who are affected by the South African state.

### **1.2 Growth Orientation**

- 1.2.1 Because of our past, South Africans tend to take a negative view of immigration, regarding immigrants as posing unwarranted competition and potential security risks. Policy is therefore focused primarily on control and expulsion rather than facilitation and management. In this Green Paper, we argue that immigration policy needs to be refocused as an issue of growth and development.
- 1.2.2 South Africa needs a migration policy that will allow it to compete more effectively in global markets. Most developed and some developing countries promote proactive policies designed to attract skills, to facilitate the access of private companies to the global skills market and to enhance the accessibility of the country to entrepreneurs and investors.

- 1.2.3 Current immigration policy is motivated by the uncontroversial idea that South Africans should enjoy preference in the labour market. The problem in practice is that information about the labour market in South Africa is so poor that there is scant objective basis for determining the availability or otherwise of South Africans to do a particular job or to ascertain the extent of the shortage in particular occupational categories.
- 1.2.4 We believe that there is a serious shortage of skills at the higher end of the labour market in many occupational categories and that this situation will worsen if South Africa enters upon a projected period of sustained economic growth and infrastructure delivery. These shortages are exacerbated by an under-enumerated brain-drain from South Africa to other industrial states. Internal training capacity is too limited to make up the shortfall in the short to medium term.
- 1.2.5 Business and entrepreneurial immigration is of growing significance in the immigration plans of many countries. South African policy does allow for the immigration of people who are prepared to bring substantial amounts of capital to the country. In practice, this provision is little used, which in turn raises serious questions about its attractiveness as a device for luring substantial investment to the country.
- 1.2.6 Current policy assumes that every job occupied by a non-South African means one job less for a South African; in other words, that the labour market is zero-sum. At all levels of the labour market, from the least to the most highly skilled, foreigners are being denied temporary work permits or are meeting with obstructions on the basis of the unproven assumption that in every case their mere presence would disadvantage South Africans. Labour market needs are dynamic, not static. Managed immigration and migration can be used to stimulate economic growth and create jobs for South Africans.
- 1.3 **Rights Orientation**
- 1.3.1 In the development of new policy, due regard must be given to current constitutional obligations and commitments. This means that all existing and new legislation and regulations should be scrutinised for the possibility of constitutional infringement, or infringement of international obligations. To the extent that there is infringement, such policy or legislation should be changed so as to ensure constitutional compliance and compliance with international obligations. The same test of constitutionality should be applied to any new immigration and refugee legislation.
- 1.3.2 Policy on refugee protection should be informed by South Africa's commitment to human rights and our international obligations as demanded in the *United Nations* (UN) and *Organisation of African Unity (OAU)* Conventions relating to refugees. The objective of the refugee protection system would be the provision of rights-regarding and solution-oriented temporary protection to persons whose basic rights are at risk in their country of origin. Such protection should apply until it is safe for them to return home.
- 1.3.3 The development of a migration regime also relates to whether or not the rights in the *Bill of Rights* apply to citizens and non-citizens. Most of the rights in the *Bill of Rights* with the exception of political rights and the right relating to freedom of trade, occu-



pation and profession (S22) are guaranteed to "everyone". Immigration and migration policy should affirm that with the exception of those *rights*, the *Bill of Rights* does apply to all persons who are affected by South African government action, including non-citizens, with the important proviso, in the case of socio-economic rights, "to the extent that this is realizable".

- 1.3.4 South Africa's international obligations in respect of the treatment of non-citizens generally, and refugee determinations specifically, require proper administrative action. Applications by all persons seeking to enter and/or remain in South Africa need to be dealt with in a just and fair manner without sacrificing administrative convenience or security. Sections 32 and 33 of the Constitution relating to access to information and just administrative action give effect to these requirements.
- 1.3.5 The immigration field currently lends itself to much administrative discretion being given to the executive and bureaucracy. For administrative decisions to be fair and reasonable, checks and balances in the form of appeal and review procedures as well as access to information must be available. This will ensure wise exercise of discretionary power, entrenching thereby a system of transparency and accountability in governance.
- 1.3.6 Every person affected in any way by citizenship and immigration decisions must be given as much due process as is possible under the circumstances. The amount of process due should depend, on the individual's interest in procedural outcomes. For example, where punitive consequences may result, the cost for the individual concerned will be high. Further, persons detained under immigration laws must be granted the same rights given to persons detained under criminal laws.

## 1.4 Regional Orientation

- 1.4.1 International economic prospects for countries are increasingly tied to their ability to function within regional groupings of states. Many of these emerging regional blocs are also developing new migration regimes with preferential treatment and mobility rights for citizens of member states. The *European Union* represents the most advanced model of such arrangements. The 12-member SADC is at a far less advanced stage of integration and needs to develop its own policies of economic cooperation, integration and population movement.
- 1.4.2 South Africa is a closely integrated member of a functioning region. The neighboring states are linked to South Africa by long-standing economic ties. One of the most important linkages of mutual benefit historically has been the existence of *labour* flows to and from South Africa. Immigration policy should be sensitised to the history of the region and South Africa's long-standing economic ties to the SADC states.
- 1.4.3 We support the idea that South Africa should work in the longer term towards the freer movement of people within the region. However, complete free movement is neither politically nor economically viable for South Africa so long as gross regional economic disparities persist. Nevertheless, as an indicator of the direction in which South Africa wishes to move, policy should differentiate between SADC-country citizens and those from elsewhere.

- 1.4.4 A large and growing regional trade imbalance in **favour** of South Africa has developed since 1990, While this may be to South Africa's short-term advantage, it has a negative impact on the economies of surrounding states. Over the longer term an unequal relationship and tilted trade balance will undermine neighboring economies, leading in turn to an increased movement of job-seekers to South Africa. South Africa must therefore strive to create a more equitable trade balance.
- 1.4.5 South Africans have a vested interest in ensuring that the economies of the other SADC states become vibrant and strong, not least because development in these countries result in local job creation and thereby dampen the pressures for migration to South Africa. South Africa, as the regionally dominant power, can and should actively assist in the economic development and reconstruction of the region through investment, trade policy, infrastructure and joint *Spatial Development Initiative (SDI)* programmed.
- 1.4.6 Migrants with access to the South African **labour** market are known to remit considerable amounts home to invest in local economies. These flows can help to stabilise those economies and dampen the pressure for outward migration. However, legal access to the South African **labour** market is currently limited to young male migrants in the mining industry and commercial farms, while women and SADC citizens with other skills useful to South Africa tend to be excluded.
- 1.4.7 Unregulated access to South Africa's **labour** market could lead to unacceptable competition for jobs. We recommend that SADC-country citizens should be afforded more opportunities for legal participation in the South African economy. The policy should be subject to various provisos: (a) that access to non-South African **labour** should not be confined to the mines and the farms, as at present; (b) that the mechanisms for access should be consistent across sectors, regulated by statute and consistent with the relevant UN and *International Labour Organisation (ILO)* conventions and agreements; (c) that any semi-skilled and unskilled migrant workers allowed entry should be from SADC countries only; (d) that the issue of temporary work permits to SADC citizens be governed by flexible annual quotas; (e) that the onus be placed on domestic employers to demonstrate their need to employ SADC citizens; (f) that such workers should be entitled to all the employment rights and protection of local workers; and (g) temporary legal access to the South African **labour** market should not be seen as a first step towards permanent residence.

## 1.5 **Management Orientation**

- 1.5.1 We believe that it is desirable and possible to manage immigration in a manner and with an ethos that are consistent with the achievement of government's growth and development policies, and with the requirements of the Constitution, the Bill of Rights, and international obligations. By management we mean the implementation of a rational plan that facilitates desirable immigration and discourages undesirable immigration.
- 1.5.2 We recommend the design and implementation of a strategic immigration plan for South Africa based on **labour** market needs, regional responsibility and international obligations. The plan should be based on: (a) an assesment of South Africa's current and projected **labour** market needs; (b) annual immigration and migration targets and

- quotas; (c) a revised system of immigrant selection and control; and (d) enhanced but controlled temporary access of SADC workers and highly skilled international migrants.
- 1.5.3 A distinction should be drawn between the institution responsible for designing the immigration plan, the institution responsible for executing it and the institution responsible for reviewing immigration decisions. Because immigration covers so many areas of state departmental responsibility that require co-ordination, we believe that responsibility for *designing the plan* should rest with a body, co-ordinated by the *Department of Home Affairs*, having appropriate levels of decision-making authority, and with representation from relevant departments of state.
- 1.5.4 The institution responsible for executing the plan is the *Department of Home Affairs*. We urge the *Department* to undertake a transformation process, such that its core function becomes one of being the agency which executes the immigration plan, by providing basic immigration services to citizens and non-citizens. The *Department* should initiate a review of how to provide these services in the most cost-effective, efficient and service-friendly manner, by examining appropriate levels of human resources and operational inputs. Resources should be specifically devoted to the training of a professional cadre of immigration officers. As part of the process of transformation, we believe that in the interests of both service-efficiency and symbolism, the *Department* should be relieved of responsibilities that fall outside of citizenship and immigration and that it changes its name to the *Department of Citizenship and Immigration Services (DCIS)*.
- 1.5.5 We believe that an independent body, an *Immigration Review Board*, should review departmental performance against the immigration plan, and review administrative action undertaken by the *DCIS* to remove undocumented and illegally present immigrants and migrants from the Republic.<sup>1</sup> The *Board* can also serve as an immediate source of appeal against unfair or arbitrary administrative action regarding immigration and removal decisions. The *Board* should provide an annual report to the legislative arm of government, that is, parliament. The composition, qualifications, and appointment of members of the *Board* should be spelt out in legislation.
- 1.5.6 We believe that the responsibility for immigration and naturalisation enforcement should reside with a professionally trained cadre of immigration officers and not with the police. We recommend the discontinuation of the current system whereby the police devote special attention to seeking out people who technically are in breach of our immigration law but who are not criminals in the ordinary sense of the word. Of course, immigration officers will co-operate with the *South African Police Service (SAPS)* and the defence forces when circumstances demand.
- 1.5.7 We include refugees in our brief because they constitute a category of people who cross our borders. We recommend a model for refugee protection in *Chapter Four* of

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<sup>1</sup> The distinction between an unauthorised migrant and an unauthorised immigrant is an important one. An unauthorised migrant is someone who enters the country without proper documentation but who has no intention to remain here permanently. An unauthorised immigrant is someone who intends to settle here permanently but does not have the permission to do so, even though he or she might have initially entered the country with proper documentation. There are, therefore, different types of illegality, and it is important in policy terms to recognise these. See Glossary of Terms.

this Green Paper. However, because refugee protection is a human rights rather than an immigration issue, we recommend the issuing of a separate White Paper based on Chapter *Four*. Thus, two White Papers, one dealing with immigration, naturalisation and migration, another with refugees, should emerge from the findings of this Green Paper. Naturally, both White Papers should be enacted in law in the form of an *Immigration, Naturalisation and Migration Act* and a *Refugee Protection Act*.

## *chapter Two*

### **Immigration/Migration Policy**

#### **2.1 Introduction**

- 2.1.1 The challenge for South Africa is to transform a racially-motivated immigration/migration system into a non-racial and rational policy response to the objective needs of our country. Such a response must be rights-regarding, consistent with the Constitution, and sensitive to the regional and global context in which we seek to promote economic growth and domestic development,
- 2.1.2 To put it more practically, instead of letting whites in and keeping blacks out as candidates for naturalisation, as was apartheid's want, we should admit individuals who have desirable skills, expertise, resources and entrepreneurial will, if they add value, and if our own people cannot now or in the future fill the need in whichever areas or niches of life economic development will undoubtedly create. We argue, therefore, in favour of more open and effectively managed rules of entry driven by labour-market need.
- 2.1.3 It is thus not only the goals and objectives of immigration that must change, but also the management of the system. Instead of administrative discretion vested in the Ministry and the *Immigration Board*, we argue instead for a South African-specific point system, where the quality of potential immigrants is enumerated at missions abroad against a system of preferences, particularly economic and occupational ones, developed at home. This requires in turn a well-developed labour market information system and improved mission capacity.
- 2.1.4 A well-developed point system should make explanation for negative outcomes unnecessary, as the reasons for decisions would be self-evident. If an explanation is nevertheless required, it would be a relatively straightforward matter to provide one. A simple system of review should also be considered. The overall effectiveness of the system, where immigration performance is measured against immigration goals, should be reviewed annually by parliament.
- 2.1.5 We make this argument in a regional context where South Africa is the dominant economic power, where we are a partner in a regional grouping of states in the form of the SADC, and where we have benefitted historically from the labour of peoples whom we today consider foreigners from Africa. We argue that it is not only our responsibility to do what we can to respond to want from our partner states in the SADC, but it is also in our national self-interest to do so.

## 2.2 Some Points of History

- 2.2.1 The history of immigration and migration patterns to South Africa has been well documented. Some features of this history have a direct bearing on future policy and are thus worth summarizing here. First, particularly during the apartheid era, South Africa sourced its immigrants from those populations of European descent that were regarded as assimilable by the white population. People from other parts of Africa, who were black, were treated as migrants with no opportunity of legal permanent settlement. Generally speaking, then, whites who fitted a certain profile were welcomed as people who could be naturalised, blacks were not.
- 2.2.2 Second, non-South African black African participation in our economy, which goes back to the 19th century, was largely restricted to the mines and farms, and regulated by inter-governmental agreements. Those involved were workers largely from Lesotho, Mozambique, Malawi and Zimbabwe; they typically were young men who were not allowed to bring their families with them; and despite the length of service they cumulatively laboured, they could never become naturalised citizens. Of course, many Africans moved into South Africa outside this system and were absorbed into our local population.
- 2.2.3 Third, South Africa provided no legal access for refugees from Africa. During the late 1970s and 1980s, when Zimbabwe and then Mozambique and Angola became independent, South Africa deliberately destabilised and abetted war in the region, contributing thereby to refugee populations for which it made no legal provision. Refugees nevertheless came, and ad hoc provision was made for them, particularly in the former homelands of the Eastern Transvaal, by the issuance of exemptions under the prevailing immigration regime.
- 2.2.4 Fourth, the National Party (NP) government and administration removed the racial provisions of immigration law in 1986, and a consolidated law, the *Aliens Control Act*, was enacted in 1991. The legislation retained a high level of ministerial discretion, a lack of accountability for administrative decisions taken, and little due process provisions for those who failed to satisfy administrative officials of their legal status. The first democratic parliament enacted the *Aliens Control Amendment Act* of 1995, which purged the law of some of its more unacceptable features, but many clauses of the Act (and the way in which they are implemented) would probably not withstand a test of constitutionality.

## 2.3 Modernizing Entry 1: General Immigration

- 2.3.1 The unprecedented mobility of capital, technology and skilled people in the 1990s pose both opportunities and challenges for nation-states, not least in the area of immigration. Capital and skills are increasingly mobile and any state wishing to seriously compete on global markets can no longer rely on isolationist immigration policies. Instead, a dynamic industrial economy needs to compete on the global market for skills as it does for investment and technology.
- 2.3.2 South Africa's immigration levels are far below those of other countries using immigration as a tool of economic growth and development. At a global scale, there are potential immigrants in many countries who would be a positive economic asset for

South Africa. A number of countries have recently developed proactive policies to attract highly skilled immigrants, including many South Africans. Not only are immigration rates to South Africa, comparatively speaking, lower; they are also falling.

- 2.3.3. Our declining immigration rate would be less of a concern were it not for the simultaneously high emigration rate. The country has experienced a serious drain of locally-trained skills and experience for several decades. Recently, though under-enumerated, official statistics show that emigration is highest in education (34% of recorded emigrants), engineering (297.), accountancy (247.), and medical and dental professions (137.). We view with great concern the current drain of locally-trained skills and the aggressive recruiting of South Africans by other industrial countries,
- 2.3.4. It could be argued, legitimately in our view, that such emigration rates might be welcomed as opening up new opportunities for disadvantaged South Africans. This view is too short-term and could result in a decline in economic productivity and the delivery and quality of services. High-level skills training of people from historically disadvantaged population groups is essential but replacement rates will understandably be slow in key areas.
- 2.3.5. The economic loss to the country is potentially significant if this brain-drain continues unchecked. To forbid people from emigrating would be politically and constitutionally impossible. Several responses are open to government: (a) required periods of public service for trainees or the recently-qualified; (b) offering financial and other inducements to stay; (c) replacing emigrants through local capacity-building at a rate as fast or faster than their departure (brain-train); or (d) replacing departing skills with temporary and permanent immigrants (brain-gain).
- 2.3.6. Many countries also use immigration policy as a mechanism for attracting independent migrants in entrepreneurial and business categories. Such immigrants are said to have a positive impact on economic growth through their innovativeness, entrepreneurial skills and capital. They can also be encouraged to invest in local job creation as a condition of immigration. Business immigrants also bring new economic linkages and contacts via their countries of origin. Current South African legislation does allow for business immigration, but the conditions were tightened in 1996 and the programme has been little used.
- 2.3.7. In a global economy, it must be recognised that old-style immigration is increasingly complemented by the temporary movement of highly-skilled personnel. Some (particularly professionals) are freelance but most work for international concerns completing contracts, initiating projects or developing branch plants in other countries. The numbers of such "skilled transients" are growing rapidly and local and foreign concerns in South Africa are increasingly wishing to avail themselves of their services (as indeed are South African transients in demand overseas).
- 2.3.8. Project-tied skills importation is increasingly important internationally. Private companies in South Africa may wish to bring in temporary skills from elsewhere on a group or individual basis to fill particular shortages and needs or to train South Africans. The Department of Health's programmed are one example in this regard. South Africa has no uniform or standardized policy or mechanisms for short-term project-tied import of groups of workers with particular skills.

- 2.3.9: Current business immigration policy excludes immigrants in the *Small, Medium and Micro-Enterprise (SMME)* and informal sectors. The high threshold investment of R1,5 million. excludes a whole category of small business people with dynamic entrepreneurial skills and international contracts. Most non-South African SMME entrepreneurs have come into the country on temporary permits or as refugees. Their insecurity of tenure inhibits operation of a successful business. Research suggests that foreign-owned SMMES are making an increasingly important contribution to the economy. A 1996 *Southern African Migration Project (SAMP)* survey of Gauteng showed that foreign-owned SMMES create an average of 4,1 jobs in a number of different sectors.
- 2.3.10 In our view, aggressive local skills training (brain-train) and brain-gain strategies must be pursued in tandem in the short to medium term. Brain-gain strategies involve individual and group recruiting in key sectors; and promoting links with skilled nationals and former nationals abroad to encourage permanent or temporary return. The talents of distinguished and highly skilled South Africans world-wide could be harnessed to the development needs of their home country, with which many first-generation emigrants retain strong personal and professional ties. Institutional mechanisms including joint posts, periodic return visits and short-term training assignments should be encouraged. We also note with approval the return of many highly skilled South Africans from abroad in the last five years. Such re-immigration and re-integration should be actively promoted and encouraged.

## 2.4 Modernizing Entry II: The Southern African Development Community

- 2.4.1 As long as economic growth is polarised in Southern Africa and there is limited job creation elsewhere in the region, we can expect abnormal movements of economic migrants to continue. The trade imbalance between South Africa and the region is a major cause for concern since it creates jobs here and destroys them elsewhere. The result is increased movement of people to find work here. South Africa can and should actively assist in the economic development of the region. Ultimately this is the only way to stabilise the movement of people to our country in search of economic opportunity no longer available at home.
- 2.4.2 The SADC Council of Ministers recently considered the *Draft Protocol on the Free Movement of Persons* prepared by the SADC Secretariat. The *Protocol* is based on the EU model and proposes that member states move towards the free movement of all citizens in a series of inflexible stages. Because of the enormous economic disparities between member states, the threat to national sovereignty and the uncertain consequences of the *Protocol*, a number of states including South Africa do not support it in its current form. Instead, the South African government proposes a separate streamlined channel of entry for SADC citizens at border and airport points. We endorse this approach.
- 2.4.3 Furthermore, we recommend that SADC citizens should have freer access to South Africa, but in very specific and well-regulated areas. While new immigration policies would apply to the SADC also (i.e. the point-system and proactive skills immigration), we are wary of actively raiding the skills of Africa which are valued, necessary for domestic *development and already depleted*. Instead, we argue that the primary means



of access to South Africa of SADC citizens should be temporary, where there is clear mutual benefit, and does not violate South African **labour** laws and employment standards. There are four areas to which this should apply: **labour** quotas, trading, students and cross-border family visits.

#### 2.4.4 Flexible Labour Quotas

- 2.4.4.1 The mines (gold and coal) of South Africa enjoy a long-standing and privileged access to unskilled and semi-skilled **labour** from the rest of the SADC region. The number of people working on the mines is currently around 200000 (or 50% of the mine **work-force**). The majority of miners are from Lesotho, Mozambique, Swaziland and Botswana. The gold mining industry continues to employ SADC workers in large numbers and there is no sign that it intends or wishes this situation to change.
- 2.4.4.2 Historical inter-governmental **labour** agreements (bilateral) govern the mines' access to non-South African **labour**. These agreements ensure that migrants come without dependents, that they never acquire residence rights, that they return home each year to renew their contracts and that a significant proportion of their pay is compulsorily deferred. Since 1987, sub-contracting has grown significantly in the mining industry, workers tend to be from Mozambique and Lesotho, non-unionised and not governed by normal industry wage agreements.
- 2.4.4.3 Workers from Mozambique and Lesotho are subject to the Compulsory *Deferred Pay* (CDP) system, whereby a portion of their wages are deferred home (a forced system of savings). Opposed by the *National Union of Mineworkers (NUM)* as well as employers, and disliked by most miners, the CDP provides the governments of Lesotho and Mozambique with direct fiscal benefit. The industry, through *The Employment Bureau of Africa (TEBA)*, also has efficient systems for voluntary deferral of wages. These are extensively used by workers who remit more funds voluntary than are transferred by the CDP system.
- 2.4.4.4 The continued employment of foreign workers on the mines (and to a lesser degree farms), and the movement of wages back to their countries, provides for a measure of economic stability for the sending economies. However, there is no reason why the mining industry should have privileged access to foreign **sourced labour**. Other employers wishing to employ non-South Africans have to do so through normal immigration legislation and regulations. This has become increasingly difficult to do legally.
- 2.4.4.5 Farmers in **Mpumalanga** and the Northern Province also enjoy privileged access to non-South African **labour** outside immigration legislation or the bilateral by arrangement with the *Department*. Farmers employing undocumented workers are issued with Section 41 exemptions under the Aliens Control Amendment Act. Since 1994, 11000 exemptions have been issued. This system is not desirable. Either it should be open to all employers, or farmers, like other employers, **should** go through the legal channels suggested here.
- 2.4.4.6 We recommend that the special inter-governmental **labour** agreements, the CDP system, and Section 41 exemptions, come to an end. We further recommend that mechanisms *must* be put in place for individual employers and companies, regardless

of sector, to be able to argue for continued or new employment of non-South African SADC labour. In theory such mechanisms are provided for in existing legislation, but they do not go far enough. We believe that legislation should allow for a mechanism, whereby, for example, social partners in South Africa (e.g. the Chamber of Mines and the NUM) negotiate industry-specific quotas. Overall quotas, specifying upper limits, could be negotiated on a country-by-country basis by government.

2.4.4.7 In particular, existing legislation provides no specific guidance or criteria by which a judgment can be fairly and defensibly made. A variety of workable mechanism are proposed by the *International Labour Organisation* from international best practice in this regard. Priority would obviously be given to employers who are observing minimum employment standards and also employing South Africans. If employers do not go through these legal channels and/or are unsuccessful in their application, but continue wilfully to employ labour illegally, they would be sanctioned.

#### 2.4.5 Trading

2.4.5.1 The deregulation of the informal sector in South Africa in 1991 and the new opportunities for trade have resulted in an explosive growth of local and long-distance informal trading. Informal traders engage in a wide variety of informal sector activities and many are integrated into trading networks that span the region. Most cross-border traders are from the region but there is growing interest among South Africans in trading outside the country.

2.4.5.2 Little concrete information exists on the profile of non-South African citizens involved in cross-border trading with South Africa. A 1995 national survey of street traders found that 14% of operators were non-South African. Another survey of handicrafts vendors undertaken by SAMP has found that non-South Africans tend to be quite highly educated, very mobile and highly entrepreneurial. The majority have no intention of remaining permanently in South Africa.

2.4.5.3 Most recycled their earnings from sales of imported goods into the South African economy by buying goods and stock to trade back home. Exported goods include clothes, electronic equipment, appliances, shoes and household goods, hence contributing indirectly to job creation in the South African manufacturing sector. Some 20% of traders actually employed South Africans in their business.

2.4.5.4 Informal trading brings significant benefits to South Africa and the region. As the SADC moves to liberalise trade within the region, it is unreasonable for South Africa to try and outlaw informal trading. Immigration and customs regulation should be more facilitative of informal trade. To enable them to conduct their business, traders need to hold appropriate documentation.

2.4.5.5 The scale of activity and the type of business do not qualify them for business or work permits. Entering illegally or avoiding border posts is generally impractical. The majority thus enter under visitors' visas and trade. Visitors' permits are usually for short and unpredictable periods. The present system obviously puts genuine traders in an ambiguous legal position, hampers their ability to trade and imposes high administrative costs as the permits have constantly to be renewed. The system makes it difficult to assess the true scale of cross-border trade and properly regulate it.

- 2.4.5.6 Customs and excise duties pose a heavy cost for informal traders, making inroads into small profit margins. Small traders are not always eligible for reduction in duty under bilateral trade agreements. Duty free allowances are too small to meet their needs. Some informal trade includes the illicit smuggling of prohibited goods such as guns and drugs. This is an unacceptable situation to which the police and customs should give their fullest attention. The vast majority of participants in informal trading rely on legality to survive, however.
- 2.4.5.7 The South African government has a duty to protect its citizens against unfair competition. However, we do not believe that all competition is by definition unfair. South Africa's commitment to regional integration and more relaxed trade policies should extend to small traders. SADC traders and entrepreneurs should be afforded greater legal access to the South African economy. Similarly, South African small traders should enjoy reciprocal access to the markets of other countries.

#### 2.4.6 Students

- 2.4.6.1 The demand for places at South African tertiary institutions has grown exponentially since 1990. At the same time, the number of places in universities has increased. In 1994, there were 11000 international students at South African universities and **technikons** (16% post-graduate). The international clientele includes students from developed countries who can acquire a relatively cheap education in South Africa and students from less-developed African countries who are perceived by South African students as competitors for dwindling resources. The problem is compounded by varying and inconsistent definitions of "foreignness" and eligibility for state support. There is no coherent policy in place **for all institutions although there is strong sentiment** for the withdrawal or downsizing of state subsidies to international students.
- 2.4.6.2 The entry of international students who wish to study in South Africa is governed by the *Department of Home Affairs*. In 1995, the *Department of Education* allowed foreign undergraduates to study at South African institutions for the first time. The policy change was a recognition of the local cultural and financial benefits to be gained from internationalisation and the presence of international students. We believe that the *Department of Home Affairs* should facilitate and provide simple, rapid-action administrative mechanisms to ease rather than inhibit foreign student access to South African tertiary institutions.
- 2.4.6.3 We support the idea of students from SADC member-states obtaining special access to South African universities and **technikons**. Our institutions should be a resource to Africa, and particularly for our partner states of the **SADC**. Universities and technikons make their own admission decisions, but it would be useful to develop general guidelines as to quotas, appropriate fee structures, and simple procedures to ease admission for students from SADC countries. The *Department of Education*, universities and technikons, and the *Department of Home Affairs* should find a mechanism to provide such guidelines.

#### 2.4.7 Cross-border Visits

- 2.4.7.1 A significant number of people cross our borders to visit families who have been separated by colonial boundaries. This pertains particularly to the borders between

South Africa and Lesotho, Mozambique and Zimbabwe. We endorse the issuing of border passes to eligible persons to ease the flow of legally-sanctioned temporary visitation of *bona fide* family members across our borders.

2.5 In sum. we recommend—

- (a) *the design and implementation of a 'market-related point system as a screening and admissions framework for individuals who wish to immigrate to South Africa; and*
- (b) *special, well-managed, legal avenues of entry for other SADC citizens who seek to enter South Africa on temporary basis, in four areas: (i) unskilled or semi-skilled workers who are legitimately in demand by South African employers, using an annual, flexible, quota system; (ii) small traders, by issuing a special trade permit; (iii) students, by easing access and administrative convenience; and (iv) cross-border family visitation, by the use of special border passes.*

## *chapter Three*

### **Rights-Based Enforcement**

#### **3.1 Introduction**

- 3.1.1 South Africa has a problem with people who violate current immigration law. These include tourists who overstay their visas or entry permits and visitors who breach the conditions of entry. The biggest problem by far are those people who evade normal channels of entry and enter the country clandestinely, often without documentation. South Africa is not alone with this problem, but the introduction of democracy after the 1994 elections have added further attraction to the scale of economic opportunity we already regionally offer, making us *a* if not *the* favoured destination in sub-Saharan Africa.
- 3.1.2 The challenge is how to approach the question of illegality when it comes to cross-border migration. South Africa does not have a well-developed jurisprudence in immigration matters. Our inherited jurisprudence is arrest, detention and removals, "influx control moved to the border", as it were. The task, therefore, is to establish some principles, which must serve as a guide towards the enforcement of a new immigration regime. These principles are: (1) that enforcement must be *rights-based*; (2) that it must focus on people who are *unauthorised immigrants*; and (3) that it must *strengthen the capacity* of government to: (a) detect the fraudulent use of documents; (b) provide effective surveillance of smuggling routes and; (c) strategically monitor national borders in areas where clandestine migration is known to occur.
- 3.1.3 The reform of immigration law and public policy is a necessary consequence of our constitutional and democratisation processes. Reform has, however, been given the additional impetus by the largely unhelpful speculation about the *sea/e* of the problem of unauthorised migration. Various estimates have been made, the most systematic going as high as 5,1 million people. Speculative assessments have also been made of the impact of unauthorised migration on our education, health-care and social welfare systems. We have looked carefully at all available figures and must declare that we have little faith in them. It would, of course, be very helpful if officials and planners had accurate statistics, but even under the best circumstances these are difficult to collect as people have an interest in not declaring their presence.

#### **3.2 Rights-Based Enforcement**

- 3.2.1 The Constitution and Bill of Rights restrict the rights of "persons" as opposed to "citizens" in respect of: (1) political rights e.g. the right to vote; and (2) freedom of trade, occupation and profession. All other rights apply equally to "persons" and "citizens", including due process, just administrative action, a fair trial, access to information and

so on. Unauthorised migrants, who are "persons" by constitutional definition, can insist that any government action taken against them must honour these rights. Or, to put it differently, the Constitution and Bill of Rights restrain government from acting in ways that violate these rights.

3.2.2 The crime of an unauthorised migrant is that he or she did not obtain the required permission to enter the country and/or lacked the necessary documentation and/or evaded a normal port of entry. While in breach of immigration law, such a person did not commit a crime in the ordinary sense of the word and the punishment would appear disproportionate to treat him or her as if he or she did. Of course, if beyond the breach of immigration law an unauthorised migrant committed a crime, the normal course of the criminal justice system should pertain. Therefore, unauthorised migrants should not be treated as criminals and, in the best of worlds, if apprehended be placed in special holding centres and be heard by dedicated immigration courts.

3.2.3 As a sovereign state, South Africa reserves the right to determine who will be allowed into the country, and under what conditions. [It has a duty to protect its borders, and deter individuals who seek to cross it clandestinely. It is not only the duty of the South African government to do so, however, but also the governments of the countries from which clandestine migrants originate. Citizens of Lesotho and Mozambique in particular should be much better informed of the risks of clandestine movement to South Africa and their governments should be urged to take a much more active role in curtailing the unauthorised movement of their citizens to South Africa. Finally, the Constitution and Bill of Rights bind the South African government in its actions *within, at and* in certain respects, 'beyond our borders. It would be a violation of basic norms if we would to seriously contemplate turning the fence separating South Africa and Mozambique into an instrument of lethal deterrence.

3.2.4 We believe that, in terms of socio-economic rights, illegally present immigrants or migrants should not be denied emergency medical treatment nor should their children be punished for the misdeeds of their parents by denying them access to temporary schooling. All other social welfare benefits must be restricted to South African citizens and permanent residents. To know who is whom requires an identification system, and we support current efforts of the Department of Home Affairs to issue a simple credible identification card to individuals of permanent residence or citizen status.

### 3.3 A Focus on Unauthorised Immigration ""

3.3.1 Research shows that the majority of migrants from neighboring countries do not wish or intend to stay in South Africa. They are migrants not immigrants. The presence of so many unauthorised workers in the country is a function of a regulatory system which offers little access to migrants who want to do temporary work and few opportunities for employers who wish to hire them legally. In *Chapter Two* we provide the outline of a new regulatory system by recommending expanded legal access for SADC citizens to the South African labour market, in well-regulated areas.

3.3.2 Government has provided two types of amnesties to qualifying individuals: (a) one to African miners in 1995; of whom 50692 were granted permanent residence; and (b) a 1996 amnesty to qualifying SADC citizens, of whom 199596 applied and 100218 were

granted permanent residence to date. These figures **are** much lower than anticipated and indicate that the scale of unauthorised migration might be smaller than originally estimated. Government should not rule out the use of periodic amnesties for regularizing the presence of specific categories of people e.g. traders, who genuinely do not intend to stay permanently within the country and who **add** value to our , economy.

- 3.3.3 Overstaying is a major means of access for SADC-country migrants (currently 290000 **overstayers** from the period 1990–1 995). Citizens of Lesotho and Zimbabwe **are** the primary offenders. Anecdotal evidence suggests that the figures could be too high given that people find it easy to move backwards and forwards across the **border** at unpoliced points or using bribery at border control points. Overstay data shows a significant decline in numbers over time. In the first three months of 1997 alone there were 170000 overstayers but in the whole of 1995, only 128000 of an originally much higher number still remain. The figures for 1992–94 are now around 80000 per year. This pattern is consistent with a distinction between unauthorised migrants (temporary/inadvertent overstayers who leave again after a short period) and unauthorised immigrants (who do not). International norms suggest a 12-15 month lag period to differentiate between the two. The number of pre-1 996 long-term **overstayers** still in the country would therefore be 425000 with a further 233000 undocumented migrants/short-term overstayers.
- 3.3.4 These patterns suggest that it does not make much sense to pour large resources into the tracing and “removal” of short-term entry permit overstayers. We believe that a relatively more open policy of temporary entry (including multiple entry permits **and** trading permits) for SADC citizens would reduce the tendency to overstay among SADC migrants. Other tactics, such as education in visa application materials at ports of entry and a system of fines, should be developed to counter temporary or inadvertent overstaying by non-SADC visitors to the country. Facilities for internal renewal of visitors’ permits could be made more user-friendly. Flexible temporary residence permits are also needed. Tracing and action against **overstayers should** properly be focused on long-term overstayers (unauthorised immigrants) who have remained in the country long after their permits have expired.

### 3.4 Strengthening Government Capacity

- 3.4.1 Despite provisions for employer sanctions in the existing legislation, these are **little-**used. We are of the opinion that realistic and implementable employer sanctions are a viable policy option for government to use as a way of reducing employment incentives for unauthorised immigration and migration and of encouraging employers to use new and existing legal channels for hiring non-South African temporary workers. The , problem is not the law, but the capacity for enforcement. We believe that the *Department of Home Affairs* does not have the staffing capacity to monitor and enforce employer sanctions.
- 3.4.2 The *Department of Home Affairs* and missions abroad have been issuing new passports and visas that are much more difficult to forge. Old passports are still, however, in circulation and recognised as travel documents abroad, which means that the impact of the new passport will be as slow as the rate of replacement of the old.

Opportunities still exist, therefore, to forge the old passport. Attention should be paid to identifying forgery practises, strengthening the capacity of border control officials to recognise forged documents, and issuing new passports as rapidly as possible.

3.4.3 Priority should be given to the strengthening of border control and the creation of new ones to counteract smuggling. Of concern, is the capacity of Customs and Excise at existing ports of entry to identify smugglers and of particular concern is either the total lack of or erratic working hours of immigration and customs and excise staff at smaller airports and landing strips. In an ideal world it would be difficult to provide surveillance of all routes of entry, but with the assistance of the SANDF and the *South African Air Force* (SAAF) it must be possible to identify strategic entry points and to concentrate effort in successfully counteracting these. The *Department of Home Affairs* and Customs and Excise should be adequately staffed and trained so as to execute these functions properly.

3.4.4 South Africa has very long land borders. In some parts rivers provide effective separation, but large sections are open and porous. It simply is not possible to provide effective surveillance of these borders. However, studies of border crossing routes must reveal typical patterns and it would be desirable, with the assistance of the SAPS and SANDF, to identify and monitor these with the view to providing more effective deterrence. We note that border-jumping is difficult to enumerate. The majority of people are thought to be young, male Mozambicans and Zimbabweans in search of work. The *South African National Defence Force* (SANDF) estimates that one person crosses the border illegally every 10 minutes. If true, this would amount to an annual influx of 50000. Research shows that unauthorised migrants, in particular, are engaged in a continuous pattern of oscillating movement between South Africa and the neighboring states. Hence there is an undocumented outflow as well as inflow to factor in.

3.4.5 We would like to highlight Lesotho as a special case in immigration policy. The movement of Lesotho citizens to South Africa is high, particularly with regards to mine migrants who work on contract at Free State mines. A great many Basothos have also applied for both the miners' and general amnesties and those who therefore intend to settle or remain permanently in South Africa will have the right to do so. Unlike other neighboring countries, Lesotho is landlocked by South Africa and constitutes therefore an highly unlikely route for unauthorised migrants or immigrants from other countries. However, while it might be desirable to ease border controls in this special case, Lesotho can still easily be a route for smuggling. Given existing capacity at its airport, unless South Africa jointly manages customs and excise and immigration controls with Lesotho, it would be unwise to lift current surveillance capacity at existing border control posts.

3.5 In sum: we believe that—

- (1) the enforcement of new immigration policy should be rights-based;
- (2) enforcement must focus on people who are *unauthorised immigrants*; and
- (3) that policy must *strengthen the capacity* of government to—
  - (a) detect the fraudulent use of documents;



- (b) provide effective surveillance of smuggling routes and;
- (c) strategically monitor national borders in areas where clandestine migration is known to occur.

## *chapter Four*

### **Refugees**

#### **4.1 Current Status of Refugees**

- 4.1.1 South Africa has no refugee legislation. In its absence, the *Department of Home Affairs*, in consultation with the *United Nations High Commission for Refugees* (U NHCR) has set up procedures in order to determine the status of a person who seeks asylum in South Africa. In deciding who is and who is not granted refugee status, officials of the *Department* apply the definition contained in the 1951 United Nations Convention as well as the extended definition contained in the 1969 OAU Convention.
- 4.1.2 When an application for refugee status is granted, permission to stay will either be in the form of a permit issued under section 41 of the *Aliens Control Amendment Act*, or permission to stay in terms of s23. While the *Aliens Control Act* and amended Act were not drafted with asylum-seekers in mind, since its purpose is to "provide for the control of the admission of persons to, their residence in, and departure from, the Republic", it has been provisionally adapted until we have an operational piece of refugee legislation.
- 4.1.3 The majority of people who are asylum-seekers are young men in their twenties who have fled African countries such as Angola, Somalia, Zaire, Liberia, Rwanda and Ethiopia. Significant numbers of asylum-seekers have also arrived in recent months from Pakistan, India and Bangladesh. By January 1997 the *Department of Home Affairs* had received 23542 applications, of which 10263 have been finalised, 3298 approved and granted asylum, and 5141 rejected.

#### **4.2 Refugee Protection**

- 4.2.1 *The Department of Home Affairs* recognises the need for the enactment of a separate and self-standing piece of refugee legislation. We strongly support the *Department* in its point of view. We believe that the legislation should be based on a model of refugee protection that is rights-regarding, solution-oriented, with the sharing of the burden across all SADC member states. The objective of the model is to provide *temporary* protection to persons whose basic human rights are at risk in their country of origin, until such time as they are able to return home in safety,
- 4.2.2 We do not endorse an understanding of refugee protection as an alternative means to immigrate permanently to South Africa. For refugees, migration is a *means* of securing access to basic human rights protection which their own state is either unable or unwilling to provide. Refugee status **ought to give** rise to an entitlement to enter South Africa, and to remain here in safety and dignity for the duration of the risk in the country of origin.

### 4.3 The Concept of Refugee Status

- 4.3.1 The international legal definitions of refugee status applicable in South Africa derive primarily from the UN Convention and Protocol relating to the *Status of Refugees*, and from the OAU's *Convention Governing the Specific Aspects of Refugee Problems in Africa*.
- 4.3.2 The UN definition should be understood to include any person genuinely at risk of serious human rights violations in his or her country of origin, who both needs and deserves international protection. There must be a heightened risk to human rights on account of race, religion, nationality, political opinion, or membership of a particular social group. The latter residual category of civil or political status is interpreted in relation to prevailing norms of non-discrimination, including, for example, persons at risk on account of gender sexual orientation, disability, class or caste. It must moreover be determined that the government in the country of origin either cannot or will not effectively counter the risk to core human rights, in consequence of which there is a need for the surrogate protection in South Africa.
- 4.3.3 The OAU's definition of refugee status includes in addition persons compelled to leave their country for reasons of external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of the country of origin.
- 4.3.4 Finally, because South Africa has assumed other international legal obligations that impose a situation-specific duty not to return persons at risk of serious human rights abuse (for example, under the *Convention against Torture*, and the *International Covenant on Civil and Political Rights*), we believe that the refugee legislation should establish a flexible conceptual category that will ensure the ability of the determination authority to recognise the claims of such persons, and to assimilate them as refugees for the purpose of access to basic human rights and protection against return.

### 4.4 The Process of Refugee Status Determination

- 4.4.1 Refugee status determination should be the domain of an expert authority with a reasonable assurance of independence from both the executive and political branches of government. Refugee status determination ought not to centre on considerations of suitability for residence in South Africa, the clear expertise of the *Department of Home Affairs*, nor on foreign policy considerations, the domain of the *Department of Foreign Affairs*. Instead, the expertise required to engage in refugee status determination is a sound familiarity with the legal and empirical realities of human rights protection, and the ability effectively to communicate across cultural, linguistic and other divides. It is moreover important that refugee protection be insulated from the potential for political intervention.
- 4.4.2 The viability of the refugee protection system can be undermined by delays and backlogs that both induce fraudulent claims, and give rise to the risk of systemic breakdown. To counter these risks, we endorse a streamlined, one-step investigatory status determination procedure. This procedure should include a quality oral hearing before

the independent status determination authority, in which all due process rights established by international law and the Constitution are ensured. An explicitly investigatory mandate, supported by free access to all relevant and credible sources of human rights data, is the best guarantor that all relevant facts are taken into account. Full disclosure, a pre-hearing process to narrow the range of inquiry, and reliance on community and other resources to assist in the assessment of identity should be features of the process. The *Department of Home Affairs* should enjoy the right to intervene in the refugee status determination process where it wishes to present evidence that a particular claimant is not entitled to refugee status by virtue of either cessation of, or exclusion from, refugee status, in accordance with relevant international legal standards. Auxiliary mechanisms to identify both “manifestly unfounded claims” in accordance with relevant UNHCR standards, and to fast-track “manifestly well founded claims” (in which membership of a clearly at-risk group will normally be the primary concern), should be considered as effective means to ensure that resources are allocated to the assessment of those claims which require the greatest scrutiny. There should be a single opportunity for review or appeal of the decision on refugee status, which might ordinarily be conducted on the basis of written submissions with a discretion to hear argument and otherwise conduct a more fulsome reassessment as required by the facts of the particular case. A firm commitment to expeditiously deport rejected asylum seekers who have exhausted their appeal rights is moreover essential to the credibility of the refugee protection system.

#### 4.5 Rights Regarding Temporary Protection

- 4.5.1 Refugee protection, unlike immigration, is a matter of implementing international legal entitlements. In January 1996 South Africa formally committed itself to grant a comprehensive set of international legal rights to all refugees. Refugees are therefore owed a standard of treatment that fundamentally distinguishes them from immigrants and migrants generally. Refugee rights as defined under international law are not subject to derogation or suspension, and increase over time. For example, some rights inhere in asylum-seekers, even those not yet formally recognised as refugees, by virtue of their simple physical presence in South Africa. Once authorised in law or in fact to remain in South Africa, refugees are further entitled to claim a broader set of rights that apply to refugees who are lawfully within the territory of a state. During the ensuing period of temporary protection, additional rights that are contingent upon lawful stay or residence must also be honoured. Beyond the requirements of international refugee law, international human rights law is also directly relevant.
- 4.5.2 In general terms, refugee rights under international law fall into four broad categories. First, there is the duty of *non-refoulement*, which requires that refugees not be returned, directly or indirectly, to the risk of persecution. Second, there are security rights, including protection from physical attack, and assistance to meet basic human needs. Third are basic dignity rights, including protection against discrimination, family unity, freedom of movement and association, and freedom of religion. Fourth are self-sufficiency rights, including rights to work and education.
- 4.5.3 We reject a vision of refugee protection that fails to meet these basic international legal standards. As a mechanism to provide surrogate protection of core human rights, it is unacceptable to extend only a form of “protection” which itself fails to conform to agreed basic standards of human dignity.

## 4.6 Solution-Oriented Temporary Protection

- 4.6.1 As important as respect for refugee rights undoubtedly is, the formal legal entitlements of refugees under international law are not sufficient to take full advantage of opportunities for the solution of refugeehood through repatriation in safety and dignity. Specifically, there is no international legal duty to *proactively* make repatriation viable, by such means as empowering refugees during temporary protection, preserving their collective social structures, or fostering collaborative development bridges between refugees and the communities in which they are protected, as well as with those to which they will hopefully return. Because we believe that a continuing commitment to refugee protection will only be possible if it is solution-oriented, temporary must be delivered in a way that is dedicated to preparing refugees for a successful return, when and if conditions allow.
- 4.6.2 First, respect for social structures is critical if refugees are not to be deprived of the structures which define their social identity, and often provide critical support in their day-to-day lives. Where refugees are compelled to abandon patterns of life rooted in family or community cooperation, they may not only be less productive during temporary protection, but will often be less able ultimately to resume their life in their country of origin.
- 4.6.3 Second, temporary protection should be thought of as an opportunity for refugees to develop or enhance skills, thereby both reducing the medium-term financial burden of providing asylum, and most important, allowing the refugee population to remain vital and able to contribute to their home communities upon repatriation. Refugee development programmed, logically supported by international co-operation, should be designed in a way that takes the needs of the host communities into account. The objective should be to treat refugees as empowered agents *for* development, instead of burdens *on* development.
- 4.6.4 Third, the viability of refugee repatriation will be assisted by the promotion of contacts between refugee communities and the internally displaced and stayee populations in the country of origin.
- 4.6.5 Fourth and most fundamentally, refugees need to know when it is *genuinely* safe to go home, and whether or not they will be able to support their families upon return. This means that reliable and meaningful information about conditions in the country of origin must be made available to the refugee community on an ongoing basis, and concrete steps taken to ensure the feasibility of re-establishment.
- 4.6.6 While we endorse rights-regarding and solution-oriented temporary protection as the goal of the protection system, there will always be some cases that should be diverted from the usual system of protection. Unaccompanied minors and individuals who have been severely traumatised by torture should be treated as special cases, and admitted upon positive assessment of status as permanent residents. In addition, vulnerable groups within the refugee population (including in particular cases women and minorities who may need to escape the risk of internal violence) may also require a **definitive** adjustment of their status to enable them to rebuild their lives outside the refugee community.

4.6.7 More generally, the duration of temporary protection must be constrained to what is reasonable to advance a programme of solution-oriented protection. An outside limit to temporary protection should be clearly established in recognition of the psychosocial need of refugees ultimately to have access to enduring stability and security. Particularly where temporary protection is delivered in the rights-regarding and solution-oriented manner proposed here, the evidence of repatriation practice to-date in other countries suggests that a *five-year maximum* duration would strike a fair balance between the need to ensure the ability to temporary protection to allow for the regeneration of a substantial part of asylum capacity, without exposing refugees to psychosocial risk. Refugees should benefit from a firm guarantee to make permanent residence available at the end of the temporary protection period.

4.6.8 With appropriate support, and with ready access to impartial information regarding conditions in the country of origin, refugees will often decide to return home of their own volition. If and when the risk that gave rise to refugee status comes to an end, however, refugee status may legitimately be withdrawn, and mandated repatriation pursued. Cessation of status can only be pursued when there has been a change of circumstances in the country of origin that eradicates the "root cause" of flight, and which is durable. Where mandated repatriation is required, it should be recognised that international human rights standards apply, particularly those that prohibit cruel, inhuman, or degrading treatment. This is both a matter of law and logic: a punitive approach to mandated repatriation will be less successful than efforts that respect the human dignity of those to be repatriated. Moreover, repatriation, be it voluntary or mandated, cannot be an end in itself. South Africa should work with UNHCR and other inter-governmental organisations to ensure that conditions in the country of return involve the healing of divisions, restoration of law and order, and development of both civil society and the economy.

#### 4.7 **Collectivised Protection**

4.7.1 Under the current international regime, when refugees arrive in an asylum state, that state is solely responsible for their protection. As such, the distribution of state responsibility toward refugees is based primarily upon accidents of geography and the relative ability of states to control their borders. Any assistance received from other countries or the UNHCR is a matter of charity, not of obligation. The present system of unilateral, undifferentiated state obligations is unfair, inadequate and ultimately unsustainable. As states have no reliable means of looking to their neighbors or the international community at large for assistance and solidarity, there is a perverse logic to the option of simply closing borders and pre-emptively avoiding any responsibility for providing protection. In the result, the arrival of refugees can be politically, economically and socially destabilizing. We believe that it is in the interests of South Africa to ensure that a mechanism is conceived that effectively and dependably avoids such risks within its region of influence.

4.7.2 Two points of principle ought to govern a shift to a more collectivised system of protection. First, co-operating states should commit themselves to a set of principles that would determine the allocation both of the responsibility physically to protect refugees, and of the fiscal burdens of refugee protection. The goal is to agree to a system of common but differentiated responsibility, which recognises that there are

very real differences in the manner in which different countries can best contribute to the successful implementation of a more collectivised system of refugee protection. Beyond a common duty of all states to provide first asylum, there is no reason to expect every country to play an identical refugee protection role. In particular, it is our view that the site of protection ought logically to take into account such concerns as the physical security of both refugees and the communities that would protect them; functional compatibility between refugees and their potential host communities; cultural harmony; and geographical proximity, logically facilitative of both ongoing contact between refugee and stayee communities, and ultimately of repatriation. To the extent that such a responsibility-sharing mechanism results in one or more states bearing a disproportionate share of the protective obligation, fiscal burden sharing (based, for example, on GNP or a comparable measure of relative ability to contribute) can be relied on to offset inequitably assigned costs.

- 4.7.3 Second, the co-operating governments must agree to a forum in which they will meet expeditiously to apply these general principles of responsibility and burden sharing whenever a fellow state perceives itself to be unable to cope with a refugee influx. The importance of the ability to meet quickly cannot be overstated if an appropriate response is to be designed before there is a risk of the denial of protection. The viability of such a mechanism is clearly enhanced by the ability to rely on the consultation structures of functioning sub-regional organisations, such as the SADC.
- 4.7.4 While it may not be possible for South Africa immediately to move from a purely national to a more collectivised model of refugee protection, it is critical that new refugee legislation specifically allow for such a shift. Simultaneously, we believe that serious efforts should be undertaken in collaboration with the UNHCR to explore the viability of shared responsibility toward refugees within the SADC region. Such efforts are most likely to be productive when, as now, there are few immediate refugee protection crises within the region that could skew the perception of states regarding the logic of a shared protection system.
- 4.7.5 A transition toward collectivised refugee protection is in the interests of South Africa not only as a means of avoiding regional instability, but also to put in place a rights-regarding alternative to so-called "first country of arrival" rules applied by some states to allocate responsibility for refugee protection on the basis of mechanistic rules that do not adequately take protection concerns into account. The sharing of burdens and responsibilities is, in other words, a pragmatic mechanism for South Africa to avoid the potential for abuse of its refugee protection system, yet which does not require any sacrifice in terms of principled fidelity to international and domestic human rights principles.
- 4.7.6 In sum: We believe that there is an urgency to enact legislation to establish a formal system of refugee protection in South Africa. While it would be technically possible to address refugee protection concerns in the context of other amendments to the *Aliens Control Act*, there are compelling reasons to have separate refugee legislation. Refugee protection, unlike immigration, is fundamentally a matter of implementing international legal obligations in domestic law.

- 4.7.7 In the result, there is less room for executive discretion in defining both substantive and procedural standards; there is a critical need for reasonable autonomy from both the executive and political branches of government; and there is a need for a distinct operational philosophy, in which the focus of concern is human rights protection, rather than suitability for ongoing residence in South Africa.



## *chapter Five*

### **Immigration/Migration Management Reform**

#### 5.1 Institutional Transformation

- 5.1.1 The *Department of Home Affairs* is the primary government institution acting in the immigration arena. We believe that all facets of immigration *and* migration policy — including planning, implementation and ongoing administration — should be the core responsibility of a single government department. We *suggest* that the responsibilities and obligations of such a role are that the department concerned should be tasked only with citizenship, naturalisation and immigration matters. The title of the department concerned should reflect this core responsibility. The term “Home Affairs” has little resonance in this regard. We strongly recommend that the current *Department of Home Affairs* shed any functions not related to immigration, naturalisation and citizenship and be renamed the *Department of Citizenship and Immigration Services (DCIS)*. The importance of immigration as a public policy issue would also be highlighted. The renamed *Department* should undertake a process of internal transformation and restructuring, and be allocated sufficient resources and personnel to achieve the tasks for it envisaged in new immigration and refugee legislation.
- 5.1.2 International migration and immigration is a policy issue that cuts across a number of different government institutions and departments including the *Departments of Home Affairs, Labour, Foreign Affairs, Justice, Correctional Services, Customs and Excise, Social Welfare, Health, Trade and Industry*, the SANDF and the SAPS. Departmental responsibilities in this area need to be clearly demarcated. At the same time, we believe that South Africa’s immigration policy should be driven by a coherent and comprehensive inter-departmental immigration plan.
- 5.1.3 In our view, the new *Department of Citizenship and /remigration Services* should take primary responsibility for co-ordinating an inter-departmental immigration committee and designing such a plan once the relevant policy and legislative instruments are in place. The immigration plan, to be tabled annually before parliament, should report on progress achieved and specify the government’s aims, objectives and immigration targets for the upcoming year. The immigration plan should be fundamentally driven by South Africa’s economic growth and labour market needs and requirements, tempered by regional commitments and international obligations. The plan should have an immigration component and a migration component. The former would refer to policy and priorities for permanent immigration to South Africa. The latter would refer to policy and priorities for the temporary import of highly-skilled migrants and selected unskilled and semi-skilled migrants from SADC countries only.

- 5.1.4 The enforcement of immigration controls is currently the responsibility of the *Department of Home Affairs*, the SAPS and the SANDF. There is blurring of responsibility and accountability which needs to be eliminated. A clearer distinction than now exists should be made between criminality and unauthorized migration. In our view, the primary responsibility of the SAPS is crime-fighting. Resources used by the SAPS in the arrest and deportation of undocumented migrants should be diverted to fighting crime. The practice of appointing police as immigration officers should end. Current legislation makes provision for enforcement by the *Department of Home Affairs*. The *Department* is handicapped in this function by a serious lack of resources. We believe that the new *DC/S* should have a directorate of professional immigration officers tasked specifically with enforcement of immigration controls.
- 5.1.5 Close cooperation between the proposed *DC/S* and the *Department of Labour* are critical in the establishment and operation of the proposed labour market-driven immigration system for the country. The two *Departments* would need to establish much stronger linkages and lines of communication to operationalise the system of immigrant and migrant selection proposed in this Green Paper.

## 5.2 New Information Management Systems

- 5.2.1 Current criteria for temporary residence and work permits for skilled applicants involve a much greater degree of administrative discretion than is desirable in a labour-market driven immigration system. There is virtually no selection procedure at all for semi-skilled and unskilled entrants. Subject to the terms of the labour agreements, the mining industry continues to operate its own selection policy, unregulated by government and unaccountable to anyone. The system of Section 41 exemptions also allows wide administrative discretion and no clear guidelines for employers or employees. The *Immigrants Selection Boards*, designed to bring a greater degree of transparency to the whole system, are currently serving a limited rubber-stamping function.
- 5.2.2 All immigration and migration decisions need to be based on reliable, up-to-date, quality information. The *DC/S* should be tasked with designing a simple, effective and dynamic points-based system of immigrant selection. International models would be of use but South Africa needs to design its own system for its own needs. Desirable skills and experience in particular labour market categories would be a major, though not exclusive, component of such a system. In order to develop a labour market-driven system, the *Department of Labour* should develop a detailed occupational categorisation of the South African labour market. This information would be incorporated on an ongoing basis into the selection system for immigration applications, The system itself would be administered by officials of the *DC/S*.
- 5.2.3 We do not believe that an individualised, points-based system of immigrant selection is appropriate for temporary migration for employment. Temporary migration should be governed by a simplified and rapid-assessment system based on employer motivation for particular workers or groups of workers for set periods. Such a system would ideally be tied to an objective test of labour market need. The */LO* has recently reviewed international practice in this regard and has recommendations for such systems which are adaptable to local circumstances.

5.2.4 We believe that at the upper levels of the job market, desired skills, not geographical origin, should be the determining factor in approval and access. At the lower end of the job-market, permits would be issued to SADC-country citizens only with a particular preference to those SADC countries which are most dependent on South Africa and whose migration ties are most entrenched. We believe that selected SADC-country citizens must be given some temporary access to the labour market. A system of controlled and managed temporary access of SADC migrants is preferably to a resource-inefficient and relentless cycle of deportation of temporary migrants. To ensure that the labour market is not flooded by SADC migrants we suggest that the government consider a flexible annual system of quotas for particular migrants in designated sectors. These could be reviewed annually as part of the immigration plan.

5.2.5 As part of an immigration policy focused on economic growth and job creation, the government should re-examine its policy towards categories of immigrants and temporary residents who might impact positively on the economy. In this regard, we urge that attention be given to a redesigned system of business and entrepreneurial immigration focused on business partnerships, job creation and investment. Such a scheme should also be extended to the SMME and informal sectors for SADC country entrepreneurs. We believe that current restrictions on cross-border trade are unrealistic and counter-productive in terms of the current trend towards enhanced regional integration and trade, The introduction of trading permits to allow freer intra-SADC informal trade is encouraged.

5.2.6 We note the efforts of the *Department of Home Affairs* to enhance the volume and quality of statistics and data gathering on issues of citizenship and immigration through a new national identification system and the National Movement Control System. We urge the *Department*, in **co-operation with the Central Statistical Service, to undertake a thorough review of the transactional information being generated and to establish mechanisms for making** such information more readily accessible to policy-makers and researchers. We note with concern the unproductive controversy around numbers of illegal immigrants that has been very evident and suggest that a serious effort be made to ascertain the reliability of current estimates.

5.2.7 We note with approval the efforts of the *Department of Labour* and **various research organisations to generate a much better understanding of the South African labour market through research. We believe that this effort, focused** on particular sectors and segments of the labour market, will provide valuable information on job and wage competition between South African and other workers. In general, we are concerned about the lack of resources available for systematic population movement research within government and suggest either that this should be rectified or that existing and new population research centres should be encouraged to continue with policy-relevant research to monitor the causes and impacts of cross-border migration on an ongoing basis.

### 5.3 Administrative Justice

5.3.1 All existing and any proposed new legislation, regulations' and practices in the immigration and migration field should be "consistent with the Constitution and Bill of Rights, the international conventions to which South Africa is a signatory, and due

**regard** for basic human rights. We are aware that the immigration issue raises difficult challenges for a government which is committed both to universal human rights and to the protection of the rights of its own citizens. Nevertheless, within the parameters of those obligations we believe that the Constitution guarantees certain rights to all people who are affected by South African government action, independent of their citizenship, national origin or legal status. It is incumbent on government, in the design of new immigration and refugee legislation and regulations, and in the implementation of both, to ensure that these rights are upheld.

- 5.3.2 We suggest that the immigration and refugee issues need to be seen as different spheres demanding separate policy responses and legislation. The current blurring of the two in policy terms and public perception is not productive. The refugee questions is fundamentally a human rights issue, in the way that immigration is not. We believe that a viable, operational, sustainable system of temporary protection for refugees is in South Africa's best interests, coupled with a programme of regional and international burden-sharing. We recommend that the government moves to implement such a system of temporary protection with all due haste consistent with the principles laid out in *Chapter Four*. A simplified and cost-effective system of determination, based on sound and up-to-date information and personal hearings, is consistent with the constitutional requirements of due **process and administrative justice**.
- 5.3.3 We suggest that administrative transparency and accountability should be central to immigration management. We believe that a points-based immigration system and an effective temporary works system will greatly reduce the need for administrative discretion and hence reduce the incentive for appeal of those decisions. In addition, the current tasks of the *Immigrants Selection Boards* would become redundant. In our view, independent review is less important in the assessment of immigration applications than it is in the review of immigration decisions taken by government employees to which there are objections.
- 5.3.4 Allegations of a lack of due process at the hands of immigration officers and the police are common in the media and in interviews with deportees. We view these reports with some concern and feel that mechanisms should be in place for reporting and investigation of such incidents without prejudice. Criminal wrong-doing by agents responsible for enforcing immigration controls should be vigorously punished. At present, the sole recourse for deportees beyond the immigration officer deciding the case is to appeal to the High Court, We believe that this is not consistent with the demands of administrative justice and due process. We believe that the most cost-effective means of ensuring this would be an independent *Immigration Review Board*.
- 5.3.5 South Africa needs a redesigned migration policy for temporary residents. The country's system of allowing temporary residence and work permits to non-South Africans is inadequate. The system inhibits the rapid and ready access of South African employers to the global skills market. It also provides special privileges for the mining industry through the bilateral agreements. Such a system, as it currently operates, not only violates **many of the fundamental rights of miners but it discriminates against other South African employers who might also have a demonstrated** need for temporary workers from outside the country. The bilateral agreements are inherently

discriminatory and reinforce the worst features of the traditional migrant labour system. They give special privileges to certain employers and they allow for wide-ranging employer and administrative discretion outside the control of the country's immigration legislation.

- 5.3.6 The system of controlled access should be counter-balanced with sanctions against employers who do not use these legal channels, and intensified actions against non-SADC citizens who come or stay illegally in the country. We believe that an effective system of managed access to the South African economy and labour market by SADC country citizens should be counter-balanced by a systematic and effective policy of sanctions against those who continue to employ undocumented migrants and illegal immigrants from the SADC and elsewhere. We recommend that the proposed *DCIS*, through its proposed enforcement branch, develop and implement an effective system of sanctions against employers who flout the legal channels of access to temporary workers.

## 5.4 The Road Ahead

- 5.4.-i Emerging from this Green Paper we recommend two separate White Papers, one dealing with *Immigration, Migration and Naturalisation* and another dealing with *Refugee Protection*, accompanied by legislation for each. We took the issue of refugees seriously in this Green Paper, and propose a model for the design of refugee policy, but believe that because it is a human rights remedy to a problem of forced migration and not an immigration issue as such, it deserves its own treatment in policy and law.

- 5.4.2 We recommend that current immigration legislation and regulations should be replaced by a new *Immigration, Naturalisation and Migration Act*. Quite apart from the symbolic value of breaking with legislation rooted in South Africa's racist past, there are various pragmatic reasons why a new Act is necessary:

- (a) The current Act has been described even by legal experts as extremely opaque in its language and structure such that it is difficult to decide what procedures should be followed or what rights detainees hold;
- (b) The Act confers an unacceptable level of administrative discretion. Many of the procedures used to process applications are not contained in the Act but in regulations made under the Act but in internal documents that are neither publicly available nor legally binding;
- (c) The new system of immigrant and migrant selection and proposals for administrative justice proposed here cannot be accommodated within the existing Act;
- (d) The risk of arbitrary and unconstitutional action by the police, army and immigration officials are greatly increased by an absence of clear procedures and guarantees set out in the legislation;
- (e) Various provisions of the Act maybe unconstitutional and contrary to the Bill of Rights;
- (f) All facets of immigration and migration should be regulated by a single, inclusive piece of legislation;

(9) **Temporary**, controlled admission of other SADC country citizens should be regulated under a new Immigration Act and not by exception as at present. The regulations governing temporary access should be consistent with the Constitution and Bill of Rights, domestic employment legislation and relevant international conventions.

5.4.3 Finally, we recommend that the introduction of new policy and law be accompanied by a public education programme. Large numbers of our people have little positive history with immigration or immigrants. The idea that managed migration can be a positive instrument of **economic growth**, as in other countries, has to be cultivated and promoted. The public must begin to grasp the reasons for the practical implications of **policy** and legislation. A new immigration policy and plan should, therefore, be accompanied by a public education campaign. The *Non-Governmental Organisation* (NGO) community can be very helpful in this regard, especially when it comes to reaching people on provincial and local levels.

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**RESEARCH BRIEFING PAPERS**

- “international Migration: Southern Africa in Global Perspective” by *Robin Cohen*  
“Migration Policy, Human Rights and the Constitution” by *Steven Friedman*  
“immigration Policy, Nationalism, Bilateralism and Regionalism” by *Care/ Cooper*

**The Inheritance**

- “A Brief History of South African Immigration Policy” by *Sally Peberdy*  
“South Africa in the SADC: Trade and Investment” by *Robert Davies*  
“The Southern Labour Market” by *Guy Mahone*  
“**Contract Migration to South Africa**” by *Jonathan Crush*

**The Challenge**

- “Temporary Work and Migration Policy” by *Jonathan Crush*  
“Refugee Migration to South Africa” by *Lee Anne de la Hunt*  
“Towards a Human Rights-Based Approach to Immigration Policy” by *Maxine Reitzes*  
“Undocumented Migration: Dimensions and Dilemmas” by *Maxine Reitzes*  
“Brain Drain Immigration/Emigration” by *Robin Cohen*  
“[re]migration and Education” by *Mamphela Ramphela*  
“Cross Border Trading” by *Sally Peberdy*  
“Immigration and Security” by *Hussein Solomon*  
“Migration from Francophone Africa” by *Antoine Boullion*

**The Future**

- “Legislative Reform in International Perspective” by *Melvin Weigel*  
“Reform of Administrative Justice” by *Anton Katz*  
“Migration Policy and the Labour Market Commission” by *David Lewis*  
“information Needs for Migration Policy” by *Neva Makgetla and Se//o Mosai*  
“Employer Sanctions” by *Leon Pretorius*

**All Papers Available on [http://www.polity.org.za/govdocs/green\\_papers](http://www.polity.org.za/govdocs/green_papers) Immigration**

**DEPARTMENTAL BRIEFINGS**

- Department of Home Affairs: *I Lambinon*  
Foreign Affairs Portfolio Committee: *R Suttner*  
Department of Foreign Affairs: *B M Danke*  
Department of Welfare: *P Ubomba-Jaswa*  
Department of Health: *Dr Pretorius*  
Department of Trade and Industry: *M C Nkuhlu and D Aldrich*
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## GLOSSARY OF TERMS

**Note of Explanation**

The challenge to government is to ensure that immigration legislation and policies are accessible to everyone, by using the most simple and understandable language. Our challenge is to develop terminology which is consistent with our commitment to democracy and basic human rights, with international norms and best practice, and which does not denigrate or stigmatize basic human dignity. The following is a list of terminology arranged alphabetically, used in this Green Paper:

**Annual Quotas**

Annual negotiated upper limits on the number of migrants from one country allowed legal access to another country for purposes of employment.

**Asylum-seeker**

A person seeking refugee status in another state.

**Bilateral Agreements**

Agreement signed between two states to regulate the flow and conditions of contract and other forms of labour migration between those two states.

**Border Pass**

A temporary residence permit offered to residents of border areas to make short-term cross-border visits.

**Brain Drain**

The permanent departure of large numbers of skilled or professional workers from a country to the detriment of that country.

**Brain Gain**

The permanent or temporary entry of large numbers of skilled or professional workers in a country to the benefit of that country.

**Brain Train**

The high-level training of local skills in order to compensate for the effects of a brain drain.

**Business Immigrant**

A person who takes up permanent residence in order to establish, participate or run a private sector company.

**Citizen**

A person who is a national of a country by birth, naturalisation or descent (as defined by domestic citizenship legislation).

**Collectivized Refugee Protection**

Burden-sharing amongst states in terms of responsibility for refugee protection.

**Commuter Migrant**

A person who lives in a neighboring state and commutes regularly for work across borders on a daily, weekly or monthly basis.



**Compulsory Deferred Pay**

**Compulsory deferment of a fixed proportion of migrant earnings** to the country of origin e.g. miners from Lesotho and Mozambique.

**Contract Migrant**

A person who travels across borders for work under the terms of a fixed contract of employment with an employer.

**Deportation**

To cause a person to be removed from a country who is found to be in contravention of relevant criminal or immigration legislation.

**Economic Migrant**

A person who travels across borders for an express economic purpose such as employment or trading or self-employment.

**Emigration**

To leave one's country of normal residence in order to go and settle permanently in another country.

**Migration**

To travel so as to temporarily change one's place of residence; see also *International Migration*; *Temporary Residence*.

**Migration Regime**

The legal and policy principles governing cross-border movement with a regional grouping of states.

**Illegal Immigration**

*See Unauthorized Immigration.*

**Immigration**

To enter another country in order to make one's permanent life and home there; see also *Permanent Residence*.

**Inter-governmental Labour Agreements**

*See Bilateral Agreements.*

**International Migration**

To **travel across international boundaries so as to temporarily change** one's place of residence.

**Labour Migration**

To **travel so as to temporarily change one's** place of residence for the specific purpose of accepting employment.

**Naturalisation**

To **acquire citizenship of a country other than one's country of** birth.

**Non-refoulement (Duty of)**

The international requirement that refugees are not returned, directly or indirectly, to the risk of persecution.

**Overstayer**

A person who continues to reside or remain in a country after the expiration of their visa, visitor's permit or temporary residence permit.

**Permanent Resident**

A person who is a citizen of another country who has acquired the legal right to remain permanently in South Africa; see *Immigrant*.

**Point System**

Selection of immigrants on basis of pre-determined point scoring system where applicants are assessed in particular categories e.g. qualifications, work experience, offer of employment, age, etc.

**Project-Tied Migrant**

A person who crosses borders for a fixed period of time to work on a specific project being carried out by his or her employer.

**Quotas**

See *Annual Quotas*.

**Refoulement**

Coercing or forcing refugees to return home where their lives or freedom would be threatened on account of race, religion, nationality, membership of a particular social group, or political opinion.

**Refugee**

See Chapter 4, paragraph 4.3.

**Refugee Protection**

The legal institutions and mechanisms put in place by a state, in accordance with relevant international standards, to provide temporary protection for refugees until such time as they may safely return home.

**Refugee Status**

A person recognised in domestic law as a bona fide refugee with all attendant rights and privileges; see also *Asylum Seeker*.

**Refugee Status Determination**

The domestic legal process for determining the veracity of an individual's application for refugee status in a country.

**Remittances**

Funds earned by migrants in one country and sent home by formal or informal means to the home country; see also *Compulsory Deferred Pay*.

**Removal**

See *Deportation*.

**Repatriation**

Return home of refugees only when and if it is safe to do so.

**Seasonal Migrant**

A person who travels across borders for work on a temporary seasonal basis.

**Self-Employed Migrant**

*See Economic Migrant.*

**Skilled Transient**

A highly-skilled person allowed temporary access to a country to pursue a particular employment opportunity or posting.

**Temporary Resident**

A person who is a citizen of another country who has acquired the legal right to time-limited presence in another country; *see Migrant.*

**Unauthorized Immigration**

To enter or remain in another country *on* a permanent basis without proper authorization or documentation.

**Unauthorized Migration**

To enter or remain in another country on a temporary basis without proper authorization or documentation.

**Undocumented Migration**

*See Unauthorized Migration.*

**Unregulated Migration**

*See Unauthorised Migration.*

**Visa**

A pre-approved document or passport stamp permitting entry and temporary residence in a country.

**Visa Fee**

A charge levied to issue a visa.

**Visitor**

A transient resident of a country with no rights of employment or settlement.

**Voluntary Repatriation**

A voluntary and non-coercive return of a refugee to country once it has become safe to return.

**Work Permit**

A document authorizing a temporary resident of a country to take up employment in another country.

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