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Immigration to post-apartheid South Africa

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Global Commission on International Migration

In his report on the ‘Strengthening of the United Nations: an agenda for further change’, UN Secretary-General Kofi Annan identified migration as a priority issue for the international community.

Wishing to provide the framework for the formulation of a coherent, comprehensive and global response to migration issues, and acting on the encouragement of the UN Secretary-General, Sweden and Switzerland, together with the governments of Brazil, Morocco, and the Philippines, decided to establish a Global Commission on International Migration (GCIM). Many additional countries subsequently supported this initiative and an open-ended Core Group of Governments established itself to support and follow the work of the Commission.

The Global Commission on International Migration was launched by the United Nations Secretary-General and a number of governments on December 9, 2003 in Geneva. It is comprised of 19 Commissioners.

The mandate of the Commission is to place the issue of international migration on the global policy agenda, to analyze gaps in current approaches to migration, to examine the inter-linkages between migration and other global issues, and to present appropriate recommendations to the Secretary-General and other stakeholders. .

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Introduction

As the new South Africa seeks integration and greater participation in the global economy and in world politics, there is a contradictory trend towards exclusivity in respect to its immigration policy. Like governments elsewhere, the new South African government is bent on maintaining two conflicting international regimes – one dealing with cross-border circulation of information and capital, the other with immigration. The co-existence of these two different regimes is at odd with globalization that has denationalized national economies and territories, as well as decentred sovereignty (Maharaj, 2002; Maharaj and Moodley, 2000). There have been long delays in developing a new progressive immigration policy in South Africa, and this has been attributed to “national politics, bureaucratic bungling, and the very real dilemma of formulating democratic, rights-based migration in what is a highly xenophobic society” (Dodson, 2002:1).

It is true that despite the numerous problems that face the majority of Blacks in South Africa, for Africans from other parts of the continent, the country is perceived as being the land of increased economic opportunities and hope, especially after the 1994 elections. In addition to these perceptions, the structure, character and state of the South African economy, compared to those of other African countries has been the driving mechanism behind most illegal migrations. Hence, as long as the widespread poverty and high levels of inequality prevail on the continent, South Africa will continue to attract migrants.

In this paper it will be argued that the South African government has two options: continue with the law and order approach and ineffective policing which contributes to high levels of xenophobia. Alternatively, it could adopt a more sensitive human rights approach which takes cognisance of the creative ways in which migrants contribute to the local economy.

This paper draws generously from the surveys conducted by the South African Migration Project (SAMP). SAMP is an independent research organisation and its "mandate is to provide information services and policy advice on the development, transformation and implementation of new migration policy frameworks and legislation in the Southern African region. Within this broader regional context, a primary aim of the project is to assist in the development of a new immigration policy for post-apartheid South Africa (SAMP, 2000:18).

Historical context

The migration of workers from other parts of Africa to South Africa has a long history (Davies and Head, 1995). At the regional level undocumented migration is closely related to "South Africa's racially exclusive immigration legislation" (Peberdy, 1997:1). According to Peberdy (1997:2-3):

Ignoring the history of black immigration to South Africa obscures the legacy of South Africa's racist immigration legislation that prevented black people from becoming immigrants and which

established the migratory patterns of today. It denies South Africa's long standing economic and political links with the region.

Historically, the mining and agriculture sectors in South Africa have been dependent on migrant labour from southern African countries. In fact much of South Africa's mineral (and natural) wealth has been produced on the backs of migrant mine workers (Jeeves, 1985; Murray, 1995). Furthermore, the "historical influx of migrants to South Africa has created a high proportion of rightless non-citizens, despite their length of residence which sometimes spans generation"(Reitzes, 1997). Census data from 1911 reveals that more than 6 percent of the population comprised non-South Africans from the region. In 1961 there were approximately 836 000 regional migrants in South Africa (Peberdy, 1997).

The apartheid government subtly encouraged or turned a blind eye to clandestine migration in order to ensure an abundant supply of cheap labour, but was opposed to black migrants applying for citizenship. The Aliens Control Act of 1991 was based on a 1913 act that excluded blacks and was amended in 1930 and 1937 to exclude Jews. Between 1913 and 1986 black people could only enter South Africa illegally or as contract workers as they were not allowed to apply for temporary or permanent resident permits (Peberdy and Crush, 1998b). The racist orientation of South African immigration policy became very evident when the government welcomed whites from neighbouring states in Southern Africa who felt threatened by white majority rule (Crush, 2000). Between 1960 and 1980, skilled and semi-skilled white migrants from Zambia, Kenya and Zimbabwe were given citizenship to boost the local population (Peberdy, 1997).

Crush (1996) has presented further compelling evidence that suggests that the Aliens Control Act was being implemented in a racially discriminatory manner in the post-apartheid era. In the first quarter of 1996 about 130 000 visitors to South Africa remained in the country after their visas had expired, and this included 12 000 from the UK, 11 000 from Germany, 3000 from the US, and about 1000 from Australia, Belgium, Switzerland and Taiwan, respectively. A very small proportion of these people were arrested and deported - 23 from the UK, 13 from Germany, 8 from the US, 4 from Australia, 2 from Belgium and 1 from Switzerland. In 1995 ninety eight percent of deportations were to southern African countries.

Estimates of the number of undocumented immigrants in South Africa vary widely. This was because the majority entered the country covertly. It was therefore not possible to for the government or researchers to give a reasonable estimate of the number of migrants in the country (Hough, 1995). However, "in the vacuum, cavalier and exaggerated numbers predominate" (Crush and Williams, 2001:3).

In 1990 the South African Yearbook indicated that there were about 1,2 million illegal immigrants in the country, in 1991 the estimate was 2 million, in 1992 it was 2,5 million, 3 million in 1993, and 5 million in 1994 (Minnaar et al., 1995:33). The accuracy of these figures, however, has been questioned. This is encapsulated in the following statement by Steven Friedman, Director of the Centre for Policy Studies at the University of Witwatersrand:

Officials, politicians and the police regularly trot out 'figures' on immigrants to justify action against them. But the numbers owe

more to imagination than to calculation. We are told that we have up to eight million illegal immigrants. But, since illegals spend much of their time evading those who do the counting, how do they know? Interviews with those who produce the estimates show that they are, at best, guessing. Much the same can be said of claims that illegals cost the country millions of rands a year. The estimators rarely say how they arrive at these figures (Sunday Times, 22/10/95).

The more immediate nature of the problem is revealed by deportation figures. In 1988, 44 225 migrants were deported, and by 1993 the figure had increased to 96 515. The majority came from southern African countries, especially Mozambique and Zimbabwe. In 1994, 179 migrants were deported to non-African countries, of which 68 percent were from India and Pakistan (Natal Witness, 31/1/95).

It is possible to differentiate between three categories of undocumented migrants. The first category refers to those who enter the country without valid documents. The second refers to migrants who enter the country legally but stay on after the expiry of their visas. The third category refers to refugees and asylum seekers who "generally have documents or their documents are being processed" and they have a legal right to be in South Africa (Lorgat, 1998).

In addition to those who entered the country illegally, there were many migrants who entered the country legitimately, with visas or work permits. Once their permits lapse, they "join the ranks of illegal aliens" (Hansard, 24/8/94, col. 274). They often lived in informal settlements which were seen as a safe haven because the police would find it difficult to identify and arrest them.

In the 1990s immigration to post-apartheid South Africa has become a potentially explosive issue. The reasons for this are steeped in a variety of social, political and economic situations not only in countries of origin but in destination areas as well. The patterns, nature and socio-cultural and economic implications are extremely complicated. Immigration policy and controls have become very restrictive as emigration has increased. Legal immigration numbers are very low and there has also been a decline in temporary work permits. According to Mattes, Crush and Richmond (2002:1-3) "immigration is not viewed as a public policy tool that could benefit South Africa. Immigrants and migrants (even the most highly skilled) are more often stereotyped as a threat to the economic and social interests of South Africans ... (there) is the misguided assumption that national development and skills in-migration are incompatible".

Demographic profile

The South African Migration Survey (SAMP) has been conducting numerous surveys focusing on immigration issues in the 1990s. One such survey was conducted in Durban in 1999. The Durban survey revealed that the average age of migrants was 34 years. A national survey revealed that the average age of migrants was 32 years (McDonald, Mashike and Golden, 1999). In Durban most of the migrants (70 percent) were in their economic prime, between 25 and 44 years. Only 15 percent were younger

than 24 years, and 4 percent were older than 55 years. The majority (74 percent) of the migrants were males (Maharaj and Moodley, 1999).

The migrants had a fairly good educational background. This is reflected by the fact that a significant number had secondary (45 percent) and tertiary (29 percent) education. Sixteen percent had some form of primary education, and only a few (10 percent) had no formal education. Over fifty percent of the migrants were single (never married). A significant proportion (32 percent) were married. Almost equal proportions who were married left their spouses in the country of origin or brought them to South Africa. Presently, 49 percent of the migrants were living with a partner, 27 percent were married and 24 percent were single. It was interesting to note that many of spouses/partners of migrants were South African (78 percent) (Maharaj and Moodley, 1999).

Gender imbalance of African immigrants to South Africa is clearly evident. African immigrants are composed of significantly more males than females (Dodson, 1998). This gender related migration pattern may be due to the dangers of travel, the cost and the fact that numerous obstacles have to be overcome on the long journey overland. These reasons could also be attributed to most married immigrants leaving their children at places of origin. Women were subjected to greater levels of trauma and indignity in the migration process and this was emphasised by Deputy Minister of Home Affairs, Nosiviwe Mapisa-Nqakula, who had been in exile during the apartheid era:

Television and newspaper images of millions of women with sick and malnourished babies strapped to their backs is evidence of how women are affected by the migration cycle. Women not only suffer the emotional trauma of helplessly watching their children die during these long journeys, but they also become victims of abuse and undignified treatment along the way. I have learnt first hand that women immigrants suffer a great deal more than their male counterparts. The trauma of being separated from their families and the indignity of having someone else taking decisions that affect your life without your involvement are just some of the added frustrations for women refugees (City Press, 29 September 2002).

Given the number of years that they have been living in South Africa, many of them have established homes and families in this country. Some of the migrants have families back home, so returning would not be a problem, although they faced the spectre of unemployment and poverty. The majority of immigrants were not enthusiastic about returning home, (country of origin), and if they had a choice, they would remain in South Africa. A few of them stated that they would not return to South Africa again because it did not meet their expectations. Others maintained that regardless of the number of times they will be deported, they would return to South Africa (Maharaj and Moodley, 1999).

The migration process described above concurs with that experienced in most third world countries. Parnwell (1993:53) made the following conclusions with regard to irregular or undocumented migration in the developing world:

Where there are wide differentials in income levels and economic opportunities, considerable flows of population can be expected to result. Where such differentials occur between neighbouring countries ... firm restrictions on the volume of movement between these countries are also likely to be in force. For many, however, the lure of economic opportunities (or their own economic plight) may be such that they may be willing to take the risk of arrest and even imprisonment to avail themselves of these opportunities by illegal means. They may enter a country illegally ... and may work without the required documents or permits. Because of their illegal status, they are particularly prone to exploitation by their employers. Their presence may also engender considerable resentment from other citizens, fearful of the effects of illegal workers on their own jobs and rates of pay.

Reasons for leaving home country

Most immigrants have come to South Africa to escape the poverty and destitution in their own countries, as well as civil wars and political instability. The majority of the countries of origin have sufficient food, land and houses. However, unemployment was a serious problem. Harris (1995:189) contends that the "persistence of the idea that poverty drives out unskilled migrants from developing to developed countries is extraordinary. They are, it seems, really refugees, expelled by economic processes". Sassen (1996) has similarly pointed out that economic refugees are driven by "larger geopolitical and transnational economic dynamics" (p.66) which "produce conditions under which poverty, or lack of opportunities for advancement can be activated as migration push factors" (p.76). According to the World Bank the countries surrounding South Africa, with the exception of Namibia and Botswana, are among the poorest in the world (World Bank, 1999).

Many of these migrants trek to South Africa due to the changed political climate. It was assumed that since President Nelson Mandela's government had taken over, the country was overflowing with economic opportunities. Surveys conducted by SAMP have suggested that the majority of migrants have no intention of settling permanently in South Africa (Mattes et al., 1999). This has also been emphasised by Reitzes (1997:2):

Many migrants in South Africa regard themselves as migrants *per se*, rather than as immigrants. They do not desire permanent residence in South Africa. They are here for specific purposes and expect to return to the country of their birth; or they wish to maintain a home base in their country of origin, and continually commute across South Africa's borders. Many are transient....

Immigrants often have to depend "on their own networks, ingenuity and survival skills" (Sunday Times, 20/9/98). Various surveys have revealed (e.g. Maharaj and Moodley, 1999) that the majority of the illegal immigrants coming to South Africa had some sort of 'contact' in this country, either a relative or friend. These contacts in South Africa provided housing, food and even organised some form of employment

for the migrants. The majority of immigrants had some skills and training, and had been engaged in productive employment in South Africa

Many migrants maintain links back home still own houses and have bank accounts and investments. Depending on resources and distance, most migrants return home on an 'irregular basis'. According to Mattes, Crush and Richmond (2002:2) "in a transnational world many contemporary immigrants maintain strong and active backward linkages. This does not mean that they are uncommitted to their country of new residence".

Reception in the host country

Often viewed as a source of cheap labour by some employers, the migrants have been accused of stealing the jobs of South Africans, in an economy which had a high unemployment rate (about 40 percent). This perception has been nurtured certain politicians and government officials who view immigrants from other parts of Africa as "either ragged spongers or skilled criminals" (Sunday Times, 22/10/95).

The view that the migrants are parasites leads to the development of xenophobia, and they have increasingly become the targets of violence. Xenophobia is rife in the townships, where the migrants are referred to as *kwerekwere* (disparaging word for African immigrant). The following example highlights the rise of xenophobia:

In July [1994] more than 300 hawkers marched to police headquarters at John Vorster Square to protest against the influx of foreigners. The marchers claimed that foreign traders were killing their business because they were prepared to accept 'virtually anything from customers' (Sunday Times, 28/8/94).

It has been argued that xenophobia thrives when there is competition for employment and social problems increase: illegal immigrants "become tempting scapegoats for alienated citizens" (Wood, 1994:625). There is also the view that the migrants are seen as tempting 'scapegoats' for the 'country's ills':

With a black government in power and apartheid gone, many black South Africans have realised that they can no longer blame the system. Most are turning on the most visible scapegoat - immigrants. The new government would do well on its promise of a better life for all before discontented South Africans turn on foreigners and blame them for the country's ills (Sunday Times, 28/8/94).

Moving beyond economic and material explanations, Bouillon (1998:23-24) has suggested that "immigrants tend to interpret a culturally driven hostility among black South Africans ... driven by the sight of the foreign and the culturally unknown". This point was emphasised in a recent article celebrating the adoption of the African Charter on Human Rights and Peoples Rights in the weekly newspaper, the Mail and Guardian, 22-28 October 1999, which suggested that South Africa is regarded by its neighbours as rapacious, imperialist and xenophobic A(pp.12-13).

The rising tide of xenophobia leads to demands for the immediate deportation and repatriation of migrants. However, given the social and political instability, and economic deprivation in Africa, South Africa will continue to be a haven for people who are desperate to improve their lives. The Daily News (10/10/98) attempted to summarise the international and local implications of the problem:

Estimates that there are as many as 100 000 illegal immigrants in the Durban area bring to our doorstep the realities of Africa - a continent in social and political turmoil. The vast human tide threatens to burst the seams of already overflowing squatter camps on the city's fringe, straining resources which are already inadequate for the rapidly growing local population. Endemic social problems - disease, unemployment, crime, infant mortality, mass hunger - are certain to mount in the years to come.

However, the above report is an example of anti-foreigner sentiment that has been attributed to negative reporting in the print media (Dolan and Reitzes, 1996). The dominant view in the press:

... portrays immigration from an anti-foreigner perspective and calls for stringent and immediate controls, even an outright banning of immigrants. This media coverage also tends to be unanalytical, reproducing problematic research and anti-immigrant terminology uncritically ... the media certainly have a right, even a responsibility, to report on xenophobic attitudes and action in South Africa... But the print media also have a responsibility to make sure they are not contributing unduly to the problem of xenophobia by internalising xenophobic language, uncritically reproducing anti-immigrant stories and research, or giving unrestricted freedoms to xenophobic reporters (Daanso and McDonald, 2000:8-9).

The press has to focus on the human rights of migrants, as well as the regional development implications of cross-border movements. Instead of drawing attention to the ostensible negative aspects of migrants, there is also a need for the media to focus on their contributions to the economy that would help dispel some myths (Dolan and Reitzes, 1996).

National surveys have revealed that most South Africans believed immigrants have a negative impact on the country. Also, there was very little differentiation between illegal immigrants and refugees. Almost 60 percent stated that immigrants weakened the economy and undermined South African resources, respectively. There was greater prejudice against migrants from Africa, and a preference for immigrants from Europe and North America. These perceptions were "widespread and cut across indicators of age, education, gender, economic status and race" (Crush, 2001:6). A national survey on South African attitudes towards migration revealed that 25 percent wanted a total ban on immigration, and 45 percent wanted this process to be rigidly controlled. Only 17 percent were in favour of a liberal, flexible approach which was related to the availability of jobs (Mattes, 1999:1). Yet only 4 percent of South African respondents actually had regular direct contact with migrants, "suggesting

that these stereotypes may be the product of second-hand (mis)information” (Mattes, et al., 1999:2).

However, the contributions of migrants to the country are often ignored. The migrants have countered that "South Africans have no work ethic and are jealous of the foreigners' initiative, creativity and entrepreneurial acumen" (Sunday Tribune, 3/11/96). Chief Buthelezi, Minister of Home Affairs, stated that:

The employment of illegal immigrants is unpatriotic because it deprives South Africans of jobs and that the rising level of immigrants has awesome implications for the RDP as they will be absorbing unacceptable proportions of housing subsidies and adding to the difficulties we will be experiencing in health care (Reitzes, 1994:8).

Exploitation of migrant workers was also quite common. In addition to lower wages, they were also deprived of benefits like pensions and medical aid. They did not belong to trade unions, hence they received no protection from exploitation and were often summarily dismissed. Reitzes (1994:9) describes the aliens as a 'marginalised underclass who are easily open to abuse':

Devoid of state protection, and denied any rights and entitlements, aliens look for jobs to survive. Because of their illegal status they are forced to accept employment whatever the payment, risk, physical demand or working hours involved. Exploitation of migrant labour carries the risk of social decay, with decreasing wages and deteriorating working conditions ... The creation of such a rightless class also pushes many of them into the criminal underworld, either as a more attractive option or a means of survival.

Migrants and crime

Migrants have been criminalised as a result of not having official travel documents as well as by media stereotyping that they were associated with illegal activities. Police estimates suggested that 14 percent of general crimes involved migrants. According to Warrant Officer Piek crimes committed by migrants in the first half of 1994 had increased by 306 percent compared to the same period in 1993. He maintained that the illegal activities of the migrants and their socio-economic problems had contributed to the high crime rate in the country. Some migrants were arrested for drug smuggling. He quoted the case of Nigerians who were arrested for dealing in cocaine. There were also allegations that some illegal immigrants were involved in the smuggling of illegal firearms and contributing to the endemic violence in some parts of the country (Maharaj and Rajkumar, 1997).

However, the police and politicians often associated migrants with criminal activities without providing evidence to support this contention. In November 1997 Defence Minister Joe Modise argued that unauthorised migrants had contributed to the increase in crime in South Africa:

As for crime, the army is helping the police get rid of crime and violence in the country. However, what can we do? We have one million illegal immigrants in our country who commit crimes and who are mistaken by some people for South African citizens. That is the real problem. We have adopted strict policy and have banned illegal immigration in order to combat the criminals coming from neighbouring states so that we can round up the criminals residing in South Africa (Human Rights Watch, 1998:1).

However, if the undocumented immigrant issue was viewed as matter of law and order, then the problem was likely to be aggravated in the long term:

It will lead to the creation of a criminal underclass, growing xenophobia, regional instability and damaging relations with neighbouring states. It also ultimately flies in the face of the ANC's stated commitment to human rights, in terms of which the moral responsibility of the state is assumed to transcend territorial boundaries (Reitzes, 1994:11).

Migrants entered the country very easily because of the porosity of borders. According to the South African National Defence Force, it apprehends "only one out of every four people who cross" (Minnaar, et al., 1995:35). As a result of political and humanitarian considerations the electrified fences on the Zimbabwean and Mozambican borders were not being used (Hough, 1995). The harbours and airports were easy entry points. There were also serious staff shortages at border posts and immigration offices throughout the country (Minnaar, et al 1995). There was also evidence that some Home Affairs and Immigration Officials were involved in corruption and bribery, especially supplying counterfeit travel and identity documents (Maharaj and Rajkumar, 1997).

The majority of immigrants were arrested as a result of information gained from informants, that is, local people who believed that the newcomers were taking away their jobs, or from anonymous callers who believed that they presented a serious social problem. The police reward for a successful arrest ranged from R200 to R500. Other migrants were arrested at border posts or at airports when their expired passports or permits were detected by computers and officials on duty. Those arrested had a fair chance to present their case and to defend themselves as long as they had the money to do so. If they were found not guilty, then they could appeal to the Minister of Home Affairs to live and work in the country. However, if found guilty, then they were assigned to officers who ensured that they were deported as soon as possible (Maharaj and Rajkumar, 1997). They were held in detention centres until deported.

A recent report by the South African Human Rights Commission (SAHRC) on the arrest and detention of migrants revealed that in many instances those arrested were subjected to violations of their basic rights:

In the majority of cases there were no reasonable grounds for an apprehending officer to suspect that a person was a non-national. A significant number of persons interviewed had identification documents which were either destroyed or ignored or which they

were prevented from fetching from home. Apprehended persons were often not told or did not understand the reason for their arrest. Extortion and bribery are practices extremely widespread among apprehending officers (SAHRC, 1999:3-4).

Given the high levels of prejudice, there was a failure to recognise that migrants have also been victims of crime. National surveys have suggested that “migrants are disproportionately the victims of crime, made worse by inadequate redress in law and lack of protection by the police” (McDonald, Mashike and Golden, 1999:19).

Welfare, health and disease

There has been a great deal of debate about the rights of non-citizens in South Africa. A major concern is that decades of institutionalised socio-economic inequalities will not be eliminated overnight. This has been compounded by increasing levels of poverty since 1994, a consequence of neo-liberal macro-economic strategies. Against this background, there are serious moral questions about what rights should be extended to migrants:

Does one offer health care and education to non-citizens (even if they are prepared to pay) when there are millions of South Africans without these services? At the same time, can one deny migrants access to these resources when South African exiles were granted asylum and support in other cash-strapped African countries during the anti-apartheid struggle? (McDonald, Mashike and Golden, 1999:24)

Politicians in South Africa have expressed concern about the increased pressure that migrants will exert on basic services and social and welfare resources (McDonald, Mashike and Golden, 1999). The majority of South Africans believed that social services should not be extended to migrants (Taylor, et al., 1999). It has been argued that illegal immigrants increased the pressure and burden on health, welfare and other social services; safety and security; correctional services and justice.

In 1994 it was estimated that illegal immigrants cost the state 221 million rand (one tenth of the RDP budget), and that this will increase to 941 million rand by the end of the century (Hansard, 24/8/94). In 1995 it cost the South African government 12 million rand to repatriate 150, 000 illegals (Daily News, 21/8/96). However, surveys have revealed that migrants do not expect their basic services to be subsidised, and are prepared to pay for any services that they obtain (McDonald, Mashike and Golden, 1999). The international and South African experience suggests that migrants contribute to the economy and make low levels of demand for state welfare resources compared to locals (Centre for Development Enterprise, 1997).

Migrants also faced enormous difficulties in getting access to housing. This was not surprising, given that there was a national shortage of three million houses in South Africa. In 1997 the Minister of Housing, Sankie Mthembu-Mahanyele, attributed the escalating housing shortage to the increasing number of foreigners: “We can’t keep immigrants out. Somehow our borders are porous” (Business Report, 31/01/97). According to McDonald (1998:1):

There are no clear policies on access to housing for non-citizens in South Africa. There are policy documents, constitutional clauses and international agreements which commit the South African government in various ways to 'ensuring access to adequate housing for all persons living in the country', but these commitments are often inconsistent with one another and even contradictory when it comes to defining who is entitled to housing.

Another area of concern was the link between migration and the spread of disease. There have been few well documented and structured studies which have investigated the links between migration and the spread of infectious diseases (Williams et al., 2002). Since the migrants entered the country illegally, not much was known about the diseases they might have carried. However, when arrested and imprisoned the state of their health was assessed and the diseases they carried were identified. Many diseases with epidemic potential, for example, yellow fever, cholera and other sub-tropical diseases, were being brought into the country by the illegal immigrants. Some migrants were diagnosed as being HIV positive.

In March 1995 two such prisoners died in Durban (Maharaj and Rajkumar, 1997). About 13,000 migrant mine workers from Malawi were repatriated from South Africa between 1988 and 1992 because 200 had tested HIV/AIDS positive (Chirwa, 1998). The relationship between migration and HIV/AIDS is very important in a southern African context because of the movement of migrant labour. In fact a "key neglected factor in explaining the rapid spread and prevalence of HIV/AIDS in Southern Africa over the last decade is human mobility" (Williams, et al., 2002:1).

However, there is little understanding of the extent to which migration influences the spread of HIV/AIDS. This is because the outbreak of the HIV epidemic was associated with changes in migrant labour systems and population mobility in southern Africa. More specifically, the following trends have become apparent over the past twenty years:

- the collapse of apartheid brought new opportunities and reasons for migration across borders within the region.
- a significant growth in levels of urbanisation in South African cities.
- women are becoming considerably more mobile, migrating for formal and informal work in ever-growing numbers (Williams, et al., 2002:18-19).

It has been argued that "unless the issues of migration and disease are understood and dealt with effectively, it is unlikely that the greater struggle to control and manage AIDS can be won" (Williams, et al., 2002:32).

The immigrant contribution

There has been some controversy about the economic impact of migrants:

Some claim that immigrants take jobs and depress wages of resident ... workers. Others argue that skilled immigrants invest

savings and add entrepreneurial talent to the economy, while unskilled immigrants accept jobs unwanted by resident workers (Walker, Ellis, and Barf, 1992:235).

International experience also shows that immigrants contribute more to the economic development of their host countries than we are made to believe in South Africa (Harris, 1995; Bouillon, 1998):

Studies have shown that immigrants are, in fact, net contributors, not parasites. Immigrants are, on average, healthier, more energetic and better educated than people in the host population. Consequently, they draw comparatively less on social welfare and other social services. Many pay tax and, through their entrepreneurship, make a positive injection into local economic development (Meintjies, 1998:20).

Home Affairs spokesman, Patrick Matlou said that once migrants are in the country, they find jobs easily because they accept whatever wages are offered to them. Hence, they were "easy prey to unscrupulous employers who were willing to hire them as cheap labour" (Sunday Times, 9/8/98). These comments were echoed by Inspector Gert de Beer of the Internal Tracing Unit:

Illegal aliens are cheap labour, and in their desire to make money, they deprive locals of job opportunities. Some are paid as little as R300 a month, while others do not even get paid. They merely work for food and shelter. Opportunistic businessmen know this and deliberately exploit the situation. The immigrants cannot complain because their employers know they are working here illegally (Sunday Times, 9/8/98).

The advantage to small companies, often fly-by-night concerns, is that they can employ these people at slave wages, knowing that they are unable to join unions and therefore protect themselves. However, if an employer gets caught hiring illegals, he has to pay a stiff fine and often bear the cost of repatriation.

A survey in Durban revealed that more than three quarters (81 percent) of the respondents did not have a contract with their employers. This situation is common and expected wherever illegal immigrants are employed because of the fears of prosecution. This increases the exploitation and vulnerability of the immigrants. In spite of this situation, the overwhelming majority stated that employers were satisfied with their work. On their part migrants (68 %) were content with their working conditions. This was largely because of the lack of alternative options. Some of the reasons for work satisfaction were: shorter working hours, ability to fulfil needs and familiarity with work. Those who were dissatisfied with their jobs complained about low wages, insensitive employers and poor management. The majority (90 percent) were not members of any union (Maharaj and Moodley, 1999).

One area in which immigrants are having an indirect impact on the economy is the area of formal and informal businesses such as hair saloons, supermarkets, African crafts, taxis and upholstery. These businesses were established with funds from home countries, loans from friends and earnings in South Africa. Direct revenue to the state

did not accrue because of the non registration of most businesses and payment of taxes. Those that did contribute to taxation paid an average of R805 per year. Indirectly, however they do contribute via their purchasing of goods, subsistence and other living expenses incurred (Maharaj and Moodley, 1999).

Immigrant owned businesses have become an important part of small, medium and micro enterprise sector in Johannesburg and have changed the socio-economic structure of the inner city. Despite hostility from locals, the immigrant entrepreneurs were positive and intended to expand their enterprises. Significantly, such foreign owned enterprises were creating jobs for South Africans (Rogerson, 1997).

If the stigma of illegality was removed, it was possible that such migrants could contribute significantly to the local economy through the creation employment opportunities as well as the training of local people. Further, the majority would then be compelled to pay taxes and this would increase the resource base of the government for reconstruction and development. Migrants can also compensate for the immigration or 'brain drain'.

Immigration drain

While there has been a tendency to overestimate the number of undocumented immigrants in South Africa, there has also been an inclination to underestimate the extent of emigration or the 'brain drain'. Between 1989 and 1997 about 233 000 South Africans emigrated to the UK, USA, Canada, Australia and New Zealand (Crush, et al., 2000:1). Official statistics revealed that 82 811 people had left during this period (Centre for Development Enterprise, 2000).

This loss of skills was not offset by a proactive, aggressive recruiting immigration policy. The flight of skills has serious social, economic and political consequences. There is also a clear gender dimension, with men being more likely to leave permanently than women (Dodson, 2002). The main reasons for the exodus are "unacceptable levels of crime and violence, economic stagnation, and perceptions of declining standards in the quality of public sector services, most notably education and health" (Rogerson and Rogerson, 2000:64).

Throughout the 1990s there has been a steady decline in the number of immigrants. In 1993 there were 9800 immigrants and this declined to 4100 in 1997 (Crush, et al., 2000:1). The net migrant gain/loss over the 10 year period 1989-1999 is reflected in Table 1 (see next page). The Centre for Development Enterprise compiled these figures based on data from Statistics South Africa and the South African Institute of Race Relations.

The implications of these trends are very clear. There will continue to be a shortage of skills as well as an oversupply of unskilled labour. The negative implications will reverberate throughout the South African economy and impact on the country's global competitiveness as "skilled workers generally create jobs for unskilled workers and the level of skills in the labour force is an attraction for foreign investment" (Wocke and Klein, 2002:441).

Changing policy perspectives

As emphasised by Croucher (1998:654) "immigration in South Africa and elsewhere, is a complex social, political and economic issue that poses numerous policy challenges for even the most stable democratic states". In an era of globalisation there has been a great deal of debate about the rights of non-citizens: Should they have access to basic welfare and social services? Should the same basic human rights apply to citizens and non-citizens? This debate has been particularly acrimonious in South Africa (McDonald, Mashike and Golden, 1999).

Table 1: Immigrants and emigrants, 1989-1999

	Immigrants	Emigrants	Net gain/loss
1989	11 270	4 911	6 359
1990	14 499	4 722	9 777
1991	12 379	4 256	8 123
1992	8 686	4 289	4 397
1993	9 824	8 078	1 746
1994	6 398	10 235	-3 387
1995	5 064	8 725	-3 661
1996	5 407	9 708	-4 301
1997	4 103	8 946	-4 843
1998	4 371	9 031	-4 660
Jan-May 1999	1 692	4 313	-2 621

Source: Centre for Development Enterprise, 2000, p.11.

Official policy towards the illegal immigrants has also sometimes been confusing, incoherent and contradictory because the government had "been caught unawares by

the enormity, complexity and seeming intractability of dealing with large scale black immigration" (Mercury, 26/10/95). Various policy options have been advocated to resolve the illegal immigrant issue, ranging from tighter border controls and implementation of law and order, to those that attempt to understand the problem in its regional and historical context.

Control, exclusion and expulsion

1994 official government policy towards illegals was embodied in the Aliens Control Act (1991) which provided for the deportation of culprits, as well as the prosecution of those who employed them and was "a piece of legislation premised on principles of control, exclusion and expulsion" (Crush, 1999:2). Historically, immigration legislation in South Africa demonstrated and increasing disregard for "accountability, transparency and due process" (Peberdy and Crush, 1998a:18). The post-apartheid government acquired a migration management system "characterised by corruption, racial double standards and special privileges for certain employers" (Crush, 1999:1). In a democratic era it was essential for new immigration legislation because:

The Aliens Control Act is extremely opaque in its language and structure, so that it is difficult to decide what procedures should be followed or what rights detainees hold. It also confers an unacceptable level of administrative discretion. Procedures used to process applications are not contained in the act, or in the regulations made under the act, but in internal documents that are not publicly available or legally binding (Crush, 1998:14).

The Aliens Control Act was described by the Human Rights Watch (1998:4) organisation as an obsolete relic of the apartheid era, which conflicted with "internationally accepted human rights norms and the South African constitution". While racial provisions governing immigration were removed in 1991, the Aliens Act "retained a high level of ministerial discretion, a lack of accountability for administrative decisions taken, and little due process for those who failed to satisfy administrative officials of their legal status" (Republic of South Africa, 1997:20).

In terms of the Act, it was an offence to "employ, enter into any agreement with, conduct any business with, harbour or make immovable property available to illegal immigrants" (Daily News, 7/11/94). However, person power and funding shortages made it difficult to stringently apply the provisions of the Aliens Act (Hansard, 24/8/94, col. 276). The problem was aggravated by South Africa's long borders, political and humanitarian considerations which prevented the more effective use of electrified border fences, and inconsistent procedures at different entry points (Hough, 1995).

In August 1994 the government established an Inter-Departmental Committee on Illegal Aliens in order to address the problem. The Committee had representatives from the departments of "home affairs, justice, customs and excise, correctional services as well as input from the police and defence force" (Natal Witness, 31/1/95). This was followed by the establishment of two Alien Tracing Units in each province on 1 November 1994. The Minister of Home Affairs emphasised that greater control and restriction of migrants were handicapped by the availability of person power and funds (Hansard, 24/8/94 col. 276).

However, if the illegal immigrant issue was viewed as matter of law and order, then the problem was likely to be aggravated in the long term. Such an approach will foster the development of a "criminal underclass", increase xenophobia and lead to regional destabilisation. Ultimately this will violate the human rights pledge of the African National Congress, "in terms of which the moral responsibility of the state is assumed to transcend territorial boundaries" (Reitzes, 1994:11).

African leaders in southern Africa, while agreeing that illegal migration should be discouraged, believed that this form of immigration was inevitable. The message from African leaders attending the Southern African Economic Summit in Johannesburg in May 1995 was that since South Africa was the most powerful nation in the region, it will have to "accept illegal immigrants from its poorer neighbours" (Natal Mercury, 12/5/95). As a member of the Southern African Development Community (SADC), and given its support for regional co-operation and development, South Africa will have to take some responsibility for those who live outside its borders. However, Reitzes (1995:31) questions whether it is "tenable that this responsibility holds only if they remain beyond those borders".

At a cabinet meeting of the Government of South Africa on 21 February 1996, it was agreed to give illegal migrants from southern African states a partial reprieve. The Cabinet agreed that migrants from the twelve states of the SADC living in South Africa could apply for permanent residence provided that they met certain conditions (Mercury, 22/2/96). In terms of the agreement migrants who could verify that they had resided in the country for five years, did not have a criminal record, and were either economically productive or married to a South African, or had dependent offspring in South Africa, could apply for permanent residence.

Although the Department of Home Affairs anticipated that one million persons would qualify, only 124,073 out of a total of 201,602 applicants were successful (Mahlutshana, 1999:31). There were several reasons for the modest number of applicants, including "a general lack of access to information among the target population due to poverty and illiteracy, costs associated with applications, fear of detection, as well as corruption within the application process" (Human Rights Watch, 1998:6).

A rights-based approach

In late 1996 the government appointed a Green Paper task group to develop a new framework for revising migration legislation. In pointing out that many aspects of the Aliens Control Act "would probably not withstand the test of constitutionality", the task group argued that the "challenge facing South Africa is to transform a racially motivated immigration/migration system into a non-racial and rational policy response to the objective needs of the country" (Republic of South Africa, 1997:19). The task group recommended that a new Immigration, Naturalisation and Migration Act should replace the Aliens Control Act.

The Draft Green Paper on International Migration, released in May 1997, argued for a migration policy which was humane and took cognisance of global realities, and was consistent with the new Constitution and Bill of Rights:

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.

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 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 (Republic of South Africa, 1997:19).

The Draft Paper acknowledged South Africa's historical and political linkages with other countries in the region. It maintained that as long as there were widespread inequalities and polarised economic growth in the region, South Africa would continue to attract large numbers of migrants. The Green Paper suggested 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" (Republic of South Africa, 1997:11).

It was pointed out that South African jurisprudence on immigration is not well developed and focuses on 'arrest, detention and removals', a hangover from the apartheid era. The Green Paper advanced the following principles that should guide the implementation of a new immigration policy:

that enforcement should be rights based; that it must focus on people who are unauthorised immigrants; and that it must strengthen the capacity of government to: detect the fraudulent use of documents; provide effective surveillance of smuggling routes; and strategically monitor national borders in areas where clandestine migration is known to occur (Republic of South Africa, 1997:27).

Since the Department of Home Affairs did not have the capacity to enforce immigration policy, the Green Paper advocated the establishment of a Department of Citizenship and Immigration Services (DCIS). The DCIS should deal only with immigration issues.

There was some concern that the Green Paper was silent on the gender issue. While the Aliens Control Act favoured men, this was tacitly endorsed by the Green Paper (Dodson, 2000). Nevertheless, the Green Paper was well received in business, economic and political circles. However, no attempt was made to immediately translate the principles in the Green Paper into formal legislation and the next step, the establishment of a white paper commission was delayed. The leadership of the Department of Home Affairs was not happy with the recommendations of the Green Paper and immigration legislative reform was stalled (Human Rights Watch, 1998). The white paper on migration was only released in March 1999.

‘Big brother is watching’

The White Paper acknowledged that migration is a function of larger geopolitical and transnational economic dynamics as encapsulated in the process of globalisation:

The challenge for South Africa is to formulate policy that takes advantage of the positive aspects of globalisation, including the unprecedented movement of people with skills, expertise, resources, entrepreneurship and capital, which will support the country's efforts at reconstruction, development and nation-building (Republic of South Africa, 1999:6).

However, compared to the progressive recommendations of the Green Paper, the White Paper was actually retrogressive. The White Paper echoed the popular xenophobic view that migrants were linked to crime, competed with citizens for jobs, increased pressure on social services, and contributed to corruption. It does not provide any evidence to support these claims, and ignored research that suggested that this was not so (Republic of South Africa, 1999). There would heavy penalties for employers of illegal immigrants. However, according to the Centre for Development Enterprise (1997b:8) in countries with a large thriving informal sector it is difficult to enforce employer sanctions, and this could also aggravate "discrimination against certain groups" within a country as well as heighten xenophobic tendencies.

The intention was to cultivate an "environment which does not offer them (migrants) opportunities of employment and free available public services which they cannot find in their countries of origin" (Republic of South Africa, 1999:31). The focus was on enforcement and in the White Paper:

The administrative and policy emphasis is shifted from border control to community and workplace inspection with the participation of communities and the co-operation of other branches and spheres of government. Procedures related to the issuance of permits are simplified to shift resources towards enforcement (Republic of South Africa, 1999:20).

According to the White Paper the government expects civil society to play a critical watchdog role in enforcing immigration laws by ensuring that the community was not sheltering non-citizens:

By checking, in co-operation with the community, whether illegal aliens are receiving services from banks, hospitals, schools and providers of water supply or electricity, they should contribute to creating the perception that South Africa is not a good receptacle of illegal immigration (Republic of South Africa, 1999:16).

This was similar to Proposition 187 introduced by Californian Governor Pete Wilson to deny social services to undocumented migrants, and in terms of which service providers were required by law to report the presence of such individuals to the authorities (Diamond, 1996). However, such a policy shift was extremely distressing given the high levels of xenophobia and negative attitudes towards foreigners from Africa. There was enormous potential for witch hunts, "vigilantism and grievous human rights abuses" which would well "outweigh any potential benefit from community participation" (Mattes et al., 2000:216).

The police would be trained to identify illegal immigrants and authenticate nationality and citizenship (Republic of South Africa, 1999). The notion that citizens have to produce proof of their citizenship was alarming and was reminiscent of the apartheid era and influx control (SAHRC, 2000). The SAHR (2000:3) argued that there was a need to "adopt a humane management-orientated approach to migration policy which recognises both our moral and historical ties to the region".

While the SAHRC (1999) recognised the need for the state to control immigration, it provided compelling evidence of the unwarranted anguish suffered by foreigners as well as South Africans as a result of the execution of existing enforcement procedures. This had serious repercussions for building a human rights culture:

If a society's respect for the basic humanity of its people can best be measured by its treatment of the most vulnerable in its midst, then the treatment of suspected illegal immigrants ... offers a disturbing testament to the great distance South Africa must still travel to build a national culture of human rights (SAHRC, 1999:4).

As pointed out by SAMP, the White Paper was pervaded with the neo-Malthusian view that "South Africa has reached its 'carrying capacity'" and any population increase would be untenable (SAMP, 2000:2). However, carrying capacity cannot be determined simply by considering population and resources, and other variables such as qualifications and skills, economic growth rate, level of development, etc. must be considered. The White Paper uncritically accepts the notion that South Africa is being overwhelmed by illegal immigrants in spite of a significant body of research which suggested that such figures have been grossly exaggerated and based on research which was methodologically flawed (SAMP, 2000).

The sea of change between the Green and White papers reflects the tensions in the ruling alliance in Government of National Unity which comprises the majority ANC and the minority Inkatha Freedom Party (IFP). The Minister of Home Affairs, Chief Mangosuthu Buthelezi, has consistently advocated a conservative, regulatory migration policy. The Parliamentary Portfolio Committee on Home Affairs identified numerous problems with the White Paper.

In spite of this, the Draft Immigration Bill to implement the White Paper on International Immigration was released on 15 February 2000 by the Minister. According to SAMP Project Director, Vincent Williams, the "Bill had been drafted without a clearly articulated government policy on migration ... the Bill did not represent any strategic shift in mindset and was merely a sophistication of the worse provisions of the Aliens Control Act" (Mail and Guardian, 20-26/7/01).

The Immigration Bill

The provisions of the white paper were translated into the Immigration Bill. However, this process was not without controversy and drama, not the least being a 2 June 2002 Constitutional Court deadline for a new immigration law to replace the Aliens Control Act. The Immigration Bill was adopted by the National Assembly of Parliament at the end of May 2002 and was summarised as follows:

The Immigration Bill represents a curious mix of typographical errors and theories of migration. This Bill was always in danger of being a series of short-term to medium-term, ad hoc interventions rather than a coherent and holistic engagement with the migration debates ... Clearly, parliament and the executive branch do not yet share a vision on the proper role of migration within the national transformation process ... Rather than making the promised leap of faith into the 21st century to tackle the challenges of globalisation, the bill appears to want to drive the foreign barbarians from the immigration gates (Business Report, 28/5/2002).

In terms of the Bill it would appear that the primary function of the Department of Home Affairs would be enforcement, or “detecting, apprehending and deporting illegal foreigners” (Business Report, 31/5/2002). For example, the Bill allowed for the creation of an inspectorate or special agency within the Department of Home Affairs to implement immigration law. The inspectorate would be empowered to conduct raids in communities and workplaces in search of illegal immigrants without warrants. If individuals were unable to provide proof of their legal status in South Africa they could be arrested and detained for up to 48 hours without review. Such draconian powers were compared with the repressive influx control legislation of the apartheid era, and were likely to conflict with the new South African constitution.

Given the tensions, contradictions and controversies leading up to the passing of the Immigration Bill, it was not surprising that the government was open to revisions, and this was emphasised by President Mbeki in Parliament:

We have clearly to focus on the matter of what kind of immigrant we want in South Africa so that we are better able to address the challenges that we face. The Immigration Bill may not address all these matters that we wanted ... We have to look carefully at what has been agreed ... and if there are elements there which are contrary to what we said ... then we would correct it (Parliament, Sapa, 29/5/2002).

A major issue was permits and quotas for foreign workers. Initially the Bill proposed a free market approach whereby companies hiring foreign labour had to pay a levy to the government, and complex bureaucratic procedures would be averted. However, an amendment introduced by the ANC deemed that the minister of home affairs would decide annually the job types for which quotas would be required, after consulting the departments of trade, industry and labour. The minister would also determine the size of quotas.

The actual mechanics of this process was unclear. Beyond the designated quotas, general work permits would be provided the department of home affairs, provided that there is proof that locals could not fill the position. A chartered account will have to certify that the foreign incumbent was being employed in terms of the same conditions of service as locals. According to the Business Report (28/5/2002), the “problems experienced in obtaining such permits have been elevated to the level of urban mythology”.

There was a lack of consensus within the ANC about the quota system. The Minister of Trade and Industry, Alec Erwin was concerned that the quota system would adversely affect the import of skilled labour. He pointed out that “in a modern world where skills and categories of skills change so fast, it would be ‘pointless’ to try to identify them” (Sunday Times, 26/5/2002). The Director-General of Trade and Industry, Alistair Ruiters, contended that a major obstacle to economic growth in South Africa was a shortage of skilled labour: “Unless we address the question of skills we are not going to address unemployment. The problem is not that people are unemployed, it is that they are unemployable. We have been told by economists that we have vacancy levels in high skill areas of up to 500 000” (Sunday Times, 12/5/2002).

The Congress of South African Trade Unions (COSATU) argued that the quota system gave “almost total discretion to an old style department, which still retains many of its apartheid-era characteristics, and is still influenced by xenophobic and racial mindsets and is a recipe for problems” (Business Report, 22/5/2002). Notwithstanding the many flaws, the Bill was passed to avert a constitutional crisis, and the South African Immigration Act was signed in 2002.

Migration specialist Jonathan Crush aptly summarises the migration status quo in 2003 as follows:

South Africa’s transition to a new post-apartheid immigration policy has been slow and torturous and is currently characterised by deep uncertainty. Though less than a year old the new legislation is already caught up in legal and constitutional challenges. This certainly suggests that the local struggle to shape a new South African migration management regime will continue into the foreseeable future (Crush, 2003:5).

After the April 2004 general elections, Nosiviwe Mapisa-Nqakula became the new Minister of Home Affairs. She immediately tabled a number of amendments to the Immigration Act. The intention was to attract people with skills as well as those who wanted to invest in South Africa. Her ultimate goal was to have South Africa’s immigration legislation totally rewritten (Quintal, 2004).

Conclusion

In South Africa illegal immigrants have been accused of taking away the jobs of locals, lowering wages, increasing crime and spreading diseases. The massive escalation in the number of illegal migrants in South Africa since 1990 can be attributed to political changes which have taken place in the country. As with the rest

of Africa, "the artificiality of some of the international borders, the political instability of several regions and the paucity of administrative resources when compared with the lengths of the borders and the numbers of migrants involved", have contributed to an escalation in the number of migrants entering South Africa (Plender, 1986:546). A democratic majority government was expected to be sympathetic to immigrants from neighbouring countries.

Policy relating to migrants has developed in a vacuum, especially in terms of the numbers involved and their role in the economy. The policy focus was initially the 'law and order' approach. There was need for a more sympathetic and sensitive approach, which took cognisance of the circumstances which contributed to the escalation in migration. The migrants were not necessarily parasitic, but rather contributed productively to the economy. Exploitation of these workers was quite common. In addition to lower wages, they were also deprived of benefits like pensions and medical aid. They did not belong to trade unions, hence they received no protection from exploitation and were often summarily dismissed.

South African immigration policy is characterised by an understanding of immigration as the consequence of immigrant's individual actions while it sees itself as a passive agent not implicated in the process. In other words the South African state blamed immigrants for the immigration flow without recognising how its past and present policies contribute to this process. As Sassen notes, older pattern of relations between South Africa and its neighbours and its integration to the global political economy is responsible for the flow. Therefore the responsibility for immigration may not be exclusively the immigrant's.

The problem of illegal immigration in South Africa has to be understood within its regional and historical context. The economies of many southern African countries had been adversely affected by the de-stabilisation policies of the apartheid regime. In spite of this, these countries supported the liberation struggle for a democratic South Africa. The ANC dominated Government of National Unity was therefore obliged to be sympathetic to the illegal immigrants from these countries. Such an approach would be in keeping with the progressive human rights policies of the Government.

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