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Research, Publications,
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LETTERS

Have your say in the next issue of *Crossings* by writing to the Editor, *Crossings*, at the above address.

FRONT PAGE:

MIGRANTS SAY HOME IS BEST

David McDonald, Crossings, 2(1) February 1998

PLEASE NOTE: Readers are welcome to reproduce and reference this article as long as appropriate acknowledgements are given

Batten down the hatches. Lock all the doors. Every impoverished person on the African continent is desperately trying to get into South Africa to find work or commit crimes, and the only way to deal with this growing human tide is to seal the borders and expel unwanted aliens.

Or is it?

Unfortunately, this alarming scenario is all too easy to believe given the nature of police reports and press coverage of cross-border migration over the past few years. It is not at all clear, however, that this is a very accurate description of what is taking place. In fact, recent national surveys with 2300 people in Lesotho, Mozambique and Zimbabwe by the Southern African Migration Project (SAMP) paint a very different picture of the current cross-border migration situation.

Based on these surveys and other research by SAMP it would appear that both the number of people trying to get into South Africa and the way that people enter the country are being misrepresented in the media. Three points are of particular interest in this regard.

First, not everyone wants to go to South Africa. An overwhelming number of the people interviewed identified their home country as a better place to raise a family than South Africa, with access to basic resources like land, water, and housing being the most important reasons. Levels of crime and safety were also seen to be much better at home, and even South Africa's much vaunted democratic reforms would appear to carry little weight with people in the region as over two thirds of the respondents said that they find "peace", "freedom" and "democracy" to be as good, or better, in their home country as in South Africa.

Not surprisingly, job opportunities were deemed far better in South Africa than at home, as were opportunities for buying and selling goods, but this perception of job opportunities does not necessarily

translate into a flood of migration. Only 13% of those interviewed said that it was "very likely" that they would go to live in South Africa for a short period of time (up to two years) and only 6% said that it was "very likely" that they would move to South Africa permanently. Taking into account that an even smaller percentage of these respondents would actually make the move, the number of people from the region wanting to live in South Africa is much smaller than we have been led to believe in the press.

Second, it is important to note that international borders are taken seriously by people in the region. Contrary to popular opinion in South Africa, people from Lesotho, Mozambique and Zimbabwe do not simply expect the South African government to throw open the doors to whomever wants to enter the country.

With the notable exception of Lesotho (where 41% of those interviewed think the two countries should simply "join under one government"), over three-quarters of the respondents feel that the South African government should restrict the number of people allowed into the country and should be able to deport those who commit crimes and/or are in the country without proper documentation.

Most of these people would also like to see policies in place which make it easier for people to move from one country to another, and many question the legitimacy of borders that were created during the colonial and apartheid era, but they do not advocate a radical dismantling of current border systems.

And finally, it is also important to note that movement across the South African border is not nearly as corrupt or chaotic as one might expect from press coverage. As a case in point, of the 40% of respondents who said that they had been to South Africa, 49% crossed the border by car or combi, 22% by bus, 14% by train, and 4% by plane or other formal modes of transportation. Of the remaining 8% that crossed the border "on foot" most of these took a bus or combi to the border, went through customs on foot, and then took another bus or combi to their destination in South Africa. In other words, there are relatively few people sneaking into the country under fences or swimming across rivers.

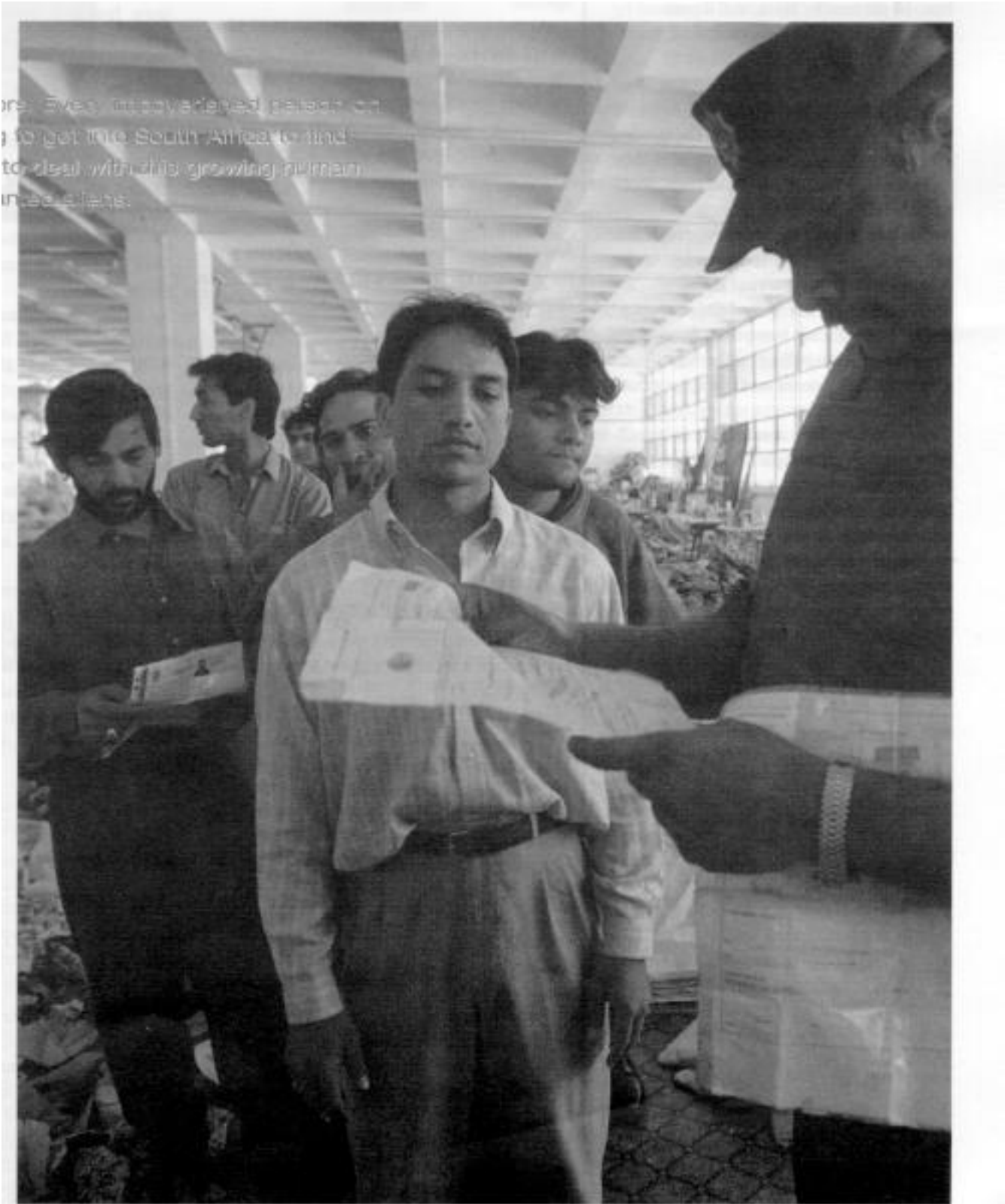
Moreover, 89% of these respondents had official passports from their home country before entering South Africa and 72% had the appropriate South African visa. Admittedly, this means that a significant number of people are still crossing the border without proper documentation, but once again the figures are not nearly as high as one would suspect from anecdotal reports in the press. (The fact that the majority of respondents without proper visas were from Zimbabwe is partly a product of the fact that it is so difficult and time consuming to get a visa for South Africa in that country.)

In conclusion, then, the movement of people across the South African border from Lesotho, Mozambique and Zimbabwe - the three largest source countries of migration to South Africa - would appear to be a much more formal and regularized than previously thought and the potential to manage cross-border migration in the future may not be as difficult as one might have anticipated.

This is not to suggest that there are no problems on the South African border or that effective cross-border migration is going to be a simple task. Anything but. It is essential, however, that South African

policy makers and the South African public at large be exposed to a more balanced and more informed debate on this extremely important policy topic.

David McDonald is the Canadian Project Manager of SAMP.



ore. Even if discovered, people don't
to get into South Africa to find
to deal with this growing human
in the streets.

ANY ILLEGALS? Members of the Border Police and Internal Tracing Unit check the papers of Pakistani immigrants in a raid on a factory in downtown Johannesburg.

Photo: Adil Bradlow/PictureNET Africa

NEW ZEALAND: Members of the South African Police and internal tracing unit check the papers of Pakistani immigrants in a raid on a factory in downtown Johannesburg.

Photo: Adil Bradlow/PictureNET Africa

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COVER STORY

ANTI-FOREIGNERS, BUT NOT OBSESSED

Bob Mattes, Crossings, 2(1) February 1998

PLEASE NOTE: Readers are welcome to reproduce and reference this article as long as appropriate acknowledgements are given

While many South Africans want tough migration policies and have negative feelings towards foreigners, most are far more concerned about domestic problems. Bob Mattes reports on recent surveys.

Given the increased media attention to manifestations of anti-migrant feelings since the 1994 election, one could be forgiven for thinking that migration was now "public issue number one" in South Africa.

Yet a review of public opinion polls conducted by Idasa since 1994 reveals that, in comparison to other national problems, migrancy features hardly a blip on the public agenda.

At the same time, an extensive 1997 Idasa/SAMP survey of South Africans' attitudes about migrants reveals that, when prompted for their views about migrants and government policy toward them, South Africans hold fairly negative opinions about foreigners and favour a very restrictive migration and immigration policy.

In our past three national surveys, Idasa has asked people to name the top three problems facing the country that the government ought to address.

Increase

In 1994, not one person mentioned migration or immigration as an important issue. This figure increased to 3.4 percent in 1995 but decreased to 1 percent in our most recent survey of June-July 1997 (which was done in conjunction with the Southern African Migration Project).

Quite obviously, immigration and migration is not the national obsession it is often made out to be.

Yet when asked for their views on official policy toward migrants, one quarter of the public want a total

prohibition of migration or immigration.

Support for a total ban increased by nine percentage points since 1995 (16 percent).

A total of 62 percent prefer some form of managed or regulated policy (comprising of 17 percent wanting migration policy tied to the availability of jobs, and 45 percent wanting strict limits placed on migrants and immigrants).

Only 6 percent favour a total liberal policy of letting anyone in who wants to enter.

South Africans are considerably more opposed to migration and immigration than any other African country where opinion has been measured. Less than 5 percent of people in Zimbabwe, Lesotho and southern Mozambique called for a prohibition of migration into their own countries (in the 1997 SAMP Three Nations Survey).

Only 6 percent of Nigerians made this call in a 1995 survey.

South Africans are even more opposed to migration than Americans, a country facing relatively more similar situations with regard to regional migration (where only 8 percent supported a total ban in 1995).

Returning Foreigners

Furthermore, just under one quarter (22 percent) of South Africans want the government to return all foreigners presently living here to their own countries. Similar proportions favoured sending back different categories of people here such as those who are not helping the economy (19 percent), those who are here illegally (32 percent) and those who have committed crimes (16 percent). Only 4 percent said the government should not send anyone back.

One important issue recently in front of policy-makers is that of granting amnesty to people currently illegally inside the country. Only 14 percent support such a policy, while 59 percent oppose.

Yet South Africans do not hold an undifferentiated view of foreigners. Many people would be willing to give preferential treatment to different groups of migrants, either in terms of entry or repatriation policy. Some 63 percent would give special preferences to skilled workers, while 50 percent supported favouring those with mining contracts, and 34 percent supported preferences for refugees. In terms of place of origin, 31 percent favour preferences for Europeans or North Americans, 27 percent for southern Africans, and 22 percent for other Africans.

Another hot issue is whether migrants should be granted a range of differing rights. Majorities or pluralities of South Africans oppose giving them the same access to a house as a South African (54 percent), the right to vote (53 percent), or the right to citizenship (44 percent).

The situation was much more mixed with regard to granting migrant children access to equal education (39 percent opposed, but 37 percent supported) and equal access to medical service (where 39 percent opposed and 38 percent supported).

In a 1995 national survey, only 4 percent of South Africans picked immigrants or migrants as their least-liked group. The vast majority focused their intense dislike on various domestic groupings.

However, in another indication of affective (or emotion-based) views of foreigners, in the 1997 survey we asked people to rate various groups on an 11-point scale with 10 being totally favourable and zero being totally unfavourable.

Among the total population, people from Southern Africa (4.3), West Africa (4.1) and Europe/North America (4.9) all receive substantially more negative views than various South African groups (with the exception of Afrikaners who received a 4.2). Illegals received especially negative views, at 2.8.

More importantly, while race is an extremely important factor in how South Africans view each other, it accounts for very little difference in how they, commonly, see foreigners.

Perhaps surprisingly, a significant part of the public (43 percent) feel that southern Africans living here or who want to move here could potentially be part of the South African nation, but 56 percent said they could not.

Whatever beliefs South Africans have about what migrants do, or what their impacts are, they are not based on a lot of direct experience. Only 4 percent of our national sample said they had "a great deal" of contact with people living here from southern Africa. Another 15 percent said "some". Most said "hardly any" (20 percent) or "none" (60 percent).

Fear

We asked people whether they had anything to fear from people from neighbouring countries living here. They mentioned up to three things. Significantly, one quarter of the sample (24 percent) told us that they had nothing to fear, while 52 percent of the total sample mentioned crime as one of their fears, 34 percent mentioned threats to jobs and the economy and 29 percent cited diseases.

In contrast, only 3 percent mentioned competition for housing, 2 percent a fear of their land or the country being overrun, and 1 percent, cultural or linguistic difference.

However, when prompted for their opinions on a number of statements about migrants, relatively few South Africans believe they have a positive impact on this country. Only 18 percent agreed that they made our society stronger (60 percent disagreed), 30 percent agreed that they brought needed skills (43 percent disagreed) and 20 percent agreed that they made our economy stronger (59 percent disagreed). Some 61 percent agreed that they put additional strains on the countries resources (19 percent disagreed).

To what extent might anti-migrant feelings turn into actual anti-migrant action?

Significant portions of South Africans said that it would be "very likely" that they would take part in collective actions aimed at migrants.

These include preventing a foreigner from: teaching their children (12 percent), operating a business in their area (12 percent), becoming a co-worker (11 percent), or attending school with their children (10 percent).

Yet it is important to note that these figures were all slightly lower than the proportions willing to take part in similar actions aimed against members of their least-liked South African group.

In another question, we asked people what they would do if they found out about someone who was in South Africa illegally. Almost half our sample (48 percent) said they would do nothing while 35 percent said they would report them to the police and another 12 percent said they would report them to their local community associations or street committees.

Three percent said they would get people together to force them to leave.

Bob Mattes is programme manager of Idasa's Public Opinion Service.

This research is the result of a collaborative effort of over 40 researchers in five different countries. The country coordinators were Fion de Vletter (Mozambique), John Gay (Lesotho), Bob Mattes (South Africa), David McDonald (Canada), and Lovemore Zinyama (Zimbabwe).



GREEN PAPER

UNWORKABLE AND COSTLY....

Anne Bernstein, Crossings 2(1) February 1998

and

IT STRIKES A GOOD BALANCE

Jonathan Crush, Crossings, 2(1) February 1998

PLEASE NOTE: Readers are welcome to reproduce and reference this article
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The Green Paper on International Migration deals with a touchy subject. ANNE BERNSTEIN argues that its proposals will be impossible to implement. JONATHAN CRUSH counters that it tries to balance the extremes of 'open borders' and 'fortress South Africa'.



RUNNING OUT: Mozambicans cross the border into South Africa. The Green Paper tries to suggest ways of regulating the flow of people from neighbouring countries.

PictureNET

Unworkable and Costly Anne Bernstein

"Where will the additional funding come from needed to implement the proposals in the Draft Green Paper, not only for more immigration officers but for all the other elements in the expanded system of checks and controls?"

The Centre for Development and Enterprise (CDE) welcomes the points of departure in the Draft Green Paper on International Migration which recognize that the interests of South Africa and of South Africans should be paramount in any policy approach to cross-border migration; that migrants will help to expand SA's economic

'cake'; that the country is seriously short of skilled people; that the prosperity of the SADC region will ultimately be promoted by the free movement of capital, goods and labour across borders; and that official treatment of migrants should be constrained by the Bill of Rights.

Unfortunately, the Green Paper stops half-way and does not follow through in its policy recommendations. The central proposals of the Green Paper will produce policies and regulations which will be counter-productive, impossible to implement, perpetuate costs and penalties for the economy, and will negate some of the very principles on which it is based.

With respect to cross-border migration, government's proposals effectively extend the present arrangements for male contract migrants (in agriculture and mining) to include women, additional employment sectors and annual quotas. Such a system would in essence remain a migrant contract labour system in which the initiative would remain with employers to justify requests for cross-border labour.

The new system would have the same deleterious effects on family life, will amount to bureaucratic control over regional labour allocation, and will counter provisions in the Bill of Rights.

With respect to skilled migration, the Green Paper recommends an elaborate occupational categorization of the South African labour market to be undertaken by the Department of Labour in order to establish a points-based system of control. Such an approach:

- is not consistent with Government's Growth, Employment and Redistribution (GEAR) strategy's commitment to achieving optimal labour market flexibility;
- will be very difficult and costly to assemble. Even the latest population census - when its full results are eventually available - will not allow the refined differentiation between grades and types of skills that will be sensitive to employer needs. Any system which requires elaborate information will not only be very costly to establish and maintain but will inevitably lead to distortions in the allocation of skills in the labour market;
- will discourage recognition of less-formal accomplishments, particularly of abilities in small-scale entrepreneurship.

CDE's greatest concern with the proposals in the Green Paper concerns the feasibility of implementation by the proposed Department of Citizenship and Immigration Services. The proposed department will simultaneously:

- have to transform itself;
- establish an elaborate categorization of skills required in the labour market;
- regulate the migrant worker quotas;
- sanction employers who employ unregistered cross-border workers;
- apply a points-based system of skilled immigration;

- control the informal immigration on non-SADC migrants;
- attempt to curb the entry of large numbers of unregistered SADC migrants whose entry will be facilitated by the new social and home community networks that the expanded migrant labour system will create.

A new South African immigration policy should be realistic about the country's limited institutional capacity. This is a country which cannot even measure its underground economy, collect rates and service charges from residents who live at listed addresses, enforce television license requirements, collect parking tickets or register voters without duplications and omissions.

If the government goes this route, it must be prepared to provide an adequate number of labour inspectors. Identity documents must be reliable and difficult to forge, so that employers can determine whether someone is in fact authorized to work. Financial penalties for employers must be sufficiently high and the probability of being caught sufficiently great so that they will be reluctant to hire low-wage illegal workers.

In 1996 Penuell Maduna, then Deputy Minister of Home Affairs, pointed out that England - which is an island - had more than 5,000 immigration officers, while South Africa, with its vast and porous borders, had fewer than 1,000. Service simply could not be rendered at the required level, he said, and the allocated funds for 1996/97 would not allow for an increase in the number of immigration officers.

Where will the additional funding come from needed to implement the proposals in the Draft Green Paper, not only for more immigration officers but for all the other elements in the expanded system of checks and controls?

The proposed migration policy will be unable to 'hold the line' where officials have drawn it; will consume more and more state resources; perpetuate 'nameless, faceless, mass raids' to apprehend illegals; impose onerous restrictions on employers; continue to undermine the state's legitimate authority; and will fail to harness migration policy as a tool for growth and development - the very objective the policy makers have set themselves.

The CDE proposes an alternative two-tiered approach to migration:

- free movement of skilled people from anywhere in the world to South Africa, and
- the probationary entry of unskilled SADC people who, once they have satisfied a series of simple requirements, may in time qualify for permanent residence and work rights.

This will provide real incentives for migrants to enter the country legally, register with the authorities, become economically productive and observe the laws of the land.

CDE proposals offer the best prospects for the effective management of the inevitable process of migration. They also offer the country the best chance for the state to re-establish its legitimate authority.

Finally, CDE sees the role of political leadership as crucial. A liberalization of controls on migration into SA will not be immediately popular, but if political leaders are prepared to spend some effort in pointing out the complexities of the problem, opposition will begin to abate.

Government is already doing precisely this with its macro-economic strategy and there is no reason why it should not do the same in the case of cross-border migration from SADC states.

Ann Bernstein is director of the Centre for Development and Enterprise (CDE).

It Strikes a Good Balance

Jonathan Crush

There is now some concern that (Home Affairs) senior bureaucrats could stall the reform process because they do not like its recommendations or find them them threatening to their own interests.

The Green Paper proposals for a new South African immigration policy have generated surprisingly little public debate, despite the importance of the immigration issue for all South Africans.

Ann Bernstein correctly highlights the need for visionary political leadership on this issue. Unless and until there is political ownership of the Green Paper neither its recommendations, nor the more liberal counter-proposals of the CDE, stand even the remotest chance of implementation.

The outgoing Director General of Home Affairs, Piet Colyn, recently predicted at a SAMP conference that there would be no new policy before the 1999 elections.

Having appointed an independent task team to write the Green Paper (a team that the Minister himself has called "a balanced forum" in which has has "every confidence"), there is now some concern that his senior bureaucrats could stall the reform process because they do not like its recommendations for find them threatening to their own interests.

The CDE's intervention is therefore welcome - primarily because it demonstrates that the Green Paper's proposals are perhaps not as "extreme" as the civil servants fear.

Ann Bernstein agrees with the points of departure in the Green Paper, as indeed do most commentators outside the Department of Home Affairs. She is quite right to draw attention to the potential costs and logistical problems of implementing the far-reaching transformations proposed by the Green Paper.

A realistic assessment of the costs of the proposals is certainly needed. Such an assessment should factor in the cost saving of the new proposals as well. These include the vast resources now dedicated to the wasteful arrest and deportation of temporary visitors to the country.

She expresses concern that the proposed temporary work system for migrants will extend and perpetuate the

iniquitous migrant labour system. In fact, the mechanism proposed is very different from the old system. In effect, regional migrants would become like "temporary residents" from anywhere else in the world.

Temporary residence and work permits issued to SADC citizens should not prevent them from bringing immediate dependents, it would not preclude them from domestic labour legislation (and the rights and privileges of all workers) it would not confine them to fixed contracts, it would mitigate the rampant exploitation that characterizes the illegal employment sector and it would be consistent with recommended International Labour Organization (ILO) standards.

It would also allow all employers, not just the historically coddled miners and farmers, legal access to non-South African labour.

Most importantly, the proposed system is consistent with the wishes and desires of migrants themselves. Recent research by SAMP conclusively demonstrates that SADC country citizens wishing to come to South Africa do not wish to come here permanently or to take up permanent residence.

The Centre for Enterprise Development (CDE) opposes the Green Paper's recommendation that government should place limits on the numbers of work permits issued to SADC citizens. The CDE, by contrast, would post no limits at all. Their counter-proposal is a recipe for "open borders" where virtually anyone could come to South Africa, work and settle. The suggestion is similar to that in the SADC Draft Protocol on Free Movement of People.

The protocol suggests a principle of reciprocity where South Africans could also move in the opposite direction. Under the CDE proposal it would be one-way traffic. All levels of South African government have rejected the draft and it is hard to see why anyone would support it until there is a better idea of what its impact will be.

The CDE also rejects the proposed points system for skilled workers wishing to come to South Africa in favour of a wide open door policy.

The Green Paper proposes an objective points test for permanent immigrants only, not for all skilled workers, as the CDE implies.

An ideal points system would have detailed labour market information as a core element. That this data does not exist at present does not mean South Africa lacks the capacity or sophistication to actually generate it on an ongoing basis.

A points system does not need to be elaborate or inflexible. Countries such as Canada are currently moving to streamline and simplify their own system.

But the Green Paper considers such a system to be necessary in order to do away with the inherited apartheid immigrant selection system with its subjectivity, bureaucratic discretion and lack of transparency.

The Green Paper is very concerned that South Africa not cut itself off from the global skills market and that employers enjoy free and flexible access to foreign skills. Temporary residence for highly-skilled migrants should be much more accessible.

There is absolutely no need for a points system to govern this form of entry and the Green Paper does not propose it. What is required here is not so much a change of policy but greater flexibility and a changed mindset.

The current restrictive policy is a hindrance rather than a help to the economy.

Who should be allowed to come to South Africa?

Instead of employers motivating for individuals (as happens at present and the Green Paper endorses), the CDE proposes that South Africa should simply open its borders to anyone from anywhere in the world who has "skills". This is an astonishingly utopian proposition by any yardstick.

The Deputy Minister of Home Affairs, Lindiwe Sisulu, has also recently indicated that this suggestion is a political "non-starter".

The CDE suggests that the Green Paper "discourages recognition of small-scale entrepreneurship" and other "less-formal accomplishments".

This observation does not square with the paper's recognition of:

- the wealth and job-creation capacity of foreign-owned micro-enterprise;
- the proposed system of trader's permits to facilitate informal cross-border trade;
- the concerns with the elitism and inaccessibility to small-scale entrepreneurs of the current business and entrepreneurial immigration rules;
- the proposals for much more generous terms of access for immigrants and migrants who demonstrably create employment.

Finally, the CDE claims that the Green Paper recommends "mass old-style pass raids of nameless, faceless illegals".

On the contrary, this is precisely what is happening under current policy.

The Green Paper recommends a break with this ineffective and inefficient system and its daily compromises of human rights.

Rather, there needs to be a clear distinction between long-term immigrants who come illegally with the intention of staying and migrants who are only here temporarily.

The Green Paper proposes that enforcement focus on immigrants while simultaneously providing improved legal channels of access to migrants.

The Green Paper tries to thread a path, admittedly not always successfully, between the extremism of the "open

borders" position of the CDE and the "fortress South Africa" view that immigration is a threat and immigrants should be kept out at all costs.

Neither of these extremist positions is in the interest of South Africans. Advocates of the extremes will certainly find little to attract them in compromise policy positions.

The Green Paper is not a perfect document, and leaves much unsaid, but it deserves to be taken very seriously by all South Africans.

Dr. Jonathan Crush is the Canadian project director of SAMP.

EDITORIAL

GOVERNMENT CAUTIOUS, BUT COURTS UNDER PRESSURE

Wilmot James, Crossings, 2(1) February 1998

PLEASE NOTE: Readers are welcome to reproduce and reference this article as long as appropriate acknowledgements are given

The Green Paper on International Migration is the first post-apartheid policy document dealing with cross-border population movements. The Green Paper is wide-ranging in scope, covering refugee, migration and immigration policy. It is also ambitious, seeking not only reform but also the institutional transformation in the South African Department of Home Affairs' management and regulatory systems.

Public comment, invited by the department, has been extensive and includes some very valuable remarks and analysis. A conference on the Green Paper was held by the Southern African Migration Project (SAMP) in September 1997, providing a useful forum for amplifying the written submissions now lodged with Home Affairs.

At the conference it became clear that the SA government intended to tackle the immigration issue in two phases. A draft refugee bill, which honours the government's international obligations in domestic law, has been drafted and can go before Parliament in 1998. The draft bill needs a final iteration, incorporating some if not all of the progressive features outlined in the Green Paper.

In the more controversial area of general immigration, the inclination is to tackle new legislation slowly and with great care. This particularly so as the new Director-General of Home Affairs rightfully does not wish to rush into anything and seeks to put his own stamp on to the process of policy reform. Patience is often more prudent than speed.

South Africans also face a run-up to the 1999 election and it would be desirable to shelter discussion on immigration issues from the politicking of the fourth coming campaign. It would not serve the nation's interests to subject decision making on so explosive an issue to the narrow self-interest of parties seeking to gain electoral advantage.

Many changes can however be made to the immigration regime prior to the rewriting of legislation. For example, the inter-governmental agreements governing the system of migrant labour to the mines can be renegotiated and one hopes that the Chamber of Mines has already initiated the appropriate political

process.

Improving security capacity without resorting to the draconian measures developed under apartheid, does not require new legislation. This is particularly important when it comes to regulating smuggling at airports, gaining control over the flow of small-arms across borders and policing borders more effectively.

Easing restrictions on business and trading can also proceed, although anecdotal evidence suggests that Home Affairs is becoming much more punitive and tough in this area. The same applies to foreign students. It is vital to facilitate rather than restrict foreign access to SA markets, and to grant companies a freer hand in moving staff around in the interest of growth.

What does require legislative change are the due process and administrative justice aspects of the immigration regime. There is massive pressure building up in South Africa to clarify the legal status of people of African origin who are here illegally, even though the most recent census figures suggest that it is nowhere as alarming as some first thought.

The point here is that while Home Affairs might seek to postpone the introduction of new immigration legislation, pressure for change will be building up through the courts as a result of an increasing case volume and the fact that some institutional bodies are considering litigation. The courts might force government into action if there was a test of the constitutionality of current immigration legislation.

It is abundantly clear from the written submissions on the Green Paper that the scale of institutional change recommended in the management and regulatory systems tied to refugees, migrants and immigrants, should be disciplined by the requirements of government's growth, employment and redistribution (Gear) strategy. The basic point is that the Treasury cannot and will not spend more money on immigration management.

A simple and cost-effective system of immigration management is proposed in the submission made by the Centre for Development and Enterprise (CDE). Although naive in parts, the model proposed is to provide a simple registration system that reacts to the real problem, instead of having the cumbersome (and costly) bureaucratic model proposed in the Green Paper.

Finally, the Green Paper's insistence on active overseas recruiting in order to meet South Africa's immediate skills shortage needs requires careful scrutiny. While South Africa should certainly be genuinely open to immigrants, especially in the business and entrepreneurial area, active recruiting would not only be politically unpopular but also an additional expense.

Dr. Wilmot James is executive director of Idasa, and the South African Director of SAMP.

PROFILE:

A CHANNEL FOR ORDINARY BASOTHO

Vincent Williams, Crossings, 2(1) February 1998

PLEASE NOTE: Readers are welcome to reproduce and reference this article as long as appropriate acknowledgements are given

Sechaba Consultants is committed to amplifying the views of citizens. VINCENT WILLIAMS profiles this SAMP partner.

"Ordinary people lack access to the decision-making process, as well as the ability to express their ideas in an effective manner. They understand their own problems, know possible solutions, have useable skills, and can contribute time, money, material and leadership. Developers often do not know how to tap this pool of community-based resources. We are fully committed to ensuring that the views and aspirations of ordinary Basotho are made transparent to policy makers and planners."

This is the philosophy which underpins the work of Sechaba Consultants, the SAMP partner which operates out of offices in Maseru, Lesotho.

Established in 1989, Sechaba Consultants is an indigenous Lesotho consulting company with extensive experience in the socio-economic, rural development and natural resources management consulting fields. Well-known for its work at a national level in terms of doing surveys for the purpose of gathering and analyzing data, the company is increasingly involving people and organizations in analyzing their own capacities. This includes assisting organizations in strategic planning and reviews through the use of participatory methods, as well as institutional development, planning and monitoring.

The range of projects that Sechaba Consultants is involved in is impressive and includes socio-economic analyses, health, water and sanitation, energy, agriculture and natural resources, and of course, migration.

At the end of 1996, Sechaba Consultants implemented a SAMP survey with miners and their wives to determine their level of participation in the mining industry and their desire to move to South Africa. They were also instrumental in designing and implementing the SAMP "Three-Nation Study of Knowledge, Attitudes and Practice concerning Migration to South Africa", a study which was undertaken in Lesotho, Mozambique and Zimbabwe. They are also currently involved in gathering migration data

and statistics from the Lesotho Department of Home Affairs.

The work of Sechaba Consultants is, however, not restricted to Lesotho. Since 1993, they have been working with companies in South Africa and Namibia, engaged in similar or complementary work. The objective of this is to move towards a more regional approach, in keeping with political developments.

Sechaba Consultants prides itself on the fact that they do not just do research and make recommendations, but that they are willing to have their recommendations tested and implemented; and should it be necessary, they will do the testing and implementation themselves.

Vincent Williams is the South African Project Manager of SAMP.

INTERVIEW

SURVIVING BY 'HOOK OR BY CROOK'

Sipho Ngwema, Crossings, 2(1) February 1998

PLEASE NOTE: Readers are welcome to reproduce and reference this article as long as appropriate acknowledgements are given

*Life in exile inspired Bea Abrahams to work with refugees.
She speaks to Sipho Ngwema about the Cape Town Refugees' Forum.*

Bea Abrahams, the chairperson of the Cape Town Refugees' Forum (CTRF), has had a tough life. But she is reluctant to talk about herself.

From the onset, she requests firmly yet politely that the focus of the interview should not be only on her, because she believes her experiences are not unique and that she is part of a collective.

It's easy to understand. Abrahams lived in political exile for 15 years and her involvement with refugees is an integral part of who she is. "Those years in exile have been probably the most meaningful years of my life."

"At the time I was studying psychology. I was aware of the psychological processes that were unfolding within a political structure and within exile. Things were so difficult; it was a question of survival. You survived - by hook or by crook. Some people were able to cope, some not," she recollects, with the journey of her painful past written all over her face.

Indeed, for her (and many others in exile) life away from home was a fate worse than death. In Swaziland where "the dark seemed darker" she lived with her young child under a constant threat of cross border raids. After the Lesotho raid, she sat next to two of her "very, very badly burnt" comrades who were victims of the raid. Throughout the journey to a hospital in Europe, Abrahams could smell their burnt flesh.

Although Abrahams emphasizes that the political education they were given was of fundamental importance in exile, she believes this was done at the expense of understanding the person as a person.

"There needed to be an understanding why is it that you are able to cope with the hardship you are going through and why I'm not able to cope. I might be resorting to liquor or substance abuse."

The warmth of the people in host countries, a passion for Africa and her experiences in the liberation movement is what has encouraged Abrahams - a committed human rights activist - to work with refugees in Cape Town.

"I can quite honestly say this is not an empty commitment; that for me I will always be involved in this kind of work. One of the principal reasons is the way we were received wherever we went. That's my experience."

"When we arrived in Tanzania in 1979 it was one of the most poverty-stricken countries, but with some of the warmest people I ever came across. Wherever we went we were made to feel special. Part of the rich experience of that exile life was the incredible warmth and hospitality that was shown to us as a South African community."

Born in Steinkopf in the Northern Cape 43 years ago, Abrahams has had more than her share of tragedy. She lost her father at 14, and her mother seven years later, shortly before she went into exile. On their way back home to South Africa in 1991, her husband and daughter were killed in a car accident - just 40km from the Zimbabwean border. She and her son then traveled home alone.

Abrahams started working for the Trauma Centre for Victims of Violence and Torture, and in March 1994, she was part of the group of service organizations that formed the Cape Town Refugees' Forum (CTRF).

"There were a lot of service organizations that were beginning to report that refugees had come to their door but none of us had a mandate to work with refugees. We felt the need to get together and try and share experiences because we realized that there were no structures in South Africa to deal with refugees."

Initially this was essentially a crisis management response, as the forum had to deal with about 2000 refugees. Furthermore, the level of destitution was very grave as some people had fled from countries as far away as Rwanda and Burundi, and come to Cape Town on foot.

"Some people had gone through horrendous experiences. Some women were raped; others left with their children but some children died of diseases along the way. They had to walk through marshes, feet would be swollen and they talked about how they would eat insects along the way to survive. The level of destitution was overwhelming."

Shelter and food were the most immediate needs. Even though organizations like the Red Cross sometimes managed to organize food parcels once a month, the parcels were small and lasted for only a week.

In December 1995, the CTRF's education sub-committee conducted a survey to try to establish what kind of educational assistance they should lobby for. About 80 percent of the refugees had a minimum of 10 to 12 years of education, and at least 30 percent had some form of, or had completed, tertiary education.

Despite all this, finding work for refugees is very difficult and they are grossly exploited. With a core group of people that "have shown real commitment as human rights activists" in the forum, the forum is in a strategic planning process and have managed to transcend the stage of providing reactive services."

CTRF has established sub-committees for emergency accommodation and education. It is busy forming a legal assistance unit, setting up physical and psychological health assistance and the refugees have mapped out an outreach and life skills programme.

Human Rights

"Within this period have managed to build consciousness around human rights and the refugee community has responded in the most incredible and mature manner. They have, within the different communities, worked around their presence in South Africa."

"They have tried to understand where they fit in this constitutional context. How they need to relate to it and what their rights and obligations are."

For every refugee that is in South Africa at the moment, life away from home will never be a bed of roses.

"My wish is that when refugees go back home, they will remember South Africa in the same way that we remembered them. We want to enrich their lives in the same way they enriched ours," says Abrahams.

Sipho Ngwema is a journalist in Idasa's Communications Department.



"My wish is
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**Bea Abrahams, the
chairperson of the Cape
Town Refugees' Forum
(CTRF),**

LEGAL WATCH

Jonathan Klaaren, Crossings, 2(1) February 1998

PLEASE NOTE: Readers are welcome to reproduce and reference this article as long as appropriate acknowledgements are given

Big Breakthrough on Non-Citizens' Rights

Undoubtedly the most important legal development in the field of migration is the South African Constitutional Court's decision in the Larbi-Odam case, which confirms and expands the rights of non-citizens, especially permanent residents.

In this case, the Constitutional Court applied the equality protections of the Constitution to non-South African citizens and struck down a regulation prohibiting foreign citizens from being permanently employed as teachers in state schools.

The regulation had provided that, subject to certain exceptions, only South African citizens may be appointed to permanent teaching posts in state schools. In terms of the regulation, eight teachers temporarily employed in the North-West Province were issued with notices of termination.

The teachers, foreign citizens some of whom had permanent residence and some with temporary residence, sued against the regulation. After losing in the lower court they appealed to the Constitutional Court.

Judge Yvonne Mokgoro wrote for a unanimous Court in overturning the lower court's decision. The case is an important application of the Court's equality jurisprudence which has been developed earlier during the course of the year and which draws upon the underlying value of dignity.

It also shows that the Constitution does apply to non-citizens. Further, the case says that the Court will not accept generalized governmental justifications for the violation of rights and will protect the rights of at least some classes of non-citizens such as permanent residents.

The Constitutional Court's analysis went in three steps:

- The Court noted that citizenship was not a listed ground of prohibited discrimination in the Constitution but still found that discrimination on the basis of citizenship could be discriminatory. The Court noted three reasons for this: that foreign citizens are a minority in South Africa, with

little political muscle; that citizenship is a personal attribute which is difficult to change; and that there were specific threats and intimidation that these foreign teachers faced. All of these reasons made the foreign citizens a vulnerable group.

- The discrimination was unfair to permanent residents, as distinguished from temporary residents. Denying permanent residents' job security when they are allowed to live and work in South Africa indefinitely was unfair discrimination.
- The regulation could not be justified in terms of the general limitations clause. Unless a post requires citizenship, for example because of its particular political sensitivity, employment opportunities should be available to permanent residents and South African citizens on an equal basis.

Furthermore, the fact that the regulation was the product of collective bargaining did not justify its unfair discrimination. The Court also rejected the argument that non-citizens had a reduced commitment to South Africa because there was another country to which they could go. The Court noted that this argument applied with equal force to South African citizens who hold dual nationality, yet the regulation did not impose any bar to their eligibility for permanent employment.

Although the Court issued an order striking down the regulation, the Court did not come to a final conclusion as to whether the regulation was unfair discrimination with respect to temporary residents. The Court noted that irrespective of the regulation, the position of temporary residents in South Africa was precarious. They cannot stay for longer than specified in their residence permit and cannot be employed for longer than that period.

However, the Court also noted that the regulation at issue allowed these temporary residents to be disadvantaged to a greater degree than was required by their residence permits with respect to job security and other employment benefits.

The legal references of the case (which has not yet been published in the law reports) is *Larbi-Odam and Others v The Member of the Executive Council for Education (North-West Province) and Another*, CCT 2/97 (26 November 1997) (available at <http://www.law.wits.ac.za/judgements/larbi.html>).

No Dompas in Zimbabwe

The Zimbabwe courts continued their recent trend of defending the freedom of movement. While recent cases (and constitutional amendments) have revolved around issues of non-citizen spouses, the topic in *Elliot v Commissioner of Police* 1997 (5) BCLR 670 (ZS), the arbitrary and random stopping of individuals to check their identity documents was found to be contrary to the freedom of movement

guarantee of the Constitution.

In the case, an attorney was stopped on his way from his law offices to a lunch-time keep-fit class in central Harare. While he was released shortly, in the words of the court "the perceived injustice of the incident to which he and others had been subjected that afternoon rankled with the application [and] led directly to the bringing of this application." The Supreme Court of Zimbabwe thus declared invalid the provision in the law making it an offence for a person to be found without his or her identity document.

Court Holds Police Responsible

In a recent unreported case, a SA High Court judge refused to let the police off the hook of justifying the detention of a non-citizen.

In *Da Silva v Minister of Safety and Security* (WLD Case No. 23344/96, 5 October 1996, 4 June 1997) Judge Heher granted an order releasing a non-citizen from custody in Sophiatown Police Station. The person was being held by the police on the strength of a warrant from Home Affairs after being detained at the offices of Home Affairs. His sister and her attorney tried to track him down for days, but were bounced from Home Affairs to the police back to Home Affairs.

In ordering the release, the judge held both Home Affairs and the police accountable. He stated "the police cannot and should not take instructions from another department and detain persons in consequence of those instructions, without making absolutely sure that they are in a position to justify that detention and, if that justification needs contact with the officials of the other department, that they are in a position to make such contact at the soonest possible time. I do not think the liberty of the individual can depend on whether the wheels of state administration run smoothly or not." (Case details available at <http://www.law.wits.ac.za/docs/dasilva1.html>).

Jonathan Klaaren works for the Centre for Applied Legal Studies and Faculty of Law, University of the Witwatersrand.

ON THE STREETS

A FISTFUL OF FRANCS

David McDonald, Crossings, 2(1) February 1998

PLEASE NOTE: Readers are welcome to reproduce and reference this article as long as appropriate acknowledgements are given

Police officers and Home Affairs officials seem to have free rein when dealing with foreigners. David McDonald recounts one recent example.

Here's an interesting twist on petty corruption in the South African immigration system for you.

On a recent, mid-day drive through the downtown core of Johannesburg, a group of foreigners (plus one South African citizen) were pulled over in a police swoop on ~~illegal~~ immigrants. After a few abrupt questions about nationality and a quick search for money, the two women in the car - one from Australia the other from West Africa - were thrown into the back of a large police van.

Apparently, the police figured they were on to something good here after discovering that the woman from West Africa had a wad of French francs in her pocket, but not knowing what the currency was decided that they had better see what else they could manage to get in return for the women's freedom.

The woman from Australia, as it turns out, works for a High Commission in Pretoria, and the woman from West Africa had just arrived in South Africa the previous day and wanted to do some shopping. Both had all their documentation in order and both were in the country legally. They did not, however, have their passports with them.

The other passengers in the car - two men from West Africa and a South African woman - tried to explain that these women were in the country legally and argued at length for their release, but to no avail. They eventually had to go back to the one man's apartment to get the passports to prove the women's identities and then had to pay a bribe of R100 to avoid further harassment of themselves and the two women.

The irony of the situation was that the two male foreigners were in the country ~~illegally~~ due to the fact that their visas had expired and their attempts to renew them had failed. The result, then, was that the two people who the police were supposed to be arresting (the two men) were outside the police van arguing for the release of the two people who should not have been arrested.

The other interesting point is that a white woman was picked up and hastily thrown into the back of the van - a sure sign of a new, non-racial South Africa.

The story would be funny, if it weren't also tragic. The women were thrown into the back of the van along with 40 other people (mostly men) who had been in there for some time and the doors were locked while the police went off to bargain for their release.

The two women were immediately set upon by several men in the van who stole the few pieces of jewelry that they had on and harassed them the entire hour they were in there. Luckily it was nothing worse than that.

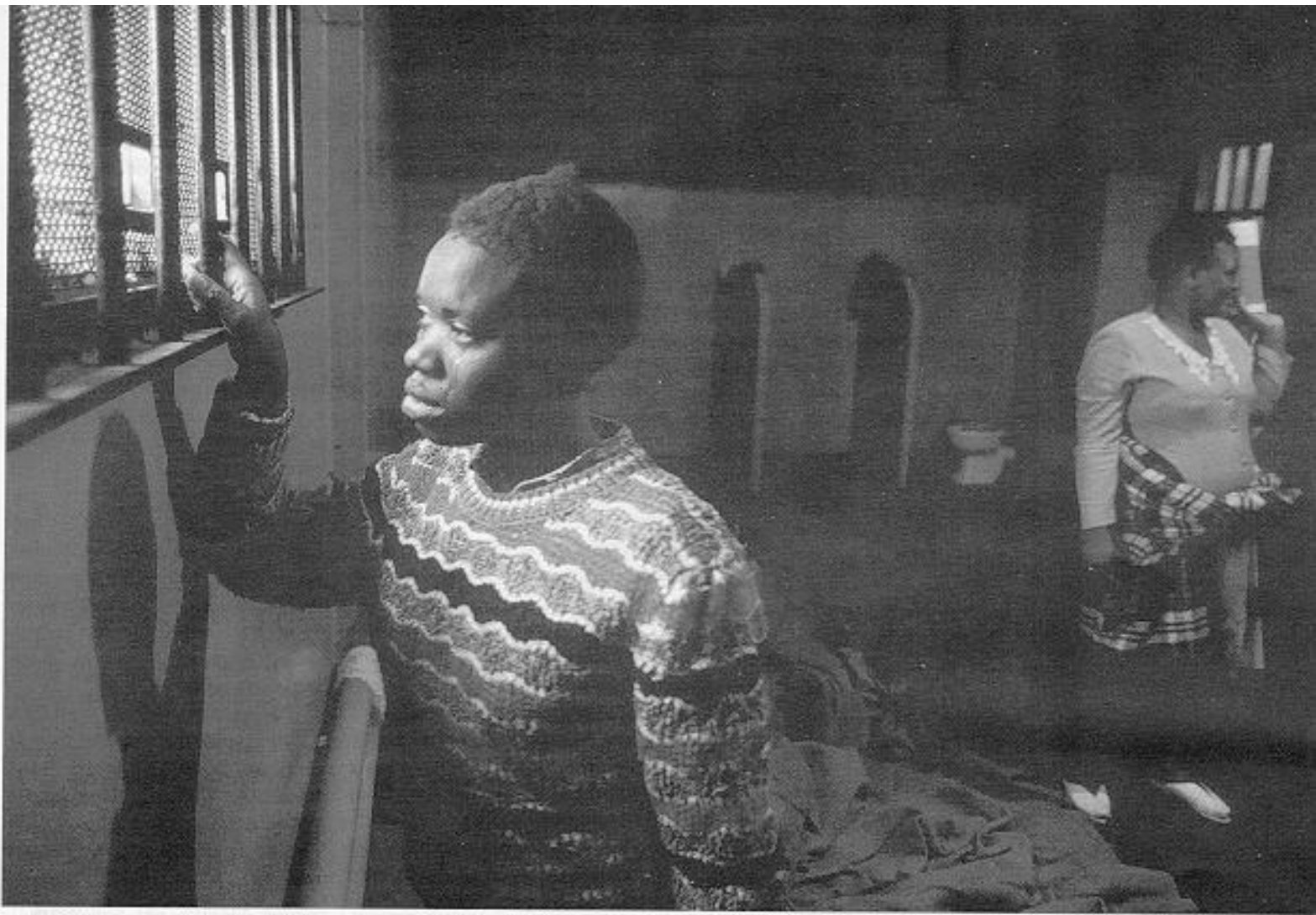
When the women were finally released and asked to have their jewelry recovered, the police severely beat the man who had committed the theft - despite the pleas of the women for compassion.

The people involved only agreed to their story being told if they would not be identified, as they are afraid of reprisals from government officials.

In the end, the story illustrates the rather confused and corrupt attempts by Home Affairs officials and the security forces to criminalize and harass non-South African citizens - particularly those from other parts of Africa. One of the West African men had been hassled twice before (both times his papers were in order) and was even stripped searched when police barged in to his apartment at five o'clock in the morning after being informed by his landlord that there was an illegal in the building.

Some of the human rights abuses committed by South African police and immigration officials are much more serious than this, and many are just as farcical. South Africa must have some form of immigration enforcement, but this kind of behaviour is completely unacceptable. It is in contradiction to South Africa's commitment to basic human rights, it denigrates South Africa's image in the region, and it must be addressed as a priority by the security and Home Affairs officials that are responsible for these activities.

David McDonald is the Canadian Project Manager of SAMP.



AWAITING DEPORTATION: Illegal immigrants wait in holding cells at Johannesburg central police station.

Picture1

SAMP ACTIVITIES

Crossings, 2(1) February 1998

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Research

SAMP has commissioned the following research activities, the results of which will be published as part of the SAMP Migration Policy Series early in 1998:

- An investigation into the role of international migrants in the construction industry, which will consist of a questionnaire survey to be done with migrants and construction companies in Gauteng.
 - A study depicting the socio-economic profile of migrants and immigrants in the Durban area, looking at reasons why and how they have come to South Africa, existing support networks for new arrivals and the long-term plans of migrants and immigrants.
 - A research report on employer sanctions which will contain a review and evaluation of existing legislation and how it is implemented. The study will also look at international models of employer sanctions and put forward recommendations in terms of the South African context.
 - SAMP has also initiated research into the phenomenon of brain-drain migration in the region and it is anticipated that this project will run until the second half of 1998.
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Publications

- [*International Migration, Immigrant Entrepreneurs and South Africa's Small Enterprise Economy*](#)

Reported on in the previous edition of *Crossings*, this report focuses on the role of international migrants in South Africa's small, medium and micro-enterprises (SMME's) and dispels the notion that all foreigners take away jobs. The key result of the report is that many foreign nationals in fact create jobs for South Africans.

Free - 22 pages - 1997 - ISBN 1-874864-62-4

- [*Silenced by Nation Building: African Immigrants and Language Policy in the New South Africa*](#)

A review of government language policy and a comparative evaluation of how this is implemented in various government departments. It includes a set of recommendations for further investigation and language policy development.

Forthcoming

- [*Left Out in the Cold? Housing and Immigration in the New South Africa*](#)

This report tries to understand what, if anything, the South African government is doing about housing for foreign-born Africans living in the country; and second, to better understand the attitudes of South African citizens and non-citizens on this issue of housing and what it could mean for housing and immigration policy. Three informal and township communities from the Cape Town area served as case studies for this research and provide us with a concrete, albeit geographically limited, perspective on this very important and politically sensitive policy area.

Forthcoming.

Conferences and Workshops

SAMP is planning to run a series of seminars focussing on specific questions and issues emerging from the Green Paper on International Migration. Dates and venues are not confirmed, but further information can be obtained from the SAMP office. The first three seminars in the series will be:

- Business and Migration
 - Education and Migration
 - International Trends in the Development of Refugee Policies
-