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CROSSINGS



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EDITORIAL

Making Aliens Human

By Jonathan Crush

THIS new broadsheet has been titled *Crossings* to draw attention to the literal and figurative dimensions of migration in Southern Africa.

Published by the Southern African Migration Project (SAMP), it will cover stories about the people who cross borders, how and why they do it and what it means to them. It will look at the borders themselves, who they include and exclude, how they are controlled as well as attitudes to borders and those who cross them.

On a more abstract level, *Crossings* is about the social and psychological barriers between "us" and "them" as well as the mental obstacles to crossing these boundaries of exclusion and inclusion, of difference and diversity. In a world of accelerating globalization, declining nation-states and multiple identities, we are all migrants.

On a policy level this publication aims to inform the public about the policies and people reconfiguring population movement in the Southern African Development Community (SADC). It will praise policies consistent with principles of regional integration, human rights, administrative justice and sound management. It will expose those that are not.

SAMP is an international network of research institutions and non-governmental organizations devoted to developing creative, humane and workable responses to cross-border migration in the SADC region.

The project is funded by the Canadian government through the Canadian International Development Agency (CIDA). It links Queen's University in Canada with Idasa in South Africa, Sechaba Consultants in Lesotho, Arpac in Mozambique and the University of Zimbabwe. Plans are in motion to extend the network to Namibia and Botswana.

SAMP has three basic operating principles:

- Good policy making requires accurate information. Migration is an emotive issue clouded by misinformation. Through rigorous research, SAMP will generate new insights into the causes, character and consequences of population movement in the SADC region.
- Policy-makers armed with good information can formulate realistic, workable policies that balance national and regional interests, are consistent with international best practice, and respect constitutional obligations and basic human dignity.
- The demonisation of migrants and immigrants is morally indefensible. SAMP is committed to using its information to change attitudes. *Crossings* is about making aliens into human beings.

Dr. Jonathan Crush is the Canadian project director of SAMP

The flood that became a trickle

WHY did only 200 000 people apply for permanent residence in South Africa in terms of an amnesty for Southern African Development Community (SADC) citizens when the government was predicting anything from 500 000 to five million applications?

Research presented at a recent conference hosted by the Southern African Migration Project (SAMP) points to a startling answer: contrary to many South Africans' assumption that those across the borders are clamoring to settle permanently with their families in the wealthiest country in the region, few SADC citizens appear to have any such intention.

This was brought to light by three SAMP surveys which canvassed the views of potential applicants. Most of these Africans see themselves as migrants, not as immigrants. They find it useful to work in

The 1990s amnesties

Miners' amnesty

Announced in October 1995, this amnesty exempted miners from the requirement to have a permanent residence permit in terms of Section 28 of the Aliens Control Act if:

- they had been working on South African mines since before 1986, and
- had voted in the 1994 South African election.

Only miners seem to have applied for this amnesty although the Department of Home Affairs says it was not limited to them. The 10-year work record for miners has proved controversial given that the SADC amnesty that followed required only a five-year equivalent.

SADC amnesty

Announced in June 1996, this exempted from the same requirement SADC citizens living illegally in South Africa if they:

South Africa, to shop or trade here, but in their hearts they remain foreigners with their families back in Lesotho, Mozambique, Swaziland or Zimbabwe.

Yet because those who designed the amnesty underestimated the pull factors in these countries, other more appropriate options such as temporary residence permits were not included.

In the current climate of xenophobia in South Africa, it is not surprising that assumptions are made about migrants' intentions. To uncover the deeper forces at play in cross-border migration, *Crossings* examines the successes and failures of the latest amnesties.

- could prove they had been living in the country for at least five years, and
- were engaged in productive economic activity in the formal or informal sectors, or
- were in a relationship with a South African partner or spouse, or
- had dependent children living lawfully in South Africa, and
- had committed no criminal offence.

Applications had to be made between 1 July 1996 and 30 September 1996. A surge of applications towards the closing date resulted in a two-month extension.

Refugee amnesty

Scant information is available to date about this upcoming amnesty. ANC MP Desmond Lockey announced at the SAMP conference that it will be aimed at granting permanent residence to Mozambican refugees who entered South Africa after 1 July 1991 but before October 1994 and therefore did not qualify, or did not apply for, the SADC amnesty with its 1 July 1991 cut-off date. Lockey said the application process would begin on 1 August 1997.

COVER STORY

Benevolent but Troubled Amnesties

By Janet Levy

The South African government recently ran a series of amnesties to redress past racist immigration policies. But critics say they have been dogged by false assumptions and a lack of long-term vision.

It was a trap laid by men who refused to tolerate the words "immigrant" and "black" in the same sentence.

The bait was an offer of amnesty against deportation to black foreigners employed illegally as domestic workers in South Africa. The sting was that they were arrested and deported when they came forward. South African authorities made this amnesty offer in the 1970s - a time when white immigrants were vigorously recruited in foreign lands but racist policies prohibited blacks from settling in South Africa, even if they had worked for most of their lives on its mines or farms.

Recently, amnesty has again been offered to foreign Africans - this time by a post-apartheid government to miners, former refugees from Mozambique, and Southern African Development Community (SADC) citizens (see "The 1990s amnesties" story - located above).

But this time the motive, according to Desmond Lockey, ANC MP and chairperson of the parliamentary Portfolio Committee on Home Affairs, was different. Among the purposes of the amnesties was to:

- redress the racist legacy of the immigration system and take the first steps in overhauling it;
- repay countries such as Mozambique for the damage caused by South African destabilization in the 1980s;
- regularize the status of people who had been working in South Africa, many of them legally, for at least five years.

But a number of commentators voiced concern about important aspects of the 1990s amnesties at a conference in June entitled "After Amnesty: The future of foreign migrants in South Africa" hosted by the Southern African Migration Project (SAMP).

Among the 80 participants scrutinizing the latest amnesties were Lockey, Home Affairs Minister Mangosuthu Buthelezi, senior officials in charge of migration in South Africa and academics, researchers and officials from throughout the SADC region and beyond.



DELEGATES: Mangosuthu Buthelezi and Jonathan Crush

Speed

Marion Sinclair, from the University of the Western Cape's Centre for Southern African Studies, said the 1996 SADC amnesty "surprised many -- the speed at which the decision appeared to have been made, the speed at which it was expected to be implemented, the eligibility criteria".

"Most important was a lack of supporting information and discussion accompanying the announcement of the amnesty. There was little sense then of how the amnesty fitted into long-term strategy of migration management in South Africa. A year later, the relationship between the amnesty and migration policy is still vague."

Mozambican-based consultant Fion de Vletter was more blunt. He said the miners' amnesty was a flop and that his latest research -- soon to be published by SAMP -- showed that only about 13 percent of eligible Mozambican miners were interested in permanent residence in South Africa.

"Why? Because these are men of two worlds. In Mozambique they have land, cattle, half of them have concrete houses. They recognize that they cannot get these things in South Africa. But they exploit the advantages of the two worlds - including high incomes and services in South Africa."

He argued that the Mozambican government was unlikely to have seen the amnesties as redressing past wrongs because South Africa had unilaterally decided what the debt to its neighbours consisted of and how it should be repaid.

Contrary to the National Union of Mineworkers (NUM) position, said De Vletter, his research showed that Mozambican miners did not want to see the migrant labour system abolished because they had made it work for them. Neither did they want the system of deferred pay scrapped. Instead the system should be improved, for example by introducing better interest rates.

De Vletter's research findings were supported by similar findings in Lesotho by Sechaba Consultants. These have been published by SAMP under the title "Riding the Tiger: Lesotho miners and permanent residence in South Africa".

Passports

Sechaba's Thuso Green said that of the 493 miners and 127 wives interviewed, only 19 percent wanted to live in South Africa and many of those wanted to keep their Lesotho passports. In contrast to Mozambique, Lesotho miners opposed the compulsory deferred pay system, although their wives supported it.

A SAMP population survey currently in progress has canvassed 692 adults in Lesotho. Green said it showed 66 percent of those interviewed would not consider leaving Lesotho permanently for South Africa but half expressed interest in a temporary stay.

"The picture you get is not of people wanting to become South African citizens or take up permanent residence. They are willing to come in for a short period only," said Green.

The results of the three surveys may go some way to explaining why, in the face of South African government predictions of at least 500 000 to one million amnesty applications for the SADC amnesty, only 200 000 materialized. Of these, only half have been approved.

It appears that the amnesty planners misread their context. Africans have a long tradition of crossing and recrossing colonially-created borders - to trade, to attend funerals and celebrations, to visit relatives.

"Is a first-world amnesty appropriate for Africa?" asked Jonathan Crush of SAMP and Queen's University in Canada. "Perhaps there should have been a range of amnesty options instead of just one, the option to become a permanent resident or not."



International immigration specialist Demetrios Papademetriou said, however, that it was common for amnesty processes

world-wide to encounter unexpected phenomena.

"In response most countries have either modified the programme during its administration or they have run a second legalization programme a year or two later."

The migratory practices typical of Southern Africa may have been one reason for the lower than expected application rates. Another was that the potential pool of applicants might have been far smaller than predicted. Given the current climate of xenophobia in South Africa, such exaggerations would not be surprising.

During discussion to evaluate the implementation of the SADC amnesty, Edwin Mahluthshana, the Director of Migration at Home Affairs, said his department had shown flexibility. For example, it had extended the application deadline by two months.

He painted a picture of a public service committed to efficient information dissemination about the amnesty, training of officials, running regional offices and allaying fears of applicants who had been working illegally and their employers.

Bushbuckridge

But Nicola Johnstone, co-ordinator of the Bushbuckridge-based refugee research programme of the University of the Witwatersrand, criticized the running of the process in rural areas. Her remarks were based on interviews conducted in Bushbuckridge, Mpumalanga and Northern Province with officials and former Mozambican refugees (from 31 December 1996 Mozambicans could no longer qualify as refugees).

Only a quarter of the roughly 320 000 former refugees living in this eastern border area had applied for the amnesty, she said. They cited a number of obstacles to applying including travel costs to regional offices, the cost of documents to support their applications and inadequately trained temporary staff. The lack of postal services in rural areas meant that rejected applicants were in practice never supplied with reasons and could therefore not lodge appeals.



Maxine Reitzes of the Centre for Policy Studies indicated that the amnesty process was more successful in urban areas. Reitzes, who interviewed applicants and officials at the Home Affairs office in Johannesburg, said the dissemination of information had been satisfactory.

But she warned that towards the end of the process, large-scale corruption had occurred as a result of insufficient time given to applicants to gather the information needed to prove they fulfilled the conditions of the exemption.

"People started selling each other places in queues or selling the forms that they had to stand in line for," said Reitzes. "Also, something must be done about corruption in the police, departments of Safety and Security and Home Affairs. People may not have applied because it is easier and quicker to get their documents in other ways."

Also problematic, she said, was the lack of communication between legislative decision-makers and the executive over the amnesty. Prior to its implementation, the ministry and department gave the impression that they did not think the amnesty was a good idea - "and yet that department was meant to implement it".

Lockey, too, alluded to such differences. The parliamentary committee had disagreed with the director-general's view that the amnesty could result in up to 12 million new immigrants, he said.

The tenor of Lockey's address was in stark contrast to that of Buthelezi. Lockey's comments reflected the ethos of the draft Green Paper (see next article), yet little of this new thinking was evident in Buthelezi's case. He largely repeated statements made in April during his Budget speech, which preceded the publishing of the Green Paper.

Thus while Lockey argued that the current focus on mass deportation of economic migrants was unworkable, Buthelezi stressed that with the amnesties completed, the focus would revert to "stopping the flood of illegal immigrants forthwith".

Researchers at the conference urged the Department of Home Affairs to incorporate their concerns into planning for the next legalization process starting on 1 August and aimed at former Mozambican refugees.

But by the end of July, no public education drive was in evidence and the amnesty remained unreported by the media. In addition, organizations working with former refugees were battling to find out key details such as what criteria applicants were expected to meet and how long the application period would last.

The brutal attempt of the apartheid government to trap and deport black domestic workers was the act of a defunct and morally bankrupt era. But transformation within Home Affairs remains incomplete until the philosophy behind the new policies is internalized by all those who must implement them efficiently.

Janet Levy is a journalist with Idasa, a non-profit organization promoting democracy in South Africa.

GREEN PAPER

Green Paper Signals Break With Racist Past

by Vincent Williams

Draft policy on immigration takes South Africa into a new era. VINCENT WILLIAMS summarizes the essence of this new thinking and raises a few areas for debate.



SENT PACKING: South African police load unauthorized Mozambicans onto a deportation train at Krugersdorp station. But the Green Paper argues that the old philosophy of exclusion and control should be replaced by one that uses migration to boost South Africa's growth and development. [Picture: Adil Bradlow, PictureNET Africa]

Why a Green Paper?

South Africa's immigration legislation is contentious. Critics say the Aliens Control Amendment Act of 1995 has failed to manage the flow of people into and out of the country. The Act, although amended, is rooted in the apartheid government's effort to get foreign whites into the country and keep blacks out. New thinking is that migration can be managed in a way that breaks with this racist past and is in the economic interests of South Africa and the region.

In 1996 Home Affairs Minister Mangosuthu Buthelezi set up a task team to draft a Green Paper on International Migration. This was to be the basis of new immigration law and public policy. In May 1997 the Green Paper was published for public comment. It outlines a set of general principles that it says should underpin immigration policy and legislation. These principles represent a major break with the ethos of the Aliens Control Act.

What is this new thinking?

The Green Paper argues that future immigration policy must be faithful to the Constitution and Bill of Rights. Universal human rights, administrative justice and certain basic rights for all people must guide new policy. It sees five issues as critical to the reform of our immigration system.

Growth and development

The first of these is to recognize that migrants and immigrants can be an asset to South Africa. They can boost the growth and development of the country, according to the Green Paper.

But many South Africans see foreigners only as a negative presence. These South Africans say that foreigners take away jobs, use the country's social services and pose a security risk. This is also the key thinking behind the Aliens Control Act. It is focused on control and expulsion, keeping unwanted foreigners out or deporting them if they have entered without being detected.

The Green Paper acknowledges that uncontrolled movement of people could have negative effects. But it goes on to say that in an increasingly competitive global market, South Africa cannot afford to continue enforcing legislation that discourages individuals and private companies from investing their skills and resources in the country.

Instead, immigration policy should attract the skills needed in South Africa. It should help private companies access the international skills market, and foreign entrepreneurs and investors to access South African markets. Attracting skilled individuals would also combat the brain-drain, or high rate at which skilled professionals are emigrating.

Some argue that instead of importing skilled foreigners, South Africa should train previously disadvantaged South Africans to fill those positions. But the two strategies are not mutually exclusive. It would take a long time for South Africa to produce the number of professionals needed to replace those leaving. In the meantime, by encouraging foreign nationals to take up certain positions, the country's growth and development would benefit.

As a specific measure, the Green Paper recommends the design and development of a points system. This would mean that people who meet certain criteria would be automatically granted entry to the country and access to the South African labour market. As a first step in developing a points system, a much clearer understanding of the existing and future needs of South Africa's labour market is needed, says the Green Paper.

It recommends that greater legal access be granted to specific categories of individuals who add value to our economy and society, such as traders and small businesspeople. It also says the existing contract labour system should be revised because, among other things, it discriminates in favour of mining and farming and exploits workers.



REFUGEES IN LIMBO: These Somalians, who live in Paarl outside Cape Town, are among refugees from several African communities to have fled civil war and persecution this decade. But South Africa has no refugee legislation regulating their stay in the country.

Picture: TRACEY DERRICK

Respecting people's rights

The Green Paper recognizes the need to enforce immigration policy and legislation, but insists that such enforcement must respect the rights of unauthorized immigrants. The need to have guiding principles in this area is seen as necessary because arrest, detention and removals mark South Africa's inherited jurisprudence.

The focus on unauthorized immigrants, as opposed to unauthorized migrants, is crucial. Neither category has the proper authorization to remain in the country, but only the former intends to stay. The Green Paper recognizes that many people who are currently arrested and deported are migrants. It is migrants who will benefit most from the proposal that greater legal access be granted to specific categories of people.

One of the most heated debates in the field of immigration policy is the extent of the rights that should apply to people arrested for breaching immigration laws. The Green Paper says the rights that apply to "persons" in the South African Constitution and

Bill of Rights must apply equally to those arrested for breaching immigration laws.

Only citizens have political rights, the right to choose their trade, the right to enter, remain and live anywhere in South Africa and the right to a passport. But immigrants and migrants are guaranteed virtually every other right in the Bill of Rights including the right to access to information, due process and administrative justice. Since they may find themselves caught up in administrative procedures, these rights are particularly important from their point of view.

People detained under immigration laws must be granted the same rights as those detained under criminal laws, according to the Green Paper.

Immigrants' rights, as is the case world-wide, will inevitably be a contested area in coming years in South Africa. All rights in South Africa's Bill of Rights are in any event restricted by a limitations clause. It may be that in practice this clause will be invoked with extra vigor in the case of unauthorized migrants and immigrants. Another potentially complicating factor is that South Africa has signed various international conventions and protocols. These oblige South Africa to protect the rights of individuals, irrespective of their citizenship. But will the rights in these protocols dovetail with those accorded in South Africa's Bill of Rights? And do people forsake those rights when they enter the country without authorization?

With respect to socio-economic rights, the Green Paper recommends that "illegally present immigrants or migrants should not be denied emergency medical treatment, nor should their children be punished for the misdeeds of their parents by denying them access to temporary schooling. All other social welfare benefits must be restricted to South African citizens and permanent residents."

But does the government, and the Department of Home Affairs in particular, have the capacity to implement this recommendation? According to the chairperson of the team that drew up the Green Paper, Wilmot James, "the challenge is to design a system that is practical, manageable and cost-effective -- which admittedly is not easy".

A regional solution

Immigration policy may be largely a domestic issue, but there are reasons why it would be a mistake for South Africa to develop policy without taking into account the needs of other countries in the South African Development Community (SADC). Firstly, there is a long history in Southern Africa of people moving to and fro across borders. Secondly, regional policies are currently being developed to bring about economic co-operation and integration through SADC.

One of the main reasons why people leave their home countries is to look for better opportunities in another. This is particularly true in the SADC region where South Africa's level of economic and infrastructural development far exceeds those of its neighbours. The Green Paper sees economic development of the region as a way of creating more opportunities for foreigners in their home countries so that they have less reason to leave.

"As long as economic growth is polarized and there is limited job creation elsewhere in the region, we can expect abnormal movements of economic migrants to continue," the paper argues. "The trade imbalance between South Africa and the region is a major cause for concern since it creates jobs here and destroys them elsewhere ... South Africa can and should actively assist in the economic development of the region. Ultimately this is the only way to stabilize the movement of people to our country in search of opportunity no longer available at home."

A relevant document in the debate on regionalisation is the SADC Draft Protocol on the Free Movement of People. It proposes that member states move towards the free movement of all citizens in a series of inflexible stages. Neither the Green Paper drafters, nor the South African government and some other states, support this proposal in its current form.

The reasons, according to the paper, are "the enormous economic disparities between member states, the threat to national sovereignty and the uncertain consequences of the protocol. Instead, the South African government proposes a separate streamlined channel of entry for SADC citizens at border and airport points. The Green Paper endorses this approach.

As specific measures, it recommends special legal avenues of entry for SADC citizens who want to enter South Africa for a temporary stay. This would apply to four types of people:

- unskilled or semi-skilled workers needed by South African employers (using an annual flexible quota system);
- small traders (by issuing a special trade permit);
- students (by easing access and administrative convenience); and
- cross-border family visitation (by the use of special border passes).

The Green Paper is clearly committed to developing South Africa's immigration policy in a regional context. But it does not specify whether other SADC governments should be given a chance to comment. Ideally, the draft Green Paper should be formally presented to the other SADC governments with a request that they make an input. This is not to suggest that South Africa's immigration policy should be determined by its neighbours -- but it would be a mistake for the South African government to assume that it can develop such policy without regional discussion.

Protecting refugees

South Africa has no refugee legislation. Currently, refugee status is granted to applicants on the basis of an exemption in terms of sections 41 or 23 of the Aliens Control Amendment Act of 1991. Thus the Green Paper and Department of Home Affairs want a separate, self-standing piece of refugee legislation. The Green Paper also recommends that an independent, expert authority be established to determine refugee status and that "refugee protection be insulated from the potential for political intervention".

The proposed refugee legislation is seen to require four elements:

It must be temporary

The aim of granting refugee status is to provide temporary protection to people whose basic human rights are at risk in their home country, until they are able to return in safety. Refugee protection is not an alternative to immigration to South Africa, the Green Paper stresses. A maximum five-year temporary protection period is suggested, at the end of which refugees should be able to apply for permanent residence if it is still unsafe to return home. The Green Paper is not clear on what happens if a refugee does not want to apply for permanent residence at the end of the five years but cannot return home either. The assumption is that the person's refugee status would remain intact but this is not spelt out.

It must be have regard for rights

Refugee protection, unlike immigration, is about implementing international legal entitlements, says the Green Paper. It must therefore meet four basic international standards:

- the right not to be returned to the risk of persecution;
- security rights (including protection from physical attack, and assistance to meet basic human needs);
- basic dignity rights (including protection against discrimination, rights to family unity, freedom of movement and association, and freedom of religion); and
- self-sufficiency rights (including rights to work and education).

It must be solution oriented

Although refugees must be protected, the focus should be on preparing them for their return home, if and when conditions allow. Thus it is proposed that, as far as possible:

- The social structures of refugee communities should be kept intact.
- Refugees should be able to develop skills helpful during their stay in the host country and on their return home.
- Contact should be promoted between refugee communities and their compatriots back home.
- Refugees should be provided with ongoing information about conditions in their country of origin.

It must be collective

A large influx of refugees could place a strain on a single country. So the Green Paper proposes that a system of collectivized protection or burden-sharing be developed in the SADC region.

Currently, when refugees arrive in an asylum state, that state alone is responsible for their protection. This means that accidents of geography and the ability of states to control their borders determine who is responsible for refugees. Instead, a set of principles is proposed that would determine who would bear the physical and fiscal burden of refugee protection. When a state feels it is unable to cope with a refugee influx, a forum must meet speedily so that it can apply these principles of burden sharing. It is proposed that the system of collectivized protection be developed with the United Nations High Commission on Refugees (UNHCR).

In its overall thrust, the chapter on refugees is largely consistent with international conventions and protocols as well as with UNHCR policies and recommendations. But many of the practical implications are not clearly defined and much is left open to speculation. For example, the notions of temporary protection and burden sharing are not new, in that they were raised in UNHCR discussions in 1981. But in the context of the Green Paper it is possible to interpret these proposals as an attempt to minimize South Africa's responsibility towards refugee protection by:

- insisting that refugees may only remain for as "long as it is necessary", after which they will be repatriated, and this will include mandatory repatriation; and
- arguing that South Africa may not have the resources to provide the protection required and, therefore, the burden of responsibility must be shared or protection will not be provided.

The discussion on refugees in the Green Paper seems to rest on the assumption that refugees will enter the country in large groups. Little if any mention is made of individuals or small groups of asylum seekers, and how the above recommendations may or may not impact on them.

However, given that a Green Paper is a concept document only, these issues will no doubt be clarified in the ensuing White Paper.

An encouraging aspect of the Green Paper is that it recommends a close working relationship with the UNHCR in determining the viability of repatriations in specific instances, as well as in the development of a burden-sharing model for the SADC region.

Management and transformation

The capacity of government to implement new immigration policy and legislation is a crucial factor to be considered. For this reason, the Green Paper recommends that "all facets of immigration and migration policy -- including planning, implementation and ongoing administration -- should be the core responsibility of a single government department".

It proposes that the existing Department of Home Affairs be renamed the Department of Citizenship and Immigration Services (DCIS) and that it focus only on matters related to migration, immigration and citizenship. For the DCIS to function well, more resources and training would be needed, it says.

The Green Paper also recognizes that migration and immigration policy cuts across various government institutions and that the policy as a whole must be driven by a coherent and comprehensive inter-departmental immigration plan. In cases where other government bodies (such as the police and defence force) became involved in migration and immigration matters, they would do so under the jurisdiction of the DCIS.

The Green Paper stresses that all migration and immigration decisions need to be based on reliable, up-to-date information. To this end new information management systems are proposed - particularly to determine South Africa's labour market needs and other migration and immigration statistics. Feeding into this labour market-driven immigration system, a points-based system of immigration selection is envisaged.

The road ahead

The publication of the Green Paper marks an important starting point for broader public discussion on migration and

immigration. Clearly, there are many unanswered questions and it is appropriate that the Green Paper does not try to give all the answers. All affected groups, including those from neighbouring states, should be able to contribute their ideas before a White Paper is published.

The Green Paper has moved into a realm in which migrants and immigrants are treated in a more humane, equitable way. For this to be reflected in official and public discourse, a public education programme is needed. This would involve government, non-governmental organizations, experts and academics.

The task team that drew up the Green Paper ran a relatively open process. In the drafting of the White Paper detailing official policy, government should be encouraged to keep channels to the public open and its work transparent.

Vincent Williams is the South African manager of Samp.

ECONOMY

Maligned Migrants Create Jobs

by Lungile Madywabe

South Africans who want to see the country's borders closed to African migrants and immigrants may be doing a disservice to the economy. A landmark study by the Southern African Migration Project (SAMP) has found that, far from stealing South Africans' jobs, immigrant entrepreneurs create employment for locals.

Balla Papa Sissoko is one such example. The 26-year-old Malian runs a panel-beating workshop in Hillbrow, Johannesburg, that employs five people, including three South Africans. Like many other migrants, he came to South Africa after the 1994 elections in search of a better life.



MENDING THE ECONOMY: Malian panel-beater Balla Papa Sissoko (right) makes a small dent in South Africa's jobless figures by employing locals.

Picture: SHAWN HARRIS

But despite his contribution, Sissoko and others like him are regularly insulted by South Africans who call them *makwerekwere*, a word that mocks the sound of their languages. In a recent wave of immigrant bashing, South African traders in Johannesburg attacked migrant traders and pillaged their businesses.

One of the reasons for this hostility is the xenophobic perception that immigrants come to the southern tip of the continent to compete unfairly for limited jobs.

However, the comprehensive SAMP study on non-South Africans who have started small, micro and medium enterprises (SMMEs) in inner-city Johannesburg proves that these immigrant entrepreneurs are making a major contribution to the economy.

The 70 immigrants interviewed were found to have created 227 jobs. Their businesses were virtually all in the retail and service sectors.

Christian Rogerson of the University of the Witwatersrand conducted the study between November 1996 and February this year. His assistant, Talibe Toure, interviewed the immigrants. As Toure is a Malian refugee, he was able to win the trust of the interviewees and speak to them in English or French.

Slightly more than half of those interviewed came from Southern African Development Community (SADC) countries.

"Distinct clusters emerged in the kinds of businesses operated by migrants from particular countries," according to the study. For example, Malawians tended to sell clothes and curios. Zimbabweans and Mozambicans repaired cars or sold curios. West Africans were mainly involved in "ethnic business related to clothes, food retailing and the operation of restaurants".

Non-SADC immigrants tended to be better educated than their SADC counterparts (half had university degrees). Their businesses were on the whole more successful and employed more South Africans than those of SADC immigrants (on average, 4,06 per enterprise compared to 2,65).

They also generally started their businesses with money brought in from outside South Africa, whereas the SADC immigrants used money earned from jobs in South Africa.

Although many immigrants' businesses start off as family ventures aimed at keeping the wolf from the door, in time South

Africans come to form the backbone of the work-force, the study found.

Most immigrants interviewed - legal or unauthorized - said they had come to South Africa to "look for big business opportunities" and had found these in Johannesburg.

Faith Thindwa is one such person. A Malawian hairdresser operating from Braamfontein, she employs five South Africans in her shop. She came to South Africa in 1991 and initially sold crafts and clothing and did some catering which earned her about R2,000 a month. Through her hairdressing business, she now makes up to four times that amount.

Akintoye Okesokun is a Nigerian dentist based at Koos Beukes clinic in Soweto. He also runs a clothing shop from the garage of his Yeoville house. The shop employs 14 people, nine of them South African.

The SAMP study concludes by urging policy-makers to counter xenophobia by openly acknowledging the positive role played by these businesses. "In particular, policy-makers must not overlook the potential role of these SMMEs in contributing towards the economic and social regeneration of decaying areas of inner-city Johannesburg."

Lungile Madywabe is a journalist on *The Sunday Independent*.

The full study, entitled *International migration, immigrant entrepreneurs and South Africa's small enterprise economy*, is now available. Check website for details.

PROFILES

Locked Between Prejudice and Red Tape

Politician Desmond Lockey speaks to KERRY CULLINAN about the balancing act involved in implementing migration reform.



PUSHING FOR CHANGE: The Department of Home Affairs is moving too slowly for MP Desmond Lockey

"I don't want to upset the apple cart, but I have some serious concerns about the Department of Home Affairs," says Desmond Lockey, the African National Congress (ANC) MP who chairs the Portfolio Committee on Home Affairs in the South African parliament.

"Very little transformation has taken place. For example, 78 percent of the deputy directors are white and predominantly male, and 62 percent of the directors are white, again predominantly male.

"In the top management there is very little culture of diversity, yet Home Affairs serves the entire population. This impacts on service delivery. It has take us three years to get a Home Affairs office in Soweto. We are still waiting for offices in Khayelitsha and Mitchells Plain."

There is also lots of corruption, he says. "A clerk who earns R30 000 a year has the power to issue tourist visas and residence permits. Foreigners often offer bribes to gain entry to the country."

The 35-year-old BA Law graduate from the University of the West Cape has just returned from an overseas trip and is on his way to Vryburg in the North West province, which is both his birthplace and the parliamentary constituency.

Aside from a troublesome bureaucracy, Lockey also has to work with Home Affairs Minister Mangosuthu Buthelezi, who is from an opposing party, the Inkatha Freedom Party.

On relations with Buthelezi, Lockey is diplomatic, emphasizing his support for South Africa's government of national unity. When pressed about the difference between Buthelezi's approach to unauthorized migrants -- entailing control and deportation -- as opposed to the Green Paper's more humane proposals, Lockey simply says: "That's because we are from different parties."

He supports the Green Paper's desire to manage migration rather than trying to prevent migrants from crossing our borders, as "we have clearly failed to curtail the influx of migrants". Again he quotes statistics from his head: "In 1988, 33,446 Mozambicans were deported. Last year, 157,000 Mozambicans were deported. This proves that the current system has failed."

Lockey favors taking into account the economic realities of South Africa's neighbours -- often the result of apartheid destabilization -- "but I'm reluctant to argue that we owe a debt to our neighbours".

Rather, he would like to see freer movement of people in the Southern African Development Community (SADC) as part of an attempt to "work in a far more concerted manner for regional integration".

"The world is organizing itself into economic blocks. In SADC, there are 12 countries with 120 million people. We have enormous wealth in people and natural resources, but we have failed to provide for people's basic needs."

Again the statistics: "In 1995/6 we exported R3 billion of products to Zimbabwe, but only imported R900 million. During the same period, we exported over R1 billion to Mozambique but only imported about R100 million. Clearly, if we don't allow our neighbours greater access to our selling and labour markets, they will export people."

Lockey also believes that our new Bill of Rights is "not a charter of citizen's rights", but applies to all people living in the country. Even unauthorized migrants have "basic human rights such as the right to life, dignity, due process and emergency health care". Employers should also not subject them to "slavery, servitude and forced labour".

He hastily adds that these views are personal. "There is intense debate within the ANC about the influx of illegal migrants. We hope to reach a position at our policy conference this year."

Lockey is a former Labour Party politician from the apartheid regime's tricameral parliament that excluded Africans. But he swears now that the ANC, which he joined in 1993, is his ideological home. He says it is "very difficult with hindsight to say whether I made the right decision to go into the tricameral system". But he shows few regrets and seems to have adjusted well to the ANC.

When his schedule allows it, Lockey heads for the gold course ("I'm a keen 11 handicap golfer"), listens to light jazz or entertains friends by cooking for them. Lockey is married and has two sons aged 11 and eight as well as a six-year-old daughter.

Kerry Cullinan is a journalist with Idasa.

Champion of free movement

by Outsa Mokone

Charles Hove has chosen to swim against the tide with his vision of a region where labour moves easily across borders.

Charles Hove still frowns when he recalls how he stood up Mozambican President Joachim Chissano last year.

Armed with a Southern African Development Community (SADC) diplomatic passport, Hove's mission was to brief the president on an upcoming economic summit. However, Mozambican border officials denied him entry into the country: all they saw was a Zimbabwean without a visa.

A fraught four hours later Hove was finally let through, but by then SADC's principal economist had missed his date with the president.

Hove sees this experience as a metaphor of the "xenophobia and immigration problems mocking Southern Africa's claim to a common destiny".

This experience, combined with insights gained while growing up in Zimbabwe and working in Africa, have been formative with regard to Hove's social conscience and his belief in the need for the free movement of people in the region.

Born in Zimbabwe in 1954, he saw its tobacco industry grow to its present strength because of Malawian migrant workers. As a result of this migrant labour system, 60 percent of Zimbabweans have blood relations with Malawians.

Hove has spent most of his working life outside his home country - first as a high school teacher in Sierra Leone and later as SADC principal economist, a post he left this year. Before his stint with SADC, he was senior economist at the Zimbabwean Ministry of Finance.

He has made a career of his charm, eloquence and intellect. He used these talents to swim against the tide by drafting and championing the Free Movement Protocol of Persons in Southern Africa.

Hove says that "issues of movement of people are historical" and therefore "whether SADC concludes an agreement or not, people will always cross borders legally and illegally".

Many countries in the region -- especially Botswana, Namibia and South Africa -- spend a vast amount of money rounding up and repatriating border jumpers. But, according to Hove, "analysis shows that the impact of all this expenditure is nil because most of these illegal immigrants return soon after being repatriated".

It is regrettable that no cost benefit analysis has ever been conducted on the value these border jumpers add to the economies of host countries, he says. In return for their contribution, many are exploited through pitiful wages and are the victims of human rights abuses.

Hove believes that the Free Movement Protocol would provide a number of solutions to regional issues: "It would allow unskilled workers from neighbouring countries to apply for permits to seek jobs in the host country. This would help governments to identify and indicate where unskilled labour opportunities were available and where not.

"It would enable governments to keep track of the number of aliens in their territory, what they were doing and how long they would stay."

He suggests that Southern African governments should address the issue at an economic level to provide long-term solutions to regional unemployment.

"Integration as contained in the SADC treaty requires that deeper levels of co-operation can only be realized if all factors of production (capital, labour and service) can be traded across borders."

Hove and those who share his vision have come up against an almost immovable force -- political resistance to the protocol. Strong opposition from Botswana, South Africa and Namibia has resulted in a SADC decision to implement the protocol in a piecemeal fashion.

Chief among opponents to a frontier-free Southern Africa is South Africa.

Hove urges South Africa to throw its weight behind the protocol to address the economic imbalance between South Africa and its neighbours.

"South Africa has a huge trade surplus against any SADC member. At present there are no ways of redressing the imbalance other than in the area of labour. SADC countries are the biggest market for South Africa's manufactured goods. It is in South

Africa's interest that the region's economies grow fast.

If South Africa were to slam its doors in the faces of illegal immigrants, where would these countries raise the money to buy South African products?

"For many years South Africa recruited miners across national boundaries through the Wenela system -- not because there was no unemployment in South Africa, but because South Africa understood that foreign labour was essential to its economic growth."

In contrast to the case of semi-skilled and unskilled workers, says Hove, no one is worried about professionals who are freely circulating about the region by invitation. Malawi, Zambia and Zimbabwe have lost their best brains to South Africa, especially in the fields of medicine and engineering, he says. "South Africa does not pay compensation for these brains it has collected at cost."

Outsa Mokone is a journalist with the Botswana Gazette.

LEGAL WATCH

Non-citizens lose vote

Thousands of non-South Africans, many of them miners, voted in the country's first democratic elections in 1994. This was made possible by a provision in the Electoral Act (202) of 1993 granting voting rights not only to South African citizens but also to permanent residents aged 18 and older.

However, as the result of a recent amendment to the Act, unless these permanent residents move quickly to take up the opportunity to become citizens, they will effectively be disenfranchised and will be unable to vote in the 1999 elections.

According to the Electoral Amendment Act of July 1997, only South African citizens who are listed on the voters' roll and are in possession of a voter's eligibility document can now vote. This amendment is consistent with the Constitution, which guarantees political rights only to citizens.

Fair process triumphs

An important South African court case which played out last year has ensured that administrative bodies are now accountable and that people applying for immigration permits or asylum are given fair process.

The case, *Foulds v Minister of Home Affairs and Others 1996 (4) SA 137*, challenged three previous decisions favoring the immigration authorities who had refused to give reasons for rejecting applications.

In 1992 Foulds, a United Kingdom citizen, applied for permanent residence status in South Africa in terms of Section 25 of the Aliens Control Amendment Act. His application was rejected by the Immigration Selection Board, which refused to give reasons for its decision.

Foulds sought a court order to set aside the decision of the board and to direct the immigration authorities to reconsider the application in a lawful and fair manner.

The court ruled in favour of Foulds. It found that he had a legitimate expectation that the board would consider his application fairly and give him a chance to deal with any adverse information it may have received. It also found that there were no reasons

justifying the board's non-disclosure of such information to him.

Rights for all

South Africa's Bill of Rights applies not only to citizens but also to non-citizens, according to a court ruling this year.

The case, *Johnston v Minister of Home Affairs and Another 1997 (2) SA 432*, also highlighted the need for safeguards to restrain the absolute discretionary powers of immigration officers to ensure that they do not violate human dignity.

Eddie Johnston was detained on 12 August 1994 in terms of a warrant issued under Section 53(1) of the Aliens Control Amendment Act. In terms of this section, a person can be arrested on reasonable grounds if s/he fails to prove that s/he is entitled to be in South Africa.

Johnston, a South African who had been living in Zambia from a young age, was held by immigration officials who refused to believe he was South African. The officials told him he would be detained until he admitted where he was from.

Johnston spent 14 months in detention without trial. No charges were brought against him. On 18 December 1995 he brought an urgent application for his release, contending that his detention was unlawful in terms of the Aliens Control Amendment Act of 1991.

The court ruled in favour of Johnston by finding that his detention had been unlawful. The court held that Section 10 of the Act should have been applied to avoid "the harshness and injustice of the prolonged detention".

This section provides for a temporary permit to be issued for a specified period while the immigration officer investigates whether the person is a prohibited person.

The court also held that the detention violated Johnston's right to freedom of security (Section 11) and dignity (Section 10) in terms of the Constitution of the Republic of South Africa Act (22) of 1993.

ON THE MOVE

Green Paper conference

South Africa is formulating a new vision of migration and immigration policy. An important part of this process is to take place at a conference on the Green Paper on International Migration.

The event will be hosted in Cape Town from 17 to 19 September 1997 by the Southern African Migration Project and the South African Parliamentary Portfolio Committee on Home Affairs in co-operation with the South African Department of Home Affairs.

The purpose of the conference is to:

- Review the contents of the Green Paper.
- Determine the extent to which interested parties agree with its general principles and recommendations.
- Pinpoint substantial differences of opinion.
- Identify issues of concern which may not be reflected in the Green Paper.
- Develop recommendations for consideration in the drafting of the White Paper on Immigration.

For further information, contact Linda van de Vijver or Vincent Williams at Idasa, tel +27(021)461-2559 or fax +27(021) 461-2589.

Moving images

Photographer Victor Matom's upcoming photographic odyssey about refugees in Gauteng and KwaZulu-Natal is aimed at helping South Africans understand the factors that result in refugee populations.

A series of exhibitions, supported by the United Nations High Commission on Refugees, will be staged in Johannesburg in November and December, and in Durban in December and January. Matom also plans to take the images to more remote parts of South Africa using a mobile gallery.

For more information contact Thabisile Radebe on tel +27 (012) 338-5301 or fax +27(012)332-0220.

Policy papers

The Centre for Development and Enterprise (CDE) has contributed two reports to the current debate on migration policy.

These are *People on the move: Lessons from international migration policies* (CDE research no 6, June 1997, R45) and *People on the move: A new approach to cross-border migration in South Africa* (CDE research no 7, June 1997, R45).

These can be ordered from the centre at PO Box 1936, Johannesburg, 2000; tel +27(011)482-5140, fax +27(011)482-5089 or email: info@cde.org.za

To have items included in this column, contact Lutando Myataza on tel +27(021) 461-2559, fax +27(021)461-2589 or email: lutando@idasact.org.za

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FORTHCOMING

Immigration Law in a Democratic South Africa

A collection of essays written by experts in the field of immigration and refugee law and policy. Edited by Dr. Jonathan Crush, the book starts with a review of the origins of the 1991 Aliens Control Act. It goes on to reflect on questions of immigration legislation and human rights, including the application of such legislation in courts and its impact on Mozambicans in Mpumalanga province.

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