

COVERT OPERATIONS:
CLANDESTINE MIGRATION,
TEMPORARY WORK
AND IMMIGRATION POLICY
IN SOUTH AFRICA

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SOUTHERN AFRICAN MIGRATION PROJECT
1997

EXECUTIVE SUMMARY

Significant numbers of foreign workers, both legal and undocumented, are engaged in temporary work in the mining, commercial agriculture and construction sectors in Gauteng, Northern Province, Mpumalanga and KwaZulu/Natal. The actual numbers involved are unknown and unknowable under existing systems of data collection and migration policy. The issue of temporary employment is inextricably linked to the broader issue of undocumented migration to South Africa. The Aliens Control Act is based on principles of exclusion and expulsion. Because non-South African temporary workers have few legal modes of access to the South African labour market, they are unprotected by law and vulnerable to the sanctions of the Act. Penalties include criminalisation, arrest, imprisonment and summary deportation. This report reviews the current state of knowledge about the temporary employment phenomenon in South Africa and the adequacy of the legal and policy instruments for managing the movement of temporary migrants for work in South Africa.

The first section examines the regulatory framework around temporary employment schemes and, in particular, the “two gates” policy inherited from the previous regime. The inherent discrimination in this system is highlighted. The second section traces the demise of formal temporary employment schemes and their replacement by more informal, unregulated, systems of labour mobilisation and deployment in the 1990s. Central to this process is the continuing flow of undocumented migrants from apartheid-ravaged countries of the region and the growing tendency in many sectors towards flexible labour arrangements, such as labour broking and sub-contracting. The third section of the report focuses on the impact of post-apartheid in-migration on temporary work, and the absence of official regulation of the sectors in which these migrants are employed. The fact that so many workers are designated as “illegal” by the state paradoxically increases their attractiveness to employers in search of cheap, disposable, exploitable labour. The fourth section examines the working and employment conditions of temporary workers in sectors such as mining and agriculture. The picture is incomplete and unsystematic but the extant evidence paints a disturbing picture of continuing exploitation and abuse, particularly of women and child migrants. Finally, the report looks at various new policy initiatives which could have far-reaching implications for the temporary work regime in South Africa.

The report concludes with several recommendations for policymakers. These include a call for a more systematic research programme focused

on temporary employment sectors and a number of suggestions: that the government, as a matter of urgency, undertake a systematic investigation of labour practices and working conditions in the major temporary employment sectors; that the “two gates” policy be abolished; and that policymakers establish a clearer distinction between immigration and migration. Most temporary workers are migrants, not immigrants. The Aliens Control Act is a flawed policy instrument for regulating immigration, not migration. South Africa has an immigration policy of sorts, but no coherent migration policy. This is a major policy gap requiring urgent attention.

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1. INTRODUCTION

In South Africa, an increasing proportion of temporary work in the agricultural, construction, service, and tourism sectors is being performed by foreign migrants and immigrants.¹ Although the precise numbers involved are unknown (and probably unknowable), there is considerable regional variation in the incidence of foreign-worker involvement in these sectors with the highest concentrations in Gauteng, Mpumalanga and KwaZulu/Natal provinces.² Much of this temporary work by non-South Africans takes place outside any formal regulatory framework. Temporary employment — of a daily, weekly or seasonal kind — is individualised and “hidden” with little overt monitoring or regulation by government, employers’ organisations or unions. The primary reason for this is that many temporary workers within South Africa are undocumented “illegal” migrants.³ South Africa thus does not have the large-scale, organised “guest worker” or “temporary employment” schemes characteristic of other parts of the world.⁴ The unregulated character of foreign worker involvement in the temporary employment sector poses a particular challenge for regional governments, organised labour and NGOs seeking to improve working conditions and to develop a more humane temporary employment regime.

A significant proportion of the temporary labour force is mobilised through labour brokers and involved in sub-contracting employment arrangements. Sub-contracting has been growing rapidly in all of the major sectors in which foreign migrants are employed, especially agriculture, construction and mining.⁵ The long-distance formal and informal labour mobilisation networks of South Africa’s brokers and sub-contractors extend well beyond South Africa’s own borders.⁶ The purveyors of temporary labour are also particularly well-integrated into local urban and rural labour markets and are able to tap the informal, underemployed labour pool of unskilled and semi-skilled South African and non-South African workers waiting for work on the margins of the formal urban labour market. The ubiquitous pick-up points for day labour in virtually all South African towns and cities are merely the most visible manifestation of a vast informal network of information, labour mobilisation and, of course, exploitation.

The whole issue of temporary employment in South Africa is thus inextricably intertwined with the broader issue of undocumented migration. How the South African government responds to this broader challenge is a critical factor in determining the status and security of temporary workers from outside the country. This in turn impacts on how

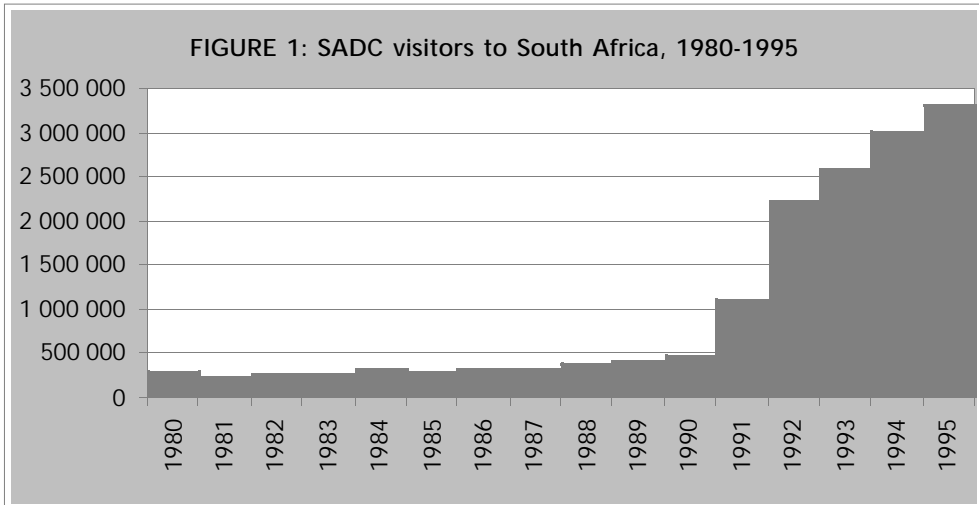
and whether temporary work can or ought to be regulated and managed. The current Aliens Control Act is, as its name implies, a piece of legislation premised largely on principles of control, exclusion and expulsion. Temporary workers are thus not only unprotected by law but are vulnerable to its sanctions. The penalties include criminalisation, arrest, imprisonment and summary deportation.⁷ In order to make sense of the current character and dynamics of temporary work in South Africa, it is thus necessary to situate it within the context of the broader phenomenon of undocumented migration and its regulation.

The report is organised as follows. The first section examines the South African regulatory framework around temporary employment schemes and, in particular, the inherited “two gates” policy of the previous regime. The second traces the demise of temporary employment schemes and their replacement by more informal, and loosely regulated, systems of control following large-scale movements of refugees and undocumented migrants to South Africa in the 1980s and 1990s. The third section focuses on the impact of post-apartheid in-migration on temporary work and, in particular, the absence of employment regulation in those sectors. In order to contextualise the discussion, this section first looks more broadly at the whole undocumented migration phenomenon. The fourth section of the report examines the evidence relating to the implications for temporary workers of the new post-apartheid migration regime. Finally, the report looks at various new policy initiatives which, if adopted, could have far-reaching implications for temporary work by non-South Africans in South Africa.

2. THE “TWO GATES” POLICY

South Africa’s borders are extremely porous and it is widely accepted that the flow of both legal and undocumented migrants to the country from the Southern African Development Community (SADC) region and beyond has grown markedly since 1990 (Figure 1).⁸ The undocumented movement occurs in contravention of existing South African immigration legislation. The result is, first, that many employers in the temporary work sector are able to find sufficient foreign labour on site or in the vicinity, and do not need to recruit cross-border through recruiting organisations and/or temporary employment schemes. Second, undocumented migrants are in a vulnerable position since their illegal status puts them beyond the protective reach of the law and makes them particularly open to exploitation and abuse. The pertinent question in the South African context is, therefore, not how existing temporary employment schemes

can be better regulated but whether temporary employment schemes might be an instrument for regularising and legitimising the status of temporary workers who are, at present, without any significant protection. This paper addresses this question in the context of the employment sectors in which foreign workers predominate.



Undocumented temporary workers in the agricultural, construction, transport and service sectors have either entered the country clandestinely or overstayed their temporary residence permits or secured false documentation.⁹ Employers in those sectors using temporary workers have traditionally been able to exert sufficient power over the central or local state to avert large-scale prosecution for their use of this labour. This is a calculated risk on the part of employers who do not enquire too closely about the origins of their workers, or do not particularly care as long as the labour is available and cheap. South African employers of temporary labour undoubtedly want to continue to employ workers from outside the country. Ironically, it is their very illegality that makes them attractive as employees, although employers tend to claim that South Africans will not accept the work at the wage rates they can afford. It is this situation that South African policymakers are increasingly exercised about. The concern is not so much with the working and living conditions of temporary workers per se, but with the impact that undocumented workers have on unemployment and wage levels among South Africans. There is a widespread perception, amongst the general public as well as a broad spectrum of policymakers, that “illegal” temporary workers deprive South Africans of jobs and depress

wage levels, as well as cause a whole host of other social problems¹⁰ In fact, there is little or no concrete evidence to substantiate these beliefs.

(A) THE ALIENS CONTROL ACT

Workers from the Southern African region seeking legal access to South Africa are subject to a dual system of control known as the “two gates” policy.¹¹ The two gates are (a) the Aliens Control Act of 1991 and (b) various bilateral labour agreements between South Africa and the governments of Mozambique, Botswana, Lesotho, Swaziland and Malawi.¹²

The Aliens Act is an omnibus piece of legislation governing all facets of immigration to South Africa.¹³ It provides specific exemptions which make legal and administrative room for labour treaties with other countries and temporary employment schemes for non-South African workers. The Act does not, however, prescribe or regulate such schemes. Rather it is permissive in its intent, allowing the Minister of Home Affairs discretion to exempt particular employers and “special recruitment schemes” from the provisions of the Act at his or her own discretion.

In October 1995, the South African parliament approved a series of amendments to the Act which were designed to tighten controls and close loopholes in the existing legislation. The 1996 Aliens Control Amendment Act explicitly envisages the continuation of the status quo since it provides for continuing exemption from the Act for persons who enter South Africa for employment: (a) under any convention with the government of a neighbouring state, and (b) in accordance with a “scheme of recruitment” approved by the Minister. In the past these clauses have allowed particular employers an exemption from the Aliens Control Act and the right to employ non-South Africans under separate terms and conditions than those prescribed by the Act. Not surprisingly it has been the employers with considerable political influence — the mining industry and white commercial farmers — who took advantage of these exemptions and, indeed, for whom they were designed.

Under the amended Act, the new categories for temporary residence are: work permit, workseeker’s permit, visitor’s permit, business permit, study permit and medical permit. The Act now makes it officially illegal for someone to enter the country for one purpose (eg on holiday) and change the purpose of visit after arrival (eg take up employment). In a memorandum to the amended Act, the Department of Home Affairs (DHA) states its reasons for the change of policy as: (a) the “large numbers” of people who wish to work in the country who enter on holiday visas and apply for work permits once inside, and (b) the fact

that such people are prepared “to work for lower wages and that employers preferred to employ them to the detriment of local labour.”

Temporary workers currently coming legally to South Africa as individuals from the region do so in the shadow of the Aliens Control Act. Temporary work occurs largely at the bottom end of the job market and it would be difficult if not impossible to convince the DHA and its Immigration Boards that there were no South Africans who could do these jobs. The evidence suggests that not many temporary workers bother to subject themselves to a bureaucratic application process that would, in any event, have little chance of success. In addition, few if any companies or individual employers are willing to make the case for entry with the DHA for an individual temporary worker, as they regularly do for skilled or professional people from abroad.

Informal access to South Africa itself is relatively easy. The most common access route for migrants is to enter for a non-work related purpose and then take up or resume employment once there. Regularising that employment status was possible under the old Aliens Control Act and often simply required a letter of support from an employer. In practice, many temporary workers find it difficult or inconvenient to officially change their “purpose of entry” and simply work illegally. There is some question about whether the Amendment Act will eliminate the possibility of temporary residents changing their “purpose of visit” in this way.¹⁴ In the case of temporary workers this will make little difference to a de facto situation, and the clause is far more likely to affect skilled and professional workers. Once inside, both undocumented migrants seeking temporary work and employers hiring them have an interest in circumventing the Act and its enforcers. Temporary work, particularly in the urban areas, is thus driven underground. Employers are more than willing to risk the sanction of the Aliens Control Act in order to extract the advantages which flow from employing vulnerable undocumented migrants.

Studies in other countries show that if there is any hope of legal access to a particular labour market, the volume of undocumented migration tends to subside. Do temporary workers from the SADC region have any means of legal access to the South African labour market? In the past, the apartheid government was divided on the question of employing non-South African labour at the lower end of the job market. The DHA often pitted itself against the Departments of Foreign Affairs, Agriculture, and Mines and Energy on this issue. Maxine Reitzes points to similar and newer divides since 1990 resulting in an immigration policy that is “diverse and inconsistent”.¹⁵ Since 1994, the DHA’s position has slowly gained ascendancy. In that year, the DHA formalised an informal policy when it announced that no immigrants in unskilled or

semi-skilled categories would henceforth be admitted to work in the country.¹⁶ The DHA's Memorandum on the Aliens Control Amendment Act of 1995 makes it clear that the onus is on employers to give employment preference to South Africans.¹⁷ This was also stated policy in the past but, as Cooper points out, "it is fairly clear that this policy was not adhered to with much seriousness".¹⁸ The Amendment Act explicitly precludes the issue of work or immigration permits to foreign workers wishing to follow an occupation in which there are sufficient South Africans to do the job.

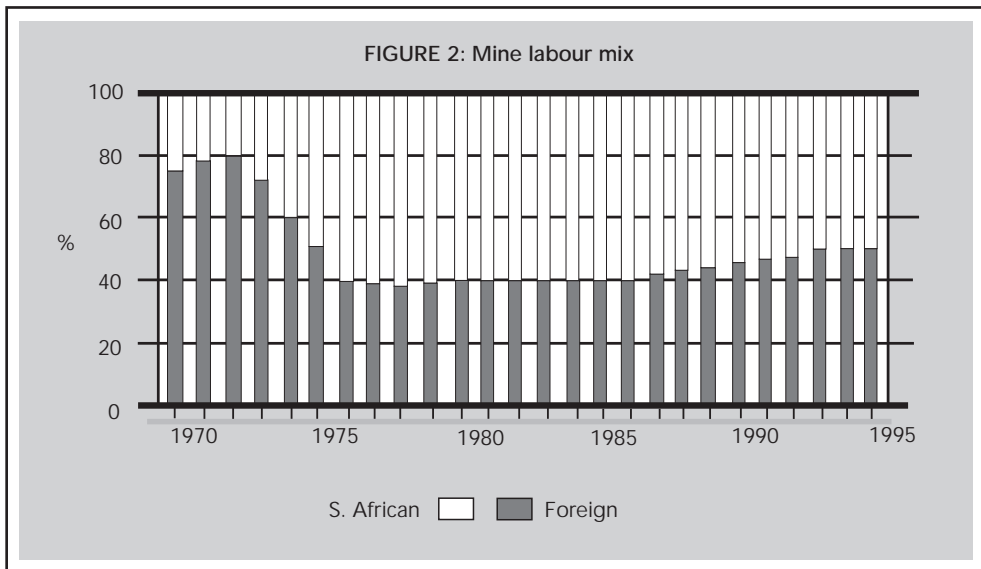
The DHA has said that it consults the Department of Labour (DL), trade unions, industrial councils, labour organisations, educational institutions, and professional and legislative bodies before deciding to approve or refuse a permit.¹⁹ However, the recent Labour Market Commission (LMC) found very little co-ordination between the DHA and the DL on this issue. The Commission recommended that the DL give considerable attention to developing a system of identifying job vacancies and categories for which there were an insufficient number of South Africans and for which foreign immigrants might apply.²⁰ Cooper suggests that it will become increasingly harder for non-South Africans to legally access the South African labour market.²¹ Whether this happens in practice depends very much on how the amended Act is actually implemented and enforced.

(B) BILATERAL LABOUR TREATIES

The post-apartheid government inherited a series of bilateral labour agreements between South Africa and the governments of Mozambique, Lesotho, Botswana, Swaziland and Malawi.²² These accords give the South African mining industry privileged recruiting access to non-South African labour outside the terms of the Aliens Act and although still in force are all old agreements dating, in their current form, back to the 1960s and early 1970s. The treaties set the terms and conditions of access by contract workers (mainly miners) to the South African labour market.

In contrast to the disorganised and highly flexible temporary employment sector, Southern Africa also boasts the modern world's most highly organised and tightly regulated system of cross-border legal migration for employment.²³ The contract labour system to the South African mines still delivers almost 200 000 foreign workers — about 50% of the total workforce each year — to work on South Africa's gold, coal and platinum mines (Figure 2). The system is orchestrated by The Employment Bureau of Africa (Teba), now an independent company with a historical monopoly over mine recruiting in all of the various states of Southern Africa.²⁴ Conditions of recruiting and employment are

governed by a series of bilateral labour treaties between South Africa and the surrounding states, and all mine contracts are subject to the conditions laid out in these accords.²⁵ Although miners would once have been classified as “temporary workers”, in the last twenty years most have become “stabilised”, working continuously on the mines, renewing their contracts (now called employment agreements) each year after a fixed period of leave.²⁶ Contract labour to the mines falls outside the scope of temporary employment as defined by the International Labour Organisation (ILO).²⁷



A new pattern of labour mobilisation has taken root in the mining industry in the last five years. This falls under the designation “temporary work”. Many mines are increasingly using sub-contractors to organise production sections and to do specialised tasks.²⁸ Sub-contractors recruit labour from within South Africa but also from Mozambique and Lesotho. They do so both with and without Teba’s assistance. Temporary work with mine contractors, unlike that in other sectors, is largely governed by the bilateral accords and the contract system of the mining industry.

The inter-governmental treaties specify a series of conditions and obligations on the part of both South Africa and the source countries on the following issues:²⁹

- recruitment — including right to recruit, length of contract, length of time between contracts, quotas, payment of recruiting fees, the need for written contracts, and provision of facilities for recruiting and processing contracts;

- contracts — including identification of employer and employee, home address of recruit, place of employment, contract length, minimum wage, food and in-kind provision by employer, transport to and from work, and written contracts;
- remittances and deferred pay — provision for compulsory deduction of a proportion of wages and transfer to the home country;³⁰
- taxation — exempting contract workers from paying tax in South Africa;³¹
- documentation — including valid contracts, passports and vaccination certificates; endorsement in passport to show purpose and period of entry; employment record books;
- unemployment insurance;
- length of agreements; and
- appointment of labour officials to be stationed in South Africa. The labour offices are nominally responsible for inter alia “protecting the interests of workers”, registration of undocumented workers, transfer of money, providing information on conditions of employment; and consulting with the South African government on repatriation of sick or destitute workers.³²

The Malawi agreement appears to have lapsed since the expulsion of Malawian miners from the industry in 1986 following an inter-governmental dispute over HIV testing.³³ In other cases, administrative practice has moved beyond the provisions of the original agreement. Administrative amendments (through the signing of diplomatic notes) have been made to the agreements to accommodate, for example, changes in legislation in the home countries of migrants. In some instances, through the agency of the National Union of Mineworkers (NUM) and broader political transformation, treaty provisions have been superseded in practice. The treaties are reportedly being renegotiated at the present time.³⁴

All mine recruiting by Teba falls under, and should be consistent with, the treaties as amended from time to time. These conditions are summarised in the standard annual Teba contract for foreign miners.³⁵ A variant of this contract is used by Teba for the recruiting of temporary workers within the mining industry; particularly sub-contractors' labour. These contracts specify certain minimum levels of remuneration and working conditions. They also underwrite the system of contract migrancy by allowing for the recruitment of single men only. Miners' dependants cannot accompany their spouses to South Africa and the miners are contractually committed to return home on expiry of the contract. Most miners are on fixed annual contracts. In the case of sub-contracted labour, employer flexibility demands variable contract lengths. The labour accords specify maximum contract lengths for all contract workers. Recruiting for contractors by other smaller recruiters,

such as Algos and Atas in Mozambique and Ramsdens and Acrol in Lesotho, is also nominally bound by the terms and conditions of the labour accords. Workers signing these recruiters' contracts can generally expect less favourable terms and treatment than those recruited by the more organised and visible Teba organisation. Sub-contract labour recruited through Teba is subject to the normal terms and conditions of the Teba contract, although this offers them little wage protection and no direct protection at work.

The number of workers employed by mine sub-contractors has grown substantially in the last few years — from 5% of the goldmines workforce in 1987 to 10% (34 733) in 1994.³⁶ Sub-contracting has also expanded in coal mining; from 5% of workers in 1987 to 16% in 1994 (Table 1).

Sub-contracting is related to the mines' push for "higher productivity,

TABLE 1: Contractors' labour on gold and coal mines, 1987-1994				
	1987		1994	
	No.	%	No.	%
UNDERGROUND				
Company employees	370 697	97.3	254 998	89.4
Contractor employees	10 373	2.7	30 259	10.6
SURFACE				
Company employees	120 406	94.0	74 026	89.1
Contractor employees	7 642	6.0	9 030	10.9
TOTAL				
Company employees	491 103	96.5	329 024	89.3
Contractor employees	18 015	3.5	39 289	10.7

Source: NUM

flexibility and cost-cutting" and is part of a much broader process in the South African, and indeed global, economy.³⁷ In the past, sub-contracting was confined to mine development work such as shaft-sinking and construction.³⁸ In the last decade mines have progressively out-contracted non-core functions such as catering and cleaning. More recently, sub-contractors have become involved directly in production including stoping, sweeping, haulage, meshing and lacing. Contractors have a decided preference for labour from Mozambique and Lesotho.

This they obtain through two sources: (a) through recruiting agencies such as Teba which recruit workers to order on non-renewable contracts of varying length; and (b) through engaging undocumented migrants (often ex-miners) within South Africa. The exact numbers of sub-contract recruits are unknown, although in 1995 Teba engaged a total of 72 912 workers for non-member mines and contractors (including 18 319 Mozambicans, 11 317 Basotho, and 1 005 workers from Botswana and Swaziland).³⁹

Casual labour and temporary employment is not new in many sectors of the South African economy.⁴⁰ A recent feature has been the explosive growth of labour broking. Naidoo estimates that over 100 000 temporary employees are hired through these brokers, of which there were over 3 000 agencies in 1995.⁴¹ Labour brokers have networks that extend well outside South Africa either recruiting themselves or “sub-letting” to recruiters. Perhaps the largest and most organised “broker” is, in fact, Teba. But other sectors, such as agriculture and construction, are also supplied with foreign workers through brokers. In the case of agriculture, recruiters in Mozambique and Lesotho and brokers in South Africa supply workers to farmers or groups of farms, primarily on short contracts for seasonal work. The main supplier in the case of Mozambique is Algos. The numbers recruited in Mozambique are very small; 252 for agriculture, 214 for services and 2 131 for mining in 1995.⁴² Algos also has offices in South Africa — at Nelspruit (Mpumalanga), Johannesburg, Empangeni (KwaZulu/Natal) and Welkom. These offices are, in a sense, “internal recruiters”, offering a legalisation service to Mozambicans already within South Africa. Algos also arranges the renewal of contracts for its recruits with the Mozambican labour delegate and local DHA offices.⁴³ In 1995, Algos legalised or renewed the contracts of 371 miners, 10 217 agricultural workers and 1 689 workers in services. Of the agricultural workers, 9 836 were registered in Nelspruit, 173 in Johannesburg and 208 in Empangeni. Of the service workers, 429 were registered in Nelspruit and 1 459 in Johannesburg.

In the case of Mozambique there is a subsidiary agreement to the main bilateral accord between the two countries governing the conditions by which farmers in certain South African districts can recruit and employ Mozambican farmworkers. South Africa has experienced a long-running conflict between the mines and the farms over access to Mozambican labour.⁴⁴ In the 1970s, the Transvaal Agricultural Union secured for its members a subsidiary bilateral agreement between the two governments which enabled them to recruit labour for white farms in specified districts under the exemption clause of the Aliens Act. The accord envisions that farmers will recruit labour within Mozambique and seeks to regulate that process. Most of the terms

and conditions of the general treaty apply to this subsidiary accord. In addition, a labour exchange was established at Ressano Garcia on the South African-Mozambique border as a recruiting office for Mozambicans seeking entry to work on farms. The office performed a clearing-house function for white South African farmers in possession of permission (a “no objection” permit) obtained from the DHA under Section 41 of the Aliens Act.⁴⁵

The use of farmworkers from other countries — such as Lesotho, Swaziland, Zimbabwe and Botswana — does not fall under any bilateral accord. In this case, the provisions of the Aliens Control Act pertain. However, various special arrangements — permissible under Section 41 of the Act — were put in place by the old DHA to regularise the status of undocumented migrant farmhands by allowing post-hoc registration and the issuing of temporary residence and work permits. In the case of Zimbabwe, residents of the Southern Province can obtain six-month permits to work in the Limpopo Valley. Recently the DHA and the Zimbabwean government opened two new border access points to South Africa explicitly to facilitate the movement of migrant farmworkers to South Africa. The effectiveness of these “special arrangements” to protect workers — one of the supposed goals of the bilateral treaties — is very much in doubt.⁴⁶

In the late 1980s and early 1990s formal recruitment of non-South African farmworkers in their country of origin became increasingly unnecessary. The temporary employment scheme regulated by the Mozambican bilateral accord is of declining significance. In Mpumalanga province, as well as other commercial farming areas such as northern KwaZulu/Natal and Northern Province, temporary workers of non-South African origin have become increasingly accessible to employers within South Africa itself. There were two reasons for this: (a) the large-scale movement of refugees out of Mozambique in the 1980s and their resettlement in bantustan areas close to some of the major farming districts; and (b) the growing movement of undocumented migrants from neighbouring states to South Africa, many of whom work initially on the farms before moving on to other employment. The refugee movement, augmented by large-scale undocumented migration since the end of the war in Mozambique, has meant that farmers have needed to do little formal recruiting under the contractual conditions of the bilateral agreement.

Most migrant farmworkers from Mozambique (and countries such as Zimbabwe, Swaziland and Lesotho) are therefore individual temporary workers outside any formal management scheme. Farmers wishing to hire Mozambicans write to the DL to say that they cannot obtain local labour. Farmers are then issued with an “Article 41” permit, also known as a

“special agricultural permit”. They then register the worker with the Mozambican Labour Representative who organises identification papers and the local DHA office which issues a work permit.⁴⁷ The system appears to be extremely lax, with large numbers of workers going unregistered. One study reports that farmers in Mpumalanga experience a complete labour turnover every three to six months.⁴⁸ This fact, taken with the R100 per capita fee, does not encourage registration. The sanctions against non-registration are weak and ineffectual. Between 1990 and 1995, a mere six employers were charged in the Nelspruit court.

In the Northern Province, a similar dispensation is available to farmers employing Zimbabwean labour. These farmers are issued with six-month special agricultural permits (Article 41's) by the DHA to employ undocumented Zimbabwean migrants. In northern KwaZulu/Natal farmers employing Mozambicans received a blanket dispensation to employ Mozambicans in the 1980s. In 1995, this was replaced by a registration system similar to that in Mpumalanga and Northern Province. The farmers register their workers with the local Mozambican Labour Officer in Empangeni and then get a work permit from the local DHA office for registered workers.

Even less is known about labour mobilisation and employment strategies in the construction industry, another major employer of non-South African labour. The ILO detects a “growing informalisation” of construction labour through labour broking and own-account work, although it is likely that the market for construction labour has always been relatively disorganised and informal.⁴⁹

3. FROM REFUGEES TO ALIENS

Who are the Mozambicans within South Africa that employers are recruiting or hiring on a temporary basis and registering with the authorities? In the 1980s, the large-scale movement of Mozambican refugees fleeing the South African-sponsored civil war in that country transformed the market for temporary employment in South Africa. An estimated 350 000 Mozambican refugees were in South Africa by the early 1990s.⁵⁰ The apartheid government refused to grant refugee status to those Mozambicans who managed to circumvent the border controls designed to keep them out (including the notorious electrified “snake” fence on the border between the two countries). As Nolan and Nkuna point out, many of the key refugee rights accorded to refugees under the 1951 United Nations (UN) Convention and the 1969 Organisation of African Unity (OAU) Convention have not been observed.⁵¹ Indeed, South

Africa did not even accede to these conventions on refugees until 1993. However, the homeland administrations of Gazankulu and Kangwane gave refugees sanctuary. The South African government tolerated this as long as the refugees remained there. Those leaving these areas were immediately liable to arrest and deportation under the Aliens Control Act.

Rights and privileges accorded to refugees under international conventions — including the right to identity documents, freedom of movement, and freedom to seek work — were denied to Mozambican refugees. There is evidence that even after 1993, when the government belatedly accorded them “refugee status”, their rights remained restricted. As recently as 1994, the DHA would still only recognise Mozambicans in rural South Africa as refugees. Mozambican refugees were never issued with identity papers or travel documents, the “sine qua non for enjoyment of most other refugee rights” and “the key to protection from arbitrary arrest, detention and deportation”.⁵² Refugees only enjoyed protection from arrest and deportation if they stayed in the designated areas. Arrests and deportation of Mozambicans living in towns escalated dramatically through the 1990s. All were regarded as “illegal aliens” not refugees. In March 1995, the South African government announced that it would no longer recognise Mozambicans as refugees.⁵³

During the 1980s, farmers in parts of the old Transvaal province bordering Kangwane and Gazankulu began to draw labour from the designated resettlement areas for Mozambican refugees.⁵⁴ The failure of the former South African government to observe international norms for the treatment of refugees had a marked impact on the conditions and terms of access to employment of Mozambican refugees. For example, international aid agencies and refugee organisations were unable to offer the kind of refugee relief that was urgently needed.⁵⁵ In its absence, desperate people in search of a livelihood were forced to work on the farms. There was no prohibition on the use of refugee labour by farmers. Many other refugees moved to the towns and cities in search of work and were absorbed into the temporary labour market of the Witwatersrand. Now defined as “illegal aliens” under the law, they were liable for arrest and deportation. Most of the Mozambicans deported in the late 1980s were living and working in the urban areas where their status as refugees was never recognised.

In 1994, a regional voluntary refugee repatriation programme was operationalised by the UN High Commissioner for Refugees (UNHCR) and the International Organisation for Migration (IOM). The least successful programme was in South Africa where, for a variety of reasons, only 31 074 out of an estimated 350 000 refugees took advantage of the programme.⁵⁶ Of the 27 366 returnees from South Africa handled by the

IOM, 19 986 were adults and the rest children. Only 7 356 refugees returned through Ressa Garcia in southern Mozambique; one of the districts of greatest ingress to South Africa by undocumented migrants in the 1990s.⁵⁷ The UNHCR's returnee statistics show a total of 67 060 returnees from South Africa during the life of the agency's programme, with 36 951 to Gaza and 20 181 to Maputo provinces.⁵⁸ Most returnees were from the refugee camps in the old Gazankulu and Kangwane bantustans, leaving large numbers of former refugees still in South Africa, concentrated primarily in the eastern border areas with Mozambique and in the townships and squatter camps of Gauteng.

The influx of people from a war-ravaged Mozambican economy into South Africa has continued, and even escalated since 1990, producing a major policy dilemma for both governments.⁵⁹ They have been joined by an escalating number of migrants and refugees from other parts of the region, and increasingly Africa as a whole. The numbers involved are a source of considerable controversy within South Africa, with wildly variable estimates being thrown around. Before 1994, most estimates of the total number of undocumented migrants were below two million (although even the basis of that figure is unclear). By late 1994, police were citing figures of eight million in total and 700 000 Mozambicans.⁶⁰ This was hardly surprising; since those seeking more resources for policing were always likely to exaggerate the figures. More alarming was the pseudo-scientific justification for these kinds of numbers. The Human Sciences Research Council (HSRC) conducted a methodologically suspect survey in 1994-5 and concluded that there were 9.5 million non-South Africans (not necessarily all undocumented) in the country.⁶¹ The HSRC concluded that there must be at least 2.8 to three million undocumented migrants in the country and that there might be "up to 9 million illegal immigrants". The most accurate estimate "may therefore be 5 to 6 million." In their latest unpublished report, the HSRC raises their estimate to as many as 12 million.⁶² These kinds of figures are waved around by the press, certain politicians and some commentators.⁶³ Mathias Brunk has critically reviewed the figures and rightly concludes that "we have too little knowledge to justify any precise estimates or assumptions".⁶⁴

Under the Aliens Control Act of 1991, the South African authorities can repatriate anyone who (a) entered South Africa clandestinely, (b) failed to leave the country when their temporary residence permit expired; and (c) breached the conditions of their visas by, for example, taking up employment while classified as a holiday visitor. The application of these provisions has provided the only reliable government statistics available. The DHA keeps computerised records of all whose temporary residence permits have expired and releases

unpublished data on request on a country-by-country basis for discrete periods of time. The most recent overstay figures available are for January to April 1996 (Table 2).⁶⁵ To extrapolate a total number of undocumented migrants from these figures is impossible for two reasons. First, there is no record of how many overstayers subsequently leave the country, either through normal ports or clandestinely. Second, this data says nothing about

TABLE 2: Visa overstays in South Africa, by country, January to April 1996					
	January	February	March	April	Total
SADC					
Angola	316	183	259	128	886
Botswana	2 547	1 978	3 972	963	9 458
Lesotho	19 859	11 971	14 006	2 498	48 334
Malawi	1 617	1 185	1 129	196	4 127
Mozambique	1 347	1 143	1 727	240	4 457
Namibia	908	552	1 826	250	3 536
Swaziland	3 275	2 252	6 020	2 683	14 230
Tanzania	34	34	86	29	183
Zambia	423	289	620	192	1 524
Zimbabwe	5 128	4 633	12 018	2 400	24 179
AFRICA					
Ghana	90	53	93	29	265
Mauritius	99	57	135	103	394
Senegal	63	74	95	35	267
Uganda	68	38	58	65	249
Zaire	143	56	81	40	320
OTHER					
Australia	151	122	519	389	1 181
Austria	89	99	405	104	697
Belgium	82	110	546	267	1 025
Brazil	85	31	100	75	291
Canada	158	137	472	208	975
Denmark	55	68	223	82	408
Germany	839	1 369	6 878	1 824	10 910
India	270	105	216	147	738
Ireland	91	111	307	134	643
Israel	73	60	317	161	611
Italy	146	122	226	205	699
Japan	89	42	180	86	397
Norway	52	33	203	80	368
Phillipines	64	25	45	142	276
Portugal	150	123	314	132	719
Sweden	89	182	415	207	893
Switzerland	113	156	577	225	1 071
Taiwan	270	116	347	313	1 046
Thailand	17	23	45	245	330
UK	1 592	1 957	6 147	2 897	12 593
USA	450	373	1 453	373	3 149

Source: DHA

Note: Only countries with > 250 overstays are included. DHA reports a 6-month timelag in "logging" overstays. SADC states naturally predominate. Immigration from elsewhere in Africa seems greatly exaggerated by commentators. Outside the SADC, the biggest offenders are the UK, Germany, the USA and Australia.

those who entered without visas or permits in the first place.

The DHA claims it is possible to calculate the total number of undocumented migrants as a simple multiplier of the overstay figures. This is obviously a problematic assertion. All that the data shows is, at one level, how easy it is to gain legal access to South Africa and, at another, how limited the sanctions are to persuade people not to overstay and/or to change their purpose of visit. Why there should be such a high overstay rate is not clear. Many migrants may have intended this in the first place; others, through change in circumstances (such as finding employment), may have decided to stay on and risk being ejected later for changing their purpose of visit. Either way, it seems likely that entry to South Africa for temporary workers is currently relatively easy, provided that the stated reason for entry is not wage employment.

Still, it is clear that many migrants choose to enter South Africa clandestinely by “border jumping”. South Africa has 7 000 km of borders with six of the SADC states, and these borders are extremely porous. In the case of Mozambique, electrified fencing and the location of the Kruger National Park has tended to push “border-jumpers” southwards to the most heavily policed and fortified border — running some 50km from Komatipoort to Namaacha in Mpumalanga Province. Along the northern border with Zimbabwe, a 137km electric fence was erected in 1986. Even here, it appears to be relatively easy to gain access through or under the fence. South Africa also shares a virtually unguarded 250km border with Swaziland and a 1 000km border with Botswana. Numerous footpaths run to South Africa through Swaziland from Mozambique and through Botswana from Zimbabwe. Along the 60km stretch of border joining southern Mozambique with northern KwaZulu/Natal, observers have recently noted 80 “well-defined” footpaths across the international border.⁶⁶ Landlocked Lesotho also shares a permeable boundary with South Africa. Access by non-South Africans to South Africa by temporary migrants is thus, in reality, virtually unrestricted and probably uncontrollable.

Under the Aliens Control Act, overstayers and clandestine entrants are both classified as “illegal aliens”. They are not distinguished in the published or unpublished deportation figures issued by the police and the DHA. Deportation figures show a dramatic escalation in the last 5 years (Table 3). There is no necessary connection between deportation figures and the actual numbers of undocumented migrants in the country, however. First, the figures reflect the intensity of policing and the resources put in to arresting and deporting migrants. Second, they do not take into account the fact that many undocumented migrants are individuals arrested and deported more than once a year.⁶⁷ Third, even the national background of deportees is no guide to the national

breakdown of the undocumented population. Mozambicans, in particular, are easy and cheap targets and are particularly vulnerable to arrest and mass deportation.⁶⁸ Fourth, there is evidence that the police target inner-city areas and employment sites (such as construction sites) in arresting undocumented migrants.

Given the difficulties of accurately determining the numbers of undocumented migrants in South Africa, it is hardly surprising that similar problems arise in the determination of participation rates of non-South Africans in temporary employment.⁶⁹ There are three reasons for

TABLE 3: Deportation of non-South Africans from South Africa, 1988-1995

	1988	1989	1990	1991	1992	1993	1994	1995	Total
Angola				1	4	1	18	39	63
Botswana	757	843	596	604	458	105	48	11	3 422
Burundi						1	1	4	6
Cameroon						1	4	5	10
Congo						2	7	5	12
Egypt						2	5		7
Ethiopia						1	6		7
Gambia						1		2	3
Ghana	1			1	9	33	49	66	159
Guinea						1	1	6	8
Ivory Coast					1		4	11	16
Kenya		2	2	2	4	7	14	34	67
Lesotho	4 400	4 728	3 832	4 440	6 235	2 090	4 073	4 087	34 885
Liberia					1		1	7	9
Malawi	248	110	78	177	157	250	398	1 154	2 572
Mali						1	4	2	7
Mozambique	33 446	38 758	42 330	47 074	61 210	80 296	71 279	131 689	506 712
Namibia						337	219	88	644
Nigeria					3	22	48	61	134
Senegal						1	69	8	78
Sudan			1				2		3
Swaziland	1 839	1 260	1 225	1 828	2 283	789	981	837	11 042
Tanzania	7	4	6	15	47	52	241	836	1 208
Uganda		1	1			6	3	4	15
Zaire				13	94	22	20	37	186
Zambia		2	1	1	11	1	16	23	55
Zimbabwe	3 527	5 817	5 363	7 174	12 033	10 861	12 931	17 549	76 255
TOTAL	44 225	51 556	53 418	61 345	82 575	96 600	90 692	157 084	637 495
% SADC	100	100	100	99.9	99.8	99.8	99.5	99.5	99.8
% African	0	0	0	0.1	0.1	0.1	0.3	0.2	0.1
% Other	0	0	0	0	0.1	0.1	0.2	0.3	0.1

Source DHA

this. First, many employees in these sectors are undoubtedly undocumented migrants who, with their employers, have a vested interest in not making their presence known to the authorities. One of the basic problems with the system as it exists in South Africa, and therefore a challenge to a proper management and monitoring system, is precisely that many temporary employees are criminalised by existing legislation. Second, there is no systematic collection of employment data by the government in the sectors in which temporary workers tend to be concentrated. Employers tend to be individuals, small companies and contractors. There is no obligation for them to report employment records, and no obligation to distinguish the place of origin of those workers. Third, in the temporary employment sector there are no centralised employment records (as there are, for example, for the mining industry).⁷⁰

The magnitude of unpaid work in South Africa is impossible to fix with any accuracy. Estimates tend to vary considerably, even amongst those supposedly in the know. The Mozambican Labour Office estimated in 1995 that there were 100 000 Mozambicans in Mpumalanga and the Northern Province and 20 000 Mozambicans working on Mpumalanga farms. Algos, on the other hand, estimates that there are only 80 000 undocumented Mozambican migrants in the whole of South Africa, and 10 000 on Mpumalanga farms.⁷¹ Other estimates put the number of Zimbabwean seasonal farm labourers in the Northern Province (and more especially the Limpopo Valley) at 7-8 000.⁷² There are no estimates at all for the numbers working in other temporary employment sectors such as construction, transport, and tourism and service industries.

In a 1994 survey, the National Labour and Economic Development Institute (Naledi) undertook a survey of union shop stewards in an effort to identify the extent of employment of undocumented workers from outside the country.⁷³ Union organisers noted that many of the farmworkers they attempted to organise in Mpumalanga were foreign but did not determine if they were employed illegally or were registered with Article 41 permits. Large numbers of Mozambicans, Zimbabweans and Malawians are employed in the hotel and restaurant sector. The unionists argue that these workers undercut unionised workers by, for example, agreeing to work in restaurants for tips only (an extremely prevalent practice in South African restaurants). In the construction industry, long an employer of Mozambican labour, unionists reported a growing number of foreign workers. In most cases these workers are employed by sub-contractors who pay wages of less than R300 per month.⁷⁴

4. TEMPORARY WORKING CONDITIONS

The “illegal” status of many temporary workers in South Africa makes them vulnerable in two senses. First, they have no rights and protection under law. Indeed, the primary aim of existing policy is to identify them, arrest them, and deport them as expeditiously as possible. Second, some employers find this vulnerability and insecurity attractive and are anxious to employ non-South Africans precisely because they will accept wages and working conditions which local workers will not.

The preliminary evidence suggests that working conditions and wages on the farms and other temporary employment sectors are often dire. The exploitation of Mozambican refugees by employers in the 1980s has been described as “rife.” One report argues that on white farms and in urban areas “lack of documentation has rendered them vulnerable to super-exploitation and abuse by employers”.⁷⁵ Press reports in 1990 indicated that some farmers were paying refugees only R30-R40 per month. Professional labour touts were also reported to be dragooning labour from Mozambique and bringing it over to the farmers at a fee of R100-150 per head. These workers were virtual “slaves”. If they refused to work they were reported to the police who then arrested and deported them.

The exploitation and abuse of vulnerable, impoverished illegal labour may have persisted, and even intensified, in the 1990s. Migrants looking for temporary work are doubly vulnerable to low wages and exploitative working conditions. Cooper notes that “certain farmers are taking advantage of the influx of illegals and the vulnerability of their illegal status to pay poverty wages or not at all”.⁷⁶ The South African Agricultural and Plantations and Allied Workers Union (Saapawu) notes that undocumented Mozambicans are willing to accept much worse conditions than local workers. Wages are as low as R80 per month on some farms (less than the legal minimum wage in Mozambique itself). Non-payment is common. Workers are actively discouraged from joining the union, and Saapawu has had little success recruiting Mozambicans. Working conditions on the farms are bad: there are no health and safety controls; poor accommodation; and no minimum wages.⁷⁷

Conditions are worse for undocumented female and child workers from Mozambique. The Naledi study reported harsh conditions on many Mpumalanga farms. Farmers argue, as they always have, that no locals will work for the wages that they can afford to pay. How generalised these conditions are is hard to say. Larger farms and estates in the Mpumalanga province rely not on Mozambican workers but on female day labour which is trucked to the farms every day.⁷⁸ A recent survey

examining the status and treatment of female farm labourers from Mozambique on eastern Mpumalanga farms paints a particularly harrowing portrait of what happens when employers are unconstrained by the law.⁷⁹ These women, concludes the ILO, experience “shockingly high levels of relative and absolute deprivation, even when compared to (South African) female farmworkers.”⁸⁰ Children of undocumented migrants “face the most extreme exploitation” including hazardous exposure to toxic substances.⁸¹ Wages for unskilled female agricultural labour ranged from R3,50 to R10 per day. Wages on plantations in Nelspruit are still several times higher than those on farms in the Northern Province and the Western Cape.⁸² The *City Press* found thousands working illegally on farms in the north for R90-R150 per month. Minnaar and Hough report that on some farms in the Messina area undocumented farmworkers are paid as little as R4 per day.⁸³ In the Northern Province, newspaper reporters found instances of child labourers on farms being paid as little as R50 per month, with adult wages only double that.⁸⁴

There are recurrent reports in South Africa of employers manipulating the “aliens control” system in the most shameless way. One of the most common ploys, reported in both the farming and construction industries, is to hire workers on a monthly contract and not register them. Just before payday, a phone call to the local police ensures that the workers will be rounded up by the Internal Tracing Unit (ITU) and deported. Similar abuses have recently surfaced in the Western Cape. In August 1996, police raided several farms in the Boland and Ceres area and uncovered evidence of an organised trade in undocumented farmworkers from Lesotho. Farmers allegedly fetched “truck loads” of migrants from the border with Lesotho and transported them down to the Cape where they were employed at wages of less than R10 per day. Five Ceres farmers were charged with “aiding and abetting illegal immigrants”.⁸⁵

On this occasion the police and DHA co-operated to break an illegal and exploitative traffic in human cargo. However, one researcher has reported that in other parts of the country, such as Mpumalanga, there is evidence of collusion between farmers and local officials⁸⁶:

These officials are “selling” Mozambican immigrants to farmers, and the farmers, in turn, are “buying” bonded labour and immunity from prosecution for employing immigrants. Farmers pay for documents which legalise the status of Mozambicans, yet they keep the papers. Thus, if the workers leave the farms, they can be arrested and dealt with as illegals, as they have no documentary evidence of their legal status. They are thus

effectively the property of the farmers, and their bonded and insecure status renders them open to exploitation and abuse. The farmers, on the other hand, are protected from prosecution as employers of illegal immigrants, as they have the documentary evidence to prove that these workers are “legal.”

Other studies suggest that this kind of system notwithstanding, farmers still have a great deal of difficulty “holding” their labour.

The growth of temporary work on the mines through sub-contracting of non-core and core functions has had very direct implications for working conditions in that sector. The NUM claims that subcontracting “represents a new path to poverty and oppression”.⁸⁷ Indeed, the move to sub-contracting appears to be motivated in large part by the drive of employers to circumvent or roll back the gains won by the NUM since 1982. Contractors’ labour is temporary labour, generally not unionised and exempted from wage rates negotiated between the NUM and the Chamber of Mines. Most workers are paid exclusively at piece work rates. Employees are not covered by mine death and benefit schemes and retirement savings schemes. The employment of low-wage contractors to undertake core production functions has led to “tension and conflict” with regular miners who are extremely vulnerable to retrenchment.⁸⁸

In 1995, the NUM and the Chamber agreed that all subcontractors would, in future, be compelled to “comply with applicable legislation”. Hence there are now no longer legal barriers to joining a union. However, since the *raison d’être* of sub-contracting is to subvert unionisation, sub-contractors discourage involvement in unions and set their own wages and employment conditions.⁸⁹ The NUM has sought, so far unsuccessfully, to be involved in all mine decision-making about sub-contracting. The union has also issued a set of guidelines on contracting out. The union wants each mine to provide reasons for contracting and to provide an explanation for why the work cannot be done by regular employees. It asks for details, on a mine-by-mine basis, of the numbers involved; the type of work; the extent of unionisation; and level of compliance with collective agreements. The NUM also demands that wage rates and conditions of services should be no worse than those of ordinary employees and that sub-contractors be barred from hiring undocumented migrants.⁹⁰

The drive to eliminate the employment of undocumented migrants as temporary workers in mining is orchestrated by the NUM. In other sectors, unions are similarly involved but lack the power to force employers to stop this practice. Evidence concerning the working and living conditions of undocumented migrants in other sectors is anecdotal at best. Until more research has been conducted it is impossible to say how

widespread the reported abuses actually are. However, even if it is impossible to quantify the phenomenon it is worth mentioning the kinds of abuses that have been reported in the press and by researchers. At the very least, this gives some sense of the range of problems that confront the development of a more humane and defensible temporary work regime.

On the issue of legal protection, there are clearly a series of potential or actual human rights issues to be addressed around the treatment of migrants by those enforcing the Aliens Control Act — the police, DHA officials, the courts and even researchers. There are suggestions that the Internal Tracing Units (ITUs) enforce the Aliens Act with the same vigour as they used to enforce the pass laws. In their drive to identify and deport “aliens” the police have specifically targeted Mozambicans and Zimbabweans and tend to raid the living and work places of migrants. In the latter case, construction sites and pick-up points for day labourers are particular targets. The police methods for “identifying” undocumented migrants are chillingly described in police-speak by researchers Hough and Minaar⁹¹:

The internal tracing units of the SAPS have become adept at spotting an illegal In trying to establish whether a suspect is an illegal (sic) or not, members of the internal tracing units concentrate on a number of aspects. One of these is language: accent, the pronouncement of certain words. Some are asked what nationality they are and if they reply “Sud” African this is a dead give-away for a Mozambican, while Malawians tend to pronounce the letter “r” as “errow”. In Durban many claim to be Zulu but speak very little. Some of those arrested as illegal aliens are found with home-made phrase books in their pockets. Often they are unable to answer the simplest questions in Zulu or are caught out if asked who the Zulu king is. Often the reply is “Mandela” Appearance is another factor in trying to establish whether the suspects are illegal — hairstyle, type of clothing worn as well as actual physical appearance. In the case of Mozambicans a dead give-away is the vaccination mark on the lower left forearm. Some Mozambicans, knowing this, have taken to either self-mutilation (cutting out the vaccination mark) having a tattoo put over it, only wearing long-sleeved shirts and never rolling up their sleeves, or wearing a watch halfway up the arm to cover the mark.

In the last three years the resources devoted to tracing, arresting and deporting “aliens”, SADC citizens in particular, have increased dramatically (Table 2). In 1994, the number of ITUs was increased from

three (based in Nelspruit, Johannesburg and Welkom) to 14 (in most major urban centres). The ITUs currently have 1 000 police personnel. In 1993, the police established a national Aliens Investigation Unit to investigate those aiding and abetting undocumented migrants. In late 1994, the Minister of Home Affairs called on the public to report undocumented migrants to his department and the police. South African citizens are offered rewards by the ITUs for calling Crime Stop numbers and reporting non-South Africans.⁹² There are also numerous reports of officials and policemen demanding bribes or protection money from migrants to avoid arrest and deportation.

In contrast to the treatment of undocumented migrants, employers have traditionally been treated very lightly by the authorities. Admission of guilt fines and payment for the deportation costs of their employees are common if charges are not pressed.⁹³ Under Section 32 of the Aliens Act, employers may also argue that they acted in good faith when circumstances “were not of such a nature that (they) could reasonably have been expected to suspect that the alien was in the Republic” in contravention of the Act.⁹⁴

In late 1994, the DHA declared that it would start cracking down on employers but it is unclear what this has meant in practice. Algos in Nelspruit reports that the DHA is “not going out of its way to impose fines or round up illegals working on the farms.”⁹⁵ The local DHA office confirms that “we are not going out of our way to find them” and says that “it is for the politicians to decide”.⁹⁶ The Aliens Amendment Act contains “stringent provisions” for employing “aliens” or entering into business with them or harbouring them.⁹⁷ The Act provides for fines of up to R40 000 and imprisonment for up to five years for providing work or aid to an “illegal alien” and makes employers liable for the costs of repatriation.⁹⁸ It remains to be seen whether the Amendment Act will effect any changes in bureaucratic practices that discriminate in favour of employers in the application of the law.

5. RECENT DEVELOPMENTS

There is a sentiment within South Africa that the “two gates” policy is discriminatory for two reasons. First, the policy favours mine over other employers. Second, it discriminates against miners who remain perpetual contract workers and are denied the right to more permanent residence and employment, as envisaged by the Aliens Control Act. Within the regional context, the bilateral accords also provide different terms of access to South Africa for migrants from traditional mine sending areas and other countries such as

Zimbabwe, Zambia and Namibia (with which there are no bilateral agreements). In its June 1996 report the LMC explicitly calls for the abolition of this “two gates” system and for a “modernised policy” based on international norms and constitutional principles.⁹⁹ Such a change is inevitable in the longer term and is likely to be a central issue in the promised Green and White Papers on immigration. If the bilateral labour agreements are modernised but not abolished, then scope still exists for temporary employment schemes of the kind governing farm labour recruitment in Mozambique. What is more likely in the medium term is that all migrants will eventually be brought under the aegis of a single new Immigration Act. Whether that act will contain exemption clauses of the kind in the Aliens Control Act, or whether it will itself prescribe conditions for legal entry of temporary workers, remains to be seen.

In October 1995, following discussions with the NUM and the employers, the South African Cabinet offered permanent South African residence to mineworkers from outside the country who had been working on the mines since 1986 and who had voted in the 1994 election.¹⁰⁰ To date, 26 440 miners have applied for exemptions and a further 20 924 are being processed (47 364 in total out of an eligible population estimated at around 130 000 by Teba). These include 8 608 from Mozambique, 31 481 from Lesotho, 3 228 from Swaziland, 3 538 from Botswana, and 449 from Malawi.¹⁰¹ The miners’ amnesty is not of direct concern to this report since most sub-contracted labour will be unaffected. But it does indicate the direction in which the South African government is moving at the executive level in its quest to normalise minework and transform the migrant labour system to the mines. Of more pressing relevance is the decision, announced in February 1996, to offer a more general amnesty to non-miners.

The general amnesty was approved by Cabinet in February 1996 and handed to the DHA for implementation. There was a stiff rearguard action against the policy from some quarters in government who promised dire consequences for the country if the amnesty went ahead.¹⁰² The Cabinet insisted on implementation and in his Budget speech of 6 June 1996, the Minister of Home Affairs announced that the amnesty would proceed. Anyone is eligible to apply for permanent residence who:

- (a) is a citizen or permanent resident of a SADC country;
- (b) has lived continuously in South Africa for longer than five years;
- (c) has no criminal record; and
- (d) has been gainfully employed or self-employed since before 1991; or
- (e) has a spouse or children born in South Africa.

The authorities have absolutely no idea about how many people will apply for amnesty but estimate as many as 600 000 adding, with a multiplier factor, 12 million people to the population of South Africa. By the end of November 1996, following an extension of the amnesty deadline by two months, about 200 000 people had applied. What is of interest here are the potential implications of legalisation for the hidden temporary work regime described in this report.

Clearly, the decision cuts across the logic and thrust of an existing policy to isolate and deport all “illegals” irrespective of how long they have been in the country, and this is one reason why the DHA originally opposed the decision. But what the amnesty does mean, in theory, is that long-time undocumented migrants reliant on temporary work can now come above ground, regularise their status in the country and seek employment without fear of harassment, arrest and deportation. Whether this will spell the end of illegal temporary work is doubtful, particularly since the decision does not affect migrants who have come to the country in the last five years. But what it could mean is that policing will now be more intensely targeted at these post-1991 immigrants to South Africa. The amnesty could therefore have positive consequences for some undocumented temporary workers, in as much as they will move outside the sanction of the Aliens Control Act. For others it will make very little difference. There will still be employers who will continue to find post-1991 immigrants a better option because of their continued illegality and vulnerability.

The most radical and far-reaching vision for the transformation of Southern Africa’s migration regime is embodied in the recent SADC Draft Protocol for the Free Movement of Persons within Southern Africa.¹⁰³ The Protocol proposes progressively freer movement for all people, including workseekers, within the SADC region and the eventual elimination of all border controls within a period of ten years. If adopted, such a plan would have three main implications for temporary work by non-South Africans within the country. First, it would mean open access to the South African job market for those from the SADC states seeking temporary work in South Africa. Second, it would decriminalise the activities of undocumented temporary workers and bring temporary work above ground. Third, it would obviate the need for bilateral accords and temporary employment schemes since, in effect, there would be a single regional labour market open to all. However, the SADC member states are deeply divided on the Protocol. The South African government, in particular, does not favour the “open borders” concept behind the Protocol.¹⁰⁴

6. CONCLUSIONS AND RECOMMENDATIONS

The new South African government has faced a rapidly escalating influx of undocumented migrants from the region and further afield. The transformation in patterns of intra-regional migration in Southern Africa in the 1980s (with large-scale refugee movements from Mozambique) and the 1990s (with a massive escalation in legal and undocumented migration of workseekers to South Africa from the region) has transformed the character of migration for temporary work within the region. Clandestine migration to South Africa is nothing new. In the past, legal and administrative instruments — including immigration legislation, bilateral accords, and temporary work schemes — were put in place to regulate informal cross-border movements. These instruments have been literally swept aside by the ineluctable force of post-apartheid population migration. The result is that formalised temporary employment schemes have been seen as increasingly unnecessary in the region, at least by employers.

The new migration regime has prompted rising demands from interest groups within the South African population — such as organised labour and hawkers groups — to adopt a blanket “South Africans first” policy in the labour market.¹⁰⁵ Employers, particularly the farmers and the mining companies, have argued in public for the right of continued access to foreign labour.¹⁰⁶ Employers in other sectors — such as construction and tourism — have made few public pleas but continue to employ non-South Africans in considerable numbers.

Central to the xenophobic and anti-immigrant rhetoric which clouds rational debate within South Africa is a set of arguments and images about the negative impact for South Africans of the presence of unskilled and semi-skilled foreigners in the country. The most common charges are that “illegal aliens” cause crime, consume scarce resources, take jobs from South Africans, depress wages, consume social services and exacerbate unemployment. The circumstantial evidence suggests, however, that undocumented migrants are well-represented in the ranks of temporary workers and that their poor socio-economic position and undocumented status in South Africa make them vulnerable to super-exploitation, low wages, poor working conditions and abuse. These abuses seem to occur in all three of the sectors in which they are primarily involved — commercial agriculture, construction and the service industry.

To date, the political transformation in South Africa has made very little difference to the lives of migrants entering South Africa for temporary work or to non-South Africans living in the country and engaged in temporary work. Apartheid era legislation (such as the Aliens Control Act) and bilateral labour agreements continue to constitute the

basic administrative structure of migration governance. Certain employer groups, such as the mines and the farms, have continued to enjoy special dispensations to recruit and employ foreign migrants virtually at will. While there have been some improvements in working and living conditions on the mines, working conditions on the farms and in other sectors where temporary workers are concentrated remain largely unregulated.

One problem is that unskilled and semi-skilled workers and work-seekers within the region have no legal access to the South African labour market. Since there is no hope of legal entry, there is no other option but to border-jump. Whether the prospect of gaining legal employment is actually a disincentive for border jumping has not been established. But it would almost certainly not exacerbate an already chronic problem. One concrete policy option articulated by the Congress of South African Trade Unions (Cosatu) is the idea of negotiated “quotas” with the neighbouring states. Another, now being mooted in Mpumalanga, is to extend the Teba model of contracting to other sectors, such as agriculture. The precise mechanisms are less important at this stage than the validity of the proposition that partial access to the South African labour market would have an inhibiting effect on clandestine immigration as a whole.

It is clear that the operation of the country’s temporary employment labour market, and the role and status of non-South African workers therein, is particularly poorly documented and understood. This emerges very clearly in both the Labour Market Commission report and the accompanying ILO report. In this paper, I have tried to piece together a coherent picture from the available evidence but it is clear that this evidence is partial, fragmentary and unsystematic. Several concrete recommendations therefore emerge from the review and analysis presented in this paper:

- Resources should be devoted to a systematic and rigorous programme of sectoral and community-level research focused on the sectors in which temporary employment is particularly prevalent — mining, agriculture, construction and the service industry;
- As a matter of urgency, it is recommended that the government institute a formal enquiry into the labour practices and working conditions in the temporary employment sector.
- Due consideration should be given to the status of non-South African migrants from the SADC states in immigration reform. Immigration policy in general — and the Aliens Control Act in particular — provides few answers and little vision for the governance of temporary migration for employment across national borders in Southern Africa. The “two gates” policy needs to be

revisited and reformulated. It is discriminatory for the reasons given by the LMC. The Commission advances persuasive reasons for bringing all immigration (temporary or otherwise) under a single new Immigration Act.

- Policymakers need to make a clearer distinction between migration and immigration; between temporary migration and permanent migration. In behaviour and intention, many temporary workers are migrants rather than immigrants. They come to South Africa for a specific purpose and intend to go back in due course. South Africa has an immigration policy, of sorts, but no coherent migration policy. This is a policy gap that clearly requires attention.
- Bilateralism is not necessarily a bad or inefficient short-term policy measure for dealing with cross-border migration by and between two nation-states. What is also needed, in the specific historical and geographical context of Southern Africa and the SADC, is a new multi-lateralism in the area of population movement, akin to those developing for trade, infrastructure and investment.

Governance of the new immigration regime seems to pose intractable difficulties for policymakers in this area. There are four basic policy positions currently being articulated in response to the influx of undocumented migrants and, by extension, undocumented temporary workers. By articulating the policy options as a series of actual or potential models of governance, it becomes easier to identify their respective premises, promises and failings. Models one and two are generally acknowledged to be failing. A public debate around models three and four is urgently needed.

MODEL ONE: FORTRESS SOUTH AFRICA MODEL

This is the traditional “sealed borders” approach of the ancien regime. The policy model suggests that South Africa’s borders *ought*, and more controversially *can*, be sealed to outsiders. In policy terms this would mean pouring vastly increased resources into the blockading of South Africa’s 7 000 km land border. One advocate of this view recommends the “extensive use of floodlights, motion detectors and heat sensors” and controversially claims that such measures along the Mexican-United States border have “reduced the flow of illegal Mexicans into the US by 60%.”¹⁰⁷ While advocates of this model see total control as unattainable they continue to call for more resources to be poured into the effort presumably on the grounds that there will be some deterrence effect.¹⁰⁸

MODEL TWO: HEARTLAND POLICING MODEL

The second (related) model suggests that control must be exercised in the heartland not on the borders. By making undocumented migrants lives so insecure and unpleasant through constant policing and harassment, and prosecuting employers who hire them, the economic incentives for coming to South Africa are reduced and the social costs of living “illegally” in South Africa are raised.

The “heartland policing” model best describes the drift of South African policy since 1994; the increase in ITUs from four to fourteen, more resources directed at identifying and arresting migrants, and higher deportation figures, are all indicative of this tendency. This model comes at a cost: undocumented migrants often lose the few constitutional, and most of the human, rights they are entitled to. Due process is often conveniently put aside. Resistance, leading to open violence, intensifies. Corruption seems to breed.

The Aliens Amendment Bill suggests that the DHA also wants to adopt a get-tough approach with employers who hire undocumented migrants. Greatly increased penalties on the books does not mean greatly increased disincentives in practice. The old government was very soft on employers who contravened the Act. Is that about to change? In general, as long as there are sufficient undocumented migrants looking for work — and employers willing to take advantage of their marginalisation and vulnerability — temporary work in South Africa will remain essentially unregulated and beyond the reach of progressive temporary employment management schemes. There is also no unanimity in government that large-scale prosecution of employers is a productive or even viable strategy. Finally, prosecuting employers will make precious little economic difference to the large numbers of undocumented migrants who seek, and find, a living in the informal economy.

MODEL THREE: THE FREE MOVEMENT MODEL

The third model is more of a “vision” of the future than a politically viable policy option, at least in the foreseeable future. Often mistakenly identified as advocating an immediate “open borders” policy, this model of governance is best exemplified by the SADC Draft Protocol on the Free Movement of Persons in Southern Africa. The Protocol would commit the SADC states to a policy of free movement (along the European Union model) within ten years. It is for that reason that a

number of those states, including South Africa, have expressed grave reservations about the Protocol. However, the Protocol also recommends several other “intermediate” policy options, including freer movement and a structure of permissive registration and governance. These recommendations are consistent with the fourth model.

MODEL FOUR: THE CONTROLLED ACCESS MODEL

If undocumented migrants are going to come to South Africa anyway, it is argued, surely it is better to regularise and monitor that movement by legalising it, directing it, and managing it? This was certainly a strong minority view within the recent Labour Market Commission. The precise details of this management structure are less important than the argument that by providing mechanisms for “undocumented” migrants to document themselves, and bringing temporary work out of the sewers, the incentives for rampant corruption, exploitation and abuse would be reduced. The incentives for employing foreign migrants might then be reduced, formal organisation of workforces would be easier, and wages and working conditions would improve.

NOTES

- 1 *Restructuring the South African Labour Market: Report of the Commission to Investigate the Development of a Comprehensive Labour Market Policy* Pretoria: Government Printer, 1996, Chapter 9; Guy Standing, John Sender and John Weeks, *Restructuring the Labour Market: The South African Challenge* Geneva: International Labour Office, 1996, Chapter 3.
- 2 Chris Dolan, “Aliens Abroad: Mozambicans in the New South Africa” *Indicator SA* 12 1995, pp 29-32; Anthony Minaar, Sam Pretorius and Marie Wentzel, “Who Goes There? Illegals in South Africa” *Indicator SA* 12 (1995), pp 33-40; Brij Maharaj and R. Rajkumar, “The ‘Alien Invasion’ in South Africa: Illegal Immigrants in Durban”, Department of Geography, University of Durban-Westville, 1996.
- 3 There is considerable confusion within South Africa on appropriate terminology for describing migrants. This report adopts the UN term “undocumented migrants” in preference to terms like “illegal aliens” and “illegals” which pervade official and academic discourse in South Africa.
- 4 Peter Stalker, *The Work of Strangers: A Study of International Labour Migration* Geneva: ILO, 1994; Roger Böhning, *Employing Foreign Workers* Geneva: International Labour Office, 1996.
- 5 Standing et al, *Restructuring the Labour Market*, pp 75, 95, 245, 302-4; D. Husy, *Minimum Wages and Labour Contractors* Cape Town: Economic Trends Research Group, 1992; R. Naidoo, “Labour Broking: The Smoke and Mirrors Industry” *South African Labour Bulletin* 19(1) 1995; NUM, “Contracting Out in the Mining Sector” Third Submission to the LMC, 1995.
- 6 This phenomenon has a long history in the region involving a vast human traffic in clandestine labour to mining and agriculture in particular. The centralisation of control in the mining industry meant that by 1920 all mine labour was routed through the NRC/WNLA (predecessors to Teba); see Alan Jeeves, *Migrant Labour in*

- South Africa's Mining Economy* Montreal and Kingston: McGill-Queen's Press, 1985. Commercial agriculture continued to depend on long-distance, often illegal, labour from the region; see the essays in Alan Jeeves and Jonathan Crush, eds., *White Farms, the State and Agrarian Transformation in Southern Africa, 1910-1950* New York, London and Pietermaritzburg: Heinemann, James Currey and University of Natal Press, 1997.
- 7 The same is true of the new Aliens Control Amendment Act of 1996; see Republic of South Africa, *Aliens Control Amendment Bill (B54-95)*, Pretoria. For perspectives arguing that more attention be paid in policy and legislation to human rights issues see Jonathan Crush, "Apartheid's Last Act?" *Democracy in Action* 10(2), 1996, pp 12-13; and Steven Friedman and Maxine Reitzes, "Immigration and Human Rights in South Africa" Report for the Human Rights Commission, Johannesburg, 1996.
 - 8 Maxine Reitzes, "Alien Issues" *Indicator SA* 12(1), 1994, pp 7-11; Xavier Cassim, "Illegal Immigration to South Africa" *Africa Insight* 25, 1995, pp 221-223; Anthony Minnaar and Michael Hough, "Causes, Extent and Impact of Clandestine Migration in Selected Southern African Countries with Specific Reference to South Africa" Pretoria: HSRC, 1995; O. Chimere-Dan, "Migrants from Other Countries in South Africa" *South African Labour Bulletin* 20(1), 1996, pp 45-47.
 - 9 Minnaar and Hough, "Clandestine Migration", pp 77-88.
 - 10 The high level of xenophobia amongst the general populace, as well as in some official quarters, is revealed in studies such as C. de Kock, C. Schutte and D. Ehlers, "Perceptions of Current Socio-Political Issues in South Africa" Pretoria: Human Sciences Research Council, 1994; Craig Charney, "Voices of a New Democracy: African Expectations in the New South Africa" Johannesburg: Centre for Policy Studies, 1995; Chris Dolan and Maxine Reitzes, "The Insider Story? Press Coverage of Illegal Immigrants and Refugees" Johannesburg: Centre for Policy Studies, Research Report No 48, 1996; see also Maxine Reitzes, "Debunking Some of the Myths" In Richard de Villiers and Maxine Reitzes, eds., *Southern African Migration: Domestic and Regional Policy Implications* Johannesburg: Centre for Policy Studies, 1995, pp 77-81.
 - 11 *Restructuring the South African Labour Market*, p 172.
 - 12 Carol Cooper, "South Africa's Policy on Migration" Background Paper for the LMC, Johannesburg, 1995.
 - 13 See Jonathan Crush and Raesibe Mojapelo, eds., *Towards a New South African Immigration Policy* Migration Policy Paper No 3 Cape Town and Kingston: Southern African Migration Project, 1996.
 - 14 Mozambican migrants, for example, have been told by the Mozambican labour office that they can no longer obtain work permits within South Africa. However, as long as Section 41 is in force it appears that employers will still be able to regularise their employees' status from within if the DHA so chooses; Interview with Luis Covane.
 - 15 Maxine Reitzes, "Divided on the 'Demon': Immigration Policy since the Election" Johannesburg: Centre for Policy Studies, 1995, p 3.
 - 16 "New Settler Policy Unveiled" *Cape Times* 22 September, 1994.
 - 17 "Memorandum on the Objects of the Aliens Control Amendment Bill 1995" In RSA, *Aliens Control Amendment Bill*, pp 40-56.
 - 18 Cooper, "South Africa's Policy on Migration."
 - 19 DHA, "Access of Non-South African Nationals to the South African Labour Market", Submission to LMC, 1996.
 - 20 *Restructuring the South African Labour Market*, pp 179-81.
 - 21 Cooper, "South Africa's Policy on Migration."
 - 22 Allan Whiteside, "Some Aspects of Labour Relationships between the RSA and Neighbouring States", Pretoria: HSRC, 1985.

- 23 Jonathan Crush, Alan Jeeves and David Yudelman, *South Africa's Labor Empire: A History of Black Migrancy to the Gold Mining Industry* Boulder: Westview Press, 1991; Wilmot James, *Our Precious Metal: African Labour to the South African Gold Mines* Cape Town: David Philip, 1992.
- 24 Roger Rowett, "The Role of Teba: Changes and Potential" In Jonathan Crush and Wilmot James, eds., *Crossing Boundaries: Mine Migrancy in a Democratic South Africa* Cape Town and Ottawa: Idasa and IDRC, 1995, pp 215-217.
- 25 Whiteside, "Labour Relations."
- 26 Jonathan Crush, "Inflexible Migrancy: New Forms of Migrant Labour on the South African Gold Mines" *Labour, Capital and Society* 25 1992, pp 46-71.
- 27 As defined by the ILO. See Roger Böhning, "Draft Guidelines on the Protection of Workers Migrating to Another Country Under Temporary Migration Auspices" Geneva: ILO, 1996. For extended discussion of mine contract labour see Crush and James, *Crossing Boundaries*.
- 28 Interview with Roger Rowett, MD Teba, 20 June 1996; NUM, "Contracting Out in the Mining Sector."
- 29 The terms and conditions of the treaties vary somewhat from country to country; those with Botswana, Lesotho and Swaziland are harmonised but differ in their particulars from those with Mozambique and Malawi.
- 30 In Lesotho, the Deferred Pay Act 1 of 1979 (as amended by the Deferred Pay Amendment Order of 1990) specifies a 30% deduction for deferred pay and an obligation on the part of employers to transfer the funds to the Lesotho Bank in Maseru. In Mozambique, the treaty provides for deferred pay on a mutually agreed basis. Since 1992, deductions only commence in the sixth month of a contract at 60% of wages. A recent SAMP study shows significant opposition to the deferred pay system amongst miners. See Sechaba Consultants, *Attitudes of Lesotho Miners Towards Permanent Residence in South Africa*, Migration Policy Paper No 2 Cape Town and Kingstons: SAMP, forthcoming. These findings contrast with those of the Lesotho government in Central Bank of Lesotho, *Survey of Basotho Migrant Mineworkers 2* Volumes, Maseru, 1995.
- 31 In the case of contractees from Botswana, Lesotho and Swaziland, tax is deducted at source and transferred to the home country en bloc.
- 32 Whiteside. "Labour Relations" claims that "the labour representative has an important role in representing the interests of his citizens" (p 35). In practice, it appears that these labour delegates perform only a very limited range of bureaucratic functions, most important of which, at the present time, is the registration and legalisation of undocumented migrants (a process provided for in the accords). The delegates appear to play little role in "representing" or protecting the interests of home country citizens at the workplace.
- 33 Wiseman Chirwa, "Malawian Migrant Labour and the Politics of HIV/Aids, 1985 to 1993" In Crush and James, *Crossing Boundaries*, pp 120-128. The Malawian treaty did not, however, apply only to miners but to any Malawian migrant working in South Africa on contract.
- 34 The DHA has requested the DL to investigate amending the accords in order that access to the South African labour market by nationals of treaty countries "can be placed on an even footing" with nationals of non-treaty countries. The LMC has since recommended their abolition altogether on the grounds that "they do not conform in many respects to ILO norms and standards, that they are not uniform and that they are outmoded". See DHA, "Access of Non-South African Nationals to the South African Labour Market", Submission to the LMC, File 20/1/B, 1995; and *Restructuring the South African Labour Market*, p 177.
- 35 South African miners no longer sign contracts; Interview with Roger Rowett.
- 36 NUM, "Contracting Out in the Mining Sector."

- 37 Standing et al, *Restructuring the Labour Market*, p. 302.
- 38 There is a long historical connection between shaft sinking contractors and Lesotho; see Jeff Guy and Motlatsi Thabane, "Technology, Ethnicity and Ideology: Basotho Miners and Shaft-Sinking on the South African Gold Mines" *Journal of Southern African Studies* 14 1988, pp 257-278
- 39 Information supplied by Roger Rowett.
- 40 Standing et al, *Restructuring the Labour Market*, p 95.
- 41 Naidoo, "Labour Broking", pp 43-45.
- 42 Interview with Mr Vincent, Algos Director, Maputo, June 1996. I am grateful to Fion de Vletter for notes on his interviews in Mozambique and Nelspruit on the subject of temporary work in Mpumalanga.
- 43 Algos officials report that the DHA is now increasingly demanding that Algos take its recruits back to Mozambique to renew their contracts; interview with Mr Pereira, Algos, Nelspruit, June 1996.
- 44 Jonathan Crush, "The Long-Averted Clash: Farm Labour Competition in the South African Countryside" *Canadian Journal of African Studies* 27, 1993, pp 404-23.
- 45 Whiteside, "Labour Relations", pp 33-34.
- 46 The arrangements do not regulate or impact directly upon working conditions at all. Many employers do not register their workers and regularise their status. The reasons for this are probably related to the inconvenience of registering term employees, the fees charged, the virtually non-existent sanctions for employing undocumented migrants, and the advantages of keeping labour covert and vulnerable.
- 47 Minnaar and Hough, "Clandestine Migration", p 66. Farmers who do go through this process tend to do so for groups of workers. Farmers are also supposed to keep a register on the farm of foreign employees for possible inspection.
- 48 *ibid*, p 67.
- 49 Standing et al, *Restructuring the Labour Market*, p 75.
- 50 Chris Dolan, "Policy Choices for the New South Africa" In De Villiers and Reitzes, *Southern African Migration*, 53-8.
- 51 Chris Dolan and Vusi Nkuna, "Mozambican Refugees: A Case Study of the Withholding of Legal Status on Access to Employment" Wits Rural Facility, Submission to the LMC, 1995.
- 52 *ibid*, p 5; in violation of Articles 27 and 28 of the 1951 Convention.
- 53 South African refugee law is currently under review.
- 54 Dolan and Nkuna, "Mozambican Refugees."
- 55 Masungulo Project, "Mozambican Refugees in South Africa" Northcliff, 1994; South African Catholic Bishops Conference, "Report on Immigrants, Refugees and Displaced People", Pretoria, 1995.
- 56 Dolan and Nkuna, "Mozambican Refugees." pp 4-5.
- 57 G. Mambo, "Contribution to the Peace Process: A Report" IOM-Mozambique, Maputo, 1995, p 38.
- 58 Jeff Crisp et al, "Rebuilding a War-Torn Society: A Review of the UNHCR Reintegration Programme for Mozambican Returnees" Geneva: UNHCR, 1996, p 45.
- 59 Chris Dolan and Vusi Nkuna, "'Refugees', 'Illegal Aliens' and the Labour Market: The Case for a Rights Based Approach to Labour Movement in South Africa" mimeo, Wits Rural Facility, 1996.
- 60 Mathias Brunk, "Undocumented Migration to South Africa: More Questions than Answers" Cape Town: Idasa, 1996, pp 6-8.
- 61 See De Kock, Schutte and Ehlers, "Perceptions of Current Socio-Political Issues in South Africa". This methodology, which basically involved asking a sample of South Africans how many foreigners they knew, produced some absurd "results"; for example, that the number of non-South Africans in the Free State supposedly

- jumped from 244 000 to over one million between December 1994 and June 1995 and dropped to 6 800 in March 1996.
- 62 Minnaar and Hough, "Clandestine Migration."
- 63 Hough, "Illegal Aliens"; Grame Hart, "The Scope and Nature of the South African Illegal Alien Problem" Johannesburg: University of Witwatersrand, 1995; B. Haldenwang, *Migration Processes, Systems and Policies*, Stellenbosch: Institute for Futures Research, 1996, p 72.
- 64 Brunk "Undocumented Migration."
- 65 The DHA's computerised information system also recorded 708 927 cases between May and November 1995; predominantly from Lesotho (33%), Zimbabwe (10%), Swaziland (7%) and Botswana (6%); see Brunk, "Undocumented Migration" p 4.
- 66 Minnaar and Hough, "Clandestine Migration" p 82.
- 67 Police estimate that 50% of deportees to neighbouring states return within three months; Minnaar and Hough, "Clandestine Migration", p 88.
- 68 Brunk, "Undocumented Migration", p 4.
- 69 Undocumented migrants are also heavily involved in the informal, long-distance trading and micro-business sectors. The SAMP is currently conducting research on this topic.
- 70 The ILO highlights the irony that an apartheid state "notorious for its brutal effort to monitor and control labour flows ... proved itself incompetent in the generation of basic labour statistics"; see Standing et al, *Restructuring the Labour Market*, p 245.
- 71 Interview with Algos, Nelspruit.
- 72 Minnaar and Hough, "Clandestine Migration" p 66.
- 73 Hilton Toolo and Lael Bethlehem, "Migration to South Africa: Problems, Issues and Possible Approaches for Organised Labour" Johannesburg: Naledi, Discussion Paper 11/94, 1994.
- 74 *ibid*, pp 21-22.
- 75 Nolan and Nkuna, "Mozambican Refugees", p 7.
- 76 Cooper, "South Africa's Migration Policy", p 29.
- 77 Interview with L Mooi, Regional Secretary, Saapawu, June 1996.
- 78 Charles Mather, "The Anatomy of a Rural Strike: Power and Space in the Transvaal Lowveld" *Canadian Journal of African Studies* 27 1993, pp 424-438.
- 79 The Eastern Transvaal Female Farm Labour Survey. See also J. Sender and D. Johnston, "A Fuzzy Snapshot of Some Poor and Invisible Women", *Development Southern Africa* February 1996.
- 80 Standing et al, *Restructuring the Labour Market*, p 256.
- 81 *ibid*, p 270.
- 82 *ibid*, p 263.
- 83 Minnaar and Hough, "Clandestine Migration."
- 84 Toolo and Bethlehem, "Organised Labour" p 21.
- 85 "Boland 'Slave Trade' Exposed" *Cape Times* 29 August 1996.
- 86 Maxine Reitzes, "Transboundary Migration to South Africa: Challenges for Human Rights, Regional Development and Security" Paper presented at SA Political Science Association Conference, Stellenbosch, 1995.
- 87 NUM, "Contracting Out", p 154.
- 88 *ibid*, p 152; Jonathan Crush, "Mine Migrancy in the Contemporary Era" in Crush and James, *Crossing Boundaries*.
- 89 *ibid*, p 153.
- 90 *ibid*, p 155.
- 91 Minnaar and Hough, "Clandestine Migration", pp 90-91. Some researchers have also been involved in projects administering questionnaires to detainees in police custody, a practice which raises troubling ethical questions.
- 92 *ibid*, p 89.

- 93 *ibid*, p 91.
- 94 Toolo and Bethlehem, "Approaches for Organised Labour" p 23.
- 95 Interview with Pereira.
- 96 Interview with J. du Plessis, DHA, June 1996.
- 97 Cooper, "South Africa's Migration Policy", p 4.
- 98 Hough and Minnaar, "Clandestine Migration", p 91.
- 99 *Restructuring the South African Labour Market*.
- 100 R. Mojapelo, "Miners in From the Cold" *Democracy in Action* 10(3), 1996, p 18.
- 101 Information from DHA.
- 102 Jonathan Crush and Wilmot James, "Humane Policy Under Threat" *Democracy in Action* 10(3), 1996, pp15-18.
- 103 The arguments for and against the Draft Protocol are reviewed in Centre for Sociopolitical Analysis, "A Research Review of the Policies Surrounding the Issue of the Free Movement of People Across International Borders with Specific Reference to Southern Africa and the Particular Effect Thereof on South Africa" Pretoria: HSRC, 1995 and Jonathan Crush, "Fortress South Africa? A Critique of Responses to the SADC Draft Protocol on the Free Movement of Persons in Southern Africa" confidential unpublished report, 1996.
- 104 Interview with Desmond Lockey, Cape Town, June 1996.
- 105 A. Desai, "Illegal Workers: Urgent Issues" *South African Labour Bulletin* 18(1), 1994, pp 34-5; R. Southall, "Foreign Workers in South Africa: Comrades or Competitors?" *South African Labour Bulletin* 18(6), 1994, pp 68-73.
- 106 R. Godsell, Briefing to Cross-Border Migration Mission, Johannesburg, June 1995; Chamber of Mines, "Position Paper on Migrant Labour" Submission to LMC, 1995.
- 107 Hussein Solomon, "Bilateral Agreements Could Solve Migrant Problem" *The Star* 6 August 1996. Solomon cites no source for this conclusion. Other studies have concluded that intensified surveillance along parts of the border simply pushes migrants to enter elsewhere and that the overall numbers have not been affected that much. Besides that, the prospect and cost of installing "floodlights, motion detectors and heat sensors" all along South Africa's 7,000 km border boggles the mind.
- 108 Research in the US suggests that the deterrent effect of intensified border policing is marginal; see T. Epenshade, "Does the Threat of Border Apprehension Deter Undocumented US Immigration?" *Population and Development Review* 20 1994: pp 871-892.

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