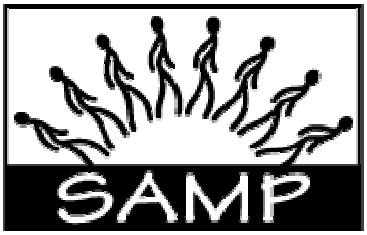

SOUTHERN AFRICAN MIGRATION PROGRAMME

COMPLEX MOVEMENTS, CONFUSED RESPONSES: LABOUR MIGRATION IN SOUTH AFRICA

SAMP POLICY BRIEF NO 25

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1.0 Introduction

1.1 The end of apartheid undermined the rationale for apartheid-era immigration. Immigration from Europe (which had been declining in the 1980s) dwindled to almost nothing as the new government dissociated itself from the racist immigration policies of the apartheid era.[1] At the same time, downsizing and mine closures in the 1990s led to a dramatic decline in employment opportunities for African migrants in the mining industry. Tens of thousands of local and foreign migrants were retrenched. Although the industry has recovered somewhat, and continues to employ some foreign workers, the overall numbers of temporary migrant workers remain far below the levels of the 1970s and 1980s.[2]

1.2 The end of apartheid also brought new forms of labour migration to and from South Africa including a marked growth in irregular labour migration from neighbouring countries and the rest of Africa and a major brain drain of skilled professionals, primarily to OECD countries. Since 2000, there have been two further changes. First, the volume of migration from Zimbabwe has grown dramatically as a result of that country's political and economic crisis.[3] Secondly, South Africa adopted a new skills-based labour migration policy.

1.3 The first section of this paper briefly reviews the post-apartheid decline in permanent immigration and legal temporary labour migration to South Africa. The next section examines some of the new migration trends that have become increasingly important over the last two decades. Finally, the paper examines the current institutional context established by the 2002 Immigration Act. In conclusion, the paper discusses the attractiveness of South Africa for African migrants and the main challenges that face the country in the coming years concerning international migration.

2.0 South Africa's Migrant Population

2.1 Migrant Stocks

2.1.1 Accurate information on migrant stocks in South Africa is hard to obtain partly because of the phenomenon of irregular migration and partly because of inadequate data collection systems.[4] Take, for example, the widely varying figures for South Africa's migrant from three different sources: (a) the Sussex University Global Migrant Origin Database (GMOD) (Version 4) (b) the 2001 South African Census and (c) the World Bank (Table 1). The GMOD and the Census come up with virtually identical totals for 2001, yet widely varying country of origin figures (e.g. Angola, DRC, Lesotho). The World Bank Migrant Stocks database is supposedly an update of the GMOD yet only provides data for 6 source countries. The 2010 update simply multiplies all the 2005 figures by 68% which improbably assumes an identical proportional increase from all countries.

Table 1: Estimates of Southern African Development Community Migrant Stock in South Africa				
Country of Origin	**2001 South Africa Census**	**GMOD (Version 4)**	**World Bank, 2005**	**World Bank, 2010**
Angola	11,806	152,057	0	0
Botswana	17,819	2,989	24,849	41,846
Congo, Dem. Rep.	4,541	149,462	0	0
Lesotho	114,941	8,246	208,226	350,657
Madagascar	220	316	0	0
Malawi	25,090	26,568	10,662	17,955
Mauritius	3,500	32,149	0	0
Mozambique	269,669	150,369	269,918	454,548
Namibia	46,225	4,215	0	0
Seychelles	257	3,144	0	0
Swaziland	34,471	2,007	80,593	135,720
Tanzania	3,923	52,554	0	0
Zambia	23,550	44,809	0	0
Zimbabwe	131,887	59,109	510,084	858,993
TOTAL	687,899	687,994	1,104,331	1,859,819

Sources: Statistics South Africa Census 2001,
GMOD v4 at http://www.migrationdrc.org/research/typesofmigration/global_migrant_origin_database.html;
World Bank 2005 at http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1110315015165/T1EstimatesMigrantStocks.xls
World Bank 2010 at http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1110315015165/T1.Estimates_of_Migrant_Stocks_2010.xls

2.1.2 The 2001 South African Census is now dated and new migrant stock figures from the 2011 Census are unlikely for at least another year. However, they do demonstrate the legacy of European immigration (23% of the migrant stock) and the importance of the SADC sub-region as source of African migrants (Table 2) (94% of the total from Africa).

Table 2: Migrant Stock in South Africa, 2001		
Region of Origin	**Number**	**Percent**
NORTH		
Europe	236,000	23.0
North America	9,000	1.0
Australasia	4,000	0.5
Subtotal	249,000	24.5
SOUTH		
SADC	687,899	67.1
Rest of Africa	41,599	4.1
Asia	27,000	3.0
Middle East	6,000	0.5
Latin America	13,000	1.0
Subtotal	776,000	76.0
TOTAL	1025000	100.0

Sources: Unpublished Data from Statistics South Africa 2001 Census.

2.2 Migrant Flows

2.2.1 Legal migrant movements to South Africa are captured in transactional data collected at ports of entry. This data is published monthly by Statistics South Africa and specifies country of origin and purpose of entry. The number of legal entries to South Africa rose after the end of apartheid and has continued to increase every year with a slight dip in 2009 (Figure 1). The number of entrants from Africa also increased dramatically over the period (Figure 2). Over the last decade, Zimbabwe has become the major country of origin for migrants to South Africa (Figure 3).

Figure 1: Total Legal Entries to South Africa, 1990-2010

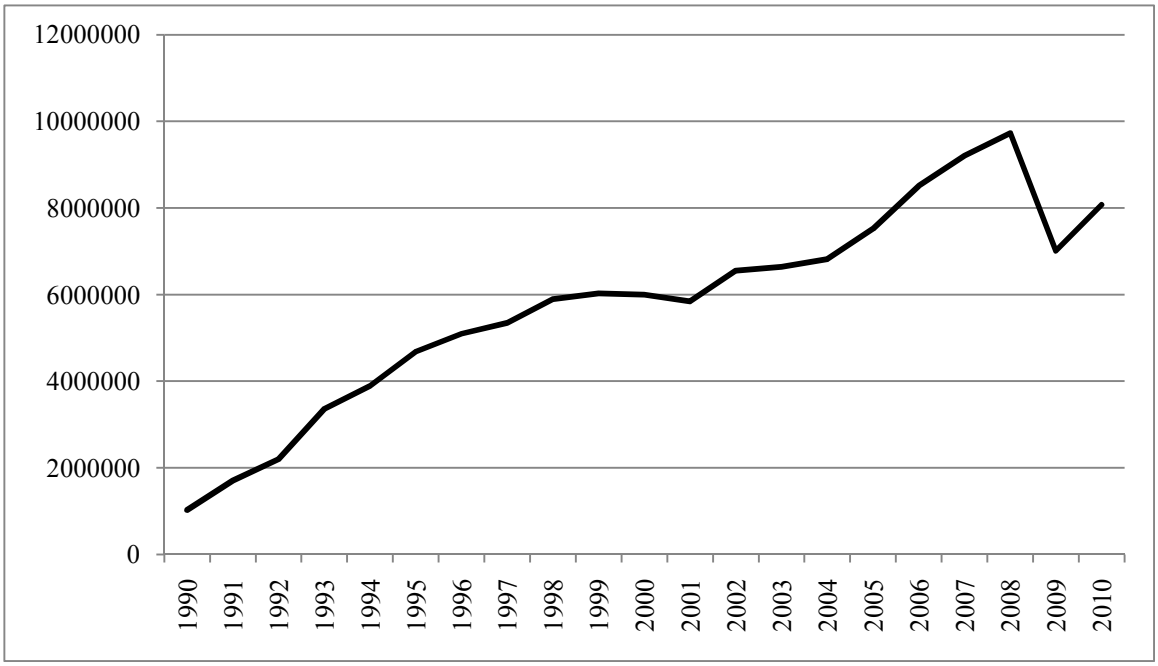


Figure 2: Legal Entries to South Africa from Rest of Africa, 1990-2010

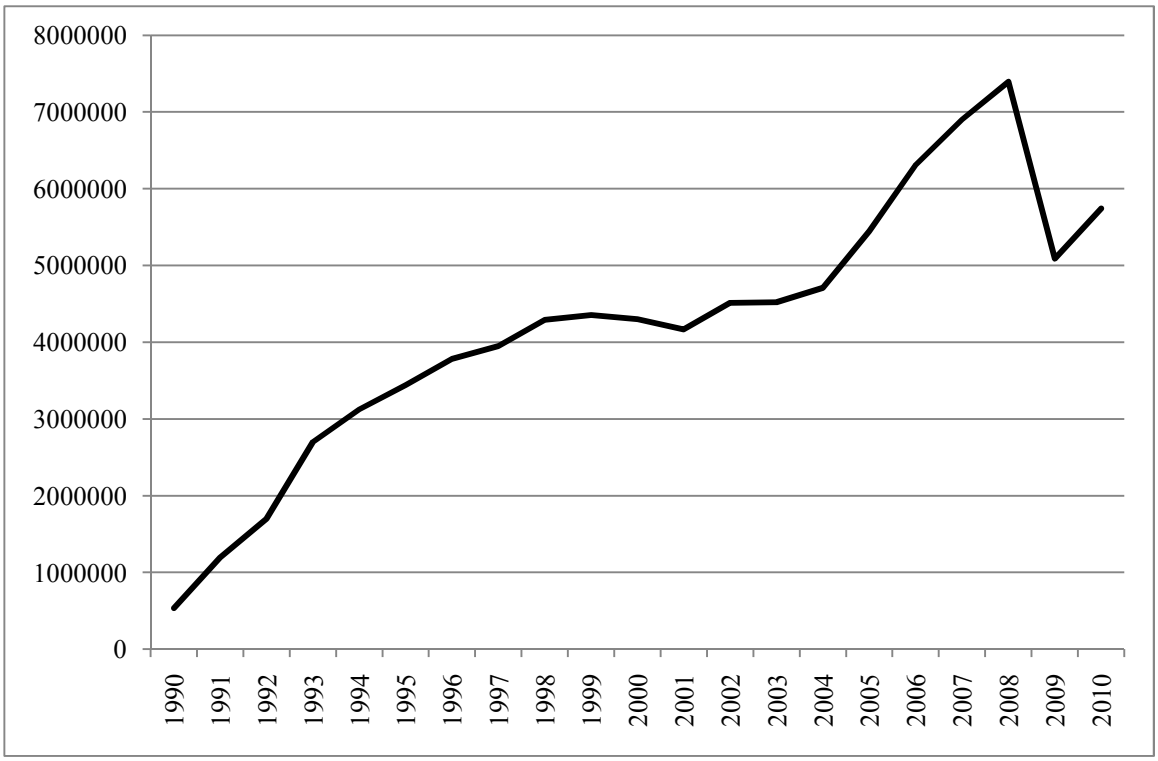
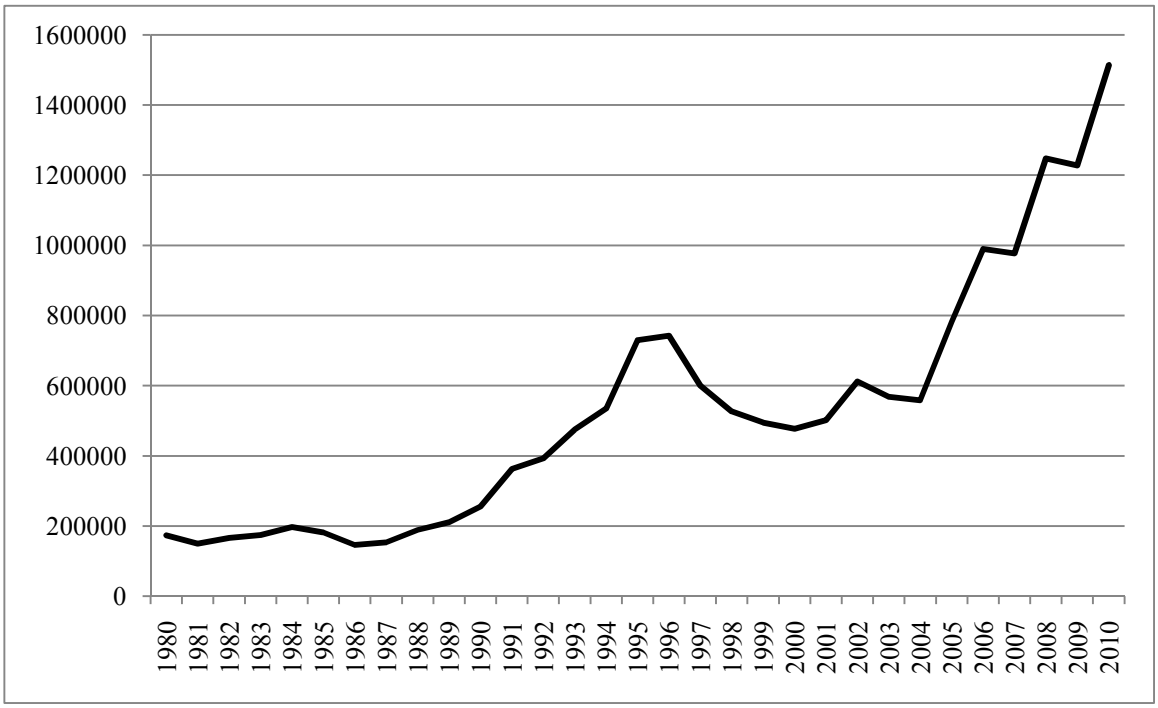


Figure 3: Legal Entries from Zimbabwe to South Africa, 1980-2010



2.2.2 How many of those who legally enter the country are labour migrants? Only a small proportion of the total can be considered genuine labour migrants (i.e. the columns for "work"

and "contract" in Table 3). However, the categories of “holiday” and “business” entry include those who are actually economic migrants who find work once they are in South Africa but without work permits.

Table 3: Stated Purpose of Entry to South Africa from Africa, 2002-2008						
	Holiday	Business	Study	Work	Contract	Border Pass
2002	3,984,746	294,000	81,395	16,924	55,683	n/a
2003	4,069,205	193,367	109,357	23,155	63,454	n/a
2004	4,274,050	141,610	121,482	28,944	54,080	35,677
2005	4,943,659	130,274	117,505	34,661	54,889	119,410
2006	5,866,426	113,553	109,010	33,034	n/a	136,439
2007	6,484,545	120,649	88,311	35,665	n/a	145,981
2008	6,251,569	108,936	77,120	42,337	n/a	141,920
2009	4,488,730	57,214	62,016	n/a	n/a	n/a
2010	5,430,282	187,576	62,498	n/a	n/a	n/a
Source: Statistics South Africa, Tourism and Migration Reports, PS015						

2.2.3 The enrolment of international students at South African universities and technical colleges increased from 14,124 in 1995 to 46,687 in 2002 and 52,703 in 2005 (the latest date for which figures are available). In 2005, 35,725 (or 68%) of the students were from other SADC countries, 7,586 (14%) from the rest of Africa and 7,913 (15%) from the rest of the world.[5] The rest of the world students come primarily from Europe (7% of the total in 2002) and North America (2% in 2002). In 2002, the major sending countries of higher education students were Zimbabwe (9,099 students or 29% of the total), Botswana (6,037 and 19%), Namibia (5,389 and 17%), Lesotho (3,383) and Zambia (2,445). The difference between these figures and those for “study” in Table 3 is a result of the fact that high school and primary school students from other countries also require study permits. This would suggest that in 2005, their numbers were around 64,000. Since 2004, there has been a dramatic decline in study permits, probably because of a decline in the issue of permits for study in public schools.

2.3 Migrant Occupational Profile

2.3.1 Two sources are available for assessing the occupational profile of African migrants in South Africa: (a) the 2001 Census and (b) household surveys in 2005-6 in sending countries by SAMP.[6] Both sets of data show that the idea that all African migrants to South Africa are poor and unskilled is incorrect. In the 2001 Census, 25% of migrants were in skilled positions, 45% in semi-skilled positions and 30% in unskilled positions (Table 4). The migrant population is male dominated (63%). The 2001 profile has probably shifted in the last ten years, in terms of gender, numbers and employment profile. There is evidence, for example, of growing 'feminization' of migration.[7]

Table 4: Demographic Profile of African Migrant Stock in South Africa, 2001		
	No.	**Percent**
Sex		
Male	449,010	63.1
Female	262,749	36.9
Total	711,759	100.0
Occupation		
Skilled		
Senior Managers/Officials	21,991	6.6
Professionals	28,021	8.4
Technical	21,582	6.5
Farmers	12,087	3.6
Subtotal	83,681	25.1
Semiskilled		
Plant/Machine Operators	26,625	8.0
Crafts and Trades	66,638	20.0
Clerical	21,824	6.5
Services	33,682	10.1
Subtotal	148,769	44.6
Unskilled		
Elementary Occupations	82,244	24.6
Other	19,167	5.8
Total	333,861	100.0
Source: Unpublished Data from Statistics South Africa 2001 Census.		

2.3.2 In terms of specific occupations, the household survey by SAMP in 2006 found that 50% of migrants from the five neighbouring countries of Botswana, Lesotho, Mozambique, Swaziland and Zimbabwe were still miners (Table 5). The survey showed distinct differences in occupational patterns of migrants from the countries. Very few Zimbabwean are miners (3%), for example. The occupational profile of Zimbabwean migrants is far more diverse and there is also a much higher proportion of skilled migrants (nearly 40%), indicative of the outflow of skills from that country to South Africa.

Table 5: Occupations of Labour Migrants in South Africa, 2006						
	Country of Origin					
Occupation:	Botswana %	Lesotho %	Mozambique %	Swaziland %	Zimbabwe %	Total %
Professional worker	1.6	2.9	1.7	3.5	14.7	4.8
Health worker	0.6	0.3	0.3	0.5	10.6	2.3
Employer/ Manager	0.0	0.0	0.0	0.4	1.3	0.3
Teacher	0.0	0.1	0.1	0.8	7.0	1.5
Farmer	1.1	0.3	0.1	0.4	0.7	0.5
Businessman/ woman	0.6	1.2	4.0	1.1	4.2	2.2
Office Manager	0.3	0.2	0.0	0.8	3.5	0.9

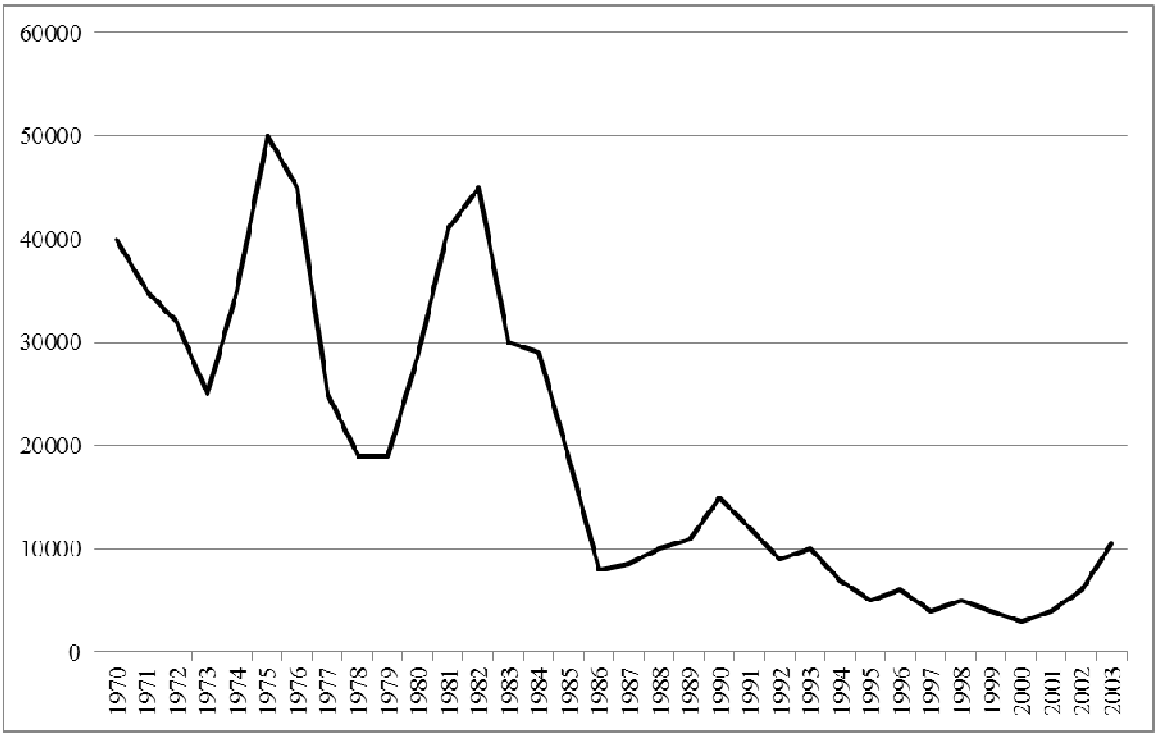
Office worker	1.1	0.3	0.4	1.7	4.6	1.5
Manual worker	0.8	6.2	8.0	6.1	4.9	5.6
Foreman	0.6	0.1	0.5	0.7	0.5	0.5
Police/ Military	0.2	0.0	0.1	0.2	0.4	0.1
Security personnel	0.0	0.2	0.5	1.9	0.1	0.6
Mine worker	87.2	68.4	30.5	62.3	3.0	49.5
Farm worker	0.2	2.0	2.2	0.5	1.2	1.3
Service worker	1.1	1.1	1.2	2.5	9.9	3.1
Domestic worker	1.7	9.0	0.9	1.6	1.9	3.2
Unskilled manual	0.5	1.5	9.5	7.8	2.1	4.7
Informal producer	0.2	2.8	0.8	0.4	4.8	1.8
Trader/hawker/vendor	0.0	2.0	6.0	0.7	14.7	4.6
Other	0.8	0.0	16.9	4.3	2.9	5.3
N	633	1,076	987	1,132	857	4,685

3.0 Immigration after Apartheid

3.1 Dismantling Apartheid Immigration Policy (1990-2000)

3.1.1 A declining trend in white immigration to South Africa began in the 1980s and continued after the collapse of apartheid (Figure 4). The primary reason for the decline in the 1980s was political and economic turbulence in South Africa as international and domestic opposition to apartheid intensified. The reason for the continued decline after 1994 was post-apartheid policy which discouraged permanent immigration from all areas, not just Europe.

Figure 4: Immigration to South Africa, 1970-2003



3.1.2 Between 1990 and 2000, the annual number of immigrants dropped from 14,500 to just over 3,000 and the number of African immigrants fell by half from 1,600 to only 800 (Table 6). The number of temporary work permits issued to skilled workers initially increased in the early 1990s (from 37,000 in 1991 to 53,000 in 1996). However, the same policy initiative to reduce the inflow of outsiders (who were widely perceived as taking jobs from South Africans in a situation of high unemployment) soon affected access to temporary work permits as well, which declined from 53,000 in 1996 to 16,000 in 2000 (Table 7).

Table 6: Immigration to South Africa, 1990-2000

Year	Total Immigrants	African Immigrants	% African
1990	14,499	1,628	11.2
1991	12,379	2,065	16.7
1992	8,686	1,266	14.6
1993	9,824	1,701	17.3
1994	6,398	1,628	25.4
1995	5,064	1,343	26.5
1996	5,407	1,601	29.6
1997	4,102	1,281	31.2
1998	4,371	1,169	26.7
1999	3,669	980	26.7
2000	3,053	831	27.2

Source: DHA annual reports; Statistics South Africa Tourism & Migration reports, PS015

Table 7: Temporary Work Permits Issued by South Africa, 1990-2000		
Year	New Work Permits	Renewals
1990	7,657	30,915
1991	4,117	32,763
1992	5,581	33,318
1993	5,741	30,810
1994	8,714	29,352
1995	11,053	32,838
1996	19,498	33,206
1997	11,361	17,129
1998	10,828	11,207
1999	13,163	10,136
2000	6,643	9,191
Source: DHA Annual Reports Statistics South Africa Tourism & Migration reports, PS015		

3.2 Towards a Skills-Based Migration Policy (2000-2010)

3.2.1 Persistent arguments from private sector employers and researchers that South Africa was experiencing a major skills crisis that was inhibiting economic growth led to a major shift in government immigration policy in the early 2000s. The Immigration Act No 13 of 2002 (which came fully into force in 2004) was designed to facilitate skills import (as well as clamp down on irregular migration). In early 2006, the government introduced the Joint Initiative for Priority Skills Acquisition (JIPSA, 2008), a three year high-level task-team under the Vice-Presidency designed to address South Africa's skills crisis through enhanced training in priority fields including (a) "high-level, world-class engineering and planning skills for the transport, communications, water and energy sectors (b) city, urban and regional planning and engineering skills; (c) artisan and technical skills in infrastructure development, housing and energy; (d) management and planning skills in education and health and (e) mathematics, science and language competence in public schooling.[8] JIPSA also suggests that recruiting new skills abroad would be pursued where necessary. In practice, it appears that immigration was viewed as a partial solution in only two of these areas: engineering and artisanal skills. These two fields were included on a Department of Home Affairs' scare skills and promoted by the Department of Foreign Affairs in South Africa embassies abroad.

3.2.2 The Immigration Act conceives of most labour migrants, including skilled migrants, as temporary residents or "sojourners." The new migration policy has a positive impact on the issue of work permits. Although data is unavailable on the actual number of permits issued after 2000,

the numbers allowed temporary entry for work purposes increased from 59,000 in 2002 to 137,000 in 2008 (Table 8). Two source areas have seen particularly rapid increases over the last decade: Africa (from 15,000 in 2001 to 47,000 in 2008) and Asia (from 7,000 in 2002 to 29,000 in 2008) (Figure 5). In 2005, the number of skilled migrants entering the country from Africa surpassed that from Europe for the first time.

Table 8: Legal Entry into South Africa for Work, 2000-2008

	2000	2001	2002	2003	2004	2005	2006	2007	2008
Europe	26,392	20,890	21,080	24,178	25,239	26,695	30,771	33,178	33,630
North America	8,090	6,070	6,070	6,105	6,207	6,527	6,022	6,358	6,738
Latin America	1,252	1,184	1,175	1,420	1,329	1,599	1,602	1,825	2,014
Australasia	1,535	1,361	1,360	1,329	1,294	1,265	1,329	1,408	1,453
Middle East	829	732	951	1,045	1,185	1,362	1,485	1,715	1,505
Asia	7,951	7,336	7,140	9,708	13,952	17,590	23,820	27,293	28,686
Indian Ocean	371	277	251	243	202	224	279	--	--
Africa	17,562	14,625	16,924	23,155	28,944	34,634	33,034	35,665	42,337
Unspecified	4,997	4,293	3,796	4,531	4,912	4,783	6,604	9,375	16,219
TOTAL	68,979	56,768	58,747	71,714	83,264	94,679	104,946	116,817	137,032

Source: Statistics South Africa, Tourism and Migration Reports, P0351

3.2.3 The new policy also led to an increase in the number of acceptances of applications for permanent residence. Almost immediately, for example, the number of immigrants began to climb from an all-time low of less than 4,000 in 2000. By 2004 (the last date for which data is available), the number had more than doubled to 11,000 (of whom nearly 50% were from Africa) (Figure 6).

Figure 5: Legal Entry into South Africa for Work, 2000-2008

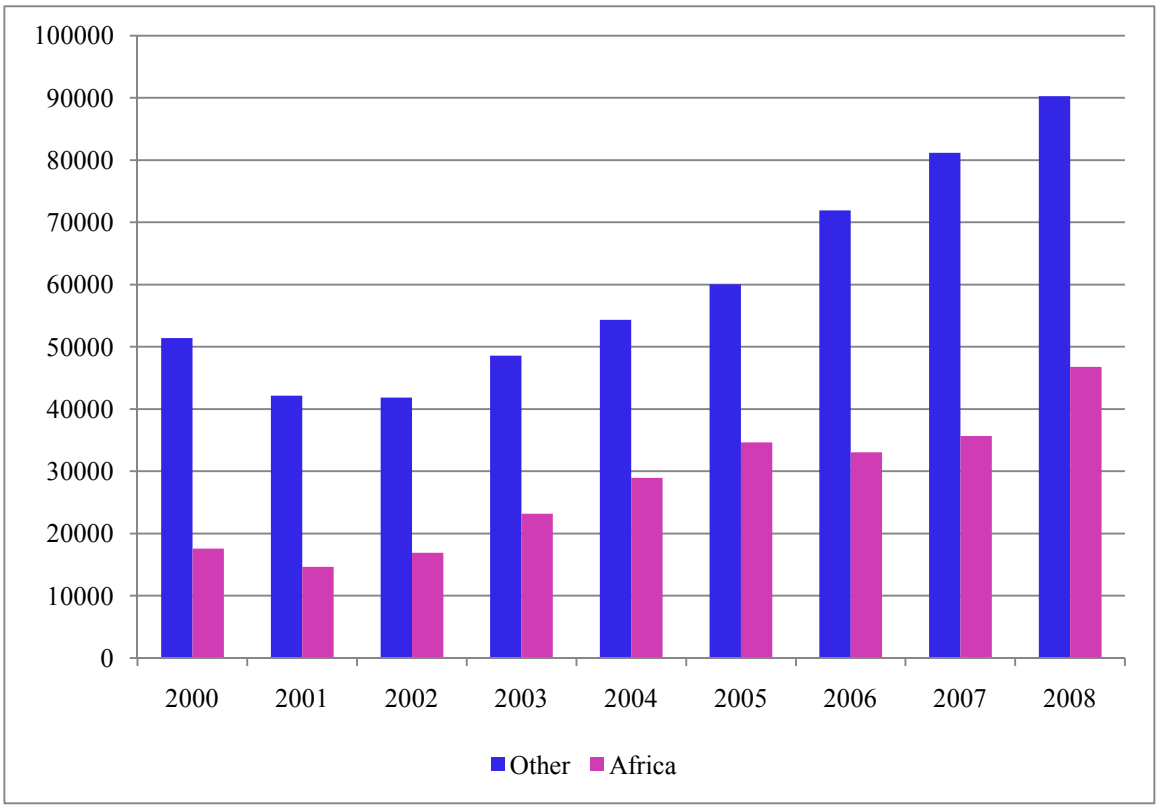
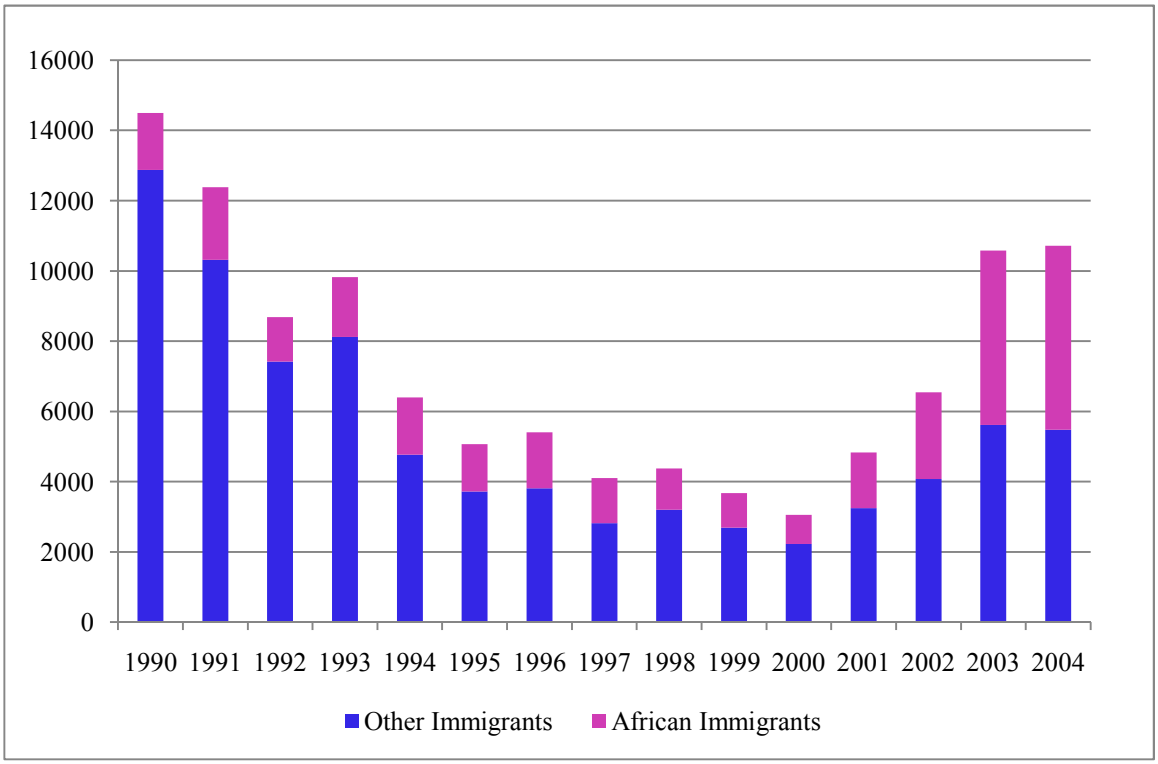


Figure 6: Legal Immigration to South Africa, 1990-2004



3.3 Remaking Temporary Migration Schemes

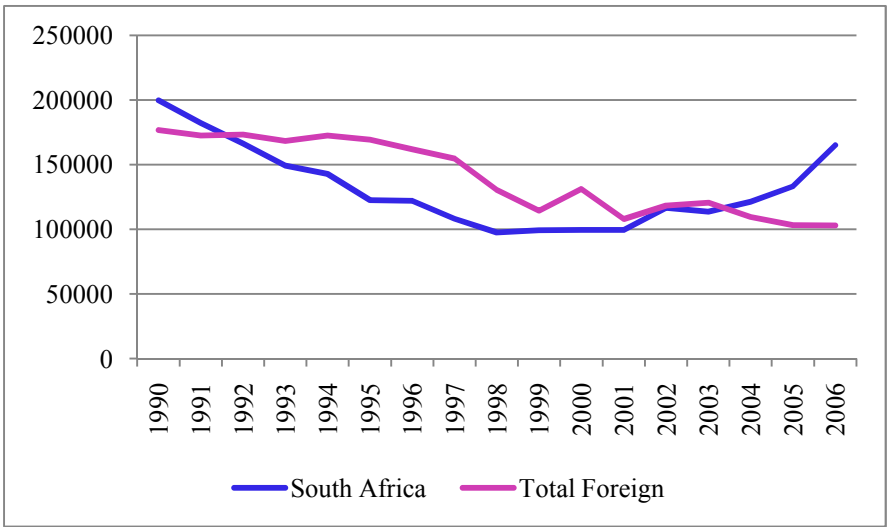
3.3.1 The collapse of apartheid led to calls to abolish temporary work schemes, seen as one of the cornerstones of the apartheid system.[9] There was very little change to the inherited system in the 1990s although the number of imported migrant workers dropped precipitously as a result of mine restructuring and retrenchments. In 1987, 477,000 migrant workers were employed on the mines. By 2001, the figure had dropped to around 207,000 (Table 9). Only one supply area, Mozambique, remained unaffected by retrenchments. The proportion of foreign miners rose from around 40% in the mid-1980s to nearly 60% in 1997, since even more local than foreign workers were laid off.

Table 9: Migrant Labour on the South African Gold Mines, 1990-2006

Year	South Africa	Botswana	Lesotho	Mozambique	Swaziland	% Foreign	Total
1990	199,810	14,609	99,707	44,590	17,757	47	376,473
1991	182,226	14,028	93,897	47,105	17,393	49	354,649
1992	166,261	12,781	93,519	50,651	16,273	51	339,485
1993	149,148	11,904	89,940	50,311	16,153	53	317,456
1994	142,839	11,099	89,237	56,197	15,892	55	315,264
1995	122,562	10,961	87,935	55,140	15,304	58	291,902
1996	122,104	10,477	81,357	55,741	14,371	58	284,050
1997	108,163	9,385	76,361	55,879	12,960	59	262,748
1998	97,620	7,752	60,450	51,913	10,336	57	228,071
1999	99,387	6,413	52,188	46,537	9,307	54	213,832
2000	99,575	6,494	58,224	57,034	9,360	57	230,687
2001	99,560	4,763	49,483	45,900	7,841	52	207,547
2002	116,554	4,227	54,157	51,355	8,698	50	234,991
2003	113,545	4,204	54,479	53,829	7,970	51	234,027
2004	121,369	3,924	48,962	48,918	7,598	47	230,771
2005	133,178	3,264	46,049	46,975	6,993	43	236,459
2006	164,989	2,992	46,082	46,707	7,124	38	267,894

Source: TEBA

Figure 7: Local and Foreign Mine Labour, 1990-2006



3.3.2 Since 2000, a rising gold price has led to renewed expansion on the gold mines, with the workforce increasing from 207,000 in 2001 to 268,000 in 2006 (Table 9). However, virtually all of the new workers have come from inside South Africa. This indicates a new "South Africans-first" policy. The number of foreign labour migrants has therefore continued to fall since 2000 (Figure 7). The proportion of foreign miners fell to only 38% in 2006.

3.3.3 Under the Immigration Act, South African employers wishing to import migrant labour in bulk now apply for corporate permits to import an agreed number of migrants. This includes the mining companies as well as the commercial farming sector, particularly in the border areas between South Africa, Zimbabwe, Mozambique and Lesotho. Prior to 2002, many farmers used irregular migrants from these countries, which led to a great deal of conflict between them and the government. Since that time they have been able to obtain corporate permits and legally employ foreign migrants. The numbers involved are unknown but probably run into the tens of thousands.

4.0 Irregular Migration to South Africa

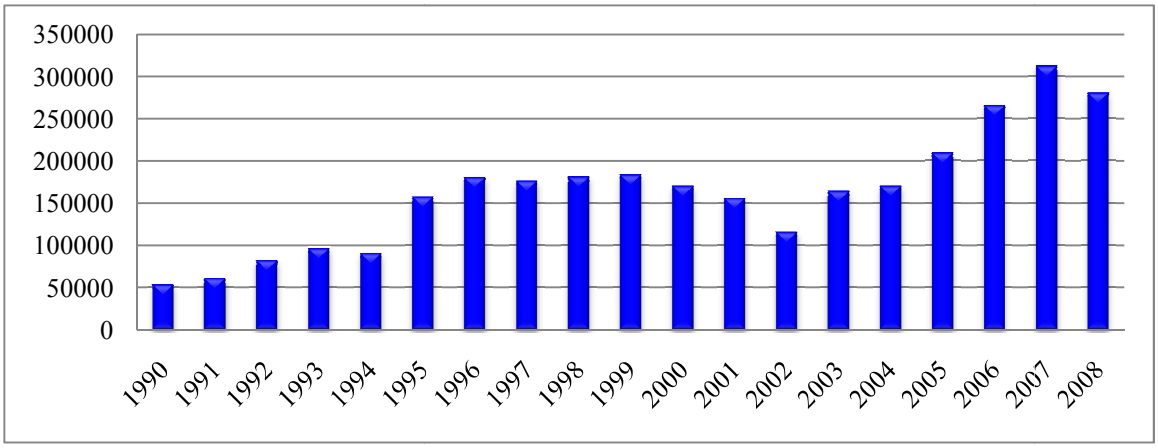
4.1 Dimensions of Irregular Migration

4.1.1 The number of labour migrants working without official work permits and/or appropriate residency status is difficult to determine. The media and the general public tend to cite numbers in the "millions."[10] However, there is no substantive basis for such claims. Nevertheless, irregular labour migration has undoubtedly increased in the last two decades. Despite very high rates of unemployment, most irregular migrants are able to find jobs in sectors such as construction and services. South African employers in these sectors show a distinct preference

for non-South African workers (since they can subvert labour laws, avoid paying benefits and violate minimum wage legislation). On the other hand, there are limited opportunities for individual unskilled and semi-skilled labourers to obtain work permits under the skills-based Immigration Act.

4.1.2 Most irregular labour migrants are from neighbouring countries. The primary policy response to irregular migration is arrest and deportation. Since 1990, just over 3 million migrants have been deported from South Africa. Although the Act proscribes stiff penalties for the employment of irregular migrants, employers are rarely prosecuted. The vast majority (97%) of deportees come from other SADC countries (with Mozambique and Zimbabwe making up 90% of the total), leading some to question the cost effectiveness of this strategy.

Figure 8: Deportations from South Africa, 1990-2008



4.1.3 The growth in irregular labour migration has been accompanied by growing informalization of migrant labour employment. Before the 1990s, most labour migrants were employed in the formal sector. Since 1990, labour migrants have begun to work in the largely unregulated informal economy (either as owner-operators or as employees of micro-enterprises). The numbers of informal sector labour migrants are unknown but are definitely increasing as the informal sector expands throughout the region. A 2010 SAMP study of Zimbabwean migrants who had entered South Africa after 2005 found that 21% were working in the informal economy. Only 14% were unemployed while 10% were working part-time and 53% full-time.

4.2 Backdoor Labour Migration

4.2.1 Forced migrants (asylum-seekers and refugees) are not normally classified as labour migrants. However, the distinction is a blurry one in practice. Between 1994 and 2004 around 150,000 asylum applications were received by the Department of Home Affairs (Table 10). In the same period, only 26,900 asylum seekers were granted refugee status. In January 2011, the

UNHCR estimated that refugee status had been granted to around 53,000 applicants in the whole post-apartheid period. However, the refugee determination process is so backlogged that decisions have tended to be taken on the basis of the country of origin rather than the individual circumstances of the claimant. As a result, asylum seekers from countries like Somalia and DRC have found it easier to get refugee status than those from other African countries, such as Zimbabwe.

Table 10: Refugee Applications in South Africa by Country of Origin, 1994-2004

Country	Applications	
	Number	**%**
Africa		
DRC*	24 808	15.7
Angola*	12 192	7.7
Somalia	14 998	9.5
Nigeria	12 219	7.7
Kenya	10 553	6.7
Zimbabwe*	6 857	4.3
Ethiopia	6 537	4.1
Tanzania*	4 821	3.1
Senegal	4 724	3.0
Burundi	4 570	2.9
Congo-Brazzaville	3 823	2.4
Malawi*	2 765	1.8
Rwanda	2 167	1.4
Ghana	2 114	1.3
Cameroon	2 011	1.3
Ivory Coast	1 006	0.6
Asia		
Pakistan	12 576	8.0
India	10 472	6.6
Bangladesh	4 173	2.6
China	2 846	1.8
Bulgaria	1 616	1.0
Others	10 098	6.4
Total	**157 946**	**100**

Source: DHA * = SADC Countries

4.2.2 In the last five years, the number of applications for refugee status has dramatically increased. This is partially because irregular migrants have starting using the system to legitimize their status in South Africa and avoid deportation. In 2009 alone, for example, there were 220,028 new applications for refugee status in South Africa (Table 11). In that same year,

45,538 applications were rejected and only 4,531 were accepted. Of these 75% were from three countries (the DRC, Ethiopia and Somalia). The number of registered asylum seekers in the country at that time was around 420,000. Zimbabwe is now the leading country of refugee claims in South Africa (149,000 or 68% of all applications in 2009) followed by Malawi (16,000 or 7%). The Department of Home Affairs takes the position that Zimbabwe is not a refugee-generating country.[11] In 2009, only 200 Zimbabweans were granted refugee status while 15,370 applications were refused.

Table 11: Refugee Applications and Decisions, 2009			
	Applications	Accepted	Refused
Algeria	133	0	50
Angola	335	7	132
Bangladesh	4,923	31	3,310
Burundi	1,208	133	367
Cameroon	667	9	429
China	3,327	0	1,634
Congo	3,223	613	1,391
DRC	6,226	779	1,706
Eritrea	219	202	71
Ethiopia	10,715	1,307	3,130
Ghana	942	0	648
India	3,632	0	1,045
Kenya	624	0	276
Lesotho	258	0	54
Malawi	15,697	0	7,749
Mozambique	2,559	0	882
Niger	1,445	0	1,071
Nigeria	3,023	0	2,046
Pakistan	3,196	0	1,770
Rwanda	275	17	68
Senegal	204	0	74
Somalia	3,580	1,213	638
Uganda	1,425	20	759
Tanzania	1,739	0	602
Zambia	1,000	0	266
Zimbabwe	149,453	200	15,370
Totals	220,028	4,531	45,538
Source: UNHCR			

4.2.3 Over the last decade, South Africa has adopted various strategies to deal with the growing influx of migrants from Zimbabwe, many of whom are in irregular status. Initially,

arrests and deportations intensified. In 2005, over 100,000 Zimbabweans were deported for the first time. Deportations reached their peak in 2008 at over 200,000 although there was a growing realisation that they exercised little deterrence effect, that those who were deported usually returned and that desperate migrants were being victimised by criminal gangs and unscrupulous officials.[12] In April 2009, a different management approach was introduced by the then Minister of Home Affairs to encourage migrants to enter through legal channels. This included a moratorium on deportations, a free 90-day visa for new entrants and a 12-month "special dispensation" permit, with the right to work, for Zimbabweans already in South Africa.[13] Following the 2009 election, the new Minister of Home Affairs initiated a review of South Africa's migration policy during which the "special dispensation permit" was held in abeyance. Finally, in September 2010, the Minister announced a legalisation amnesty for Zimbabwean migrants, the fourth such amnesty since the end of apartheid.[14]

4.2.4 The Zimbabwean Documentation Project (ZDP) ran from September to December 2010. Under the ZDP, Zimbabweans could apply for work, study, or business permits provided that they had a Zimbabwean passport and documentation confirming either proof of employment (e.g., an affidavit from the employer) or proof of registration with an educational institution or proof of operating a business (e.g., company registration).[15] The permits would be valid for up to 4 years (just short of the 5 years needed to apply for permanent residence). Initially only those who had entered the country prior to May 2009, a requirement that was later dropped. Because many migrants were having problems obtaining Zimbabwean passports, that requirement was relaxed during the last two weeks of the process and a receipt showing that they had applied for a passport was accepted. Individuals were also encouraged to hand in fraudulent documentation and were guaranteed immunity from arrest and prosecution.

4.2.5 By 31 December 2010, a total of 275,762 applications had been received. Originally, deportations were to resume on 1 January 2011 but the moratorium was extended to August 2011 to allow time for all the applications to be properly processed. While one of the aims of the ZDP was to relieve the pressure on the refugee determination it is clear that many migrants decided to hedge their bets pending decisions on their applications. A total of only 49,255 Zimbabweans surrendered their asylum status in favour of obtaining valid work and business permits. Around 4,000 migrants voluntarily surrendered fraudulent documents.

4.3 Skills Emigration and the "Brain Drain"

4.3.1 Official emigration statistics often do not capture the full dimensions of the brain drain from South Africa. Statistics South Africa, for example, recorded a total of 92,612 emigrants (including 20,038 with professional qualifications) between 1989 and 2003 to five main destination countries (the UK, the USA, Australia, Canada and New Zealand). However, destination-country statistics of immigrant arrivals from South Africa show 368,829 total

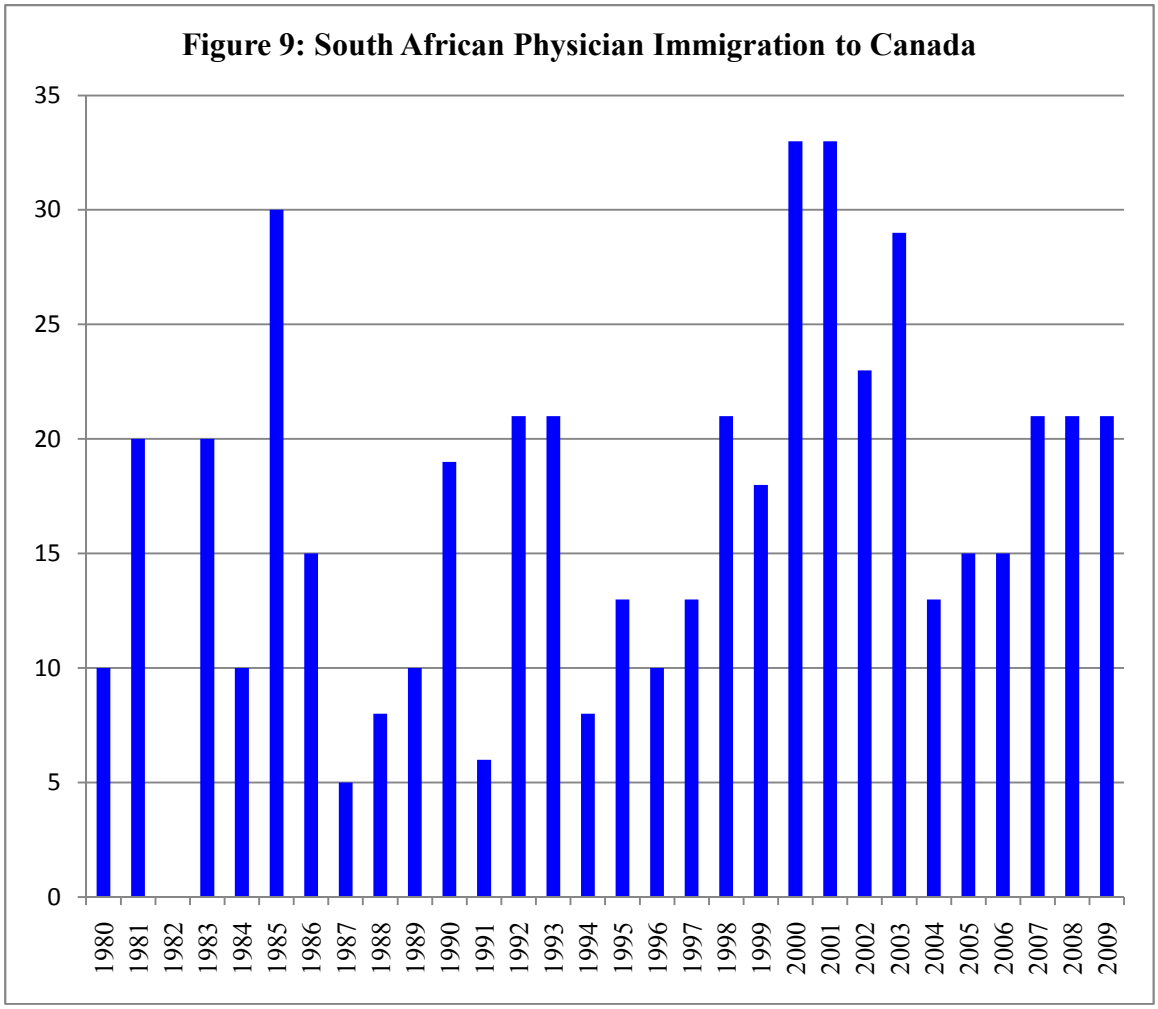
immigrants and 80,831 professionals arriving from South Africa during the same time period.[16] Official statistics therefore undercounted the loss by around three-quarters.

4.3.2 The sector most impacted by the brain drain is health. In 2000, an estimated 21% of South African-born physicians were resident in OECD countries (Table 12).[17] The major destinations included the United Kingdom, the USA, Canada and Australia. The number of South African nurses outside the country in 2000 was 4,844 (or 5% of the total). The UK, the USA and Australia were the major destination countries. Indications are that the brain drain has continued since 2000 although exact numbers are unavailable. Data for 2005 suggests a major increase in physician migration to the UK and New Zealand between 2000 and 2005. A recent SAMP survey of South African physician migration to Canada suggests that physician immigration to that country continues though it may have slowed in recent years (Figure 9).[18]

Table 12: Location of South African Physicians and Nurses in OECD, c. 2000

Location	Physicians 2000 Foreign-Born	Physicians 2005 Foreign Trained	Nurses 2000 Foreign-Born	Nurses 2005 Foreign-Trained
Home	27,551		90,986	
Abroad	7,363		4,844	
UK	2,022	7,778	2,884	
USA	1,950	2,215	829	
Canada	1,545	1,877	280	211
Australia	1,111		1,083	
New Zealand	555	1022	432	
France	16	1	4	
Portugal	44		58	
Switzerland	22		55	
Austria	13		16	
Greece	12		22	
Sweden	11		10	
Spain	4		3	
Belgium	0		33	
Netherlands	0	125	0	63
Denmark	20	1	16	7
Ireland	45	0	105	227
Norway			49	
% Abroad	21		5	

Source: OECD



Source: SAMP Survey 2010, N=502

4.3.3 South Africa is also a potential beneficiary of the brain drain and stands to benefit greatly from the exodus of health professionals from other African countries. In 2000, South Africa had 1,557 physicians and 439 nurses from other SADC countries. The African brain drain to South Africa was slowed by South Africa's post-1994 immigration policy which, before 2002, did not favour the importation of skills. Although that has now changed, the South African government is adamant that it will not hire health professionals from other African countries.

Table 13: Other African Physicians and Nurses in South Africa, c. 2000

Location	Physicians	Nurses
Angola	31	0
Botswana	26	5
DRC	98	7
Lesotho	49	25
Malawi	48	11

Mauritius	19	3
Mozambique	61	11
Namibia	291	118
Seychelles	4	0
Swaziland	44	25
Tanzania	40	4
Zambia	203	52
Zimbabwe	643	178
Total	1,557	439
Source: Clemens and Petterrson		

5.0 Institutional Context

5.1 Immigration Legislation

5.1.1 Migration to South Africa is now governed by two pieces of legislation: the Refugees Act of 1997 and the Immigration Act of 2002. The Immigration Act was designed to facilitate easier access by South African employers to foreign skills but on a strictly temporary basis. A number of different permit categories now facilitate temporary entry including (a) four different categories of work permit -- quota, general, exceptional skills and intra-company transfer, (b) corporate permits; (c) business permits; (d) study and exchange permits, which allow limited work activity; and (e) treaty permits. Other entry permits include (f) visitor's permits; (g) cross-border passes; and (h) relatives' permits. The Act requires government to publish an annual list of skills in short supply. Migrants could also apply for work permits from inside the country (a provision that was rescinded in 2011).

5.1.2 In the case of quota work permits, categories and quotas were to be "determined by the Minister at least annually … after consultations with the Ministers of Labour and Trade and Industry" (Section 19(1)). The quotas (as presented on 24 February 2003) related to experience and training rather than sectors of the economy. They were extremely broad in scope. The highest quota, of 90,000 permits, was provided to two categories: (a) where employers "justifiably" require a post-graduate degree and at least 5 years of professional experience; and (b) where employers "justifiably" require at least 5 years of experience showing skills acquired through training. A second quota of 75,000 permits was provided (a) where employers require a graduate degree and 5 years of professional experience; and (b) where employers require at least 5 years of experience showing entrepreneurship, craftsmanship or management skills. In between was a sliding scale of qualifications, skills and experience level. There are ten categories in all, most allocated a quota of 70,000 permits, giving a total of 740,000 quota permits per annum. None of the categories allowed residence rights for families of permit-holders.

5.1.2 Since 2003, there has been a dramatic revision of the quota permit system and reduction in the number of quota permits available. The Quota Schedule published by the Department of Home Affairs in 2007 allowed for a total of only 30,200 permits tied to specified sectors and professions.[19] Each quota category required the person to be "registered with the relevant professional body where applicable" and to have "at least 5 years relevant experience." The three largest sectors cited were: "Building and engineering technicians" (5,250); "Biomedical engineers and technicians" (5,000) and "Agricultural and science technicians" (5,000). The Quota Category of Work Permit was removed in the 2011 amended Act and replaced by a "Critical Skills" Permit for trades, professions or occupations listed in a Critical Skills List to be defined by the Minister of Home Affairs.

5.1.4 General work permits (Section 19(2)) may be issued to migrants who do not fall within the ambit of the quota permit system. Here the onus falls on the employer to demonstrate that they have first diligently searched for a qualified South African candidate and to give an undertaking that the terms and conditions of employment are not "inferior to those prevailing in the relevant market segment for citizens, taking into account applicable collective bargaining agreements and other applicable standards." The general work permit appears to be a catch-all for individuals who do not fall under the other categories. Holders of general work permits are expected to provide proof within six months of issue that they are still employed and of the conditions of their employment.

5.1.5 Exceptional skills work permits (Section 19 (4)) are issued to individuals of extraordinary (but undefined) skills and qualifications. This is the only category of work permit to include residence rights for the permit-holders immediate family. However, this permit was rescinded by the government in early 2011.

5.1.6 Intra-company transfer permits (Section 19 (5)) initially permitted a company to bring a foreign employee into the South African branch plant for a period of up to two years, later extended to four years.

5.1.7 Corporate permits "may be issued to a corporate applicant who may conduct work for such corporate applicant." This is effectively a "block" or "group" permit allocated to an employer rather than individual employees. In granting such a permit, Home Affairs must first consult with Labour and Trade and Industry to determine the number of foreign employees who can be hired under the permit. Management of the permit, including allocation of individual permits, becomes the responsibility of the corporation.

5.1.8 Visitors' permits and cross-border passes (for people from neighbouring countries with a common border who do not hold passports) are issued for short term stays of up to three months. Purpose of visit does not have to be specified but work is specifically precluded. Business

activity is permitted, however, which means that cross-border trading can be carried out legally under these permits.

5.1.9 South Africa has thus effectively dispensed with the temporary work schemes and programmes inherited from the apartheid era. This comes at a time when temporary work programmes are attracting much attention in many OECD countries. In 1998, the Draft Green Paper on International Migration argued that South Africa could restructure its temporary work schemes and renegotiate the bilateral agreements to make them consistent with South African labour legislation and the Bill of Rights in the Constitution. However, this option was rejected in the subsequent White Paper and legislation.

5.2 Draft SADC Protocol on Facilitation of Movement

5.2.1 Three separate drafts of protocols on the movement of people within SADC were developed in the 1990s. The first was the 1995 Draft SADC Protocol on the Free Movement of People which proposed a phased adoption of free movement between all member countries. The model was heavily based on Schengen approach and aimed for the phased abolition of all barriers to movement across national borders of SADC countries within five years. This Protocol was rejected by SADC states in 1997. South Africa responded with a Draft Protocol on the Facilitation of Movement of People which proposed minimal levels of harmonization on issues such as visa-free entry for short-term visitors. This Protocol was rejected by the SADC Secretariat which drafted its own SADC Draft Protocol based on the original Draft Protocol on the Free Movement of People.

5.2.2 This Draft Protocol was shelved by the SADC Council of Ministers in 2001. In the last five years, however, renewed debate about the Protocol was prompted by the ground-level reality of growing intra-regional mobility, the need for a coordinated multi-lateral approach to the development and security challenges of migration and the prompting of the African Union. Discussion on the Protocol was revived in 2003 when questions related to the movement of persons repeatedly surfaced during the deliberations of the SADC Organ on Politics, Defence and Security Co-operation.

5.2.3 In July 2005, the Ministerial Committee of the SADC Organ considered and approved the Draft Protocol on the Facilitation of Movement of Persons. The draft Protocol was subsequently tabled at the SADC Summit in August 2005 where it was approved and signed by six member states. It has now been signed by nine member states: Botswana, DRC, Lesotho, Mozambique, Namibia, South Africa, Swaziland, Tanzania and Zimbabwe). However, for the Protocol to come into effect, at least nine member states must have both signed and ratified it. The ultimate objective of the protocol is "is to develop policies aimed at the progressive elimination of

obstacles to the movement of persons of the Region generally into and within the territories of State Parties."

5.2.4 In terms of the timeframe for implementation, the Protocol specifies that an Implementation Framework will be agreed upon within six months from the date on which at least nine member states have signed. While the Protocol makes provision for a range of policy, legislative and logistical adjustments on the part of states, the extent to which (a) states are obliged to comply and (b) the Protocol can be enforced, remains unclear. While it is not always clearly stated, it is implicit in the phrasing of particularly the provisions related to residence and establishment, that these provisions are subject to the domestic/national legislation of states. In other words, even if a member state has ratified the Protocol, it does not mean that its national policies and legislation will be amended to comply with the provisions of the Protocol. In essence, any and all the provisions of the Protocol are ultimately subject to domestic legislation.

6.0 Conclusion

Three general conclusions can be drawn from this analysis:

6.1 South Africa will continue to be a major destination for temporary labour migrants from neighbouring countries. Under apartheid, temporary entry was highly regulated and largely confined to the mining sector. Since the end of apartheid and the decline of the employment opportunities in that sector, opportunities for temporary migrant employment have expanded and diversified. Many more sectors now employ temporary migrants and the informal economy has also emerged as a major employer and income earning opportunity. Rates of unemployment amongst migrants are much lower than amongst South Africans. However, the opportunities for South African employers to legally access temporary migrants are limited and irregular migration has expanded considerably as a result. More recently, migrants have been exploiting loopholes in the existing legislation (such as 3 month visitor's permits and asylum permits) to ensure that they avoid deportation. Deportation (and revolving door migration) has been the primary policy response to date. The effectiveness of this system in deterring migration is questionable. This realization has led to a more serious consideration of the SADC Draft Protocol in South Africa since 2002.

6.2 South Africa is likely to continue to experience a serious brain drain as long as there are demands for their skills outside the country. The outflow of skills is unlikely to slow in the foreseeable future. In sectors such as health and education, skilled Southern Africans are being lured by recruiters with extremely attractive work packages. Surveys of the skilled and professional population and of students in professional programmes show high levels of dissatisfaction and a very strong inclination to emigrate. Sector-specific strategies to discourage emigration do not appear to have been very successful to date. The brain drain partially explains the shift in South African policy towards a skills-based immigration policy after 2000. While the

available evidence suggests that there has been an increase in temporary and permanent migration to South Africa (especially from the rest of Africa) it is not clear to what extent this has alleviated South Africa's skills crisis or whether it has succeeded in mitigating the impact of the ongoing brain drain.

6.3 Understanding of the dynamics and trends of labour migration to and from South Africa has improved but there are still many gaps. Official statistics (which reveal migration patterns and trends) need to be triangulated with household surveys (which provide a greater understanding of migration causes and dynamics) and private sector data (which provides employment information). Not only are there large data gaps but where the data does exist, it is often dated or inaccessible. Recommendations: (a) a major enquiry and evaluation of South Africa's post-2000 skills-based immigration policy is necessary to evaluate whether the legal and policy instruments are having their desired effect; (b) much greater understanding is needed of the phenomenon of irregular migration and the effectiveness of deportations as a counter-strategy; (c) a Migration Observatory (along the lines of the ACP Observatory) would be extremely useful in collating information, conducting research and capacity-building for migration management.

Endnotes

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[17] Michael Clemens, *Medical Leave: A New Database of Health Professional Emigration from Africa*, Working Paper No. 95, Centre for Global Development, 2006.

[18] The 2006 Canadian Census counted 2,070 South African-born doctors and 435 South African-born nurses.

[19] See http://www.imcosa.co.za/images/stories/downloads/quota%20list%202009.pdf for the 2009 list.