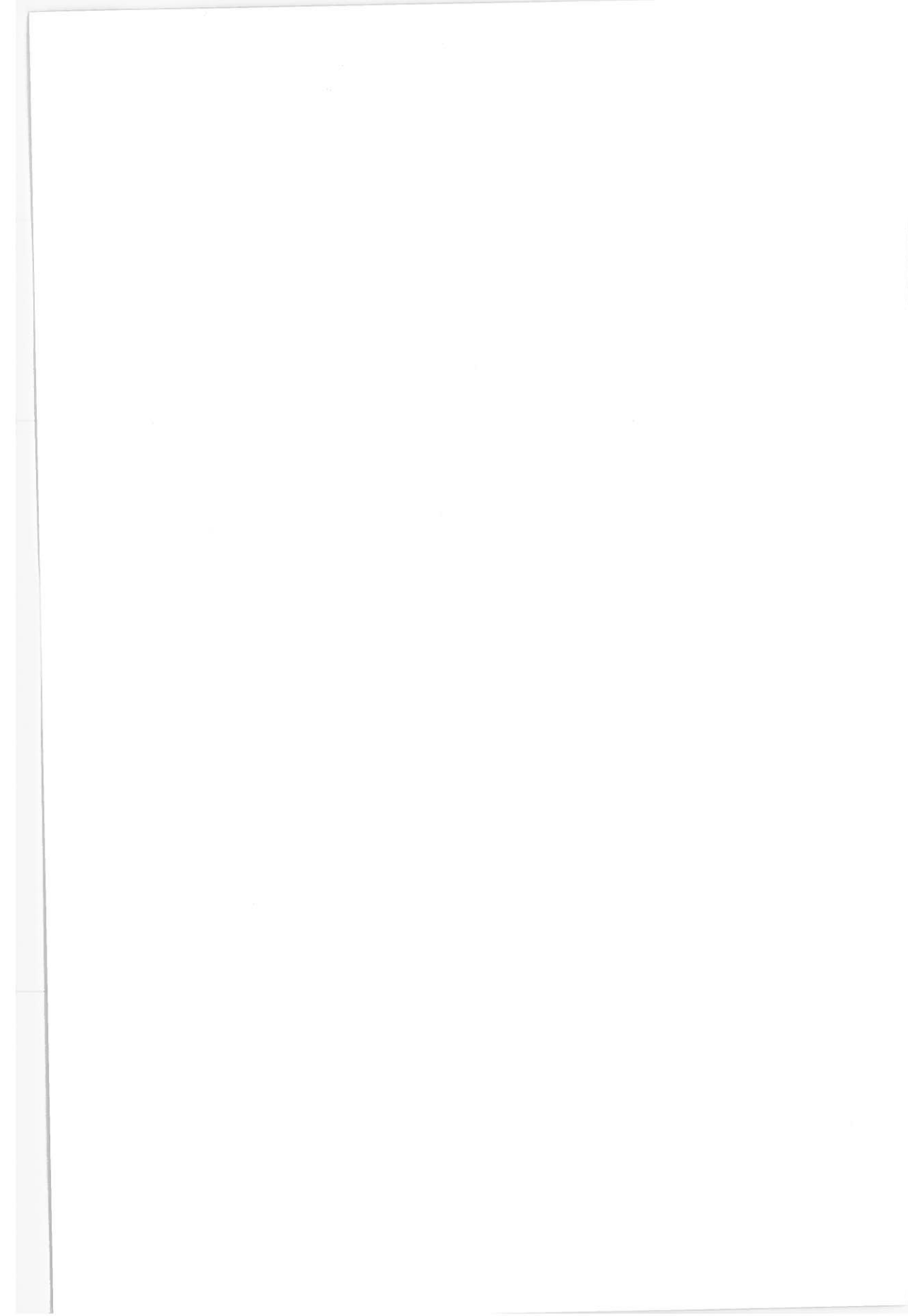


THE NEW SOUTH AFRICANS?
IMMIGRATION AMNESTIES
AND THEIR AFTERMATH

EDITED BY
JONATHAN CRUSH & VINCENT WILLIAMS



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SOUTHERN AFRICAN MIGRATION PROJECT
1999
CAPE TOWN

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LIST OF ABBREVIATIONS

ANC	AFRICAN NATIONAL CONGRESS
CIDA	CANADIAN INTERNATIONAL DEVELOPMENT AGENCY
DHA	DEPARTMENT OF HOME AFFAIRS
GNU	GOVERNMENT OF NATIONAL UNITY
ID	IDENTITY DOCUMENT
IEC	INDEPENDENT ELECTORAL COMMISSION
ILO	INTERNATIONAL LABOUR ORGANISATION
LANGTAG	LANGUAGE PLAN TASK GROUP
NGO	NON-GOVERNMENTAL ORGANISATION
NMCS	NATIONAL MOVEMENT CONTROL SYSTEM
NUM	NATIONAL UNION OF MINeworkERS
RRP	REFUGEE RESEARCH PROGRAMME (OF THE UNIVERSITY OF THE WITWATERSRAND)
SACS	SOUTH AFRICA COMMUNICATION SERVICE
SADC	SOUTHERN AFRICAN DEVELOPMENT COMMUNITY
SAMP	SOUTHERN AFRICAN MIGRATION PROJECT
TEBA	THE EMPLOYMENT BUREAU OF AFRICA
UK	UNITED KINGDOM
UNHCR	UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES
US	UNITED STATES (OF AMERICA)

FOREWORD

Migration to South Africa must be seen from two angles. First, on a positive note, we must think of the benefits. And secondly, regrettably on a negative note, the problems must be addressed. The Department [of Home Affairs] realises that a properly managed immigration programme can be of great economic, social and cultural benefit to the country. The policy is therefore aimed at allowing entry only to those persons who can contribute substantially towards the needs of South Africa in the form of personal skills or investments leading to industrial expansion and job creation for the local population. This lies at the heart of our immigration policy.

The Department is convinced that research on migration with a view to analysing the problem is an essential step towards finding lasting solutions to this global issue, with specific emphasis on the South African situation.

Allow me to reflect upon the issue of numbers. How many illegal immigrants are presently in South Africa? I have heard figures ranging from one to 12 million. This obviously relates to two schools of thought, one being "don't be concerned", the other saying "please be alarmed". I plead that we focus less on the count and more on the essence. Is there a problem and what is it costing?

Between July and November 1996, citizens of Southern African Development Community (SADC) member states who had been in South Africa for at least five years prior to June 1996 and who qualified in terms of certain conditions were afforded the opportunity to apply for exemption in terms of which permanent residence in South Africa could legally be acquired. Approximately 200 000 applications were received and of these just over 60% were approved. Taking into account exemptions afforded mine workers and Mozambican refugees, a total of around 350 000 exemptions are being attended to.

South Africa has extended a gesture of goodwill to neighbouring countries by granting these exemptions, which are also referred to as amnesty.

The amnesties granted in the past were founded on the fact that the persons concerned had been living in South Africa for an extended period, were involved in economic activity and were law-abiding. Take the example of a Mozambican mine worker employed on the gold mines for an extensive period who, through his work, has lost touch with his relatives in Mozambique and who has acquired a family in South Africa. It would be inhumane to force such a person to return to Mozambique when he has served his purpose here.

We are dealing with human beings and we must act accordingly. In the example above, the person concerned was legally in South Africa and contributed to the welfare of the country. If you consider the position of a person

who has been employed illegally by a South African employer over an extensive period, paid below-average wages and exploited by his unscrupulous employer in other ways, you cannot turn a blind eye to such a person's predicament.

Time marches on. Before we realise it, another five years will have elapsed since the cut-off date for the most recent exemption or amnesty. The government will again be faced with the dilemma of whether or not to grant a further amnesty. If we are to take the matter seriously the flood of illegal immigrants must be stopped forthwith. Only a determined, vigorous and continuous effort will address this problem. Failing in this will inevitably lead to further demands for amnesty in due course.

THE HONOURABLE MANGOSUTHU BUTHELEZI
MP, Minister of Home Affairs

Extracted from the Minister's keynote address to the 1997 SAMP Conference. Extracts referring specifically to the amnesty are reproduced here. A copy of the complete address is available at: <http://www.queensu.ca/samp/document.html>



INTRODUCTION

THE MEANS OF AMNESTY

BY JONATHAN CRUSH AND VINCENT WILLIAMS

THE CONDITIONS

In 1994, the new South African government faced the daunting task of transforming inherited immigration and migration policies designed for very different, racially driven, objectives. For most of the twentieth century, immigration policy applied to whites only.¹ Black people were officially allowed into the country under very strict conditions and only for clearly defined purposes, primarily contract work in the mines.² When the contract period ended, they were expected to leave. Most did — but some did not. Others came informally, and a few of them, too, stayed in South Africa.³

In the 1980s, cross-border movement intensified dramatically. South Africa, like other countries in the region, faced its first mass influx of refugees. Ironically, the apartheid government was the prime cause of the flight of over two million people from Mozambique to other countries in the region — Malawi, Zimbabwe, Swaziland and South Africa itself.⁴ Only the South African government sought to keep them out by deporting them, electrifying border fences, and restricting the movement of those who made it over (or under) the fence.

Since 1994, South African immigration policy has vacillated between two extremes. It has been described as diverse and inconsistent.⁵ More precisely, there are profound differences of opinion within the government over how to respond to the challenge of migration without transgressing the constitutional and human rights principles of the new democratic state.

There is evidence of a hardening of attitudes and the restriction of all movement into the country.⁶ Legal immigration is down and South African employers complain of the difficulties of securing work permits for employees from abroad. Nearly a million people have been deported from the country since 1990, over 80% of them from Mozambique and many of them former refugees (table 1). A massive clampdown on unauthorised migration has seen long-term residents and even South African citizens swept into the dragnet. Officials charged with keeping the “flood of aliens” at bay have been accused recently of abusing their powers.⁷

This book focuses on what some would see as the more humane aspect of immigration policy since the election.

In 1994, the ANC-led government of national unity was faced with three cohorts of immigrants and migrants requiring a policy response:

- 200 000 foreign miners working on contract in South Africa’s mining industry;
- 300 000 or more Mozambican refugees living primarily in the rural areas near the Mozambican border;

	No	Percentage
Mozambique	738 218	82,1
Zimbabwe	102 335	11,4
Lesotho	33 178	3,7
Swaziland	10 587	1,2
Malawi	6 418	0,7
Other SADC	5 739	0,6
Total SADC	896 475	99,7
Other African	946	0,1
Other global	1 451	0,2
Total	898 872	100,0

Source: Department of Home Affairs (DHA)

- an unknown number of non-citizens of various immigration categories — legal and illegal — who had been in the country for lengths of time varying from decades to days.

The idea that an amnesty programme of legalisation would be an appropriate policy response for each of these categories seems to have developed gradually. Rather than having a single, all-inclusive, all-purpose amnesty, the government has offered three different amnesties, each one purportedly tailored to fit the particular circumstances of its “clients”. The first amnesty was concluded as long ago as March 1996. The third has yet to be implemented (as at October 1998). The pros and cons of this piecemeal approach are debated in this book.

The first, the so-called “miners’ amnesty”, was announced in October 1995. Since its formation in 1982, the National Union of Mineworkers (NUM) has been a vociferous advocate of the dismantling of the migrant labour system. Normalisation of the status of long-term contract workers would, in the union’s view, allow them to settle permanently in South Africa. The NUM therefore sought a once-off amnesty for all miners. In the ensuing agreement between the NUM and the government, the latter tied the amnesty to an earlier decision in 1994 to allow foreign miners with over 10 years’ residence to vote in the 1994 election.

The miners’ amnesty exempted miners from the requirement of having to have a permanent residence permit in terms of s28 of the Aliens Control Amendment Act of 1995. To qualify for this amnesty, miners had to prove that they had (a) been working on South African mines since before 1986; and had (b) voted in the 1994 South African national election. Acceptable forms of proof included a temporary voter’s card and proof from an employer (supplied in most cases by The Employment Bureau of Africa [Teba]), an affidavit from a leading figure in the applicant’s community or a letter from the NUM (if the applicant was a member). The latter option led some miners to think, incorrectly, that NUM membership was a prerequisite.⁸

The second amnesty, also known as the “SADC amnesty”, was announced in June 1996 and initially ran from 1 July 1996 to 30 September 1996. In response to a surge of applications towards the end of September, the closing date was extended by two months to 30 November 1996. In contrast to the miners’ amnesty, the SADC amnesty applied to people from throughout the region and was not confined to one economic sector. The qualifying conditions attached to the SADC amnesty were much more rigorous. Applicants had to prove (a) that they had been living in South Africa for at least five years; (b) that they were engaged in productive economic activity in the formal or informal sector, or were in a relationship with a South African partner or spouse, or had dependent children born or lawfully living in South Africa; and (c) that they had committed no criminal offence.

The proposed amnesty was at first opposed by the Department of Home

Affairs (DHA) on grounds which, if correct, were a genuine source of concern. The Department estimated that 600 000 to one million people would apply for the amnesty and that this would add another 12 million people to South Africa's population, owing to the multiplier effect of family reunification.⁹ The Department also felt that the amnesty would encourage further undocumented migration in the expectation of future amnesties. The Cabinet nonetheless approved the amnesty and charged the Department with its implementation.

The third amnesty was formally announced on 4 December 1996, the date on which the refugee status accorded to Mozambicans came to an end. We designate this the "refugee amnesty". Some estimates put the number of ex-refugees still resident in South Africa as high as 250 000-300 000, although the Department anticipates only 90 000 applications.¹⁰ These Mozambicans now no longer enjoy refugee status. If they did not or could not avail themselves of the SADC amnesty, they are at constant risk of arrest and deportation, despite the view expressed by the DHA that they are in the country legally, but need to obtain the necessary documents to regularise their stay.

Under the refugee amnesty, the DHA would (a) grant legal status to Mozambicans who meet certain, as yet unspecified, criteria; and (b) facilitate the voluntary return of those who wish to return to Mozambique. In the course of 1997, the Department said on several occasions that implementation was being delayed until the second amnesty was completed. Early in 1998, the Department agreed to proceed with implementation in partnership with various Non-Governmental Organisations.

THE NUMBERS

How many people have availed themselves of amnesty to date? In the case of the miners' amnesty, we estimate that about 104 000 miners were eligible to apply (based on the 10 years' service criterion), amounting to just over half of the total foreign workforce at the time. If the NUM's demand for a five-year amnesty period had been acceded to, the number of eligible miners would have jumped to over 150 000 — or three-quarters of the foreign workforce (table 2).

The DHA received 51 504 applications — an application rate of 49%, much lower than either the government or the NUM expected. To both, there seemed to be no good reason why all who were eligible should not avail themselves of the opportunity to acquire the right of permanent residence. The absolute numbers and the application rates varied considerably, with the greatest interest shown by Lesotho miners (a 55% application rate) and the least by Mozambican miners (a 38% application rate) (table 3).¹¹

TABLE 2: ELIGIBILITY FOR THE MINERS' AMNESTY

	No of Miners	No Eligible for 10-year Amnesty	Percentage Eligible	No Eligible for Five-year Amnesty	Percentage Eligible for Five-year Amnesty
Botswana	12 429	9 580	77,1	11 226	90,3
Lesotho	96 105	61 886	64,4	78 739	81,9
Mozambique	74 380	23 806	32,0	46 422	62,4
Swaziland	16 243	9 210	56,7	13 777	84,8
Total	199 157	104 483	52,5	150 614	75,6

TABLE 3: APPLICATIONS FOR MINERS' AMNESTY

	No of Miners	Applications	Percentage of Miners	Percentage of Eligible Miners
Botswana	12 429	3 886	31,3	40,6
Lesotho	96 105	34 017	35,4	55,0
Malawi		350		
Mozambique	74 380	9 159	12,3	38,5
Swaziland	16 243	4 092	25,2	44,4
Total	199 157	51 504	25,9	49,3

As expected, most miners applied in the provinces where they worked. More than half of the applications were lodged in the Free State, with significant numbers also applying in Gauteng, the Northern Province and North-West Province (table 4). These provinces, of course, are home to the major gold, coal and platinum mining operations.

The refusal rate on applications was very low, primarily because the mines have an unparalleled computerised data base, housed at Teba, which contains detailed work and service records for each miner. The Independent Electoral Commission (IEC) drew on this data base during the 1994 election and it was used again during the amnesty.

The second amnesty was far more problematic. Table 5 shows that the number of applications received was far lower than the predictions emanat-

TABLE 4: MINERS' AMNESTY APPLICATIONS BY PROVINCE

	Free State	Gauteng	Northern	North West	Mpumalanga	Other
Botswana	559	317	2 377	623	10	
Lesotho	20 003	4 719	3 045	4 173	1 872	5
Malawi	0	261	7	74	6	2
Mozambique	3 611	2 274	1 178	1 807	284	5
Swaziland	1 351	568	1 077	592	504	
Total	25 524	8 139	7 884	7 269	2 676	12

Source: Teba

TABLE 5: SADC AMNESTY APPLICATIONS

	Gauteng	KZN	Mpum	NP	NC	NW	EC	Free State	WC	Total	%
Angola	124	2	5	4	1	5	0	0	4	145	0,1
Botswana	1 365	5	67	84	5	100	0	0	0	1 626	0,8
Lesotho	11 105	299	1 283	58	11	671	215	1 997	8	15 647	7,8
Malawi	6 364	614	269	116	12	320	12	27	10	7 744	3,8
Mauritius	34	19	0	3	0	46	13	3	4	122	0,1
Mozambique	75 696	1 818	32 978	28 061	11	7 590	37	461	23	146 675	72,8
Namibia	21	4	0	4	41	7	1	1	12	91	0
Swaziland	1 481	128	1 167	23	0	54	9	32	4	2 898	1,4
Tanzania	97	42	18	2	0	40	8	0	0	207	0,1
Zambia	856	29	2	11	0	83	59	2	0	1 042	0,5
Zimbabwe	22 432	92	497	1 403	3	876	42	34	26	25 405	12,6
Total	119 575	3 052	36 286	29 769	84	9 792	396	2 557	91	201 602	
%	59,3	1,5	18	14,8	0	4,8	0,2	1,2	0,1	100	

EC = Eastern Cape; KZN = Kwazulu-Natal; Mpum = Mpumalanga; NP = Northern Province; NC = Northern Cape; NW = North-West Province; WC = Western Cape

Source: DHA

ing from official sources. The DHA received 201 602 applications in total, 72% of them from Mozambicans, followed by Basothos (12%) and Zimbabweans (7%). Nearly 60% of the applications were received in Gauteng, followed by Mpumalanga (18%) and Northern Province (14,8%).

These figures can lead to one conclusion only: the majority of applicants were not “illegal immigrants” or “illegal aliens” at all, but probably Mozambican refugees who came to South Africa in the 1980s.

The other notable feature of the overall pattern of applications is how few applications were received from citizens of most other SADC countries. In the early 1990s, the previous South African government claimed that between one and two million “illegal aliens” were in the country. The amnesty application figures call this figure into question. DHA data show that in 1996 there were 46 179 people in South Africa who had entered the country lawfully before 1991 and had not left. The amnesty figures are more consistent with this information than they are with the inflated figures of apartheid and post-apartheid scaremongers.

The DHA approved 124 073 applications (61,5%) and rejected 77 529 (38,5%). In absolute terms, rejections were highest for Mozambicans (61 155) and Basotho (7 454). Rejection rates were also highest for applications from citizens of these two countries (at 41,7% and 47,6% respectively). The rejection rate for other countries was much lower (table 6), with the exception of Tanzania.

Given the stringent conditions attached to this amnesty and conventional wisdom about undocumented migrants, the overall refusal rate might

have been higher. Instead, the figures seem to suggest that many applicants are relatively settled in South Africa, have been here for an extended period and, crucially, are able to sustain themselves economically.

On the other hand, it is not clear why so many Mozambican applications were refused. Fraudulent applications and ineligibility must account for a portion but the figures also raise questions about the decision-making criteria. In particular, if (as indicated) a large number of Mozambican applicants were ex-refugees, questions arise about their ability to provide the requisite documentation, particularly as regards length of residence in the country and gainful employment.

The other issue of note is that refusal rates varied significantly from province to province. In Kwazulu-Natal the refusal rate was virtually zero. In Gauteng, by contrast, it was the highest. Was this the result of administrative bias or other factors? Were the criteria applied consistently everywhere?

The likely application rates for the third amnesty are very hard to predict. Certainly the numbers will be higher if the amnesty is properly designed and implemented. But the previous two amnesties have confounded the prophecies of most observers. Many expected that the application rates would be a lot higher than 49% for the first amnesty.

In the case of the second amnesty, no one is sure what the eligible pool actually was. However, the fact that only about 200 000 applied (as opposed to the one million projected by the DHA) suggests that it is all too easy to infer numbers on the basis of untested assumptions about migrant numbers and behaviours.

By asking the migrants themselves about their intentions, the research reported in this book challenges these assumptions and helps explain why forecasts from official sources were so wide off the mark.

TABLE 6: SADC AMNESTY EXEMPTIONS GRANTED						
	Received	% of total	No Approved	Percentage Approved	No Rejected	Percentage Rejected
Angola	145	0,1	93	64,1	52	35,9
Botswana	1 626	0,8	1 321	81,2	305	18,8
Lesotho	15 647	7,8	8 193	52,4	7 454	47,6
Malawi	7 744	3,8	5 913	76,4	1 831	23,6
Mauritius	122	0,1	107	87,7	15	12,3
Mozambique	146 675	72,8	85 520	58,3	61 155	41,7
Namibia	91	0,1	79	86,8	12	13,2
Swaziland	2 898	1,4	2 015	69,5	883	30,5
Tanzania	207	0,1	108	52,2	99	47,8
Zambia	1 042	0,5	822	78,9	220	21,1
Zimbabwe	25 405	12,6	19 902	78,3	5 503	21,7
Total	201 602	100,0	124 073	61,5	77 529	38,5

Source: DHA

THE IMPLICATIONS

In this book we aim to do four things:

- explain the background and rationale for the amnesty offers in the context both of international comparative experience with amnesties and the particular circumstances of post-apartheid South Africa and southern Africa;
- report the findings of Southern African Migration Project (SAMP) research on migrant intentions and behaviours, including attitudes towards and knowledge of the amnesties, in order to explain the actual rates of participation;
- examine the process of implementation of the first and second amnesties, and highlight conceptual, logistical and practical problems that arose in implementation; and
- make recommendations, based on that experience, concerning the implementation of the third amnesty and migration policy in general.

NOTES

- 1 Crush, J & Peberdy, S "Rooted in racism: The origins of the Aliens Control Act" in Crush, J (ed) *Beyond Control: Immigration and Human Rights in a Democratic South Africa* (Cape Town, 1998), pp 18-36
- 2 Crush, J, Jeeves, A & Yudelman, D *South Africa's Labour Empire: A History of Black Migrancy to the Gold Mines* (Cape Town, 1991)
- 3 Cross-border migration to and from South Africa has been going on for decades. At the time of the 1951 population census, for example, the black population included 605 000 people born outside South Africa: 161 240 born in Mozambique, 63 655 born in Malawi, 51 017 born in Botswana, 42 914 born in Swaziland, and 7 127 born in Tanzania. Their numbers decreased in the 1960s and 1970s as harsh apartheid laws made South Africa a less promising destination for migrants.
- 4 Johnson, P & Martin, D *Apartheid Terrorism: The Destabilisation Report* (London, 1989); De la Hunt, L A "Refugees and immigration law in South Africa" in Crush, J *Beyond Control*, pp 123-48
- 5 Reitzes, M "Divided on the Demon: Immigration Policy Since the Election" Johannesburg: Centre for Policy Studies, 1996
- 6 Minnaar, A & Hough, M *Who Goes There? Perspectives on Clandestine Migration and Illegal Aliens in South Africa* (Pretoria, 1996)
- 7 Human Rights Watch *Prohibited Persons: Abuse of Undocumented Migrants, Asylum Seekers and Refugees in South Africa* (New York, 1998)
- 8 Interview with Roger Rowett, Teba, April 1996
- 9 "Millions could get residence in SA" *The Citizen* 15 June 1996; James, W & Crush, J "Humane policy under threat" *Democracy in Action* 10(3), 1996

- 10 The former figure includes dependants; the latter only primary applicants (household heads).
- 11 The lower Mozambican eligibility rate (32%) is at first glance puzzling, given the long history of mine migration to South Africa. The figures may reflect Mozambicans' continued popularity with employers and the fact that many mines prefer to fill vacancies with them. Another puzzle is the 350 Malawians who applied in spite of the fact that officially there are no Malawians on the mines. It is possible that they had married locally or had obtained identity documents from the former homelands.

PART 1:
THE RATIONALE
FOR AMNESTY

CHAPTER 1

THE INTERNATIONAL EXPERIENCE OF AMNESTY

BY DEMETRIOS PAPADEMETRIOU

The arguments in the amnesty debate in South Africa recall other contexts. The same arguments were heard in Washington in the mid-1980s. The same arguments are heard today in Greece and other countries in Europe which are engaged in legalisation programmes. Thus, it is possible to draw lessons about legalisation programmes in general.¹ These lessons may, in turn, be of considerable assistance in southern Africa.

About 20 countries have engaged in amnesty programmes in the last 20 to 25 years, many of them in multiple, successive programmes.² Australia has had three in quick succession — in 1978, 1979 and 1980. After 1980, it

passed legislation that precluded any future legalisation programmes. Argentina has had four programmes, the first in the late 1940s. Italy has had three or, more accurately, an ongoing programme since 1988. It is currently engaged in the last phase. France did a series in the 1970s through until 1981. The United States (US) had only one such programme, in 1986. Everyone who subscribed to it swore that there would never be another.

Most countries, regardless of whether they formally announce a programme or not, engage in fairly significant ongoing legalisation programmes. In other words, they change the status of large numbers of individuals on a case-by-case basis all the time. Sometimes the judiciary does it instead of the government. In the US, for example, something in the order of 10 000 to 15 000 people per annum gain legal status through the courts.

The US programme in 1986 was a massive undertaking.³ Critics commented that, in a single programme, the US legalised more people than all the other countries put together had ever legalised through their multiple programmes. The US had four simultaneous programmes: one aimed at agricultural workers (1,3 million applications); one for the general population (1,7 million); a smaller one for Haitians, Cubans and East Europeans; and an idiosyncratic one. All together, about 3,1 million people applied. Of these, about 2,6 million (90%) received legal permanent residence or a status that allowed them, after a further 18 months, to be legal permanent residents.⁴

There are a number of reasons why a country like South Africa might legalise its unauthorised population.

- *To start with a clean slate.* Starting all over has the advantage of allowing one to introduce new immigration legislation and immigration control measures. Amnesty should be an opportunity to re-evaluate one's entire approach to immigration and to introduce a new immigration system, based on the knowledge that has been gained about the reasons for immigration.
- *To reduce the unauthorised population.* Amnesties are needed because international experience shows that one cannot successfully reduce the size of the unauthorised population through enforcement. People cannot be rounded up and thrown out of the country without gross violations of civil liberties being committed. The complexity and diversity of countries such as the US or South Africa increase the likelihood of gross violations of human rights exponentially. Besides violating domestic constitutional guarantees, draconian expulsions earn a country a black mark in the international community. South Africa has only recently succeeded in shaking off its international pariah status and would not want to be seen in that light again.
- *To reshape the labour market.* Opponents of amnesty claim that it entrenches unemployment by permanently depriving citizens of jobs. In fact, the expulsion alternative (even if it were feasible or possible)

can cause extraordinary disruptions in the low-wage sectors in which the concentration of immigrants is the greatest. If the country has 40% unemployment and one million unauthorised people are removed, certain critics maintain that there would be one million new jobs for South Africans. However, one must not assume that “a worker is a worker is a worker”, that jobs that require few skills and little education have no entry requirements.

- *To recognise a breakdown of public policy.* Amnesties often arise out of a recognition that there has been a public policy breakdown in the area of immigration. Rarely is a large unauthorised population the result of a single mistake. Rather, it occurs because government has paid too little attention for a relatively long period of time, or because a country has had policies that created relationships between employers and foreign workers that are no longer acceptable, as in South Africa’s mining and agricultural sectors.
- *To capture the underground economy.* Amnesties afford undocumented workers rights and a chance to exercise those rights. They also reduce the size of the underground economy and assist locals working side by side with foreign workers. Thus they can help to raise working conditions for everyone.

The international experience suggests several lessons for South Africa.

- *Provide good public education and public information.* Education and information are critical if a government really wants to accomplish the goals of an amnesty — that is, to identify all eligible people and maximise their access to the programme. An amnesty programme should not force people into hiding; nor should it set out to ensure that as few people as possible apply. Rather, an amnesty should reflect government’s sincere effort to find those who are eligible, and to create the optimum conditions for them to enter the programme and change their status. If it wants to attract all the people that are eligible statutorily, government has to invest in public education and information.
- *Be flexible about the rules.* In most countries one of two things has happened: either they have been flexible enough to clarify and modify the programme as necessary, or they have found themselves facing a second legalisation programme a year or two later. In other words, during the course of a legalisation programme, unexpected things occur. A country either adapts its programme accordingly or comes back and tries to do it better next time. It is possible, for example, to overlook a particular community or type of person. In Canada, in 1973, they forgot about foreign students. When they remembered this group, they had an avalanche of applications. In the US, there were regular meetings over an 18-month period between

the government and the advocacy community (which had organised itself into “qualified dedicated agencies”). These agencies offered services to immigrants and the government. Through their input, the general legalisation programme underwent many adaptations. As a result, the US is virtually the only country that can claim that it captured a number (1,7 million) that was within the projected range (1,6 to 2,4 million). Two months before the end of the programme, the number was only 1,1 million. Adaptations produced a cascade of applications and a far larger number was captured.

- *Do not play the numbers game.* The numbers game is very popular in South Africa, as elsewhere. In an earlier amnesty programme in the US, in the 1970s, a commissioner of immigration quadrupled his agency budget by stating that there were 12 million “illegals” in the US. It is difficult to contest such a figure without months of calculations. A well-planned and well-executed amnesty will reveal more about the real numbers than any speculative estimates.
- *Engage neighbouring countries.* Amnesties do not impact on people and communities in the country offering the amnesty alone. In South Africa, as elsewhere, regional, bilateral relationships are important. Germany has to live with its neighbours to the east, so it accommodates Poles and Czechs. The US has to live with its neighbours to the south, especially Mexico. Countries contemplating amnesties need to engage and consult with their neighbours on the implications for both the sending and receiving areas.
- *Learn from the amnestied population.* Researchers and those in government should invest resources in learning about the amnesty population. For legislation to be effective it is necessary for the legislature to understand its subjects, otherwise it will simply repeat past mistakes. The best vehicle for understanding the unauthorised population is the legal population. Studying immigrant communities can bring to light a great deal of information about unauthorised migration. Legal and illegal immigrants are part of a single community. Very often they are part of the same household.

NOTES

- 1 On the US experience see Donato, K, Durand J & Massey, D “Stemming the tide? Assessing the deterrent effects of the Immigration Reform and Control Act” *Demography* 29 (1992), pp 139-58; Baker, S “The ‘amnesty’ aftermath: Current policy issues stemming from the legalisation programs of the 1986 Immigration Reform and Control Act” *International Migration Review* 31 (1997), pp 5-27
- 2 Meissner, D, Papademetriou, D & North, D *Legalisation of Undocumented Aliens: Lessons from Other Countries* (Washington, 1986)

- 3 Baker, S *The Cautious Welcome: The Legalisation Programs of the Immigration Reform and Control Act* (Washington, 1990); Bean, F, Edmonston, B & Passel, J (eds) *Undocumented Migration to the United States: ICRA and the Experience of the 1980s* (Washington, 1990)
- 4 Meissner, D & Papademetriou, D *The Legalisation Countdown* (Washington, 1988)

CHAPTER 2

QUESTIONS OF AMNESTY

BY JONATHAN CRUSH

The issue of amnesty, like the broader issue of unauthorised or undocumented migration that frames it, is controversial. Yet it should be possible to conduct a fruitful and constructive dialogue on this complex and challenging issue. Government faces difficult choices as it tries to balance competing interests. By examining (a) the rationale and objectives of the recent amnesties, (b) their progress and the problems in their implementation, and (c) their intended and actual consequences, we hope to come up with recommendations that will assist policy makers in South Africa and the Southern African Development Community (SADC) to answer the question: where does migration go from here?

The intention of the Southern African Migration Project (SAMP) is not to be gratuitously critical of the amnesties or to advance a particular agenda vis-a-vis the question of amnesty and cross-border migration. Indeed, the government is to be commended for taking a bold and progressive initiative. SAMP's objective is, rather, to stimulate debate on the effectiveness and probable impact of the amnesty on South Africa and its neighbouring states. Several questions are pertinent at the outset of this debate.

- What is the purpose and rationale of immigration amnesties in general and the South African amnesties in particular?
- What was right or wrong about the way in which the amnesty process was planned and implemented? How successful was it in achieving its stated objectives? What are its implications and consequences?
- What should be done about unauthorised migration and immigration after the amnesty process is completed?

Two points need to be made. First, South Africa's offer of amnesties to citizens of neighbouring countries is not new. Migrants and immigrants from neighbouring countries have been moving to and from South Africa for decades. At various times, government has felt it expedient to regularise the status of those who came as migrants and did not go home. In July 1987, for example, the then Minister of Home Affairs, JCG Botha, announced two permanent residence amnesties: (a) for black citizens of SADC states who entered South Africa before 1 July 1963; and (b) for "alien black wives" married to South African citizens who entered South Africa before 1 July 1986. More recently, in August 1995, the current Minister of Home Affairs announced that "in highly exceptional cases which contain merit", citizens of SADC states who entered South Africa between 30 June 1963 and 1 July 1986 would receive permanent residence. No figures are available on applications for these earlier amnesties.

Second, with regard to the post-1994 amnesties under discussion, it should be emphasized that there have been three, somewhat uncoordinated, amnesties, not one. They have differed in respect of their rationale, objectives and impact. In addition to the general question of how and why the government arrived at the three amnesties, each amnesty itself raises further questions. With regard to the miners' amnesty, for example, why did only 49% of those who were eligible actually apply? What was the impact of a 10-year as opposed to a five-year eligibility requirement? Did miners who qualified for the amnesty intend to relocate permanently to South Africa? Could anything have been done retrospectively for the thousands of long-serving miners who were retrenched in the early 1990s?

With regard to the SADC amnesty, why did the DHA get the numbers so wrong? Was the pool of potential applicants much smaller than expected, or were there other reasons why people did not apply in the numbers anticipated? If many eligible people did not apply, what does this say about the

implementation process and people's attitudes, awareness and perceptions of the amnesty?

While no government wants to set up the expectation that it will, as a matter of course, grant periodic amnesties, the option of doing so for particular strategic reasons must always remain open.

Amnesties generally have one or a combination of objectives:

- to pay off a debt, real or perceived, to people or countries who are owed something;
- to right some act of injustice or historical wrong, real or perceived;
- to allow the state to improve its information base on the volume and dimensions of undocumented migration and residence;
- as a policy response to stop or stem unauthorised immigration.

Instead of expelling unauthorised residents, the argument goes, their status should be legalised so that they can openly participate in and contribute to the economy and society. In this sense, the amnesty regularises a *de facto* situation.

An altogether more cynical view is that the objective is to help the state to identify and expel "illegal immigrants" who apply for amnesty. Obviously, no state would ever publicly state the latter as its objective. There are, however, instances in the past of precisely this. In the 1970s the apartheid government offered an amnesty to female domestic workers who were in South Africa without proper documentation. Some 2 000 applied and, having thus identified themselves, were arrested and deported.

Do the general objectives above apply to South Africa? The question is answered in the form of a series of hypotheses.

Hypothesis 1: The amnesties were offered to right the historical wrongs and injustice of apartheid. The historical injustice in this case is twofold: (a) the apartheid government's racist immigration policy and laws by which only whites could qualify as immigrants; and (b) the migrant labour system to the mines which prevented contract workers, even if they spent most of their lives in South Africa, from ever bringing their dependants with them and settling in the country.

Between 1946 and 1986, over one million white immigrants landed in South Africa. No black immigrants gained entry during that same 40-year period, at least not officially.

Numerous studies have shown that hundreds of thousands of men and women from neighbouring states have worked as migrants in South Africa's mines, industries and on farms since the mid-19th century.¹ Most went home but some remained, having married locally or acquired false papers. Amnesty therefore offered these *de facto* immigrants — apartheid era black immigrants — a chance to regularise their status.

Several questions are raised by this hypothesis.

Why, if it was designed to right an apartheid wrong, was this amnesty

confined to SADC-country citizens? Surely any person who entered illegally during the apartheid era should have been entitled to this concession?

Why was the amnesty for contract workers confined to miners? Other sectors, such as farming and domestic service, also utilised long-term migrants from other countries. Why were they denied a similar opportunity?

Hypothesis 2: The amnesties were designed to repay a moral debt to South Africa's neighbouring states. The amnesty could be seen as (a) reimbursement to those countries for their support in the struggle against apartheid; and (b) by extension, reparation for the devastation suffered by countries like Mozambique as a result of apartheid destabilisation.

Several questions arise.

Does South Africa in fact owe its neighbours a debt, moral or otherwise, and should such a debt be the basis for policy making on immigration? If we accept that there is a debt and the amnesty is sufficient payment, then we must also ask what this debt consists of and whether amnesty is sufficient, adequate or full payment.

Common sense and good neighbourliness demand that the debt and the means of payment be the subject of negotiation and agreement. However, South Africa has unilaterally decided what the debt consists of and how it will be repaid. Do the surrounding countries acknowledge the amnesty as sufficient or even appropriate payment of the debt? Should they not be consulted on the nature and terms of repayment of the debt? How does permanent residence given to Zimbabweans who have left Zimbabwe and settled for good in South Africa benefit Zimbabwe? How does offering some ex-Mozambican victims of apartheid atrocities permanent residence compensate other victims who remain behind? This is rather like the United States rewarding South Africans for scrapping apartheid by giving American citizenship to all ex-South Africans living in the States. How this would benefit South Africa is unclear.

Hypothesis 3: The amnesty was implemented to allow the government to acquire better information and statistics on the dimensions and impact of past undocumented migration. Such an objective would require a very systematic process of monitoring and information gathering, such as has not happened with the South African amnesties. This is undoubtedly a lost opportunity. A well-planned and administered amnesty can provide very valuable data.

Hypothesis 4: The amnesty was implemented as a measure to halt further migration and to deal with unauthorised immigration by bringing the phenomenon into the open. Was this the motive? And even if it wasn't, what, if any, impact will the amnesties have on the volume of cross-border movement to South Africa? The amnesties differentiate between longer-term and recent entrants to the country. Not all amnesties do this. Internationally, not all amnesties have had a distant cut-off date. Indeed, there is a school of thought that says successful amnesties should have as close a cut-off date as possible to the

present. By imposing a 10-year and five-year residence requirement the South African government chose to offer a far more restricted and conditional amnesty targeted at a subset of immigrants and migrants. The Minister has made it clear that a different strategy will be adopted for post-1991 immigrants: seek out and deport.

Hypothesis 5: The amnesty was designed to allow the government to identify unauthorised immigrants and to deport those who did not meet the stringent standards of eligibility. Several questions come to mind. Did people think or suspect that this was an objective of the DHA and, if they did, how did this impact on application rates? What assurances, if any, were people given that information they supplied to the government would not be used for other purposes? If no assurances were given, why not? International experience suggests that such guarantees are a basic feature of successful amnesties. What does the DHA intend to do with information collected during the amnesty process, in particular information concerning those whose applications were rejected?

What do we need to think about in practical policy terms?

- *Consultation.* How much public consultation and debate preceded the implementation of the amnesties? Public consultation is not only the *sine qua non* of a functioning democracy, but a public debate would have helped to raise public awareness of the objectives of the various amnesties. There are obviously very good and sound reasons why the South African government, from its purview, went ahead with the amnesties. But it is striking how little media coverage and public debate there was about the desirability of amnesty, how little public education there was about its benefits for South Africa, and how limited the expert input was on how to design and implement an effective amnesty. One might also speculate about how much consultation there was on the issue among the various interested parties, particularly with the migrants themselves and their home-country governments.
- *Implementation.* We need a better understanding of the implementation of the amnesties. What public education and dissemination strategies were adopted? What proportion of those who were objectively eligible for the amnesties knew about them or applied? How accessible were the amnesties, geographically (in terms of access to offices) and informationally? What measures were adopted to educate people and allay their suspicions about the government's objectives? What part did corruption play in making applications for amnesty? Did people have sufficient time in which to gather the requisite information? Was the information required too onerous or difficult to produce? What procedure was followed to evaluate the applications that were received? Why was the rejection rate so high?

Why did it vary so much from one province to another? Are people entitled to reasons for the rejection of applications? Can they appeal against the decision? What will happen to the information that they provided? Will it be used by the police to expel them from the country?

- *Impact.* There was an erroneous assumption in official circles that the amnesties would increase the population of South Africa by up to one million people and that this would in turn, through family reunification, increase the total population of South Africa by 12 to 20 million. This would have a major negative impact on South Africa's economy and social services. Of course, the positive economic impact of regularising the status of people who are already in South Africa is overlooked in this argument. There are several fallacious demographic assumptions in projections based on an inadequate understanding of the dynamics of regional migration. Ultimately, we can only assess what the impact of the amnesty is for South Africa and neighbouring states if we look at the migration intentions of those who actually applied.

Of the migrants who applied for amnesty and have received permanent residence how many actually intend to become permanent residents of South Africa? What proportion of those would become citizens? Are they intending to cut their links with their home countries?

The research reported in this publication suggests that the South African amnesties offered permanent immigration status to people who are not and do not see themselves as immigrants. This raises the issue of the appropriateness of a "First World" type of amnesty for this particular setting. Would it not have been more appropriate for people to be given a range of amnesty options? As it was they had only one — to become permanent residents or leave. Many might have been content with temporary residence permits, the opportunity to legalise their status and an end to harassment and deportation.

- *Re-opening the amnesties.* Should the amnesties be reopened? There would seem to be little inclination within the government to do this. The National Union of Mineworkers' position on this issue is of particular interest. They question the apparent inequity of a 10-year qualifying period for miners and a five-year period for other SADC citizens. Another issue is why the amnesty was only offered to SADC citizens. There are people who have been in the country, some legally, for more than five years on temporary permits. Shouldn't they too have been allowed to apply? And then there is the question of whether the SADC amnesty was adequately implemented and whether it in fact reached everyone who was eligible?

Far more controversial is the issue of whether there should be some kind of amnesty — perhaps not a permanent residence amnesty — for people who came to the country after 1991 and who are in some form of gainful economic activity and would like to regularise their status.

- *The future.* What happens after the amnesty? It is tempting to focus on the issue of people illegally in South Africa who came since 1991 and think about ways to get rid of them. It is necessary to stand back and to look at the broader picture of cross-border migration in Southern Africa. The Draft Green Paper on International Migration, issued by the Department of Home Affairs, is a useful point of departure.

NOTE

- 1 For reviews see Crush, J “Cheap gold: Mine labour in southern Africa” in Cohen, R (ed) *The Cambridge Survey of World Migration* (Cambridge, 1995); and “Migrations past” in McDonald, D (ed) *On Borders* (Cape Town, forthcoming).

CHAPTER 3

THE OBJECTIVES OF AMNESTY

BY DESMOND LOCKEY

Two amnesty programmes have taken place since 1994 and a third will soon be implemented. I will concentrate on their objectives. First, the miners' amnesty. In terms of the Electoral Act of 1993, the franchise was extended to migrant workers who entered South Africa legally before the threshold of 13 June 1986 and were "ordinarily resident" in the country. Many miners fitted this description and were issued with voter cards. They were also exempted from the requirement of possessing a permanent or temporary residence permit under the Aliens Control Act of 1991 and were entitled to apply for South African identity documents. Not many did this at the time.

After representations from the National Union of Mineworkers, the government decided to allow all miners who participated in the 1994 elections to apply for identity documents. The amnesty aimed to give eligible migrant miners permanent resident status in South Africa. Beyond that, the aim was to assimilate them into South African society and give them an opportunity to apply for full citizenship after five years, with all the additional benefits and commitments that this implies.

Why did we not extend immediate citizenship to this category of migrants? The reason was that a number of countries do not permit dual citizenship. If South Africa bestowed citizenship on contract miners, they could well have lost the rights and benefits they were entitled to in their home countries. The decision about whether to become a fully fledged South African was left to the individual miner.

The second amnesty was designed for undocumented migrants (people in contravention of the Aliens Control Act) in South Africa and was far more controversial. During the first 18 months of the Government of National Unity, the issue of illegal immigration became very pertinent and required urgent political attention. A Cabinet committee was set up to look into the phenomenon and to assess its impact on government programmes and the employment situation in the country.

At the request of President Joaquim Chissano of Mozambique, the Cabinet, in August 1995, considered a possible moratorium on the large-scale repatriation of undocumented Mozambicans. The Department of Home Affairs (DHA) was asked to investigate the provision of an amnesty for long-term illegal residents.

The Department reported on the negative and positive implications of amnesty. Negative factors included growing resentment against undocumented migrants. They were perceived as placing a burden on hard-pressed social services. According to the Department, they were regularly involved in bribery and corruption and the falsification of documents. They were also reputedly involved in crime, the smuggling of firearms, drug trafficking and poaching. They were blamed for the rapid spread of contagious diseases. They supposedly had a deleterious effect on the employment situation in the country.

It was felt that a conditional and limited amnesty would:

- promote good relations with neighbouring countries;
- show the South African government's appreciation for the support of its neighbours in bringing about democracy in South Africa;
- clear the slate of large numbers of long-term undocumented migrants and, in doing so, ease the DHA's backlog and allow it to address the continuous influx of economic and undocumented migrants from the region, Africa as a whole and Asia;
- encourage Southern African Development Community (SADC)

countries to take positive steps to prevent a further influx as a pay-back for South Africa's concession to grant amnesty;

- provide a more accurate indicator of the actual number of immigrants unlawfully in the country.

On 29 November 1995, Cabinet approved a one-time amnesty in terms of s28 of the Aliens Control Act of 1991. During the first six months of 1996 various meetings took place in which the issue of amnesty was discussed, conditions developed and the pros and cons weighed up.

In a briefing to the Portfolio Committee in 1996, the Deputy Director General of Home Affairs said that about 600 000 people could qualify for the amnesty. Persons granted amnesty would qualify for family reunification. Extended families of up to 20 persons per migrant would become resident and South Africa consequently could expect up to 12 million new immigrants.

The Portfolio Committee did not agree with this scenario. We supported the amnesty process for the following reasons.

- Amnesty was an opportunity to address the historical injustices and imbalances created by the apartheid immigration system which did not permit immigration of Africans prior to 1986.
- Amnesty was a starting point for the fundamental transformation of the immigration regime in this country from a system founded on control, exclusion and the expulsion of Africans into a system that could contribute towards managing migration in South Africa's own interests, and which would take into account the role of South Africa in the SADC community and the region's collective economic interests.
- Amnesty was an opportunity to resolve some of the damage caused by destabilisation and the war sponsored by the former government in the 1980s.
- Amnesty merely regularised the residence status of persons already in the country, and would not result in a considerable influx of people.
- The large-scale deportation of economic migrants is unsustainable and impracticable in the long term and does not contribute to a workable and durable solution to the problem of economic migration into South Africa.

On 1 July 1996, the government announced a general amnesty to SADC citizens in terms of which permanent residence in South Africa could be acquired legally by migrants who met the requirements.

Cabinet has since decided that a third amnesty, for Mozambican refugees, is necessary. When the general amnesty process for SADC citizens is over, permanent residence status will also be granted to former Mozambican refugees who did not qualify or apply for the SADC amnesty. The amnesty decision came after a request from the executive committee of the United Nations High Commissioner for Refugees and was aimed partly at refugees who cannot be expected to leave South Africa as a country of asylum.

The amnesty process was the first step in addressing fundamental shortcomings in the immigration system that was inherited from the apartheid government. The transformation of the immigration system to meet the standards of our bill of rights presents policy makers with a number of challenges.

- There has been an increase in anti-immigration sentiments throughout the world and South Africa is no exception. Xenophobia has become a pertinent factor in formulating immigration policy. The challenge is to change the culture of xenophobia that is a product of decades of isolation.
- Immigrants must be attracted who can enhance and build the South African economy. In attracting skills, the impact on SADC neighbours of importing scarce skills must be considered, since there has been a significant brain drain from the region into South Africa.
- The immigration system must be transformed to meet the standards of an open, democratic society. There needs to be regulated access to South Africa for SADC migrants, to the extent that it is sustainable. The issue of flexible labour quotas should be looked at carefully. Unauthorised migration, as it occurs at present, is not in anyone's interest. Migrants are exploited and subjected to inhumane working conditions. Employers undercut wages and this increases the tension between migrants and South Africans. The South African government also has a duty to protect its own people, especially the unemployed and the poor.

These issues present a difficult challenge, but one that South Africa has to face in its efforts to develop a workable and solution-oriented immigration policy.

PART 2:
IMPLEMENTING
THE AMNESTY

CHAPTER 4

THE VIEW FROM HOME AFFAIRS

BY EDWIN MAHLUTSHANA

Putting into effect government decisions to grant certain categories of people exemptions under s28(2) of the Aliens Control Act is nothing new to the Department of Home Affairs. The Southern African Development Community (SADC) amnesty is the fourth general exemption granted in recent times. The presence of illegal immigrants in South Africa is a problem that has existed for many decades and, like previous governments, the present government is constantly faced with the dilemma of how to handle the migration problem.

What do you do with a person who has been living in your country for five to 10 years or longer, has worked and contributed to the building of the

country, is married (whether by customary or civil ceremony) to a South African citizen and has children born here? It is against this background that the government decided in June 1996 that citizens of the SADC countries who satisfied certain criteria would be exempted from the provisions of the Aliens Control Act. Such exemption could lead to citizenship after a further five years' residence in South Africa. The Department was charged with carrying out the government's decision to the best of its ability.

This was not a blanket amnesty. Applicants had to provide evidence of residence in South Africa, and that they had been engaged in "productive economy activity" or had a relationship with a South African spouse or partner or had dependent children born in or residing lawfully in the country. In addition, applicants had to have no criminal record. Providing the requisite proof had the potential to create serious problems. There were difficulties in getting applicants to understand the requirements and to produce the necessary documentation, but the Department went out of its way to facilitate the process and advised its officers to be as cooperative as possible.

The fact that many applicants were in the country illegally made it very difficult for them to provide the requisite evidence. Many had never acquired proper documentation and could provide no documentary proof of when they had entered the country. How do you prove that you have been in the country since 1 July 1991 if you crossed the border illegally, lost your papers or threw them away to avoid detection?

Proving engagement in "productive economic activity" was also difficult. Any employer who vouched that the applicant had worked for him/her would also be acknowledging that he/she had employed someone in contravention of the Aliens Control Act. The applicant would place the employer in an invidious position if he/she furnished information about where he/she was employed. Enquiries were received from employers, particularly farmers and employers of domestic workers. Openness between employers and the Department was encouraged and was backed up by publicity assuring employers that they need not fear prosecution.

The Department decided to accept sworn declarations, provided that corroboration from another person, also by affidavit, was provided. Predictably, this system was open to fraud and abuse. The Department adopted a pragmatic approach with burden of proof on "the balance of probabilities".

For the programme to succeed, planning was of the utmost importance. This entailed identifying and finding solutions to possible problems, and setting up mechanisms. The process had to be closely monitored. Comments, complaints and criticism had to be acted on. This led to an extension of the period during which applications could be made.

In particular, the perceptions of South African citizens and the target group of qualifying SADC citizens had to be addressed. The major obstacle in any process of amnesty is winning the confidence of the target group. They

might justifiably have seen the amnesty as a ploy to identify them so that they could be apprehended and repatriated. Organisations linked with some SADC countries, especially Mozambique, kept enquiring from DHA offices how such fears could be allayed. We held sessions with these enquirers and did our best to clear up misperceptions. We also had to authorise the issue of temporary residence permits, protecting those who had applied against arrest and deportation.

Immigration officials had to adjust their attitude to ensure a positive approach to the programme. All officials were urged to provide as much accessibility as possible. Officers in decentralised offices were trained in the processing of applications. Arrangements were made in all offices to ensure that, as far as possible, the services of translators were available. A director from head office visited all regions with a team to implement on-the-spot solutions, to ensure uniformity, and to direct proposals for improvement and facilitation to head office.

Another aspect of planning was the dissemination of information regarding the conditions of amnesty, where to apply, and what documents to produce. Information was made available through the electronic media and the press, and pamphlets and posters in different languages were distributed in schools and squatter camps.

Circulars containing full details of the procedure to be followed were compiled and distributed to the offices of the Department. Television and radio interviews were conducted with regional directors to explain the procedure and to explain how the Cabinet arrived at its decision.

As anticipated, eligible persons who could have applied were reluctant to come forward at first, suspecting a trap had been laid. As the initial deadline of 30 September approached, the response grew. Towards the closing date queues formed overnight, some people sleeping outside the offices. The closing date was extended to 30 November. Office hours were extended and offices remained open on Saturday mornings to accommodate applicants. The Department appointed casual workers to sift through and process the applications, while trained staff attended to the final checking and interviews with applicants, many of whom had to be assisted with filling out the forms. Applications were dealt with regionally, screened by committees and approved or rejected by senior personnel. To ensure that applications were properly considered and dealt with according to the directives, random spot checks were made. Any person whose application had been rejected was given the opportunity to appeal against the decision. Such appeals were considered by members of staff other than those who had originally processed the application, or at head office.

Projects of this nature often give rise to rumours of irregularities on the part of the officials. It is a problem to identify the officials involved in such irregularities because there is usually very little co-operation from the "victims".

The Department is satisfied that all applications that could have been submitted before 30 November 1996 were received. An estimated 500 000 to one million applications were expected by the Department, and a total of 201 602 received.

By mid-1997, the SADC amnesty had cost the Department over R4,2 million.

CHAPTER 5

ACCESSING THE SADC AMNESTY: THE URBAN EXPERIENCE

BY MAXINE REITZES AND NIGEL CRAWHALL

The Southern African Development Community (SADC) amnesty was represented by the South African government as a generous gesture to neighbouring states. Even Home Affairs Minister Mangosuthu Buthelezi, a public critic of the amnesty, has observed that it gave South Africa the “moral high ground”.

Was the amnesty indeed as generous as is made out? Our objective here is to evaluate the inclusiveness and accessibility of the amnesty.

First, we consider the success of the amnesty in terms of the number of applications expected and the number received. Then we examine the categories of non-citizens who were explicitly excluded from the amnesty.

We then look at the implementation of the amnesty through a study of the operation of the amnesty process at the Johannesburg office of the Department of Home Affairs (DHA). The accessibility assessment includes a discussion of the following factors:

- the level of preparedness of the DHA;
- the dissemination and communication procedures used by the Department;
- the Department's use of language resources;
- the bureaucratic procedures of the Department; and
- the physical accessibility of application centres.

Finally, we look at the challenges of integrating successful applicants into South African society.

THE NUMBERS

Did the SADC amnesty process succeed in drawing the largest possible number of applicants from the target population? Unfortunately, this is impossible to assess because accurate figures on the pool of potential applicants did not exist.

The number of applications received between 1 July 1996 and the final closing date of 30 November 1996 was 201 602. If one considers that the bulk of applications were received between mid-September and the end of November, the first few months having generated only 10 000 applications, the process seems to have been reasonably effective in its latter stages.

However, its success can only be measured by comparing the number of potential applicants with the number of applications actually received.

Using the DHA's estimates of the eligible population, the amnesty must be deemed to have failed. Estimates of the eligible population varied from Minister Buthelezi's reference in August 1996 to five million, to the 500 000-1 000 000 anticipated by DHA officials. Even the latter figures were little more than an educated guess.

If one assumes that the eligible population was one million, then one may conclude that the initiative convinced only 20% of potential applicants, the remaining 80% continuing their illegal situation unnecessarily. If, however, the eligible population numbered 500 000, the DHA can claim a 40% success rate. While this is a considerable improvement it still begs the question of what happened to the other 60%.

We canvassed two of those involved in the exemption process for their opinion on the apparent failure of the amnesty to reach even half of the projected target population: Hennie Meyer of the DHA's Communications Department in Pretoria, and Sheena Duncan of the Black Sash. Meyer spoke as a representative of the DHA; Duncan on behalf of an NGO that offers advice to migrants.

Meyer declined to comment on whether the amnesty had been a success. He indicated that senior management had expected larger numbers, but said he was pleased with the results of the communication strategy:

It served a purpose. As you know, the [communication] campaign started quite late, after the exemption was under way. You could see a marked difference in applications after we started the campaign ... One must remember, with illegal immigrants, the numbers are all guesswork.

Duncan responded:

I am bemused. I don't know whether it was a success. I don't have anything to measure it against. The numbers are clearly funny. Is the [DHA's] estimate distorted, or are people happy with their forged documents?

Duncan identified three possible explanations for the apparently low turnout, the last being the most likely:

- People were suspicious of the exemption. Some of the earlier amnesties had been used to trick people into exposing themselves so that they could be deported. This might have put off older people but is unlikely to have influenced the majority of potential applicants.
- People have secured their residence by means of forged documents and bribery. Where DHA officials have perpetrated forgeries or fraudulently entered a person's particulars on the official computerised records, such a person is likely to live out his or her life as a legal South African. Though this certainly applies in some cases it is unlikely that millions have accessed this option.
- Estimates of the number of eligible people were inaccurate. Duncan noted that a generalised inflation of statistics benefited a number of stakeholders: the hysteria surrounding the "alien threat" has useful spin-offs for a number of individuals whose ranks include police and politicians.

Our research supports the views expressed by both Meyer and Duncan. The communication strategy appears to have been effective. It is likely that a substantial percentage of potential applicants knew of the exemption and could have accessed it. Ignorance of the amnesty was not responsible for the hypothetically low application rate.

Duncan's hierarchy of possible explanations is credible. The large number of applications received between September and November suggests that applicants had overcome their initial mistrust of the Department and the government. Few who were eligible would have risked missing the opportunity.

It is said that some unauthorised residents of the country have managed to buy their papers through corrupt DHA or people with access to DHA

records. Those who paid bribes for the paperwork were probably satisfied with their status and would not have applied, particularly if application meant exposure of their fraudulent documentation. But it is unlikely that as many as 300 000 to 800 000 people are in possession of improperly acquired identity documents, however pervasive the corruption. A more credible explanation for the low number of applications is that official estimates of the eligible population were incorrect from the start.

CATEGORIES OF EXCLUSION

Unlike amnesties in many other countries, the South African version imposed a five-year residence limitation. In other words, in order to qualify applicants had to have successfully evaded the authorities for at least five years. If they did not have a South African spouse or South African-born children, they had to demonstrate involvement in a productive economic activity. Less problematically, perhaps, they also had to have no criminal record.

Certain categories of resident non-South Africans were excluded from the amnesty because of their inability to satisfy the explicit conditions. Others, who satisfied the conditions, were excluded by factors such as:

- problems relating to the dissemination and accessibility of information;
- the lack of accessibility of the application process;
- the historically hostile relationship between state officials and immigrants;
- the abuse of previous amnesties by the apartheid state;
- uncertainty about the response to forged documents;
- inability to provide acceptable proof of satisfying the conditions; and
- the power of discretion given to DHA officials.

The amnesty explicitly excluded the following categories of people in South Africa:

- Citizens of non-SADC states. Significant numbers of perfectly legal temporary residents from eastern and central Europe, Asia and non-SADC African states were specifically excluded from the amnesty, regardless of whether or not they were able to fulfil the conditions which applied to citizens of SADC states. For example, skilled Africans who had come legally from West Africa and East Africa to work in the country in the late 1980s were not eligible.
- SADC citizens, including contract workers, who did not meet certain criteria. The SADC amnesty was not available to contract miners. Even those who had failed to apply for the “miners’ exemption” were excluded. According to a DHA source, “they had their chance

last year". Because the two amnesty programmes occurred separately, there was no consistency in their terms and conditions. The most obvious discrepancy was in the residence eligibility requirement — five years for SADC citizens, 10 for miners. The National Union of Mineworkers (NUM) pushed, unsuccessfully, to have the miners' amnesty re-opened with a five-year eligibility period.

- SADC citizens who entered South Africa between 1991 and 1996. Any SADC citizen who entered (or re-entered) South Africa, legally or illegally, after 1 July 1991 was precluded from applying for the amnesty. The DHA regarded those who entered illegally after 1991 as "illegal aliens", subject to arrest and deportation.
- Migrants from SADC countries and elsewhere. The majority of foreigners in South Africa, from SADC and non-SADC states alike, regard themselves as migrants, not immigrants. They do not desire permanent residence in South Africa. Migrants enter the country to work or trade, and expect to return to their country of origin; or they wish to maintain a base in their country of origin, and to commute across South Africa's borders. Many are transient, in the country legally, but pursuing activities, such as trading and working, which they are not authorised to undertake.

Under existing law, migrants have no option but to remain undocumented, and therefore "illegal", as there is no policy that adequately addresses their status. It is expensive and time-consuming for them to apply for temporary work permits or work-seeker permits each time they re-enter the country. Applicants for temporary work and work-seeker permits have to pay R360 each time they apply and the fee is not refundable, regardless of whether the application succeeds or fails. Most fail. The same fees and conditions apply to those seeking to extend or alter their temporary residence permits.

For migrants from SADC states, a permanent residence amnesty was of little interest. Even if it had been, the strict criteria precluded them from applying. The condition requiring prospective applicants to provide evidence of five years' continuous residence in South Africa excluded them immediately: for migrants, recurrent visits home are the norm. Considering the objection raised by opponents of the amnesty that it would prompt a large influx of families, it is ironic that the only way in which migrants could legalise their status was to apply for permanent residence and represent themselves as continuous residents. They may not have wished to do so, but some might have found this option preferable to remaining illegal.

- Refugees. The majority of refugees in South Africa are Mozambicans. Under a tripartite agreement with the Mozambican government and the United Nations High Commission for Refugees, Mozambicans

who arrived between 1985 and 1992 were accorded group refugee status in 1993. The agreement did not consider individual cases. The only people given documentation were those who registered for “voluntary” repatriation. Those who did not wish to be repatriated remain without documents. They exist in a legal vacuum, may be considered by officials to be “prohibited persons” and, as such, are subject to arrest and deportation. There is considerable evidence that the deportation trains to Mozambique have many refugee passengers on board.

It is not clear whether refugees could successfully have applied for the SADC exemption. The large number of Mozambican applicants for the amnesty suggests that many did so. The prospect of losing refugee status on 31 December 1996 may have added impetus. This would have been their only option if they wished to remain in South Africa. However, during the period of the SADC amnesty, from 1 July to 30 November 1996, there was no clear distinction between Mozambican refugees and “illegal immigrants”. The fact that it has now offered a third amnesty, for refugees, suggests that the government did not consider refugees eligible for the SADC amnesty.

In sum, in spite of its apparently inclusionary intentions, the SADC amnesty excluded a wide range of non-South Africans legally and unlawfully in the country. It was therefore consistent with the restrictive approach of broader immigration policy. Furthermore, through the diverse interpretations of its conditions and the inconsistent implementation of procedures, it also excluded potentially successful applicants. Finally, all current immigration policy effectively excludes migrants.

ACCESSIBILITY ASSESSMENT

While the SADC amnesty was a necessary and welcome short-term intervention which attempted to regularise the status of a limited number of undocumented immigrants in South Africa, it failed to address the broader, long-term issues concerning immigration and related policies. Did the amnesty process contain barriers that discouraged eligible candidates from applying? A sample of amnesty applicants (all in Johannesburg) and various other permit-seekers and permit-holders were surveyed, to document their perceptions of the accessibility of the process.¹

INFORMATION DISSEMINATION

The survey found few problems with the preparatory aspects of the amnesty. Dissemination of information about the amnesty was rated as successful by

the respondents. Bear in mind, however, that the DHA's dissemination strategy changed midway through the amnesty period in response to the unexpectedly low application rate in the initial weeks and months. Without this change of course, the responses would probably have been more negative and the application rate far lower.

Initially, the DHA did little to promote public awareness of the amnesty. In July 1996, it instituted a new communications strategy with a budget of R400 000. The approach was based on common sense rather than policy or research. There was no time to test-run different media for effectiveness.

Whereas the DHA's initial press releases were in English only, the revised approach adopted the African languages most likely to be known by SADC nationals. Radio advertising was conducted in all the official African languages. Television announcements were also made. The Department printed flyers in English, Xitsonga, Setswana, Sepedi, isiZulu and SeSotho. Portuguese and Shona were omitted because of time constraints and because the South African Communications Service (SACS), which was contracted for the work, could only translate South Africa's official languages.

Most respondents reported radio and television announcements as their initial source of information. One respondent read about the exemption in the Portuguese-language newspaper *O Seculo*, which apparently provided a translation of the press release. One Zimbabwean reported reading about it in the *Citizen* newspaper. The advertising campaign was successful, at least in Gauteng, with applicants receiving the information directly from source rather than second or third hand. The situation in other provinces is less clear. The DHA left dissemination to the discretion of the regional offices. Regional offices apparently developed and implemented their own strategies in their respective provinces. Head office did organise a public presentation to farmers' associations and cooperatives in Mpumalanga. This was, however, attended mainly by white farmers, and not by the Mozambican labourers who required the information.

PHYSICAL ACCESSIBILITY

The respondents all found the DHA's Market St premises reasonably accessible. They either already knew the building or had friends who knew where it was. Physical accessibility may have been more problematic in provinces other than Gauteng. Duncan felt this was not a factor, as "everyone knows where to go for marriage certificates, birth certificates or similar documents. Home Affairs is well known even in rural areas."

LANGUAGE ACCESSIBILITY

During the amnesty period, the DHA had no coherent language policy. In November 1996, the DHA issued a circular adopting English as the

Department's official language for internal communication. The documents, circulars and affidavits produced for the exemption were available in English only. Further research would be required to establish the degree of difficulty civil servants experienced in reading the complex amnesty instructions in English and communicating them to applicants in another language. Though the option was not considered, accuracy and efficiency might have been improved by making available Zulu or Tsonga versions of all the documents, for the benefit of civil servants as well as applicants.

Prior to the amnesty, in March 1996, Nigel Crawhall conducted research on behalf of the Language Plan Task Group (LANGTAG) at the DHA's Market St office. The staff at this office is multilingual and able to work in almost all South African languages. They reported difficulty in assisting French and Portuguese speakers, and expressed considerable frustration at the absence of any language facilitation and policy support or resources.²

According to a senior official at Market St, interpreters were made available during the amnesty process. Only a Portuguese-speaking Angolan was needed full time; other interpreters were brought in as required, or were provided by applicants. In normal circumstances, the Department does not provide interpreters; clients must provide their own.

Officials interviewed at Market St reported few language-related problems during amnesty processing. Most applicants had been living in South Africa for more than five years and were able to speak an official language. Two thirds of applicants spoke Tsonga; many others spoke Zulu or English. One Malawian applicant could communicate in Fanakalo, which no one understood. Another Malawian had to be found to interpret.³

EASE OF ASSEMBLING DOCUMENTATION

Initially, a generic police affidavit form was used for the five affidavits applicants had to provide. This was ineffective, so purpose-made affidavit forms were produced. Applicants found the process relatively easy to follow. They felt they understood what was happening and that staff understood them. The DHA's staff was generally seen as helpful during the amnesty, in contrast to the police who were considered corrupt and dangerous.

Getting the necessary documents (affidavits, birth certificates, marriage certificates, employment evidence, etc) together might have presented a problem, although none of the respondents commented on this.

Applicants were required to produce proof of their identity and length of stay in South Africa by furnishing a foreign passport that indicated their personal particulars and their date of entry into the country. The DHA anticipated problems with this condition, stating that "it is foreseen that many applicants will have unacceptable or no documents to substantiate their identity or stay in the RSA".⁴

The possession of forged documentation is widespread, as is the lack of

documentation, sometimes as a result of confiscation by the police or of destruction. The Department's response was to accept an application accompanied by

[a]n affidavit/declaration from the applicant confirming her/his identity as well as affidavits/declarations from persons to whom she/he was known during the period in question who are South African citizens or permanent residents. The applicant should also be requested to approach her/his diplomatic or consular representative in the RSA to obtain confirmation of identify/citizenship status.⁵

This information was circularised to DHA officials but was not made public. If they did not know about these alternatives, many potentially successful candidates may have been prevented from applying by their inability to produce a valid passport. Others may have been reluctant to present themselves with inadequate or forged documentation for fear of being arrested and deported.

Applicants were also required to furnish written proof of employment from their employer, in order to substantiate their claim that they were engaged in productive economic activity. This presented an obstacle if they were no longer in such employment. Employers might also have been reluctant to issue such written proof since it was tantamount to an admission that they had been employing "illegal" immigrants and they could be subject to a fine. Some employers may even have preferred their employees to remain illegal, as their precarious situation made it easier to exploit them.

The DHA anticipated that proving productive economic activity would present a number of problems; for example, "the applicant may have been employed up until two days before lodging her/his application". The DHA acknowledged that proof of employment in the informal sector was "nigh impossible to obtain", and suggested the following alternative:

Should an applicant be unable, after close questioning during the interview, to produce proof of economic activity, then as a last resort an affidavit from the applicant in which she/he provides an explanation of her/his economic activity as well as supporting affidavits from persons who have personal knowledge thereof, will suffice. The question to answer in judging her/his economic activity is whether she/he has sufficient resources to maintain her/his existence both in the past and in the future.⁶

Again, this information was not publicised and many prospective applicants were unaware of it. The absence of any criteria/guidelines to assist officials in deciding whether or not the applicant had sufficient resources meant that applicants relied entirely on the discretion of officials.

However, even formal criteria are unlikely to have been entirely adequate in the circumstances, since immigrants and migrants are often integrated into complex support networks that sustain them in periods of unemployment.

DURATION OF THE AMNESTY

The time period allowed for the amnesty as a whole was certainly insufficient. Several NGOs asked the DHA to extend the exemption until the end of January 1997. The Department was unwilling to extend the amnesty beyond 30 November 1996. If the Department's objective was to maximise access to the amnesty, the process should have run for a year at least. All of the respondents felt that the time allotted was far too short.

They commented that the process was lengthy, offices understaffed, and queues unreasonably long. One noted that his employer complained about his repeated visits to the Department. In September 1996, newspapers reported queues of up to 2 000 people at Market St, with only 300 to 500 being attended to daily.⁷ Queueing continued through the night, a situation the elderly applicants and those suffering from ailments would have been unable to endure.

Mob scenes in the last days of the amnesty period both promoted and provided cover for corruption. The *Sunday Independent* alleged that DHA officials were selling documents at a nearby restaurant and that certain people were being brought forward in the queue so as to be processed faster. This crisis might have been averted had the Department not waited until the penultimate day of the period to announce that the exemption was to be extended.

Respondents were distressed that the interim permits they received were valid for six months only, when it was evident that the DHA did not have the capacity to process all the applications in that time. Uncertainty about their legal or work status and the possibility of expulsion caused them much anxiety and stress. With Christmas approaching, many were unclear as to whether they could visit their families outside South Africa and return to their employment in the new year, with the validity of their permit intact.

CONFIDENCE IN THE PROCESS

Critical to the success of the amnesty process was people's confidence that it was not a ruse designed to identify and arrest them. There is evidence that the police have destroyed or confiscated the documents of legitimate immigrants, and that they harass and exploit those they suspect are in the country illegally.⁸ Yet the government was expecting "illegals" who had managed to evade arrest to risk their current situation and trust the amnesty process.

The respondents expressed qualified faith in the DHA's staff. Although they generally had good experiences, they were aware of corruption or betrayal. One Mozambican, whose application was eventually accepted, was arrested and

deported in March 1996 (a month after the exemption was announced by Cabinet), and subsequently returned to work in Johannesburg.

Three other men reported, during a focus group interview held at the Lindela Deportation Centre in Krugersdorp in December 1996, how they had gone to apply for the amnesty at the DHA's Pretoria office. They did not have all the required documentation and were asked to return with the documents necessary to complete the processing of their applications. When they did so, they were directed to Room 28 within the Department. In that room, they found a policeman who took them to the police van after having been shown the documents! It is possible that these individuals may not have qualified for the amnesty but, even so, incidents such as this would have done little to inspire faith in the process.

People who did not qualify were declared prohibited persons on the spot and given seven days to leave the country, reports another study.⁹ No guarantees were offered to those who came forward, other than a temporary s41 permit. This left people in a vulnerable and stressful position. It is not known how many people were put off by fear of what should have been a humane and low-risk process. The general conclusion was that the DHA was facilitating amnesty as well as detention.

OTHER FACTORS

All the factors discussed above emerged in our research. However, other factors, including the costs involved, gender-related issues and regional circumstances, could also have influenced the application rate.

None of the respondents cited cost as an issue. In urban areas, travelling and the completion of forms was facilitated by friends, family and the police. In outlying areas, cost might have been a problem, particularly if multiple visits to a DHA office were required.

Whether it was more risky for men than for women to present themselves at the DHA is not known. Men may have found it easier to take time off work than women working as full-time domestics or in their own homes. Too little is known about the demographic profile of the eligible group to contrast gender patterns of applicants versus non-applicants. Nonetheless, it would be useful to do a breakdown of applications according to gender and to correlate this with other variables, such as province and urban/rural.

THE PROSPECTS FOR SUCCESSFUL INTEGRATION

In planning and executing the amnesty little or no thought was given to how those who had newly acquired permanent residence in South Africa and/or had moved from illegal to legal status would be integrated into the mainstream of South African society.

The two major obstacles to the social, economic and political integration of foreigners in South Africa are the pervasively negative attitudes of South Africans towards all foreigners, and the lack of co-ordinated policy formulation and implementation.

These factors are not mutually exclusive. Sections of the electorate who are hostile towards foreigners exert pressure on their parliamentary representatives to enforce stringent immigration controls. Their demands have to be finely balanced with policies on trade, investment and tourism which are intended to enhance economic development for the benefit of South Africa and the region.

Legislative reform that regularises the status of immigrants (such as the SADC amnesty) and greater coordination and planning are necessary for the integration of foreigners. But they are not sufficient. As long as South Africans remain hostile to the presence of immigrants, successful integration will not be achieved. Intolerance is unlikely to be cancelled by a mere stroke of the legislative pen. Immigrants interviewed in various studies have stated that the police confiscated and/or destroyed their documents, whether they were legal and valid or not; and South Africans often do not distinguish between foreigners who are in South Africa legally and those who are here illegally. One amnesty applicant optimistically noted: "My days of harassment are over. Now I won't have to be afraid of being arrested for not having a passport or ID."¹⁰ He may well be disappointed.

CONCLUSIONS

With a third amnesty for ex-refugees in South Africa imminent (and the possibility of further amnesties in the future) some concrete lessons and conclusions can be drawn from the SADC amnesty.

- The low turnout in the early phases of the amnesty clearly resulted from the failure to design and implement a communication strategy prior to the commencement of the amnesty. When it became apparent that the eligible population was not coming forward in the numbers expected, the Department did belatedly devise such a strategy, with good results. NGOs should be directly involved in devising and evaluating a communication strategy in any future amnesty.
- Evaluation is necessary to ensure the development of effective services and their smooth operation. Levels of "user satisfaction" should be determined by means of client-based evaluation. All relevant forms should be pretested for language and clarity by bureaucrats as well as individuals from the client pool.
- To facilitate the processing of applications, a commissioner of oaths

- should be available at every DHA office during any amnesty period.
- The processing of applications should be synchronised with the application process, in order to inform applicants of the outcome of their applications promptly.
 - Of all the problems highlighted by this study, time appears to be the most critical. It took time to prepare and disseminate the information; officials needed time to familiarise themselves with it; and the exemption process itself took time to gather momentum. The inability of DHA offices to cope with the number of applications received in the weeks before the initial cut-off date, 30 September 1996, was not necessarily the result of understaffing: the amount of time needed was underestimated from the start. In order to have been fair to all parties, the amnesty process should have run for at least one year. Future amnesties should adopt a time frame that accommodates the logistics in order to maximise access for the eligible population.
 - If conditions for the integration of foreigners are not created, their presence may precipitate social and political instability. The SADC amnesty was an important intervention for the regularisation of the status of some categories of foreigners in South Africa, but it was only a beginning. It was also symptomatic of the tendency of South African immigration policy to address the effects of policy failure rather than the causes. Much work remains to be done to develop a coherent policy vision to ensure that immigration policy accords with other domestic, regional and foreign policies, that it can be implemented and that it is sustainable and cost effective.

NOTES

- 1 Interviews were conducted by Orlando Massingue at the DHA's Market St office in Johannesburg.
- 2 Reitzes, M & Crawhall, N *Silenced by Nation Building: African Immigrants and Language Policy in the New South Africa* SAMP Migration Policy Series No 4 (Cape Town, 1997)
- 3 A pigeon language specific to the mining industry
- 4 DHA "Guidelines for the Application for Exemption by SADC Citizens" para 2.1.1
- 5 Ibid
- 6 Ibid, para 2.2.1
- 7 *Sunday Independent*, 29 September 1996
- 8 Human Rights Watch *Prohibited Persons: Abuse of Undocumented Migrants, Asylum-Seekers and Refugees in South Africa* (New York, 1998)
- 9 Field report of Administrative Law B students, University of the Witwatersrand, 1996, p 2 (courtesy of Jonathan Klaaren)
- 10 *Cape Times*, 4 September 1996

CHAPTER 6

ACCESSING THE SADC AMNESTY: THE RURAL EXPERIENCE

BY NICOLA JOHNSTON

For citizens of SADC countries living in rural South Africa, the implementation of the 1996 amnesty appeared to offer an answer to their uncertain legal status and limited access to the formal labour market. The amnesty offered the chance to legally obtain an identity document. However, access to the amnesty was limited by factors such as transport costs and inadequate documentation. Implementation also provided opportunities for extortion and bribery.

The Refugee Research Programme (RRP) of the University of the Witwatersrand was commissioned by the Southern African Migration

TABLE 7: SADC AMNESTY URBAN AND RURAL APPLICATION RATES				
	All Countries		Mozambique	
	No	%	No	%
Urban applications	133 325	66	83 760	57,1
Rural applications	68 277	34	62 915	42,9
Total	201 602	100	146 675	100

Project (SAMP) to monitor the implementation of the amnesty in the rural context. Research was conducted in Mozambican settlements in the rural district of Bushbuckridge in the Mpumalanga/Northern Province border region.

The RRP conducted individual and focus group interviews in five settlements spread throughout the district. Interviews were also conducted with Department of Home Affairs (DHA) officials. The following information emerged from the interviews.

Mozambicans constituted by far the largest group of applicants for the SADC amnesty with 146 672 applications (or 73% of the total). In rural areas, the proportion was even higher. In Mpumalanga there were 32 978 Mozambican applicants out of a total of 36 286 (or 90%). In the Northern Province a total of 29 769 applications were received, of which 28 061 were from Mozambicans. The Thulamahashe (Mhala) DHA office, where the majority of our interviewees applied, received 7 541 applications, of which 7 523 (99,8%) were from Mozambicans.

The RRP estimates the Mozambican population residing in the rural border regions of South Africa at around 320 000. Approximately 70 000 rural Mozambicans applied for the amnesty (or 23% of the estimated population).¹ The overall acceptance rate for Mozambican applicants was 58,3%.

ACCESS TO INFORMATION

The amnesty information campaign appears to have been successful in the rural areas. Advertisements specifying the conditions of the amnesty were placed in local and national print media and on radio in all languages. Pamphlets advertising the amnesty were handed to everyone crossing the South African borders and were distributed at DHA offices throughout South Africa. The pamphlets were printed in all the first languages of possible applicants as well as in English.

All the respondents in the RRP study had heard about the amnesty or knew of the opportunity being offered by the government "to apply for an ID". Radio was the source of information of nearly 40% of respondents. A similar percentage had heard rumours about the amnesty, or had heard about it from fellow Mozambicans or local headmen. Community meetings and the ANC youth league were also cited as sources. No one reported seeing the pamphlets at the DHA's offices.

The communication campaign publicising the amnesty did not start until after the amnesty was already under way. Although everyone interviewed knew of the amnesty, many had heard about it too late to organise documentation and transport, even with the extended deadline. Most of the applications were received in November 1996, the last month of the amnesty. This could have been because news of the amnesty travelled slowly, or it may simply have been the result of deadline pressure. Many people were under the impression that they could still apply for identity documents after November 1996. In February 1997, the DHA office at Thulamahashe was still turning away hundreds of people wanting to apply.

MOTIVES FOR APPLICATION

The prospect of acquiring “legal” status was the key factor motivating applicants. Obtaining a legal identity document was regarded as crucial in resolving other status-related problems, including access to employment, land, infrastructural services and freedom of movement.

Access to more stable and better-paid work was the most important of these — particularly for Mozambicans, whose lack of legal status made them susceptible to exploitation as a cheap source of labour and left them with no bargaining power.

I don't work. How can I work without an ID book? There is not even a single place they can employ me without an ID. We hope that once everybody is in possession of an ID life will be better for us refugees, because we will be able to work for our children. (Interview no 19, Rhulani, 12 November 1996)

The work I know of building for people does not pay. You can build a whole house and your employer gets to sleep in it, but if you demand your money he will tell you stories. (Interview no 17, New Forest, 8 November 1996)

I was working well in Pienaar, but you find that as soon as month end comes the Boers will organise the police to arrest us. (Interview no 6, New Forest, 12 November 1996)

In addition to labour abuse, Mozambicans are vulnerable to crimes such as robbery and extortion. They have little recourse to the law. The amnesty offered the possibility of legal protection.

If you have an ID, you can be able to approach lawyers if someone tries to cheat or rob you. If you are without an ID, you have

nothing to do because you have no power. (Interview no 6, New Forest, 12 November 1996)

Not having an identity document also limits the ability of Mozambicans to function in South African society in other ways. Some interviewees complained that they were unable to open a bank account or to apply for a loan to develop an existing business.

The opportunity to gain access to agricultural land was another advantage of legal status. Mozambicans residing in the Bushbuckridge area were originally from agricultural areas, where they engaged in subsistence farming. Land in the area is allocated mainly by tribal authorities. Although refugees in some settlements have been given permission to plough communal land, they complain that their crops are often destroyed by the local cattle, which are also free to graze there. Access to land was therefore a major issue, particularly for older people and women.

Even though some refugees have been living in South Africa for as long as 15 years, their settlements are still regarded as "temporary" by local authorities. Consequently, services such as water and electricity have not been provided. Research in the area has shown that, on average, those living in refugee settlements walked four times the distance of those residing in local villages to collect water.² Respondents felt that an identity document would enable them to apply for a permanent stand, and give them access to electricity and water reticulation on the same terms as their South African peers.

Without a South African identity document, freedom of movement is not possible. Mozambicans experience problems travelling within South Africa and in cross-border communication with Mozambique: "It is difficult for us to travel around this country, because of not having the right documents" (Interview no 19, Rhulani, 12 November 1996). Most interviewees knew of cases of police harassment. Some had relatives or friends who had been working in Gauteng and who were deported because they were not in possession of an identity document.³

There is a strong desire to maintain links with home and many still have contact with relatives in Mozambique. An identity document would enable them to apply for a passport and travel freely between Mozambique and South Africa: "With an ID, I can just go home and leave my family and come back here to seek employment, since Mozambique is still impoverished" (interview no 5, Mathlari-hansi, 15 November 1996).

It was clear from the interviews that many applicants were long-time residents of South Africa, but maintained links with Mozambique and would visit there more often if they could. Their response to the amnesty offer was entirely pragmatic. Permanent residence and citizenship in South Africa had limited appeal.

Rather, the amnesty offered them the chance to legalise their status in South Africa. That, in turn, would allow them to avoid the negative aspects

of life in South Africa (police harassment, deportation, restrictions on their movements) and maximise the benefits (through access to improved resources in the rural areas).

BARRIERS TO ACCESS

All the people interviewed for this survey said that they wanted to possess a South African identity document. However, the location of offices and the administrative procedures created many obstacles for prospective applicants. Some of the difficulties that they experienced are discussed in this chapter.

THE COST OF APPLYING

Mozambicans in the Bushbuckridge district are significantly poorer than the area's disadvantaged South African communities.⁴ Many people interviewed could not afford the cost of travelling to the closest DHA office, at Thulamahashe. The return taxi fare from one settlement is as much as R20 and this, for a family surviving on approximately R200 a month, was too much. Applicants were required to make several trips: first to check if they had a criminal record, then to file an application, then to provide all the supporting documents, and finally to check progress. One official noted: "People coming from rural areas particularly have a real problem with transport. They come to find out about the progress on their application and we have to tell them to come back again later because we have no new information" (interview, Nelspruit, 14 February 1997). Travelling back and forth raised the cost substantially.

The RRP suggested that it would have been easier if they could have applied locally, for example at the local tribal affairs office. We approached the Deputy Minister of Home Affairs and the Director of Refugee Affairs in October 1996 about this issue. Both were sympathetic to the idea of further offices in rural areas, but concluded that it would be too difficult to implement at that late stage.

Officially, there was no charge for submitting an application, but many people were charged R6 for fingerprints and R15 for photographs. A DHA official claimed that "photographs are only needed if the applicant was successful, in order to apply for an ID. The applicant arranges them for himself [sic]. There are people making photos outside our office, but that has nothing to do with us" (interview, Nelspruit, 11 April 1997).

Some tribal offices charged applicants for a letter to confirm the length of their stay in the area. The charge varied from R10 to R90.

We knew about that [amnesty], it has been broadcast over the radio. The problem is that the Tribal Office want a sum of R20,

to give you a referral letter, proving that you are a resident of New Forest. So you are supposed to take that letter to Thulamahashe to apply for amnesty. So the money we are spending for amnesty is R35, because at Thulamahashe we are supposed to pay R15 for photos. (Interview no 28, New Forest, 8 November 1996)

Some received a receipt for the payment, which was said to be "the chief's money". Those unable to afford the costs of filing and following up an application were mainly those without stable employment. In effect, therefore, the amnesty was biased in favour of those with relatively higher incomes and disadvantaged those who were unable to afford the costs, official or otherwise, of applying.

DOCUMENTATION

To apply for the amnesty, people had to produce documentation proving that they had been resident in South Africa for at least five years. This was a major problem for rural Mozambicans, the majority of whom fled Mozambique on foot during the civil war, carrying no documents with them. Although they were recognised as refugees by the former "homeland" authorities, they were not provided with documentation and were never officially recognised by the apartheid regime.

DHA officials and prospective applicants alike expressed their frustration over the lack of formal documentation to support applications. One official commented that "the problem this time was if people had no proof, record or document. If we accept anything then we are opening a loophole. If we use our own discretion it can also be a problem." One applicant described the difficulties thus:

We told them that we don't have documents to prove [length of stay]. We could only tell them the year on which we arrived in this country. The others were having the documents which they received on their arrival here. I was not having them, because the time when I arrived those documents were not yet being issued. (Interview no 24, Mathlari-hansi, 15 November 1996)

Various documents were presented to substantiate five years' residence: ration cards (received by some when they first arrived in South Africa), Gazankulu pass books, "road to health" cards of children born in South Africa, letters of referral from the tribal authority, letters from schools for younger applicants. Those who were able to produce supporting letters from relatives with South African identity documents had an inherent advantage:

The ones who are having relatives who are residents of South Africa are the fortunate ones, because their relatives accompanied

them to Thulamahashe and can prove that it is long that they have been residing in this country. (Interview no 27, New Forest, 8 November 1996)

Applicants also had to prove they were engaged in productive economic activity in the country, or were in a relationship with a South African partner or spouse, or had dependent children born or lawfully living in South Africa. Owing to their lack of status, the majority of applicants make a living in the informal sector. Their activities may change from month to month, even from day to day. Previous RRP research showed that the main source of income for Mozambicans in the area was from family members working in Gauteng as street sellers or labourers, or locally, from doing agricultural or cleaning work.⁵

Asked how people in the informal sector could prove that they had been economically active, a DHA official responded thus:

There were many such cases. For example, someone selling vegetables has a supplier whom he buys from; they can get a declaration from this supplier stating for how long they have been supplied by him. A mechanic has contact with people who bring their cars to him; he can get a declaration from them. A builder can get a declaration from clients; his proof is the people he has built houses for.

This glib response glosses over the difficulty of obtaining “acceptable” documentation. Acceptable documentation consisted of a letter of referral from the applicant’s place of work, and testimonials from South African work colleagues regarding the applicant’s length of service. In a few cases the employer personally assisted applicants. Most respondents did not have the required supporting statements.

An alternative requirement was proof of a relationship with a South African partner or spouse. Some applicants had marriage certificates; others had no documentation to prove either marriage or a relationship. Many had been married by tribal ceremony and possessed no supporting documents. In such cases, both partners had to sign an affidavit confirming that they were married and stating how many children they had together. One official claimed that male applicants were “buying” South African wives to accompany them to the offices, while their real Mozambican wives remained at home.

Applicants also qualified if they could prove that they had children born and resident in South Africa. Most refugees residing in the rural areas have children. For children born at hospitals or clinics, hospital records and “road to health” cards served as proof. School attendance and registration records were used for older children. However, the more traditional members of the Mozambican population generally preferred home-births. Children who had

been born at home would often not be registered until they attended school (if the parents could afford to pay school fees). Therefore, even documentary proof of birth in South Africa was a problem for some.

GENDER BIAS

The process required only one principal applicant per family or household. This prevented many women from applying independently, because men are regarded as the head of the household and their authority would be required if any member of the household applied for amnesty. In rural areas, where a large proportion of the male population works away from home in Gauteng and other urban areas this presented a problem.

Officials reinforced this gender bias. Women who came alone were asked to come back with their husband if they were married. One woman recounted the difficulty she experienced:

On my first day they told me to come with a letter from the tribal office and I did as I was told. Then the following day I came with that letter and they said to me that I must come with my husband ... I don't know where to find him because he is not here. He is at his work place. He left here a long time ago. He has been away for more than a year now and I have not heard from him. So how am I supposed to go there with him, when I don't know where he is? This is really frustrating. When we heard that we must go and apply for ID books we thought that everybody was welcomed to do so. Only to find that it is really difficult for women ... I have already lost courage of getting there again. I will not go there any more. Maybe if my husband was here I would have applied already. (Interview no 23, Mathlari-hansi, 15 November 1996)

Although the terms "spouse" or "partner", as used by the DHA, are intended to be gender neutral, in practice officials interpreted them in a gender-specific manner which disadvantaged women.

TIMETABLE AND ADMINISTRATIVE PROCEDURES

The implementation of the amnesty proved to be a logistical challenge. DHA officials had to be briefed about the terms and conditions of eligibility. Temporary staff members were employed and trained and permanent staff redeployed in the provinces where they were based. Temporary clerks lacked training, were often only qualified to function as monitors, and were generally not as conscientious as permanent staff — all of which slowed down the process considerably.

A work study group from Pretoria identified potential venues for an extra

six "service stations" in the Bushbuckridge district, which would have taken some of the strain off the Thulamahashe office. These stations were not set up owing to a lack of funds.

The inevitable result was that hundreds of people were kept waiting in queues literally for days. At the Thulamahashe office in October 1996, there were hundreds of people queuing right around the building and filling an interior courtyard. There was no shade and people were taken to hospital suffering from heat exhaustion and hunger. Some slept outside the offices for several days, rather than pay the return transport fare. Others went home and did not return.

Officials blamed delays on the lengthy administrative process required for each application. The forms used required a lot of detailed information. Some officials felt that the forms could have been shorter and that this would have speeded up the processing and approval of applications. Most of the applicants in the Bushbuckridge district were semi-literate and needed the assistance of the temporary clerks appointed in all the offices in filling out the forms.

All applications were referred to the regional director of Home Affairs and rejected or approved at that level. Rejected applications were sent to the DHA's head office, where the decision was confirmed or reversed. According to an official interviewed at the Nelspruit DHA office, the protracted process meant that applicants were often deported by the South African Police before they heard the result:

They [exemption applicants] are given a s41 document, which allows them to remain for 14 days. After that time expires they must return to their country otherwise they are illegally remaining in the country and will be forcibly repatriated.

Applicants whose applications were rejected could appeal against the decision. The Black Sash expressed concern that the refusal document gave applicants 30 days in which to appeal, but did not state the grounds for the refusal. Applicants were told that they would be notified by post of the reasons their application had not succeeded. This was unsatisfactory, since many had no postal address and post often took longer than 30 days to reach them. Thus they had no way of knowing what the defect in their application was, or what proof was insufficient.

As a result, there is no general information on the reasons why applications were rejected nor, indeed, any explanation of why so many applications — 101 378 — were rejected.⁶ It is hard to believe that all 101 378 were ineligible or fraudulent, particularly if one considers the difficulties experienced by many eligible applicants. The number of applications accepted might have been higher, had the appeal process been more transparent.

Appeals could be lodged with the DHA up until 9 June 1997. All appeals

were to be decided by 30 June. Thereafter all those residing in the country illegally or whose application had been finally rejected would be “removed in terms of the 1991 Aliens Control Act”.⁷

All SADC amnesty applications were entered on the DHA’s computerised data base, the National Movement Control System (NMCS), in order to “prevent applicants from applying more than once for the exemption, and moving from one office to the next trying to find an office which is lenient/soft on requirements and thus obtaining the exemption more often than not fraudulently”.⁸

One is prompted to ask whether the information gathered is to be used to identify and deport rejected applicants. The DHA gave no undertaking that information volunteered by applicants would not be used against them. If it is, those who applied for amnesty and whose applications failed are worse off than those who did not apply, since the authorities are now aware of their personal particulars and whereabouts. The DHA does not appear to acknowledge this as a problem. A senior official felt that applicants who did not qualify deserved nothing else. This, of course, assumes that all nominally eligible applicants who applied, received the amnesty, and that those who were refused were genuinely ineligible. From what has been discussed here concerning the difficulties of obtaining the requisite proof, this seems unlikely.

The application forms required applicants to give both a residential and a postal address. It is virtually impossible to trace Mozambican refugees residing in the rural eastern border region to their place of residence, owing to the absence of road names and the temporary nature of housing in the area. Only the tribal authorities have any record of where people are resident. It would be equally difficult to track down those people who have migrated to urban areas and are living in makeshift accommodation in townships.

CONCLUSION

Mozambicans living in rural South Africa are unanimous in their desire to possess a South African identity document. The fact that long-term residents of the eastern border region of the country did not apply for the SADC amnesty indicates, however, that there were significant barriers to doing so.

The existence of such barriers to application and the need to formalise the status of former refugees suggests that the third amnesty is urgently needed. In order to be more successful next time around, the following practical suggestions should be considered.

- “Outreach” centres should be provided in rural areas, to reduce applicants’ travel costs.

- Support and advisory services should be established, particularly in rural areas, to assist with applications and appeals.
- Forms should be brief and should only collect information relating directly to the application.
- Temporary staff should receive proper training.
- Directives concerning the acceptability of various forms of documentation should be applied consistently.
- Systems should be streamlined to enable applicants to complete all the steps in the application process (check for criminal record, completion of application forms, presentation of supporting documents) in a single visit.
- It should be possible for women to apply independently of a partner or spouse.
- A common vision of the purpose of the amnesty should be developed between the policy makers and the implementing agents. In order to achieve this it is necessary to improve communication between different departments and different levels of the DHA. The rationale for policy decisions should be clearly stated and should inform the manner of implementation.

NOTES

- 1 These were principal applicants (heads of households). The number of people on the forms would have been higher if dependants were included.
- 2 Dolan, C et al "The links between legal status and environmental health" *Health and Human Rights*, 2 (1997), p 72
- 3 Johnston, N & Simbine, C "The usual victims: The Aliens Control Act and the voices of Mozambicans" in Crush, J (ed) *Beyond Control* (Cape Town, 1998)
- 4 Dolan, C "Aliens aboard — Mozambicans in the new South Africa" *Indicator SA* 12 (1995)
- 5 Dolan, C & Nkuna, V "Refugees, illegal aliens and the labour market: The case for a rights-based approach to labour movement in South Africa" (Unpublished report, Wits Rural Facility, 1995)
- 6 The DHA was unable to provide statistics on the grounds for the rejection of applications, when approached in May 1997.
- 7 *The Citizen*, 28 May 1997
- 8 DHA Circular No 30, 1996

PART 3:
ATTITUDES TO
AMNESTY

CHAPTER 7

WHO WANTS TO LIVE IN SOUTH AFRICA?

BY DAVID McDONALD

Granting amnesties to non-citizens is a controversial and difficult process at the best of times. When these policy decisions are combined with a lack of reliable information about the potential amnesty population and with negative stereotypes about migrants — as is the case in South Africa — the process becomes even more problematic.

There is a perception in South Africa that everyone on the African continent will jump at the opportunity to become a South African citizen and expects the South African government to offer amnesty to whoever wants it. It is also assumed that anyone granted permanent residence will bring his or

her family and friends to live in South Africa, resulting in a multiplier effect that will quickly overwhelm South African society.

This chapter attempts to debunk some of these stereotypes about migration as they pertain to amnesty in South Africa. Using data drawn from national surveys in Lesotho, Mozambique and Zimbabwe — the three largest sources of migration into South Africa — it will be argued that the majority of people in these countries have little interest in living in South Africa on a permanent basis.¹ South Africans' fear of being overwhelmed by an influx of new citizens is not borne out by the research and there are, in fact, grounds for supporting further amnesties in the future.

The surveys referred to in this chapter address potential and former migrants — they do not include migrants currently living in South Africa. The surveys do, however, provide some interesting insights into what the average citizen of Lesotho, Zimbabwe or Mozambique thinks about migration and South African citizenship.

CONTACTS WITH SOUTH AFRICA

The number of migrants (documented and otherwise) from Southern African Development Community (SADC) countries to South Africa has increased dramatically in the last five years and there is a perception in South Africa that these people are a threat to the social and economic fabric of the nation.

A somewhat different picture emerges from our surveys. Cross-border migration is an important part of life for many people in the region, and a large number of people cross the border for various reasons. But very few have any desire to move to South Africa permanently and most prefer their home country to South Africa.

The surveys also confirm the short-term and temporary nature of cross-border migration in the region. This is particularly true of Lesotho where the average number of times people had been to South Africa was 28 times, some having visited the country hundreds of times. These figures are significantly lower for Mozambique and Zimbabwe (the median being three visits per person), but there is regular and frequent cross-border movement from these countries as well. The duration of each visit is fairly short, with 60% of respondents staying in South Africa for less than a month at a time: people from Lesotho staying the shortest time and people from Mozambique the longest (see table 8).

Most respondents are not interested in living in South Africa — at least not for an extended period of time. Asked whether they wanted to leave their home country to live in South Africa permanently, two-thirds said “not at all” and 12% “not much”. Only 13% said that they wanted to leave their

TABLE 8: LENGTH AND FREQUENCY OF MIGRANTS' VISITS TO SOUTH AFRICA

	Les	Moz	Zim	Total
Average number of visits	68	5	6	45
Average number of visits in last five years	21	2	6	14
Frequency of visits				
More than once a month	1	10	6	15
Once a month	13	1	18	12
Every few months	39	37	38	39
Less than once a year	17	19	18	18
Single visit	12	33	21	17
Normal length of stay				
Less than one month	66	20	71	60
Between one and six months	14	18	11	14
Between six months and one year	4	20	10	12
More than one year	11	42	7	14

Note: Figures may not add up to 100 % owing to rounding. A dash (-) signifies a value of less than 1 % but greater than zero.

home country “to a great extent” — even though 69% of respondents said they would be able to go to South Africa if they wanted to. When asked how “likely” it was that they would go to live in South Africa permanently, only 6% said “very likely”.

Responses were slightly more positive when people were asked if they would like to live in South Africa for a “short period of time (up to two years)”, with 18% saying they would definitely “want” to go and 12% saying it was “very likely” that they would go. But 41% said it was “unlikely” or “very

TABLE 9: LIKELIHOOD OF MOVING TO SOUTH AFRICA

Able to go to SA if desired	Les	Moz	Zim	Total
Yes	64	76	68	69
No	35	17	30	28
Desire to live in SA permanently				
Great extent/Some extent	25	32	19	25
Not much/Not at all	76	60	77	73
Desire to live in SA for a short period (up to two years)				
Great extent/Some extent	50	57	49	52
Not much/Not at all	49	38	48	46
Likelihood of leaving to live permanently in SA				
Very likely/Likely	25	13	12	17
Unlikely/Very unlikely	69	69	77	73
Likelihood of leaving to live for a short period in SA				
Very likely/Likely	58	40	39	45
Unlikely/Very unlikely	37	35	48	41

Note: All neutral or noncommittal responses have been omitted from tables.

TABLE 10: DESIRE TO STAY IN SOUTH AFRICA				
Would you want to become a permanent resident of SA?	Les	Moz	Zim	Total
Yes	33	14	13	19
No	61	83	85	78
Would you want to become a citizen of SA?				
Yes	34	7	15	18
No	60	90	83	79
Would you like to live in SA when you retire?				
Yes	27	4	7	12
No	67	95	90	85
Would you want to be buried in SA?				
Yes	17	1	4	7
No	76	96	93	90

unlikely" that they would live in South Africa for even two years (see table 9).

Most revealing of all, perhaps, were the responses to questions asking people to compare their home country to South Africa. On almost every front — with the exceptions of job opportunities, cost of living and availability of health care — the home country was perceived to be equal to or better than South Africa. Despite South Africans' belief that theirs is the most desirable country on the continent in which to live, the majority of those interviewed felt their home country was a better place to raise a family, and gave access to land, water and housing as the most important reason. Crime levels were lower and personal safety was perceived to be appreciably better at home. Even South Africa's democratic reforms would appear to carry little weight with people in the region, with more than two-thirds of respondents saying that they find "peace", "freedom" and "democracy" to be as good as, or better, in their home country than in South Africa.

Not surprisingly, respondents felt that there were more job opportunities in South Africa than at home, and more opportunities for buying and selling goods, but this perception does not necessarily translate into a flood of migrants. As noted above, only a small percentage of those interviewed said it was likely that they would go to live in South Africa for even a short period. The trend is for people to take advantage of fixed-term jobs and/or buying and selling opportunities in South Africa, and then to return home.

In other words, not everyone in the region wants to live in, or even visit, South Africa. It is essential that policy makers differentiate between regular short-term, purpose-oriented migration, and long-term or permanent immigration of the type that requires permanent residence or full citizenship. Short-term migration accounts for the greater part of cross-border movement in the region, which suggests that the number of people wanting to settle in South Africa is in fact lower than is generally believed.

Another fallacy is the belief that a dozen or more family members will

follow for every foreigner of African origin who is granted permanent residence in South Africa. Even the Minister of Home Affairs has expressed this misperception, observing that “each illegal alien is likely to bring with him his parents, a wife, the parents of the wife and an average of four children”. This perception is not borne out by our research. When asked if they would send for their family members if they were living in South Africa, only 48% of respondents said “yes”; and, on average, each would bring along only three other people.

ATTITUDES TOWARDS IMMIGRATION POLICY

Many South Africans oppose amnesty as a policy option because they believe that other countries in the region expect the South African government to throw open its borders to migrants. The press is full of articles which imply — directly or indirectly — that South Africa must stand firm on border controls and not give in to the entry demands of other Southern African Development Community (SADC) states. The 1996 SADC proposal to gradually phase in a “freer movement” of peoples in the region met with strong opposition in the media and from certain policy makers and academics, and was viewed as an effort to undermine South Africa’s border controls.

Reality paints a different picture, however. Although the citizens of Lesotho, Mozambique and Zimbabwe favour a relaxation of border controls and consider it a fundamental right to be able to move from one country to another, they do not expect the South African government to abandon border controls altogether. While many question the legitimacy of borders that were created during the colonial era and would welcome policies that make it easier to move from one country to another, they do not advocate the complete dismantling of current border controls.

About one-third of respondents disagreed with the suggestion that people should be able to move freely across borders and more than half felt that borders were important in defining personal identity. Most felt that the South African government should be able to restrict the number of (im)migrants allowed into the country and that it should have the right to deport people who are in the country illegally, or are “not contributing to the wellbeing of the country”, or who have “committed serious criminal offences”.

Citizens of other southern African countries would like to see the South African government impose controls in a humane and rational manner, but do not reject the idea of selective (im)migration and do not expect the government to grant amnesty to every non-South African currently living in the country. Of the people interviewed, 51% agreed that the South African government “should offer amnesty to all foreigners now living illegally in

South Africa”, Basothos agreeing most strongly with the statement and Zimbabweans and Mozambicans being more ambivalent (table 11).

Yet relatively few people said they wanted permanent residence for themselves. This may indicate support for a form of amnesty more in keeping with their needs and interests as migrants, such as would be the case if amnesty were understood to offer legalisation as opposed to permanent residence.

In the light of calls for a special approach to migration from SADC countries to South Africa, it is interesting to note that the majority of respondents did not expect preferential treatment for people from the region when it comes to immigration policy (see table 11). Only 34% of respondents felt that residents of SADC countries should be accorded special treatment when it comes to immigration into South Africa and only 36% that people from their own country deserved special treatment.

What these findings signify for future amnesties is not entirely clear, but they do suggest a relatively cosmopolitan view of migration among the people surveyed (or at least an appreciation of the fact that migration policy is a complex issue that transcends the interests of any particular country). The

TABLE 11: ATTITUDES TOWARDS IMMIGRATION LAWS

What do you think the SA government should do?	Les	Moz	Zim	Total
Let anyone into SA who wants to enter	68	13	22	34
Let people into SA as long as jobs are available	25	67	35	41
Place strict limits on the number of foreigners who are allowed to enter SA	6	15	36	21
Prohibit all people from other countries from entering SA	-	1	4	2
What do you think the SA government should do about SADC citizens in SA?				
Send them all back to their own countries	2	2	11	6
Send back only those who are not contributing to the economic wellbeing/livelihood of SA	12	27	32	21
Send back only those who have committed serious criminal offences	68	57	30	51
Send back only those who are here without the permission of the SA government	10	8	27	16
The government should not send any people back to their own countries	6	3	8	6
The SA government should offer amnesty to all foreigners now living illegally inside the country				
Strongly disagree/Disagree	28	31	42	35
Agree/Strongly agree	69	44	41	51
People from SADC countries should receive special immigration treatment in SA				
Strongly disagree/Disagree	66	25	49	48
Agree/Strongly agree	30	43	32	34
People from here should receive special immigration treatment in SA				
Strongly disagree/Disagree	63	29	51	48
Agree/Strongly agree	34	47	30	36

findings may also reflect some pan-Africanist sentiments on the part of respondents — a hypothesis supported by the fact that the majority of respondents favoured a balanced approach to immigration policy in their own countries. Attitudes in respect of borders differed considerably among the respondents from the three countries surveyed: 41% of Basothos said that their country and South Africa should join as one country, as opposed to 7% and 9%, respectively, of Mozambicans and Zimbabweans. This can probably be ascribed to the large number of contract workers from Lesotho (by far the largest of all the SADC states) working in South Africa and the close cultural, linguistic and familial ties between the Basotho and South Africa's Sotho and Tswana speakers. Lesotho, being completely surrounded by South Africa, was perceived by some as a province of South Africa more than an independent state. However, many Basothos felt that parts of South Africa's Free State province should be incorporated into Lesotho.

Another interesting finding was that respondents did not necessarily expect to have all the rights and privileges of South African citizens. Most felt that non-citizens should have equal access to jobs, education, medical services and housing, but they were more reticent when it came to issues of a political nature, such as the right to vote, the right to become a permanent resident or citizen of South Africa, and the right of non-nationals to request amnesty (see table 12). In other words, the people interviewed wanted the same basic human rights and the same economic opportunities as South African citizens, but, with the notable exception of the Basotho, they did not expect (or want) the political rights of citizenship.

In the same way that respondents wanted South Africa to relax its immigration laws, people from Lesotho, Mozambique and Zimbabwe were also willing, reciprocally, to allow a freer movement of people and goods from South Africa into their own country. Far from expecting the South African government to throw open its borders to whoever wants to enter, or to offer amnesty to whoever asks for it, most people in the region respect the sanctity of borders and citizenship. Even in Lesotho — where independence of the

TABLE 12: ATTITUDES TOWARDS RIGHTS FOR NON-CITIZENS

The SA government should offer other Africans who are in South Africa:	Les	Moz	Zim	Total
The right to vote in South African elections				
Strongly disagree/Disagree	33	65	55	51
Agree/Strongly agree	65	15	27	36
The right to become a permanent resident of South Africa				
Strongly disagree/Disagree	17	48	39	35
Agree/Strongly agree	80	28	38	48
The right to become a citizen of South Africa				
Strongly disagree/Disagree	15	54	39	36
Agree/Strongly agree	81	23	37	47

nation is itself in question — there is a pragmatic and selective approach to questions of sovereignty, immigration and border controls with South Africa.

POLICY IMPLICATIONS

There are at least three important policy lessons to be drawn from this research. The first is that cross-border migration into South Africa (at least from the three countries surveyed) is much less chaotic and overwhelming than is generally believed. Migration into South Africa is already highly regularised and taking a more onerous, control-and-expulsion-oriented approach is likely to force people underground and to erode the goodwill and legal practices that currently exist.

This is not to suggest that border controls should be scrapped or that permanent residence should be offered to anyone who enters the country. Effective border monitoring and immigration law will always be necessary. Nevertheless, South Africa is at a crossroads with regard to its immigration policy: it can either take the stance of “fortress South Africa” or it can recognise both the need for and the feasibility of managing growing levels of cross-border migration in a humane and objective manner.

Secondly, the research supports the need to distinguish between short-term, purpose-oriented cross-border migration and long-term permanent immigration. It also reinforces the argument that managing short-term migratory flows is feasible and that offering amnesties to those who intend to stay in South Africa for an extended period of time will not create an overwhelming influx of migrants from other parts of the region.

Thirdly, statistics gleaned from the surveys indicate that there are grounds for making special concessions for citizens of Lesotho when it comes to permanent residence. Although most Basotho respondents (63%, as compared to 29% of Mozambican and 51% of Zimbabwean respondents) disagreed with the statement that “people from Lesotho should receive special treatment” when it came to immigration policy in South Africa, the number of Basotho who visited South Africa (81% of respondents) and the frequency of their visits (on average, 68 times in the course of a life time) indicate that there is a need to recognise the unique relationship Lesotho has with South Africa. These statistics, coupled with the Basothos’ desire to see an easing of border restrictions and for equal rights and benefits in South Africa, suggest that it is indeed time for a new immigration accord between the two countries.

NOTES

- 1 For a full report see McDonald, D et al *Challenging Xenophobia: Myths and Realities About Cross-Border Migration in Southern Africa* SAMP Migration Policy Series No 7 (Cape Town, 1998)

CHAPTER 8

ATTITUDES TO THE MINERS' AMNESTY IN MOZAMBIQUE

BY FION DE VLETTER

Why did more Mozambican miners not take up the South African government's offer of amnesty? Mozambique is after all the poorest country in the world, according to some measures, and South Africa the wealthiest in sub-Saharan Africa.

When the miners' amnesty was conceived several assumptions were made about what Mozambicans would want, particularly that they would want to live in South Africa. The assumptions proved to be incorrect.

The architects of the amnesty failed to observe the distinction between migrants and immigrants. There were no consultations with beneficiary

states or with the individual beneficiaries of the amnesty. The amnesty was imposed unilaterally by South Africa and it failed because it did not serve the needs of the miners. The Mozambican government was not consulted about the amnesty. They did not see it as a payback for Mozambique's support of the liberation struggle in South Africa.

The Mozambican government was very concerned about the impact of the amnesty. Like the South Africans, they assumed that many Mozambican miners would take up the offer of permanent residence in South Africa and would drop out of the deferred pay system that gives Mozambique a third of its foreign exchange earnings. As it turns out, they were wrong too: the amnesty has had little impact in this respect.

This chapter assesses the amnesty from the viewpoint of its intended beneficiaries: the miners themselves. It is based on a Southern African Migration Project (SAMP)-funded survey of a sample of 495 Mozambican miners and 197 miners' spouses in Mozambique in October 1996.¹ The survey showed conclusively that the assumptions of both governments were wide of the mark. It seems obvious, in retrospect, that a career miner with a comparatively comfortable and secure wage, a home where his ancestors lived and where future generations are expected to continue to live, would be unlikely to take up residence in South Africa.

ATTITUDES TO AMNESTY

Interest in the amnesty was significantly lower in Mozambique than in other "supplier states". In all, just over 50 000 miners applied for the miners' amnesty. Of them, 9 159 (or 8%) were from Mozambique — an application rate of one in eight, compared with one in three in Lesotho. Two out of every five Mozambican applicants had more than 10 years' service, compared with one in two in Lesotho.

One explanation put forward for the apparent lack of interest was insufficient knowledge or awareness of the amnesty. The survey showed that 93% of eligible miners knew about the amnesty offer (table 13).

Information about the offer of amnesty came primarily from the mining companies and fellow miners. Only one-quarter heard about it via the National Union of Mineworkers (NUM). This accords with the low rate of union membership of Mozambicans (table 14). The majority of those surveyed (86,5%) correctly surmised that they were eligible. They were less certain why they were eligible. Only 42% correctly identified the 10 years' residence requirement (table 15). Fifteen per cent thought the requirement was five years' residence, suggesting some confusion with the second SADC amnesty, for which miners were not eligible. Almost a quarter said they did not know what the requirements were.

TABLE 13: MOZAMBICAN MINERS' AWARENESS OF AMNESTY OFFER

	Responses	Percentage
Aware	427	93,8
Not aware	28	6,2

TABLE 14: DISSEMINATION OF INFORMATION ABOUT MINERS' AMNESTY IN MOZAMBIQUE

Information source	Responses	Percentage
Mining company	157	36,9
Friends/Colleagues	130	30,5
Union	103	24,2
Media	36	8,5

TABLE 15: MOZAMBICAN MINERS' PERCEPTIONS OF AMNESTY CONDITIONS

	Responses	Percentage
No conditions	21	4,6
10 years' work	191	42,1
5 years' work	69	15,2
Payment of money	12	2,6
Voted in election	3	0,7
Other	51	11,2
Don't know	107	23,6

Those who expressed interest in obtaining permanent residence said that permanent residence would enable them:

- to purchase consumer durables, such as furniture and cars, on hire purchase;
- to look for other work should they lose their jobs on the mines;
- to avoid compulsory deferred payment; and
- to avoid harassment, arrest and summary deportation by the South African authorities.

However compelling these arguments for acquiring permanent residence, none of them expresses anything other than strategic short-term motives and advantages. As one miner pointed out, "I want to obtain a South African ID to allow me the same privileges as South Africans but I do not intend living there". Others said that the amnesty would enable them "to avoid expulsion" and "to get an ID without having to pay", a reference to the trade in counterfeit documentation.

Almost all of those intending to obtain permanent residence said that they would bring family members with them. Yet, almost without exception, the same people said that they would maintain a home base in Mozambique, because that was where their family lived.

Only 40% had spoken to their family about moving to South Africa. Of them, 59% said their families were prepared to come. Most (83%) would leave their assets in Mozambique, in the care of their parents or brothers.

There was very little to differentiate those who showed an interest in acquiring permanent residence from those who did not. Their wage and education levels and wealth distribution were almost identical and there was no obvious urban or rural bias. Those interested in permanent residence had worked fewer contracts; as a group they had, on average, fewer wives and children.

The Mozambican miners clearly felt that they had a duty to stay in their country and they were concerned about the consequences for Mozambique if people left. They felt Mozambique would suffer negative demographic consequences if younger men were lured away by the material attractions of living in South Africa. South Africa, not Mozambique, would reap the economic benefit of their labour.

Others were motivated in their opposition by a sense of patriotism and loyalty towards their fatherland: South Africa was not their "land of birth" and people should "never abandon their country because of *caprichos* [whims]".

The strength of their national loyalty was confirmed by the 91% who said they would keep their Mozambican nationality and not become South African citizens. The same number said that they would not apply for South African nationality and that they were not prepared to lose their Mozambican nationality, suggesting that residence in South Africa was seen as transitional and mostly work related.

A minority felt that there was nothing to fear. As one noted, "I don't think there will be a great number of workers who will live in South Africa because their assets are in Mozambique and it is difficult to transfer assets".

Many miners, in expressing their fears about the negative results of the amnesty for Mozambique, assumed that their compatriots would behave in a manner that they could not countenance in themselves, by abandoning Mozambique.

ATTITUDES TOWARDS LIVING IN SOUTH AFRICA

Most Mozambicans (58,4%) could see no advantage to living in South Africa (table 16). The main perceived benefits of permanent residence included ease of access to work and relief from tax deductions ("discount pay"). Miners were particularly concerned, and uncertain, about the tax implications of permanent residence.

Miners were emphatic about the disadvantages of living in South Africa (table 17). Many were loathe to give up what they had spent many years developing in Mozambique and pointed out the difficulties of re-establishing themselves in South Africa. Others said they would find it difficult to integrate with South Africans.

TABLE 16: PRINCIPAL ADVANTAGES OF LIVING IN SOUTH AFRICA AS OPPOSED TO MOZAMBIQUE

	Responses	Percentage
None	265	58,4
Easy to get work/Do business	60	13,2
Don't discount pay	11	2,4
Other	88	19,3
No response	30	6,6

TABLE 17: PRINCIPAL DISADVANTAGES OF LIVING IN SOUTH AFRICA AS OPPOSED TO MOZAMBIQUE

	Responses	Percentage
Lose what respondent has in Mozambique	54	11,9
No land to cultivate/Have to buy everything	88	19,4
Don't like the life/Only there to work	42	9,3
Difficult to integrate	89	19,6
None	21	4,6
Other	102	22,5
Don't know	17	3,8
No response	40	8,8

Perhaps the greatest deterrent to living in South Africa was the perception that land was not as easily available as it was in Mozambique. As one miner remarked, "there is no future, there is no place to cultivate". Many felt that South Africa had something to offer them only as long as they were fit to work. "The future turns bad when a miner loses his capacity to produce," said one. Another spoke of "a feeling of suffering because if you come as a miner staying permanently in South Africa, in the end you will be sent out, marginalised".

Mozambicans also felt ill at ease in a country that is different and hostile. Many referred to discrimination against Mozambicans: "There's discrimination which makes us Mozambicans suffer a lot ... There is racism and tribalism and when you live there everything is lost ... Many South Africans without work say they are unemployed because Mozambicans take their work ... There are not a lot of us who came to get this thing [permanent residence] because the *donos* [bosses/owners] of the country are discriminating and racist." South Africa was also seen as violent and threatening. As one man said, "I don't want to live in South Africa because it is a country that is quite violent and aggressive".

The strength of the attachment the miners have for their own country is remarkable. South Africans, especially those who assume that Mozambicans would prefer to live in South Africa, would be surprised to learn that many Mozambicans simply do not like the lifestyle which their comparatively rich neighbour offers. This sentiment is perhaps best encapsulated by the rancorous response, "*A vida la nao da* [life there won't do]".

CONCLUSIONS

Longer-serving Mozambican migrant miners had little interest in immigration and permanent residence in South Africa. Given their socio-economic situation, it was not surprising that they did not embrace the amnesty. It was unlikely that younger miners would flock to South Africa with their families either.

Those who applied for permanent residence appear to have done so in order to acquire certain benefits but not for the purpose of residence as such. Permanent resident status would allow the holder consumer privileges, such as hire-purchase eligibility, and would allow miners to seek other employment in the event of job dissatisfaction or retrenchment.

There was much confusion and misinformation about the consequences of permanent residence on important issues, including pensions, taxes, visas, customs duties, land rights, recruitment procedures and deferred pay.

The rejection of the amnesty by the majority of miners is easily explained. Those with 10 years' or more experience on the mines were well into the prime of life. Most had invested substantially in permanent housing and had local currency savings accounts. The average household was large, sheltering an average of about 10 people (including the miner himself). Job prospects outside of mining were, in the miners' opinion, negligible. Although they had spent most of their working lives there, they saw South Africa as a foreign country in which they would find it difficult to integrate. At the core of their rejection of South Africa was the sentiment that Mozambique was their home, where their roots were, where they had rights to land and where they had invested for future generations.

The amnesty provisions were originally conceived by the NUM, and were presumably seen as a concession to workers who had spent most of their working lives in South Africa. The NUM was effectively negotiating on behalf of foreign migrants for equality with South African miners, starting with residence and concomitant benefits.

But the NUM should have consulted the miners themselves before interceding on their behalf. If the objective of the NUM was to gain certain privileges for long-serving foreign miners who might otherwise be unfairly disadvantaged, it should have been more sensitive to both the general and country-specific needs of foreign workers. In seeking to promote the desires of its members, the NUM (and others) misjudged the priorities of Mozambican miners.

NOTE

- 1 The full survey is reported in De Vletter, *F Sons of Mozambique: Mozambican Miners and Post-Apartheid South Africa* SAMP Migration Policy Paper No 8 (Cape Town, 1998)

CHAPTER 9

ATTITUDES TO THE MINERS' AMNESTY IN LESOTHO

BY THUSO GREEN AND JOHN GAY

In August 1996 and October 1996, Sechaba Consultants conducted a survey for the Southern African Migration Project (SAMP) among Basotho miners and their wives.¹ The purpose of the research was to assess the numbers of miners and families who wished to take up the offer of permanent residence in South Africa and to assess the potential impact on Lesotho. The sample included 493 miners and 127 wives.

ATTITUDES TO THE AMNESTY

The miners and their wives were asked a number of questions concerning permanent residency and a possible move to South Africa. Table 18 provides a breakdown of their responses to questions concerning permanent residence.

TABLE 18: BASOTHO MINERS' ATTITUDES TO AMNESTY

	Yes	No	Unsure
Eligible for amnesty	52,0%	21,3%	26,7%
Granted amnesty	3,4%	96,6%	0,0%
Applied for amnesty	11,9%	87,9%	0,2%

At the time of the interviews, about half of the miners (52%) thought they were eligible for the amnesty. Twenty-one per cent thought they were not eligible. Over a quarter (26,7%) were unsure. In fact, 64% of Basotho miners were eligible to apply. This suggests that there was some confusion about the terms and conditions of eligibility.

The principal source for information about the amnesty was the National Union of Mineworkers (NUM) (table 19). Most miners correctly believed that the principal qualifying factor for permanent residence was the number of years they had served on South Africa's mines. However, they gave several different figures for the number of years required, the majority believing that at least 10 years of service were needed. Others cited a figure of five years, which implies confusion with the second SADC amnesty. Few miners (only 6,4%) felt that years of service should have been the main criterion. Others thought that all Basothos should have been eligible (19%) or that local passport and identification papers or other immigration credentials should have sufficed (45,6%).

There were important correlations between the social and economic status of Basotho miners and their eligibility for the amnesty (table 20). Basotho miners who were eligible for the amnesty differed from those who were not in that they had larger households and more dependants. They had served substantially longer on the mines, had a higher income and more livestock.

Table 21 compares miners who applied for amnesty with those who did not. There are clear differences between miners who applied and those who did not. Those who applied had larger families and more dependants. They had worked in the mines for longer. They had fewer livestock, less monthly income from non-mining sources and lower monthly savings. They spent more money on goods to send home to their families. Those who applied wished to live in South Africa, and wanted the benefits of living there.

Coplan and Thoahlane state: "The willingness of migrants and ex-migrants and their wives to leave Lesotho and live in South Africa varied with their social and material investment in their homesteads. The greater

TABLE 19: PERCEPTIONS OF AMNESTY BY ELIGIBLE BASOTHO MINERS

	Eligible
Informed by union about amnesty	80,6%
Believes years in mine is principal criterion	87,4%
Believes all Basothos should be eligible	19,0%
Believes local passport and ID should be criteria	45,6%
Believes years in mine should be criterion	6,4%

TABLE 20: SOCIO-ECONOMIC PROFILE OF ELIGIBLE BASOTHO MINERS		
	Eligible	Not Eligible
Members in household	5,9	4,8
Dependants	7,2	6,1
Total number of contracts	18,4	9,7
Value of fields	M512	M655
Value of livestock	M5911	M4168
Monthly income from non-mining sources	M72	M27
Gross monthly pay	M1480	M1233
Wishes to live in RSA	23,8%	10,5%

TABLE 21: SOCIO-ECONOMIC PROFILE OF BASOTHO APPLICANTS		
	Applied	Not Applied
Members in household	5,6	5,2
Dependants	7,1	6,7
Total number of contracts	19,1	16,1
Value of livestock	M2826	M5669
Monthly income from non-mining sources	M31	M63
Monthly savings	M20	M49
Monthly value of goods and money sent home	M655	M582
Wishes to live in RSA	46,2%	14,6%
Wants the benefits of life in RSA	57,4%	0,6%
Don't want permanent residence in RSA	3,3%	49,2%
Have investments in Lesotho	4,0%	15,8%

the investment, the greater their commitment to remaining labour migrants and keeping their families on their homesteads in Lesotho.”²² Applicants were in greater need than their compatriots and had fewer resources with which to meet those needs. They did not have investments in Lesotho that made remaining at home an attractive proposition, and saw real benefits to crossing the border.

Table 22 differentiates between those who wanted to live in South Africa and those who did not.

Those who wished to live in South Africa were better educated, had a higher cash income and sent more money and goods home than those who wished to live in Lesotho. Those who preferred Lesotho had more assets, particularly livestock, in Lesotho than those who wished to move. Some intended to farm on retirement.

Reasons for moving included the benefits that could be gained from living in South Africa, in particular the opportunity of having a small business there. This makes sense. Those who had money, education and business skills saw South Africa as potentially more profitable, while those with less money and education, but who owned agricultural assets, saw Lesotho as a place to make a living by farming.

TABLE 22: BASOTHO MINERS' SOCIO-ECONOMIC PROFILE AND DESIRE TO LIVE IN SOUTH AFRICA

	Does	Does Not
Highest schooling of miner	4,7	4,0
Gross monthly income	M1530	M1268
Monthly income per member	M131	M120
Value of livestock	M3717	M6281
Value of fixed assets at home	M5897	M7681
Monthly value of money and goods sent home	M661	M575
Wants to live there only while working in RSA	38,1%	9,5%
Sees benefits in RSA	34,0%	1,9%
Likes Lesotho, not RSA	5,1%	44,0%
Has assets in Lesotho	3,1%	17,8%
Wishes to start a small business after retirement	22,7%	5,8%
Wishes to farm after retirement	17,0%	37,2%

Almost exactly half (49,5%) of the families of eligible miners were prepared to move to South Africa. The reasons they gave for wanting to move included keeping the family together (35,8%), seeking benefits in South Africa (17,0%), finding a better life than that offered in Lesotho (13,2%), and finding employment (11,3%).

By far the most common reason why the family would not move was that they preferred Lesotho to South Africa (61,8%). This was followed by the desire to remain with family (9,1%).

Coplan explains the reasons for miners' loyalty to Lesotho:

There are powerful reasons why Basotho migrants cling to Lesotho's national sovereignty, no matter how impoverished. The proud history of Lesotho with its distinctive institutions, social structure, and resistance to incorporation is a hard thing to abandon ... [A] married man is theoretically entitled to pasture and fields for cultivation as "free goods", and in genuine practice to some ground on which to build his house ... [T]he rights to residential stands, fields for cultivation and pasturage that attach to social identity as a member of a Basotho family, clan and chieftaincy, as well as that identity in and of itself, represent precious entitlements to a great many migrants, the more so as they have to spend so many hard years away from them ... Those who would prefer to carry South African identity documents still resist the idea of "incorporating" Lesotho into its hegemonic neighbor, just as they prefer not to relocate their families to the workplace ... "That would be the end of Sesotho," they protest. By Sesotho they mean far more than their language and culture, narrowly conceived. It means a social identity and its entitlements, reciprocities and their

resources, investments of the self and substance, a personal as well as communal, genealogical and national history, and a secure, self-comprehending way of life.³

Miners who took up permanent residence in South Africa had the option of maintaining a home in Lesotho, where family members or members of the extended family might live. Some 68,3% of the miners and wives who were prepared to move to South Africa said that they would keep a home in Lesotho, while 31,7% said they would cut ties with their country of origin.

Those who would cut their ties with Lesotho were motivated by financial considerations; they felt that it would be too expensive to maintain two homes and that it would be better for their families if they concentrated on the benefits to be gained by living in South Africa.

Of those who would take up permanent residence in South Africa but keep a home in Lesotho, some were motivated by loyalty to their home country, others by their ownership of assets in Lesotho or by the presence of family members in Lesotho. Plans for the future also influenced their decision. Families that looked to farming emphasised the need to keep a home in Lesotho, while individuals who planned to run a taxi or to own a small business wanted to live in South Africa.

The survey also sought to find out whether those who wanted to live in South Africa would seek South African citizenship and, if so, why. Table 23 contrasts the percentage of miners who would apply for South African citizenship with those who wished to retain Lesotho citizenship or to have dual citizenship.

Only 18,7% of miners said they wanted to live in South Africa. Of this group, 50,9% (that is, 9,5% of the miners who took part in the survey) said they wanted South African citizenship and 36% that they wanted dual citizenship.

In short, only 6,1% wished to become South African citizens and leave their home country altogether; 3,4% would take up South African citizenship but would try to retain their Lesotho citizenship as well; and 9,2% would reside permanently in South Africa without taking up South African citizenship.

The remaining 81,3% would maintain their status as migrant workers with citizenship and residence in Lesotho.

TABLE 23: DESIRE FOR SOUTH AFRICAN AND/OR LESOTHO CITIZENSHIP

	Yes	No	Unsure
Miner wants to live in South Africa	18,7%	46,0%	35,2%
If lives in RSA, wants South African citizenship	50,9%	49,1%	0,0%
If RSA citizen, also wants Lesotho citizenship	36,0%	64,0%	0,0%

CONCLUSION

Basotho migrant labourers on South African mines face a great deal of uncertainty. Their uncertainty stems from the unfavourable economic conditions pertaining in South Africa and the difficulty of knowing what choice to make in this rapidly changing region. Mechanisation has led to mass retrenchments, and the declining gold price and rising production costs have forced many mines to close. South Africa is plagued by violence and a high crime rate, and political instability continues throughout the region.

Even though only 6,1% of the miners interviewed would want to become South African citizens and leave their home country, the remainder would probably do their best to get access to pensions, in order to enjoy the fruits of their labour. How they might do this without taking permanent residence is not clear. They may not fully understand all the issues involved, but if they do not accept permanent residence in South Africa they may have to rely on what Lesotho has to offer when they eventually leave mining.

Although the Lesotho government has not made any specific pronouncement on the amnesty, its former Minister of Employment and Labour, Notsi Molopo, argued in 1996 that "permanent residence to migrant workers will not affect Lesotho's economy, because the majority of Basotho mineworkers [who constitute the largest number of immigrants] will not take the benefit. They have settled families, relatives, fields to grow crops, and domestic animals in Lesotho, all of which will make it difficult for them to leave and go to South Africa." He said a minor economic effect might be experienced from mineworkers who retired or were retrenched from South African mines.⁴

It seems that very few Basothos would choose to live permanently in South Africa. The call of Lesotho as home, and of "Sesotho" as a defining concept, is powerful. But the union of patriotism and poverty is not sustainable. The answer for many Basotho migrants might ultimately be to establish a base in South Africa, while maintaining a base in Lesotho.

The findings reported here have the following policy implications:

- Only a relatively small proportion of Basotho miners plan to take up permanent residence in South Africa. The majority of these miners would not sever ties with Lesotho. Lesotho would suffer a certain loss of income and skills, but that loss would not be as significant as some people have feared.
- Many of those who would take up South African citizenship would want to keep their Lesotho passports if at all possible. Their ambivalence flows from South Africa's political instability and violence, and concern that Lesotho's government is incompetent and corrupt.

- Miners need better information about the legal requirements for permanent residence and their eligibility. Several miners, and an even greater number of wives, did not understand what constituted eligibility for permanent residence. Many others were unsure about the difference between permanent residence and citizenship.
- The position with regard to pensions for those who do not take up permanent residence must be explained. There are far more miners wanting pensions on completion of service than the number who wish to take up permanent residence. The difference between state pensions, as provided by the South African government, and work pensions, as provided by the mines and/or a provident fund, should be made clear.

NOTES

- 1 The full study is reported in Sechaba Consultants *Riding the Tiger: Lesotho Miners and Permanent Residence in South Africa* SAMP Policy Paper No 2 (Cape Town, 1997)
- 2 Coplan, D & Thoahlane, T "Motherless households, landless farms: Employment patterns among Lesotho migrants" in Crush, J & James, W (eds) *Crossing Boundaries: Mine Migrancy in a Democratic South Africa* (Cape Town, 1995), p 148
- 3 Coplan, D *In the Time of Cannibals: The Word Music of South Africa's Basotho Migrants* (Chicago, 1994), pp 249-50
- 4 "Is the permanent residence issue a big deal to the government?" *Work for Justice* 46 (April 1996) p 9

PART 4:
AMNESTY AND
THE REGION

CHAPTER 10

ROUNDTABLE DISCUSSION

BY DEMETRIOS PAPADEMETRIOU, LUIZ BITONI, ATTIE TREDOUX, ROBERT DAVIES,
KHABELE MATLOSA & LOVEMORE ZINYAMA

DEMETRIOS PAPADEMETRIOU

What effect do amnesties have on illegal immigration? Some argue that they encourage illegal immigration, both before and after the programme. This then necessitates a further programme. Certainly that can happen. It will happen if you don't do what you are supposed to.

Amnesty programmes are an opportunity to re-evaluate a country's approach to immigration; to introduce a new immigration regime based on the knowledge gained about the underground economy and labour market.

They are also an opportunity to develop robust enforcement policies, though this should not be done unilaterally. This is where most countries, including the United States, have failed. They have developed enforcement policies without really thinking them through. Unilateral border controls and employer sanctions have become the norm. In order to say anything legitimate about immigration you have to repeat these policies. But, in private, people shake their heads and admit that the policies have failed.

It is not because they are bad ideas that they have failed. They have failed for complex reasons. I know that South Africa is thinking about expanding employer sanctions. I suggest that this may be less effective than enforcing proper working conditions in all sectors of the economy. If you have to put resources into anything, don't put them into employer sanctions.

The United States has disregarded the deplorable working conditions in its garment industry sweatshops and in agriculture but it has a robust employer sanctions programme. The effect of this programme is negligible because the advantage to employers of continuing to employ illegal workers in terrible conditions is too big and so employers take a chance. If they get caught once every three years, they still make a killing.

Stepping up border controls and imposing harsher employer penalties is likely merely to result in snowballing costs. When they don't work you will say, "it didn't work because we weren't diligent enough". So you punish the employers more and put yet more resources on the border. That is what has happened in the United States. Illegal immigration has jumped from 250 000-300 000 in the early 1990s to 350 000-400 000 eight years later, despite the immigration budget having been quadrupled in the last four years and \$1,3 billion currently being spent on the border effort alone.

Another thing that really bothers me is the perception that immigrants are responsible for an increase in crime rates. If one goes into this issue one finds that the statistics say exactly the opposite; immigrants are underrepresented in most measures. Crime is homegrown rather than immigrant-grown. By all means focus police attention on the bad apples: the more integrated the world becomes the more chance bad apples have of getting to other countries. But don't blame rising crime rates on immigration.

LUIZ BITONI

Policies to solve migration issues should be a joint regional effort. However, the South African amnesty policy was not coordinated with the other countries of the region. Because there was no prior research, the basic reasons for migration were not identified in the planning of the amnesty programme. As a result, the kind of amnesty that was proposed — involving an offer of permanent residence — was not adequate for the situation. Migrants are looking for an improvement in their material position, not a different place to live. In my research, only one or two per cent of Mozambicans said they

wanted to use their money in South Africa. Even after 20 or 30 years in South Africa they still considered Mozambique "home".

The real challenge is to create conditions that make it possible for these people to survive. The South African government should invest the money it spends on deporting people on projects in the countries of origin. Then people won't come to South Africa to look for employment or residence.

ATTIE TREDoux

It is my job to write legislation. I was responsible for the Aliens Control Act and its 1995 amendments. No matter how good your legislation is, there are factors that defy borders or controls. If you are hungry you will cross a border in spite of legislation. So I've learnt that there is no need to rewrite legislation; we can review our policy but we must try to manage the situation more effectively. The distinction between migrants and immigrants is false. If you grant a person amnesty and permanent residence, it doesn't prevent him from going back to his country of origin, and it doesn't affect his citizenship in that country. In fact, granting amnesty as we have done on a few occasions actually assisted migrant workers as well. They can now cross the borders and come back on a more regulated basis.

ROBERT DAVIES

The amnesties have come under criticism, some of it well deserved. Although there may have been some who thought that offering the amnesties with permanent residence would solve the migration issue, that was not the only view that motivated the amnesty. There was definitely also the view that South Africa's immigration policy had in the past been racially discriminatory. There were people in the country whose official status was that of "illegal aliens" who would in other circumstances have been able to get permanent residence and citizenship. As part of a new approach to immigration, it was necessary to recognise this category of people.

However, the research presented in this document confirms that this is not the major category; it is only a small category of the people here, and this is reflected in the thrust of the Green Paper on International Migration. We are beginning to distinguish between the various levels and layers of immigrants and migrants. We've moved beyond the basic four categories: contract workers, refugees, "brain drain", and undocumented. In analysing the "undocumented" category, we are finding that there are immigrants as well as migrants, mostly the latter.

We need to take this further. There are migrants seeking work in the formal sector and others working in the informal sector. It is vital to make that distinction. The Green Paper is a broad outline of the way forward. But there are many unresolved issues in the detail. If we are to move towards a flexible

labour quota system, as recommended in the Green Paper, how are we going to define these quotas? If you have informal and formal sector migrants, the quotas can't simply be based on employer requests. Nor can they be based on estimates of the numbers involved.

It is true that we haven't fully understood the causal factors involved in migration. We are facing an abnormal migration in southern Africa. The region's history of destabilisation, ecological imbalances and structural economic problems are among its causes. Migration must spur South Africa on to work with the migrants' countries of origin, to make the option of staying in their own countries viable and attractive for current migrants.

KHABELE MATLOSA

The amnesties dealt with contract migrants, undocumented migrants and refugees. But there are other aspects of migration that need to be dealt with, such as the brain drain. Consultation between the region's governments on migration policy is necessary. But the consultation must not be state centred: the peoples of the region must be part of the debate through civic and business organisations, unions, and so on.

The Draft Protocol on Free Movement of Persons in the region has to be debated and unravelling. The issues pertinent to regional migration involve borders, state security and sovereignty. Governments panic at the idea of dismantling borders. We need to find out whether the migration problem can be resolved while countries equate borders with state security. We need durable, mutually beneficial solutions.

LOVEMORE ZINYAMA

Perhaps South Africa needs to take an approach that is regional, multisectoral and sustainable in the longer term, and not one based on short-term fear and panic. South Africa's exports of subsidised goods give it a competitive advantage and cause deindustrialisation in neighbouring countries. For example, the Zimbabwean textile industry virtually collapsed following non-renewal of a longstanding trade agreement.

Mr Buthelezi's keynote address outlined a policy that reserves South Africa for South Africans, with unskilled and semiskilled people from the region to be kept out. There will be selective immigration of skilled personnel. But that too will result in deindustrialisation of neighbouring countries. If industry in Zambia fails to develop because there is a brain drain to South Africa, Zambia's unskilled and semiskilled workers will follow.

Boundaries are artificial. In discussing policy to control the movement of people, how much consideration have we given to communities in border regions? Some members of the same family live in Mozambique, some in South Africa. As far as they are concerned those boundaries don't exist.

PART 5:
AFTER AMNESTY

CHAPTER 11

LESSONS FOR THE THIRD AMNESTY

BY VINCENT WILLIAMS

Cabinet announced the third amnesty in December 1996, to coincide with the cessation of refugee status for Mozambicans in South Africa. As of mid-1998, implementation had still not commenced and there is still considerable uncertainty about when and how the long-promised amnesty will proceed. The urgency of the matter cannot be understated. In the months that have elapsed since the announcement, many potentially eligible Mozambicans have been arrested and deported.

The third amnesty is directed very specifically at those Mozambicans who entered South Africa during the years of the civil war in Mozambique.

Thus, the primary criterion is that applicants need to be able to prove that they entered South Africa as bona fide refugees, at a time when the then South African government did not officially recognise them as refugees.

Whether additional criteria will be specified is unclear. Equally unclear is what the Department of Home Affairs (DHA) would accept as valid documentation to verify that applicants do in fact qualify as bona fide ex-refugees.

Every effort should be made to reach all eligible applicants and the shortcomings of the Southern African Development Community (SADC) amnesty process should be taken into account and rectified. The aim should not be to minimise the number of applications but to ensure that everyone who is eligible has a fair opportunity to apply. Dr Patrick Matlou, Chief Director of Migration of the DHA, has noted that it is unlikely that anything will be done differently.¹ This chapter has been written to encourage the Department to learn from the mistakes of past amnesties.

Eighteen months after the amnesty was announced, there is still uncertainty about how it will be implemented and funded. The Department reached a provisional agreement with an external organisation to fund the amnesty through the Department and various Non-Governmental Organisations. In a presentation to the Parliamentary Portfolio Committee on Home Affairs in May 1998, the Director-General of Home Affairs had the following to say:

They have indicated that they are willing to fund the exercise, but it now appears as if they intend to target persons who do not qualify in terms of the Cabinet decision and it may be necessary to fund the exercise departmentally. It is envisaged that, if the state has to fund the project, it will cost approximately R1m. This has not been provided for.²

The concerns of Department officials about the cost of the amnesty and the potential for it to be abused by people who do not qualify are valid and need to be taken seriously. However, it is precisely this kind of confusion and uncertainty that surrounded the SADC amnesty. Such confusion not only generates suspicion among potential applicants about the intentions of government in granting the amnesty; it also increases hostility among South Africans who may feel that the Department is not in favour of granting the amnesty, but is being forced by Cabinet to do so.

Thus the first point to be made is that public statements regarding the amnesty, irrespective of where they emanate, must be consistent and should convey the intentions of government, including the DHA, clearly.

The scope and conditions of the amnesty, the rationale behind it and the applicable rules and guidelines should be conveyed not only to potential applicants, but also to the South African public. It is crucial that this information

is conveyed to officials in the DHA and in other departments that are likely to be affected by the granting of the amnesty.

Speculation about the number of people who will apply for and be granted permanent residence serves only to heighten anxiety about the economic and social impact the amnesty will have. The truth is that no one knows for certain how many people will apply and qualify and what impact this will have. It would be very useful to establish baseline data and develop a profile of the target group, either prior to or concurrent with the implementation of the amnesty. There is a perception that the applicants, once granted permanent residence, will further increase competition for scarce resources and impose an additional burden on the state. However, in terms of the currently applicable requirements, potential applicants must have been present in South Africa since at least 1993, so it is more than likely that many of them have integrated, have jobs and are self-sufficient. Obtaining data about the target group will not only dispel such misperceptions that might exist, but will also lead to the efficient and effective use of limited resources.

As the Department itself observed during the latter stages of the second amnesty, a focused and well-managed information campaign (communication strategy) can significantly enhance the success of the amnesty. Such an information campaign should be directed primarily at potential applicants, but may also serve to keep the South African public, government officials and policy makers informed of the progress of the amnesty.

Information can be disseminated by various means, including leaflets, posters, billboards, newspapers and television. During the SADC amnesty radio proved to be the most effective means of reaching potential applicants. As most Mozambican refugees live in the border areas of Mpumalanga and the Northern Province, radio is probably still the best way of reaching them. The information campaign should contain the following components:

- It should commence with an official public announcement to South Africans, explaining the purpose of the amnesty and allaying fears about its impact on the country.
- The campaign should continue for the duration of the amnesty, and should aim both to reach potential applicants and to provide information about the progress of the amnesty, the number of applications, the profile of applicants and other relevant data.
- At the conclusion of the amnesty process, there should be an official announcement disclosing the total number of applications, how many were approved, how many rejected, and where in South Africa the successful applicants are resident.

Our evaluation of the SADC amnesty suggests certain steps that can be taken to streamline the implementation of a future amnesty:

- Providing an adequate number of access points and ensuring the optimal location and staffing of these points.

- Running outreach programmes to send mobile units and volunteers to areas where the DHA does not have a physical presence.
- Making application forms shorter and only collecting information directly relevant to the application.
- Translating application forms into Shangaan and/or Portuguese, and having interpreters available to assist applicants.
- Ensuring that all procedures can be carried out in one visit by, for example, having a commissioner of oaths stationed at every office where applications will be received.
- Allowing sufficient time for all eligible applicants to prepare and submit their applications.
- Allowing women to submit applications on behalf of their family unit.

Some of these measures were, in fact, implemented during the SADC amnesty, but it appears that this was only done when the DHA's offices began to experience problems. These measures must be included in planning and budgeting for the implementation of the amnesty.

Departmental officials were not always *au fait* with the provisions of the SADC amnesty and were often uncertain about the applicable guidelines and procedures. It was also not clear where, besides the Department's offices in Pretoria, queries could be directed.

It would be practical to create a central committee or team to provide guidance and monitor the overall process of implementation. Any queries from field offices could be directed to the persons who are part of this committee or team. In addition, representatives of other departments that are affected by the amnesty process should be included on such a committee or team.

The context within which the amnesty is granted has to be made absolutely clear. It is assumed that, during the amnesty period, those who submit applications will not be prosecuted for being in the country illegally; effectively this amounts to a moratorium on Mozambican deportations. If this is not the case, it should be made clear to all potential applicants. However, announcing an amnesty without guaranteeing that persons will not be arrested and deported when they come forward to submit their applications undermines the amnesty and can only contribute to its failure.

All prospective applicants should be told what the purpose of the application is and advised about the legal obligations and consequences of submitting an application. In particular, applicants should be informed that if their application is rejected, they will be liable for deportation following an initial period during which they may leave voluntarily. This information must form part of the information campaign proposed above.

The decision of Cabinet to grant amnesty to Mozambican ex-refugees is a gesture of goodwill. It would be a pity if this goodwill were undermined by a

disinclination to learn from the administrative shortcomings of the SADC amnesty.

NOTES

- 1 The DHA has recently suggested that Mozambicans who entered South Africa as bona fide refugees in the 1980s and early 1990 are in the country legally. The amnesty is therefore not about regularising the status of illegal residents. Rather, the aim is to provide legal residents with appropriate documentation. It is pertinent, therefore, to ask why so many continue to be arrested and deported as if they were in the country illegally (see Johnston, N & Simbine, C "The usual victims: The Aliens Control Act and the voices of Mozambicans" in Crush, J *Beyond Control*, pp 160-80). The urgency of issuing documentation through the amnesty process can therefore not be overemphasised.
- 2 Presentation to the Home Affairs Portfolio Committee by the Director-General: Home Affairs, 5 May 1998, p 1

CHAPTER 12

WHICH NEW SOUTH AFRICANS?

BY JONATHAN CRUSH

There is a sentiment in some circles in South Africa that the country is in danger of having foreign immigration models — models derived from the experiences of other countries — foisted upon it. This sentiment informs some of the responses to the Draft Green Paper on International Migration.

The fact that the Canadian government sponsored the research inputs to the Green Paper and that the South African Task Team had Canadian-based advisers is seen to imply that a Canadian-style immigration model is proposed in the Green Paper. Similarly, because the Green Paper draws on a new international convention regarding refugee rights, it is seen, equally erroneously,

as a devious attempt to import a “eurocentric” model to South Africa. These responses have overlooked the Green Paper’s attempts to build a new immigration policy based on research into the realities of cross-border migration in southern Africa. They ignore the proposed use of immigration as a vehicle for furthering the South African government’s stated economic policies and the call for its immigration policy to be consonant with its democratic constitution and international commitments.

South Africa, like other countries, has the right to resist the wholesale importation of inappropriate foreign models. The danger is that the lessons that might have been learnt from those models and experiences are thrown out as well. South Africa is exceptional but it is not unique. This is clear from what has been discussed in these pages.

The post-1994 immigration amnesties were a South African initiative arising from Cabinet’s response to the country’s recent migration and immigration history. There is little evidence that those who motivated for the amnesties were driven by an awareness of amnesty experiences elsewhere. And there is no evidence that the Department of Home Affairs (DHA) sought guidance in the experiences and mistakes of the numerous other countries that have, over the years, offered immigration amnesties to irregular residents.

The post-1994 South African amnesties have unusual, even unique, features. And, on the evidence presented in this book, it might be said that the amnesties were reasonably successful and that they achieved most of their goals. Certainly, the level of awareness of the amnesties was very high among the target populations. There were problems of accessibility and documentation though most people seemed to know and recognise what was involved. That only 200 000 people applied for the SADC amnesty rather than the one million anticipated is probably because the eligible population was a lot closer to the former figure than the latter. The low rate of participation among miners was not because they were unaware of the terms and conditions, but because they were not interested in permanent residence or were unsure about the strategic reasons that motivated their colleagues to apply.

There will be no further amnesties, the current South African Minister of Home Affairs has suggested. International comparisons are therefore at best academic, at worst irrelevant. There are, however, at least two reasons why such comparisons should be made.

- The amnesty process is not yet over. The third amnesty for former Mozambican refugees is still to be implemented. As Vincent Williams suggests in the previous chapter, there is much of practical value to be learnt from the 1996 SADC amnesty and international best practice; and
- The Minister of Home Affairs acknowledged that South Africa could be faced with the demand for another amnesty in five years’ time.¹

This does not, of course, mean that there will be one. But it is worth remembering that unless the policies designed to control unlawful entry and employment succeed demonstrably, the demand will be made. If or when that happens, the lessons to be gleaned from past amnesties and international experience will still be relevant.

The International Labour Organisation (ILO) has reviewed amnesties (or regularisation) globally and makes the following recommendations for countries considering such a policy approach.²

The overriding concern must be to implement the amnesty “effectively and comprehensively”. In order to maximise access and impact the following are required:

- Clear and attractive conditions or eligibility rules;
- A broad-based and energetic advertising and publicity campaign;
- An effort by the administration to convince migrants and employers that it wishes to “wipe the slate clean” rather than to get rid of foreigners or punish employers;
- A sharing of implementation with Non-Governmental Organisations (NGOs) trusted by the migrants.

The ILO highlights how “getting the framework conditions right” encourages people to come forward.

- The point in time when migrants become eligible for regularisation should be recent, not months or years back.
- To require that migrants have ordinary or stable employment, let alone that they possess sufficient resources, will “inevitably lead to contentious documentation and verification procedures that will have effects opposite to those intended”. The authorities ought to accept all migrants who meet the cut-off point “irrespective of their employment status and regardless of the category of migrant to which they belong”.
- Many eligible migrants may be employed by local employers, many of whom may be aware that their workers are illegal. A workable amnesty should elicit the help and support of employers. They should be indemnified against prosecution and encouraged to assist their workers to regularise.
- In the absence of reliable documentation proving eligibility, government should accept third-party declarations, sworn affidavits, and the like.
- The prevailing image and negative experience of government action should be countered with “user-friendly implementation mechanisms” that convincingly convey the message of openness, helpfulness, and “wiping the slate clean”. Social workers or specially trained officials would serve this purpose better than the police or immigration officials.

- The government must persuade both foreigners and employers, if need be by enacting laws, that “information from applications of both eligible and ineligible applicants will not and cannot be used for enforcement or any purpose other than to decide legalisation eligibility”.

The ILO’s recommendations may appear Utopian, but they assume that there is an honest intent on the part of government (a) to “wipe the slate clean” by regularising the legal position of all or the majority of foreign citizens illegally present; and (b) to maximise the number of applications from the eligible population.

The fact that the South African amnesties do not compare particularly well with the ILO recommendations means either that insufficient thought was given to the purposes and process of amnesty or that the South African government’s intentions diverged from those recommended by the ILO.

If the aims of the South African amnesties had truly been to regularise the position of the largest possible number from the eligible population, it would have adopted a different approach. For example, there would have been:

- Prior discussion and consultations with interested parties, including other governments, trade unions, employers’ associations, NGOs and migrant associations;
- A systematic public education campaign before the amnesty kicked off, to inform the South African public of the purpose and likely effects of the amnesty and the target population of the requirements and conditions of eligibility;
- A cut-off date closer to the present time, and sufficient time in which to gather documentation and make application;
- Guarantees to employers and employees that the information volunteered would be used to decide eligibility for amnesty only and for no other purpose;
- Systematic incorporation of research findings on migrant attitudes, intentions and behaviours. As the research reported in this publication demonstrates, migrants in South Africa are far more interested in legal status than permanent residence. A range of legalisation options should be available, rather than the “all or nothing” implication of accepting permanent residence.

None of the above took place — which leads one to conclude that the South African amnesties had another purpose.

The ILO warns that amnesties “will fail if they are overloaded with unrelated aims”. The South African amnesties had a great deal to do with the politics and parameters of the new South Africa. They carried the weight of expectations and obligations related to the new government’s perception of itself, of the sins of past governments, and of a new political morality. Policy

makers could walk away satisfied that they had, as the Chair of the Home Affairs Portfolio Committee put it, gained the “moral high ground”.

They had much less to do with whether and how a policy of amnesty might help to address the specific challenge of unauthorised immigration and unlawful employment. And that is what makes the South African amnesties simultaneously admirable and problematical.

The South African amnesties did not, in fact, primarily aim to deal with the challenge of undocumented migration. They have therefore not contributed a great deal to its resolution. If the current policy framework remains in place, then amnesty as a policy measure to deal with unlawful immigration and employment will soon be on the agenda again. This book, by reviewing the experience of a “political amnesty”, provides pointers on how a proper “immigration amnesty” might be implemented.

Finally, what of the “new South Africans” created by the political amnesty? The answer exposes the contradiction inherent in these amnesties. The architects of the amnesties assumed that they were creating “new South Africans”: they were legalising people who were or wanted to be permanent residents and, eventually, citizens of South Africa. The people at whom the amnesties were targeted wanted nothing of the sort, however. They did not want to be “new South Africans”. All they wanted was an end to harassment and persecution, and access to a livelihood denied them in their home countries.

The creators of the “new South Africans” have not broached the issue of “integration”, as they logically should have done. The effects of amnesties continue beyond the closing date for applications. They impinge on social, educational, cultural, economic and health-related departments and policies. What emerges from this book is that the “costs” may not be nearly as burdensome as critics of the amnesties suggest. Integration may not imply the full and long-term integration of people of other languages, cultures and colour into South Africa. But the issue of how foreigners with legal status are treated in everyday interaction with ordinary South Africans remains unresolved.

Politicians and officials have expressed concern over the rise of xenophobia in South Africa. One policy response is to try to get rid of all of those who supposedly cause the xenophobia — the immigrants, migrants and refugees. If there were no foreigners, the reasoning goes, South Africans would not be xenophobic.

A more productive policy response would be to try to re-educate the xenophobes. The Deputy Minister of Home Affairs spoke recently of the need for a campaign of public education to counter xenophobia and to educate the public on the rights of non-citizens in the country.³ This is the most overt commitment government has yet made to a programme of public education on immigration and refugee issues. The logical place to start is to explain the rationale and impact of the amnesties to sceptical South Africans.

NOTES

- 1 The Hon M Buthelezi, in the foreword to this book.
- 2 Böhning, WR *Employing Foreign Workers: A Manual on Policies and Procedures of Special Interest to Middle and Low-Income Countries* (Geneva: ILO, 1996), pp 82-86
- 3 Lindiwe Sisulu, Home Affairs Budget Speech, May 1998