

Migration Series

CDE
R E S E A R C H
POLICY IN THE MAKING

**PEOPLE ON
THE MOVE**

**A NEW APPROACH TO
CROSS-BORDER MIGRATION
IN SOUTH AFRICA**



7

June 1997

THE **C**ENTRE FOR **D**EVELOPMENT AND **E**NTERPRISE

CDE

RESEARCH

POLICY IN THE MAKING

CDE Research: policy in the making is a vehicle for disseminating the results of research, and suggested policy options, on critical national challenges. Each issue is based on in-depth research, involving a single commissioned paper or several such papers written by experts in the field.

SERIES EDITOR

Ann Bernstein

This issue was written by: Ann Bernstein, executive director, Centre for Development and Enterprise; Professor Lawrence Schlemmer, CDE consultant; Professor Charles Simkins, Helen Suzman professor of political economy, University of the Witwatersrand; and Professor Douglas Irvine, senior associate, CDE; assisted by Judi Hudson, a CDE research co-ordinator. We have been strongly influenced by the work of Professor Myron Weiner, former director of the Centre for International Studies, Massachusetts Institute of Technology.

CDE Research no 7, June 1997: *People on the move: a new approach to cross-border migration in South Africa*. CDE Migration Series.

This publication is the second in a two-part series on migration. The first is ***CDE Research*** no 6, June 1997: *People on the move: lessons from international migration policies*.

Published by the Centre for Development and Enterprise
P O Box 1936, Johannesburg 2000, South Africa

ISSN 1027-1406

CDE acknowledges the financial support of the Urban Foundation in completing this work.

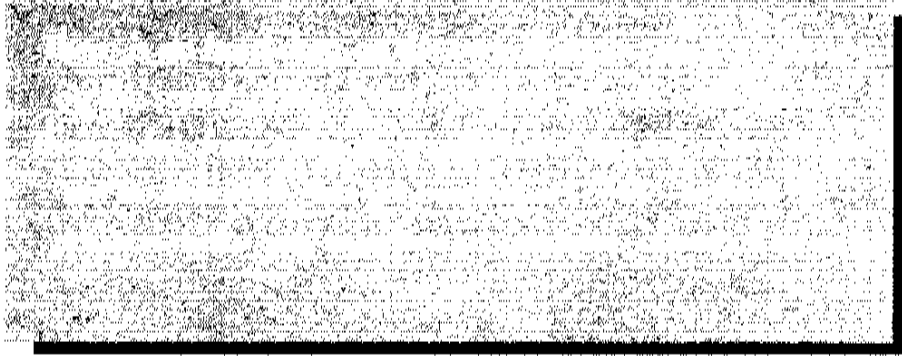
The CDE Migration Series

ver the past three years, the Centre for Development and Enterprise has been engaged in a major study of the international experience of migration policy and the implications of those lessons for South Africa. Migration is an emotive issue in South Africa, and an effective cross-border migration policy will involve some hard choices. Throughout this investigation, CDE has been guided by one central concern: how can South Africa adopt migration policies that meet its national interests and are compatible with the values of its citizens?

The CDE Migration Series consists of two reports. The first is based on an examination of the international migration policy experience in five areas, central to the migration issue in South Africa. Working with Professor Myron Weiner former director of MIT's Centre for International Studies and chairman of the External Research Advisory Committee to the United Nations High Commissioner for Refugees, CDE commissioned five research papers from international experts on selected topics relevant to migration policy in South Africa (see CDE Research no 6 *People on the move: lessons from international migration policies*, June 1997).

This document, the second in the series, analyses the current policies on migration in South Africa, and develops a new approach to cross-border migration for the country. Based on a detailed analysis of critical issues in the migration policy debate, CDE's proposals involve a two-tier approach distinguishing between skilled and unskilled migration. The CDE policy package is designed to stimulate economic growth and strengthen the economy by enlarging the pool of skilled people and entrepreneurs and by promoting a more efficient labour market. The proposals accommodate regional pressures for migration while limiting the claims on public resources until immigrants have demonstrated their capacity to contribute to the country.

The approach proposed by CDE builds on international experience and on South Africa's own realities and experience. We believe it is in South Africa's best interests. We also believe it is a policy which South Africa has the capacity to implement.



PEOPLE ON THE MOVE

A new approach to cross-border migration to South Africa

INTRODUCTION

In this report, the second of two publications in the CDE Migration Series, we develop a new approach to cross-border migration for South Africa. Migration is an emotive and complex topic. For 50 years apartheid governments tried to control and prevent internal rural-urban migration within South Africa's borders. The result of this ill-conceived policy was not to stop migration but, among other things, to create a society which is struggling to this day to meet the challenges of internal migration.

The long-delayed onset of democracy seemed to lead to an influx of migrants of a different kind. One of the defining features of transitional and now democratic South Africa has been the much more visible presence of 'foreigners' in different parts of the country. Traders from West Africa, poor peasants from Mozambique, sharp operators from Nigeria and Zaïre – these are the images that fill the popular imagination.

Foreigners are not new to South Africa. There have been 'foreign' workers in the country for many decades: contract workers on the mines, Zimbabweans in Johannesburg's northern suburbs, Mozambicans deep in the heart of Soweto or Mpumalanga, Chinese entrepreneurs in Port Elizabeth or Johannesburg; and migrants were critical for the early industrialisation of the country. And yet in the 1990s it seemed as though a large number of people, mainly from Africa but from elsewhere as well – Taiwan, China, India – had suddenly arrived here. In the absence of hard numerical data – about either South African internal migration or cross-border immigration – all kinds of wild guesses about numbers and trends gained credence.

Isolated incidents of tension between South Africans and migrants received prominence in the media. Links were made between government's commitment to reconstruction and development for South Africa's citizens and the reputedly enormous influx of foreigners denuding the country's resources. 'Illegal immigrants' became the new scapegoats for anything

from an increase in crime to government's problems with delivery (*see box, page 4*). The whole question of immigration to South Africa – by both skilled and unskilled people – has emerged as one of the most important areas of controversy in the 'new' South Africa.

The government, struggling with its inheritance of people, policies and institutions, felt pressurised to react to 'illegal immigration'. Existing legislation was amended; an amnesty was declared first for mineworkers and then other foreigners. Simultaneously promises were made to tighten up on restrictions on foreigners entering or staying illegally in the country.

Evidence emerged of problems in South Africa's system of border controls, of injustices in the attempts to arrest and deport people who had no legal papers, and of the costs and unintended consequences of deportations and other control measures.

Negotiations with the other countries in the SADC region resulted in first one and then an altered (more restrictive) approach to subregional movement. All these pressures have now resulted in the establishment of a task team appointed by the department of home affairs to develop a green paper on migration policy. Simultaneous with the ongoing work of the task team, the minister of home affairs has issued strongly worded statements of intent on toughening up on 'illegals'.

It is in this context that CDE puts forward its proposals on how to approach this complex area of national policy. On the basis of considerable international and local research, and policy discussions with diverse South Africans, CDE puts forward a new approach to cross-border migration to South Africa.

The CDE approach tackles migration from the perspective of South Africa's national interests, and aims to strengthen the legitimate authority of the South African state, its laws and officials. The proposed policy complements and supports

the government's macro-economic strategy, and aims to harness the economic benefits of migration for South Africa while limiting any additional new burdens on

**For a summary of CDE's analysis,
see pages 30 and 31**

For CDE's proposals, see page 32 onwards

state resources. The policy is built on a realistic assessment of the country's limited institutional capacity and is therefore reasonably simple to implement and easy to communicate.

The policy provides a channel for law-abiding, work-seeking and enterprising, even if unskilled, migrants to register with the South African authorities and enter our economy. It is only once they are full tax-paying, continuously working residents that migrants will qualify for permanent residence and the right to join South Africans in the queues for services.

On the control side of the policy, we propose a mechanism which switches the main focus of attention away from mass deportations or search raids inside South Africa towards a focus on individuals who have contravened the terms of their probationary entrance into the South African economy.

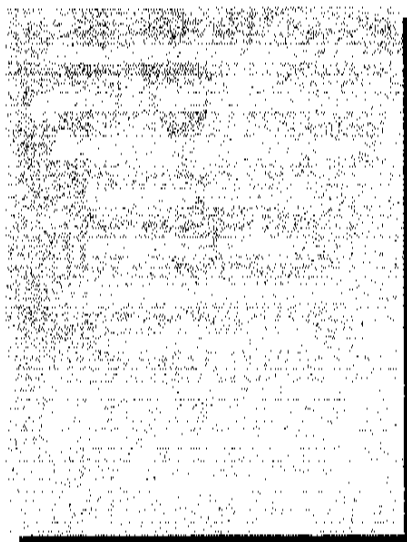
No policy on migration issues, in a country as complex as this one, will be perfect. The CDE proposal tries to put together an optimal approach on what is a multifaceted and potentially beneficial phenomenon. This report on *A new approach to cross-border migration in South Africa* should therefore be seen as a contribution to what we hope will be an open and vigorous debate on the direction of national policy in an area of great importance for many years to come.

KEY ISSUES ARISING FROM MIGRATION POLICIES

At the outset, it is important to isolate key issues which arise from South Africa's migration policy. In dealing with what is a very complex and difficult area of policy for many societies, not only ours, we would argue that the following are the most important issues for developing a new approach to migration in South Africa.

The 'new' scapegoats?

The minister of housing said yesterday that when she took over her portfolio the housing backlog was estimated at 1,5 million, but in a second assessment it now stood somewhere between that figure and 3 million homes. The reason? 'We can't keep immigrants out. Somehow our borders are porous.'



National interest

In an increasingly global world, it is tempting to downplay the importance of nations and their domestic political concerns. This temptation should be resisted. While recognising the realities of a shrinking globe we strongly support the view that a government's first duty is to the citizens of the country it governs: to protect and advance their security, well-being, rights, freedoms and economic prosperity.

This is not to say that governments should ignore the claims of neighbouring states, regional welfare, international obligations and other humanitarian considerations, but that they should do so in the framework of their own national interests. Thus, in thinking about migration policy for South Africa, the government should be guided first and foremost by issues of national interest. It is from this perspective that government should assess and respond to the many and complex issues of fact and philosophy involved in the migration debate.

Understanding the migration process

In the course of the heated and sometimes fractious debate on issues surrounding migration, various assumptions are made about the migration process that are integral to different policy positions. Many claims are made on how this process works, why people migrate, and what they do when they get here. Migration is in fact a very complex process, and one about which we are rather ignorant in southern Africa. If one thinks about the enormous disparities in wealth and opportunity within South Africa itself and between South Africa and the other countries on the subcontinent, the really intriguing question is why so many people stay where they are – in rural South Africa or in the countries surrounding South Africa.

If migration were – as it seems at first sight – driven solely by poverty, economic hardship and a lack of opportunity, then far more people would be camped in the middle of Johannesburg, Durban or Cape Town than there are. Oscillating migration also demonstrates a long-term commitment to maintaining a household in the place of origin. The truth is that the vast majority of people in poorer countries do not move, and do not try to move. A critical building block for any migration policy, then, is a sound understanding of the phenomenon at work, the many different forms of migration, and its real causes and nature.

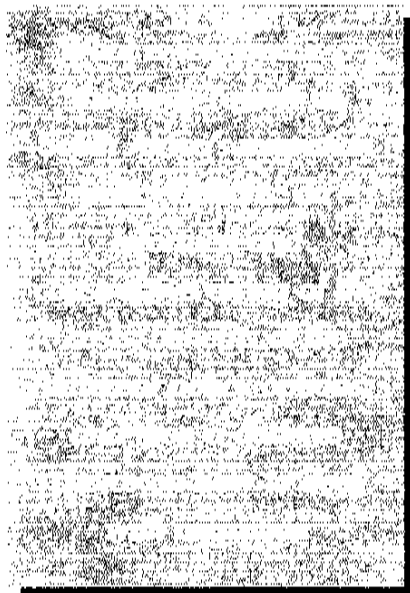
Financial and institutional capacity of the state

In an ideal world, one can formulate an ideal migration policy. The political miracle of 1994 notwithstanding, South Africa today is not an ideal world. Fiscal and institutional realities must be an essential component of any migration policy. The government's macro-economic strategy spells out the stringent fiscal constraints facing the South African exchequer for the foreseeable future. Any single budget item will more than likely be cut in real terms over the next five years, thus making any policy built on the assumption of greater financial resources a non-starter. In similar vein, the realities of state capacity need to be understood and integrated into any policy proposals. South Africa is large, diverse, and a complex society to govern. The realities of apartheid, democratisation, state transformation and affirmative action mean that the instruments of government – the institutions, procedures, personnel and output – are extremely weak. The prospect of the civil service being able to perform effectively even its most basic functions is in doubt for at least the next 5-10 years.

To suggest that the government can undertake additional tasks with a modicum of effectiveness in this context is unrealistic. These two realities, then, of fiscal and institutional limits on policy implementation need to be factored into the discussion of migration policy in South and southern Africa.

Domestic policy concerns

Migration policy needs to be consistent with a government's core economic and political philosophies. First, if South Africa – as is clearly stated in the government's macro-economic strategy – wants to become a competitive economy in the global system, consideration must be given to the relationship between opening our borders to trade, industry, culture, communications and capital, and the movement of people which must inevitably follow. Second, if the government is committed to establishing a human rights culture inside South Africa, the interaction between this and policies to deal with the inevitabilities of migration to the country must be considered. Third, government needs to consider how its attempts to provide certain basic social needs inside the country (employment, education, health care, housing, welfare) is affected by its approach to migrants. Conversely, its approach to these issues could also be a factor in promoting greater migration, and this too needs to be borne in mind.



International policy concerns

By its very nature, cross-border migration has foreign policy implications. These naturally involve economics and politics. The content and implementation of South Africa's migration policy will affect its relations with neighbouring states.

Sustainability

In designing a migration policy, attention must be given to its long-term implications as well as the ability of the


state to sustain such a policy over time. This does not mean that a country's migration policy should never change – far from it. Migration policy must be sensitive to a range of factors, such as the rate of economic growth, the need for skilled migrants, the capacity of the state, or actual migration pressures. It is perfectly sensible to adopt a policy for a period of time, evaluate its impact, and then adapt or even change it.

Implementation considerations

Migration policy and its implementation affect many departments of state. It is important, therefore, to establish an effective, ongoing policy-making process, a framework for interdepartmental co-operation and co-ordination, and an ongoing process for evaluating the impact of policy. Of course, the production of information and analysis on important migration questions is essential. All these concerns apply at the interstate level as well.

These are the broad dimensions of the problem that shaped CDE's approach to tackling migration.

THE GOVERNMENT'S CURRENT APPROACH

 I present the entry of non-nationals into South Africa is governed by what has been called a dual system of control. This takes the form of immigration and work permits under the Aliens Control Act 96 of 1991 (as amended in 1995), and bilateral treaties between South Africa and the governments of Botswana, Lesotho, Swaziland and Mozambique. (According to the Labour Market Commission, the treaty with Malawi seems to be non-functional².) This 'two gates' system is an inequitable one, as those people entering the country in terms of the Aliens Control Act

may gain permanent rights to work and residence whereas those whose status is governed by the bilateral treaties remain perpetual contract workers. 'The perpetual temporary status of contract migrants reflects government's concern to limit the number of foreign workers to whom permanent status is granted as well as concern for the impact that a drastic change in the pattern of labour supply would have on the sending countries and on South African employers.'³

Control over migration in terms of the Aliens Control Act is enforced via a system of immigration, work, work seeking, study, business, visiting and medical permits (*see box, this page*).

Following the deliberations of a government interdepartmental committee on the problem of illegal entry into the country, the Aliens Control Act was amended in 1995 in order to tighten controls over entry and broaden the scope of sanctions on offenders. The amended act is intended to express

the two pillars of the government's migration policy: non-racialism, and job preference for local South Africans. And yet in many respects the bulk of the act is built on South Africa's past.

For the previous 50 years of apartheid rule, South Africa's approach to migration was a racial one. It could be summarised simply as 'whites in, blacks out'. This principle is evident from European immigrants' easy access to South Africa (notwithstanding the attempts to curb Jewish migration in the 1930s and Catholic migration in the 1950s), and the harsh domestic controls on black migration within the country, controlling access to the 'white' cities and towns and trying to encourage black people to stay in the rural reserves (*see box, page 7*). It is also evident from the extensive and long-standing system of bringing foreign black workers to South Africa for highly controlled participation in the mining industry and commercial agriculture.

Whom does the department of home affairs let into South Africa?⁴

Applicants wishing to emigrate permanently to South Africa have to meet certain requirements. These are:

- the applicant must be of good character;
- s/he must be a desirable inhabitant;
- s/he must not be likely to be harmful to the welfare of the Republic of South Africa; and most important
- s/he must not follow an occupation for which there already are enough persons available to meet the requirements of the country.

There are a number of categories of immigration procedure, for example workers; family reunion schemes (for persons who are economically active but unable to submit a firm offer of employment); spouses and children; persons who are sponsored (such as an infirm, aged or destitute member of the family); fiancées; financially independent persons that is, investors; and those who own a business.

Investors are required to:

- transfer a guideline amount of not

less than R1 500 000⁵ to the Republic, of which R700 000 must be invested in the South African economy for a period of three years, either as a deposit with a financial institution or by any other means, such as the acquisition of immovable property. After three years the applicants must show proof that this requirement has been complied with, failing which their immigration permits may be withdrawn;

- refrain from engaging in employment or establishing own businesses without the approval of the department; and
- notify the department of any change of address during the period under review.

Those in the own business category must, besides providing sufficient funds for their maintenance and that of their families:

- transfer such minimum amounts as may be determined by the Immigrants Selection Board, with or without consultation of other bodies or instances, as being suf-

ficient to establish such businesses, taking due consideration of their nature and extent; and

- submit to the department after 12 months of the establishment of the business:
 - audited financial statements in order for the viability of the business to be assessed;
 - documentary evidence that, since the establishment of the business, at least two South African citizens or permanent residents excluding family members have been appointed and are still in service; and
 - documentary evidence that the amounts, as determined by the abovementioned board have been utilised for the intended purposes.

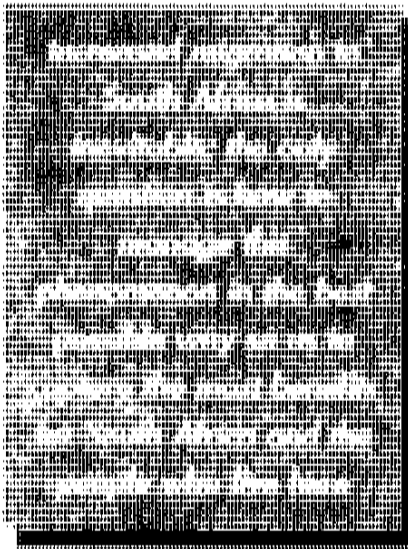
A fee of R5 580 is payable in respect of a formal application for an immigration permit, per individual or per family. However, the fee is not payable by a spouse, a dependent child, a destitute, aged or infirm member of the family, or a person permanently or lawfully resident in the Republic.

Thus, the new government inherited a migration policy package inappropriate for a non-racial country committed to opening its borders to trade and investment and, inevitably, acting as a magnet for people from all over the continent. And, simultaneously with democratisation, access to South Africa was suddenly made easier with the loosening of border policing after the end of the 'liberation struggle'

The current 'two gates' approach to migration is inadequate. The policy context in South Africa has changed dramatically. A new vision is needed, together with an understanding of the policy options available to facilitate the formulation of effective policy in this complicated area. In short, we need to 'shift gear'

Government action, 1994-1997

Since the democratic elections of 1994, numerous developments in the area of migration policy have occurred. In 1995 the new government amended the Aliens Control Act of 1991, which deals with the admission, control and expulsion of foreigners. According to the department of home affairs, this amended act 'underscores the government's policy to inter-



alia prevent foreigners who do not qualify to immigrate or to work in South Africa from entering the country under false pretences, or to take up employment'.⁸ Aliens who enter South Africa for holiday purposes may no longer change the purpose of their visit as in the past, where 'many holiday visitors, once inside the country, applied for work permits or permanent residence'. Comments the department: 'The true intention of the visit was more often than not "work" rather than a holiday visit. A foreigner now has to apply for the correct visa or permit before entry,

and must await the result of his/her application outside the country. Conveyors such as airlines are subject to fines being imposed if they 'convey persons' to the RSA without the necessary visa or permits. The department of home affairs has also introduced fees for a vast range of immigration services. The principle involved will be one of reciprocity in that countries which exempt South African citizens from visa requirements and/or fees will likewise be exempted by South Africa. However, reciprocity will not apply in respect of fees for work, study, and immigration permits, as these are aimed at compensating the state for the cost of services rendered to such foreigners.'⁹

The Aliens Control Amendment Act increased the powers of officials to act as immigration officials. The act removes certain unconstitutional powers previously possessed, and regulates the handling of different categories of illegal aliens; those suspected, those found and those detained, pending removal. It requires officers to have warrants before entering properties to search and seize. However, it allows search and seizure without a warrant if a warrant is expected to be forthcoming and it is believed that valuable evidence may be destroyed.

Commenting during the Aliens Control Amendment Bill debate, Dene Smuts, Democratic Party MP, charged that 'The bill simply tinkers here and there with a subsection of the principal act, leaving gaping wide powers of arrest without a warrant, of arrest and deportation, whether or not a person had been found guilty, of presumption of guilt and the like, untouched'.¹⁰

Also in 1995 the South African Citizenship Act, Act 44 of 1949 was repealed. The present South African Citizenship Act, Act 88 of 1995, details the acquisition of citizenship by birth, descent (which also applies to adoption), and naturalisation. No person born in the Republic shall be a South African citizen if, at the time of his/her birth, one of his/her parents had not been lawfully admitted to the Republic as a permanent resident. The conditions for citizenship by naturalisation include that:

It didn't work before⁶

South Africa is no stranger to the desire to control movement. Influx control in South Africa was intended to limit, indeed eliminate, all African workers with a permanent residential base in the urban areas. Under this system, employers in the cities were supposed to rely on a stream of short-term migrant workers. By the 1970s there were signs that the system was costly and ineffective; it simply didn't work. Each year the government spent money on apprehending, prosecuting, imprisoning and rustivating pass law offenders, and still the black population in urban areas grew. The pass laws could not halt black urbanisation. Successive governments arrested people under the pass laws in their millions – no fewer than 17,12 million between 1916 and 1981 (an average of 721 every day non-stop for 65 years) 'according to their own figures'.¹¹ The pass laws were rendered unworkable through the efforts of ordinary folk who, despite unjust laws, went to town to find jobs, better health services, more opportunities, and in most cases a better life.

the person has been admitted to the republic for permanent residence;
has lived in the country for not less than a year preceding the application and for a further period of not less than four years during the eight years preceding the application;
is of good character;
intends to continue residence;
is able to communicate in any one of the official languages to the satisfaction of the minister; and
has an adequate knowledge of the responsibilities and privileges of South African citizenship.

In June 1996 the department of home affairs announced an amnesty for people illegally in the country. It applied to citizens from other SADC member states – Angola, Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Swaziland, Tanzania, Zambia and Zimbabwe – and applicants were required to prove:

- a) continuous residence in the Republic for five years before 1 July 1996;
- b) engagement in productive economic activity in the country (either formal or informal sector); or
- c) a relationship with a South African partner or spouse (customary marriages included); or
- d) existence of dependent children born in or residing lawfully in South Africa; and
- e) that they have not committed a criminal offence listed in Schedules I and II of the Aliens Control Act, 1991.¹¹

The residential status of people who obtain exemption is similar to those with permanent residence in South Africa, namely they may 'sojourn' legally and may ultimately obtain South African citizenship on application. Where an application is rejected due to an inability to comply with the criteria, or where the illegal person failed to submit an application timeously, the person may be deported/repatriated. The spouse(s) and children of a principal applicant whose names were listed on his/her application form had to lodge applications individually whether they were resident in South Africa or in their country of origin. The family of a SADC applicant may only consist of a spouse (customary marriages included), stay-together partners (only if the partner also resides in South Africa), and dependent children under the age of 18 years. Parents and family of the principal applicant and spouses who have been approved may apply for immigration permits under the family reunion category.¹²

SADC citizens were initially invited to apply for this amnesty up to 30 September 1996. However, the department was apparently 'inundated' with applications, and as a result the cabinet extended the date to 30 November 1996. A total

of 50 692 mineworkers and 199 254 people from SADC countries applied for the amnesty.¹³ As at 23 April 1997 102 541 applications had been approved. The majority of the applications (61%) were lodged in Gauteng (*see table 1 this page*).

In 1996 the department of home affairs announced a further measure to combat the influx of illegal immigrants: a 'forge-proof' passport and identity document. This was to coincide with the implementation of an Automated Fingerprint Identification System (AFIS). The expected capital expenditure to implement this new system is estimated at R407 million during the first eight years.¹⁴

More and more illegal immigrants have been deported. For example, 181 231 people were removed in 1996, about 100 per cent more than in 1994 (*see table 2, page 9*). The department of home affairs has reported that removals cost R7 571 680 during the financial year 1 April 1996 to 31 March 1997.¹⁵

During 1996 and 1997 the South African government negotiated with SADC countries on the subject of free movement within the region. In January 1997 the SADC's Draft Protocol on the Free Movement of Persons in the SADC region (1995) was retracted. According to Article 3 of this protocol, its ultimate objective was to progressively elimi-

Table 1: SADC amnesty approvals¹⁶

Applicants' country of origin	Number of approved applications	Percentage of total
Mozambique	70 350	68,6
Zimbabwe	16 727	16,3
Lesotho	7 194	7,01
Malawi	5 389	5,25
Swaziland	1 271	1,23
Botswana	908	8,88
Mauritius	108	0,1
Tanzania	96	0,09
Namibia	77	0,075
Angola	73	0,071
TOTAL	102 541	100,00

nate all controls on SADC citizens so that people in the region could move around freely in 10 years after its adoption, thus promoting the region's interdependence and integration. Article 2 granted the following rights to citizens of member states:

- the right to enter freely and without a visa the territory of another member state for a short visit;
- the right to reside in the territory of another member state; and
- the right to establish oneself and work in the territory of another member state.

During the negotiations it emerged that some governments believed the free movement of people would not benefit the more developed or least developed states of southern Africa. It was felt that the free movement of people would place a large burden on states such as South Africa, Namibia and Botswana, and intensify the brain drain from states such as Lesotho, Malawi and Mozambique. It has been argued that the 1995 protocol did not sufficiently recognise the discrepancies between various countries in the region.¹⁷ Moreover, as Zimbabwe's minister of home affairs has declared, 'We are not ready to sign the protocol on the free movement of people. Doing it at the moment would be like opening the floodgates to criminals.'¹⁸ The 1995 protocol was replaced by the Draft Protocol on the Facilitation of Movement of Persons in the SADC region of 1997 which is currently being discussed. The document has more modest objectives, and aims, inter alia, to:

- gradually remove barriers to movement of citizens of member states within the region;
- expand the network of bilateral agreements among member states in this regard as a step towards a multilateral regional agreement;

Table 2 : repatriations and deportations, 1990-1996¹⁹

Year	Repatriations	Deportations (convicted criminals)	TOTAL
1990	53 418	293	53 711
1991	61 345	204	61 549
1992	82 575	531	83 106
1993	96 600	633	97 233
1994	90 692	208	90 900
1995	157 084	611	157 695
1996	180 714	517	181 321
Jan-Mar 1997	41 466	173	41 639
TOTAL	763 894	3 170	767 064

reduce red tape for those interested in investment in countries;

secure co-operation in preventing the illegal movement of citizens of member states and the illegal movement of nationals of third states within and into the region;

co-operate in improving control over external borders of the SADC community; and

promote common policies in regard to immigration matters where necessary and feasible.

It also redefines a 'short visit' as a period not exceeding 30 days as opposed to the 1995 protocol's six months.

However, the 1997 proposals for easing visa requirements have since been changed, following objections by South Africa, Namibia and Botswana, which are reportedly alarmed about the flood of illegal immigrants into their countries. The charge is being led by the South African government, which has suggested that the entry of immigrants at border posts should be more tightly controlled. This proposal will be discussed when the home affairs ministers of SADC states meet later this year. South Africa is proposing a SADC desk at all entry points to member states. A spokesperson for the department of foreign affairs has stated: 'The new draft is being circulated among the SADC members as the original agreement was not acceptable to South Africa ... This is done to alleviate pressure on our resources. We are at the service of SADC, and we will not do anything provocative.'²⁰

In May 1997 the South African minister of home affairs advocated a more stringent approach to illegal immigrants, arguing for a new identification system that would discourage illegals from fraudulently using ID documents, and ensuring that social services are inaccessible to them. He also said his department would clamp down on those who assisted illegal immigrants.²¹ Concomitantly, the ministry of defence has warned that the electrified fence on South Africa's northern and eastern borders could soon be switched to 'lethal mode' to stop cross-border violations. The minister of defence cited immigrant criminal activity as a primary motivating factor:

... we are facing an internal crime threat which is threatening to destabilise the country. Crime is a definite deterrent to investment, and not only that, but people are being held up, tortured and shot ... if we are not coping with the influx of illegal immigrants, and our people are being threatened, there will come a time when we will switch on the fence to lethal mode.'²² The minister later modified his position, stating that 'lethal mode' would only be used in a worst case scenario, which might include a war situation.²³

The South African government has also accepted the United Nations Convention Relating to the Status of Refugees of 1951, and the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa of the Organisation of African Unity. South Africa does not have a refugee act, and it is being debated whether or not separate legislation for

refugees is required or whether this should form part of immigration policy.

Towards the end of 1996 the department of home affairs appointed a task group to prepare a green paper on migration policy to be completed and presented by the end of May 1997. The task group's mandate stated: 'The parameters of the brief have been defined broadly to include all areas of migration. Current legislation relating to migration is governed by the Aliens Control Act. Any new migration policy or legislation derived from the green paper process will have to be premised on the Rule of Law, a Bill of Rights culture and established international norms.'²¹

Evaluation

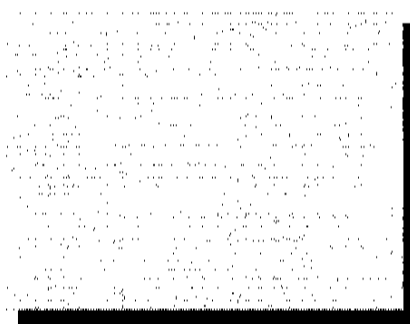
Government's current approach is unclear

The establishment of this task group is to be welcomed, as government's current approach to migration appears to be ad hoc and rather confused. Statements by leading government spokespersons indicate an uncertainty on how to proceed in respect of overall migration policy, and many of the fundamental problems remain (*see box, pages 12-13*). It appears as if the government has no coherent grasp of the migrant question, as is evidenced by its divergent perspectives on the scale and impact of migration. It has offered no clear assessment of the impact of amnesties, and has not indicated how it intends to determine the real number of migrants.

The development and implementation of migration policy require numerous government departments to work together. For example, the Aliens Control Act is administered by the department of home affairs, whose overall emphasis is on the national interest as opposed to integration with the region. But interaction at the political level with neighbouring states is undertaken by the department of foreign affairs. The two departments seem to be coming at the issue in different ways.

As expressed in the Aliens Control Act, South Africa's migration policy is based on strict entry criteria for foreigners, especially for work and permanent residence purposes. This is in contradistinction to South Africa's emerging policies vis-a-vis the southern African region. South Africa became a member of SADC in August 1994, and committed itself to the aims of the SADC treaty of 1992. This calls for greater and more equitable economic integration in the region, facilitated by a freer movement of goods and services. This acceptance of the need for greater economic and financial co-ordination and integration in the region is not reflected in policy relating to the movement of people.²²

Conflict over the 1996 cabinet decision to declare an amnesty and allow illegals from neighbouring countries to



take up residence in South Africa, subject to certain conditions, revealed that there are differences between departments on the issue of policy. The minister of home affairs objected to the amnesty, warning that this decision could cost the economy 'billions of rands ... Calculations done in 1993

showed that accommodating 250 000 aliens would cost the economy R1 billion a year by the year 2 000. He added that the real figure was closer to 600 000 people, and that his department had worked out that this could lead to as many as 6 million new citizens, with each legalised alien bringing dependants from his home country to South Africa to settle.

According to our custom as black people, polygamy is allowed. It's common for people to have three wives; now can you imagine if they bring them?'²³ Commenting on the cabinet's decision to declare an amnesty, the minister said in March 1996: 'Decisions are taken on the basis of majoritarianism. I must say that I'm very unhappy.'²⁷

Commenting on the amnesty in the national assembly, the chairperson of the home affairs portfolio committee noted: 'I want to commend the minister for his vision in implementing this amnesty. This will bring about an end to the racist policies of the past government in dealing with migrants from our neighbouring states. For decades, South Africa had an immigration policy that allowed whites in and kept Africans out. Migrant labour from southern Africa contributed generously in building the South African economy to what it is today. The proposed amnesty will regularise the position of those migrants who have helped to build up our country, and they richly deserve this. He added that 'most of the applicants would already have been assimilated into our society. It will also provide us with the moral high ground to deal firmly with those illegal immigrants who are involved in criminal activities in South Africa.'²⁸

When CDE asked the department of home affairs what had persuaded the cabinet to grant amnesty to certain categories of illegal immigrants, the director-general replied that it had 'only received the instruction to execute the decision' and could not answer. He added it could 'speculatively be mentioned that certain neighbouring states requested that a moratorium on the repatriation of a large number of their illegal citizens in South Africa be considered as a gesture of goodwill. It was decided to grant exemption to the SADC member states. Asked what facts had formed the basis for this decision, he replied: 'As the facts are not known, it is not possible to reply to this question. When asked what the expected impact of this decision might be, he replied: 'A large number of illegal persons will probably eventually be exempted and obtain the rights and privileges of a person with permanent residence status in the Republic. They will sojourn

legally in the country, and may ultimately obtain citizenship on application.²⁹

It therefore appears as if the impact – socio-economic and otherwise – of this far-reaching decision has not yet been properly analysed; surely the first step to take before such a significant policy innovation is embarked upon. The figures and calculations about costs being thrown around by commentators are totally speculative. Little mention is made of the possible benefits of immigration.

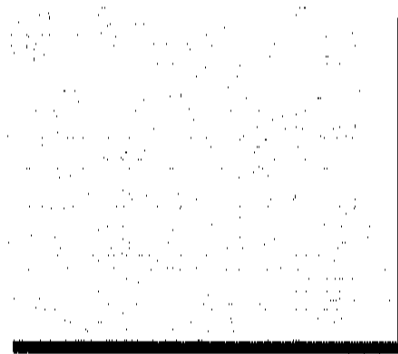
Policy in the midst of ignorance

One of the major problems in dealing with the migration issue in South Africa is the absence of accurate information. Cabinet ministers, senior officials, citizens and the media have been talking since 1993-4 of anything between 2.5 and 8 million illegal immigrants. The reality is that we do not know what the scale and nature of clandestine movement from other countries really are. Therefore, all the current figures are highly speculative. It is likely that a number of people are being counted twice or even more than that (*see box, this page*). Figures on emigration are also totally unreliable (*see box, page 20*). The 1996 census will provide no solid information on this topic. The census co-ordinator and head of Central Statistical Services' demographic surveys, has stated that the census questionnaire would not enquire about the legality of any individual's residential status.³⁰ The Statistics Act forbids Central Statistical Services from determining which individuals are in the country illegally.

Various political agendas may have an effect on the way in which the figures are massaged. For example, at a time when the defence budget is being slashed, various security agencies are using the 'threat' illegal immigrants pose to the South African state to justify their continued existence.

The result of this is that policy decisions are being taken in the absence of solid empirical information about numbers and trends. In this climate, the attitudes and outlook of policy-makers and others on migration questions are influenced by their own prejudices, anecdotes, or a current favourite set of numbers. Is it really possible that South Africa's illegal population is as high as 5 million, or even 8 million? This would mean that about one eighth, or even one fifth, of the population is illegal. If the higher estimates are even vaguely correct, this would mean that illegal immigrants comprise between one third and one half of the economically active population of the entire country, estimated at just under 15 million.

We concur with the view of the labour market commission on this topic: 'In the commission's view, it is highly unlikely that the country has absorbed 5 to 8 million foreigners, documented and undocumented, in this short space



of time. If this had been the case, the effect of undocumented people on the labour market and social services would have been far more startling than it appears to be. These estimates have nevertheless influenced the policy debate and public perceptions.'³¹

Policy is also being made in a context of ignorance on other important issues, such as the real economic or other impact of migrants on the country (positive or negative) and what kind of people (level or nature of skills) move to South Africa. We also have no real idea of trends of movement. For example, was there a sudden rush to South Africa from about 1990 onwards, which has now stabilised? Was this mainly skilled or unskilled migrants? Or is there a steady (or growing) stream of newcomers coming across our borders?

Critical questions need to be asked before major policy decisions are made. We need to know numbers; trends; the impact on different cities and regions of South Africa; costs and benefits to the country; the nature of migration to South Africa – i.e. who comes from where and why; what migrants do once they arrive here; what kind of work they perform, how many are self-employed, etc; and the impact of this on the economy, on other citizens and so on (*see box, page 14*). This information will not emerge instantly or on command, as much of it is hard to come by and will require detailed research on the ground. Policy will have to start by pointing

Nobody knows the real numbers – so take your pick!

How many illegal immigrants are there in South Africa?

- According to the public relations department of the South African Police Service, there were 2 million illegal immigrants in South Africa in 1994.³²
- During the same month a police estimate of 8 million illegal immigrants was reported.³³
- In 1995 the department of home affairs estimated that there were about 3.5 million illegal aliens in South Africa.³⁴
- A study commissioned by Eskom in 1995 and released in April 1996 found that there were least 2 million illegal immigrants in South Africa.³⁵
- According to a study by the Human Sciences Research Council published in 1996 – at the request of the department of home affairs – there were as many as 2.5–4.1 million illegal aliens in the country.³⁶

Who's saying what on illegal

'It is very easy to whip up anti-foreigner sentiments in the short term, but the long-term consequences would be disastrous. Home affairs has been running a consistent scare campaign ever since the elections ... a new form of apartheid, we feel, is very dangerous. The demon is not illegal immigration, it is xenophobia and racism. Home Affairs persists in the use of the term "aliens" to describe people from our neighbouring states, people intricately bound with the destiny of South Africa, people who are, if anything, owed reparation for apartheid crimes. — Neil Coleman, *Cosatu*, 1996.³⁷

The view is that because many of our people were in exile in many countries in Africa, my department ought to be lenient in handling the issue of African illegal immigrants. I want to state that none of us can forget the way African heads of state throughout the continent gave sanctuary to many of our people fleeing apartheid South Africa. I, however, do not believe that this gives us a pretext to close our eyes to the influx of illegal immigrants to further compound the problem of joblessness. — Mangosuthu Buthelezi, *minister of home affairs*, 1994.³⁸

'Only people without morals would ignore the contribution that has been made by neighbouring countries. We, the majority party in government, are taking the view that a sensitive and appreciative approach should be adopted. It looks insensitive to say, now that we are in power, "Go back to your countries, we don't want you here." It is our duty to address the problems of our own people, but we have to take into account the background from which we came. — President Nelson Mandela, 1995.³⁹

'South Africa has no moral obligation to accommodate the citizens of neighbouring

states. [It] only has a moral obligation to accommodate refugees. Destabilisation has been a contributing factor to migration, but there are other more substantive reasons, such as economic decline. — David Laubscher, *department of foreign affairs*, 1995.⁴⁰

'Yes, certainly, this country owes a moral debt — but how do you compute this? What do we do to atone?' — Penuel Maduna, *former deputy minister of home affairs*, 1995.⁴¹

'We try to deal with them in as humane a way as possible. We regard them as human beings in dire straits. It's the police that said that illegal aliens are criminals. — Piet Colyn, *director-general of home affairs*, 1995.⁴²

'The repatriation of illegal aliens is a waste of resources. — Deputy president Thabo Mbeki, 1995.⁴³

'Illegal immigrants are not wanted, and they have no friends here. — Inspector Andy Pieke, *police spokesman*, 1996.⁴⁴

'We are sick of the foreigners. They must be sent back home. — Tim Singiswa, *Hillbrow resident*, 1994.⁴⁵

'Let them go home. They do a lot of horrible things, and have no respect for the laws of this country.' — Walters Mojaelo, *a returnee who led an organised campaign against foreigners in Alexandra*, 1995.⁴⁶

'Our citizens know no boundaries. They regard themselves as an integral part of each of our countries. Therefore they do not feel like aliens. — President Joaquim Chissano, 1996.⁴⁷

'People here ask me why am I here, why

do I take their jobs. I would like to tell them they are cowards. I remember just a few years ago when South Africans were refugees. — Jean-Claude Rutausere, *refugee from Burundi*, 1996.⁴⁸

'We are here to remind South Africans that they live in Africa, not America; although if this place wasn't a lot like America, I doubt many of us would be here. — Zairian resident, 1994.⁴⁹

'We are Africans, and should be allowed to live here also. We were allowed to stay in the era of political violence when some of our compatriots lost their lives. We also contributed towards the struggle against apartheid. Now the ANC-led government is turning its back on us. They [ANC] are treating us shoddily. They forget that some of their members were given refuge by Mozambique. They did not treat white foreigners in the same way.' — Frans Maphosa, *Mozambican*, 1995.⁵⁰

'Why should we throw in the towel? We love this country, we want to put down our roots, we could create jobs for South African nationals and we are not a burden on anybody. — David Foulds, *British-born entrepreneur seeking permanent residence*, 1996.⁵¹

'Roughly one out of five squatters in South Africa is illegal. Many of these people have acquired false passports and identity documents placing them in line for RDP assistance. If they continue to elbow out needy South Africans, ethnic antagonism, conflict and a violent backlash could be spawned. The high rate of crime and violence in South Africa — mainly drug trafficking, car theft, gun-running and armed robbery — is directly related to the rising numbers of illegals. — Colonel Brian van Niekerk, *police spokesman*, 1995.⁵²

immigrants in South Africa?

'We have to start looking at these millions of people as a vast regional asset. We need to start exploiting their skills and entrepreneurial spirit in much the same way the United States did when it welcomed with open arms all immigrants that could help the country grow. The nation has to treat foreigners as valuable visitors, whose determination to succeed could do more to uplift the economy of southern Africa than any government policy. The trained artisans among these people should be utilised to combat the current shortage of skilled workers in the building industry, which will go a long way to boost the delivery of homes. – *Ravi Moodley, president of the Institute of Artisans, 1996*⁵¹

'We know that 14 per cent of white adults were born outside the country, and we have welcomed them because immigrants tend to be determined, enterprising people who often make it on their own resources. We don't have to grow the economy by 6 per cent a year to provide for the 2 million or more illegals; they are busy looking after themselves. – *Teddy Langschmidt, Integrated Marketing Research, 1996*⁵⁴

'Illegal immigrants are deprived of any basic right under South African law. It is not even legal to give them food or water and they are constantly exploited ... Immigrants create economic opportunities. They usually work harder and bring skills and efficiency with them. – *Paul Pereira, South African Institute of Race Relations, 1995*⁵⁵

'We want to be treated with dignity. Human rights do not exist for foreigners. ... It is not right to call us enemies. I am disappointed with our brothers. A black foreigner is an enemy while whites are called tourists. There is a notion that

black foreigners are all illegal aliens and whites are visitors or investors. – *George Hamilton Watson, refugee from Sierra Leone, 1996*⁵⁶

'I have been here since 1989 and go home to collect items myself. Other traders and the police hate us, but there is nothing we can do. It is their country. We make money but we also spend a lot of money here. We also employ people to sell the goods for us so that we do not get caught by the police. – *A Swazi trader at Green Point flea market in South Africa illegally, 1996*⁵⁷

'We want the government to intervene before we decide to physically chase these people away from our city... We are greatly distressed with the Immigration Department, as these immigrants are so clearly recognisable and yet nothing gets done. – *Redman Kandanisa, East London Vendors' Association, 1996*⁵⁸

'Many of my neighbours will go out of business if they cannot employ the Zimbabweans who are prepared to work for R250 a month. ... We don't want to appear to be opposing the principles of the RDP and we will gladly employ South Africans, but then we need help in recruiting and transporting them, which we simply cannot afford ourselves ... and a crackdown on farmers will merely force illegals to go elsewhere in search of work. – *Philip Nel, Limpopo farmer, 1994*⁵⁹

'Mozambicans working on commercial farms receive between R60 and R150 per month over and above board and keep. Some black farmers also allocate small vegetable plots to their workers, in a form of labour tenancy. These are the lucky ones; a common ploy is for farmers to engage Mozambicans at the begin-

ning of the month and then to call the Prohibited Immigration Unit just before pay day: the police then arrest and deport the labourers and the farmer has enjoyed another month of free labour. – *Chris Dolan and Vusi Nkuna, Witwatersrand Rural Facility, 1995*⁶⁰

'Those who illegally evict immigrants from their areas should suffer the wrath of the law. Some of them are said to be arresting (foreigners) at gunpoint. – *Nkele Tingane, Alexandra Civic Organisation, 1995*⁶¹

'We are not assaulting or threatening these people [illegals]. We are mainly doing the job for the police by handing them over and asking for them to be deported to their own countries. – *Anonymous, Alexandra Property Owners Association, 1995*⁶²

'We do not wish to do what was done to immigrants in Alexandra by the community, where some were stabbed and burned to death. We want them to go home alive. – *Memorandum presented to Etwatwa police station commander by residents living near Daveyton, 1995*⁶³

'The government [needs] to crack down on illegal immigrants living in Alexandra ... charity begins at home. – *Tony Leon, Democratic Party, 1995*⁶⁴

'(Government departments should) request the identity documents or passports of all foreigners requesting services subsidised by the government and in this way ensure that they do not gain access to services in short supply to our own people. – *Mangosuthu Buthelezi, minister of home affairs, 1997*⁶⁵

roughly in the right direction, with the capacity for fine-tuning being built in.

Since 1994 the South African government has wrestled with the many and complex issues involved in dealing with migration. It is a confused story, reflecting the many pressures on the government from all the different issues and interests that influence and are affected by migration. The appointment in late 1996 of a task team to review and assess migration policy is an important and welcome opportunity.

What the task team does, and how the minister and then the cabinet will respond to the issues on the table, is critically important. What is required is a thorough review of South Africa's policy options in this area; an informed and constructive airing of the costs and benefits of the different policy options in public; and then a decisive choice on how to deal with migration – a difficult phenomenon with numerous policy implications, that will not go away. The worst response to the situation will be for government to not make a decisive choice on where it stands on the process of migration and its management. The country and the region need firm leadership on this question, sound information, and a policy choice that harnesses the benefits of an inevitable migration process to South Africa, while minimising any possible costs.

Needed urgently: reliable information

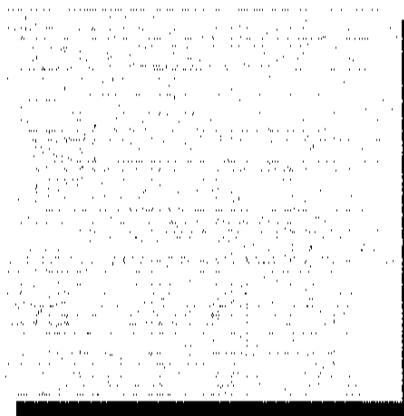
1996 Labour Market Commission:

'A major survey should be undertaken into immigration and the labour market, since the absence of reasonable estimates of this phenomenon and its labour market implications makes much labour market analysis rather speculative.'⁶⁶

1996 Draft white paper for population policy:

'There are no reliable estimates of illegal immigrants, though their number is thought to be high. The number of refugees in the country is estimated to be high, though again no reliable estimates are available. ...

No comprehensive review of the impact of immigration on the population structure, economy and demand for services has been undertaken. ... Concerns include the absence of adequate analysis of the nature and impact of international immigration for policy development purposes.'⁶⁷



LESSONS FROM INTERNATIONAL POLICY EXPERIENCE

Democratic South Africa is not alone in having to cope with multiple migration challenges simultaneously. Many developed and developing countries around the globe provide useful information and experiments from which South Africa can learn and adapt to its own cir-

cumstances.

Relevant international experience can be briefly summarised as follows:

Migration policy in any country is an interacting set of tools and instruments, none of which works perfectly.

Policy must distinguish between the different types of migration affecting a particular country, and devise appropriate policies for each type.

States have a right to defend their borders and protect their citizens against undesirable elements. It is necessary to decide whether controls should take the form of border or internal controls or both.

Only in very rare cases is it possible to completely prevent illegal immigration. Co-operative arrangements with neighbouring countries and bilateral return agreements are useful.

Employer sanctions are difficult to enforce in countries with a large informal sector, and might exacerbate discrimination against certain groups within a country. Corruption militates against effective enforcement of employer sanctions.

As governments become more restrictive on legal migration, illegal migration and claims for asylum increase.⁶⁸

The politics of migration policy is very important.

Governments must assure their own populations that some control policies are in place, even though there may be a considerable amount of leakage. Unless citizens are reassured that borders are controlled, xenophobic attacks against foreigners are likely to increase, since the smooth integration of legal migrants depends upon public assessment that their number is finite.

Guest worker programmes are second-best solutions that everywhere produce at least some distortion and dependence. These programmes are easier to start than to stop. Guest worker programmes come closest to their aim of adding workers to the labour force and not residents to the population if three conditions can be satisfied: there is little illegal immigration and there are strong labour market institutions; employer taxes or levies minimise the distortions due to the presence and availability of foreign workers; and economic incentives promote the return

of guest workers to the country of origin (for example, forced savings schemes).

With respect to skill migration, governments need to consider whether they are doing enough to keep skills within the country.

To be successful, targeted skill migration programmes must determine need, select and recruit appropriately qualified workers, integrate them into the national economy, and conduct subsequent evaluations of effectiveness.

Trade, investment and development assistance are weak instruments in terms of changing employment opportunities in poor countries and thus in affecting migration outflows from neighbouring countries.

In the short term, development spurred by freer trade results in more rather than less migration.

Refugees have normally been driven from their countries of origin by a national crisis, whereas illegal immigrants make a primarily individual decision to cross borders.

Countries need to reconcile their national interest with their international obligations towards refugees.

Distinguishing between people who qualify as refugees under international norms and illegitimate asylum seekers could be seen as an administrative rather than a moral problem. However, states cannot escape the moral obligation of devising ways of deterring false claimants without deterring genuine refugees.

In most countries migration and refugee policies are not the responsibility of any single government department. Fragmentation of decision-making is typical of migration policy making in most countries, since the issues intersect with the concerns of so many ministries.

In the absence of a co-ordinating mechanism for settling migration policies, special interests – certain employers in most countries, and ethnic minorities in some – exercise a major influence.

In many countries, when migration has moved to the top of the political agenda in response to an immediate crisis or an awareness of growing public anxieties, national leaders have often responded in an ad hoc fashion.

A few governments have sought to develop more coher-

ent policies through the establishment of an immigration and refugee commission, made up of government and party officials and representatives of the business community, trade unions, ethnic groups and academics or by turning responsibility over to a lead department.

Whether a special commission is the best mechanism or a lead ministry should be given primary responsibility for reforming policy is less important than the broader questions of how a policy process can be created that is informed by research, that considers public opinion, but is not wholly guided by it and takes into account a country's diverse interests and objectives (*see box, page 16*).

There are important insights from this international review that should inform South Africa's approach to migration policy. (See CDE Research No 6, *People on the move: lessons from international migration policies*, June 1997).

DIFFERENT VIEWS ON HOW TO DEAL WITH MIGRATION IN SOUTH AFRICA

There are a number of different views on how policymakers should respond to migration questions in South Africa. In this section we will describe these different positions. In doing so we will divide immigrants into two broad categories: skilled migrants, and unskilled or semi-skilled migrants.

Skilled migration

With respect to skilled migration, there are only two really different views. On the one hand there is the current government position which involves strict controls over the entry of skilled people into South Africa. The view is that skilled people should only be allowed into the country in professions or technical areas where a shortage of such people can be demonstrated. The way such a shortage is identified is through government statistics and through consultation with the pro-

fessional or technical bodies representing that group of skilled people already within South Africa. Besides potential migrants with these formal skills, individuals with money to invest in the country (*see box, page 6*) are also eligible for immigration.

A number of different reasons are given to support this position, which severely limits the entry of skilled migrants into the country. There are people who advocate restrictions on skilled migrants on the basis that there are many black South Africans who can either do the job required or who should be trained to do it. It is argued that the importation of foreign skills would hamper this process of affirmative action. It sometimes appears as if those holding this position would prefer not to have any skilled migration to South Africa

at all. Other people argue that South Africa should only allow skilled people into the country in those categories 'where there is an identified shortage, and we need those skills'. There is not much discussion around how this shortage will be identified, as it seems to be assumed that this is a simple, self-evident process easily handled through bureaucratic channels. Lastly, there is what might be called a region-specific variant of the control argument. Some people – including some southern African governments – argue that South Africa should not denude its neighbouring countries of their skilled people, and should therefore not recruit in SADC countries for any of the skills we need.

The contrary position is that the country's doors should be opened to all the skilled people who would like to come

Migration policy-making: an international perspective⁷⁰

According to Myron Weiner, in most countries migration and refugee policies are not the responsibility of any single government department. In the United States, for example, migration and refugee issues are handled by the departments of labour, justice, state and (indirectly) commerce. Congress writes the legislation that determines how many migrants should be admitted, as well as the criteria for admission, but provides no funds to municipal or state governments to cover additional welfare, education or medical costs – with the result that some state and local governments attempt to overturn federal policies requiring the provision of these services to immigrants. While fragmentation of decision-making is particularly pronounced in the United States, fragmentation is typical of migration and refugee policy-making in most countries, since the issues intersect with the concerns of so many ministries, including education, labour, commerce, industry and external affairs. Few countries (Australia and Canada are notable exceptions) have a single ministry or department with responsibility for the co-ordination of migration and refugee policies. In the absence of a

co-ordinating mechanism for settling migration and refugee policies, special interests – certain employers in most countries and ethnic minorities in some – exercise a major influence.

In many countries, when migration has moved to the top of the political agenda in response to an immediate crisis or an awareness of growing public anxieties, national leaders have responded in an ad hoc fashion. Governments have hastily attempted to seal their borders, interdict ships at sea, expel guest workers and prevent individuals from seeking asylum – all in an effort to reassure the public. A few governments have sought to develop more humane, coherent and consistent policies through the establishment of an immigration and refugee commission, made up of government and party officials and representatives of the business community, trade unions, ethnic groups and academics, or by turning responsibility over to a lead department.

Australia, for example, revised its White Australia policy (which excluded non-European immigrants) under the influence of the department of foreign affairs rather than the department of immigration. The Fitzgerald commis-

sion subsequently played a major role in shaping Australia's migration and refugee policies. In the United States, the Select Commission on Immigration and Refugee Policy, which included members of the congress and senate as well as the executive branch, formulated the policy of employer sanctions to deter illegal immigrants, and provided amnesty to those who had resided in the United States for an extended period. Similar national commissions have designed long-term immigration and refugee policies in Canada and several European countries. One other reason for having a lead agency or commission to take the initiative in designing policies is that there is a greater likelihood that the process will generate the kind of data that is essential for addressing these issues.

Whether a special commission is the best mechanism, or a lead ministry should be given primary responsibility for reforming policy, may be less important than the broader questions of how a policy process can be created that is informed by research, that considers public opinion but is not wholly guided by it, and takes into account a country's diverse interests and objectives.

here, irrespective of where they come from. Also, many arguing this position believe that 'skilled' should be broadly defined, and include informal entrepreneurial skills.

Unskilled migration

With respect to unskilled migration to South Africa, a number of different views can be identified which essentially cluster around two basic positions. We have termed these positions 'fortress South Africa' and 'the open door'.

Fortress South Africa: maximum control and exclusion

The most central position is based on the notion that 'charity begins at home'. Mindful of the resource constraints in South Africa and the existence of backlogs and shortages of employment opportunity, school classrooms, teachers, hospital beds, adequate shelter, welfare funds, land close to employment and a host of other necessities which many South Africans do not have, a strong view is taken that the country cannot afford to be lenient. Illegal migration, particularly of unskilled migrants whose contribution to the economy will be limited, simply has to be tightly controlled.

A variation on this position – although not presented as such – involves a two-step approach. People holding this view argue that what the country should do is to offer permanent residence and rights to anyone in South Africa now, and having done that, apply all its resources to stemming the flow of new migrants into the country. This is in many respects a clearer and more consistent version of the government's current approach.

The open door' accommodation and free movement

There are two positions in this 'open door' category. The first may be described as one of 'humane accommodation'. Its proponents argue that the migrants coming to South Africa are largely refugees from strife and great privation in their countries of origin, and that a humanitarian response to their plight should be the fundamental policy consideration for South Africa. This empathy is strengthened by the consideration that the peoples and governments of the countries of origin – at least in Africa – supported South African exiles and refugees both directly and indirectly in the bitter years of the struggle against apartheid. Both these sources of sympathy for migrants help to establish a case for a lenient and accepting response by the authorities to the pres-

ence of illegal immigrants. Some people even go further than this and argue that national borders, an artificial construct, are no longer very important anyway, and that individuals should have equivalent rights wherever they happen to be and whether they are citizens of that particular country or not.

The second strong position in the 'open door' category is what might be called the economic argument for free movement. Its proponents hold that the best policy for economic growth in South Africa and the broader region is to lift all restrictions on the movement of labour, capital and goods. They also believe it is a waste of time, money and effort to try to police South Africa's long and porous borders.

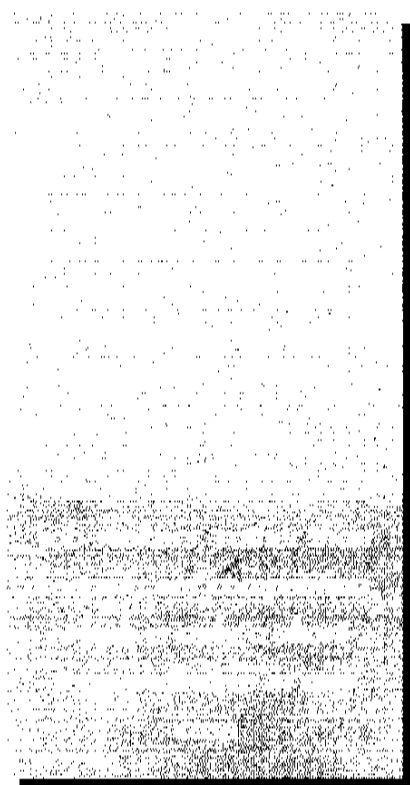
CDE ANALYSIS: POINTS OF DEPARTURE

In this section we will put forward 11 analytical points of departure. These build on considerable research on migration, South African policy generally, and on the country's governance and development capacity. On the basis of this analysis we will then return to comment on the different points of view on migration policy discussed in the previous section.

South Africa's national interests must come first

The globalisation of the world economy and the inevitable spread of markets, transportation, communication, capital and skills has challenged the geographic hegemony of national governments. By implication, this process of internationalisation is at least qualifying established notions of the jurisdictional authority of nation states. We believe this weakening of the state should not be allowed to go too far. National interests are important, even, and perhaps especially, in a globalising world.

A perception of uncontrolled migration across borders could lead people to question the state's ability to carry out its fundamental responsibility of guaranteeing the rights of citizens. Hence a country's approach to migration must be seen to be part of an ordered policy. An approach which sim-



ply throws open the country's borders could lead to a breakdown of the authority (and even legitimacy) of the state, or to perceptions that this is happening. In South Africa, as precedents in the field of safety and security have shown, this could be an invitation to groups to simply take the law into their own hands. As Myron Weiner puts it, 'No country has given up control over entry, nor is there any reason to do so.'⁷¹

It is for this reason that CDE is opposed to expanding the definition of 'refugee' to include not only groups of people who respond collectively (most often) to extreme situations of peril in their country of origin (civil war, natural disaster, persecution of a racial or ethnic group), but also all those individuals or families who want to leave one country in order to seek improved economic and other opportunities in another.

This is much too broad a notion of 'refugee'. It confuses two different processes taking place within and among countries. It is also an extremely dangerous and loose definition which could impose totally unmanageable obligations on South Africa as the most developed country in sub-Saharan Africa. Furthermore, it undermines the narrow and legitimate definition of refugees and how states should respond to such people in their hour of need.

Notes Weiner: 'The definition of refugee need not be expanded to include all whose human rights are violated or who are in economic distress, for that would result in a massive increase in claimants beyond what states can reasonably be expected to accept, and hence would undermine the asylum and refugee regime.'⁷²

Similarly, it is our concern with South Africa's national interest that leads us to reject the 'globalist' position which in effect argues against the very concept of nation states, and, with respect to migration, holds that there ought to be a presumption in favour of a supposed right to free movement, with the burden of proof on the advocates of restrictions. As Weiner points out, 'globalists pay little attention to whether the adoption of their principles in a world comprising sovereign states would lead to an improvement or a worsening of the human condition in any specific country.'⁷³ For example, the adoption of a globalist position on migration by a single country puts that country at risk when other countries choose not to open their borders.

Migration can then be used as an act of aggression against the country with open borders as one country passes its unwanted people on to another. Under such circumstances, an open door to migrants might well do many people more harm than good. Moreover, if a state chooses not to give preference to the wellbeing of its own citizens over the wellbe-



ing of citizens of other countries, then local communities and regions within the country might protect themselves by imposing restrictions on entry or discriminating against foreign residents, generating the very opposite result from that intended by the globalists.

It is convincingly argued that people who belong to a community will defend their local politics and culture against strangers, and that if the state did not take on this responsibility one would not end up with a 'world without walls' but would rather 'create a thousand petty fortresses ...' Weiner

(and CDE) therefore finds value in the sovereign state, not because it is exclusive but because it provides for greater inclusiveness than would be possible if it did not exist.⁷⁴

There is another argument which, to our minds, effectively undermines and downplays the national interests of South Africans. This view suggests that South Africa's policy on migration should be determined by the needs of other countries in the southern African region. It is argued that these states suffered during the years of apartheid, that some of them actively assisted the ANC or South Africans in exile, and that South Africa should therefore open its doors to their citizens.

There are many problems with this point of view. For example, since these states responded in different ways to apartheid, should our migration policy not do likewise? Given that some governments in the region do not want South Africa to recruit skilled people in their countries, should we therefore be generous only to their unskilled citizens? And is the presumption correct that South Africa's interests and those of the region are identical?

We would argue that South Africa's migration policy (like any other area of national policy) must in the first instance be considered and assessed in the light of our national interests, and that there are often differences between South Africa's interests and those of particular states in the broader region beyond our borders.

Hard-nosed questions about migration policy and its implications are therefore legitimate issues of national politics. How many migrants are entering the country, or can be expected to do so during the next few years? What will they do once they get here? Will they be an economic asset to the country, or a drain on its already strained resources? Is it possible to prevent migration to a country such as South Africa? What will it cost to do so at some meaningful level of prevention? Will 'foreigners in our midst' heighten tensions and social conflicts inside South Africa? What are the

political, social and human rights consequences of internal policing to get rid of illegal migrants? Do migrants come to South Africa to find employment or to benefit from our 'state entitlements'? How does migration policy support and interact with other national objectives and policies?

POLICY IMPLICATION: South Africans must debate and then decide on a migration policy that promotes this country's national interests.

Migration policy must support and complement government's macro-economic strategy

The government's Growth, Employment and Redistribution strategy (GEAR) is courageous because it puts medium- and longer-term benefits before short-term palliatives (see *CDE Round Table: Getting into GEAR*, April 1997). It commits the government to exchange control liberalisation on the assumption that capital which flows out in the early stages will return in due course, along with additional capital. It commits the government to creating conditions for greater labour market flexibility on the assumption that wage levels which drop initially will rise later with improved productivity.

In order to support these principles in the field of cross-border labour flows, migration policy should sacrifice the semblance of short-run controls on inward migration on the assumption that the fiscal resources saved, the new skills and human capital acquired and the willingness of migrants to work for lower wages will all help to stimulate growth. GEAR also commits the government and the economy to improved competitiveness. By protecting uncompetitive local labour, migration controls are not helping that labour in the long run. The answer to labour vulnerability which is compatible with economic growth is to train local workers and job-seekers, rather than keeping out competition, which is only a short-term palliative in any case.

GEAR is based on the global consensus on and understanding of modern economies which denies the zero-sum approach. There is not a finite pool of opportunities where one person's employment means that there is one less opportunity for someone else. We see South Africa as an expanding market of infinite opportunities where people can create their own jobs, run their own businesses, find employment with someone else, and so on. The very act of participating in the economy in this way, if well managed, helps to grow many more opportunities for employment. Thus the more skilled, energetic and entrepreneurial people we have in the country the better.

POLICY IMPLICATION: Migration policy must be consistent with a more open economy and support maximum economic growth and job creation.

South Africa needs all the skilled people it can attract

GEAR aims to position South Africa's monetary, fiscal and exchange rate policy in such a way as to achieve a 6 per cent growth rate by the turn of the century. The modest growth of the past three years has already seen the re-emergence of a skills shortage (see box, page 20).

The expansion of opportunities for education and training will increase the supply of skilled labour, but it will take time. In some fields where training and education is expensive, it will be optimal for South Africa to import skills rather than to try and produce them locally. Moreover, studies of South African development and competitiveness all stress our weakness in respect of human capital. A greater supply of human resources would raise returns to other factors of production, such as capital, land and unskilled labour.

South Africa is perennially short of skilled and entrepreneurial people. Economic growth requires as many skills as we can grow, hire or import. It is a fallacy to think that there is a contradiction between equal opportunities for all South Africans irrespective of colour, and the active participation of employers (companies, universities, government and other institutions) in the global marketplace for skilled personnel.

Therefore, it is essential that companies, universities, government departments and any other employers are free to buy in talent as and when they deem fit. The economic expansion that this talent will help South Africa to create and sustain will in turn help to create the resources necessary to train and educate more and more South Africans.

Race has been a key factor in South Africa's approach to skilled migration. Under apartheid only white people qualified. Under the democratic regime a new racial qualification has emerged. Some take affirmative action within South Africa to mean that we do not want skilled people who are not black South Africans to fill vacant positions. This has also been coupled with an idea (and policy in some neighbouring states) that South Africa should not 'steal' qualified black people who are citizens of neighbouring states. The consequence of these two positions is that people with skills throughout the subcontinent who are seeking greater opportunity are encouraged to leave Africa rather than come to South Africa, and that the skills shortage inside South Africa remains (see box, page 21).

We can understand the fears of countries in southern Africa who are worried about losing skilled people. But they are deluding themselves if they think that tougher restrictions on getting into South Africa will solve their problems. Skilled people will move in response to greater opportunities. South Africa's neighbouring states must make themselves more attractive to their citizens – which will require domestic political and economic reforms.

If denied the opportunity to move to South Africa when and if they want, many skilled people will leave the continent – surely a consequence of policy which is not in the interests of anyone in southern Africa.

Any system of restricting the movement of skills into a country will inevitably be subject to the influence of interest groups. In this respect it is interesting to note the view of the Labour Market Commission: 'The Commission is particularly concerned at the role played by local professional associations in the evaluation of an application for work status in this country. It appears that these organisations adopt a high-

ly protectionist stance to the entry of foreigners into their ranks.'⁸⁰

How we define a 'skilled' person in the context of a developing country is important. In South Africa the term has been taken to refer to people who bring into the country their own formal technical, professional or educational skills. This has generally been coupled with the notion that people who can bring money into the country are also welcome – so investors bring a 'skill' in the form of resources into South Africa too. CDE would argue that we need to expand this definition of 'skilled' to include small-scale entrepreneurs, both formal and informal.

We should be generous and in effect much more realistic about our definition of skills. South Africa is short of all types of professional and entrepreneurial skills, so we should welcome anyone who can add to the country's pool of talent, energy and expertise in these areas.

Inadequate migration statistics hide skills crisis

- The magnitude of South Africa's 'brain drain' is disguised by serious data deficiencies. According to official South African data, in the period 1984–93, 28 965 emigrants left for the United Kingdom, while 33 640 British immigrants arrived. For the same period, British data give the total number of immigrants from South Africa as 100 700, and emigrants to South Africa of 52 600. Overall the South African data record a net gain for South Africa of 4 675, while British data record a net loss for South Africa of more than 48 000. In the year ending June 1996, Australia received 59 per cent more immigrants from South Africa than we recorded emigrating to Australia.⁷⁵

This means:

- our data is near-worthless; and
- South Africa has seen a significant exit of people, principally skilled people, over a long period of time.

'Brain drain' statistics should be treated with caution. They cannot take into account what has been termed

'grey' emigration, whereby people leave on holiday and simply do not return, or return as occasional visitors, thereby cutting out the red tape involved in emigration. A spokesperson for the Central Statistical Services has stated: 'We can't tell – we can only tell people who go formally.'⁷⁶

- Statistics reflect a substantial net loss of skilled professionals. CSS figures for the first three quarters of 1995 show that 6 665 South Africans left the country permanently in that period while 3 695 foreigners settled in South Africa, representing a net loss of 2 970 persons. The net loss of persons in professional, semi-professional and technical occupations during this period was 680, with a net loss of 738 during the same period in 1994. In the first quarter of 1996, 3 083 emigrants left South Africa, compared with 1 118 immigrants who entered. The number of emigrants who left South Africa in this time increased by 27 per cent compared with the previous year, while the number of

immigrants decreased by 21.1 per cent. Education-related occupations lost 132 people, with only 27 new arrivals to fill these positions. Likewise, 39 medical and dental professionals left, with only 18 new arrivals.⁷⁷

- An increasing number of Afrikaans-speaking professionals are leaving South Africa. The director of an emigration agency has noted: 'We have many more Afrikaners than before, they make up about 50 per cent of our applicants.'⁷⁸
- South Africa has a low and declining rate of formal (legal) immigration, the decline being most significant in the last two years. We have never attracted so few immigrants.

Number of immigrants admitted to South Africa, 1992–1996⁷⁹

1992	8 686
1993	9 824
1994	6 398
1995	5 064
1996	5 407

POLICY IMPLICATION: Migration policy must aim to provide the country with an abundance of skilled people (with both formal and informal skills).

South Africa is a nation with many cross-border links – these create immigration pressures

The peopling and geographical definition of South Africa have created a multitude of cross-border links. Changana-Tsonga, Tembe Tonga, Ndebele, Swazi, South Sotho and Tswana people are to be found on both sides of South Africa's borders; Zulu offshoots are found in more than one neighbouring country. Other parts of the South African population have links with Asian, European and Middle Eastern countries. The development of South Africa's mines has, at one time or another, pulled in workers from most SADC countries. Through legal or clandestine immigration many people have joined the South African nation; migration is central to its character. Current international studies on migration point to the importance of social networks in the migration process. In other words, once a foreign community, village, country or area has established a beachhead in a new country, the process of migration for other people from that same original base becomes easier and more likely. Policy must recognise that many networks cross South African borders. 'If there is a single "law" in migration, it is that a migration flow, once begun, induces its own flow. Migrants enable their friends and relatives back home to migrate by providing them with information about how to migrate, resources to facilitate movement, and assistance in finding jobs and housing'⁸¹ (see box, page 22).

Increased migration to South Africa is inevitable; the only question is how to manage this phenomenon in the best possible way so as to capture the most benefits for South Africa and the people who live here.

POLICY IMPLICATION: Increased economic integration with southern Africa will multiply migration pressures.

Increased development in southern Africa will not stop migration to South Africa

Many people suggest that a key policy measure in stopping migration to South Africa should be increased aid by the

South African government to uplift the economies of neighbouring states.

This sounds like a plausible strategy: yet international experience is instructive. The 1992 United States Commission for the Study of International Migration and Co-operative Economic Development put it this way:

'While job-creating economic growth is the ultimate solution to reducing these migratory pressures, the economic development process itself tends in the short to medium term

Africanise or indigenise?

The 'University of Ghanaphuthatswana'⁸²

South African universities, under pressure to reflect the demographic and social structure of the country more closely, often find Africanisation a more viable option than indigenising or applying affirmative action. This trend has emerged at the University of the North West (formerly the University of Bophuthatswana) – which some have dubbed the 'University of Ghana-puthatswana' because of the number of Ghanians allegedly employed there. This case highlights one of South Africa's major challenges: how rapidly can skilled black technicians, managers, entrepreneurs and, in this case, academics, be trained? And what is our attitude to skilled foreigners overall?

The number of academics employed at the University of the North West swelled from 32 in 1981 to about 200 in 1986. After remaining fairly constant until 1991, the numbers grew further to approximately 250 in 1992 and have since maintained that level.

There have been significant changes in the racial composition of the staff, and in the ratios of expatriates to South Africans.

Percentages of white and black staff

	White	Black
1981	56%	44%
1995	24%	76%

Composition of expatriate staff

	Europe	Africa	Asia	America
1981	86%	14%	0%	0%
1995	19%	56%	21%	4%

Percentages of South African and expatriate staff

	South African	Expatriate
1981	81%	19%
1995	68%	32%

to stimulate immigration by raising expectations and enhancing people's ability to migrate.⁸³ This view is corroborated by Weiner (See CDE Research No 6: *People on the move: lessons from international migration policies*, June 1997), Harris and Sassen.⁸⁴ In any event, it is extremely doubtful whether South Africa has the resources to become involved in massive development aid to neighbouring states or the capacity to invest in them for anything other than economic reasons. Difficulties in implementing the RDP inside South Africa point to the need to be realistic about capacity and speed.

This does not mean that South African migration policy should work against the development of our neighbouring states. Far from it – South Africa should encourage and promote viable economic growth and socio-infrastructurel devel-

opment throughout the region. But to think that this will reduce the migration pressures to South Africa in the short to medium term is an illusion. Economic growth in South Africa and the southern African region will increase the pressures for migration to South Africa. The results of better infrastructure, education, communications and other opportunities will be to facilitate greater mobility. For the vast majority of potential migrants in the region, greater mobility will mean moving to South Africa. If anything, increased development of southern Africa will heighten the demand for migration to South Africa.

It is generally assumed that if there were free movement to South Africa, all migrants would migrate permanently and they would be lost to their society in all respects. This ignores the role of migrant remittances (*see box, page 23*). According to Harris, in the late 1970s it was estimated that illegal Mexican immigrants to the United States remitted or carried back more than \$2 billion annually (or four times the earnings of the Mexican tourist industry), and this directly affected about 21 per cent of the population of the country.⁸⁶ The size of the flow does not indicate the degree of impact on the country receiving remittances.⁸⁷ Expenditure of the remittances creates employment for many others in the making of goods and supply of services. So migration is not necessarily a net loss to the 'sending' country. In many cases, the 'sending' country benefits as it receives inflows of foreign currency.

Networks into Africa

In February 1996 CDE conducted interviews with 30 taxi drivers and 20 flea market traders based in Gauteng.⁸⁵ The following emerged:

- At the moment the South African taxi transport network does not extend beyond Harare. The areas catered for in the region include Lesotho, Swaziland, Zimbabwe, Botswana and Mozambique. Passengers who want to venture as far north as Zambia, for instance, take a taxi from Johannesburg to Harare, and then take another taxi there for the next leg of their journey.
- Job-hunters, migrant workers and petty traders replenishing their stock – of perfumes, spices, second-hand clothing, and electrical appliances, especially refrigerators – make up the bulk of the passengers on taxis.
- The load to South Africa is lighter with taxis ferrying only people; from South Africa, furniture and goods load taxis as well.
- Products sold in South Africa include wooden and wire products (such as toys, household accessories), cotton and wool, beads, sculptures, clay and pottery products, baskets, and leather products such as bags and watch straps.
- Preliminary findings of the SADC/South African Traffic Control Council cross-border traffic survey show that although Lebombo is one of three border posts between South Africa and Mozambique, there is a significantly higher flow of taxis (twice as many) through there than at Beit Bridge, the only border post between South Africa and Zimbabwe.

POLICY IMPLICATION: Regional development is important in its own right. It is not an effective short-term instrument to control migration.

We know very little about the scale, nature and possible future trends with respect to immigration to South Africa

One difficult factor in the discussion about migration to South Africa is the paucity of information.

Most of the proponents of the 'fortress South Africa' position base their argument on a number of assumptions that are empirically dubious. We do not know how many people there are in the country illegally. We do not know how many people presently living in other countries would like to come here, or are planning to come. We do not know what migrants contribute to the South African economy, nor what they cost the society.

There is no hard data on the overall impact migrants have on the social, political and economic life of South Africa, and those who claim to know exactly what this impact is should not be believed. And yet proponents of the 'tighten up' posi-

tion make only negative assumptions about all these issues.

A new migration policy will need to be carefully evaluated, and this means that considerably more and better information is required. Sound empirical data is needed on:

- the pressures for migration to South Africa from the different SADC countries;
- the impact of new migrants on different communities (urban and rural), economic trends and services inside South Africa;

Some migrants are itinerant traders⁸⁸

A prominent South African migration researcher argues that the catch-all category of 'illegal immigrant' is inappropriately applied to undocumented migrants, principally traders, who sojourn temporarily in South Africa. Many migrants in South Africa regard themselves as migrants per se, rather than as immigrants. They do not desire permanent residence in South Africa. They are here for specific purposes, and expect to return to the country of their birth; or they wish to maintain a home base in their country of origin, and continually commute across South Africa's borders. Many are transient, trading artefacts which they bring from other African countries. They exit with the proceeds and South African consumer goods, procure more goods, and return to sell again. Similarly, many enter to find work, take goods and remittances back to dependants, and then re-enter.

Such migrants have no option but to remain undocumented, and therefore 'illegal', as there is no policy that adequately addresses their requirements. It is expensive and time-consuming for them to have to continually re-apply for temporary permits each time they wish to re-enter the country. Applicants for temporary work and work-seeker permits have to pay R360 each time they apply for permits or seek extensions. Tariffs are non-refundable, regardless of the outcome of the application. The SADC amnesty of 1996 was inappropriate for such migrants, since they do not desire permanent residence. Had migrants wanted to secure permanent residence, they would have been precluded from doing so by virtue of the imposed condition that applicants had to provide evidence of continuous residence in South Africa from 1 July 1991.

A unique policy response to this category of migrants is required; thus a long-term, multiple entry, temporary work or residence permit may be one way of regularising and legalising their status.

the way in which the new policy is being implemented, and adjustments that might need to be made; the budget allocations needed to enable the implementation of migration policy, and the efficiency of such implementation.

The consequence of this lack of information requires honesty from policy-makers on what they do not know, the introduction of a reliable, objective and ongoing source of information on international migration trends and impact, a degree of caution as to the knowledge of the real demand for migration to South Africa, and thus a need to carefully monitor and review policy instruments annually (*see box, page 14*).

POLICY IMPLICATION: South Africa urgently requires a thorough and objective process to obtain essential information on migration. In the meantime, some caution is needed in the policy field.

The economic contribution of migrants must be recognised by policy-makers

Do illegal migrants really steal jobs from locals?

Many local people are fearful that they will lose their jobs to migrants who are prepared to accept work at a lower rate. By keeping wages down, illegals might displace some local workers, but the magnitude of the displacement is not clear.

A recent study on unemployment found that South Africans blamed illegals for unemployment more than they blamed anything else. No fewer than 79 per cent of all South Africans believed that competition for jobs from illegals was a major cause of unemployment, with all other explanations endorsed by lower proportions of people.⁸⁹ But the study strongly suggested that unemployed South Africans, on average, would not accept work at the rates foreign migrants are happy with.

On average, South Africans claiming unemployment would not, by their own admission, accept formal work at much less than the going rates in formal, large-scale industry and commerce for unskilled labour.

The charge that illegal immigrants take work away from South Africans, at wage levels which South Africans would generally be willing to accept, has yet to be proved. Some evidence is surfacing on the positive socio-economic impact of some illegal immigrants (*see box, page 25*). There are also reports of foreign traders who regularly travel to South Africa, sell their goods, and then use the money acquired to buy South African goods before returning to their country of origin.

Such people contribute to the economy as a whole, and to local job creation.

The international evidence is interesting in this regard. Most work done concerns the United States. According to Borjas in a study for the OECD (1993): 'The methodological arsenal of modern econometrics cannot find a single shred of evidence that immigrants have a major adverse impact on the earnings and job opportunities of natives of the United States.'⁹⁰ In an earlier study (1990), he concluded that 'despite all of the concern about the displacement effects of illegal immigration, the available evidence suggests that illegal aliens ... have a minor impact on the earnings and employment opportunities of the natives. According to Harris, other studies reach the same conclusions. 'Black unemployment rates are not increased – if anything, they are lowered – by a rise in the proportion of Mexican immigrants in the local labour market.'⁹¹

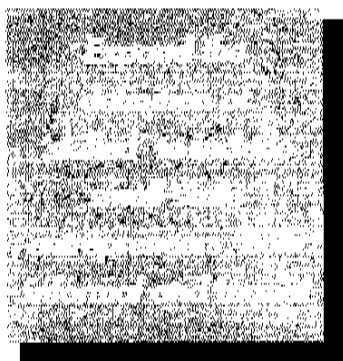
According to Harris, some studies suggest that immigrants have a positive effect on local employment by saving industries that would otherwise either close or relocate – for example, the shoe, vehicle, garment and fruit-processing industries in California. In the case of Los Angeles, McCarthy and Valdez (1986) found that when in the 1970s national employment contracted by a total of 5 per cent in the leather goods, textile, garment and furniture industries, employment in the city in these industries expanded by 50 per cent, largely, they argued, as a result of the availability of immigrant workers, legal and illegal, which increased the demand for native-born workers as owners, managers, supervisors, technicians in the input and machine supplying industries and in transport.

If these industries in Los Angeles had contracted at the national rate, its labour market would have had 83 000 fewer jobs. Portes came to similar conclusions for the OECD in 1993. Harris goes on to argue that these calculations omit to include the increase in local employment as a result of immigrants (including illegals) spending the incomes they earn – on housing, foodstuffs, furnishings, journeys to work, and so forth.⁹²

Are migrants parasites on the host society?

The foreign migrant makes his or her contribution to the economy with rather lower levels of demand for state resources than local participants in the economy.

Again, the international evidence is instructive. North and Houston found that, in the case of illegal immigrants to the United States, a majority paid direct taxes to finance public support programmes but were rare users of tax-supported programmes. In the case of Caribbean migrants to Britain, it was found that in the 1960s few immigrants drew retirement pen-



sions (one of the largest items in the national insurance and benefit systems), and their use of other provisions was slightly lower than that of the native-born. In California, McCarthy and Valdez found that less than 5 per cent of Mexican immigrants received any assistance from public welfare services – well below all other low-income groups.⁹³

South Africa benefits from migration

For decades, South Africa has relied heavily on the contribution of skilled immigrants. Nevertheless, the low quality of South African mass education results in South Africa's Human Development Index (as calculated by the United Nations) remaining low in relation to our general level of development, so that skilled immigrants will continue to play a role in the softening of a major constraint on economic growth.

***Not everyone wants to become a South African!*⁹⁴**

In October 1995 the South African cabinet offered permanent South African residence to mineworkers from outside the country who had been working on the mines since 1986 and who had voted in the 1994 election. A survey of mineworkers in Lesotho provided some interesting preliminary answers to the question of the likely implications of the amnesty. As Jonathan Crush notes, 'These findings are highly significant, for they contest the assumption that all Lesotho citizens cannot wait to move permanently to South Africa and abandon their home country. The vast majority see a permanent move as undesirable. Those with resources and assets in Lesotho are even less likely [to move]. Of those who move, most would continue contact with Lesotho, and would aim to retire there.' The findings showed that:

- only 18,7 per cent of respondents said they wanted to take up permanent residence in South Africa;
- only 6,1 per cent would take up South African citizenship;
- 68,3 per cent of those who said they would move to South Africa also indicated that they would keep a home in Lesotho.

As at 1 December 1996, 51504 miners had successfully applied for amnesty out of an eligible population estimated at around 130 000 by the recruiting agency TEBA.⁹⁵

Formal managerial and professional qualifications are not the only index of skill: our underdeveloped small and medium enterprise sector will also benefit from the importation of proven but informally acquired entrepreneurial skills. Even immigrants with limited skills are generally risk-takers in their communities of origin, and are people with the drive to work hard and succeed in their new settings.

CDE believes it is important to see immigration as a valuable additional source of human capital which creates opportunities for more rapid growth, rather than as a source of competition for a fixed number of jobs. In this respect South Africa has more to learn from the immigration history and

policies of the United States than from European history and practice, even though some of our current immigration law and policy follow British practice for historical reasons. Indeed, Europe taken as a whole is in serious demographic and labour market disequilibrium at present, a fact with which Europeans will have to struggle for decades. It is possible to avoid the emergence of this problem in southern Africa if migration policy is appropriately formulated now.

POLICY IMPLICATION: The benefits of migration can outweigh the costs of claims on social services.

Ghanaians in Durban – surprising findings⁹⁶

Interviews conducted in 1996 with 50 self-employed Ghanaian immigrants in the Durban metropolitan area cast doubt on a number of common ideas about migrants, namely:

- that immigrants take more jobs than they create
 - 78 per cent of respondents believed that South Africans do not have adequate skills in the areas in which they were engaged;
 - 68 per cent felt that they had special skills to contribute to the Durban metropolitan area;
 - 52 per cent of respondents had trained locals in the skills that they are engaged in – shoe repairs, barbering, hairdressing and dressmaking. Some of the locals had set up their own small businesses in the Durban area, while others had been employed by the immigrants who trained them. Most South Africans working in hair salons were apparently trained by the Ghanaian owners of those salons;
- that xenophobic attitudes prevent immigrants being integrated into communities
 - only 16 per cent of respondents indicated that their hosts had hostile attitudes to them. Some 36 per cent indicated indifferent attitudes, and 48 per cent said their hosts had warm attitudes towards them;
 - as many as 90 per cent indicated that they did not feel threatened by South Africans engaged in the same economic activity. This might of course be because not too many South Africans are involved in the same economic activity; and
 - 92 per cent did not have any difficulty communicating with people of the host area, with English being the common medium of communication.

Popular fears and misconceptions about migration must be dealt with. Leadership is required

It is very important that the authorities should be fully acquainted with the attitudes of citizens on an issue such as illegal immigration and migration generally. Weiner documents instances in the United States, Europe and Asia where political leaders have been out of touch with and underestimated the reaction of citizens to the influx of foreign immigrants, and have suffered political setbacks as a result.⁹⁷

An issue of very great concern is the evidence from numerous surveys that the vast majority of the South African population are antagonistic to migration of people from across the borders. In a survey conducted in February 1995, the Human Sciences Research Council found that 72 per cent of respondents felt the government should act more strictly against illegal immigrants, and that the proportion had risen from 56 per cent in a 1994 survey.⁹⁸ This evidence was interpreted to mean that xenophobic attitudes were increasing sharply. The evidence was also interpreted to mean that there is a perception that foreign migrants compete unfairly for scarce resources and employment opportunities.

Associated with these perceptions is the danger of hostilities developing which could lead to reactions of protest or violence against foreign migrants. There are instances where this has already occurred.

One very understandable reaction to this type of evidence is that the authorities should heed the prevailing sentiment (the 'voice of the people' as it were) and clamp down on foreign migration. Obviously, as a democracy, South Africa has to be responsive to the perceptions of the mass of its citizens. At the same time, however, politicians have an educational role and a duty to lead public opinion where issues are more complex than the rank and file citizenry might realise.

Governments need to consider many factors in making policy, and popular sentiment is only one of these. There is

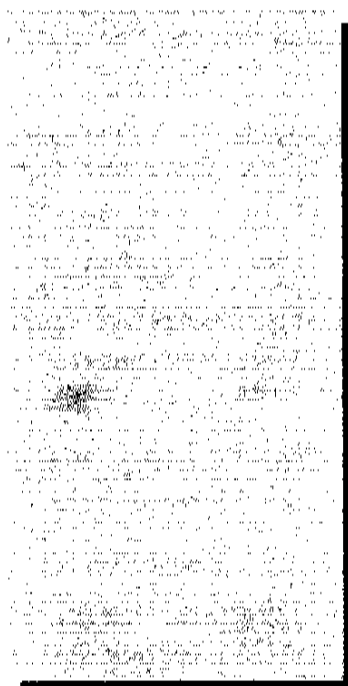
thus no reason why the initial wishes of the population at large should define government policy on migration – popular views are important, and the government should attempt to understand such views fully. But it should balance them against other considerations which are in the longer-term interests of the population.

It is important to realise that the attitudes expressed in opinion surveys, while valid reflections of broad sentiments and of a typical inclination to respond according to perceived self-interest, do not necessarily mean that a majority of people feel so strongly about the issue that they would reject a more balanced policy towards migrants if they were to be presented with all the facts and the policy fully communicated and explained.

There is also a wider consideration at play in this regard. While there have been popular reactions against foreign migrants, the most serious instance of conflict over jobs and resources have occurred and still occur between interest groups within the South African population. One need only think of the ethnic clashes on the mines, and faction fights between rural communities. Hence the potential for conflict over resources is much wider than that which relates only to foreign migrants, who in any event, precisely because of their foreign status, tend to avoid conflict as much as possible. They also seldom present themselves as factions or groups, tending rather to operate within the system as individuals, adapting to the constraints and opportunities presented to them.

This wider consideration should focus attention on the critical need for the economy to grow, and for fiscal and infrastructural resources to expand more rapidly than they are at the moment. To the extent that an expensive and probably ineffective attempt to clamp down on illegal foreign migration will consume scarce resources, and perhaps even constrain the contributions that foreign migrants make to wealth creation and cross-border trade, an attempt to 'get tough' on foreign migration will hinder rather than help to address the wider and more urgent challenge of growth. Controls have costs, and ineffective controls simply waste money, becoming a tax on growth.

POLICY IMPLICATION: South African public opinion needs information on the realities of migration. New migration policy must give a lead and make a clear choice on the realities and benefits of migration for South Africa



Crime and conflict must be tackled directly, not through migration policy

Negative assumptions are often made about the behaviour of all illegal immigrants

Illegals are supposedly responsible for stealing jobs from locals, for crime, drug trafficking, arms proliferation and spreading diseases. Consider the following press report: 'Certain nationalities had been identified by the police as being associated with specific crimes. Nigerians had been linked with drug smuggling, particularly cocaine, Zairians with diamond smuggling, Taiwanese and Chinese with the smuggling of perlemoen and crayfish,

Thai girls with prostitution, and Mozambicans and Angolans with arms smuggling.'⁹⁰ The police estimated in 1994 that some 14 per cent of crimes, aside from illegal migration itself, are committed by illegal immigrants.

There is no doubt that some illegals are exploiting opportunities for crime. This is not so much a problem of migration but an example of a much wider problem in our society, namely the breakdown of law and order and of social discipline.

One cannot address this problem from the edges as it were, one edge being illegal migration. It has to be addressed at its core, and for what it is. Laws of supply and demand require basic law and order in which to operate effectively and without distortion. Crime can be regarded as a case of some participants in the marketplace taking unfair advantage of others by using coercion, violence and fraud in order to obtain resources. The scope for this kind of distortion of all markets has to be reduced to something approximating that of a normal society before we will be able to understand the issue of illegal migration in its proper perspective.

It is often suggested that tight border controls are necessary in order to prevent the entry of criminal elements, smugglers and the passage of stolen goods into South Africa. But it is obvious that criminals are the type of people most likely to take the risks of crossing tightly controlled borders, because their entire mission is the rejection of law and order.

This would be like using a very large net which catches thousands of little fish in order to catch many fewer big fish with the agility to jump out of the net before they are landed.

The damage to the interests of the non-criminals would be disproportionately greater than to the real criminals. This simply cannot be an efficient basis for an anti-crime drive. The principle should be to use a special net to catch the fish

that need to be caught, as it were. A crime strategy must be focused on criminals, and not hope to catch offenders by chance.

POLICY IMPLICATION: Do not put more resources into migration policy in order to deal with crime. Target cross-border crime directly, and put more resources there.

Immigration policy must be humane, and avoid unnecessary criminalisation

For decades, South Africa's influx control system made criminals out of ordinary people who did not break other laws in pursuit of their interests. The system eventually collapsed under its own weight, but not before it had fined or jailed millions of people with scant respect for due process, separated families, and eroded respect for the rule of law. Under current immigration policies there remains the need for indiscriminate mass raids on the streets, illegal immigrant detention camps, and deportation trains. These institutions are not easily reconciled with a human rights culture, and can be the means by which burdens are imposed on many thousands of people (not all of them foreign).

On the streets of South Africa it is often difficult to distinguish between local and foreign people. A recent newspaper report by a black South African made the point forcefully: '[A]lthough pass laws requiring every black person to carry identity documents were abolished in 1985, blacks would still be wise to carry their IDs when in Johannesburg. A stroll in Hillbrow or a shopping trip at the Smal Street Mall in the city centre without your ID could get you arrested if you are mistaken for an illegal immigrant and you are black.'¹⁰⁰

Some – including the deputy president – already acknowledge that these burdens are often pointless (*see box, pages 12–13*). There are costs in imposing them, and they do not stop clandestine immigration. Such a situation points to the defects in current immigration policy. These defects are systemic; they will not be removed by a once-off amnesty, unless it is followed by a more realistic accommodation of demographic and labour market pressures.

The removal of unnecessary criminalisation will also pave the way for immigrants to meet their tax liabilities more fully.

POLICY IMPLICATION: South Africa has enough real criminals. Migration policy should not condemn (potentially) millions of otherwise law-abiding people as criminals. This will be costly, and undermine attempts to build a new human rights culture in the country.

Migration policy must be realistic about South Africa's limited institutional capacity

Does the state have the capacity and resources to really stop illegal migration?

Many who argue for a 'get tough' approach to manage illegal immigration do so on the basis of certain assumptions. Speaking in the national assembly in June 1996, the minister of home affairs said: 'The department [of home affairs] is confident that the influx of illegal immigrants who pose a threat to the RDP and the prosperity of citizens can be stemmed, but only if the central and regional governments, as well as all political parties, are willing to support the department in its application of strict control measures and intensified law enforcement action.'¹⁰¹

The Institute for Security Studies has suggested that South Africa can do more to control the influx of illegal immigrants through tighter border controls (floodlights, motor detectors, etc) and internal controls such as tamper-proof identity cards, a comprehensive national registration system with built-in punitive measures against employment, and 'a system to ensure that illegals are not employed in the underground economy'¹⁰²

Is it practical to suggest that a country which cannot even measure its underground economy, collect rates and service charges from residents who live at listed addresses, enforce television-licence requirements, collect parking tickets or register voters without duplications and omissions could actually implement these measures?

More stringent internal regulation of migrants is not feasible, given the financial and administrative demands, the state's weak institutional capacity, the political consequences, and difficulties of enforcing employer sanctions in a country with a large informal sector such as South Africa (*see CDE Research No 6: People on the move: lessons from international migration policies, June 1997*). This suggestion also mistakenly assumes that one can ignore South

Africa's failed history of influx control and impose it all over again. Those advocating such an approach need to explain how exactly this might be done, and at what cost.

The former deputy minister of home affairs, has highlighted the country's limited resources. 'It can be mentioned that England, as an island, has a total of in excess of 5000 immigration officers, while South Africa, with its vast borders, has fewer than 1000 officers to fulfil the same task. The allocated funds for 1996/97 unfortunately do not allow the enlargement of the department's establishment in regard to immigration officers. The service simply cannot be rendered at the required level.'¹⁰³

It is dangerous to adopt unimplementable laws and policies

The 'get tough' position on cross-border migration raises the danger of the legitimate authority of the state being undermined. First, this could happen as a result of adopting unimplementable laws – and the experience of the United States government in trying to patrol the border with Mexico must surely be instructive here. Second, it needs to be appreciated that people in southern Africa do not necessarily regard an official border as sacrosanct, unlike the case in countries where borders have been established for centuries and more or less coincide with the territories of defined national communities.

The notion of border sanctity must not be pushed too far when Changana-Tsonga, Tembe Tonga, Ndebele, Swazi, South Sotho and Tswana people have for centuries lived astride the modern South African boundary. Chiefs with subjects on the other side, or families with relatives, would soon come to regard 'the wall' as a target for legitimate protest.

Immigration policy must be consistent with the modest resources South Africa can afford to devote to its administration and policing. These resources should be applied in such a way as to yield the maximum useful effect, rather than being squandered in pursuit of unachievable goals.

South Africa has long borders, and limited resources with which to police them. The decriminalisation associated with a more liberal immigration policy would free up policing resources to deal with a real social problem in the form of cross-border crime. Rational administration of a realistic immigration policy requires only modest human resources.

Above all, South African immigration policy should not make implicit dishonest promises on which it cannot deliver. An immigration policy which is beyond the state's capacity to enforce it will lead to trouble, not only in the form of official self-delusion but also in the form of stress at the popular level when developments do not meet expectations, and the state yet again is seen to be failing to deal with society's needs.

POLICY IMPLICATION: Migration policy should not assume the country has the capacity for elaborate, sophisticated and comprehensive migration control policies modelled on the richest industrial democracies. We do not.

THE IMPLICATIONS OF CDE ANALYSIS, VALUES AND ORIENTATION

Now we can briefly consider how the CDE's analytical points of departure relate to the different views about international migration.

With respect to **skilled migration** to South Africa, it is clear that the CDE analysis points strongly in the direction of opening the country's doors to all the skilled people who want to come here, irrespective of which country they come from. At present the country is losing skilled people, whom are all desperately needed if we are to achieve our growth and development goals. There are now more opportunities for skilled black South Africans than the education system can meet – this mismatch will expand with increased economic growth. Attempts to restrict immigration from SADC countries seems to be a self-defeating proposition. Skilled people are mobile – they will seek out opportunities wherever they can find them. We need to attract them to stay in southern Africa, not 'imprison' them where they do not want to be, with the effect of encouraging individuals to leave the region. And finally, our analysis points strongly in the direction of reassessing the conventional and formal definition of 'skills' to include people with established informal entrepreneurial skills, appropriate for a developing country.

Turning to **unskilled migration**, we will comment on the various positions separately. We are uncomfortable with the 'fortress South Africa' position in either of its two variations. At first blush the 'get tough' position seems the obvious approach to adopt. And yet the CDE analysis reveals many considerations that make this a problematic approach: it is unworkable, requires considerably more resources to be devoted to policing and controls, makes many wrong assumptions about the process of migration (its nature, causes and consequences), does not complement but goes against the thrust of the government's macro-economic strategy, focuses official resources and attention on a negative rather than a positive dynamic, criminalises whole classes of people inside the country, and will probably increase bribery and corruption in the South African system.

The second variant on 'fortress South Africa' argues for

an amnesty for everyone inside the country, and then 'getting tough' on any newcomers. This seems at first to be a neat, manageable and fair approach. On reflection, however, it has less appeal as a long-term government policy. This is a stop-gap policy: it makes no headway in sorting out the society's and government's approach to migration generally, and what impact migration has on the economy and other aspects of our society. It provides a mixed message: anyone who has got in up to now can stay, but we do not want any more people. Why?

This approach also assumes South Africa can be effective at stopping more people from coming into the country, and that it is worth spending real and additional resources on attempting to do that. It also ignores the nature of the migration process and the fact that networks develop between the migrants who are here already and their connections back home. Once these kind of networks are established, it is very difficult to prevent additional new migrants from entering the country. We would rather see the country start developing a policy that establishes a clear attitude to migration and its costs and benefits for South Africa; starts the process of informing and educating South African society about the nature, reality and contribution that migrants can make; and also starts the process of developing a decent information base of the real pressures for migration to South Africa from neighbouring countries.

In summary, then, we would argue against the two variants of the 'fortress South Africa' position. If either is implemented, they would at best fail because of the sheer impossibility of policing South Africa's extensive and remote borders, and at worst will undermine sensible budgetary policy by requiring more and more state finances to be devoted to border controls and the tracking of illegals. Worse still, to the extent that a policy of tight control is successful, it could lead to a ballooning of bribery and corruption on both sides of the border which would further strain South Africa's resources for the maintenance of national safety and security. The spectre of South Africa returning to an era of mass 'pass raids' with all the negative consequences for human rights, relations between police and citizens, and injustices where innocent citizens are mistaken for 'illegals' would be a real threat to the democratic, open, 'good neighbour' nation that the government is trying to build.

'Fortress South Africa' is incompatible with the key components of the government's macro-economic strategy, with its commitment to expanded trade, tourism and general openness to economic forces.

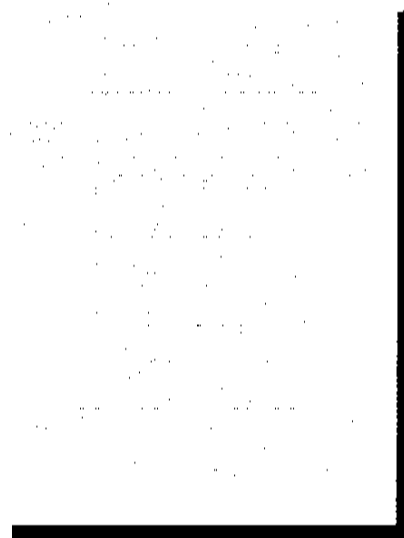
If we now examine the 'open door'

positions on migration policy, CDI's analytical conclusions are revealing. Our analysis leads us to oppose the 'humane accommodationist' view that national borders are not really all that important, and that migrants should have the same rights whatever country they come from or were born in. It is not in South Africa's interests (or any other nation's for that matter) to give up on the idea of nation states and the responsibilities of government for promoting the interests of the country's citizens and permanent residents. National interest requires a distinction between citizens, permanent residents and others. These distinctions help countries to define their own interests, their own national policies, and their work to promote them. Trying to do that is not inexorably an attack on the human rights of migrants in the country. We should restrict the word 'refugee' to its original meaning. Trying to stretch this concept too far obscures the real and material difference between a migrant and a refugee, and doing that could have negative consequences for 'real' refugees.

The economic case for free movement is an appealing one, albeit in isolation from other considerations. Our differences with this position concern strategy and not principle. The considerations that have influenced our analysis of this position are political and practical. States should not give up the right to control their own borders, so how movement into the country is regulated or channelled is important. In addition, we would argue that the country has an interest in ensuring that once migrants are in the country they do not become a new burden on the state and its limited resources. So conditional or probationary access seems to us to be a preferable approach.

No migration policy will be able to work perfectly - there will always be ways in which people can slip through the system. However, it is essential for citizens of a country to believe that the government is controlling the process of migration, and to have some confidence in how the authorities are managing this phenomenon. This requires a more subtle strategy and leadership from the politicians.

Simply stated, a policy which, for whatever good reason, creates the impression of a total 'open door' to foreigners with no conditions at all, and allows people to play on the spectre of millions of foreign people coming into South Africa and immeasurably adding to the burdens of the state, could produce reactions among the populace which at best will vindicate the tough charity begins at home viewpoint, and at worst will lead to punitive popular reactions against all foreigners and possibly violence. The too hasty introduction of unconditional free movement



Summary: CDE analytical points of departure

- **South Africa's national interests must come first.**
- **Migration policy must support and complement the government's macro-economic strategy.**
- **South Africa needs all the skilled people it can attract**
- **South Africa is a nation with many cross-border links, and these create migration pressures.**
- **Increased development in southern Africa will not stop migration to South Africa.**
- **We know very little about the scale, nature and possible future trends with respect to immigration to South Africa.**
- **The economic contribution of migrants must be recognised.**
- **Migration policy is not just about economics. Political leadership is required to deal with popular fears and misconceptions.**
- **Crime must be tackled directly, not through migration policy.**
- **Immigration policy must be humane and avoid unnecessary criminalisation.**
- **Migration policy must be realistic about South Africa's limited institutional capacity.**

Summary: Policy implications from CDE analysis

- **South Africans must debate and then decide on a migration policy that promotes this country's national interests.**
- **Migration policy must be consistent with a more open, trading economy and support maximum economic growth and job creation.**
- **Migration policy must aim to provide the country with an abundance of skilled people (formal and informal skills).**
- **Increased economic integration with southern Africa will increase migration pressures.**
- **Regional development is essential for itself. It is not an effective short-term instrument for controlling migration.**
- **South Africa urgently requires a thorough and objective process to obtain essential information on migration. Some caution in the policy field is needed in the meanwhile.**
- **Benefits of migration can outweigh the costs of claims on social services.**
- **South African public opinion needs educating on the realities of migration. New migration policy must give a lead and make a clear choice on realities and benefits of migration.**
- **Do not put more resources into migration policy. Target crime (cross-border and domestic crime) directly and put more resources there.**
- **South Africa has enough real criminals. Migration policy should not condemn (potentially) millions of otherwise law-abiding people as criminals. This will be costly and undermine attempts to build a new human rights culture in the country.**
- **Migration policy should not assume the country has the capacity for elaborate, sophisticated and comprehensive migration control policies. We do not.**

could result in a situation that sets back mobility and openness in and into South Africa for a long time to come.

A carefully modulated policy mix with the emphasis on the 'open door' but retaining some instruments for control as the first phase of a broader liberalisation, is what is most likely to contain optimal benefits for the South African economy and social structure, local citizens, and the surrounding countries of southern and central Africa. (*See table, page 34*).

CDE's analysis and orientation is clear. We are in favour of migration as a phenomenon. We see many migrants as the risk-takers of their communities, and as people with the drive and need to work hard. This philosophy should apply to rural-urban migration within South Africa and to migration across our borders. South Africa will not become a successful world competitor as a closed, nationalistic, narrow society. Diversity, an openness of spirit and the opportunity to maximise the energy and unforeseen talents of people are required to build a great society and to encourage entrepreneurial growth and development.

This does not mean that an open invitation should be issued to everyone in Africa to migrate to the southern tip. States have a right to secure their borders and keep out undesirables – criminals, vagrants, drug traffickers, gun-runners, cross-border cattle rustlers and so on – and to do this effectively. Security agencies should be doing more to combat the entry of these people in any event. A clear distinction needs to be made between crime control and migration issues. The two overlap, but they are not the same issue. Strict and tough crime control measures should not be mistakenly used as tools of immigration controls. It is important to distinguish between South Africa's national interests and the interests of the region. These are not always synonymous, and it is our view that national interests should predominate in this and other policy areas.

What it does mean is that CDE's approach to migration policy and the individuals whom it most affects is a positive one. In most cases, migrants do not take jobs of local workers. (*see box, page 25*). Many migrants will establish small enterprises, and can add to the skills and economic base of our society. We are also short of small-scale entrepreneurs who can create one to two- or 10-person enterprises.

Regional development throughout southern Africa is an important objective in itself. However, we are deluding ourselves if we believe that such development will in any way diminish the pressures for migration to South Africa for a very long time to come. Convincing evidence is available of the positive migratory impact of development – it acts as a spur, and provides new opportunities for groups of people to migrate to areas of new opportunities. Thus developments such as the Maputo Corridor are more than likely to increase the flow of migrants to South Africa (particularly Mpumalan-

ga and Gauteng) for the foreseeable future.

The development of a human rights culture is long overdue in South Africa, but it must be remembered that the rights of citizens and the rights of foreigners in a country are different. A very important ingredient in the development of a South African migration policy has to be firm realism as to the limited institutional capacity and resources of the South African government. The failure of the most powerful government in the world – that of the United States – to halt illegal immigration should be borne in mind. CDE shares deputy president Thabo Mbeki's view (*see box, pages 12-13*) that deportations as a key instrument of policy are futile. We would go further to argue that they are probably counterproductive, as research shows that they often lead to extended family migration so that someone is always left behind in South Africa to look after the deported person's dwelling and possessions.¹⁰⁴

With respect to the issue of skilled migrants, we are convinced that economic growth in South Africa will require a much greater supply of skilled people than is now available or even on the horizon. In the words of the 1996 report by the National Commission on Higher Education, ... [there is a] chronic mismatch between higher education's output and the needs of a modernising economy.¹⁰⁵

Having said all of this, CDE is mindful that the politics of migration policy need to be carefully thought through, and that firm political leadership is required. The politics and perceptions about migration need to be carefully considered and managed. This requires leadership, the integration of migration policy into other facets of government policy, and factual information.

CDE PROPOSALS

... the goal of South Africa's migration policy should be to

free up controls on movement in ways that are most consonant with our national interest. South Africa needs high and sustained economic growth, skilled people and entrepreneurs, and a more efficient labour market. Our migration policy must be generous and humane, while strengthening the South African economy rather than being a drain on our resources. It must accommodate regional pressures for migration, while enabling the state to re-establish its control over the process, and enhance its legitimate authority by introducing an effective management system. The policy must be simple, straightforward, easy to communicate and easy to understand.

Circumspection is required for a number of reasons. South Africa lacks reliable data at present about migration pressures and trends from each state in the region. Nobody

can say with any precision how large the demand for migration to South Africa actually is. We must also recognise that the country's domestic labour market is characterised by high levels of unemployment, a degree of rigidity with respect to wages in the unionised sector, and the political reality of a relatively strong unionised labour voice. Furthermore, there is a certain fragility to the politics of our new democracy. South Africa in transition suffers from institutional weaknesses. The state is struggling to perform some of its most basic functions, with limited human and material resources. The government's macro-economic strategy must not be undermined by uncontrolled increases in levels of demand for benefits and services.

These considerations lead CDE to advocate the introduction of a two-tiered migration policy. While supporting the goal of free movement in principle, we advocate a more nuanced approach to liberalisation for at least the next 5 years. This involves a differentiated strategy for skilled and unskilled migrants. We support the immediate lifting of all restrictions on skilled migration. Unskilled migrants, on the other hand, should be accepted only from SADC countries, and in order to remain in South Africa must demonstrate that they are able to become economically active, tax-paying and law-abiding residents. While this is a generous policy, it also facilitates control since it encourages people to register with authorities, and requires them to provide a residential address.

CDE's proposals set out a broad strategic position. Within this framework, the legislative and regulatory details will need to be developed more fully.

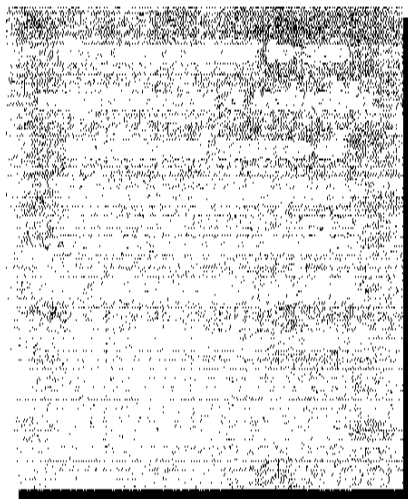
This new policy will apply to:

- all potential immigrants from outside the country, and
- all foreigners illegally in South Africa at the time that the policy comes into effect, who will have to apply to the department of home affairs for permission to remain here in terms of conditions applicable to all potential immigrants.

CDE's proposals do not cover all the different categories of migration. For example we do not deal with the question of refugees, itinerant traders or oscillating migrant workers. These are important issues which need specific policy attention. CDE's proposals address the central problem of migrants seeking medium to long-term work and residence in South Africa.

Skilled people

There should be free movement of skilled people from anywhere in the world to South Africa. Skills must be defined



broadly, as a combination of qualifications and experience. Opening the doors to skilled migrants immediately removes a major barrier to faster economic growth.

The definition of 'skilled persons' should be expanded to include not only the traditional professional, technical, managerial and investor categories, but also entrepreneurs of all kinds who have some demonstrated skills in the creation and management of either formal or informal enterprises.

This approach is appropriate to the circumstances of a developing country, as it recognises skills in the informal as well as the formal sector. A schedule defining acceptable levels of skill should be established. This can be revised from time to time.

Restrictions on the immigration of skilled people should be lifted with immediate effect.

All skilled persons applying to immigrate:

- will be granted permanent residence rights, and
- will qualify for citizenship rights after five years.

Skilled immigrants must become citizens, however, to qualify for any one-off lump sum subsidies from the state, eg for land and housing.

Skilled immigrants should be allowed to bring members of their nuclear families (ie one spouse, and their children) into the country. If they want to bring in any additional members of their families, they will have to apply for special permission and prove that they have the means to support them.

All applicants and their families will need to provide recent medical certificates indicating their good health.

No one convicted of a serious crime (including financial crime) in South Africa or elsewhere will be granted either permanent residence rights or citizenship.

Unskilled people from SADC countries

All unskilled people from SADC countries who apply to migrate to South Africa will be permitted into the country, provided that they register with the department of home affairs and can furnish an address in South Africa. Thereafter, in order to qualify for permanent residence and citizenship they must satisfy a number of requirements at different stages, with different levels of rights.

Level one: trial entry

Two categories of applicants must be distinguished initially, namely persons applying from outside South Africa and illegal aliens inside South Africa at the time when the new policy is implemented.

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Africa. They may not apply for re-entry until at least one year has elapsed after they leave the country.

Persons who leave South Africa before the six months are up must wait for one year after their departure before applying for re-entry.

All applicants will need to provide recent medical certificates indicating their good health. While in South Africa

they will be eligible for basic health care but for no other social services until they qualify for permanent residence.

Persons who falsely declare that they are able to support themselves must be deported, and must wait for two years before applying for re-entry.

No applicant with a criminal record should be granted entry. Persons charged and convicted of serious crimes in South Africa at any time before acquiring citizenship must be deported and prohibited altogether from re-entering the country.

Unskilled persons who are illegally inside South Africa at the time when the new policy is introduced must apply to remain here legally. Such permission will be granted on the same terms as for applications from outside the country. Persons

Different policy positions

- 'Fortress SA'**
 - Tight restrictions on skilled migration
 - Strict controls on unskilled migration
 - Amnesty and then strict controls
- 'Open door'**
 - Any skilled person can come to SA
 - All migrants should have same rights as SA's
 - Economic argument for free movement

Desirable outcomes

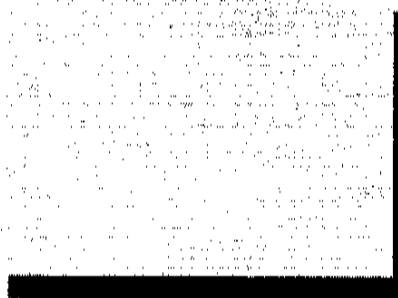
- SA's national interest first
- Policy must support GEAR
- SA needs skilled people
- Increasing SA's many cross-border links
- Development in southern Africa
- Recognise economic contribution of migrants
- Minimise popular fears
- Tackle crime directly
- Policy must be humane and avoid unnecessary criminalisation
- Policy must be realistic about SA institutional capacity

✕ marks where the proposed policy contradicts desirable outcomes
 ✓ marks where the proposed policy supports desirable outcomes

who would qualify to enter the country will be granted level one rights, and all subsequent provisions must apply to them.

We assume that many such people will have taken advantage of the amnesty granted in 1996. However, it is important to encourage any people who are inside the country but still outside the legal system to acquire legal status and become part of the official records.

The trial entry period provides powerful incentives for would-be immigrants to follow the legal channels. Once inside the country they have to prove their potential to become productive and support themselves, and they must abide by the law.



If they complete this trial period successfully, they are duly rewarded.

Level two two-year probation

Persons who have provided proof at the end of the initial six-month period that they are able to support themselves and

have a fixed abode will be granted permission to remain in South Africa for a further period of two years. In effect, this is a probationary period.

They must provide the South African authorities with their residential address in South Africa. The authorities must be informed of any change of address, failing which the permit will be withdrawn.

Migration policy-making: a South African perspective

South Africa is a society with many complex problems facing the state - constrained fiscal resources, high expectations, uncertain respect for the authority of the state, and simultaneous priorities.

In this context policy-making is inevitably a set of trade-offs: a challenge of seeking the optimal reconciliation of conflicting demands.

This challenge has deepened since the new macro-economic policy GEAR has imposed a rigorous programme of fiscal discipline combined with attempts to conserve state resources for critical developmental tasks.

Migration policy-making typifies the dilemmas which arise in many other fields of policy in the current South African situation. Very simply, the requirements which the policy environment sets are the following:

- policy must conserve fiscal resources by optimal allocations. It cannot be expected that any issue receive 'saturation' treatment. Government spending must be targeted at the point before diminishing returns on expenditure, even though the cut-off may be contro-

versial. However tempting they may be, the attempt to achieve maximum effects must generally be avoided;

- the state must not further jeopardise a brittle respect for authority by setting itself goals, or making commitments which cannot be achieved;
- the competence of the administration has to be protected by setting administrative goals which are similarly achievable;
- national interests have to be taken very seriously in a region in which South Africa's relative economic development makes it a magnet for surrounding populations;
- at the same time, these same national interests and the challenge of growth require that flows of resources into the country in the form of investment, tourism and skilled migrants with the capacity to create wealth must not only be welcomed but facilitated;
- since few if any of the policy challenges in South Africa are likely to be fully resolved in the short to medium future, a particular need arises to ensure the sustainability

of measures to address the problems;

- the requirements of effectiveness with limited resources mean that policy must be based on a very thorough understanding of problems and be guided by international 'best practice';
- the temptations of achieving effectiveness through tough action and coercive action also have to be avoided when South Africa's domestic policy mission is to build a culture of human rights and freedom.

In short, quick fixes, policies which promise redemption and immediate transformation and approaches which attempt to suppress the symptoms of problems through coercion and control will all undermine their own intentions. Modest and achievable goals for the best and most balanced longer-run effects are the only approach to take. This inevitably imposes a great burden of leadership. But leadership is the one resource with which South Africa is well-endowed.

It is with this kind of approach that the issue of cross-border migration has to be addressed.

During this period they will continue to be eligible for basic health care but for no other social services.

Persons charged and convicted of serious crimes during this probationary period must be deported and prohibited altogether from re-entering the country.

At the end of the two years, they must again provide proof that they are able to support themselves. This will require

proof of employment (ie an employment contract) or of their having established a business which is registered with the SA Revenue Service, to which all tax returns are submitted. Persons who prove that they are able to support themselves will be granted permanent residence rights.

Persons unable to provide such proof must leave South Africa. They may not apply for re-entry until at least one year

From alien to law-abiding worker and resident

Skilled migrant

Applies for entry	Provides proof of skills
	Provides proof of good health
	Pays application fee

Permanent residence

Permanent residence granted	Pays taxes
Can bring spouse and children	Must not commit a crime
	Eligible for social services

Citizenship

Qualifies after five years	Eligible for one-off lump sum state subsidies
----------------------------	---

Unskilled migrant

Applies for entry	Pays application fee
	Provides address in SA
	Provides proof of good health

Level One – Trial entry

Has six months to find work and accommodation	Provides address in SA
	Starts to pay taxes
	Eligible for health care only
	Must not commit a crime

Level Two – Two year probation

Has work and accommodation	Provides address in SA and pays taxes
	Eligible for health care only
	Must not commit a crime

Level Three – Permanent work and residence rights

Has work and accommodation	Provides address in SA
Permanent residence granted	Must not commit a crime
Can bring spouse and children	Eligible for social services

Citizenship

Qualifies after five years, including the two-year probationary period.	Eligible for one-off lump sum state subsidies
---	---

has elapsed after they leave the country.

Persons who leave South Africa before the two years are up must wait for one year after their departure before applying for re-entry.

Persons who falsely declare that they are able to support themselves must be deported, and must wait for two years before applying for re-entry.

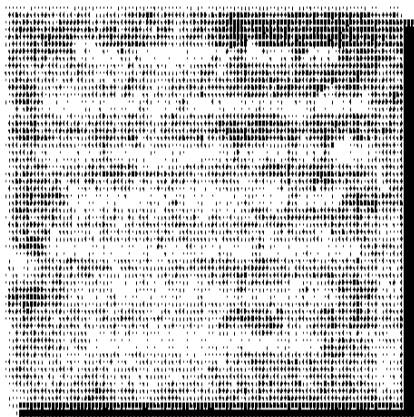
The two-year probationary period requires immigrants to confirm their potential as productive, law-abiding people. They pay taxes, but make minimal claims on the state's social services. If they are successful, they receive the substantial reward of permanent work and residence rights.

Level three: permanent work and residence rights

Persons who have provided proof at the end of the two years that they are able to support themselves, and who have then been granted permanent residence rights, will be allowed to bring members of their nuclear families (ie one spouse and their children) into the country. If they want to bring in any additional members of their families, they will have to apply for special permission and prove that they have the means to support them.

Members of their families will need to provide recent medical certificates indicating their good health, and must not have a criminal record. Persons who qualify for permanent residence will have a right to join the queues for social services, as they are taxpayers and have demonstrated that they are not parasitic on the state.

Persons convicted of serious crimes after acquiring permanent residence rights must be deported and prohibited alto-



gether from re-entering the country. and are welcome as immigrants who can duly qualify for citizenship (*see box, page 36*).

They must become citizens, however, in order to qualify for any one-off lump sum subsidies from the state, e.g. land, housing.

Illegal aliens

After the introduction of the approach advocated above, anyone within the borders of South Africa:

- who is not a citizen, or
- who does not have a temporary, probationary, or permanent work and residence permit,
- will be deemed an illegal alien and thus subject to deportation.

Such aliens must be humanely treated, and should have the right of appeal to South African courts.

Deportation will disqualify individuals from applying for re-entry to South Africa for a period of two years from the date of their deportation.

The CDE policy is designed to accommodate law-abiding newcomers who can support themselves and become taxpayers. It is a generous policy, but in those cases where people do not qualify to remain in South Africa the state would be

Institutional capacity and CDE's proposals ...

Does South Africa have the administrative capacity to implement even CDE's modest approach to migration policy?

The CDE proposals will require:

- a significant initial investment in a national and international system of computerised record-keeping;
- thorough training of personnel;
- proper communication of the new policy in all its dimensions;

- an effective link-up between the registration and monitoring of the policy and the policing of individuals who do not report to the authorities when required;
- effort by national political leadership in explaining and selling the new policy to citizens;
- monitoring and evaluating the impact of the new policy;
- a process of accumulating reliable

and comprehensive national data on migration processes.

We believe it is possible for South Africa to implement such a policy, current constraints notwithstanding. In order to do so the government should enlist the co-operation of the private sector and civil society to establish the necessary capacity. Redeployment of civil servants will be required and the policy will have to be phased in.

justified in taking stern action on economic grounds and to ensure that the law is observed.

Policing and control

Policing and control of South Africa's borders and all entry points into the country must be:

- in line with the principles outlined in this approach; and as efficient as possible, subject to available resources.

Controls within South Africa would involve officials of the department of home affairs as well as the police.

One great advantage of the approach we are advocating is that it offers positive incentives for would-be immigrants to follow legal channels and, once they are in South Africa, to operate within the law.

Another advantage is that the system of control within the country then becomes focused primarily on specific individuals, with names and addresses, rather than a mass of nameless and faceless people whose existence can only be guessed at. Under the new system it will be easier to track down defaulters who fail to report back as required. This is very different from unacceptable mass 'pass raids'.

National data base

A national computerised database on all matters relating to immigrants, their applications, status, and personal records is essential to this policy.

An appropriate system will have to be designed and set up before the new immigration policy is implemented.

In the ordinary course of their operation, the procedures required by the new policy would feed reliable information into the national database, covering the vast majority of people intent on migrating to South Africa. The policy is designed to:

- encourage potential migrants to apply for legal entry into South Africa, and to
- establish a process to monitor and keep track of them once they are in the country.

Monitoring and evaluating immigration policy

CDE's proposals establish procedures which would go a long way towards remedying the grave lack of information about migration patterns which we have noted.

The data collected in this way will:

- determine the scale of the demand to migrate to South Africa in general, and from particular countries;
- track migrants' performance in the labour market, and the broader economy; and
- provide a reliable basis for a thorough review of the

migration policy package which should be undertaken after five years, to evaluate and assess its results.

The process of data collection must be amplified by additional research on:

- the social and economic impact of migrants on South Africa's regions, cities and towns; and
- the numbers of people estimated still to be bypassing this system for channelling legal migrants to South Africa.

Communication and training

An effective and sustained campaign must be mounted to communicate the nature and purpose of this policy to:

- the media;
- neighbouring countries and potential migrants;
- the people of South Africa; and
- officials and police who will be involved in administering the policy.

Before the new policy is implemented, the police and all officials concerned must be given appropriate training in its administration.

Leadership

Political leadership is crucial to this policy's success. Political leaders must:

- inform the public about how the country can benefit from newcomers;
- stress the need for migration to stimulate economic growth;
- explain that migrants will have to obey the laws, support themselves and pay taxes;
- educate South Africans about the inevitability of increased migration;
- ensure that the public debate is about facts rather than speculation unsupported by evidence, or rumours and myths.

The politics of migration revolves around an exceptionally sensitive set of issues. We have set out a straightforward policy, which can be supported with strongly reasoned arguments. Its essential features are simple and easy to understand. Political leaders will be able to put forward this policy with confidence, knowing that they can make a sound and coherent case.

Summary of proposals

The policy proposed by CDE:

- is simple, easy to understand and easy to communicate;
- involves a two-tier approach, distinguishing between skilled and unskilled migrants;
- welcomes all skilled migrants for the economic contri-

bution they can make immediately gives unskilled migrants six months to prove that they can find or make work to support themselves;

requires those who succeed in doing so to serve a further two-year probationary period;

rewards them with permanent work and residence rights when they complete the probation successfully;

provides powerful incentives for all migrants to go through the legal channels;

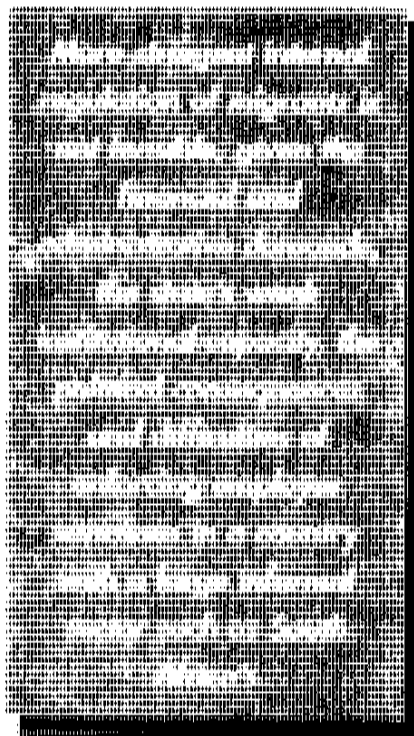
requires them to abide by the laws of the land;

ensures that they are contributing to the economy and paying taxes before they qualify for limited social services; and

limits access to one-off lump sum subsidies (housing, land, infrastructure) to migrants who fully commit to South Africa by acquiring citizenship.

The policy provides real incentives for migrants to enter the country legally, register with the authorities, become economically productive, and observe the laws. It establishes a framework which offers the best prospects for the effective management and control of immigration.

CDE's policy package is designed to stimulate economic growth and strengthen the economy by enlarging the pool of skilled people and entrepreneurs, and by promoting a more efficient labour market. Our proposals accommodate regional pressures for migration while limiting claims on public



resources until immigrants have demonstrated their capacity to make a contribution to the country.

The proposed system encourages people to register as taxpayers, and rewards those who observe the laws of the land. It enhances the state's authority by introducing a manageable system of controls, which are also in accordance with democratic values.

This policy is based upon the recognition of real interests. It is also generous and humane. No doubt some will criticise CDE's proposal as being altogether too lenient. But if those critics object to the presence in this country of people who bring skills with them, who are able to support themselves, who pay their taxes and who abide by our laws

— if they object to such people, then they do so simply because they are foreigners. We do not believe that such objections are valid.

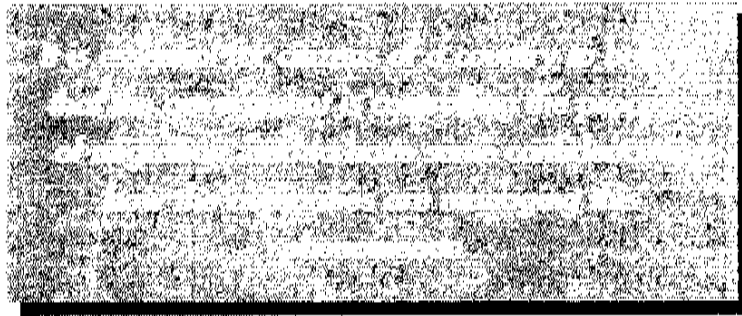
Others again might think that CDE's proposals still entail too many controls and restrictions. To this we would say that if we open the door to all who believe they can find or create work in this country, it is surely reasonable to require them to show that they can do so.

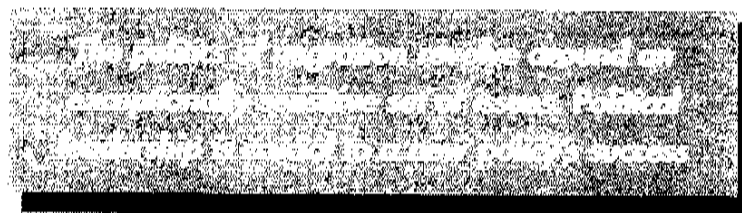
The policy proposed by CDE builds on international experience as well as on South Africa's own experience. We believe it is in South Africa's best interests. We also believe it is a policy which South Africa has the capacity to implement.

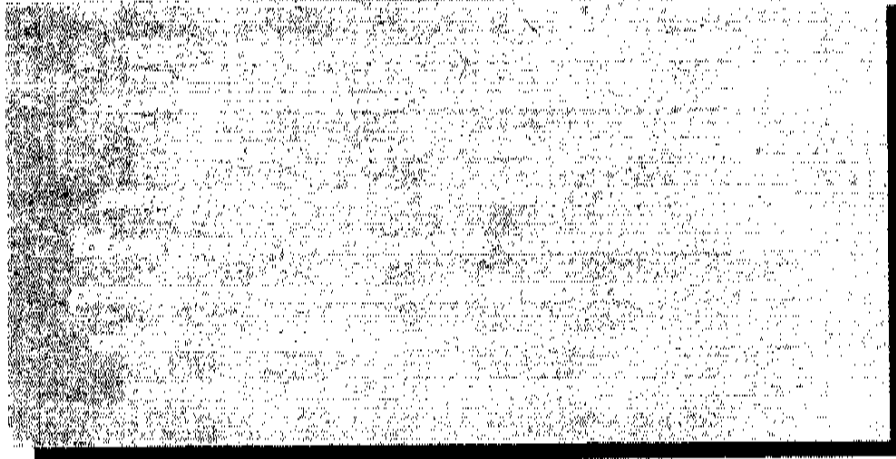
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