



**THE CENTRE FOR DEVELOPMENT AND ENTERPRISE**

**RESPONSE TO THE**  
***DRAFT GREEN PAPER ON***  
***INTERNATIONAL MIGRATION***

**Prepared by the Centre for Development and Enterprise**  
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# CENTRE FOR DEVELOPMENT AND ENTERPRISE

## RESPONSE TO THE *DRAFT GREEN PAPER ON INTERNATIONAL MIGRATION*

The Draft Green Paper on International Migration was published by the Department of Home Affairs for information and comment on May 30, 1997. An invitation was extended to interested parties to submit comments by 30 June 1997.

The Centre for Development and Enterprise has just completed a three year project into major aspects of cross-border migration both internationally and in South Africa, with a view to making a contribution to the debate on an appropriate international migration policy for South Africa. As an interested party in the sense of having investigated the phenomenon at issue in considerable depth, we wish to submit the comments which follow, as well as the more detailed reports on the study on which they were based, for consideration in the further development of policy in this vital field.

These comments are in effect a summary of CDE's major reactions to the Draft Green Paper and if it is considered appropriate, CDE would be very happy to make a verbal presentation in support of this response.

NOTE: the comments which follow deal only with migration policy and not with refugee policy. Refugee policy is a special field and CDE has not considered this aspect of policy on cross-border movement in the same depth as the more general aspects of formal and informal migration across South Africa's borders.

### **1. THE GENERAL APPROACH TO CROSS BORDER MIGRATION IN THE DRAFT GREEN PAPER**

CDE fully endorses the implicit point of departure of the Draft Green Paper that the interests of South Africa and of South Africans should be paramount in any policy approach to cross-border migration. As will be pointed out below, however, the interests of South Africa are not necessarily well served by policies which take a short term view of the impact and consequences of migration and propose measures which will cost more than the beneficial effects which can realistically be achieved.

If it were possible, on a sustainable basis, to exclude illegal cross border migrants within the

fiscal constraints imposed by the macro-economic policy(GEAR), and by competing priorities of utmost urgency, like strengthening the safety and security agencies, there might be some justification for a policy of tough deterrence and tight controls, such as that recently proposed by the Department of Home Affairs and also implied in some respects in the Draft Green Paper. However, as we explain in due course, the effective implementation of a restrictive policy or a policy which assumes a significant expansion of administrative capacity does not seem possible with current resource constraints and the likelihood of mounting pressure on our long and porous borders.

CDE welcomes other aspects of the general orientation to cross border migration as contained in the Draft Green Paper, and the following in particular:

- \* It correctly rejects an approach to the protection of work opportunities for South African citizens which views the labour market as a cake of fixed size, in which the acquisition of work by foreigners would amount to a net loss of opportunity to local job-seekers. CDE welcomes the fact that the Draft sees the potential for migrants to help in expanding the cake and in making a contribution to the growth of opportunity for all.
- \* In similar vein it recognises the salience of the shortage of skills in South Africa and the fact that appropriate migration policies, by alleviating certain of the skills deficits, can contribute to more dynamic growth in the country.
- \* It accepts in principle the fact that the economic prosperity of the SADC region will ultimately be promoted by the free movement of capital, goods and labour across the borders.
- \* The Draft makes a convincing case for the official treatment of migrants within the limitations and prescriptions of the South African Bill of Rights and subject to the requirements of due process. It correctly identifies many current aspects of the treatment of migrants as lacking in transparency and accountability and as allowing too much Ministerial and departmental discretion in the way individuals are dealt with.

Because of the prominence of these essential principles and points of departure in the Draft Green Paper, one might have expected concrete policy proposals consistent with them. This, however, is not always the case. While the Draft takes us part of the way to a resolution of current policy dilemmas it falls short of satisfactory guidelines in certain critical respects.

It is the view of CDE that certain central proposals in the draft will result in policies and regulations which will be counter-productive, impossible to implement, which will perpetuate costs and penalties for the economy and which will negate some of the very principles on which the Draft Green Paper is based.

The points of comment below identify some of the major disadvantages of the proposals as CDE assesses the situation on the basis of its own research.

## 2. PROBLEMATIC ASPECTS OF THE PROPOSALS IN THE DRAFT GREEN PAPER.

- 2.1 In the Draft it is argued that the current disparities in wealth between countries in Southern Africa make a liberalisation of migration policy which would accord with the principles of GEAR and with the promise of an open regional economy impossible at this stage. It argues in passing that the response of South Africa should be to contribute to the economic revival and development of the region with a view to making some eventual liberalisation of the movement of labour possible.

CDE would contest this approach on two grounds. First, while development assistance to countries in the region is to be recommended as a good thing under any circumstances, the notion that South Africa could make a sufficient contribution, while necessarily pursuing its own more rapid growth, to lead to a meaningful reduction in disparities in the foreseeable future, is very optimistic indeed. Unless the countries of Southern Africa were to uniformly adopt good economic policies and South Africa had economic policies, wide disparities in levels of welfare will persist for several decades. Sound policies on cross-border migration cannot be delayed for this length of time.

Second, as CDE points out on the basis of international research, development assistance in the short run tends to increase the propensity of the citizens of the developing country to migrate, firstly because the development raises expectations, and secondly because the citizens have more resources for travelling.

Hence, while development assistance to other countries in Southern Africa has to be strongly endorsed, it will most certainly not have effects sufficiently quickly to reduce the relative attractiveness of South Africa within a meaningful time scale. To link migration policy to a long-range regional economic strategy is misplaced.

- 2.2 Although the Draft accepts in principle that migration does not reduce job opportunities in the host country, it fails to carry this principle through to its policy proposals in all respects. The Draft states that " Unregulated access ... could lead to unacceptable competition for jobs". (1.4.7., p16). Leaving aside the issue of political viability which is complex and requires much more analysis than the Draft accords it, "unacceptable competition for jobs" sounds very much like the zero-sum economic argument which the Draft explicitly rejects. This lack of logical consistency is not at all helpful in formulating policy.

CDE is able to refer to convincing evidence from the USA, where the disparities between that country and Latin America are just as great as those which exist in Southern Africa, to the effect that no convincing proof exists that Mexican or other migrants have taken jobs away from native Americans - in fact their relatively cheaper labour has stimulated the economy in certain sectors, thereby creating growth in employment for US citizens. The same would apply in South Africa.

At present most of the occupations which the unregistered cross-border migrants take are

not the kind of jobs to which unemployed South Africans aspire. Therefore there is much less competition for employment between migrants and South African citizens than is commonly assumed. If effective competition existed there would in fact be much less of a demand for foreign migrant labour in certain occupations than is manifestly the case. Given that migrants accept work which is unpopular among South Africans, the presence of the migrants is of benefit to the economy in certain sectors and on aggregate serves to add jobs to the South African employment market.

- 2.3. The Draft correctly identifies the inherent discrimination in the present arrangements in terms of which contracts with sending countries are entered into and exemptions granted for annual quotas of male migrant contract workers from neighbouring states to work on the mines and in commercial agriculture in certain provinces. It proposes in effect to extend this system to include women and sectors other than mining and agriculture, and to fix general quotas for several Southern African countries.

Extended and rationalised or not, such a system would in essence remain a migrant contract labour system in which the initiative would remain with employers to justify requests for cross-border labour. The system would have the same deleterious effects on family life as migrant contract labour at present, and would also amount to bureaucratic control over regional labour allocation. It is also not in keeping with the emphasis given in the document to the need for consistency with provisions of the Bill of Rights.

The system proposed in the Draft Green Paper would ensure the continuation of a segregated or dualistic labour market since the formal contracts would ensure that the work-status of first entry would have to be maintained. This will in fact introduce rigidities into the labour market at the very time that attempts are being made to make the labour market more flexible.

- 2.4. In making the proposal that there be fixed and regulated quotas for migrant workers from surrounding states, the Draft assures readers that the intention will be simply to regulate temporary migration. Permits are also recommended for temporary cross-border migration for small traders, students and family visits.

One of the motivations in allowing temporary work permits and other means of regulated access on a temporary basis appears to be a trust in the effectiveness of "safety valves". The logic would be that in allowing temporary access to migrant contract work, the pressure for illegal migration would be reduced.

CDE accepts that this sounds plausible, but would argue very firmly that the effects will be precisely the opposite. Once in South Africa, the temporary migrant workers or traders establish social networks and domestic bases, which in turn become a magnet or a convenient focus for additional and unregulated migration by family members and members of home community networks. Illegal migrants the world over seldom travel to completely strange places - they travel to places where they will be offered shelter, advice and food until they are able to establish some kind of activity on their own. The notion of the "safety valve" has utility in mechanics but not in the type of social

behaviour at issue here.

It is worth recalling that the discredited policy of Influx Control had its "safety valves" in the form of Section 10 exemptions, but it was honoured more in the breach than in conformity to the legal prescriptions. The state gradually lost control of infringements, and in the process "criminalised" millions of determined illegal work-seekers to no good effect at all.

- 2.5. The draft shows admirable sensitivity in stating that it would not wish to support policies which would "raid" neighbouring states of their skilled populations. CDE is sympathetic to the sentiments expressed but would argue that in some cases, unless the people involved have opportunities for mobility within the region, they are likely to leave the region or Africa altogether, which would be a loss not only for the country involved but for Southern Africa as a whole.

Furthermore, CDE believes that migration policy in South Africa should not encourage neighbouring states in their attempts to control the choices of individuals in their labour markets. Productive labour forces are labour forces in which individuals can exercise choices. All of Southern Africa must aim at achieving situations in which skills are retained and attracted on the basis of choice and preference.

- 2.6. CDE supports the argument made in sections of the Draft to the effect that many if not most migrants from the Southern African region do not want to migrate permanently. It is regrettable, however, that the evidence on which these arguments are based is not adequately referenced. On pages 22, 24, and 28, readers are referred to SAMP research or to "research", which seem to cover very vital issues, but no means of gaining access to such vital insights are provided.

As regards the policy implications of such research, CDE finds the conclusions drawn somewhat confusing. If it is true that most cross-border migrants do not want to stay in South Africa on a permanent basis, why is it necessary to have an elaborate system of temporary migrant work quotas to secure it?

- 2.7. The proposals in the draft relating to skilled migration are less problematic in some respects, but even they fall short of accepting the points of departure on which they are claimed to be based. The Draft states a commitment to the macro-economic strategy GEAR, which, inter alia includes the goal of achieving optimal labour market flexibility.

Yet when it comes to making recommendations as regards the entry of skilled persons, the suggested provisions are for an elaborate system of occupational categorisation of the South African labour market to be undertaken by the Dept. of Labour. A points-based assessment of immigrants will be established based on such a categorisation. This hardly sounds like labour market flexibility.

The kind and quality of occupational information on which a valid points-based system could be built will be very difficult and costly to assemble. Even the latest population

census, when its full results are eventually available, will not allow the refined differentiation between grades and types of skills that will be sensitive to employer needs. Any system which requires elaborate information will not only be very costly to establish and maintain but will inevitably lead to distortions in the allocation of skills in the labour market. It is most unlikely to function better than a system which simply requires the would-be immigrants to describe their qualifications and skills and provide proof that their skills were useful in an economic and vocational sense in their country of origin.

CDE would also argue, for example, that the craft skills of an Indian goldsmith, the metal casting skills of a West African bronze artist, the acquired skills of a formally untrained computer-graphics expert from Croatia, a Chinese herbalist or of an experienced carpet merchant from Lebanon are unlikely to be adequately identified in a categorisation of skilled occupations by any government department. Labour market flexibility requires simplicity of categorisation based on the demonstrated value of skills on a case by case basis.

It is very likely that the provisions for bureaucratic prescription of skills required by the economy will discourage recognition of less-formal accomplishments, particularly of abilities in small-scale entrepreneurship. Such skills are not always associated with formally recognised training. South Africa will have to develop new sectors of enterprise, particularly in fields like small-scale production as well as "cultural" production for tourist markets, and these skills are not the types of skills listed in gradings of occupations. CDE would argue that the would-be immigrants and their occupational track records should speak for themselves!

- 2.8. CDE's greatest concern with the proposals lies in the feasibility of their implementation by the proposed Dept. of Citizenship and Immigration Services (DCIS). This Department, simultaneously, will have to transform itself, establish an elaborate categorisation of the skills required in the labour market, regulate the migrant worker quotas, sanction employers who employ unregistered cross-border workers, apply a points-based system of skilled immigration, control the informal immigration of non-SADC migrants and, most onerous of all, attempt to curb the entry of large numbers of unregistered SADC migrants whose entry will be facilitated by the new social and home community networks that the expanded migrant labour system will create.

In fairness, it is proposed that the service be strengthened by the addition of a new Directorate in charge of a force of migration officers. But where will these people be recruited from, when most of the existing "inspectorates" in the public sector like health, customs and excise, the revenue service, not to mention the SA police service, are all seriously understaffed and find it very difficult to attract recruits with the required skills and aptitudes?

CDE accepts that the system proposed may improve over time, but the initial requirement of recruitment and training, and the establishment of the required information systems will inevitably mean a slow start. Hence in the initial two to three years an accumulation of unregistered persons will occur which will mean that as it gets ready to implement the

new policies, the new service will have to surmount a "hump" of illegality and devote most of its resources to crisis management. In other words, a situation very akin to that facing the new police service will probably arise. And the proposed expansion of controls and administration will have to occur at a time when the macro-economic strategy, GEAR, requires a reduction of public sector personnel. CDE, therefore, cannot see how the proposals could be viable in the short to medium term.

### 3. SUGGESTED ALTERNATIVES

On the basis of its examination of the situation, CDE has identified some key requirements that new policies relating to cross-border migration have to fulfil. These requirements and alternative policy proposals are set out in full in the attached policy document "People on the Move: a New Approach to Cross-border Migration in South Africa". Very briefly summarised here the requirements are:

#### UNSKILLED MIGRATION FROM SADC STATES

- 3.1 Any policy has to address the national interest first and foremost. The national interest, however, has to be approached in a broader context than that dictated by any single issue. Hence, CDE is of the view that one of the issues most critical to the national interest is that the government counter the all too pervasive image that it cannot administer some of its most important policies. An image of ungovernability is perhaps the most costly penalty that a country seeking to build economic and investor confidence can pay.

For this reason, one simply cannot risk a situation in which a failure to get to grips with unregistered cross-border migration will strengthen the image already created by the "grey economy", tax evasion, crime and non-payment of service charges.

- 3.2 It is also necessary to minimise the costs of controlling and administering cross-border migration, and maximising the economic benefits which the migrants bring to South Africa. The policies which are adopted should be within the existing capacity of the Department of Home Affairs, with a modest upgrading of its information and control systems.

With these considerations in mind CDE has proposed an approach to cross border migration which will actually encourage the SADC migrants to register themselves. It does involve quite considerable liberalisation of the controls on these migrants (as opposed to unskilled non-SADC immigrants).

The proposal, very briefly, is that all unskilled SADC citizens be allowed to register as work-seekers and potential immigrants provided they pay a small fee and furnish full contact details, which they will be required to update in the case of changes in circumstances.

Hence the names and details will be captured on a formal registry and the migrants will be traceable if they default.



In return for this formalisation of their status, they will go through two successive periods of "probation" in which they will have to prove that they can support themselves, pay all taxes and rates due and, in short, demonstrate that they can contribute meaningfully to the South African economy and not become dependent on the state.

The costs of this liberalisation will no doubt be a significant increase in the numbers of legal immigrants, and these migrants will be perceived (wrongly in our view) to be competing with South Africans for jobs. The proposals allow, however, for only the very minimum access to state services until a period of five years has elapsed when successful migrants will achieve South African citizenship.

Against the costs of this increase in legal immigration, one has to weigh the following:

- \* it will be in the migrants' interests to play according to the rules of the game and therefore the government will regain control of a substantial proportion of migration. The government will therefore be able to concentrate its scarce resources on a smaller number of unskilled "illegals", mainly from countries other than the SADC states.
- \* as the Draft Green Paper itself concedes, impact of the cross border migrants on the job-opportunities of South Africans is substantially over-estimated, as is the contribution of SADC migrants to crime.
- \* as the Draft Green Paper also acknowledges, by no means all the registered migrants will stay permanently; most will choose to retire to their home countries, and the freedom of economic opportunity while in South Africa will speed up the rate at which they are able to accumulate sufficient resources on which to retire.
- \* it is clearly evident that most cross-border migrants find some form of occupation, and prominent among the occupations is trading with their home countries. The net effect of the addition of a large number of legal cross-border migrants will be to expand the number of economically active persons in relation to the total population and actually reduce the levels of dependency on the state and rate of unemployment as measured against all economically active persons.
- \* there may be fears among trade unions that the cross-border migrants will undercut the wage rates of local unionised labour. It would seem to CDE, however, that the provisions for institutional and central bargaining in the Labour Relations Act reduce this danger quite significantly.

Hence the costs, in CDE's view, are much more modest than is conventionally assumed, and considerably lower than the costs for the country and the economy of a perceived breakdown in the implementation of legislation.

## SKILLED MIGRATION FROM ANYWHERE IN THE WORLD

The major reason for encouraging the immigration of skilled people is the economic resources they import in the form of skills, networks and in some cases investment capital. This is fully acknowledged in the Draft Green Paper.

As with most economic inputs and factors of production, the market is the best way of allocating resources. For this reason CDE would avoid a points-based system, because, as we have indicated, the current state of occupational and economic information is such that critical distortions in supply and demand are bound to be caused by any system based on available official databases. In particular, as we have said, the field of self-employment and entrepreneurship would be particularly badly served by a points system based on available occupational data.

For this reason CDE is in favour of broadening the definition of skills to make sure that it includes most forms of small-scale entrepreneurship, and allowing anyone with the minimum level of defined skills to enter the country.

No doubt there will be an oversupply of some skills as a result. but the whole point about skills is that people who have them are more likely to be able to create their own work and stimulate a demand for their skills than is the case among unskilled people. This applies even to the much maligned fields of Arts, Literature and Social Science.

The main point, however, is that a policy along these lines will be very simple to administer and as such will be very cost effective, thoroughly in line with the GEAR proposals.

The following comparisons between the capacity and other implications of the Draft Green Paper proposals and those of CDE are worth contemplating. (See next page)

*SKILLED MIGRATION*

- \* Establishing and maintaining a sophisticated occupational data-base and keeping it compatible with the country's changing skills requirements
- \* Administering a points-based skilled worker entry-control system
- \* Setting annual targets and quotas
- \* Distinguish between SADC and non SADC skilled migrants

*UNSKILLED MIGRATION*

- \* Distinguish between people from SADC and other countries
- \* Setting annual targets and quotas
- \* Domestic employers must demonstrate their need to employ SADC citizens
- \* Social partners in South Africa to negotiate industry specific quotas
- \* Distinguish between employers who are observing minimum employment standards and employ South Africans and those who do not
- \* Establishing and administering an expanded system of labour contracts which at present is privately administered for the mining industry
- \* Policing the illegal entry of large numbers of SADC and other cross border migrants and repatriating them
- \* Mass old style 'pass raids' of nameless faceless 'illegals'
- \* Create a new professionally trained cadre of immigration officers
- \* Immediately requires more money and resources

*SKILLED MIGRATION*

- \* Allow in skilled workers from anywhere in the world
- \* Only requirement is proof of skills/ experience beyond minimum level (specified in simple schedule)

*UNSKILLED MIGRATION*

- \* Distinguish between people from SADC and other countries
- \* Name and address list of all probationary entrants
- \* Policing the entry of far fewer SADC unskilled migrants and non-SADC unskilled and repatriating them
- \* Monitoring and granting rights to those registered migrants who meet the progressive requirements
- \* Mainly individualised approach to controls inside South Africa of those who fail to comply with simple requirements for residence rights
- \* Feasible within current budgetary constraints

#### 4. A COMMENT ON THE POLITICAL LEADERSHIP REQUIRED OF SOUND MIGRATION POLICY

At the time of preparing these comments, yet another survey has appeared in which large majorities of South Africans of all races appear to support tougher action to exclude illegal migrants from South Africa. This comes as no surprise to us since we have conducted such surveys ourselves.

These results should be seen in the following light. Unemployment is today perceived to be the greatest single problem facing government in South Africa among all groups. When ordinary people are asked about illegal migration an immediate negative response is triggered by first, its definition as something illegal (no one is inclined to support illegality of any kind) and second, its popular association with competition for jobs.

We can, however, point to surveys in which tough action against illegal immigrants is compared with other priorities for government action, and the remarkable finding is that the former does not emerge among the highest priorities. Negative responses to illegal immigration are easy to demonstrate simply because it is the most obvious type of answer to give if one does not have sufficient information to understand the problem in its context.

CDE acknowledges that, like the GEAR strategy itself, a liberalisation of controls on immigration will not be immediately popular, but if political leaders are prepared to spend some effort in pointing out the complexities of the problem, as we have discussed above, we are convinced that opposition to such liberalisation will begin to abate. The government is having to do precisely this with its macro-economic strategy, and there is no reason why it should not do the same in the case of cross-border migration from SADC states.

The penalty for not grasping this nettle will most certainly be a policy high on good intentions but very low on implementability. This will simply deepen the government's problems in facing its stakeholders and constituencies.

CDE's alternative proposals go further than measures to avoid wasting precious fiscal resources on cost-inefficient policies. In an important sense, CDE proposes that South Africa use the skills, economic benefits and labour resources which migrants can bring. Our proposals will encourage migrants to register their status and domiciles. This in turn would facilitate the reestablishment of legitimate control by the government. This, we believe, is the most which can be achieved in pursuit of our national interests.