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## No. 02: The New South African Immigration Bill: A Legal Analysis

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# **Southern African Migration Project**

## **The New South African Immigration Bill: A Legal Analysis**

### **Migration Policy Brief No. 2**

Series Editors: Jonathan Crush and Vincent Williams

2001  
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**1.0 Introduction<sup>1</sup>**

- 1.1 The Southern African Migration Project (SAMP) notes the promulgation of an Immigration Bill in Government Gazette Vol. 416 (No. 20889) on 15 February 2000 and the invitation to submit comments. SAMP supports the Department’s contention, implicit in the gazetting of a new Bill, that the Aliens Control Act is an unacceptable instrument for the sound and effective management of migration. The rescinding of the Aliens Control Act and its replacement by a new Immigration Act is therefore a matter of highest priority. However, it is equally important that such legislation is not rushed; that it is constitutionally-sound, implementable and cost-effective.
- 1.2 SAMP’s input to the public process of revising the Bill is contained in this document. However, we note the existence of a separate process of review of the White Paper on International Migration by the Portfolio Committee on Home Affairs which is holding public hearings on the White Paper from 15-20 May 2000. The Committee is apparently not considering the Immigration Bill at this time. SAMP is unclear how these two processes inter-relate and will therefore also be making an input to the Portfolio Committee reviewing the White Paper.
- 1.3 The Immigration Bill notes the limited list of organizations consulted by the drafter(s). There are some notable absences from this list, including the Department of Labour, COSATU and prominent NGO’s in the migration field. It is unclear why the drafters would consult Anglo American Corporation and the South African Chamber of Mines and not NUM. In addition, it is unclear why Georgetown University and the US INS were the only organizations consulted externally. The Immigration Bill does not specify what was done with the numerous public and expert submissions received by the Department on the White Paper. It is possible that these inputs informed the drafting of the Bill although that is not clear. It has been reported that the Immigration Bill has not changed substantially from an earlier Migration Bill which was prepared before 30 November (the deadline for submissions on the White paper).
- 1.4 The intent of any Bill is to give effect to the policies laid out, and accepted by government, in a policy White Paper. Hence, there should be consistency between the principles of the White Paper and the immigration legislation which accompanies or emanates from the White Paper. In our view, the Immigration Bill is problematic in this regard. There are elements in the White Paper which are ignored in the Immigration Bill. Contrariwise, there are certain provisions in the Immigration Bill which appear to have no rationale or justification in the White Paper. This input aims to point out these inconsistencies.
- 1.5 In its submission to the Department of Home Affairs on 30 November 1999, SAMP identified a series of problems with the White Paper on International Migration.

However, many of the problematic areas in the White Paper have been carried over into the Bill. SAMP’s submission on the White Paper is therefore appended to this document for ease of reference. This input also aims to show how the Immigration Bill replicates some of the problems previously identified in the White paper.

- 1.6 As many commentators have noted, the White Paper was unclear on numerous policy issues; sometimes making definitive recommendations and sometimes merely speculating on whether some measure might be desirable. The lack of definitiveness on key issues means that it is unclear whether many proposals are government policy or not. Some of each type of recommendation are incorporated into the Bill so the problem is not resolved by reference to the Bill.
- 1.7 The emphasis in this input is on problem areas with the Immigration Bill. However, the Bill does contain many positive elements that are far superior to the Aliens Control Act. For example, the provisions of Section 3(6), Section 11, Section 16, Section 19, Section 21(1), Section 28(1), Section 29 (1) (a,e,f), Section 33 (1) (a to c), Section 34 (1) and (2), Section 40. In our view, these and like sections and sub-sections, should be enshrined in the finalized Immigration Act.
- 1.8 This input begins with some general comments on the Immigration Bill’s purposes. Then it considers points of contradiction with the White Paper. Finally, on the Bill itself, our approach is to identify particular sections where the proposed process:
  - will not assist the government in reaching its stated goals
  - is in conflict with its stated goals
  - is counter to common law notions of procedural fairness
  - potentially violates the Constitution and Bill of Rights
  - has been tried and failed in other jurisdictions
  - will have an effect opposite to the one intended
  - is unimplementable for reasons of logistics, cost, etc.

There are also statutory issues that need to be considered if this Bill is to become law (e.g. interaction with the Public Service Act, the Public Finance management Act and the Administrative Justice Act).

## **2.0 A Note On Language and Terminology**

- 2.1 SAMP notes the intent of the Department of Home Affairs to “promote a human-rights based culture in both government and civil society in respect of immigration control” (Section 29(1)(a) and to “prevent and deter xenophobia” within its own ranks (Section 29(1)(e)). The language used within legislation is both a marker and measure of the seriousness of this intention. SAMP commends the drafters of the Bill for abandoning

some of the provocative, misleading and inflammatory language and terminology of the Aliens Control Act and the White Paper. The repeated use of the term “foreigner” is, we suggest, still suggestive of a siege mentality which views all non-citizens and non-residents as a potential threat. We recommend the substitution of “foreign subject” or “foreign national” for “foreigner” in the text of the Bill. Illegality should be tied to residence not identity. We therefore recommend the substitution of “illegal resident” for “illegal foreigner.”

- 2.2 SAMP notes the structure of the Bill which deals, first, with conditions of entry and residence; and only then with conditions of enforcement. This structure conveys the appropriate message that the government is not opposed to entry that is managed, legal and in the best interests of the country.

### **3.0 General Comments on the Immigration Bill**

- 3.1 Even without reading the White Paper and its policy underpinnings, it is clear from a reading of the Bill that the Government is seeking to largely model its immigration law after that of the United States. This has some positive and negative aspects. But it is not based on any systematic analysis (here or in the White paper) of American immigration law or its appropriateness to South Africa.
- 3.2 The rationale for the new Bill include the usual objectives of any immigration legislation: using immigration to enrich the country economically and culturally, while protecting the jobs and futures of the current citizenry. The objective that seems to override all, is the need to deter and prevent people from illegally migrating to South Africa. SAMP has argued that the extent of unauthorized residence in South Africa has been grossly exaggerated by the HSRC. SAMP notes with alarm recent statements by politicians that there are now 8 million illegal residents of South Africa. This assertion has no basis in fact.
- 3.3 The objective of controlling illegal residence is consistent with that of most other nation-states and is a legitimate concern. But how one goes about it is another matter. In addition, the conditions that define the parameters of illegality (entry and residence requirements) clearly need to be rethought and changed in South Africa. This the Bill certainly does, though the changes are not all positive.
- 3.4 The stated goal is that the legislation will deter people from coming or staying in South Africa illegally and “encourage” them to voluntarily repatriate by creating conditions that make South Africa an unattractive place to live. The Department has apparently not done any research to test this premise. This approach has not worked elsewhere because for the vast majority of illegal residents, simply living in the destination country is better than returning home to nothing or with nothing.

- 3.5 The policy wisdom of the proposed community policing approach is highly debatable. First, the strategy will lead to incitement of violence against those thought to be foreign and will likely increase not reduce xenophobia and intolerance. Second, through insistence on presentation of formal identification documents of basic services it will lead to further inefficiencies in already overburdened service delivery.
- 3.6 The SAMP response made various inputs on the gender-bias of the White Paper. We can identify no point at which these concerns have been taken into account in the Draft Bill.
- 3.7 The Immigration Bill is extremely business-friendly. This is not necessarily a problem if the interests of business and of all South Africans are coincident. For example, if this Immigration Bill loosens the constraints on foreign investment and economic growth imposed by the Aliens Control Act, this could be argued to be in everyone’s interest. On the other hand, the proposed corporate permit section of the Bill has the effect of placing employees under the near total control of their employers. The issue of corporate permits willy-nilly could also disadvantage many South Africans. Labour’s views on these provisions of the Bill should be sought and carefully considered.

#### **4.0 Comparing the White Paper and the Bill**

- 4.1 The White Paper proposed a hierarchical approach to immigration policy in which the SADC countries would have “preferred status.” The mechanisms were not spelt out in the White Paper and this recommendation is completely ignored in the Immigration Bill.
- 4.2 The White Paper makes several references to the “need” of the mines and farms to employ non-South African labour and that policy should accommodate this need, while simultaneously seeking to encourage them to reduce their foreign-labour dependence (Section 4.4.6). The White Paper simply accepted the word of these employers and did no independent investigation of these so-called “needs.” It also did not canvas other employers to see if they had similar needs. The White Paper therefore singled out these sectors (in direct contradiction to the recommendations of the Green Paper) as requiring special treatment. The White paper made no reference to the desirability of bilateral treaties which currently exist and give these employers almost complete discretion. Various bodies, including the National Labour Market Commission, COSATU and the NUM, have proposed scrapping these treaties and the deferred pay system.

Section 18(5) of the Bill is therefore an astonishing concession to the mining industry since it has no backing within the White Paper. The clause potentially exempts unnamed employers (but by implication the mines and farms) from all the provisions of the corporate permits scheme proposed for all other employers, entrenches the bilateral mechanism and permits compulsory deferred pay. It also potentially allows them to

employ a “wholly” foreign workforce. None of this is mentioned, proposed or sanctioned in the White Paper. The fact that authority is deferred to the Department of Labour on this issue does not detract from the central purpose and effect of this clause: to maintain the status quo and the migrant labour system and the exceptional status of the mining industry vis-a-vis other employers. All employers should be subject to the same regulations, without exception or exemption.

Since the mines also have training programmes for South Africans it appears that they will also be exempted from paying a proportion of their foreign employees’ salaries into a national training fund (section 12(4) and 16(5)). In other words, the Bill carries no incentives whatsoever for the employment of South African over foreign workers on the mines.

- 4.3 The White Paper specifically recommends that, in the interests of South Africans, “negotiation among social partners could provide for quotas of workers who could be sponsored by employers who are responsible for them and under specific programmes in respect of which general conditions of employment do not apply and are regulated by special conditions agreed upon by the social partners in Nedlac.

The Bill makes no reference to the White Paper’s recommendations for quotas. Nor does it mention Nedlac or the provision to by-pass its basic policy position that no foreign national should be employed in conditions worse than those of a local.

- 4.4 The White Paper recognized the need for informal traders from neighbouring states to trade legally in South Africa. The White Paper rejected the idea of trader’s permits in favour of subsuming traders under the general permit of entry (Section 4.1.1). This is carried through in the Bill where there is no specific mention of traders at all. This is unfortunate. If the intention of the legislation is to create an enabling environment for traders, then the legislation should spell out that the General Entry permit also applies to traders. The White paper noted that traders not in possession of documents could be issued with a South African travel document. This suggestion has been dropped in the legislation. In the absence of a traders permit, there is also the question of whether, by definition, traders will be violating the conditions of the general entry permit. Is not trading a form of work?

- 4.5 The White Paper proposed that all entrants to South Africa should pay a deposit through a credit card which was refundable on exit. This was a pointless exercise and its absence from the Bill is welcome.

- 4.6 The issue of same sex relationships is explicitly identified in Section 14.2 of the White Paper as requiring legislation that is consistent with the constitution. This issue is not

dealt with in the Bill. This is unfortunate given the Department’s legal stance on same sex relationships in recent court cases.

- 4.7 In the Bill, the Immigration Service is established as a separate legal entity from the Department of Home Affairs (section 27(1)). The Bill is clearer than the White Paper was that the separation of the Immigration Service from the Department of Home Affairs is to be complete. Indeed, in the Bill, the Department of Home Affairs and its Director-General only figure in the transitional sections (section 54-61).
- 4.8 The White Paper proposed the establishment of an Immigration Review Board. As implemented in the Bill, this sixteen-member Board (now called simply the Immigration Board) would be appointed and chaired by the Minister of Home Affairs (section 28(1)). The portfolio committee would have a recommending power with respect to nine of these appointments (section 28(1)(f) and (g)). There is no specific seat for a representative of the national association of local government or any of the three components of Nedlac.
- 4.9 The Bill gives the Board rule-making, policy formulation, monitoring, and review functions, without making any distinction in subject matter (section 32). The role of the Board seems to have changed from the conception in the White Paper. There, while the role was essentially unclear, the impression was that the Board would be an institution that would not so much make or approve rules but rather that it will approve IS-motivated exceptions to existing rules or legislation.

Along with increased administrative autonomy for the Immigration Service comes increased legislative power. This power comes at the expense of the Minister and through the vehicle of the Board. In the Bill, the Board has the power to adopt regulations (section 32(1)(a)). The procedures for such rule-making are given in draft Bill section 33. A form of notice and comment rule-making is mandated (section 33(1) and (2)).

- 4.10 The Bill’s proposed procedure differs from that proposed in the White Paper in form. In the White Paper, the Immigration Service was to adopt regulations that would need approval by the newly created Immigration Review Board. However, this change is perhaps not so great at the level of substance. Although the Board may operate through committees (e.g. draft Bill section 28(2)(d), section 28(5)), the Service would provide the administrative capacity for the Board (section 28(4)). This administrative capacity would likely include the drafting of regulations.

The draft Bill gives the Board a review function with respect to decisions of the Service (section 32(1)(d) and section 34). The Board functions effectively as the final internal appeals tribunal after the Managing Director functions as the first-line appellate body (section 34(2)(a) and (b)). However, there is no specific structure on the Board designed

to perform this function. It seems unlikely that review of individual decisions of the Service will be considered by the full 14-member Board. Presumably, then, it will fall to a committee of the 14 members to exercise the review function. Even then, without administrative capacity, the review function would be a difficult one to exercise. And it is an unlikely function to excite the interest of member of the Board. It thus seems likely that the review function will be perfunctorily performed at the level of the Managing Director and the Board.

## 5.0 Comments on Sections of the Bill

**Section 3:** Temporary Residence Permits. Common throughout the provisions describing the various permits is the ability to attach reasonable terms and conditions onto the permit. This seems logical and is done elsewhere, such as in Canada. However, the cost of monitoring that the terms and conditions are being kept is prohibitive and just is not done. This has meant for example, that entrepreneurs, whose conditions were to invest in a certain business within two years of arrival, did not. The message here is that either one puts the resources into monitoring the terms or conditions or one puts the onus on the permit-holder to report periodically that terms and conditions are being met. Neither appears in this bill.

**Section 4:** General Entry Permit. It would appear unduly restrictive to limit the life of this permit to three months. What is the reasoning here? Why not 4, 5 or 6 months?

**Sections 5 to 17:** The Description of Permits. The bill defines every possible kind of temporary permit. This will prove to be very onerous to manage and monitor. In several cases (for hospitals, teaching institutions, other government organs), the issuance of the permit has been effectively delegated to a third party. This is a good idea, flexible and realistic, in that those third parties know better than the Immigration Service who they want and who is *bona fide* and who us not. Again, it is difficult to manage, to ensure that reporting from those delegates is accurate and timely, so that truly, the immigration law does support market and cultural needs. This has been done to name the parties who become liable under the Act for the presence in the country of certain illegal residents.

Most permits require certifications from a Chartered Accountant to the effect that the prospective permit holder is financially independent. Given that those Chartered Accountants would be liable should their certification be incorrect, the profession could be reluctant to participate in the way this bill would have them participate.

**Section 8:** The wording is very vague and it is unclear as to whether and how the investors and self-employed become permanent. This kind of programme elsewhere has proven to be fraught with fraud and malfeasance, requiring a lot of monitoring. Even then, there are studies that show that little foreign capital is brought in in this manner.

**Section 12:** Work Permits: This looks like a nice combination of employment motivated by employers themselves and labour market prescription. But the demands on the employer seem quite onerous. There is an equally onerous duty on the Service to follow up on these cases. In Canada, in the high technology field, the Immigration Department developed a pilot project that allowed the industry more flexibility, so that the Human Resources Department did not need to be consulted in every case. Such flexibility is the tool of the future and these provisions in the Bill are outdated, unless their true motive is really to dissuade employers from hiring foreigners.

**Section 20(4):** Permanent Residence: Again, the imposition of terms and conditions are impossible to monitor. It becomes a game of “catch as catch can” and looks very arbitrary to the person on the street.

**Section 21:** Of special concern here is the provision whereby a permanent residence permit is cancelled where a marriage breaks up within 3 years from the date of issuance. This could be particularly onerous on women. Elsewhere women have stayed (and suffered, and died) in abusive marriages, because the husbands have threatened to report marriage breakdown to the Immigration authorities. Policies are needed to provide compassionate treatment to these spouses where there was abuse.

**Section 21 (3):** Why should a child have to confirm their permanent residence within 2 years of having turned 21? This is onerous and inevitably will lead to those who don’t renew becoming illegally inside South Africa. What social policy end is being served by creating more illegal residents in this petty way?

**Section 22:** Ground for Residence: “good and sound character”: who defines this? Who decides this?

**Section 22 (1) – (3):** It appears that certain jobs will bring with them permanent residence, while others bring temporary residence, depending on the take of the Department of Trade and Industry, year to year. Labour market analysts do not have the data to define the real market needs within each sector on a yearly basis. This is cumbersome and will not support the need for foreign labour.

**Section 22:** It is unclear when an investor will receive temporary or permanent residence, and when a person with extraordinary skills and qualifications will receive temporary or permanent residence. This is too vague to be fair.

**Section 23:** Prohibited Persons: This list would include only those who have been convicted of an offence or at the least have been charged and a warrant has been issued. The field should be widened since very few persons who have committed crimes against humanity or war crimes will have charges laid and warrants issued. As well, this clause would not exclude those who

have been charged by international courts of international crimes from becoming permanent residents of South Africa.

**Section 23 (c):** Consistent with the extraordinary powers of discretion given to the Service, this clause even gives it the power to declare citizens of whole countries to be prohibited persons.

**Section 25 2(b):** The Minister is given a wide discretion to waive regulations and grant residence, but also a wide discretion to exclude persons and categories of persons “for good cause”. This is exactly the kind of exemption (under Sections 28 and 41 of the Aliens Control Act) that have lacked transparency and caused considerable difficulties for the public and the Department itself. The accountability of the Minister is also minimal: reporting to the Board! At the very least, the Minister could be required to report to Parliament on a yearly basis on who exemptions were granted to and why. The Australian model could be used here.

**Section 26:** Withdrawal of permanent residence: These are all standard grounds. Absent is fundamental misrepresentation on application for permanent residence, and suggest it be included. As well, war criminal and criminals against humanity are not included and ought to be.

Recent internationally embarrassing incidents involving such persons – e.g. Haile Mengistu and Foday Sankoh – could be avoided by this change. The more important issue here is the process by which someone will be given notice of the withdrawal. Will this be in the regulations?

**Sections 27 and 28:** The Immigration Board directs the Immigration Service, but the Minister shall represent and be responsible for the Service before Cabinet and Parliament. The Service is headed by a managing director who sits on the Board that is also chaired by the Minister. There are several possible conflict situations in this arrangement. This is a scenario for many conflicts of will and interest. It does not help the Service do its work, nor does it help provide a good public face for this legislation.

**Section 29:** Objectives and functions of the Service: There are too many objectives, some of them conflict and finally, there do not seem to be tools in the bill to allow the Service to fulfill them. For example: 29(1)(b): “facilitate and simplify the issuance of permanent and temporary residence permits to those who are entitled to them...” How can they do this with the heavy demands of the bill regarding this very task? And how can the Service promote “ a climate ...which encourages illegal foreigners to depart voluntarily”, yet still be known for promoting a human rights based culture and for preventing xenophobia in the Service? The very bureaucracy that sets out to create conditions that illegal residents will find so intolerable that they will want to leave, will also be the bureaucracy known for tolerance and understanding and appreciation of what LEGAL immigrants bring to the country? The public does not distinguish well between illegal and legal immigrants. If the service is tough on illegal residents, that is enough for the xenophobes to feel encouraged.

**Section 30:** Powers of the Service: The most worrisome clause is subsection (e) whereby an officer can stop anyone, citizen or otherwise to prove their immigration status. This is a police state power, last exercised in the former Soviet Union and in South Africa before 1986. It will create an environment of fear and suspicion and is excessive.

Privacy and other constitutional rights are at risk under the proposed community enforcement policy. For example, Section 30(f) empowers an officer to “organize and participate in community fora or other community based organizations to involve the citizenry in the application and implementation of this Act and to educate the citizenry in migration issues.” This strategy focuses specifically on services to the population (Section 30(d)). Section 48 allows the IS by regulation to require persons to report to the Service “any illegal foreigner.” Section 47 mandates that institutions shall endeavour to ascertain the status of the persons interacted with and to report illegal residents or persons of uncertain status. This policy of requiring verification of identity and nationality potentially violates the constitutional right to privacy (especially Sections 14 and 32(1)(a) of the Bill of Rights).

**Section 33:** Rule-making: There should be something in the bill on yearly public consultations, and public reporting on the administration of the Act. There is little accountability on the part of the Service, the Board or the Minister.

**Section 34:** Adjudication and Review: in other jurisdictions, the person concerned has 30 (Thirty) days to respond to a contemplated decision. In this bill she gets ten! There is little procedural fairness here. An “appeal” to the Managing Director and then to the Board seem wasteful, since they cannot be seen as independent. Also, there is no procedure for petitioning the Minister, who has a wide discretion under the bill.

**Section 36:** There are constitutional constraints on the establishment of security services whether such a service is part and parcel of the Immigration Service or under its command.

**Section 37:** There is no in-depth discussion of the detention of foreign nationals. Most of the provisions of this section duplicate the constitutional problems of the Aliens Control Act. The Immigration Courts could also play a role in ensuring constitutional accountability via-a-vis continued detention of persons detained under the authority of the Immigration Service. There should be a monitoring system like a judicial inspectorate to ensure that abuses in privatized detention facilities are avoided.

**Sections 41 and 42:** Burden is placed on employers and learning institutions to show due diligence. This is another reason why these institutions will think twice before participating fully in this Act.

**Section 43:** Hotels are given the responsibility of reporting illegal residents under their roof. And the burden shifts to the hotelier to prove they were not being harboured. There is a

presumption here (and in the case of educational institutions also) of reverse onus. This will also have the unintended consequence of putting the tourist industry on guard and speaks against one of the goals of the white paper: to foster tourism! It is also unlikely that this method will “net” many illegal residents who do not generally have the wherewithall to stay in hotels. The effect will simply be to annoy and inconvenience tourists, citizens and business men and women.

**Section 44(1):** The requirement that everyone identify themselves means, in practice, a requirement to carry identification. Quite apart from the police state implications of such a stipulation it infringes the Constitutional rights of South Africans.

**Section 45:** Aiding and abetting: This is the most disturbing provision of the Bill and is its foundation. It turns every illegal resident into a legal leper. It tries to ensure that no person or body corporate in the republic will lend any assistance whatsoever to an illegal resident whatever their reason for being in the country (e.g. someone who has overstayed because of a medical emergency). It outlaws those who would advocate on their behalf and helps promote xenophobia, since, as pointed out earlier, the public rarely distinguishes between legal and illegal immigrants.

**Section 52:** Offences. In Section 52(3), heavy penalties are prescribed for repeat deportees, including imprisonment and fines of up to R30,000. While the intent may be to try and discourage revolving door migration, it is highly unlikely to have this result. Instead, within a month of passage of such a clause, South Africa’s court system will be overwhelmed by Mozambicans and Zimbabweans charged with a “second offence.” A clearer strategy for criminalizing undocumented migrants and sending them to prison is hard to conceive of. This clause is unworkable and its removal is recommended.

**Section 52(10):** Imposes heavy penalties (including imprisonment and fines of up to R50,000) for anyone who “through offers of financial or other considerations or threats compels or induces an officer to contravene the Act.” This clause is clearly designed to try and deal with massive corruption in the present system. However, the proposal that penalties be doubled if a South African official actually colludes in the process is bizarre. Contrariwise, this clause only addresses half the problem. No penalties are imposed on officials who contravene and subvert the Act. We recommend that equally heavy penalties be prescribed in the Bill for any official who through extortion, acceptance of bribes, or the issue of false documentation subverts the effectiveness of the immigration legislation.

**Section 52(11):** Assets may be confiscated by the Courts to defray the costs of deportation. The real problem, which this Bill does address, is the wrongful seizure of assets by citizens and others. This is a criminal action and should be explicitly identified as such in this legislation.

## **6.0 Conclusions**

- 6.1 SAMP would finally wish to draw the attention of the Department to the question of the cost implications of the proposed reforms. One of the criticisms levelled against the Green paper was that it did no systematic cost-benefit analysis and that the proposed reforms were too costly to implement. The same charge has been levelled against the White paper. A serious and systematic investigation of the costs and cost savings (if any) of the proposed new system is highly recommended before this far-reaching Bill becomes law.
- 6.2 There are various obvious contradictions and inconsistencies between the White Paper and the Bill. One or the other needs to be brought into line. The Bill contains sections implementing policies that are not in the White Paper. Various policy provisions in the White Paper are not embodied in the Bill. This raises the question of whether or not the White Paper is government policy. If it is, all aspects should be in the legislation.
- 6.3 The Immigration Bill proposed far reaching institutional and policy restructuring. Various aspects are a significant improvement over the Aliens Control Act (see 1.6). Others are a retreat in terms of human rights and constitutional guarantees. The enforcement aspects of this Bill are particularly draconian and will impact negatively on the rights of South African as well as foreign nationals, legal and illegal.
- 6.4 The Bill is a useful starting point for legislative reform and the replacement of the anachronistic Aliens Control Act. However, the problems with the Bill in its current form will not be resolved by minor tinkering with the language.

## **Endnotes**

1. This input was coordinated by Jonathan Crush with assistance from Susan Davis, Jonathan Klaaren and Vincent Williams.