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No. 03: Making Up the Numbers: Measuring “Illegal Immigration” to South Africa

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Southern African Migration Project

Making Up the Numbers: Measuring “Illegal Immigration” to South Africa

Migration Policy Brief No. 3

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Editorial Note:

The extent of South Africa's "illegal immigrant" problem continues to confound. Numbers in the millions continue to be casually thrown around by officials, politicians, and the local and foreign press. The study on which these millionaire estimates are based has been widely discredited. But those who are critical of the study and skeptical of the inflated numbers are unable to come up with alternative numbers. Their response is usually that the extent of undocumented migration is, by definition, unknowable. True as it might be, this response unfortunately does not help very much. In this paper, the author attempts to break down the various categories of irregular migration and employment in South Africa and to assess what is and what is not known statistically about each. The paper also attempts to develop a defensible set of estimates about the extent of undocumented migration.

Contents

1.0	Introduction.....	1
2.0	Causes of Irregularity.....	3
3.0	Sites of Irregularity.....	5
4.0	The New Restrictionism.....	9
5.0	A Question of Numbers.....	12
6.0	Lawful Entrants and Stayers.....	14
7.0	Unlawful Entrants and Stayers.....	15
8.0	Lawful Entrants, Unlawful Stayers	16
9.0	Unlawful Entrants, Lawful Stayers.....	17
10.0	Conclusion.....	18

1.0 Introduction

- 1.1 There is a widespread belief within South Africa that the number of non-citizens in the country has escalated dramatically since 1990. Lurid newspaper headlines speak of “floods, “tidal waves” and “swarms” of migrants flattening the country’s borders. Researchers and officials give the popular imagery “scientific” and “official” weight (van Niekerk, 1995; Minnaar and Hough, 1996; Solomon, 1996). Typical is the use of unsubstantiated figures to make definitive statements about the “cost” of migrants to the country. The Minister of Home Affairs, Mangosuthu Buthelezi, for example, asserted at a press conference in February 1998 that:

With an illegal alien population estimated at between 2,5 million and 5 million, it is obvious that the socio-economic resources of the country, which are under severe strain as it is, are further being burdened by the presence of illegal aliens. The cost implication becomes even clearer when one makes a calculation suggesting that if every illegal costs our infrastructure, say R1 000 per annum, then multiplied with whatever number you wish, it becomes obvious that the cost becomes billions of rand per year.

The moral panic engendered by the image of an undifferentiated “flood” of “illegal aliens” contains many predictable elements. Africa is in chaos and South Africa represents a haven of freedom, peace and prosperity for the continent’s destitute masses:

Just as the country is trying to get to grips with determining and plotting strategies to meet its peoples needs and to develop, it faces a deluge of migrants, mainly illegals ... we are perceived as an island in a sea of poverty, making us a magnet for migration.

These “illegals” supposedly cause crime and run arms and drugs; they use overstretched social, medical and health services, depriving South Africa’s own citizens; they take jobs and are responsible for unemployment; the numbers are already overwhelming with floods more on the way.

- 1.2 In popular and official (mis)perception, little distinction is made between various categories of migrant. Migrants tend to get lumped into all-encompassing categories such as “illegal aliens”, “illegal immigrants” or simply “illegals.” All are seen as immigrants wanting to stay rather than migrants with a specific and limited purpose. The dominant discourse frames immigration and migration as problems and threats to be resisted rather than opportunities to be managed.
- 1.3 Misperceptions and stereotypes do not provide an enabling political environment for progressive or pragmatic policy initiatives in the immigration area. Since 1994, the South

African parliament has passed over 200 new bills ranging across the social and economic spectrum. New labour and employment legislation have been at the centre of the ANC's policy agenda. However, apartheid-era migration legislation and policy have been slow to come under the searchlight of executive, parliamentary and constitutional scrutiny.

- 1.4 Some commentators have therefore described the country's immigration policy since 1994 as contradictory and confused (de Villiers and Reitzes, 1996; Reitzes, 1996). It would be more correct to say that there are profound differences of opinion within the government and an intense struggle over the best means to deal with what is commonly believed to be a massive increase in clandestine migration and irregular employment.
- 1.5 The definition of lawful and unauthorized entry and stay in South Africa is thus still governed by inherited apartheid-era legislation and bilateral agreements. The 1997 *Draft Green Paper on International Migration* proposes a major overhaul of the structure of migration and immigration governance in the country (Department of Home Affairs, 1997). The 1999 *Draft White Paper on International Migration* is similarly far-reaching, if more conventionally control-oriented in its thinking. Depending on the extent to which the *Green and White Papers* becomes policy, the meaning and substance of “legality” and “irregularity” could look very different five years from now, by the simple expedient of a transformed legislative and policy framework.
- 1.6 A wholesale transformation of inherited migration policy is far from inevitable. There is a strong lobby within government (coming particularly from the Department responsible for managing migration and immigration) that feels that inherited policy and legislation are basically adequate. This position is sceptical of most forms of migration and immigration. Resources are to be poured into controlling unlawful entry and unlawful employment. Employer sanctions should be vigorously applied and unauthorized migrants rounded up and deported *en masse*. This “fortress South Africa” approach best characterizes the drift of migration policy since 1994 (Crush, 1998).
- 1.7 A definitive analysis of the extent and impact of undocumented migration and irregular employment in South Africa is complicated not only by the changing parameters of legality, illegality and irregularity, but by fundamental inadequacies in systems of data collection and analysis. This is partly an apartheid hangover. As Standing et al (1996: 245) point out, “A state notorious for its brutal effort to monitor and control labour flows ironically proved itself incompetent in the generation of basic labour statistics.”

- 1.8 The migration debate in South Africa is obsessed with the unanswerable question: “how many?” But neither the post-apartheid state nor researchers have yet developed the capacity to produce defensible estimates. In the vacuum, cavalier and exaggerated numbers predominate. What is needed, once a new policy framework is in place, is a systematic and comprehensive research effort to document the labour market and socio-economic impacts of undocumented migration and irregular employment in the country and their inter-relationships.
- 1.9 This paper critically reviews the current state of knowledge about undocumented migration and irregular employment in South Africa as a baseline exercise. It begins with an overview of the major causes of the upsurge in migration to South Africa from neighbouring countries. The paper then examines how the current policy framework impacts upon definitions of irregular employment and undocumented migration. The next section of the paper looks at various attempts to provide defensible general numbers of the volume of authorized and unauthorized migrants in the country. This leads into a discussion of the need for a more refined and disaggregated understanding of migration and employment. Finally, the irregular employment matrix developed for the recent ILO/IOM Symposium in the Hague is used to disaggregate the different forms of migration and irregularity in South Africa (ILO/IOM, 1998).

2.0 Causes of Irregularity

- 2.1 South Africa has a long history of dependence on migrant workers from the Southern African region, particularly in sectors such as mining and agriculture. Indeed, without migrant workers neither industry would have developed at all, nor therefore would South Africa’s modern industrial economy. The development and entrenchment of the migrant labour system to the South African mines has been well-documented (Crush et al, 1991; Crush and James, 1995). That system remains in place.
- 2.2 South Africa also experienced clandestine movements of migrants from the region, particularly to agriculture and the urban services sector (Jeeves and Crush, 1997). Prior to the 1960s, migrants, in effect, came and went virtually as they wished. From the 1960s onwards, the apartheid state significantly tightened its controls on such movements in an effort to force employers to hire locally. Irregular employment continued regardless.
- 2.3 Since 1990, two major changes can be seen in the movement of migrant workers to South Africa. First, the numbers of migrants coming to South Africa from the region for temporary employment each year have undoubtedly increased. Second, the number of migrants coming lawfully and unlawfully to South Africa from the rest of Africa and elsewhere has also increased, though not to the “flood levels” of popular perception.

- 2.4 The causes of the escalating migrant movement to South Africa from the region are various and complex, historical and contemporary. One recent analysis of the South African labour market concludes that “the elasticity of migrant labour (from the SADC region) may be effectively infinite” or, at the very least, that the potential labour supply is “enormous and elastic” (Standing et al, 1996: 61-2). Some of the conditions promoting mobility are specific to some countries (the aftermath of the civil war in Mozambique for example); others are more generalized (growing trade imbalances between South Africa and its SADC neighbours, structural adjustment programmes, domestic economic policy, drought and ecological degradation). Without a systematic household migration survey in the supplier states, however, it would be hard to move beyond a general recounting of push-pull factors in explaining the supply-side pressures for migration.
- 2.5 A 1997 Southern African Migration Project (SAMP) survey of a representative sample of migrants in Lesotho, Mozambique and Zimbabwe shows that South Africa is of little interest except as a source of employment. The report concludes: “On almost every front – with the important exception of job opportunities, costs of living and health care – the home country was perceived equal to or better than South Africa ... and even South Africa’s much-vaunted democratic reforms would appear to carry little weight” (McDonald et al, 1998:1). Very few have any intention or wish to settle permanently in South Africa.
- 2.6 Migrants were also asked about whether they had a job before they went to South Africa on their most recent visit (Table 1). Over half (52%) replied in the affirmative. This confirms other findings that indicate that many were repeat visitors to South Africa and would go again. That 46% went without jobs indicates that the perceived likelihood of finding employment was also high. Many have networks that alert them to employment opportunities or know where and how to obtain employment.

TABLE 1: JOB PROSPECTS IN SOUTH AFRICA

	Lesotho	Mozambique	Zimbabwe	Total
Job Before Migrating	69%	43%	22%	52%
Obtained Job in SA	31%	57%	64%	46%
No Answer	0%	0%	14%	2%

Source: SAMP Data Base

- 2.7 The perception that there are jobs for migrants seems largely justified. Although unemployment rates for migrants are unknown, they appear to be much lower than the national

average -- estimated at 20-40%, depending on mode of calculation (Standing et al, 1996: 103-29). This, in part, accounts for the widespread ground-level perception within South Africa that migrants are “taking jobs” from South Africans. In the only study conducted to date on this issue, a sample of Mozambican deportees were interviewed about their employment experience in South Africa (Covane and Macaringue, 1998). The deportees reported extraordinarily low levels of unemployment at the time of arrest: 4.2% of men, 5.9% of women.

3.0 Sites of Irregularity

- 3.1 Clearly, the demand for foreign migrants from certain types of employers is considerable. Why they should be more desirable than South Africans in a situation of high domestic unemployment is discussed below. The established wisdom is that legal contract migrants work in mining and that those in irregular employment are found primarily in commercial agriculture, construction and the services industry. This would appear to be confirmed by the two SAMP studies cited above. In the case of Lesotho and Mozambique, mining is, as expected, the major occupation (Table 2). Agriculture, construction and domestic service also have good migrant representation. Zimbabweans, with a somewhat broader range of skills and higher education levels, are more widely-dispersed, with a significant number in industrial employment.
- 3.2 The Mozambican survey confirms the pattern for migrants specifically in irregular employment, but also provides an important gender dimension to the data (Table 3). Two-thirds of men were in wage employment, but only 45% of women. Women are heavily involved in street trading. Construction and car repair are the primary occupations for men; domestic service and shop work for women. Both are well-represented on the farms.
- 3.3 Irregular employment is also spatially concentrated. In the case of commercial agriculture, the primary employers are farmers in the border areas with Mozambique and Zimbabwe (Mpumalanga and Northern Province) with minor concentrations in the sugar fields of Kwazulu Natal. Researchers have also noted an increasing trend towards the use of long-distance migrant labour in the fruit and wine industry of the Western Cape. Much of this labour is domestic, but farmers are also recruiting from outside South Africa, particularly Lesotho. In the central Free State province, seasonal cross-border movement from Lesotho to work on vegetable farms is increasing.

TABLE 2: MIGRANT EMPLOYMENT IN SOUTH AFRICA BY SECTOR

	Lesotho (%)	Mozambique (%)	Zimbabwe (%)
Mining	63	40	9
Farmwork	3	6	2
Construction		8	14
Domestic Service	7		9
Mechanic		7	
Factory Worker			8
% Employed	73	61	42
Trading			8
SMME Owner		7	
% Self-Employed		7	8
TOTAL	73	75	58

Note: Actual employment rates are much higher. Jobs with >5% frequency are omitted from the table.

Source: SAMP Data Base

- 3.4 In the border areas, four types of migrants are employed: (a) residents of border villages in Zimbabwe and Mozambique who cross to work on farms on a seasonal basis; (b) “stop-go” migrants who work for a short period on the farms prior to moving on to their primary destination of Gauteng (Rogerson, 1998). Often, a period of farmwork is the involuntary terms of “repayment” for assistance in crossing the border unlawfully; (c) Mozambican ex-refugees living in rural villages close to the Kruger Park and the farming areas. Farmers pick-up, primarily female, day labour during harvesting from these areas; and (d) resident, core workers on major commercial enterprises. Estimates of the number of Mozambicans working on Mpumalanga farms range from 10,000 to 80,000 (which may be indicative of the seasonality factor). Estimates of the number of Zimbabweans working seasonally on Northern Province farms have been put at 7-8,000.

TABLE 3: MOZAMBICAN IRREGULAR EMPLOYMENT IN SOUTH AFRICA

	Male (%)	Female (%)	Total (%)
Construction	40.0	0.0	32.0
Farmwork	7.8	7.8	8.1
Mechanic/Panel Beating	9.8	0.0	7.9
Shop/Restaurant Employee	3.3	27.0	7.4
Domestic Service	3.9	10.8	5.3
Electrician	2.6	0.0	2.1
EMPLOYED	67.2	45.6	62.8
Street Vending	2.0	32.4	7.9
SELF-EMPLOYED	2.0	32.4	7.9
UNEMPLOYED	4.0	5.4	4.2
No Answer	27.0	16.6	25.1

Source: Covane and Macaringue (1998).

- 3.5 Urban irregular employment appears, at this point, to be spatially concentrated in the major industrial conurbations of Gauteng and the Kwazulu-Natal. In both areas, male migrants tend to be highly visible in the construction industry; and female migrants in services, including domestic work. In the Gauteng area, white Portuguese who left Mozambique and Angola in the 1970s tend to employ Mozambicans in a variety of employment niches. The construction industry, originally the preserve of Zimbabweans, is increasingly dominated by irregular Mozambicans recruited in South Africa as casual labour or through an extensive network of personal and labour-broking contacts (Rogerson, 1998).
- 3.6 Similar specializations can be seen in the Cape, where Ovambo fishermen from Namibia have inserted themselves into the local deep-sea fishing industry in Hout Bay, Cape Town. A recent study of the main migrant communities of that city revealed that 48% of migrants were from Namibia and 36% from Angola, with a smattering of migrants from countries as far afield as Ghana, Liberia, Zaire, Rwanda and Nigeria (McDonald, 1998: 22). A growing trend in Cape Town has been the use of long-distance migrant labour in the city's booming construction industry. The workers, primarily Mozambicans, are recruited by labour brokers in Gauteng.

- 3.7 A new urban-based phenomenon is migrants who themselves “create” irregular employment through the establishment of SMME’s and hawking operations. A study of migrant entrepreneurs in Johannesburg found that these small enterprises created an average of 3 jobs per business (primarily in the retail and repair sectors rather than production) (Rogerson, 1997).
- 3.8 The other clear spatial-sectoral coincidence of irregularity occurs in the gold mining areas of the Free State, the east and west Rand, and Evander, and the coal mining areas of Mpumalanga. Here, legal contract migrants from Mozambique, Lesotho, Swaziland and Botswana are employed in large numbers, as they always have been. These areas also draw other migrants from these countries; particularly women from Lesotho. Many subsist on the margins of formal employment or are in relationships with foreign and South African miners and ex-miners.
- 3.9 The restructuring of the mining industry over the last decade has seen increasing use of sub-contractors for service and specialized production activities (Ulicki and Crush, 1998). The number of workers employed by mine-subcontractors grew substantially from 5% of the mine workforce in 1987 to 10% in 1994 (and is probably much higher today). Sub-contracting puts many workers in an irregular situation, generating considerable cost-savings to employers in the process.
- 3.10 The obvious conclusion is that employer demand is a major factor in moving migrants across the border and in providing irregular work once they are in the country. Although a systematic survey of employers would be well-nigh impossible to conduct, case study evidence suggests that there is a widespread preference for non-South African workers. Construction companies prefer non-South African workers who are considered “hard-working and more diligent”, “excellent workers”, “more disciplined”, “less devious”, “more-skilled and well-behaved” and “don’t have a chip on their shoulder” (Rogerson, 1998). The usual advantages of irregular employment (low wages, vulnerability, exploitative conditions) may be at the core of this preference. Employers also speak of their preference for the work habits of non-South Africans, their higher basic skills level and the absence of workplace militancy.
- 3.11 To the present, the state has imposed few penalties or real disincentives for employing migrants in irregular situations. All of the state’s policing effort is focused on the migrants themselves. To date the enforcement effort targets employees, not employers. Since 1990, the South African government has deported 900,000 migrants of which 740,000 (over 80%) are from Mozambique (Table 4). Deportations reached an all-time high in 1997. There is little evidence that this policy has a dampening effect on migration. Rather it has spawned a vast clandestine network of revolving door migration, subterfuge, abuse and official corruption.

TABLE 4: DEPORTATIONS FROM SOUTH AFRICA, 1990-1997

DESTINATION	No.	%
MOZAMBIQUE	738218	82.1
ZIMBABWE	102335	11.4
LESOTHO	33178	3.7
SWAZILAND	10587	1.2
MALAWI	6418	0.7
OTHER SADC	5739	0.6
TOTAL SADC	896475	99.7
OTHER AFRICAN	946	0.1
OTHER GLOBAL	1451	0.2
TOTALS	898872	100

Source: Department of Home Affairs (DHA), Pretoria

3.12 Employers have remained largely outside the state’s enforcement strategy. Legislation is on the books allowing for punitive sanctions against employers but it has been little used to date. As Table 5 suggests, the late apartheid state preferred to deport rather than sanction. The post-apartheid state has continued the tradition. Whether this is because employees are easier targets (they don’t go to court) or because the state is realistic about the inefficacy of employer sanctions is unclear. Certainly recent rhetoric suggests that employer sanctions will shortly become a mantra in South Africa, as they are elsewhere. Whether they will be any more successful in dampening the pressures for in-migration remains very much in doubt.

4.0 The New Restrictionism

4.1 Table 6 shows the total number of legal temporary entrants to South Africa by stated purpose of visit for the period 1994-9. The vast majority of legal border crossings are ostensibly for business or pleasure. What these figures disguise is the current highly restrictive environment for access for employment purposes.

TABLE 5: EMPLOYER SANCTIONS , 1988-1996

	EMPLOYERS VISITED	EMPLOYERS CHARGED	EMPLOYERS SENTENCED	MIGRANTS DEPORTED
1988	131582	56	27	44225
1989	77841	14	13	51550
1990	58004	11	2	53418
1991	59078	25	25	61345
1992	54203	37	23	82575
1993	66086	17	17	96600
1994	45719	24	24	90692
1995	68070	73	73	157084
1996	69009	23	23	180713

Source: DHA

TABLE 6: PURPOSE OF TEMPORARY ENTRY TO SOUTH AFRICA, 1994-1999

PURPOSE OF ENTRY	1994	1995	1996	1997	1998	1999
BUSINESS	761231	619422	621836	601167	676521	576401
STUDY	29695	31604	39582	45092	51737	50130
WORK	70002	71028	118449	86118	81442	74129
CONTRACT WORK	157589	124764	123342	107681	84755	61443
BORDER PASSES	88448	115250	153004	143964	110608	113053
TOURIST	2674510	3563738	3937989	4185694	4893473	5150930
TOTAL	3781475	4525806	4994202	5170096	5898236	6026086

Source: Central Statistical Service

- 4.2 In 1996, the South African Department of Home Affairs (DHA) decreed that no-one could henceforth change their purpose of visit once inside the country. In a break with past practice, all applications for work also had to be made outside the country. The DHA stated its reasons as (a) the “large numbers” of people who wish to work in South Africa who enter on “holiday visas” and apply for work permits instead; and (b) that such people were prepared “to work

for lower wages and employers preferred to employ them to the detriment of local labour.” No evidence is cited to support either of these propositions. Indeed, there is none.

- 4.3 South African immigration legislation (the Aliens Control Act of 1991, as amended in 1995) makes no direct provision for temporary employment schemes and group entry of migrants. All applications have to be made *by the individual* in the country of origin. All applications are then referred to the Department of Home Affairs in Pretoria which continues to exercise enormous discretionary power. The Act unexceptionally prohibits the issue of permanent residence or temporary work permits if a position can be filled by a citizen or permanent resident. Departmental regulations prohibit the issue of permits in occupational categories in which “a sufficient number of persons are available in South Africa to meet the needs of its citizens.” But how does the DHA make this determination? Recent efforts by two non-partisan bodies to discover how this system works in practice were unsuccessful (Department of Labour, 1996; Department of Home Affairs, 1997). The decision-making appears to be ad hoc and highly discretionary. There is certainly no objective system in place for determining skills shortages and labour market need.
- 4.4 The new restrictionism translates into limited opportunity for migrants from the Southern African region, or anywhere else, to enter South Africa lawfully to work. The DHA claims that “except for the mining industry, there no longer is a need of recruitment” from the SADC countries (Department of Home Affairs, nd). Clearly, not all South African employers would agree with this summary judgement. Even the DHA itself facilitates deals for farmers to access migrant workers.
- 4.5 The restrictionist policy applies, also, to skilled migrants from outside the SADC region. The overall number of new temporary work permits issued has risen slightly since 1994 from a low base. Still, the total number issued in 1996 was still less than 20,000. In 1996, there were only about 50,000 holders of temporary work permits in the entire country. Employers complain bitterly of the difficulties in getting work permits for non-citizens. Policy strongly favours skilled migrants from Europe and the West. In 1995, 65% of work permits went to Europeans, 12% to North Americans and only 8% to citizens of the 12 SADC states (Table 7). Opportunities for migrants to lawfully enter South Africa for work purposes are thus highly constrained, particularly for the countries from which most migrants actually come; that is, South Africa’s neighbours within the SADC.
- 4.6 South Africa does have separate bilateral agreements with a number of neighbouring states (Mozambique, Botswana, Lesotho and Swaziland) governing the entry of contract workers (primarily in mining and to a much lesser extent, agriculture). These are all old agreements

dating back to the 1960s and early 1970s. At the time, the South African mining industry enjoyed privileged access to non-South African contract labour, privileges not enjoyed by other employers. Indeed, the industry virtually pursued its own “foreign policy” on migration (Crush et al, 1991). The treaties allowed for post hoc legalization of undocumented migrants. However, the DHA sees this as an incentive to clandestine migration. Taken with its belief that “there is no longer a need for recruitment” of labour from neighbouring states, the system of legalization was officially discontinued in 1995.

- 4.7 Thus, the means and mechanisms for *lawful* entry to work in South Africa by migrants from anywhere in the world, but especially the South African region, are highly restricted. Indeed, they have become much tighter since 1994. Only the mining industry and some white farmers have managed to exempt itself from the new restrictionism, on the basis of arguments that the DHA is in no position to contest. Other employers, who might well make a similar case for lawful access to migrant workers from outside the country, are simply precluded from making the case. Given the evidence of widespread employment of undocumented migrants in certain sectors and regions, there would appear to be a major contradiction between current state policy and employer demand.

5.0 A Question of Numbers

- 5.1 The new restrictionism rests its case on manufactured numbers. Central to the all-pervasive anti-immigration discourse is the claim that “millions” of “illegal aliens” have entered the country since 1990. Official are wont to make unsubstantiated and very public “estimates” of the numbers involved. Analysis shows that the “estimates” have grown in concert with the escalating moral panic about “illegal immigration” – from around 1 million in the late 1980s and early 1990s, to as high as 12 million in the last year (Brunk, 1996:6-8; Minnaar and Hough, 1996: 126-8).
- 5.2 A favoured “method” of calculation involves taking figures that are verifiable (say deportation figures) and using a multiplier to reach a grand total. Nearly 600,000 people have been forcibly removed from South Africa since 1994. These figures could indicate that the number of migrants unlawfully in the country are substantial. However, it is impossible to draw any simple correlation between deportation figures and the size of the deportable population. First, the figures reflect the intensity of policing and the resources put into arrest and deportation. These have certainly increased since 1994 (Minnaar and Hough, 1996: 164). Second, it is thought that numerous migrants are arrested and deported more than once a year. Third, Mozambicans, in particular, are easy and cheap targets for the police and are vulnerable to

arrest and mass deportation. As Brunk (1996) concludes, “it would be foolish to assume that those arrested form a representative sample.”

- 5.3 Given that the authorities, by their own admission, tend to target employment sites and the streets, it would be surprising if the majority of deportees were not working in some capacity. A recent survey of Mozambican deportees showed that at least 63% were in paid employment at the time of arrest and another 8% were street vending (Covane and Macaringue, 1998). Hence, one could justifiably infer that as many as 90,000 Mozambican deportees each year were working at the time of arrest.
- 5.4 The state-funded Human Sciences Research Council (HSRC) has developed what it claims is a “scientific method” for measuring the illegal presence. Every 6 months, the HSRC undertakes a countrywide door-to-door sample survey which asks: “How many people who are not SA citizens live in the house around this property?” Extrapolating the answers, the HSRC concluded that 9.1 million non-citizens were in the country in mid-1994. Subtracting the number of non-citizens legally resident in the country, the HSRC concluded that around 4.5 million were there illegally.

The basic fallacies in this method are obvious. One the more bizarre by-products came when the same question was asked at six-monthly intervals. The resulting-time series appears to show mass movements of foreigners (involving hundreds of thousands of people) around the country every 6 months and even, since 1995, an apparently massive *outflow* of 4 million migrants.

- 5.5 The 1997 SAMP survey in Lesotho, Mozambique and Zimbabwe asked questions about household and community migration of a national sample, but regrettably the data was not quantified (McDonald et al, 1998). The survey did show quite extensive migrant links with South Africa. Some 52% of the population had immediate family members in South Africa (with a high of 70% in Mozambique, and a low of 31% in Zimbabwe). A similar proportion had friends living or working in South Africa (66% Mozambique, 42% Zimbabwe). As many as 72% reported community members in South Africa (92% Lesotho, 74% Mozambique, 54% Zimbabwe).
- 5.6 A common assumption in South Africa is that all migrants are “illegal immigrants” who wish to stay (Minnaar and Hough, 1996: 18). The assertion is directly contradicted by the SAMP survey. Respondents were asked about the likelihood of leaving their country in the foreseeable future to live in South Africa. Only 16% said it was likely or very likely (with a high of 25% in Lesotho, and a low of 12% in Zimbabwe) that they would go and live permanently in South

Africa. On the other hand, 45% said it was likely or very likely that they would go and live in South Africa for a short period (48% Lesotho, 40% Mozambique and 39% Zimbabwe). The study concludes:

Although cross-border migration is an important part of life for many of the people ... in the region, and there are clearly a large number of people crossing the border for various reasons, very few have any desire to move to South Africa permanently and most prefer their home country to South Africa on key indicators such as freedom, democracy, safety and access to basic resources like land and shelter (McDonald et al, 1998: 9).

People were also asked about the length and frequency of their visits to South Africa. In the case of Lesotho and Zimbabwe only 11% and 7% respectively stay in South Africa longer than a year. The Mozambican equivalent is a very high 42% but this does not translate into permanent residence (with only 13% saying they would probably move to South Africa permanently) (McDonald et al, 1998: 10-11).

- 5.7 To summarize, although there is considerable circumstantial evidence that the numbers of people from neighbouring states and elsewhere in Africa who are in South Africa have increased markedly since 1994, attempts to get at defensible numbers have been woefully inadequate. While the “numbers game” may seem rather pointless, defensible numbers are an important counterweight to the politics of media and official exaggeration. The evidence to hand does suggest that the vast majority of foreign migrants have no long-term intention of staying in South Africa. Hence it would be fair to assume that if it were possible to arrive at defensible figures for foreign citizens in the country at any one time, then we would be measuring a largely migrant population, and migrant by choice rather than by official policy. Rather than seeking *a single* figure, however, it is more profitable to break down the migrant population into constituent categories. A simple distinction between legality of entry and legality of stay is a useful starting point.

6.0 Lawful Entrants and Stayers

- 6.1 The migrant population in this category is threefold: (a) skilled migrants on annually renewable temporary residence visas and work permits (about 60,000 in number); (b) contract mineworkers entering under the bilateral agreements, mainly in mining; and (c) “special zone” and contract agricultural workers.

- 6.2 The first category is of limited interest to this paper. The second includes all of the 190,000 contract miners recruited by the South African mines, through TEBA, in Mozambique, Lesotho, Botswana and Swaziland (Table 8). Although the overall size of the mine workforce has declined considerably since the late 1980s, foreign migrants have more than held their own. The proportion of foreign migrants in the mine workforce has risen from a figure of 40% in the 1980s to its current figure of close to 50%. Mozambique, in particular, has recently experienced growth in its mine workforce at a time when most other areas have experienced substantial job loss (de Vletter, 1998).
- 6.3 A “special zone” lawful entry system was established recently to assist white farmers in border areas. Some 3,000 to 4,000 Zimbabweans are employed lawfully on farms in the Northern Province. Since mid-1996, two “informal” crossings points have been established on the South Africa-Zimbabwe border. Persons living within 50kms of the Limpopo can obtain 21 day passes at the border, provided that they remain within 50km of the border. Zimbabweans may also enter South Africa as recruited workers. With a nominal fee, an identity card and a letter from a South African farmer, recruited workers enter South Africa to work for periods of 3 to 6 months (Lincoln, 1998). Farmworkers, mainly women, are also legally recruited in Lesotho (through the Labour Department there) for temporary work contracts in the Free State. The estimated number is as high as 20,000.

7.0 Unlawful Entrants and Stayers

- 7.1 The popular image is that South Africa’s 7,000 km-long borders are extremely porous and that most people unlawfully in the country, also came unlawfully, without proper documentation. The first assumption is correct; the second probably not. Certainly there are migrants who cross South Africa’s border by clandestine means, without documentation or with improper (forged) documentation in order to work or seek work (known locally as border jumpers).
- 7.2 In media and official discourse, the preferred methods supposedly include climbing over or under the electrified fence, walking inaccessible footpaths, swimming rivers or dodging lions in the Kruger Park. Organized smuggling, at least from the region, is not seen as a major problem. On the Mozambican border, in particular, organized clandestine crossing is certainly a profitable business. How many people “fence-jump” is impossible to say. The South African National Defence Force (SANDF) apprehended a total of 47,031 jumpers in 1994 and 1995. Of these, 65% were on the border with Mozambique and 28% on the border with Zimbabwe. The SANDF estimate that they apprehend 1 in 4 border-jumpers, though how they know that is a mystery (Minnaar and Hough, 1996: 144). Certainly, it is fair to assume that most fence-jumpers are seeking or have jobs in South Africa. However, none of the

circumstantial evidence seems to support “the flood” of popular mythology. There are two reasons for this – first, the relative ease of lawful entry into South Africa. And second, the attitude of people towards borders and illegal crossing.

- 7.3 In the SAMP survey, support amongst citizens of neighbouring countries for “open borders” was significant with 61% in favour. Yet this did not translate into a blithe disregard for existing borders. The survey showed significant support for the principles of territorial and border integrity and the practice of border controls in Southern Africa (McDonald et al, 1998: 12). Over 80% of the respondents said they would be discouraged from going to South Africa if they did not have the right travel documents, and 70% said that they would be discouraged if they thought they could not get in legally (McDonald et al, 1998: 16). These attitudes are confirmed by actual behaviours. On their last visit to South Africa, 89% had passports and 72% had a visa or permit for entry (McDonald et al, 1998: 14). The relative extent of unlawful entry, combined with unlawful stay, has thus very probably been grossly exaggerated within South Africa.

8.0 Lawful Entrants, Unlawful Stayers

- 8.1 In this category, there are three “populations”: (a) contract workers who enter South Africa under the bilateral agreements, lose their jobs and then stay in the country; (b) migrants who enter for a non-work related purpose (such as tourism or study) and are in the country with a valid residence permit but employed without a work permit or working in the informal sector; and (c) migrants in the same category but whose residence permits have expired.
- 8.2 Legal entry to South Africa from neighbouring countries has certainly increased dramatically since 1990 (Table 9). In 1996, legal border crossings from South Africa’s seven most important SADC-partners amounted to 3.6 million. If anything these figures are an undercount since they do not include people who hold multiple-entry “border passes.” They do reflect the relative ease of crossing into the country. The vast majority of border-crossers take tourist permits when they enter.
- 8.3 The tourist or business permit provides a suitable legal camouflage for those intending to work on entry. The question is how many migrants enter with jobs in hand or employment in mind. The SAMP survey provides useful purpose-of-entry data for migrants on their last visit to South Africa (Table 2). Some 67% of lawful entrants from Mozambique entered South Africa for work-related purposes. The equivalent figure in Zimbabwe was only 29%, with Lesotho at 25%.

- 8.4 A related question is how many migrants are still in the country a year after they enter? The survey showed that only 7% of Zimbabweans and 11% of Basotho, but 42% of Mozambicans tend to stay for longer than a year in South Africa. It is clear, therefore, that most entrants are migrants not immigrants. However, some clearly stay longer and even settle. The question is how many?
- 8.5 The DHA’s computerized National Movement Control System records electronically all legal entries and exits from the country. This system allows calculation, at any point in time, of how many people are still in the country with expired residence permits and, crucially, where they are from. Table 10 shows that the cumulative number of people still in the country with expired permits was 658,875 in early 1997 (on 9 March 1997 to be precise). Overstay figures for the period 1992-1994 suggest that approximately 80,000 per annum migrants remain in the country on a longer-term basis (it is not unreasonable to assume that the 1995 and 1996 figures have already subsided to this level).
- 8.6 The total number of “lawful entry, unlawful stay” migrants at the end of 1996 could therefore be as high as 350-400,000, although this figure should be discounted by an unknown number who have left the country without going through formal border posts.

9.0 Unlawful Entrants, Lawful Stayers

- 9.1 This category consists of three main migrant populations: (a) asylum seekers and refugees; (b) successful applicants for the immigration amnesty of 1996; and (c) undocumented migrants legalized for work purposes under Section 41 of the Aliens Control Act (mainly farmworkers).
- 9.2 The last great wave of unlawful entry to South Africa occurred before the end of apartheid, not after it. In the 1980s, an estimated 350,000 Mozambican refugees fled to South Africa. They were never recognized as such by the apartheid government. Of this number, about 70,000 returned under a voluntary UNHCR repatriation programme in the early 1990s. The legal status of the remainder is ambiguous at best (de la Hunt, 1998). Officially, any bona fide Mozambican refugee is considered a legal resident of South Africa under the terms of a 1997 cabinet decision to grant amnesty and residence permits. However, the amnesty has still not been implemented and the ex-refugees remain in legal limbo; legally present but without the documentation to prove it. Many have therefore fallen into the deportation dragnet (Johnston and Simbine, 1998).
- 9.3 South Africa has faced a new influx of refugees, primarily from Africa and Asia, since it acceded to the UN and OAU refugee conventions in 1993. Their entry is “unlawful” in that it

contravenes the Aliens Control Act. South Africa has never had refugee legislation although a flawed and compromised Refugee Bill is currently before Parliament (Hathaway, 1998). Refugees seeking asylum in South Africa either enter clandestinely or, as seems most common, enter the country ostensibly for a lawful purpose (tourism, business, study) and then apply for asylum later. By early 1998, some 38,143 had applied for asylum under temporary ad hoc procedures. The backlog in processing claims is considerable and growing. Only 16,282 applications had been processed to that point and a mere 4,934 granted refugee status (de la Hunt, 1998).

- 9.4 In 1996, the South African government offered an amnesty (legalization) programme to non-citizens who had been resident for more than 5 years in South Africa (Crush and Williams, 1998). The vast majority of the applicants were Mozambicans (73%) (Table 11). The eligibility restriction guaranteed that the vast majority of applicants would be refugees from the 1980s. The remainder were a combination of legal and undocumented residents. Many of the latter had acquired false identity documents and were living in the country as South Africans.
- 9.5 The other migrants in this category are the so-called “Section 41s.” Farmers employing undocumented migrants can register them with the local DHA office and receive a “Section 41” permit. Farmers in Mpumalanga and Northern Province have begun to use the system more and more. The total is still relatively small (11,000 since inception in 1994) but can be expected to grow.

10.0 Conclusion

- 10.1 It is difficult to draw definitive conclusions about the precise character and pervasiveness of undocumented migration and irregular employment in South Africa. An obvious first step is to begin to disaggregate the migrant population into its constituent categories. This paper has used an ILO classification to categorize that population and to analyse what is currently known about the characteristics and volume of each sub-grouping. Research currently in progress will begin to fill in some of the major gaps in our knowledge revealed by this exercise.
- 10.2 In responding to the challenges of increased in-migration, the first priority for South Africa involves a conscious policy choice. On the one hand, there are those in government (associated with the DHA and driven by a populist agenda) who argue for continued and intensified application of existing immigration regulations (deportations, employer sanctions, denial of basic services to migrants etc.) in an effort to root out all non-citizens and permanent residents from the labour market.

- 10.3 On the other hand, there are voices calling for a revamped immigration system which would permit greater legal access to the South African labour market by migrants from the South African region. These range from politically untenable proposals for open borders within the SADC region, to the highly contentious proposals of the Green Paper on International Migration for quota-based temporary work schemes.
- 10.4 Both perspectives were represented on the government’s White Paper task team (as they were on the Green Paper task team before it.) When those, ostensibly political, choices have been made and new immigration policy and legislation are on the books, there is a clear need for inter-departmental coordination on policy monitoring and implementation.
- 10.5 At present, there is no common or agreed policy vision and no systematic inter-departmental coordination on implementation. Employer sanctions is a case in point. The DHA views employer sanctions as a means purely to raise the stakes of employing non-South Africans to the point where employers will employ locals in preference, thereby supposedly dampening the demand-side pressures for irregular migration and employment. The Department of Labour, on the other hand, views employer sanctions as a potential policy measure to be directed at all employers who violate basic labour standards. Sanctioning of violators will, in this view, raise labour standards and reduce the irregular employment of non South Africans (and perhaps increase employment opportunities for South Africans).
- 10.6 Labour legislation such as the Labour Relations Act and the Basic Conditions of Employment have changed the parameters and paper definition of irregularity fairly substantially. However, the recency of these Acts means that it is not at all clear to what extent they are being violated and circumvented. Hence, it is simply too early to tell whether new laws and regulations will achieve their primary objectives in relation to the control and elimination of irregularity.
- 10.7 In South Africa, the next 2-5 years, should see a firming up of the overall policy framework governing migration and immigration. A draconian approach will drive irregular entry and unlawful stay still further underground and make it even more difficult to develop workable and sustainable policy instruments for the regulation and elimination of irregular employment. A more rationale and coordinated approach, focused on employment standards and basic rights, must begin with a comprehensive labour market survey to establish the extent to which South Africans and foreign migrants are caught up in irregular employment. The effectiveness of existing instruments and legislation can then be properly evaluated against the government’s objectives for a humane, constitutionally sound and non-abusive set of labour standards.