WHITE PAPER ON INTERNATIONAL MIGRATION FOR SOUTH AFRICA

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Department:
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REPUBLIC OF SOUTH AFRICA

NDP 2030

We Care!

WHITE PAPER ON INTERNATIONAL MIGRATION – FINAL VERSION

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FOREWORD BY THE MINISTER OF HOME AFFAIRS

The South African policy on international migration is set out in the 1999 White Paper on International Migration. It is implemented through the Immigration Act, 2002 (Act No. 13 of 2002) and partly through the Refugees Act, 1998 (Act No. 130 of 1998). In the recent past, the Department of Home Affairs (DHA) amended the Immigration and Refugees Acts and implemented regulations and strategies to address glaring gaps in legislation. However, what is required is a comprehensive review of the policy framework that can inform systematic reform of the legislation.

Essentially, and despite significant changes in the country, region and world, the country's formal international migration policy has remained in place since 1999. The policy is outdated and has serious limitations that affect the country's ability to adequately embrace global opportunities while safeguarding our sovereignty and ensuring public safety and national security. Significant policy gaps exist in a number of areas, such as the management of integration for international migrants, management of emigration and management of asylum seekers and refugees. The approach taken in the new White Paper is that international migration must be dealt with holistically as many aspects are interconnected and this manifests in concrete processes and the lives of people.

It is against this background that the DHA undertook a comprehensive review of the international migration policy. In the 2016/17 financial year, the DHA developed a new White Paper on International Migration which was approved by the Cabinet on 29 March 2017. The 2017 White Paper incorporates much of the content of the 1999 White Paper but locates it within a much broader and more relevant policy framework and addresses serious policy gaps. The 1999 White Paper is essentially based on formal compliance to laws and regulation.

The paradigm set out in the 2017 White Paper is one of strategic management of international migration to achieve national goals. The 2017 White Paper enables the whole of the state and society to actively manage international migration to achieve the clear development goals set out the National Development Plan (NDP). The White Paper recommends policy and strategic interventions in eight policy areas: management of admissions and departures; management of residency and naturalisation; management of international migrants with skills and capital; management of ties with South African expatriates; management of international migration within the African context; management of asylum seekers and refugees; management of the integration process for international migrants; and management of enforcement.

The new White Paper will provide a policy framework that will guide the comprehensive review of immigration and related legislation. Those elements of the new policy that require only administrative action will be implemented immediately. However, those elements of the new policy that require major changes will not be implemented immediately as the amendment of

legislation will be required. The process of amending the legislation has begun and is expected to be concluded by March 2019 with the submission of the amended legislation to Parliament for public consultation and approval.

I would like to thank all sectors of society that contributed towards the development of this White Paper. It is a policy that can only be implemented through a "whole of government and whole of society approach" and I urge all relevant stakeholders to support the vision of managing international migration for the development of the country, the region and continent.

PROF HLENGIWE MKHIZE, MP
MINISTER OF HOME AFFAIRS

DATE: _____

SIGNATURE: _____

EXECUTIVE SUMMARY

South Africa as a sovereign state has defined borders that are recognised by approximately 200 other states into which the political and legal world is divided. As a sovereign state, South Africa reserves the right to determine who is allowed entry into the country, and under what conditions. Therefore, the new White Paper on International Migration affirms South Africa's sovereign right to determine the admission and residence conditions for foreign nationals in line with its national interest. The policy on international migration will reflect how our nation of 55 million people will relate to the rest of the 7 billion humans who share planet Earth.

The current policy on international migration is set out in the 1999 White Paper on International Migration. It is implemented through the Immigration Act, 2002 (Act No. 13 of 2002) and partly through the Refugees Act, 1998 (Act No. 130 of 1998). The current paradigm exposes South Africa to many kinds of risk in a volatile world and by default strengthens colonial patterns of labour, production and trade. It also serves to perpetuate irregular migration, which in turn leads to unacceptable levels of corruption, human rights abuse and national security risks. The new White Paper argues that the current policy does not enable South Africa to adequately embrace global opportunities while safeguarding our sovereignty and ensuring public safety and national security.

In recent past the Department of Home Affairs (DHA) amended the Immigration and Refugees Acts and implemented regulations and strategies to address glaring gaps in legislation. However, what is required is a comprehensive review of the policy framework that can inform systematic reform of the legislation. Essentially, and despite significant changes in the country, region and world, the country's formal international migration policy has remained in place since 1999.

What South Africa urgently needs in a highly connected world is a robust, progressive vision of the benefits of well-managed international migration. This vision must be based on the crucial contribution inward and outward migration makes and will make to growing our economy and to the transformation of Africa. The White Paper contends that it is neither desirable nor possible to stop or slow down international migration. What is argued is that international migration in general is beneficial if it is managed in a way that is efficient, secure and respectful of human rights. Therefore, Vision 2030 (aligned to the NDP timeframe) for a well-managed international migration is that South Africans should embrace international migration for development while guarding sovereignty, peace and security.

The White Paper recommends policy and strategic interventions in eight policy areas:

- **Management of admissions and departures:** The purpose of policy interventions introduced in this area is to strengthen a strategic, modern, integrated and risk-based approach in managing the secure and efficient cross-border movement of people, goods and conveyances.

- **Management of residency and naturalisation:** The purpose of policy interventions introduced in this area is to enable South Africa to grant residence and citizenship status to foreign nationals based on strategic security considerations and the national priorities of South Africa.

- **Management of international migrants with skills and capital:** The purpose of policy interventions introduced in this area is to increase South Africa's international competitiveness for critical skills and investment (attraction and retention of high-valued migrants).

- **Management of ties with South African expatriates:** The purpose of policy interventions introduced in this area is to enable South Africa to manage emigration in such a manner that it contributes to the achievement of national development goals.

- **Management of international migration within the African context:** The purpose of policy interventions introduced in this area is to facilitate cross-border movement for African citizens and provide a legal route for South African Development Community (SADC) economic migrants.

- **Management of asylum seekers and refugees:** The purpose of policy interventions introduced in this area is to enable South Africa to provide refugee protection and basic services to asylum seekers and refugees in a humane and secure manner.

- **Management of the integration process for international migrants:** The purpose of policy interventions introduced in this area is to establish a secure, strategic and integrated approach for the integration of bona fide migrants into communities.

- **Management of enforcement:** The purpose of policy interventions introduced in this area is to reduce irregular migration and improve compliance with immigration and related legislation and by-laws.

The new White Paper will provide a policy framework that will guide the comprehensive review of the immigration and other related legislation. Those elements of the new policy that require only administrative action will be implemented immediately. However, those elements of the new policy that require major changes will not be implementable immediately as the amendment of legislation will be required.

Some of the policy interventions contained in the White Paper will require significant restructuring, the cost implication of which cannot be assessed at this time. The White Paper is sensitive to the consideration that any given policy can only succeed if it can be supported by the available fiscal and financial resources. Hence, the department is currently developing a business case which will, amongst other things, outline a viable and sustainable funding model for the effective delivery of its mandate.

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What is put forward in the White Paper is based on desktop research, interviews and discussions with internal and external stakeholders (workshops, roundtables and colloquia), as well as domestic and international study tours. It is also informed by a practical knowledge of problems that have emerged since the publication of the White Paper on International Migration in 1999.

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SECTION 1: BACKGROUND AND CONTEXT

Chapter 1: Introduction and rationale for a new White Paper on International Migration

Introduction

South Africa, as a sovereign state, has defined borders that are recognised by approximately 200 other states into which the political and legal world is divided. As a sovereign state, South Africa reserves the right to determine who is allowed entry into the country, and under what conditions. Therefore, the new White Paper on International Migration affirms South Africa's sovereign right to determine the admission and residence conditions for foreign nationals in line with its national interest. The policy on international migration will reflect how our nation of 55 million people will relate to the rest of the 7 billion humans who share planet Earth.

The global movement of people, information, technology and capital across the globe gives us huge opportunities as a nation and at the same time presents very serious risks. According to the 2013 United Nations (UN) population report at least 3 per cent (232 million) of the human population are international migrants who have moved across borders to live in other countries for twelve months or more. People migrate for complex and varied reasons. A random sample would include labourers, unqualified artisans, highly qualified professionals, business persons, families and victims of forced migrations caused by political, economic and natural disasters.

Young men have constituted a major proportion of those migrating annually, but increasingly women and children are migrating. The overall number of migrants has been increasing steadily owing to opportunities offered by rapid transport, accessibility to communications as well as "push" and "pull" factors. "Pull" factors include economic and professional opportunities and safety. "Push" factors include large economic inequalities (domestic and international), conflicts, persecution, degraded environments and climate change. To discuss international migration meaningfully we must think nationally (across sectors and spheres of government), regionally and globally while understanding that the policy adopted will impact on every community and individual in South Africa, including our citizens visiting or residing in other countries. No nation in a world with a globalised economy can survive or thrive in isolation; or without due regard for international laws, conventions, treaties and agreements.

In general, South Africans are proud of the role we are playing internationally to strengthen collective peace and security and confront problems such as climate change, pandemics and poverty. A war or the collapse of a state anywhere in a highly globalised world impacts directly on global security and how much we pay for fuel or food and insurance. There will be mass migration and a rise in risks, threats and costs if all or part of a state collapses. Examples are Somalia, Libya, Iraq and Syria. The largest instance was Europe in the 1940s.

We also celebrate and are proud of the international achievements of our athletes, scientists and entrepreneurs. None of these achievements would be possible if international migration was not possible and states closed their borders. As a member of the family of nations, our chances of peace and prosperity are far greater in a world where states cooperate and their citizens are free to travel, work, study, research, enjoy culture and build relationships.

Problem statement

The current policy on international migration is set out in the 1999 White Paper on International Migration. It is implemented through the Immigration Act, 2002 (Act No. 13 of 2002) and partly through the Refugees Act, 1998 (Act No. 130 of 1998). The new White Paper argues that the current international migration policy does not enable South Africa to adequately embrace global opportunities while safeguarding our sovereignty and ensuring public safety and national security.

The White Paper further argues that South Africa has not yet built consensus at policy, legislative and strategic levels on how to manage international migration for development. As a result, national thinking and attitudes to international migration are influenced by an unproductive debate between those who call for stricter immigration controls and those who call for controls to be relaxed. In general the discourse is characterised by strong emotions, stereotypes and contested statistics. The White paper proposes adopting a managed international migration approach to enable us to work together to achieve common national goals.

Root causes

International migration is regarded as a routine administrative function of the state

The approach to international migration in the 1999 White Paper is largely static and limited to compliance rather than managing international migration strategically. As a result there is a lack of a proactive management of international migration and this does not advance the national security and development agenda of the country.

Historically the DHA has been regarded as performing routine administrative functions in a low-value, low-security environment. Consequently, its systems are outdated, there is grossly inadequate capacity and the entire operational budget for immigration functions is less than a billion rand. The focus is biased towards formal rights rather than on understanding that international migration must be managed professionally, securely and strategically to achieve national priorities.

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The White Paper proposes that international migration must be managed proactively and strategically in order to contribute to national priorities, such as nation building and social cohesion, inclusive economic growth and national security. South Africa needs to start a conversation on the importance of international migration so that there can be consensus on its contribution to meeting broadly supported national goals. For example, the NDP prioritises the acquisition of skills, some of which must be recruited internationally, in order to achieve national priorities such as inclusive economic growth. However, South Africa has not put in place adequate policy, strategies, institutions and capacity for attracting, recruiting and retaining international migrants with the necessary skills and resources.

Lack of a risk-based approach to international migration

The current policy relies on the mechanical application of rules to manage risks, rather than the integrated intelligence-based approach that is best practice globally. South Africa has consequently invested little in the effective and secure management of international migration so that risks can be evaluated and mitigated adequately. To obtain a business or residence visa in South Africa certain formal conditions must be met, including proof of financial resources, police clearance and checks against Interpol and other watch-lists. Countries that effectively manage risks have in addition put in place the people, systems and awareness needed to monitor and assess risks, starting with a complete official history that the applicant or traveller has with the destination country. The capacity to analyse and take strategic decisions is fundamental, together with the availability of the necessary information from other departments, such as State Security, Transport, the South African Police Service (SAPS), South African Revenue Service (SARS), the Department of Trade and Industry (dti) and the Health Department.

Countries with a similar risk profile to South Africa that effectively manage immigration, apply, to a far greater extent, the basic principle of keeping risks outside their borders. This includes doing adequate checks at missions and by airline liaison officers at key airports. The cost of these measures is far lower than that of dealing with threats such as fugitive crime bosses once they have established themselves in South Africa. The same measures, such as the use of biometrics, allow for the much more rapid processing of legitimate travellers, and the economic benefits exceed by far the cost of maintaining modern systems that are managed and operated by specialists.

In South Africa risks have to be managed within the framework of the Constitution and the human rights of both citizens and other nationals must be respected and protected. Immigration that is not managed through a risk-based approach is poorly managed immigration. This gives rise to systemic corruption as well as exposing all who live in the country to serious risks such as terrorism and drug smuggling. If risks are not managed, instability will increase and skilled

migrants will not be recruited efficiently, thus undermining development. Job opportunities will not expand and this in turn will generate xenophobia and more instability.

Little awareness of historical and geopolitical contexts

The 1999 White Paper was an important instrument for deracialising apartheid immigration legislation and it adopted the formal principles of immigration administration that are promoted by the UN and found in middle or higher income countries. However, the largest specific policy gap in the 1999 White Paper is that there is no sense of South Africa being an African state situated in the SADC, which is one of the eight regional communities recognised by the African Union (AU).

Under colonialism and its apartheid manifestation, immigration linked to citizenship was strictly limited to persons deemed to be "Europeans". Africans were classified as "Natives" and consigned to the migrant labour system that maintained colonial economies across southern Africa. The 1999 White Paper opened our borders to Africa and the world but reserved the right to immigrate largely to those with high level skills or capital. Workers with low to mid-level skills from SADC countries can only be recruited by farmers, the mines and other companies under a temporary Corporate Work Visa that has its roots in the migrant labour system.

In general, the 1999 White Paper is conspicuously silent on the need to manage historic migration flows from the SADC in a way that will break with the colonial past by promoting regional integration and industrial development. Because of our shared colonial history, the development gap between South Africa and its neighbours is larger than in any other region globally – South Africa's gross domestic product (GDP) per capita is five to seven times that of the rest of the SADC.[1] The new policy seeks to address this historical and geographical reality and put forward policy interventions that would help enable South Africa, southern Africa and Africa to develop its own markets, industries and skills base.

Lack of a holistic approach to immigration policy leading to policy gaps

The first Green Paper on International Immigration (1997) covered immigration, asylum seekers and refugees. The 1999 White Paper excludes policy on asylum seekers and refugees, which is covered in the Refugees Act. The approach taken in the new White Paper is that international migration must be dealt with holistically, as many aspects are interconnected and this manifests in concrete processes and the lives of people. For example, providing protection to refugees and asylum seekers falls in the human rights domain; but it also carries security risks for the host country that must be managed using the same security systems that cover immigration. More

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[1] TIPS Annual Forum, 2015.

skilled refugees could successfully apply to work and stay in South Africa under the Immigration Act if the required systems were established.

The current White Paper is also not holistic because it does not deal with emigration, defined as the settlement of South Africans in other countries. These South Africans represent both a loss to the country as well as potential skills and resources which could be harnessed creatively to advance our development. The new White Paper thus addresses the question of how to engage with South African emigrant communities abroad.

Serious policy gaps regarding asylum seekers and refugees

At the level of policy, legislation, strategy and systems, the asylum seeker and refugee regime that was established through the 1998 Refugees Act has serious gaps that have only been partially addressed through amendments. A contributing factor was the assumption that the number of asylum seekers would be low, given the relative stability of the SADC and the distance from typical refugee sending countries. In part, this was a consequence of not considering historical flows of labour within the SADC and thus not being prepared for hundreds of thousands of SADC citizens claiming asylum so they could work while their claims were being adjudicated. The largest influx came as a result of economic collapse in Zimbabwe but there is a strong underlying trend from across the region. Another factor is the high level of activity of human smugglers and traffickers who bring in people under the guise of being asylum seekers from as far as North East Africa and Asia.

While the policy of non-encampment can be fully justified, there was no provision made for providing indigent asylum seekers with basic food and accommodation, leading to the courts obliging the DHA to consider issuing deserving cases with permits allowing them to work or study. This has become a powerful pull factor which further burdens the asylum system leading to many adjudication cases being delayed for years. There has been no additional funding to increase capacity in areas such as the two boards dealing with appeals, even though this would be a fraction of the additional burden that is placed on social services by long-stayers. Besides policy gaps, this points to the need for the state to move more quickly to a more integrated and strategic approach to planning and budgeting.

Capacity constraints to manage international migration

In this context the definition of "capacity" should be understood to include all major factors that enable a state to manage international migration. This includes the vision, understanding and attitudes that are prevalent amongst leaders and the public; policy and regulatory frameworks; and the institutional and administrative resources required to implement the policies. It also

includes capacity to secure and defend the people, systems and institutions involved in the management of international migration. Amongst other serious threats, the systems of the DHA are under continual attack from criminal syndicates. Critical to ensure both security and efficiency, and to protect human rights, are the quantum and quality of human resources that manage immigration systems.

The limited capacity of South Africa to manage international migration is due to a lack of appreciation of its positive role and strategic importance. Contributing to the situation described above has been a tendency to regard the DHA as the sole department responsible for the management of international migration. This has contributed to the lack in South Africa of approaches involving the whole of the government and civil society, which is contrary to best practice globally. A strong international trend is for countries to move to an integrated approach, with departments working together and in harmony with civil society stakeholders in order to achieve common security and developmental objectives.

Because there is little national consensus around the importance and goals of international migration, government and civil society often decide on matters in court in South Africa and those decisions often drive policy. This can be disruptive, with unintended consequences, such as the 2004 Watchenuka judgement which entitles asylum seekers to work and study – a major pull factor that overwhelmed the asylum system. The White Paper proposes that South Africa should adopt an approach to immigration that is strategically managed and which involves the whole of the government and society approach led by the elected government.

Motivation for a new White Paper on International Migration

It has been over 18 years since the White Paper on International Migration (approved by Cabinet in March 1999) became the basis of immigration legislation and regulations. Although there have been significant economic, social, legislative and regulatory changes since then, there has not been a comprehensive review of policy. Essentially, the country's formal international migration policy has remained in place since 1999 – despite significant changes in the country, region and world. Notable developments include the following:

- South Africa is a major international player in various international (multilateral and bilateral) platforms that deal with peace keeping missions and development.
- South Africa has become a major destination and transport hub for the continent and the world. Most SADC nationals, for example, are transiting through South Africa to the continent and the world. World leaders, including politicians and business persons, travel through South Africa to the region.
- South Africa has become a platform for investment into Africa. South African companies are also increasingly expanding their businesses into Africa and other continents.

- Migrants from the African continent, as far as North Africa, are transiting through South Africa to their preferred destination countries in Europe and North America. This has been exacerbated by the tightening of borders and political instability in North Africa, the Middle East and Europe.
- South Africa continues to receive a high number of individual asylum seekers from almost all the regions of the world, including asylum seekers from countries that are politically stable.
- South Africa attracts tourists from all regions of the world because of its climate, developed infrastructure and various tourist attractions; and it has become a major venue for international events.
- The rate at which the global economy is being driven by scientific and technological change is accelerating. South Africa has become a global player in certain areas of the sciences, including the hosting of the Square Kilometre Array (SKA) radio telescope.
- African countries continue to liberalise their immigration regimes in line with the African Union 2063 vision.
- Many South Africans have taken advantages presented by globalisation and have migrated to various developing and developed countries. More of these South Africans can contribute to achieving national priority goals than is the case presently.

The changes experienced by South Africa since the adoption of the 1999 White Paper, coupled with the above mentioned developments, necessitate that South Africa reviews the current international migration policy to be responsive to such developments and to be aligned with the new macro policy frameworks. For instance, South Africa has adopted the NDP as an overarching policy framework for all public policies, legislation and strategies. The NDP essentially argues that, if we are to end poverty and create decent work, we must use migration to break these patterns by growing our skills and knowledge base and by removing barriers to regional development. The NDP further argues that South Africa needs to adopt a more open approach to skilled immigration to enable expansion of high-skill supply for the economy in a manner that obviates displacement of South Africans.

Chapter 2: Historical overview of international migration in South Africa

Introduction

Specific historical and geographical contexts are crucial in understanding migration patterns in any country. This chapter explores the contribution of migrants in building the economy of South Africa and the implication for the sending countries, especially neighbouring countries. Several scholars[2] have written extensively on this subject and they argue that ignoring this history would obscure its impact on South Africa's international migration policy and practice; and our long-standing economic and political links with the region.

Colonial and pre-1948 international migration policy

In the colonial era the countries that now form the SADC were linked through a migrant labour system. Migration was probably the single most important factor tying together all of the various colonies and countries of the sub-continent into a single regional labour market during the twentieth century. South Africa has been the main destination for migrant labour in the continent since the nineteenth century, following the discovery of the region's natural resources. As the supply of indigenous labour within South Africa was insufficient to meet the growing demand of the mines, the Chamber of Mines recruited from surrounding colonies and across southern Africa.

Even before the apartheid era, international migration policy in South Africa was based on racial discrimination. Much of the international migration policy paradigm in South Africa in the late nineteenth and the early twentieth centuries was dominated by the discourse of recruiting "desirable" whites and excluding migrants from Asia and India in particular. In terms of acquiring citizenship, formal immigration under colonial and apartheid regimes was essentially conceived of as being for whites only. With regard to African migrants, domestic and foreign, the primary concern of apartheid and pre-1948 South African governments was to ensure colonial domination and an abundant supply of cheap migrant labour.

The Immigrants Regulation Act of 1913, the first nation-wide immigration legislation passed in South Africa, had a major aim of excluding those Indian immigrants who had followed Indians who had entered after 1860 as indentured labourers to work in the sugar cane plantations. The growing Indian population was considered a major threat to the ideology of white supremacy.

At the end of World War I, South Africa was the destination for a rapidly increasing number of European immigrants, often from Eastern Europe. Many were Jewish or Catholic and poor – all

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2 Peberdy, S., Crush, J. and Williams, V. (1997,1998, 1999, 2000, 2001, 2005, 2008, 2009); Maharaj, B. (2004).

characteristics considered undesirable on political and racial grounds. The Immigration Quota Act of 1930, aimed at excluding such unwanted immigrants, also established the concept of discriminating between immigrants who were 'desirable' and 'undesirable'.

Apartheid international migration policy

Under apartheid, immigration control manifested chiefly in tight border security and restrictions on Africans considered politically undesirable and others entering the country; and on Africans travelling abroad. Ports of entry (POE) were under the control of police directed by an intelligence unit until 1992 when immigration officers were introduced. The fragmented departments of "Home Affairs" (variously named) were responsible both for general control via the pass laws as well as delivering modern services largely to whites.

The apartheid government encouraged or turned a blind eye to clandestine migration in order to ensure an abundant supply of cheap labour, but was opposed to black migrants applying for citizenship. The Aliens Control Act of 1991 was based on a 1913 Act that excluded blacks and was amended in 1930 and 1937 to exclude Jews. The racist orientation of South African immigration policy became very evident when the government welcomed whites from neighbouring states in southern Africa who felt threatened by the black majority rule. Between 1960 and 1980, skilled and semi-skilled white migrants from Zambia, Kenya and Zimbabwe were given citizenship to boost the local white population.

Between 1913 and 1986 black people could only enter South Africa illegally or as contract workers as they were not allowed to apply for temporary or permanent residence permits. Historically, labour migrants were concentrated in their largest numbers in the South African mining industry. The mix of source countries varied over time. Mozambique, Lesotho, Swaziland, Botswana, Zimbabwe and Malawi were the major suppliers. All migrants were recruited by a single Industry-financed monopoly, The Employment Bureau of Africa (TEBA), which operated an extensive network of recruiting offices in supplier states. At the end of a stipulated period, migrants had to return home to renew their contracts as per the bilateral labour agreements[3] with neighbouring countries.

Post-1994 international migration policy

From 1994, the vision of South Africa's first democratic government was to reverse racially-based and exploitative laws, and integrate South Africa into the SADC region, the African continent and the world. The transition to democracy has enabled South Africa to play a full and

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[3] South Africa's bilateral labour agreements with neighbouring countries: Mozambique (1974), Botswana (1973) Swaziland (1975) and Lesotho (1973).

active role in the family of nations. This is one of the fruits of a struggle in which the mobilisation of international support played a critical role.

South Africa has undergone a protracted process of developing policy and legislation on migration and refugees since 1994. This process includes the drafting of a Green Paper on International Migration in 1997, a White Paper on International Migration accompanied by a Draft Immigration Bill, and the adoption of the first comprehensive Immigration Act in 2002, which has subsequently been amended. A Refugees Act was also legislated in 1998, and amendments to this Act are currently underway. The discussion below highlights key areas of these documents and legislation.

Since 1994 several million South Africans have used their new passports to visit, study, work, and to do business abroad. Tourists and skilled migrants have helped grow our economy and knowledge base. Even so, while the international migration policy framework was formally deracialised, the 1999 White Paper has in part a colonial outlook. For instance, the White Paper argues that technically the migration policies of the old South Africa could be applied if adapted to comply fully with the Constitution and the administrative practices developed under it. This would in theory ensure that they do not unfairly discriminate against certain foreigners on the basis of origin, ethnicity or religion. In essence, however, the current policy framework is based on rules that in practice disadvantage Africans and favour immigrants from Europe and other developed regions over African countries.

Amendment of the Aliens Control Act No. 96 of 1991

The first migration policy reform came in 1995, with a statutory amendment to the Aliens Control Act No. 96 of 1991. It was Parliament's intention to bring the Act more in line with the country's new constitution. Before being amended in 1995, Section 55 of the Act provided that no decision of the DHA was reviewable by a court or tribunal, and persons could be held in detention indefinitely, without judicial review. The 1995 Amendment removed this provision and provided that detention for periods beyond 30 days ought to be subject to review. In short, despite the reforms, there were still concerns that the Aliens Control Act fell far short of constitutional expectations. Clearly, more comprehensive reforms were necessary.

Green Paper on International Migration

In May of 1997, South Africa published a Green Paper on International Migration. Underscoring the Green Paper were the dual principles that a planned and efficient system of immigration would be in South Africa's national interest and that unauthorised migration is undesirable. The Green Paper suggested that planned immigration would create opportunities for economic

growth and development, and as such could be viewed as a potential tool for nation-building, rather than an impediment. It further argued, however, that realising the benefits of immigration would require a broader vision of the role of population movements in economic growth, and that the implementation of such a vision would require a simple, achievable and manageable plan of action. The Green Paper also maintained that as a sovereign state, South Africa would reserve the right to determine who would be allowed entry into the country, and under what conditions. At the same time, the Green Paper proposed that the design and implementation of immigration policy should be faithful to the 1996 Constitution, and should be consistent with the national commitments to upholding universal human rights, administrative justice, and the guarantee of certain basic rights for all people affected by the South African state.

White Paper on International Migration

The White Paper on International Migration was published in March 1999 and its Executive Summary provides an overview of its focus, contents and recommendations, as follows:

> In this White Paper administrative and policy emphasis is shifted from border control to community and workplace inspection with the participation of communities and the cooperation of other branches and spheres of government. Procedures related to the issuance of permits are simplified to shift resources towards enforcement. An Immigration Service would be established with monitoring and investigative capacity at community level and there would be an Immigration Review Board drawn from different sectors.

The basic shortcoming of the White paper is discussed in Chapter 1. In summary, it adopts an approach that is not aligned to South Africa's historical and geographical realities; or to using international migration strategically to achieve development goals. The approach is also one of mechanical compliance to requirements rather than ensuring national security through the management of risks. Lastly, it assumes immigration is a routine function that falls mainly under Home Affairs rather than adopting a "whole of the state and society" approach. This contributed to the classification by National Treasury of Home Affairs as a general administrative department that does not need to operate in a highly secure environment. The White Paper did advocate for the establishment of an immigration service and the Immigration Services (IMS) branch of the DHA was duly established; but it only receives a budget sufficient for routine administration, with limited funding for enforcement of immigration legislation.

Immigration Act No. 13 of 2002

The Immigration Act (Act 13 of 2002) was legislated following the tabling of the White Paper on International Migration (1999) and the Immigration Bill (2001). The Act represented a significant policy and legislative departure from the Alien's Control Act of 1991, namely the previous statute governing the entry, residence and departure of foreign nationals in South Africa.

The Preamble of the Act emphasised a number of principles, including: simplified requirements and procedures, and the expeditious issuing of residence permits; security and state control over immigration; inter-departmental coordination; cognisance of globalisation and the General Agreement on Trade in Services (GATS); strengthening border monitoring and deterring illegal immigration; efficiently managing and administering border posts; efficiently and effectively enforcing immigration law, "thereby reducing the pull factors of illegal immigration"; accessing scarce skills, while protecting South African workers; maintaining a policy connection between foreigner workers and the training of citizens; addressing migration issues with other states; ensuring human rights protection in immigration control; and preventing and countering xenophobia within government and civil society.

South African refugee policy and legislation

Refugee White Paper, 1998

The Refugee draft White Paper was developed in 1998 as a first step towards developing a system of protection for refugees and asylum-seekers, following South Africa's ratifying of the 1951 UN Convention Relating to the Status of Refugees and its 1967 Protocol, and the 1996 Organisation of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa. The White Paper also included a Draft Refugee Bill which, following amendments, was adopted and legislated as the Refugees Act (Act 130 of 1998) later in the same year.

Cognisant of the obligations imposed by international instruments, the White Paper defines the conditions of eligibility for refugee status in South Africa, as well as conditions for exclusion from this status. The White Paper also outlines a number of principles guiding the treatment of refugees in South Africa, including: the international principle of non-refoulement[4]; non-prosecution on the basis of illegal entry into the country; non-deportation, except where there is a threat to national security or the public order; basic security rights; basic human dignity rights; and basic self-sufficiency rights, including the rights to work and education.

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[4] Refoulement essentially refers to returning a person to a place where his/her life would be threatened.

The White Paper also outlines the conditions of residence for persons granted refugee status, placing emphasis on the creation of an "enabling" environment for self-sufficiency through access to identity and travel documents, the rights to work and study, as well as a speedy determination process. In the event of a mass influx of refugees, the White Paper recommends that the Minister be empowered to determine refugee status on a group basis, and make regulations related to accommodation and treatment of refugees in these circumstances.

Refugees Act No. 130 of 1998

The Refugee Act was adopted in 1998 with the main aims of giving effect to international instruments, providing for the reception of asylum seekers, establishing conditions for the refugee application and determination processes, and defining rights and conditions of residence for refugees in South Africa. Consistent with the White Paper, the Act outlines circumstances under which an applicant may qualify for refugee status, or be specifically excluded. The Act also provides for the establishment of refugee reception centres staffed by refugee reception officers and refugee status determination officers.

The Act also provides for the establishment of both a Standing Committee for Refugee Affairs and a Refugee Appeal Board, and provides specific guidance on the composition, powers, duties, and conditions of office of members of both bodies. The Act came into force in 2000 after the adoption of the Refugee Regulations.

WHITE PAPER ON INTERNATIONAL MIGRATION – FINAL VERSION

Chapter 3: Continental and regional migration policy frameworks

Introduction

In the course of the twenty-first century, globalisation and increased interdependence between the fields of trade, migration and investment have more than ever challenged the capacity of states to autonomously manage such flows, thus giving rise to regionalism and multilateral solutions. Although international migration flows are becoming increasingly intercontinental, most international migrants move within major regions. In particular, migration seems to be influenced by regional processes.[5] For instance, Africa has at least eight regional bodies which are the building blocks of the African Economic Community (AEC), established in the 1991 Abuja Treaty, which provides the overarching framework for continental economic integration. They include the Arab Maghreb Union (AMU); the Economic Community of West African States (ECOWAS); the East African Community (EAC); the Intergovernmental Authority on Development (IGAD); SADC; the Common Market for Eastern and Southern Africa (COMESA); the Economic Community of Central African States (ECCAS); and the Community of Sahel-Saharan States (CENSAD).[6]

These regional approaches are usually based on the conclusion of free trade instruments between countries in a specific region with a view to enabling economic development. Such instruments may range from extensive free movement regimes applicable to all categories of persons to more limited provisions focusing on the movement of qualified individuals.[7] Africa as a continent is also experiencing an increase in intraregional migration and research has shown that, to a larger extent, these movements occur essentially within the continent. However, these migratory flows are occurring in an African context still marked by the inadequacy of institutional capacities of some African countries to address migration challenges individually and collectively.[8] A policy position on the management of international migration needs to take these migration flows and institutional capacity factors into consideration.

This section of the paper explores various policy instruments that have been developed by the AU and SADC in order to facilitate the free movement of persons, goods and capital amongst the member states. Free movement of persons encompasses three types of movements: visa-free entry for short visits and/or granting of visa on arrival; the right of residence (temporary and permanent), and the right of establishment (income generating activities such as work and starting a business). Regional policy instruments are generally used to guide member states to develop their national policies on international migration. South Africa is in the process of

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[5] Regionalism as a Venue for Migration Governance (Available at: www.nccr-trade.org).
[6] The Regional Economic Communities of the African Union (Available at www.un.org/en/africa).
[7] Regionalism as a Venue for Migration Governance (Available at www.nccr-trade.org).
[8] African Common Position on migration and development, 2006.

developing a new White Paper on International Migration which is Africa-oriented as opposed to the current one that is based on historical ties with Europe.[9] The main objective of this section is to provide a foundation for a South African policy position for managing international migration in line with the African development agenda.

Continental migration policy framework

The founding policy framework for the management of international migration in line with the African development agenda is the Abuja Treaty of 1991. In 1980, the OAU (predecessor of the AU) Extraordinary Summit adopted the Lagos Plan of Action as a major step towards the goal of integration. The commitments in this Plan and the Final Act of Lagos were translated into concrete form in Abuja, Nigeria in June 1991 when the OAU Heads of State and Governments signed the Treaty establishing the (AEC) during the 27th Ordinary Session of the Assembly. The aim of the AEC is to promote economic, social and cultural development as well as African economic integration in order to increase self-sufficiency and endogenous development and to create a framework for development, mobilisation of human resources and material.[10]

Freer movement of people across the continent is cited as a key long-term objective of the AU. Since the early 2000s, the relationship between migration and development has become increasingly important to the AU. In this respect, in 2006 the AU adopted the African Common Position on Migration and Development. The Common Position paper covers a number of areas including migration and development, human resources and the brain drain, remittances, trade, migration and peace, security and stability, migration and human rights.

The AU has taken the commitments of the Abuja Treaty a step further. At the 24th Ordinary Assembly held in Addis Ababa, Ethiopia, from 30-31 January 2015, the Heads of State and Governments of the AU adopted Agenda 2063 as both a Vision and an Action Plan for an integrated, prosperous and peaceful Africa. Agenda 2063 is a call for action to all segments of African society to work together to build a prosperous and united Africa based on shared values and a common destiny. The 25th Ordinary Session of the AU Assembly held on 14-15 June 2015 in South Africa made several declarations that require member states to develop programmes of action for implementation. At least two declarations set clear parameters for the international migration policy in South Africa. That is, the establishment of the Continental Free Trade Area (CFTA), and the implementation of continent-wide visa free regimes, including issuance of visas on arrival at ports of entry for African citizens.

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9 As of April 2016, South Africa granted visa exemption to 14 African countries (holders of ordinary passports) - Benin, Cape Verde, Gabon, Lesotho, Malawi, Mauritius, Mozambique, Seychelles, Swaziland, Botswana, Namibia, Tanzania, Zambia and Zimbabwe. This is in sharp contrast to the number of the European countries that qualify for a similar exemption (29 countries). 2016 DHA list of visa exempted countries.

10 www.dirco.gov.za

SADC regional migration policy framework

The goal of achieving the free movement of people, goods and capital in the region has long been a priority for the SADC, and is seen as integral to promoting development, poverty alleviation, and prospects of greater integration. To this end, a number of protocols have been adopted by the SADC member states. These are protocols that address the free movement of SADC nationals.

Protocol on the Facilitation of Movement of Persons of 2005

The overall objective of the Protocol is to facilitate the movement of persons. More specifically, it aims to facilitate the entry of citizens from the SADC into other member states without the need for a visa, for a maximum period of ninety days. The Protocol makes reference to the provisions pertaining to residence and establishment. The ultimate objective of the Protocol is to develop national policies aimed at the progressive elimination of obstacles to the movement of persons of the region generally into and within the territories of State Parties. The Protocol will enter into force after it has been ratified by two-thirds of the member states. By 2016 the protocol had been signed by nine member states while only four member states (including South Africa) had ratified it.

The major gap that has to be addressed is not the ratification of a high-level policy framework, but a systematic programme to put in place critical enabling conditions. These include the development of compatible immigration policies, laws and systems and accurate population registers. The assumption is that the SADC as a region will have limited capacity to manage the flows of migrants without these systems, particularly to South Africa.

SADC Protocol on Education and Training of 1997

The SADC Protocol on the Facilitation of Movement of People is not the only SADC Protocol that relates to the movement of people within SADC member states. The 1997 SADC Protocol on Education and Training recognises that the human resources development is essential in promoting overall development and tackling the socio-economic problems facing the sub-region. The objectives of the Protocol include the relaxation and eventual elimination of immigration formalities in order to facilitate freer movement of students and staff within the region for the specific purposes of study, teaching, research and any other pursuits relating to education and training.

SADC Protocol on Tourism of 1998

The 1998 SADC Protocol on Tourism is based on the premise that SADC has rich tourism potential which can be developed for the benefit of member states and their citizens by contributing to economic and social development. Its objectives include promoting the sub-region as "a single but multifaceted tourism destination" which can be assisted by facilitating intra-SADC travel through the easing or removal of travel and visa restrictions and harmonising immigration procedures. The Protocol calls for the complete abolition of visa requirements for SADC nationals, as well as the introduction of a tourism univisa for visitors from countries outside the region. Discussions are underway on the proposed univisa. However, security and income sharing considerations by member states seem to have derailed the progress.

SADC Protocol on Free Trade of 1996

The 1996 SADC Protocol on Trade, while only partially related to the movement of people, has direct implications for migration. The Protocol on Trade argues that the development of trade and industry is essential to economic integration in the SADC and that trade in goods and services and cross-border investment are major areas of cooperation. The objective of the Protocol is to create a free trade area in the SADC, and to promote trade between member states. This Protocol has implication for business persons especially cross-border traders who frequently travel for business purposes. While the Protocol does not directly refer to small-scale cross-border trade, it will have a direct impact on activities of this kind as well.

Labour Migration Policy Framework of 2014

The Policy Framework seeks to promote sound management of intra-regional labour migration for the benefit of both the sending and receiving countries as well as the migrant workers. The framework requires member states to develop national labour migration policies that are consistent with relevant national   policies and legislation as well as the SADC, AU, UN and ILO (International Labour Organisation) policy instruments.

South Africa's current policy position on the free movement of African citizens

The SADC arguably lags behind other Regional Economic Communities (REC) such as the ECOWAS and EAC in implementing the regional migration policy frameworks for the facilitation of freer movement of persons within the region. For instance, the ECOWAS adopted the Protocol on Free Movement of Persons, Residence and Establishment in 1979. The Protocol grants ECOWAS citizens the right to enter, reside and establish themselves in member states,

through a phased approach. The EAC has made significant progress on visa-free movement of EAC citizens, but has not implemented free residence and establishment. The EAC has begun harmonising and lowering requirements and fees for EAC applicants for temporary and permanent residence.

It should be noted that the gap in development between South Africa and other SADC states is much larger than differences between states in other regions. Most of the SADC member states have not amended their policies in line with the above mentioned policy instruments. Consequently, the SADC remains a slow work in progress towards the ideals of the Abuja Treaty. While South Africa continues to advocate for the implementation of these regional policy instruments in various SADC platforms, it has adopted both unilateral and bilateral approaches in removing visa conditions for SADC and other nationals outside of SADC. For instance, South Africa has implemented visa waivers which are in line with the spirit of the Abuja Treaty with nationals of 11 of the 14 SADC countries. South Africa also implemented the Zimbabwe Special Permit (ZSP) and Lesotho Special Permit (LSP) to regularise the large numbers of Zimbabwean and Lesotho nationals residing in South Africa irregularly.

To ease movement into South Africa for Africans from farther afield, South Africa has begun offering 10 year multiple-entry visas to Africans from countries requiring visas to visit South Africa, who are frequent travellers, business people and academics.

Chapter 4: Existing policy and legal framework

Introduction

This chapter discusses the policy environment underpinning the formulation of the new White Paper on International Migration. The White Paper has to be consistent with, and complement, the Government's broad developmental, security, diplomatic and social objectives. For this reason, it is necessary to consider the broad policy framework within which this policy has been formulated. The South African policy and legal framework that regulate admission, residence and naturalisation process for foreign nationals is contained in various national and international policy and legal instruments, and implemented through various Acts of Parliament. The following policies and legislation had a major impact on the formulation of this White Paper:

The Constitution of the Republic of South Africa

In 1996 South Africa adopted the Constitution as the supreme law of the country. Any law or act inconsistent with the provisions of the Constitution shall be of no force and effect to the extent of such inconsistency. The Constitution also demands that the rule of law be respected by all, including the state and its organs. In this section attention is given to the provisions of the Constitution as far as it has an effect on this policy. The Constitution lays down certain relevant principles which have implications for the White Paper:

- The right of the South African people to self-determination and sovereignty is fundamental and this includes the right to security and control of our resources. Section 39(1)b of the Constitution states that the Bill of rights must be interpreted in accordance with international law. International law states that each country is free to determine its own rules regarding the acquisition and loss of citizenship, entry and residence of foreigners.
- Section 10 of the Constitution states that everyone has inherent dignity and the right to have their dignity respected and protected.
- Limiting of the freedom of movement, as enshrined in Section 21 (1) of the Constitution, could only be done in line with Section 36 of the Constitution. That is, the reason for limiting the movement must be sound, reasonable and justifiable.
- Section 9(3) of the Constitution qualifies what kind of discrimination is prohibited – the state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth. Granting some immigrants the right to permanent or long-term residency and citizenship and not other immigrants is not on the face of it discriminatory.

Legislation administered by the DHA

The following legislation regulates conditions under which foreign nationals could attain admission, residence and citizenship status in South Africa:

Immigration Act, 2002 (Act No. 13 of 2002)

- Section 9 of the Immigration Act specifies admission requirements that must be adhered to. According to section 9(1) of the Immigration Act no person shall enter or depart from the Republic at a place other than a port of entry. Section 9(3) Immigration Act further states that no person shall enter or depart from the Republic unless he or she is in possession of a valid passport.
- Sections 11 to 23 of the Immigration Act provide for various types temporary visas that could be granted to foreign nationals: S11 for visitors; S13 for study; S14 for treaty agreements; S15 for business; S16 for crew; S17 for medical treatment; S18 for relative; S 19(1) for critical skills; S 19(4) for general work; S 19(5) for intra-company; S21 for corporate; S20 for retirement; S22 for exchange programmes; and S23 asylum transit.
- According to Section 25(1) of the Immigration Act the holder of a permanent residence permit (PRP) has all the rights, privileges, duties and obligations of a citizen, save for those rights, privileges, duties and obligations which a law or the Constitution explicitly ascribes to citizenship.
- Sections 26 and 27 of the Immigration Act provide for various types PRPs that could be granted to foreign nationals: S 26(a) holder of a general work visa; S 26(b) spouse of South African citizen or PRP holder; S 26(c) child of South African citizen or PRP holder under 21 years; S26(d) child of South African citizen; S 27(a) holder of a quota work visa; S 27(b) holder of critical skills visa; S 27(c) holder of a business visa; S 27(d) refugee; S 27(e) retired person; S 27(f) financial independent person; and S 27(g) relative of South African citizen or PRP holder within the first step of kinship.

Refugees Act, 1998 (Act No. 130 of 1998)

- Section 23 of the Immigration Act specifies admission requirements that must be adhered to by foreign nationals who wish to apply for refugee protection in South Africa.
- Section 22 of the Refugee Act provides for an issuing of asylum seeker temporary residence permit to an applicant, pending the outcome of an application in terms of Section 21.

- Section 24 of the Refugees Act provides for the granting of a refugee permit for a period of five years.
- Section 27(c) of the Refugees Act entitles a refugee to apply for a permanent residence permit after five years of acquiring refugee status on condition that and if the Standing Committee certifies that he or she will remain a refugee indefinitely.

South African Citizenship Act, 1995 (Act No. 88 of 1995)

- Section 2 of the Citizenship Act provides grounds under which South African citizenship could be attained.
- Section 5 of the Citizenship Act provides for the conditions under which foreign nationals could be naturalised.

Marriage Act, 1961 (Act No. 25 of 1961)

- There is no specific section in the Marriage Act that specifies the process for granting residence and citizenship to foreigners on the grounds of a marriage. However, Section 12 of the Marriage Act deals with the required documents (affidavit) that must be submitted by foreigners in order to enter into a marriage.

Policies and Acts administered by other Departments

The following national and sector policies and legislation were taken into consideration during the drafting of the White Paper:

- Basic Conditions of Employment Act, 1997;
- Broad-Based Black Economic Empowerment Amendment Act, 2013;
- Children's Act, 2005;
- Companies Act, 2008;
- Cross-border Road Transport Agency Act, 1998;
- Customs Controls Act, 2014;
- Employment Equity Act, 1998;
- Employment Services Act, 2014;
- Labour Relations Act, 1995;
- National Development Plan;
- Prevention and Combating of Trafficking in Persons Act, 2013;
- Ship Registration Act, 1998;
- South African Maritime Safety Authority Act, 1998;
- South African Revenue Service Act, 1997; and

- Unemployment Insurance Act, 1996.

International Conventions and protocols

The following international instruments that have been ratified by South Africa were taken into consideration during the drafting of the White Paper:

- 1948 Declaration of Human Rights;
- 1951 UN Convention Relating to the Status of Refugees;
- 1951 Equal Remuneration Convention (ILO);
- 1957 Abolition of Forced Labour Convention (ILO);
- 1967 UN Protocol on the Status of Refugees;
- 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa;
- 2011 Domestic Workers Convention (ILO);
- Convention on International Civil Aviation;
- SADC Protocol on Education and Training;
- SADC Protocol on Tourism;
- SADC Protocol on Transport, Communications and Meteorology;
- The 2005 SADC Protocol on the Facilitation of the Movement of Persons; and
- The International Convention for the Safety of Life at Sea.

SECTION 2: INTERNATIONAL MIGRATION PATTERNS IN SOUTH AFRICA

Chapter 5: Migration to South Africa: Facts and figures

Introduction

International population movements are complex to measure, as they are influenced by a variety of socioeconomic, political, environmental and other factors. The South African official figures from the 2011 Census indicate that 3.3 per cent or about 2,1 million of the country's 51,7 million population are foreign-born. South Africa continues to attract a high volume of various categories of international visitors and migrants from almost all regions of the world. For instance, in 2011 more than 12,3 million movements were captured in the enhanced Movement Control System (eMCS) in respect of foreign nationals' arrivals. This figure increased to 16,5 million in 2016. More than 79% of the movements involve SADC nationals, with those living in neighbouring countries making frequent crossings. For more details, please refer to Table 1.

Table 1: Trends in international movements: Foreign arrivals

Country	2011	%	2012	%	2013	%	2014	%	2015	%	2016	%
LESOTHO	3 231 198	26%	3 159 045	24%	3 179 290	22%	3 192 012	21%	3 446 591	22%	3 807 923	23%
ZIMBABWE	2 400 429	19%	2 947 721	22%	3 486 327	24%	3 599 136	23%	3 420 840	22%	3 419 088	21%
MOZAMBIQUE	1 564 543	13%	1 732 183	13%	1 980 889	13%	2 133 012	14%	2 078 799	13%	2 015 119	12%
SWAZILAND	1 120 877	9%	1 232 633	9%	1 413 618	10%	1 602 200	10%	1 682 041	11%	1 733 549	10%
BOTSWANA	659 333	5%	683 746	5%	863 321	6%	989 935	6%	1 153 573	7%	1 357 651	8%
UK	515 158	4%	504 715	4%	504 481	3%	517 504	3%	531 781	3%	560 032	3%
USA	314 583	3%	328 557	2%	353 100	2%	371 964	2%	363 566	2%	409 145	2%
GERMANY	254 297	2%	268 246	2%	289 744	2%	314 233	2%	306 902	2%	356 719	2%
NAMIBIA	177 496	1%	223 807	2%	258 829	2%	272 281	2%	289 683	2%	287 141	2%
ZAMBIA	177 830	1%	180 497	1%	193 290	1%	200 791	1%	191 977	1%	201 627	1%
MALAWI	152 218	1%	154 918	1%	189 329	1%	186 868	1%	160 788	1%	174 592	1%
FRANCE	117 326	1%	125 385	1%	133 038	1%	154 700	1%	156 549	1%	181 031	1%
NETHERLANDS	126 574	1%	127 535	1%	131 221	1%	150 575	1%	146 677	1%	170 256	1%
INDIA	110 189	1%	120 567	1%	131 774	1%	124 450	1%	121 513	1%	137 917	1%
CHINA	97 689	1%	119 096	1%	139 228	1%	112 727	1%	115 326	1%	148 716	1%
AUSTRALIA	114 564	1%	120 152	1%	121 664	1%	127 129	1%	115 809	1%	124 758	1%
NIGERIA	74 845	1%	78 733	1%	92 449	1%	81 716	1%	77 299	0%	84 912	1%
ITALY	64 861	1%	65 728	0%	69 037	0%	74 761	0%	68 728	0%	76 964	0%
CANADA	64 222	1%	68 104	1%	70 512	0%	70 881	0%	67 546	0%	71 621	0%
PORTUGAL	63 273	1%	68 447	1%	68 234	0%	66 857	0%	66 892	0%	64 282	0%
Top 20 Foreign Arr.	**11 401 505**	**92%**	**12 309 815**	**92%**	**13 669 375**	**93%**	**14 343 732**	**93%**	**14 562 880**	**93%**	**15 383 043**	**93%**
All Foreign Arrivals	**12 370 123**		**13 313 038**		**14 757 652**		**15 427 482**		**15 610 272**		**16 550 616**	

Source: DHA EMCS SYSTEM (January 2017)

While most of the international visitors and migrants do return to their countries, a substantial number does not depart due to the nature of their residence visas. However, some overstay and in most cases apply for asylum to legitimise their stay in the country. For instance, in 2011 while more than 12,3 million movements were captured in the enhanced Movement Control System (eMCS) in respect of foreign arrivals; only 10,8 million departure movements were captured in respect of foreigners. This trend can be observed for other years as well. For more details, please refer to Table 2.

Table 2: Trends on international movements: Foreign departures

Country	2011	%	2012	%	2013	%	2014	%	2015	%	2016	%
LESOTHO	2 701 404	25%	2 520 162	22%	2 682 312	20%	2 794 676	20%	2 899 633	20%	3 231 707	22%
ZIMBABWE	2 126 297	20%	2 376 146	21%	3 074 759	23%	3 056 018	22%	2 912 827	21%	2 829 182	19%
MOZAMBIQUE	1 095 527	10%	1 328 617	12%	1 748 711	13%	1 946 055	14%	1 888 857	13%	1 820 946	12%
SWAZILAND	1 047 434	10%	1 145 401	10%	1 335 323	10%	1 520 184	11%	1 576 545	11%	1 644 053	11%
BOTSWANA	653 864	6%	668 298	6%	846 786	6%	971 301	7%	1 124 906	8%	1 337 892	9%
UK	511 864	5%	502 306	4%	502 417	4%	514 258	4%	524 013	4%	563 846	4%
USA	310 297	3%	324 720	3%	350 089	3%	371 303	3%	360 809	3%	406 283	3%
GERMANY	248 855	2%	264 672	2%	287 389	2%	306 454	2%	301 222	2%	347 144	2%
NAMIBIA	175 915	2%	221 373	2%	254 855	2%	268 663	2%	286 534	2%	283 873	2%
ZAMBIA	166 873	2%	165 226	1%	184 310	1%	190 262	1%	181 422	1%	189 459	1%
FRANCE	117 943	1%	124 513	1%	133 290	1%	155 625	1%	158 759	1%	181 911	1%
NETHERLANDS	120 829	1%	126 087	1%	130 576	1%	148 626	1%	144 333	1%	165 502	1%
CHINA	96 435	1%	118 458	1%	140 829	1%	116 770	1%	119 569	1%	152 415	1%
INDIA	106 757	1%	116 323	1%	128 702	1%	121 594	1%	120 492	1%	139 201	1%
AUSTRALIA	112 698	1%	118 215	1%	121 382	1%	124 599	1%	116 636	1%	124 560	1%
MALAWI	103 466	1%	98 653	1%	114 355	1%	130 132	1%	129 453	1%	124 289	1%
NIGERIA	65 594	1%	71 261	1%	82 161	1%	75 367	1%	74 542	1%	80 232	1%
ITALY	63 700	1%	65 445	1%	68 295	1%	73 744	1%	68 801	0%	76 303	1%
CANADA	63 616	1%	67 662	1%	70 507	1%	71 349	1%	67 705	0%	71 511	0%
PORTUGAL	61 271	1%	67 068	1%	66 825	0%	65 937	0%	66 011	0%	63 490	0%
Top 20 Foreign Departures	**9 950 639**	91%	**10 490 606**	91%	**12 323 873**	92%	**13 022 917**	92%	**13 123 069**	93%	**13 833 799**	92%
Top 20 Foreign Arrivals	**11 401 505**		**12 309 815**	677%	**13 669 375**		**14 343 732**		**14 562 880**		**15 383 043**	
All Foreign Departures	**10 894 724**		**11 478 328**		**13 399 830**		**14 104 171**		**14 174 409**		**14 988 933**	
Difference	**1 450 866**		**1 819 209**		**1 345 502**		**1 320 815**		**1 439 811**		**1 549 244**	

Source: DHA EMCS SYSTEM (January 2017)

As far as the total number of movements through the POE is concerned, volumes have increased from 33 million in 2011 to 41,9 million in 2016, as illustrated in Table 3.. The growth in traveller movements underscores the need for more intelligent processing of travellers at the POE.

Table 3: All movements for the period 2011 to 2016

Year	Citizens		Total	Foreigners		Total	Grand Total
	Arrivals	**Departures**		**Arrivals**	**Departures**		
2011	4 870 436	4 914 014	9 784 450	12 370 123	10 894 724	23 264 847	33 049 297
2012	4 814 715	4 863 916	9 678 631	13 313 038	11 478 328	24 791 366	34 469 997
2013	5 006 626	5 113 350	10 119 976	14 757 652	13 399 830	28 157 482	38 277 458
2014	5 074 074	5 160 428	10 234 502	15 427 482	14 104 171	29 531 653	39 766 155
2015	5 075 189	5 136 482	10 211 671	15 610 272	14 174 409	29 784 681	39 996 352
2016	5 133 436	5 235 891	10 369 327	16 550 616	14 988 933	31 539 549	41 908 876

Source: DHA EMCS SYSTEM (January 2017)

Temporary residence visas

Between June 2014 and January 2016, over 121 000 temporary residence visas were issued. Relative's visas for spouses account for 24 per cent while critical skills and business visas account for 4 per cent and 1 per cent respectively. Nationals from Bangladesh, Nigeria, and Pakistan were the most likely to apply for relative's visas. Applications for relative's visas were followed by applications for study visas and visitor's visas, which made up 18 per cent and 14 per cent of all applications for temporary residence visas received. Nationals from Zimbabwe (20 per cent), followed by those from Nigeria (15 per cent), the DRC (9 per cent) and Angola (6 per cent) accounted for half of the study visa applications. For more details, please refer to Table 4.

Table 4: Trends in temporary residence visas (1 June 2014 - 14 Jan 2016)

Type of Temporary Residence	Number	%
Relative Visa (Spouse)	28608	24%
Study Visa Section 13	22074	18%
Visitors Visa Section 11(1)	16632	14%
General Work Visa Section 19(2)	11582	10%
Visitors Visa Section 11(6)	11221	9%
Critical Skills Visa Section 19(1)	7195	6%
Visitors visa section 11(1)(b)(iv)	5226	4%
Relatives visa (minor child) Sectic	4668	4%
Visitor's visa section 11(1)(b)(ii)	3283	3%
Visitors Visa Section 11(2)	2217	2%
Work Visa Section 19(5)	1971	2%
Relatives visa (major child) Sectic	1878	2%
Medical Treatment Section 17	1806	1%
Business Visa Section 15	1530	1%
Retired Person Visa Section 20	1346	1%
Total top 15 types	**121237**	**100%**

Source: VFS System (June 2014 – December 2016)

Permanent residence permits

The trends on the granting of PRPs resemble that of the residence visas. For instance, between June 2014 and December 2016, applications on the basis of being a spouse accounted for 35 per cent, while critical skills and business visas account for 1 per cent and 3 per cent respectively. These figures would seem to indicate that relationships form the basis of the majority of applications (62 per cent) for permanent residence in South Africa. For more details, please refer to Table 5.

Table 5: Trends in permanent residence permits

| Permanent residence category	Number	%
26(b) Spouse	15 965	35%
26(a) Worker	8 315	18%
27(g) Relative	2 853	6%
27(b) Extra ordinary skills	4 257	9%
27(d) Refugee	1 929	4%
27(e) Retired	1 231	3%
27(C) Business	1 453	3%
26(d) Dependent(>21)	999	2%
27(a) Worker	583	1%
27(f) Financially independent	196	1%
26(c) Dependent(<18)	8 319	18%
Grand Total	**46 100**	**100%**

Source: VFS System (16 June 2014 – 01 December 2016)

During the 2014/15 financial year, 1 955 applications for permanent residence based on marriage grounds were referred to the Inspectorate. A total of 1 838 investigations into such applications were finalised. Based on the outcome of the finalised investigations, 74 per cent of these applications (1 362) were recommended for rejection on the basis that the marriages were found to be fraudulent, whereas 26 per cent (476 applications) were recommended for approval. These figures highlight the need to strengthen the Inspectorate capacity and ensure that sufficient checks are conducted prior to the granting of visas and permits based on relationships, as there is a trend of misusing this visa and permit category.

Refugee regime

South Africa continues to receive a high volume of asylum seekers, and over 90 per cent do not qualify for refugee status. When the Refugees Act was enacted in 1998, the numbers of asylum applicants were very low; with about 11 000 people applying for asylum in 1998. Graph 1 shows that this number has swelled over the years due to various "pull" and "push" factors. While the numbers have been declining since 2011, the current average of 62 000 asylum applications per annum makes South Africa the highest recipient of individual asylum seekers in Africa.

Graph 1: Trends in asylum seeker applications
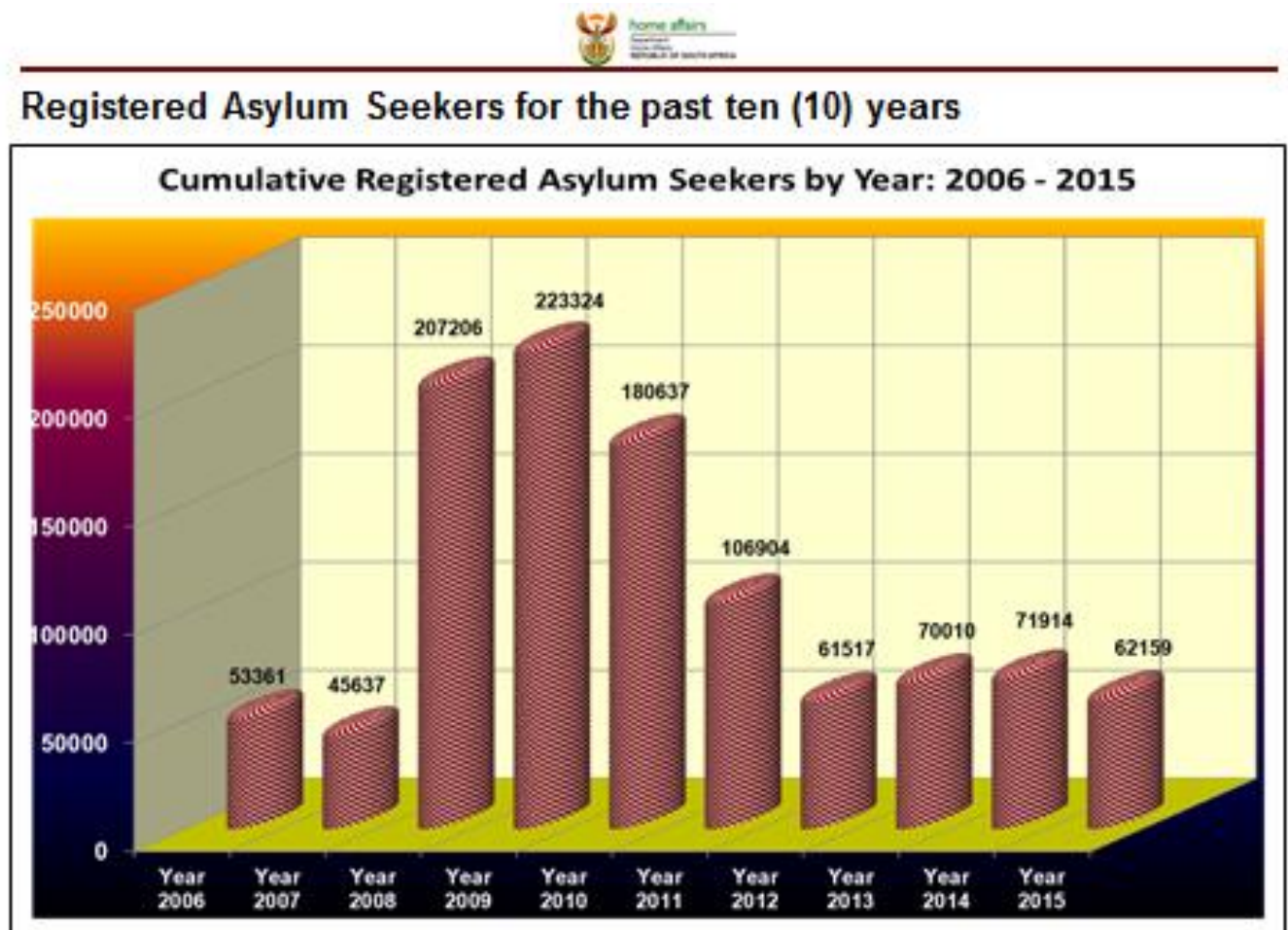
Source: DHA NIIS (January 2016)

There are about 15 African countries that account for 71 per cent of applications that were received in 2015. More than 40 per cent of asylum seekers come from the SADC countries which are generally stable politically. Table 6 provides more details.

Table 6: Top 15 African countries of origin of asylum seekers

Country	Numbers
Zimbabwe	20 405
Ethiopia	10 176
DRC	8 029
Nigeria	7 431
Somalia	2 595
Malawi	2 310
Ghana	2 271
Congo Republic	1 485
Lesotho	1 437
Mozambique	1 220
Uganda	753
Burundi	678

Source: NIIS 31 January 2016

In May 2015 the Department undertook an analysis of the National Immigration Information System (NIIS) which records data on asylum seekers and refugees. The analysis showed that 1 061 812 Section 22 permits (asylum seeker temporary permits) had been issued to asylum seekers. Most of these permits were not active (983 473) with only 78 339 still active. The analysis also showed that 119 600 Section 24 permits (formal recognition of refugee status permits) had been issued to refugees. Most of the refugee permits were active; that is, 96 971 were still active while 22 629 permits had expired.

Irregular migration and deportation

South Africa is confronted with the challenge of a high level of irregular migration. This is compounded by the high cost of enforcement (inspections, detention and deportations). This puts a large strain on the budget of the DHA. The majority of irregular migrants come from neighbouring countries. For instance, of the total number (369 726) of migrants that were deported between January 2012 and December 2016, nationals from Mozambique, Zimbabwe and Lesotho made up 88 per cent of the deportations.

The above statistics confirm the need to find a solution for the documentation of migrants from the SADC with lower-level skills since they account for a large proportion of the yearly deportations. Whilst conclusive data is not available on whether these deportations amount to 'revolving door' movements (i.e. the same person being deported several times in a year), there are strong indications that this is the case. For more details on the trends, please refer to Table 7.

Table 7: Trends in deportation

	Country	2012	%	Country	2013	%	Country	2014	%	Country	2015	%	Country	2016	%
						Deportation statistics for 2012-2016									
1	ZIM	38987	38%	MOZ	46273	41%	MOZ	48603	53%	MOZ	12534	33%	MOZ	12213	52%
2	LSO	26961	26%	ZIM	35251	31%	ZIM	18356	20%	ZIM	11265	30%	ZIM	7434	32%
3	MOZ	23651	23%	LSO	21339	19%	LSO	14138	15%	LSO	7926	21%	LSO	1050	4%
4	MWI	8255	8%	MWI	5740	5%	MWI	6823	7%	MWI	3907	10%	SWZ	955	4%
5	SWZ	2262	2%	SWZ	3089	3%	SWZ	1957	2%	SWZ	896	2%	MWI	844	4%
6	TZA	1307	1%	TZA	657	1%	TZA	464	1%	TZA	418	1%	TZA	264	1%
7	NGA	593	1%	NGA	377	0%	NGA	292	0%	NGA	235	1%	NGA	217	1%
8	COD	218	0%	UGA	149	0%	GHA	97	0%	CHN	60	0%	COD	63	0%
9	UGA	194	0%	GHA	111	0%	COD	86	0%	UGA	58	0%	ZMB	42	0%
10	BDI	165	0%	CHN	93	0%	CHN	85	0%	COD	40	0%	THA	37	0%
	Top 10 countries	102,593	99%		113,079	100%		90,901	99%		37,339	99%		23,119	99%
	Others	936	1%		475	0%		607	1%		342	1%		335	1%
	Total	103,529	100%		113,554	100%		91,508	100%		37,681	100%		23,454	100%

Abbreviations: AGO-Angola; BDI-Burundi; CHN-People's Republic of China; COD- Depmocratic Republic of Congo; GHA-Ghana; MOZ- Mozambique; LSO-Lesotho; MWI-Malawi; NGA-Nigeria; SWZ-Swaziland; THA-Thailand; TZA-Tanzania ; UGA-Uganda; ZMB-Zambia; ZIM- Zimbabwe.

Source: DHA deportation records (January 2017)

Conclusion

The above trends in international migration confirm that South Africa has not been successful in attracting and retaining sought-after international migrants, such as skilled and business persons. Instead the majority of international migrants are either low-skilled, asylum seekers or those who are granted residence on the basis of relationships (relative's visas). These numbers are of great concern to the country given that the intention of the international migration policy is to promote economic growth through the granting of business, critical skills, study and visitors (tourist) visas.

SECTION 3: POLICY VISION AND THRUST

Chapter 6: Vision 2030 for a new international migration policy in South Africa

Introduction

The White Paper contends that it is neither desirable nor possible to stop or slow down international migration. What is argued is that international migration in general is beneficial if it is managed in a way that is efficient, secure and respectful of human rights. All nations today are a product of historical migration flows that were partly influenced by earlier decisions taken by leaders of states. In general, nations flourished where people with different origins, skills, resources and cultures were able to live, work and trade peacefully.

Vision 2030

South Africans embrace international migration for development while guarding sovereignty, peace and security.

This new White Paper on International Migration takes its cue from the NDP which has been adopted by the government as a macro policy that should guide the development of new public policies, legislation and strategies. The NDP provides a broad framework for a new paradigm which requires South Africans to regard international migration as enabling their own development and that of their country and region. In the new paradigm, South Africans would see themselves as responsible citizens of South Africa, Africa and the world and support efficient, secure and humane approaches to managing international migration. The current paradigm exposes South Africa to many kinds of risk in a volatile world and by default strengthens colonial patterns of labour, production and trade. It also serves to perpetuate irregular migration, which in turn leads to unacceptable levels of corruption, human rights abuse and national security risks.

What South Africa urgently needs in a highly connected world is a robust, progressive vision of the benefits of well-managed international migration. This vision must be based on the crucial contribution inward and outward migration makes and will make to growing our economy and to the transformation of Africa. The deep historical roots that must nourish this vision include the following:

> - Our commitment to the values of humanism and internationalism through our struggle for human worth and dignity.
> - Our commitment to overcoming the legacy of colonialism and building a prosperous, peaceful and united Africa.
> - Building a nation of active citizens of South Africa, Africa and the world.

Guiding principles

The new vision will be underpinned by sound principles that have been formulated to focus the policy and to ensure that it is in line with other government policies.

First Principle: Management of international migration in the national interest

South Africa has a sovereign right to manage international migration in its national interests. The national interests of South Africa should be defined in accordance with

- The principles underpinning the Constitution;

- National priorities such as national security and development; and

- Promotion of human rights, peace and stability in order for South Africans to live in a secure, stable and prosperous world.

Second Principle: Positioning of South Africa's international migration policy within the African development agenda

South Africa can play an important part in making regional economic integration happen and in the unification of post-colonial Africa. No country can maintain a stable development trajectory that is independent of the region in which it is located. Our future lies, together with others, in being part of the African continent that has a knowledge-driven industrial base, thriving trade and a free flow of people, goods, information and capital. In this regard it is important to note three significant developments that have implications for future international migration in Africa. These are: the adoption of the AU Agenda 2063 by the Heads of States and Governments in June 2015; establishment of the Continental Free Trade Area (CFTA); and negotiations for a continent-wide visa free regime.

Third Principle: South Africa's international migration policy must contribute to nation building and social cohesion

One of the purposes of a migration policy is to determine which foreigners can become part of the population, either on a temporary or on a permanent basis. In doing so, the migration policy shapes the future composition of the population. The NDP projects that international migration will add between 0,1 per cent and 0,2 per cent a year to the rate of population growth in the period to 2030. At the same time the United Nations estimates that 71.3 per cent of the South African population will live in urban areas by 2030. Therefore the new policy must take into consideration the impact of migration (internal and international) in the population dynamics.

Fourth Principle: South Africa's international migration policy must enable South Africans living abroad to contribute to national development priorities

Like many other developing countries, South Africa loses a significant proportion of its skilled workforce every year. This has both negative and positive consequences that must be managed. South Africans who have migrated to other countries can be a source of development in terms of skills, capital and connections. Countries that are confronted with a similar challenge have established various institutional mechanisms for engaging with their respective expatriates.

Fifth Principle: The efficient and secure management of international migration is the responsibility of individual countries, all countries collectively as well as regional structures

On the domestic level, the policy should make explicit the principles that indicate the rights and responsibilities of the state, civil society, individual citizens and foreign nationals living in South Africa:

- The whole of the South African government and political formations; and

- Civil society partners – organised labour, business, communities and immigrant communities.

On the international level international migration is a complex process involving sending, receiving and transit countries. The policy should therefore provide a framework for promoting shared responsibility for managing international migration. In this regard South Africa must:

- Actively strengthen international efforts to promote and implement good practice and the principles of shared and collective responsibility and cooperation;

> - Proactively engage with relevant states and build bilateral and multi-lateral partnerships; and
> - Ensure that this policy framework articulates with South Africa's foreign policy.

Policy outcomes

The new White Paper seeks to achieve the following outcomes:

1. Ease of movement for sought-after international migrants (tourist, professionals and business persons), goods and conveyances to South Africa;
2. Reduced irregular migration from neighbouring and other countries;
3. Attraction and retention of skilled international migrants and business persons who contribute positively to the economy;
4. Attraction and return of South Africa expatriate to invest in the economy;
5. Provision of a legal route for SADC nationals to work and trade across the region;
6. Effective provision of protection and basic services to asylum seekers and refugees in a humane and secure manner; and
7. Integration of international migrants who are living in the country legally and have been issued with a residence visas.

The above policy outcomes will be achieved through various policy and strategic interventions that will be introduced in the following areas:

- Management of admissions and departures;
- Management of residency and naturalisation;
- Management of international migrants with skills and capital;
- Management of ties with South African expatriates;
- Management of IM within the African context;
- Management of asylum seekers and refugees;
- Management of the integration process for international migrants; and
- Management of enforcement.

SECTION 4: POLICY AND STRATEGIC INTERVENTIONS

Chapter 7: Management of admissions and departures

Policy scope

This chapter seeks to address policy gaps that compromise the secure and efficient facilitation of the movement of persons, goods and conveyances. The management of arrivals and departures goes beyond South African borders; that is, the journey of a traveller does not start or end at a POE. It starts when a person applies for a travel document, then makes a travel reservation and boards a conveyance *en route* to his or her destination. Each of these choices, including the travel route, provides information about the traveller, which enables receiving states to form a picture of the identity and intention of the traveller.

Status quo and problem statement

South Africa has well-developed infrastructure, communication systems and international transport hubs which enable international travel. Thus, South Africa has become a major destination and transport hub for the continent and the world. During 2016, the country recorded 31,5 million movements (citizens and foreign nationals) across the country's borders.[11] Facilitating the movement of such a high number of travellers requires an approach that balances efficient and effective traveller facilitation with security considerations. This is because South Africa has also become an attractive destination for irregular migrants (undocumented migrants, border jumpers, over-stayers, smuggled and trafficked persons) who pose a security threat to the economic stability and sovereignty of the country.

Until recently South Africa had a very fragmented border management approach which compromised the integrity of the borders. The situation is made worse by the long and porous land and maritime borders. The DHA plays a leading role in the management of the border environment because of its mandate to regulate and facilitate the movement of persons through POEs and the issuing of passports and visas to citizens and foreign nationals respectively. Other important role players in the border environment include the South African National Defence Force (SANDF), which has the primary responsibility for securing the borderline; SARS; which regulates the movement of goods and money; the SAPS which combats crime; and the departments of Transport, Health and Agriculture, Forestry and Fisheries which regulate entry and exit according to their respective mandates.

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[11] South Africa has a presence in 124 missions though only 30 missions are currently serviced by DHA officials. There are 71 places designated as ports of entry in South Africa.

Policy objectives

The broad policy objectives are to ensure security and public safety while efficiently and strategically facilitating the movement of legitimate persons, conveyances and goods in support of national goals. The key policy interventions discussed below have to do with the capacity of the state and specific policies aimed at delivering against this mandate in the context of a globalised world, African development and a post-colonial region characterised by highly uneven development.

Policy and strategic interventions

Adoption of a risk-based approach

At the heart of efficient and secure traveller facilitation is traveller identification management where travel documents accepted for border integrity purposes underpin the ideals of safety and security. The importance of secure travel documents to international security cannot be overstated. Travel documents are, however, only as secure as the people and systems behind their production, issuance, control and inspection. Technology and process innovations (biometric verification) are required to achieve effective and efficient security and facilitation measures; and as enablers of future security screening regimes.

In order to facilitate movement whilst ensuring that security considerations are satisfied, the DHA will follow a layered approach in order to manage risk. The key methodology and international best practice for managing immigration risks, is to build a complete history of the visits of all those who visit South Africa. This should be linked to effective screening of visitors to SA before they leave their country of origin or report to a POE for entry into South Africa. The risk-based approach ensures that undesirable persons are prevented from travelling to South Africa at source countries; i.e. a process known as externalising the borders, ideally through screening for visa issuance at a mission abroad, followed by airline liaison officers (ALOs) document inspection at the foreign airport. Document inspection is already carried out by air and shipping liners and advance passenger processing (APP) clearance is implemented.

The DHA should be empowered to access the magnitude of data available in the travel industry for use in risk and threat assessment and should continue to hold conveyors accountable for performing document checks prior to conveying passengers to a POE in accordance with the international regulatory frameworks. The risk-based approach does not imply that deterring irregular movement and facilitating the movement of legitimate travellers in order to promote trade and tourism are mutually exclusive. In fact, once their risk and threat profiles have been confirmed to be low, bona fide tourists, academics and business people can be granted long-term

multiple entry POE visas. Nationality as a determining factor to exercise visa exemptions is no longer sufficient and should be enhanced by individual risk profiles.

Facilitation of low risk travellers could include self-service immigration clearance through automated gates whilst border control personnel focus their attention on those with higher risk profiles. Security and efficiency can be complementary if the approach is right and resources are adequate. The issuing of ePassports to citizens could further facilitate the move to self-service immigration clearance and foreigners could be pre-vetted through a Trusted Traveller Programme (TTP). Infrastructure and facilities at especially the aviation ports of entry should optimally support DHA business processes that aim to facilitate movement. In the land port of entry environment facilities should be redeveloped to reduce the risk and optimally balance facilitation and security requirements. Finally, the risk-based approach should not merely rely on system checks but require an immigration force that is able to interpret data meaningfully as well as management oversight capacity to ensure the uniform application of policies.

Designation and rationalisation of POE

The Home Affairs Minister's mandate in the Immigration Act, 2002, relates to the designation of a place as a POE for persons to enter and depart from the country whilst other state entities have similar mandates relating to their spheres of control. For instance, the Commissioner of SARS is mandated by the Customs and Excise Act, 1964 (Act No 91 of 1964) to appoint or prescribe places to be places of entry for SA for commercial purposes (importing and exporting of goods). The International Health Regulations Act, 1974 (act No 28 of 1974), provides for the designation of any part in SA as an approved port. Therefore, any request for the designation of a POE is dealt with ultimately as a collective decision by the Cabinet. However, there is a need for the alignment of processes for the declaration of POE. There is also a need for a provision that would enable the Minister to determine and specify areas within a POE where a person shall present himself or herself for examination by an immigration officer. This is needed especially at some of the maritime ports where there are various terminals and at some land POE where passenger segmentation is applied, e.g. pedestrians, truck drivers, etc. Provision should also be made for designated areas within or close to the land POE that may cater for the establishment of rail ports of entry where goods and passengers may be inspected in accordance with the business processes applicable in other POE.

While the Immigration Act (2002) mandates the Minister of Home Affairs to designate a POE, it is silent on the criteria or condition that must be met before a POE could be officially established by the Minister. One of the conditions could be that at maritime and rail POE the legislation should compel the landlord of the port to provide suitable facilities and infrastructure for the Border Management Agency (BMA) officials to exercise their mandate, based on set standards, similar to what is in place in the aviation environment.

Various Ministers of Home Affairs have indicated that the current number of POE should be reviewed in order to improve the management of the remaining ports as well as the associated risk. The high number of POE (71) is mainly a legacy of the police under apartheid setting up posts to stop infiltration of cadres by the liberation movement. To date, such a rationalisation process has only taken place in the airports environment when during the early 1990s the number of international airports was reduced from 38 to 10. More recently, a study was conducted to establish a scientific method to support decisions regarding the opening or closing of a POE, using multi-criteria decision analysis (MCDA) methodology.

In order to be able to rationalise the number of POE in a justifiable manner and deal with new requests for the creation of new POE and community border crossings, criteria should be defined as to when a place may be designated as a POE or an existing POE be closed or reduced or increased in size or prominence (e.g. from commercial to non-commercial or vice versa or operating hours be reduced or extended). Criteria could include economic, trade, the needs of the community, traffic volumes and levels of crime and or corruption that are prevalent for instance, due to quiet spells at night when traffic volumes are low.

There is also a need for a provision that would enable the Minister to determine and specify areas within a POE where a person shall present himself or herself for examination by an immigration officer. For example, some of the maritime ports have various terminals for docking of vessels and people going ashore, at some land POE passenger segmentation is applied and at international airports the mandate of the department relating to transit passengers needs to be strengthened, in line with international practice.

The influence of technology on modern travel also needs to be taken into consideration as an airline may receive an advice to offload a passenger from a flight at its origin, which resolves issues before they arise at the port. Technology further has a profound impact on the configuration of passenger terminals. Self-service options are replacing airline check in counters which means that domestic and international travellers end up sharing the same facilities, at least on landside for now.

Facilities at land POE should strengthen business processes to enable the BMA to perform basic document checks of travellers at the perimeter of the POE, similar to the manner in which airlines do before a person is allowed into the secure area of an airport. Systems and infrastructure should support efficient facilitation while ensuring that there is adequate pre-screening of travellers. There must be provision for holding facilities when there is a need for additional checks and for quarantine.

Regulation of maritime POE off-port limits (OPL) and stowaways practices

Ships unable or unwilling to enter harbours in SA moor the vessels outside the harbour precinct within 12 nautical miles and boarding either a small boat or helicopter (called a launch) to perform crew changes or load supplies. OPL operations are not regulated by legislation and are being exploited by conveyors to save harbour costs at the expense of security and what is referred to as the untapped "economy of the sea". The mandate of the DHA in territorial waters needs to be established.

A clear definition of stowaways is needed in line with the international regulatory framework as well as appropriate punitive measures for those who stow away or attempt to do so at our harbours on ships destined for foreign shores. However, this phenomenon is not only limited to the maritime environment, it is prevalent in the land border environment as well. Current practices that incentivise repeat offenders include that the shipping agent pays the fare for a flight to the country of origin as well as a cash fee and new clothes for the flight home. The impact of stowaways is also a deterrent to foreign vessels reluctant to enter our ports and could add to the high number of OPL requests.

Establishment of one-stop border posts

The main objective of **one-stop border posts** (OSBP) is to enhance trade facilitation, without compromising national security or revenue collection. The implementation of the one-stop concept requires that the border agencies of each state involved are able to apply their national laws in the territory of the adjoining state. As national laws cannot automatically be applied in other territories, specific provisions should be developed to give South African agencies extra-territorial jurisdiction in the adjoining state and to provide for the agencies of another state to exercise their laws on our territory. In order to prevent the abuse of power, great care should be exercised in this regard, taking models elsewhere in the world into consideration.

The concept of an OSBP is being piloted at the Lebombo/Ressano Garcia POE between South Africa and Mozambique. Operationalisation of an OSBP entails the joint inspection of South Africa and foreign border control authorities of travellers, goods and conveyances in order to eliminate duplication of effort by the traveller and/or person in charge of the conveyance and to reduce congestion in the POE. The concept implies that either or both of the countries' authorities operate in the territory of the other and various models in this regard exist. The principle of extra-territorial jurisdiction may also be applied in another country not bordering South Africa that receives or dispatches uninterrupted flights to and from South Africa.

Regulation of community border crossings

According to section 9(1) of the Immigration Act of 2002, "no person shall enter or depart from the Republic at a place other than a port of entry". However, there are several informal border crossings along the South African border that are not designated by the Minister and are not managed by immigration officers as required by the Act. Most of these informal border crossings are a colonial legacy that left divided communities along the borderline. They are often associated with markets and other forms of local trade; or with communities on either side of the border making use of the nearest facilities, such as schools and clinics. The challenge in SA is that informal border crossings are not managed and as a result they are being exploited by syndicates who use them to traffic and smuggle persons and goods. Other countries have adopted controls that allow for the movement of community members who reside along the borderline while managing the risks involved.

The concept of regulated community border crossings has been piloted at the border with Botswana during 2015 with the opening of the Tshidilamolomo border crossing, where cross-border movements of members of the local community are facilitated through pre-registration and biometric verification upon each movement.

Institutional capacity/arrangements

Establishment of a Border Management Authority

The rationale for BMA establishment is to create an operational balance between security, trade facilitation, tourism promotion and socio-economic development both within South Africa and the SADC region. It will provide for an integrated border control with officials having a common identity under a single command structure. The agency will be equipped with the necessary skills and knowledge in law enforcement, and the core functions of the relevant departments, to ensure the efficient and humane delivery of secure services in an integrated manner, finally dispensing with the silo mentality currently prevailing at the POE. The establishment of a risk targeting centre is an important aspect of the BMA, where all departmental systems would be jointly used to assess risk levels of conveyances, persons and goods.

Net benefit of the policy interventions

The importance of adequately applying a risk-based methodology is to ensure that persons travelling to the country are being risk profiled well in advance, testing the credibility of travel documentation, personal identity and running background checks on the possible listings against national and international warning lists, which will enhance security and reduce irregular migration.

Chapter 8: Management of residency and naturalisation

Policy scope

This chapter seeks to address policy gaps that arise due to the current practice of linking the granting of residence and citizenship. In South Africa controls are weakened because there is currently a linkage between certain temporary residence visas (TRV) and permanent residence permits (PRP) which, provided certain conditions are met, effectively creates automatic qualification for PRPs and subsequently for citizenship. Thus one of the main criteria used to qualify for permanent residence is the period of stay in the country, irrespective of the type of temporary residence visa initially issued, or purpose of entry.

Status quo and problem statement

In many countries the granting of residency or citizenship to foreigners is taken very seriously as either status is valued highly and is understood in relation to national values, rights and responsibilities, development goals and nation building. Factors taken into account when granting the status typically include the ability of the immigrant to function appropriately in their host societies and a sound assessment of actual and potential risks and benefits.

In South Africa the current approach to the granting of residency or naturalisation is mechanical and compliance-based rather than to achieve strategic goals or to build the nation. It also undermines the value of the status of being a resident or a citizen. Serious risks are not managed effectively, thus creating opportunities for the widespread abuse of the system and the granting of residence status to persons who put the nation at risk.

A general principle that was observed in countries that manage international migration strategically is that the relationship between temporary residence, permanent residence and naturalisation depends on the type of residence visa/permit with which the recipient started. The type of residence visa or permit determines the trajectory to naturalisation, including the time it takes.

In South Africa there is a misconception that immigrants have a constitutional right to progress towards permanent residency or citizenship status (naturalisation). A sovereign state has the prerogative to determine who enters its territory, control migration patterns relating to the country and enact laws to regulate such migration. States also have the right to protect themselves from risks, such as the entry and stay of fugitives from justice who are linked to organised crime.

Refugees are also allowed to apply for permanent residence even though their status is inherently temporary. This is because refugees are expected to return to their country of origin once conditions allow them to return safely. This should not be regarded as automatic but linked to finding durable solutions in the event of conditions changing.

Conversely, the current approach does not allow the granting of residency or naturalisation to be used strategically. An example is the offer of a fast-track to long-term residence when recruiting international migrants with critical skills who could make valuable contributions to South Africa's economic, social or cultural development. Provided that they meet appropriate criteria, such immigrants could be looked at as a valuable resource that could enrich our society and build our nation.

Policy objective

The main objective of policy interventions introduced in this area is to enable South Africa to grant residence and citizenship status to foreign nationals based on strategic, security considerations and the national priorities of South Africa.

Policy and strategic interventions

Delinking of residency and citizenship

There should be no automatic progression from residency to citizenship in law or in practice. That is, the process of granting residency (short-term and long-term) and citizenship will be delinked. A points-based system will be used to determine whether the applicant will qualify for a short-term or a long-term residence visa. However, the number of years spent in the country will not qualify a person to apply for naturalisation. The process of granting residence and citizenship status should allow strategic and security considerations and the national priorities of South Africa to be taken into account.

Replacement of permanent residence permit with long-term residence visa

The PRP will be replaced with a residence visa in order to dispel a misconception that immigrants have a constitutional right to progress towards citizenship status on the basis of a number of years spent in the country. The difference between permanent and long-term residency is that the later will be reviewable and not linked to citizenship.

A new visa regime should be established, providing for immigrants to enter and sojourn temporarily in the Republic for defined purposes, and the new visa regime will also provide for immigrants to be admitted and sojourn in the Republic for longer periods in respect of prescribed categories, with validity periods and renewals or review in accordance with the purpose of

residence. Long-term residence visas/permits may be extended to the categories that include holders of relative's, business, and critical skills visas, including students graduating in critical skills occupations. Refugees may also apply for a long-term residence visa after ten continuous years of living in SA as a refugee. However, a refugee must apply to the Standing Committee for Refugee Affairs (SCRA) for certification to be declared a refugee indefinitely.

Naturalisation process

The granting of citizenship to foreign nationals should be considered as being exceptional and requiring an executive decision of the Minister; this is contrary to the current administrative decision making process. A citizenship advisory panel will be established to consider citizenship applications and make recommendations to the Minister. The selection criteria will be developed under the citizenship policy. The number of years spent in the country will not carry much weight when compared with the value-add and security factors associated with the applicant.

A list of those who have become citizens through naturalisation would be approved by the Minister and published periodically.

Induction and naturalisation ceremony

Steps should be taken to ensure due weight is given to the value of the status of residence and of citizenship, including the level of approval necessary. The process for awarding citizenship should ensure that rights and responsibilities are explained, understood; and ensure that the conditions attached to them are accepted by those to whom the status is conferred. It is proposed that induction or orientation programmes should be one compulsory step in the naturalisation process or the awarding of citizenship. It should be followed by a certification ceremony or the ceremony for the awarding of citizenship. The certification ceremony or the ceremony for the awarding of citizenship should be designed to impress upon on the new citizens on their rights, obligations and conditions attached to citizenship, and it should deal with issues of their integration into our society. The taking of the prescribed oath of allegiance and the induction or orientation programmes should be designed to provide new citizens with information about the history of the country in terms of its culture and norms as well as key socio-political and economic aspects.

Institutional capacity/arrangements

The Citizenship Advisory Panel (CAO) of experts will be established to consider applications and advised the Minister accordingly.

Net benefit of the policy interventions:

The new process of granting residence and citizenship status will allow strategic and security considerations and the national priorities of South Africa to be taken into account.

Chapter 9: Management of international migrants with skills and capital

Policy scope

This chapter addresses policy and capacity weaknesses that constrain South Africa's ability to compete for international skills and investment in the permitting environment. The policy interventions will be introduced to attract international migrants with skills and capital.

Status quo and problem statement

The current international migration policy is aimed at granting visas to those with skills that cannot be obtained in the South African labour market (e.g. critical skills); or those with substantial amounts of capital. However, South Africa has not been able to adequately attract and retain international migrants with the requisite skills and capital to invest in the country. This could be attributed to the following factors:

- The international migration policy is not linked to the skills development and investment priorities of the country;
- The current permitting regime is not proactive and flexible so as to enable South Africa to effectively compete for requisite skills and investment;
- There is a lack of an inter-sectoral and inter-governmental proactive approach for attracting and retaining international migrants with skills and capital; and
- Until recently, South Africa didn't have a special permitting regime for international students who are studying towards occupations that are needed by the economy.

The law requires the DHA to publish a list of critical skills from time to time after consultation with the Departments of Labour, Trade and Industry and Higher Education and Training. General work visas are only granted if there is no South African citizen available to fill the vacancy. Other types of work visas are for categories such as intra-company transfers and corporate visas typically used in mining and farming to recruit migrants from SADC countries. In 2016 the department issued a directive which allows students who are studying towards certain occupations (critical skills list) to apply for a PRP.

The current required capital for a foreigner to apply for a business visa in South Africa is R5 million. However, if the business is considered to be of national interest, the applicant can apply to the Minister of Home Affairs for the waiving of the required capital. However, this practice has been criticized by the dti on the grounds that such businesses are not sustainable.

There is criticism of the current permitting system outlined above in terms of its enabling South Africa to compete internationally for skills and investment. A broader criticism is that

international experience shows that value is gained by granting visas to migrants with high level artisanal or professional qualifications and experience regardless of field. In a dynamic global economy workers or entrepreneurs with generic skills are valuable because they can respond to changing needs. A similar criticism is that the requirements for starting a business should be more flexible as highly skilled professionals and artisans can start small, medium and micro-sized enterprises (SMMEs) with relatively little capital and create jobs.

Policy objective

The main objective of this policy intervention is to introduce a simplified and predictable immigration regime that contributes to the economic growth of the country. This should enable the country to attract and retain international migrants with critical skills and capital to invest in the country.

Policy and strategic interventions

Points-based system

It is proposed that the attraction of migrants with skills, investment and business interests should be linked to a points-based system. A points-based system, sometimes combined with a critical skills list or quotas, is used to respond flexibly to demand in other countries to facilitate the proactive recruitment and retention of migrants with skills. Points can be adjusted from time to time in consideration of factors such as qualifications, work experience, age, amount of money to invest in the country, type of business to invest in, ability and willingness to transfer skills. The advantage of a points-based system is that it is transparent and can be used strategically and flexibly in response to changing situations and needs.

Long- term residence visa (family-oriented)

Migrants with the needed skills, investment and business interests must be allowed access to a long-term visa that will allow easy access to citizenship. This must be a special visa that could be fast-tracked and must enable the applicant and the immediate family to apply as one unit. The family members (first step of kinship) must be able to work and study using the long-term residence visa without the need to apply for other appropriate visas as currently required.

Residence visa for international students

The NDP states that, "all graduates from foreign countries should be granted 7-year work permits". In line with the NDP, it is proposed that South Africa use the visa and permitting regime strategically to retain international students in South Africa post-graduation. In 2013, there were 20 962 international students at postgraduate level, and 35 813 at undergraduate level, according to data from the Department of Higher Education and Training (DHET).

Retention of international students after graduation is an important opportunity that many countries are exploiting. Firstly, it largely overcomes one of the critical challenges associated with leveraging skilled foreign nationals, the non-recognition of qualifications. Secondly, that section of the international talent market (international students) is already in your country. It does not make sense to plan on attracting skilled foreigners while losing those graduating from your universities. Finally, countries expend limited resources on educating international students at their institutions of higher learning. If the international student leaves upon graduating, the return on that investment is lost to the host country.

A number of countries grant residence visas and permits to international students (including to South African students) after graduation as an incentive for attracting students to stay in the country. South Africa has started to grant PRPs to qualifying international students. In keeping with this practice the White Paper recommends that a residence visas be extended to qualifying international students upon graduation from university. This option is based on its attractiveness to international students interested in staying, and the assumption that South Africa has an interest in ensuring all skilled workers and potential entrepreneurs produced by its universities.

In implementing this strategy effectively, a number of factors must be considered. Students may not necessarily want to live in South Africa permanently, but may want to gain work experience before returning to their home countries. It is also important to note that while many may look for salaried work, some are aspiring entrepreneurs who will look to start businesses in South Africa because of its attractive business environment and market.

Training and transfer of skills

If the purpose of recruiting migrants with critical skills from abroad is to close skills gaps in the domestic labour market, a mechanism is required for the transfer of skills. One of the requirements should be, where appropriate, to ensure the transfer of skills to citizens. Examples of strategies employed in other countries include such measures as requiring the employment of understudies and the funding of the training of citizens directly or via a levy. Therefore, the recruitment of skilled migrants must be linked to a mechanism that ensures the direct or indirect transfer of skills to citizens. Where skills are not easily transferable, a training scheme must be

established where employers of foreign nationals are required to contribute funds that will be used to train South Africans.

Institutional capacity/arrangements

Establishing an inter-departmental capacity

Within the limits of the current policy framework the DHA has amended legislation, regulations and processes. An example is setting up a Corporate Accounts unit to fast track the issuing of visas for high priority national projects and sectors. A partnership with a visa facilitation service has improved efficiency and security and a one-stop business centre is being piloted in various cities. The immediate family of a visa-holder is now granted work and study visas without undue delays. Graduating foreign students in certain fields can apply for work visas. All of the above measures are assisting on a small scale, but there is an urgent need to make larger changes in approach, capacity and regulations in order to address the serious skills shortages and attract more investment.

South Africa can learn from countries as they have established effective systems and institutions for making strategic decisions based on national interests and for competing in the global skills market. Typically, an inter-departmental commission in other countries facilitates implementation of proactive recruitment approaches and publishes a list of skills and businesses that are required based on national and sectoral priorities, strategies and plans. There are elements of such systems in South Africa but they are limited and fragmented. For instance, a skills planning institutional mechanism is being established by the DHET. One component is a research project called the Labour Market Intelligence Project (LMIP). The Sector Education and Training Bodies are also mandated to plan for skills provision in their respective sectors. The Human Resource Development Council of South Africa (HRDCSA) has undertaken studies on the recruitment and retention of international migrants with critical skills. What is lacking in South Africa is an institutional arrangement and responsive policy framework that ensure that market information is analysed and used strategically to attract and retain international migrants with skills and capital.

Net benefit of the policy interventions

Newly established business ventures will create job opportunities for citizens. Skills held by foreign nationals will be transferred to them through various skills transfer mechanisms. Immediate access to long-term residence visa and granting of family inclusive visas will provide security to qualifying international migrants.

Chapter 10: Management of ties with South African expatriates

Policy scope

The focus of this policy is on South African citizens who either wish to emigrate or have already emigrated but wish to invest in South Africa or to return into the country. This is a new policy area on the management international in South Africa and it seeks to address policy and capacity weaknesses in the system. Issues of concern include institutional mechanisms and policy framework for managing emigration in the national interest.

Status quo and problem statement

International migration policy is often equated with immigration policy, but every immigrant is also an emigrant with ties to a sending state. Many sending states are active in managing these ties, with some deriving a significant portion of their revenue from remittances.

Like many other developing countries, South Africa loses a significant proportion of its skilled workforce every year. However, little attention has been paid to maintaining links to South Africans who have settled in other countries. A number of root causes have been identified to explain this pattern of migration. The current international migration policy framework does not cover citizens who wish or have migrated to other countries. That is, the current international migration policy does not enable South Africa to proactively manage and harness emigration for development purposes. Apart from economic incentives, many emigrants maintain links with South Africa and there are various ways in which they can contribute to national development.

Using receiving country censuses and other data, one study estimated that more than 520 000 South Africans had emigrated between 1989 and 2003, with the numbers growing by about 9 per cent a year. About 120 000 of those emigrants had professional qualifications. This represents about 7 per cent of the total stock of professionals employed in South Africa and is more than eight times the number of professionals immigrating to South Africa in the same period.

Another factor to note is that many persons classified as white under apartheid emigrated, mostly in the 1990s, due to push factors that include fear of change and opportunities open to professionals. In recent years, however, white emigrants appear to be outnumbered by growing numbers of black professionals who have joined the global skills market. The positive side of emigration and citizens working abroad for extended periods is that such relationships can be critical in growing our knowledge base and creating business opportunities in a highly competitive knowledge-based, global economy.

Policy objective

The main objective of this policy is to institutionalise the management of emigration by developing coherent policies, strategies and capacity within the state. The new approach must take the following into consideration:

- Policy interventions for South African citizens who intend to emigrate for development purposes (study, work and business);
- Policy interventions for South African citizens who live abroad but intend to invest (skills and capital) in the economy; and
- Policy interventions for South African citizens who live abroad and intend to return to the country.

Policy and strategic interventions

When managed properly, emigration can positively contribute to the country's national priorities of economic growth and economic inclusion. The following interventions are recommended:

Emigration policy

South Africa urgently needs to establish a consensus on how to harness the diaspora to contribute to achieving development goals. The elements of the policy will include the following elements:

1. **Mandatory registration of South African citizens who intend to emigrate for a period that is longer than three months:** This will exclude those who are travelling for tourism purposes. The main purpose for this intervention is to maintain strong ties with such citizens in line with the development agenda of the country. This intervention is an extension of the ROSA (Registration of South Africa) system which is currently administered by the Department of International Relations and Cooperation (DIRCO). The limitation of the current system is that it is voluntary and not focused on those who emigrate for development purposes. The South African Passports and Travel Documents Act, 1994 (Act No. 4 of 1994), should be amended to make the registration of expatriates mandatory.

2. **Promotion of emigration to meet varied national goals such as labour and investment exportation and student exchange programmes:** This should include support mechanisms for young people in the country wishing to travel for career development.

3. **Investment by South African expatriates:** This will include remittances, investment, tourism and the sharing of skills and knowledge.

4. **Embracing of diaspora communities:** This will include continuation of dual citizenship, effective provision of consular services and country ambassadorial network programmes.

5. **Re-integration programmes for returning expatriates:** This could include induction and other programmes designed to assist returnees in re-adjusting and re-entering the South African labour market and economy.

Institutional capacity/arrangements

In order for the objectives of this policy to be realised, an institutional mechanism at a national level with international footprints is required. Furthermore, this policy area relies heavily on the involvement of stakeholders, the most important being the DIRCO. Therefore, it is recommended that an inter-agency working structure must be established under the leadership of DIRCO. Key stakeholders that must participate in this structure include: the DHA, dti, DHET, Economic Development Department (EDD), Department of Labour (DoL) and Brand SA. The responsibility of the inter-agency structure could include the following:

- Promotion of emigration destinations (information on countries that offer better economic opportunities);
- Collection, analysis and record keeping of South African emigration statistics;
- Proactive management of the ROSA system; and
- Establishment of diaspora desks in missions abroad to facilitate networks with the expatriates.

Net benefit of the proposal

The strategic interventions identified above have multiple net benefits. Firstly, the South African economy will receive a boost when expatriates invest their resources and skills into the economy. Secondly, the knowledge, skills and expertise obtained from working abroad will lead to better employment opportunities for expatriates. Lastly, South African citizens will benefit from the increase in economic growth and development resulting from effective emigration management. Moreover, the mandatory registration of South African expatriates will enable the country to better understand the spread and profile of its expatriates globally. This will also enable government to provide assistance to them in cases of security threats.

Chapter 11: Management of international migration in the African context

Policy scope

This chapter deals with policy and capacity gaps that constraint mobility of African citizens and SADC economic migration.

Status quo and problem statement

The problem statement in this area is twofold.

Firstly, South Africa's international migration policy is not sufficiently aligned with its African-centred foreign policy, in which it undertakes to "continue to support regional and continental processes to respond to and resolve crises, strengthen regional integration, significantly increase intra-African trade, and champion sustainable development and opportunities in Africa".[12] Furthermore, existing international migration policy does not adequately respond to continental developments regarding the liberalisation of movement of Africans in Africa.

Secondly, our international migration policy has not sufficiently responded to inward mixed migration flows primarily from our immediate and regional neighbours. This is particularly with regard to semi-skilled and unskilled economic migrants, who have been largely unable to obtain visas and permits through the mainstream immigration regime (except for corporate permits in mining and agriculture). Cross-border traders and small business owners are also largely excluded. This has had several negative consequences:

- Asylum seeker management system abused and overwhelmed by economic migrants;
- Abuse of migrants – and by extension South African workers – by some unscrupulous South African employers;
- Increased trade in false documentation and petty corruption by police and immigration enforcement officials;
- Social cohesion suffers, as citizens assume that all migrants from the rest of Africa are irregular and undesirable; and
- "Revolving door" and costly deportations to neighbouring countries increased significantly.

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[12] 2011 White Paper on South Africa's Foreign Policy.

Policy objectives

This chapter aims to outline how South Africa can manage international migration in a way which aligns to and advances its African-centred foreign policy, and contribute to continental efforts to ease the movement of Africans in Africa. It also proposes a pragmatic management approach which balances acceptance of the reality that some economic migration to South Africa is inevitable, with the need to ensure unemployed, poor and working class South Africans are the primary beneficiaries of employment and other economic opportunities in the country.

Policy interventions

Elimination of visa requirements for African citizens

The AU Agenda 2063 has highlighted the importance of free movement by Africans in Africa for meaningful integration, and increased trade. One of the seven overarching aspirations outlined in Agenda 2063 is "an integrated continent, politically united, based on the ideals of Pan-Africanism and the vision of Africa's Renaissance". The clauses that unpack this aspiration (23 and 24) mention free movement twice, locating it at the heart of political and economic regional integration. The AU Agenda 2063 goes on to call for action to introduce an African passport, issued by member states, capitalising on the global migration towards e-passports, and with the abolishment of visa requirements for all African citizens in all African countries by 2018. South Africa fully supports the vision of an Africa where its citizens can move more freely across national borders, where intra-Africa trade is encouraged and there is greater integration and development of the African continent. The current status is untenable. For instance, on average Africans need visas to travel to 55 per cent of other African countries. They can get visas on arrival in only 25 per cent of other countries. Finally, they do not need a visa to travel to just 20 per cent of other countries on the continent.[13]

Elimination of visa requirements for African citizens in a secure manner

The movement of persons across national borders brings with it benefits and also creates risks that have to be mitigated by each country and multilaterally. South Africa has adopted a risk-based approach which advocates for an incremental removal of migration formalities for frequent and trusted travellers including diplomats, officials, academics, business persons, students, etc. The South African envisaged policy position on the elimination of visa requirements for African citizens can be summarised as follows:

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[13] According to the first Africa Visa Openness Index launched in early 2016.

1) African citizens should enter South Africa visa-free as a starting point on condition that returns agreements are agreed upon. Visas should be required only where objective risks are identified such as:
   a. Overstaying and deportation of foreign nationals (quantify the number per year which triggers consideration of visa implementation);
   b. Security risks (organised crime; terrorism; political instability);
   c. Civil registration risks (documents frequently obtained fraudulently; countries unable/unwilling to identify their nationals when requested); and
   d. Countries with a high number of nationals who abuse the asylum system.
2) Key elements of a visa-free regime would be:
   a. Visa-free entry of nationals for short visits up to 90 days;
   b. Recognition of visas for third parties (univisa concept) on condition that security measures are put in place by participating SADC member states. This should include the returns agreements for third country nationals;
   c. Agreed standards on immigration and border management;
   d. Agreed standards on civil registration;
   e. Returns agreement; and
   f. Sophisticated, real-time risk management, information and intelligence sharing.
3) Where visas are required, South Africa should make it as easy as possible for bona fide travellers to enter South Africa.
   a. Standardise and expand use of long-term multiple-entry visas for frequent travellers, business people, and academics;
   b. Identify additional proxies for easy approval, e.g. degree from South African university, university degree generally, family members in South Africa, etc.;
   c. Develop list of countries whose visa adjudication system and visas are recognised and trusted by South Africa; and
   d. Use of technology to establish trusted traveller schemes.
4) Where the SADC is lagging, South Africa should work with countries that have similar priorities to implement measures to liberalise movement in a structured programme.
5) At a regional level, South Africa should continue to advocate for a free movement of African citizens. It would be ideal for the region to work together to agree on common approaches for managing free movement of persons, goods and capital.

Management of economic migration from the SADC

This is perhaps the most challenging policy area to address and to build consensus around a clear policy and strategy despite the fact that South Africa is, to a great extent, a product of historical flows of migrants from southern Africa. These migration patterns flow into sectors which include mining, agriculture, hospitality, construction and domestic work. This has resulted in a rich and diverse society and culture and has contributed to South Africa having the most advanced

economy in Africa. The South African economy remains by far the biggest in the region with a resultant economic pull factor. The South African economy still remains much bigger than the other countries in GDP terms. Wages received for the same work are on average five times larger than in other SADC countries.[14]

Strategic factors that have to be taken into account in formulating policy options in this area:

- There will be strong migration flows between certain Southern African countries and South Africa as long as there are large differences in levels of development and other major push and pull factors. Nowhere in the world has a country with a stronger economy than its neighbours managed to exclude migrants effectively from neighbouring countries seeking work, especially within sectors that require lower levels of skills and are largely informal.
- South Africa has the most extreme inequality of any middle income country and the highest unemployment rate. This is in part the result of the skewed structure of a post-colonial economy and low levels of education and skills. Economic migrants from the SADC largely have low to middle levels of skills and they often compete directly with unemployed South Africans. They also settle in urban areas where South African migrants from rural or peri-urban areas are competing for scarce resources, services and opportunities.
- No country that wants to grow its economy has done so in isolation from its region. SADC member states, including South Africa, are committed to overcoming the legacy of colonialism by achieving a vision of an industrialised SADC with developed infrastructure, internal markets and free movements of people, goods and capital.

Current strategic initiatives

South Africa has had to respond to realities on the ground, including periodic outbreaks of violence against foreign nationals in 1994 and subsequently. The three strategic initiatives outlined below are beginning to improve the situation regarding economic migration and this should be taken into account when considering the policy options set out below.

- Special dispensations for economic migrants from certain SADC countries. The reality is that a significant population of Zimbabwean and Lesotho citizens are living as irregular migrants or asylum seekers in South Africa. Some have acquired fraudulent documents and may live under false identities. Many of them work, study or run businesses in South Africa. The special dispensations[15] provide an opportunity for Zimbabwean and Lesotho nationals to regularise their stay in South Africa. Amnesty may be given to those who

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declare fraudulently acquired documents and who do not have criminal records. Such dispensations take different forms in different countries but in general they have both security and developmental objectives. National security and public safety depend on knowing the identity and civil status of every person within a country. In addition, the presence of communities and individuals who are not known to the state but for whom the state has to provide, puts pressure on resources and increases the risk of social conflicts. Vulnerable migrants pay bribes and are victims of extortion and human trafficking. This increases levels of corruption and organised crime. Regularising relationships between states, however, improves stability, reduces crime and improves conditions for economic growth for both countries.

▪ The policy objectives of the Zimbabwe special dispensation have been realised to a significant degree (over 300 000 special visas were issued) and the Lesotho special dispensation is being rolled out. However, although the broad policy objectives are the same, the relationship between South Africa and each of its neighbours has complex features that will impact on each process and its outcomes.

Specific policy interventions

South Africa should expand its visa regime to cater for some carefully managed economic migration from immediate and regional neighbours. In doing so, there must be due regard for the shorter and longer term socio-economic impact in South Africa, and in migrants' home countries. This option will allow some managed legal migration by economic migrants from Southern African Customs Union (SACU)[16] countries, as well as Zimbabwe, Mozambique and Malawi, as major source countries.

The recommended approach includes three main elements: regularisation of existing regional migrants currently residing in South Africa; introduction of special visas for various categories of migrants from the region; and improved enforcement of immigration and labour laws and regulations.

▪ **Regularisation programme.** The new SADC visas should be tied to a programme to regularise existing undocumented SADC migrants *currently residing in South Africa*, along the same lines as the ZSP, LSP and other amnesties South Africa has conducted over the years. Applicants must fulfil certain requirements: have a valid passport from their home country; prove they have no criminal record; and prove they have a valid basis for residing in South Africa, such as employment, ongoing study, or business ownership.

▪ **Introduction of new visa options:** The visa regime must be expanded to cater for some economic migration from our neighbours, so prospective migrants will not migrate to South Africa by irregular means. What is important here is that we accept the need to do

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[16] Botswana, Lesotho, Namibia and Swaziland.

this, using a pragmatic management approach, involving experimentation and incremental implementation, monitoring and evaluation, and continuous improvement. Coordination between Home Affairs, Labour, economic cluster ministries and Statistics South Africa is vital. At least three types of visas are recommended for piloting.

- o **SADC special work visa:** This is a visa which will allow the holder to work in South Africa for a prescribed period of time. Holders of this visa will not qualify to progress to PRP on the basis of years spent in the country. This would be a quota-based regime which will be implemented through bilateral agreements which will specify responsibilities for the signatory and contracting states. The number of visas to be offered is partly a political decision, but one which should be informed by a fact-based analysis of labour market dynamics (employment levels, share of jobs held by foreign nationals, etc.). Feasibility of a sector-based approach (visa holder would be authorised to work only in a specific sector) should be investigated.

- o **SADC traders' visa:** A long-term, multiple-entry visa for cross border traders who enter and exit the Republic frequently is proposed. These traders are an important component of intra-African trade, which benefits the regional economy. A trusted traveller/eVisa system can also be considered to cater for cross-border traders.

- o **SADC small medium enterprise (SME) visa.** This visa is for self-employed people and small business owners. As long as these immigrants pay taxes and follow South African business regulations, they should be welcomed. SARS/Company registration could form part of the visa application process. A quota can be considered for competitiveness concerns.

- **Stronger enforcement of immigration and labour laws:** Stronger enforcement of labour and migration laws is critical to ensure that citizens are not disadvantaged by employers paying economic migrants lower wages. Irregular migration is likely to decrease, if employers' compliance with immigration and labour laws increases. In other words, the focus should be on unscrupulous employers rather than individual migrants, because it is their hiring practices which act as a pull factor for irregular migration. Close coordination between Home Affairs and the Department of Labour is critical, especially given the limited number of inspectors retained by both departments. Given resource constraints, innovative approaches to enforcement should be developed, such as a trusted employer system, and targeting enforcement efforts on the highest risk/repeat offenders.

  - Given resource constraints, innovative approaches to enforcement should be developed, such as a trusted employer system, and targeting enforcement efforts on the highest risk/worst offenders.

Institutional capacity/arrangements

The following additional capacity/arrangements are required:

- The DHA needs to strengthen the international relations function inside the department, as the ability to build regional partnerships – bilaterally and multilaterally – in a strategic, sustained way, is critical to the effective management of international migration. While overall management of international relations lies with DIRCO, the DHA is the lead department on migration issues, so it must develop stronger internal capacity to manage these.
- The DHA needs to strengthen coordination with labour, economic cluster departments and Statistics SA to manage the proposed special visas. Input from these stakeholders is needed to ensure quotas are appropriately issued in correspondence with market dynamics.

Net benefit of the policy interventions

The overarching benefit that the proposal hopes to realise is the reduction of irregular migration. If this objective is achieved, the following linked benefits should be realised:

- Relieve pressure on asylum seeker management system;
- Reduce downward pressure on wages and conditions in the lower end of the economy, flowing from abuse of migrants by unscrupulous employers;
- Improved social cohesion as citizen perceptions of migrants improves; and
- Reduced "revolving door", costly deportations to neighbouring countries.

Chapter 12: Management of asylum seekers and refugees

Policy scope

This chapter addresses the policy and capacity challenges that expose asylum seekers, refugees and the country generally to security risks. It also proposes solutions to the exploitation of the asylum system by irregular and economic migrants.

Status quo and problem statement

South Africa is one of the top ten countries that process claims for individual asylum seekers in the world. The country is currently experiencing a high volume of mixed migration flows and a majority of these migrants use the asylum seeker regime to regularise their stay in the country.

The country upholds the international principle of 'inclusion before exclusion' when dealing with migrants who claim asylum. All asylum applicants are processed without discrimination and they also have an opportunity to seek judicial review should they not be satisfied with the outcomes of the status determination process. Due to the high volume of applicants and the time it takes to process a claim until a final decision has been made, South Africa often fails to identify applicants who are in need of special protection and immediate assistance. For instance, a woman who has been a victim of war crimes and requires immediate psycho-social and medical assistance will not be identified at arrival with the current asylum seeker system. This system may be inclusive but it is not able to maximise the protection and assistance that some asylum applicants require.

The asylum seeker regime is being abused by economic migrants resulting in over 90 per cent of the claims for asylum being rejected. As the biggest economy in the southern African region and the African continent, South Africa is attracting a high number of economic migrants that use the asylum seeker regime as an entry point. With these high demands being placed on the asylum seeker and refugee regime, the country's ability to provide protection services to migrants in need of protection, is compromised.

The southern African region does not have a common approach to respond to the need to provide protection to asylum seekers and as a result regional solutions such as the 'first safe country' principle cannot be sought.

A refugee in South Africa enjoys protection from the state as well as, where necessary, the provision of basic services for them and their families that are recognised refugees. South Africa implements the three durable solutions that are encouraged globally for refugees. This includes repatriation, integration and resettlement. However, there is a perception that refugee status

should be seen as a permanent status and therefore refugees should get access to South Africa's permanent residence status and eventually become naturalised as citizens.

Policy objective/s

South Africa intends on building a regime for asylum seekers and refugees that will protect and provide for their needs in a humane and secure manner. It will achieve this by limiting the abuse of the asylum regime by economic and irregular migrants. To respond to these needs, a multi-stakeholder approach is to be developed nationally and a regional solution to managing asylum seekers and refugees must be sought in the southern African region. In exploring all three durable solutions for refugees, South Africa will also assist refugee-sending countries, especially from the continent, to reach political and socio-economic stability where their citizens can be repatriated and contribute to the development of their countries.

Policy interventions

South Africa reasserts its commitment to its Constitution underpinned by the principle of upholding and protecting human rights. It also re-affirms its international commitments in protecting the rights of asylum seeker and refugees. The policy on managing asylum seekers and refugees commits to the protection of refugees in a manner that is humane and secure.

Non-encampment policy

The current policy of non-encampment should continue as permanent camps in our context would create serious logistical, security and humanitarian problems. It is far better to integrate those given refugee status into communities, provided adequate mechanisms are put in place and there is coordinated support by relevant departments and other actors.

Admission of asylum seekers and refugees

The current principle of an inclusive approach that allows any foreign national to claim asylum should continue with exceptions as stipulated in the current Refugees Act that excludes war criminals and other prohibited categories. However, this principle should not be applied in a way that compromises the rights of citizens to national security and public safety. The Immigration Act governs the right of entry and should be used to ensure an adequate assessment of risk of all those presenting themselves at POEs or apprehended after entering the country illegally and belatedly declaring an intention to apply for asylum.

In order to admit asylum seekers in the refugee regime in a humane, secure and effective manner, South Africa will establish Asylum Seeker Processing Centres. The centres will be used to profile and accommodate asylum seekers during their status determination process. During this process special services will be given to applicants in need of care and vulnerable groups. This will be a multi-stakeholder facility with stakeholders like the DHA, Refugee Appeal Board (RAB), SCRA, Department of Social Development (DSD), Department of Energy (DoE), Department of Health (DoH), and United Nations High Commissioner for Refugees (UNHCR) playing active and regulated roles.

All relevant departments would provide services at the centres, as well as international organisations such as the UNHCR and the Red Cross. Low risk asylum seekers may have the right to enter or leave the facility under specified conditions. Most asylum seekers who fall into low risk categories could be released into the care of national or international organisations and family or community members. Conditions could include the department receiving written assurances that the asylum seekers will have their basic services provided for by the individual or the organisation.

Removal of automatic right to work and study for asylum seekers

The processing of asylum seeker claims will take place whist the applicant is accommodated in 'Asylum Seeker Processing Centres' or by an individual or an organisation that has made a written undertaking that they will provide for the basic needs of the applicant while their status is being determined by the department. On conditions where the applicants have the means to provide for their own basic needs during status determination, without participating in any economic activity, the department may allow the applicant to provide for their own basic needs. Asylum seekers will not automatically acquire the right to work, study or conduct business in the country while their status is being determined since their basic needs will be catered for in the processing centres. However, in exceptional circumstances such as judicial review, asylum seekers will be allowed to work and study.

Change of residence status by refugees

An asylum seeker and refugee in South Africa will only have one residence status at a time, while residing in the country. This is with the understanding that the status of asylum seekers and refugees is temporary but may at times be long term. As a result, the refugee status will be reviewed periodically to determine the need for continuous protection by South Africa. Refugees will no longer have access to South Africa's permanent residency since the PRP is being replaced by a long-term residence visa. The long-term residence visa is equivalent to the refugee's permit which affords refugees the opportunity to integrate into the country.

Naturalisation to become a citizen is not linked to the immigration and refugee regime and will be prescribed in the frameworks governing citizenship and civil rights in SA.

Regional refugee approach

South Africa recognises that a regional approach needs to be sought to deal with the issue of asylum seekers and refugees in the southern African region and the African continent, broadly. A bilateral and multilateral approach will be taken to establish cooperation with asylum producing and transiting countries as well as countries that could accommodate refugees for resettlement. This will require the harmonisation of governance frameworks and adherence to international agreements and standards.

Durable solutions

SA supports the three durable solutions for the protection of refugees – this includes the voluntary repatriation, resettlement to a third county and the integration of refugees into communities in South Africa.

Conditions for the exclusion of asylum seekers

Refugee status may be withdrawn on grounds of serious criminal convictions or breaking of specified conditions. Exclusions includes fugitives of justice – those wanted for committing crimes in a country that South Africa recognises as having a fair justice system. This also includes applicants that have failed to apply in safe countries en route to South Africa, often termed "third safe countries". Refugees who return to their countries of origin may have their refugee status revoked. Conditions for travel of those granted refugee status will be regulated and this will include their use of South African or other travel documents.

Institutional capacity/arrangements

A multi-stakeholder approach is required for the effective in secure management of asylum seekers and refugees. For instance, a processing centre will be a multi-stakeholder facility with stakeholders like DHA, RAB, SCRA, DSD, DoE, DoH, and UNHCR playing active and regulated roles. All relevant departments would provide services at the centres, as well as international organisations such as the UNHCR and the Red Cross. Low risk asylum seekers may have the right to enter or leave the facility under specified conditions. Most asylum seekers who fall into low risk categories could be released into the care of national or international organisations and family or community members. One condition for releasing an asylum seeker

into the care of an individual or an organisation would be to receive assurances on the welfare and the location of the asylum seeker.

Net benefits of the policy interventions

This policy on the management of asylum seekers and refugees will allow for a more efficient status determination process that will ensure that applicants in need of protection are processed in a secure, efficient and humane manner. Asylum seekers will have access to the necessary assistance from the government and non-government stakeholders at the point of application. By reducing the incentive for abuse by economic migrants, the asylum system will be transparent and responsive. It will also reduce the cost of managing a large number of asylum seekers who have to reside in the country for extended periods of time while their application is being considered.

Chapter 13: Management of the integration process for international migrants

Policy scope

There are categories of migrants that will be excluded from the integration policy due to the temporary nature of their stay in the country. For instance, the policy should not apply to asylum seekers as they have temporary status while awaiting the outcome of adjudication. This policy also excludes holders of temporary visas who are in the country for a short time, such as tourists. However, the following services must still be extended to these categories of migrants:

- South Africa's profile information with key aspects of its society, economy and cultural norms;
- Information on the Constitution with regard to the rights and responsibilities of migrants;
- Information on government services such as social assistance, safety, health and education; and
- Issuing of secure and recognised enabling documents such as asylum seeker permits and travelling documents where required by law.

The policy of integration should be applicable to holders of residence visas, refugees and naturalised citizens. These are the people who are in the country for extended periods and who will need to settle and interact with different institutions such as the financial institutions. Therefore, this policy seeks to facilitate a smooth adaptation of this category of foreign nationals into the country's value system, residence and establishment requirements.

Status quo and problem statement

Sovereign states have a right to determine which foreigners can become part of the community either on a temporary or on a permanent basis. In doing so, the migration policy shapes the future composition of their populations. Some countries have made a conscious decision to use the migration policy to shape their society and demographics by giving preference to certain types of individuals who are deemed to be more strategic for nation building. In this respect, for instance, the migration policy could choose to give preference to professionals or investors or, in addition, could give preference to people from certain age groups to be integrated into its value system and population.

Other countries do not discriminate between potential migrants in a structured way but set quotas to limit the intake of foreigners who may be integrated into their communities. These are some of the options that are adopted by various countries within the framework of their immigration policies and legislation. Over the last twenty years South Africa has become increasingly multi-

cultural with diverse communities of foreign nationals finding different ways of integrating into our society. This has large actual and potential benefits in terms of enriching our cultural and social diversity and knowledge base. However, policy decisions have to be made in the interests of nation building and good government to maximise benefits while mitigating risks.

South Africa has not adopted a clear and coherent integration policy for the integration of foreign nationals into the country's value system and population. This could be attributed in part to a country's lack of a common vision on the value of international migration and in part to South Africa being in many respects a nation in formation. Consequently, communities have had to deal with the unregulated influx of migrants into their communities without proper preparation to create awareness and to induct the foreign nationals. In some communities this has contributed to discrimination and attacks on foreign nationals. Some categories of foreign nationals have also struggled to adapt and to integrate into host communities. As a result closed migrant communities have become isolated, with some areas being dubbed "no go areas" for citizens.

Contributing to the situation described above has been a tendency to regard the DHA as the sole department responsible for the management of international migration. This has contributed to the lack of development of integrated approaches across government, which is contrary to international best practice. A strong international trend is for countries to move to an integrated approach, with departments working together in harmony with civil society to manage the integration of migrants.

Policy Objectives

The main objective of the integration policy is to establish a secure, strategic and integrated approach for the integration of international migrants into communities.

Proposed policy interventions

The following issues should be addressed by the integration policy:

- The integration policy applies to all international migrants who are in the country legally and are holders of residence visas and permits;
- National strategy for refugee integration in line with the non-encampment policy;
- Holders of critical skills visas and qualifying holders of business and study visas will qualify to apply for long-term residence visa. The granting of such visas will take into consideration family reunification issues;
- Mechanisms will be put in place to facilitate provision of social security and portability of social benefits to qualifying international migrants;

- Migration advisory services and migration desks at local government level will be established to advise international migrants on services and relevant information;
- Enforcement of by-laws by local government; and
- Establishment of inter-sectoral and intergovernmental institutional machinery with strong coordination and accountability mechanisms.

Institutional mechanisms/capacity

A serious policy gap in relation to the integration of migrants is the lack of a policy and regulatory framework that will ensure effective coordination across sectors and spheres of government. In this regard, the following is suggested:

- The respective responsibilities and roles of relevant departments in all three spheres of government must be made clear and reflected in procedures, regulations and formal agreements as appropriate;
- Due attention must be paid to linking with provisions in existing legislation from other departments;
- By-laws for managing settlement and integration of migrants into communities need to be reviewed and strengthened to provide guidance to migrants; and
- Agreements would be reached with departments and provincial and local government in terms of the legal framework. There would also be engagement with national organisations and institutions such as banks to ensure those granted residence status have access to services.

Net benefit of the policy interventions

- South Africa will have the capacity to manage the integration of international migrants who are living in the country legally;
- Pressure on government services and resources will be reduced since irregular migration will be minimised; and
- There will be better social acceptance of international migrants into South African societies.

Chapter 14: Management of enforcement

Policy scope

This chapter deals with the policy and capacity gaps that constrain South Africa from curbing irregular migration. Key elements of the interventions include: sending countries; irregular migrants; and citizens who are aiding and abetting illegal migrants.

Status quo and problem statement

South Africa has become an attractive destination for illegal immigrants (undocumented migrants, border jumper, over-stayers, smuggled and trafficked persons) who pose a security threat to the economic stability and sovereignty of the country. Enforcement of compliance, in the form of detentions and the deportations, is not sustainable since detentions and deportations require a substantial amount of funding. Irregular migration could be attributed to the following factors:

- Model of deportation is not risk-based, thus most deportations include repeat offenders from the neighbouring countries. There are no biometric systems to detect and identify repeating offenders;
- There are no returns agreements with neighbouring countries thus they do not cooperate with the deportation process (identification of nationals and issuing of travel documents);
- The department does not have repatriation facilities in the provinces, and relies on the infrastructure of other law enforcement agencies;
- Human rights organisations and legal practitioners abuse the loopholes in the system to secure the release of the illegal immigrants, at the expense of the government; and
- Lack of uniform application of the Immigration Act in court.

Policy objective

The main objective of this policy intervention is to reduce irregular migration and improve enforcement and compliance with the Immigration and related legislation.

Policy interventions

Key interventions proposed in this policy area include the following:

Risk-based and cost effective deportation strategy

The current state funded deportation model is not sustainable and needs to be replaced with one that relies on shared cost and greater cooperation with the sending state. This should be implemented by means of bilateral agreements (returns agreements) with individual states. A risk-based deportation which will prioritise deportation of high risk over low risk migrants (risk profiling criteria will be developed).

Data on deportations suggest that the current deportation approach has focused mainly on nationals from neighbouring countries than those from other parts of the world. By focusing on deporting nationals from neighbouring countries we face a "revolving door" syndrome where you deport and the deportee returns. There is no biometric system to detect revolving door ("repeat offenders") deportees.

Criminalisation on con-compliance with deportation orders

The Immigration Act should be amended to allow for laying of criminal charges against repeat offenders and those who do not cooperate with deportation notices.

Immigration repatriation centres

Immigration repatriation centres should be established at provincial level since depending on Police and Correctional Services facilities is not sustainable.

Prioritised investigations and case-flow management

In order to better provide for the efficient judicial system as well as to minimise the delays in finalising cases on the court rolls, the Office of the Chief Justice (OCJ) has initiated case flow management and a process to set uniform norms and standards for the judiciary. Despite the introduction of this initiative, immigration related litigations do not receive appropriate attention from officials or courts. There is a lack of uniform application of departmental legislation and appreciation of the importance of urgently dealing with immigration matters in courts. Therefore, the White Paper recommends that prioritised investigations and case flow management should be introduced by the Department of Justice and Constitutional Development (DoJ&CD) in order to promote speedy justice for migrants and to improve case finalisation rate for immigration related litigations. Initially, specialised immigration courts and prosecutors were recommended; however, the DoJ&CD has advised against the proposal given its financial implications

Marriage clearance certificates

In order to curb abuse of the Marriage Act, the department will introduce marriage clearance certificates which will be issued to foreign nationals who intend to enter into spousal relationships with citizens (marriage or life partnerships). The purpose of this intervention is not to frustrate bona fide foreign nationals who wish to enter into spousal relationships with South African citizens but is to ascertain the legal status of foreign nationals in the country. This is supplementary to the letter of non-impediments that is currently required as a confirmation that the foreign national is not already married in the country of origin.

Institutional mechanisms

Close coordination between the DHA, DoL and SAPS is critical, especially given the limited number of inspectors retained by DHA and DoL. Given resource constraints, the enforcement capacity could be improved through the following interventions:

- Secondment of officials on a regular basis from the SAPS or Military police to assist the Inspectorate in enforcing immigration;
- Declaring of inspectorate official as peace officers as per the Criminal Procedure Act; and
- Inspectorate systems for deportations, declarations for prohibitions and undesirability to be linked to police and other JCPS IT systems for easier detection of those who may be a threat to SA.

Net benefit of the policy interventions

The interventions will contribute to the reduction of irregular migration and improved compliance with the Immigration and related acts.

SECTION 5: STATE CAPACITY FOR MANAGING INTERNATIONAL MIGRATION

Chapter 15: Intergovernmental governance framework

Situational analysis

The need for a 'whole of government and society' approach for the management of international migration is one of the main themes of this paper. The first theme is that international migration policy is cross-cutting and requires an inter-sectoral governance approach for it to succeed. A second theme is that Home Affairs needs to be capacitated as the department mandated to lead in the implementation of national policy and administer immigration legislation strategically and professionally. Thirdly, at the heart of the argument developed in this White Paper is the proposition that for South Africa the cost of a lack of investment in managing international migration is far higher than the cost of building the necessary capacity.

The following organisational and personnel implications have been identified:

- Additional staff and training for adjudication and enforcement will be required;
- Additional staff in the missions abroad will be required to pro-actively attract potential migrants and South African expatriates with critical skills and investment capabilities;
- Additional resources for establishing and managing BMA will be required;
- Additional resources for establishing and managing the Asylum Seeker Processing Centres will be required;
- Additional staff for managing the integration process of international migrants will be required; and
- Additional resources for establishing provincial repatriation centres, and
- Training of investigators, prosecutors and case flow managers on the international migration policy and legal framework.

The critical success factor for all policy interventions is the introduction of various inter-sectoral and inter-governmental structures. For instance, the integration of international migrants will require the establishment of an inter-governmental Working Structure which will coordinate the integration process.

The main purpose of this final chapter is to indicate what factors must be taken into account when deciding on a feasible strategy for South Africa to build the capacity necessary to manage immigration strategically and securely. Some of the policy interventions contained in the White Paper will require significant restructuring, the cost implication of which cannot be assessed at this time. The White Paper is sensitive to the consideration that any given policy can only succeed if it can be supported by the available fiscal and financial resources. However, at this

juncture, it is not possible to prepare a complete fiscal and financial assessment of the White Paper's implications which should be more properly assessed during the legislative process. In fact, while some of the policy interventions will cause additional public expenditure, others will result in substantial savings. A well-managed international migration will reduce the social costs and public expenditure associated with illegal migration. However, a meaningful cost analysis will require the development of a cost-saving matrix which goes beyond the scope of the present policy formulation exercise.

However, in assessing the financial implications of a new policy, one must be mindful of the relevant starting point: the present situation is less than desirable and if better results are sought it will be necessary to direct greater financial resources towards the management of international migration.

The DHA is currently developing a business case which will, amongst other things, outline a viable and sustainable funding model for the effective delivery of its mandate. The argument advanced in the business case is that policy, legal, organisational, systems and financial constraints are preventing the DHA from continuing with its transformation and threaten to undermine the progress it has made. More seriously, the department is not positioned to carry out its full mandate as a critical enabler of economic development, security, service delivery and access to rights.

CONCLUSION

Given the policy shortcomings of the current White Paper and much of the legislation based on it, this new White Paper argues that South Africans need to adopt a paradigm that sees international migration as enabling their own development and that of their country and region. In the new paradigm, South Africans would see themselves as responsible citizens of South Africa, Africa and the world and support efficient, secure and humane approaches to managing international migration. The current paradigm exposes South Africa to many kinds of risk in a volatile world and by default strengthens colonial patterns of labour, production and trade. It also serves to perpetuate irregular migration, which in turn leads to unacceptable levels of corruption, human rights abuse and national security risks.

Managing regional migration flows in the interests of security and development is a viable strategy. European economic growth benefitted hugely by capital and labour flows that created more economic parity in the region. This was the precondition for a common currency and free movement of labour.

The broad understanding of international migration advocated in the new White Paper accords with principles adopted by international bodies such as the UN, the AU, the International Organisation for Migration (IOM), ILO and UNHCR. It recognises the rights of nations to security and self-determination within a framework of universal human rights and shared responsibilities.

A world founded on these principles is one where – as the Freedom Charter envisaged – "All the cultural treasures of mankind shall be open to all, by free exchange of books, ideas and contact with other lands". International migration is a reciprocal, two-way process and our students, workers, tourists and business persons want to be welcomed wherever they seek opportunities. Other nations expect the same of us.

What is put forward in the White Paper is based on desktop research, interviews and discussions with internal and external stakeholders (workshops, roundtables and colloquia), as well as domestic and international study tours. It is also informed by a practical knowledge of problems that have emerged since the publication of the White Paper on International Migration in 1999.

APPENDICES

Glossary of terms

> **Asylum seeker:** refers to a person who seeks safety from persecution or serious harm in a country other than his or her own and awaits a decision on the application for refugee status.
>
> **Border management:** commonly defined as the government functions of immigration, customs and excise, and policing, with the aim of controlling and regulating the flow of people and goods across a country's border in the national interest (particularly economic development, security and peace).
>
> **Critical skills list:** refers to a legislated list of scarce skills that are in demand for growing the economy.
>
> **Economic migrant:** refers to foreign nationals who migrate for economic reasons such as seeking employment or to conduct business.
>
> **Emigration:** refers to the act of departing or exiting from one's country (country of origin or of habitual residence) with a view to settling in another (host country).
>
> **Family reunion/family reunification migrants:** refers to people sharing family ties joining people who have already entered an immigration country under one of the above mentioned categories.
>
> **Forced migration:** in a broader sense, this includes not only refugees and asylum seekers but also people forced to move due to external factors, such as environmental catastrophes or development projects.
>
> **International migration:** refers to any movement by a person across an international border, regardless of (1) the person's legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of the stay is. Short-term international migration refers to at least three months duration of stay in the country, or away from the country of habitual residence. Long-term international migration exists when the period of stay is at least one year.[17]
>
> **Irregular migrants (or undocumented/illegal migrants):** these are people who enter a country, usually in search of income-generating activities, without the necessary documents and permits.
>
> **Migration management:** this term is used to encompass numerous governmental functions within a national system for the orderly and humane management of cross-border migration. It refers to a planned approach to the development of policy, legislative and administrative responses to key migration issues.
>
> **Naturalisation:** refers to an act of granting of citizenship by a state to a non-national through a formal act on the application of the individual concerned.
>
> **Permanent residence permit:** refers to authorisation granted to certain categories of foreign nationals by the state to reside in the country permanently.

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[17] International Organization for Migration

Port of entry: refers to a place designated by the Minister in SA where all persons have to report to an immigration officer before entering or leaving the country.

Refugee: a person who, "owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinions, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to "avail himself of the protection of that country'.

Resettlement: refers to the relocation and integration of people (refugees, internally displaced persons, etc.) into another geographical area and environment, usually in a third country.

Temporary residence visa: refers to any of the visas issued to a foreign national to enter and temporarily reside in the country. These include transit, visitors, work and business visa.

Visa exemption: refers to the act of exempting any person or category of persons from requirements of obtaining a visa.

Xenophobia: At the international level, no universally accepted definition of xenophobia exists, although it can be described as attitudes, prejudices and behaviour that reject, exclude and often vilify persons, based on the perception that they are outsiders or foreigners to the community, society or national identity.