

Labour Market Review 2007

2007

Labour Migration and South Africa:

Towards a fairer deal for migrants in the
South African Economy



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Preface

The Labour Market Policy Programme has produced the 2007 edition of the Labour Market Review. This edition of the Labour Market Review has a special focus on the impact of labour migration in South Africa and its possible policy implications on our existing legislation. In line with the overall purpose of the Review, the aim in this edition is to provide valuable factual and analytical information on the trends, conditions and challenges of labour migration in the labour market and the economy that can empower stakeholders and the public at large, to engage in discussions and the analysis of policies and strategies.

The report looks at migration trends in the South African labour market before and after the advent of democracy. It also looks at the policy reforms introduced after 1994 that aimed at addressing the conditions of migrants in the country.

The report consists of five main components. The **first** component of the report contextualises the study by providing a descriptive overview of the trends, new forms and challenges of labour migration. In this section, the report also highlights amongst others, issues like skills emigration and the feminisation of migration.

The **second** component provides a comprehensive analysis of the changes in the management of migration in the country, the Southern African Development Community (SADC), the continent and globally. It also touches on issues of unilateralism to multi-lateralism in the management of migration and SADC protocols. The report further looks at how the South African policies influenced migration policy frameworks in the SADC region and the rest of the continent.

The **third** component looks at the effects and the impact of labour migration on the labour market. In this section, it acknowledges that there is a lack of evidence and information in this area and that more research work is needed before conclusions could be reached.

The **fourth** component of the report looks at the working conditions of migrants. In this section, the report highlights that migrants who enter South Africa legally are automatically protected by relevant labour laws that apply to all workers. In addition, there are no restrictions on union membership so that foreign migrants enjoy the benefits of collective bargaining agreements.

Finally, the **fifth** component of the report looks at the national and international instruments in dealing with labour migration. It highlights that South Africa's interventions in addressing issues relating to labour migration are largely congruent with the international instruments.

In conclusion, the report proposes that a concerted effort in devising appropriate government policy interventions in dealing with labour migration has to be undertaken. This includes forging close working relations and improved coordination within government especially when signing memoranda of understanding with other countries.

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1 Introduction

“Nearly half of all reported migrants go from one developing country to another, with large movement of workers taking place among neighbouring countries on several continents” (ILO 2004) ¹.

The South African situation exemplifies the ILO's (2004) observation about the significance of intra-regional labour movement in the new global economy. South Africa has been a migrant-receiving country for decades. The majority of those migrants are, from neighbouring countries within the Southern African region. Until 1994, South Africa was also an important destination for (White) immigrants from Europe. ²

The most significant changes in the last 20 years have been the virtual cessation of immigration from the developed world and a dramatic increase in the numbers of skilled migrants leaving South Africa for those destinations. South Africa has continued to receive migrants from neighbouring countries, but in greater numbers. Migrant streams have also become far more diverse. For example, South Africa has begun to receive migrants from developing countries further afield (including the rest of Africa and Asia).

These changes (with resultant policy challenges) have been set in motion by globalisation, the collapse of apartheid, and economic, political and social crisis in other parts of Africa. In order to establish exactly what has changed since 1990, it is important to briefly outline the development of labour migration to South Africa. This exercise also highlights the legacy of the apartheid period.

The defining characteristics of regional labour migration to South Africa before and during the apartheid era were as follows: (a) sectoral bias, (b) gender differentiation, (c) irregularity, (d) exploitation and (e) racist immigrant selection. Each of these pillars needs brief elaboration for combined they constitute the institutional and legal inheritance that confronted the country's first democratic government and its social partners in 1994.

Historically, labour migrants were concentrated in their largest numbers in the South African mining industry.³ The precise mix of source countries varied over time (**Table 1**). Mozambique, Lesotho and (until the 1970s) Malawi were the major suppliers. Entry to South Africa was on a temporary basis on fixed contract and governed by bilateral treaties between South Africa and the supplier states (see Section 3.2). 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 contract, migrants had to return home to renew. If they became diseased or disabled (a common occurrence), they were sent home.

The mine migrant system was highly gendered.⁴ Not only were all migrant recruits male but they were prohibited from bringing spouses and other dependents with them to South Africa. Migrants were herded into the notorious single-sex compounds where their every move was tightly regulated and controlled. The compound (or hostel) system epitomised the gender discrimination and oppression at the heart of the system.⁵

¹ International Labour Office (ILO), “Towards a Fair Deal for Migrant Workers in the Global Economy: Executive Summary” (Geneva, 2004)

² Sally Peberdy, *Selecting Immigrants: Nationalism and National Identity in South Africa's Immigration Policies, 1910-1998* (PhD Thesis, Queen's University, 1999).

³ Jonathan Crush, Alan Jeeves, and David Yudelman, *South Africa's Labor Empire: A History of Black Migrancy to the Gold Mines* (Cape Town: David Philip, 1991); Wilmot James, *Our Precious Metal: African Labour in South Africa's Gold Industry* (Cape Town: David Philip, 1992).

⁴ *Women on the Move: Gender and Cross-Border Migration to South Africa*. SAMP Migration Policy Series No. 9, Cape Town, 1998.

⁵ Mamphela Ramphele, *A Bed Called Home: Life in the Migrant Labour Hostels of Cape Town* (Cape Town: David Philip, 1993).

Table 1: Foreign labour migration to the South African gold mines, 1920-1990

Year	Angola	Botswana	Lesotho	Malawi	Mozambique	Swaziland	Tanzania	Zambia	Zimbabwe	Other	Total
1920	0	2 112	10 439	354	77 921	3 449	0	12	179	5 484	99 950
1925	0	2 547	14 256	136	73 210	3 999	0	4	68	14	94 234
1930	0	3 151	22 306	0	77 828	4 345	183	0	44	5	99 355
1935	0	7 505	34 788	49	62 576	6 865	109	570	27	9	112 498
1940	698	14 427	52 044	8 037	74 693	7 152	0	2 725	8 112	70	168 058
1945	8 711	10 102	36 414	4 973	78 588	5 688	1 461	27	8 301	4 732	158 967
1950	9 767	12 390	34 467	7 831	86 246	6 619	5 495	3 102	2 073	4 826	172 816
1955	8 801	14 195	36 332	12 407	99 449	6 682	8 758	3 849	162	2 299	192 934
1960	12 364	21 404	48 842	21 934	101 733	6 623	14 025	5 292	747	844	233 808
1965	11 169	23 630	54 819	38 580	89 191	5 580	404	5 898	653	2 686	232 610
1970	4 125	20 461	63 988	78 492	93 203	6 269	0	0	3	972	265 143
1975	3 431	20 291	78 114	27 904	97 216	8 391	0	0	2 485	12	220 293
1980	5	17 763	96 309	13 569	39 539	8 090	0	0	5 770	1 404	182 449
1985		18 079	97 639	16 849	50 126	12 365	0	0	0	4	196 068
1990	0	15 720	108 780	72	50 104	17 816	0	0	2	0	192 044

Source: TEBA.

Concessions were also granted to the commercial agricultural sector. Until the 1960's there were arrangements to allow arrested irregular migrants to be employed by commercial farmers.⁶ Localised agreements dating back to the apartheid years, but which continued into the 2000s, were made between the Department of Home Affairs and the Department of Labour to allow the recruitment of seasonal foreign migrant workers by commercial farmers in selected regions.⁷

Other South African employers were not permitted to hire foreign migrants. Until 1963, there were no restrictions on the movement of migrants from Botswana, Lesotho and Swaziland. Thereafter, they were forced into irregular channels along with migrants from other countries such as Mozambique, Malawi and Zambia. Secret side deals existed into the 1960s between South Africa and the Rhodesian and Portuguese East African governments to allow what was called clandestine migration. However, this did not stop the repatriation of irregular migrants.⁸ Irregular migration to South Africa has thus existed for many decades. It focused on commercial farms although other employers also hired migrants illegally (especially in domestic service and construction).⁹

The long history of migration linkages between South Africa and its neighbours is demonstrated in a 2004 SAMP survey in neighbouring countries. In five SADC countries, 57% of adults in households with a cross-border migrant have parents who had migrated to another country (primarily South Africa) for work (**Table 2**). The proportion varied from a high of 76% in Lesotho to a low of 34% in Zimbabwe. Nearly a quarter (23%) had grandparents who had left the country in search of employment. Here, too, there was significant inter-country variation: from 10.5% in the case of Swaziland to 44% in the case of Mozambique.

⁶ Sally Peberdy, *Selecting Immigrants: Nationalism and National Identity in South Africa's Immigration Policies, 1910-1998* (PhD Thesis, Queen's University, 1999).

⁷ *Borderline Farming: Foreign Migrants in South African Commercial Agriculture*. SAMP Migration Policy Series No. 16, Cape Town, 2000.

⁸ Sally Peberdy, *Selecting Immigrants: Nationalism and National Identity in South Africa's Immigration Policies, 1910-1998* (PhD Thesis, Queen's University, 1999).

⁹ Jonathan Crush and Alan Jeeves, eds. *White Farms, Black Labor: The State and Agrarian Change in Southern Africa, 1910-1950* (Pietermaritzburg: University of Natal Press, 1997).

Table 2: Household history of migration to South Africa by country

Parents ever gone to work in another country?												
	Botswana		Lesotho		Mozambique		Swaziland		Zimbabwe		Total	
	N	%	N	%	N	%	N	%	N	%	N	%
Yes	254	41.9	828	76.2	609	66.3	519	47.3	138	34.2	2348	57.1
No	257	42.4	171	15.7	255	27.8	503	45.8	242	60.0	1428	34.7
Don't know	95	15.7	87	8.0	54	5.9	76	6.9	23	5.7	335	8.1
Total	606	100.0	1086	100.0	918	100.0	1098	100.0	403	100.0	4111	100.0
Grandparents ever gone to work in another country?												
Yes	63	11.0	249	24.4	396	43.9	115	10.5	61	18.5	884	22.6
No	294	51.5	215	21.1	239	26.5	701	63.8	246	74.8	1695	43.3
Don't know	214	37.5	555	54.5	267	29.6	282	25.7	22	6.7	1340	34.2
Total	571	100.0	1019	100.0	902	100.0	1098	100.0	329	100.0	3919	100.0

Source: SAMP MARS Data Base.

Table 3 suggests the number of foreign-born Africans in South Africa peaked in 1951 at just over 600 000. Many were subsequently deported or left and apartheid restrictions made migration to South Africa much harder. By 1985, the number had dropped to around 320 000.

All black workers were subjected to extreme forms of exploitation under apartheid. The rise of the union movement and collective bargaining in the 1970s allowed workers to win back some basic rights. Migrant workers from other countries were doubly vulnerable and were subject to particularly vicious forms of abuse and exploitation in any sector in which they worked. Their irregular status contributed to their vulnerability. So too did their inability to organize. Only in the mining industry, where South African and foreign miners joined to form the National Union of Mineworkers (NUM), did foreign migrants begin to enjoy some protection and rights in the 1980s.

At the top end of the labour market, apartheid immigration policy reinforced racial stratification. Only whites were allowed to legally immigrate to South Africa before the 1990s. Many were able to find jobs and enjoy a standard of living that was unavailable to them in their home country. As a result, most stayed and settled, augmenting South Africa's white population. Though many from Europe retained dual citizenship, they were not "migrants" in the traditional sense. They came to stay and maintained only cursory economic links with home.

Table 3: Foreign-born Africans in South Africa, 1911-1985

	1911	1921	1936	1946	1951	1970	1980	1985
Angola			28	6 716	6 322	3 859	589	392
Botswana	5 020	11 959	4 048	38 559	51 017	49 469	33 366	26 015
Lesotho	75 132	111 733	163 838	199 327	219 065	157 499	172 879	135 563
Malawi	4 573	2 2122	17 657	61 005	63 655	110 777	36 087	28 712
Mozambique	114 976	110 245	98 031	141 417	161 240	142 512	64 813	63 561
Namibia	2 230	2 926	1 879	4 990	4 129	2 518	10 342	9 210
Swaziland	21 662	29 177	31 092	33 738	42 914	29 167	31 981	30 722
Tanzania			118	2 937	7 127	288	145	887
Zambia	2 158		12 189	13 515	13 544	2 194	1 495	926
Zimbabwe	2 526		2 167	32 034	32 697	13 392	20 552	7 019
Other	930	5 146	2 730	22 569	4 282	4 369	4 234	14 003
Total	229 207	279 819	333 777	556 807	605 992	516 044	376 483	317 010

Source: SA Census. Note: Figures include mineworkers except in 1960.



Should South Africa be allowing unskilled workers into the country when domestic unemployment is at 30-40% using the broad definition of unemployment?

Given the integral connections between White political domination and the migrant labour system to South Africa, it is important to ask what happened when apartheid collapsed. In other words, has the establishment of democracy in South Africa made any difference to the system of labour migration? Or, put another way, what challenges has the democratic South African government faced in attempting to undo the legacy of “the most enduring migrant labour system in history?”¹⁰

¹⁰ Crush, Jeeves and Yudelman, South Africa's Labor Empire, p. 1.

South Africa provides an extremely pertinent case study of the challenges that face a national government which is burdened with the legacy of a system that exemplified all the worst features of temporary labour migration. The challenges are many and complex. For example:

- Should South Africa be allowing unskilled workers into the country when domestic unemployment is at 30-40% using the broad definition of unemployment?
- Why should one corporate sector (mining) enjoy greater legal access to migrants from neighbouring countries and be allowed to decide how many migrants it will employ and from where?
- Should such a privilege be denied to other employers, particularly SMME and non-corporate employers?
- Would greater legal access to the South African labour market dampen irregular migration?
- What would be the consequences of greater freedom of access of migrants to the South African labour market?
- Are labour migrants already allowing employers to undercut wages and working conditions for South Africans?
- How should South Africa regulate and enforce acceptable conditions of employment and basic protection for migrants?
- How, in sum, does a country that is receiving large numbers of (unwanted) migrants at the bottom end of the labour market and exporting large numbers of skilled migrants at the top end of the market through a sizable brain drain, turn migration into a “win-win” situation as proposed by the ILO?
- How does South Africa develop policies that fit with its obligations and the aims and objectives of the African Union, and look to the possibilities of migration for development as outlined in the African Union Migration Policy Framework (2006) and the African Union-European Union Common Position on Migration and Development (2006)?
- How do South African policies fit with the SADC Protocol on the Facilitation of Movement of People, and what are its implications for the South African labour market when it is implemented?

The challenges of creating a “fair deal” for migrant workers in South Africa are rendered more complex by the fact that the end of apartheid opened up the country to new forms of global, continental and regional migration. As the mine labour system has gone into a prolonged period of decline, so the South African government has had to confront a regional migration regime that has become more varied and literally unmanageable. Before examining the South African response to this policy challenge, it is important to review the changes in labour migration that have occurred in the last 10-15 years.

¹¹ ILO, “Towards a Fair Deal,” p. 1.

2 New forms, new challenges

“Cross-border flows have been on the rise in recent decades. Added to traditional movements from South to North is growing immigration within the developing world. Current migration patterns are closely linked with features of globalisation. A widening income gap between the rich and poor parts of the world also spurs people to seek economic opportunities elsewhere. These factors, combined with aging populations in many developed countries, mean migration is likely to continue to increase” (ILO 2004).¹¹

The ILO here draws attention to the global increase in migration and shifts in the patterns of global population migration in the last two decades. These include a growth in irregular migration and employment, greater labour migration within the South, an escalating brain drain to the North, a massive increase in formal and informal remittance flows, and increased trafficking. It is necessary to establish at the outset how these global trends are being experienced in South Africa. How have traditional patterns of migration to South Africa changed since 1990? This section of the paper draws attention to several new trends accompanying globalisation, the collapse of apartheid and changing economic realities in Africa.



Census 2006 recorded 958 186 foreign-born people in South Africa, then 2.4% of the country's population.

2.1 Labour migrants in South Africa

Census 2006 recorded 958 186 foreign-born people in South Africa, then 2.4% of the country's population. Census 2001 recorded the foreign-born population of South Africa as 1 025 072 or 2.3% of South Africa's total population (Table 4). Of these, 22% were born in Europe (largely the result of immigration in the apartheid era). Of the rest, 687 678 (or 67%) were born in neighbouring SADC countries. Only 41 817 (or 4%) reported being born in the rest of Africa and 40 889 (or 4%) in Asia. Even allowing for error under- and misreporting, the census strongly confirms the continued importance of intra-regional migration to South Africa. The numbers from the rest of Africa are certainly not consistent with the popular view that the country has been flooded by impoverished Africans from other countries. While these figures represent the number of migrants, they include dependents and therefore do not show the number of migrant workers per se. Further analysis of the census data needs to be undertaken to build a more nuanced profile of the foreign-born population.

Table 4: Total people born by region outside of South Africa, by province and gender

Province	SADC Countries		Rest of Africa		Europe		Asia		North America		Central and South America		Australia and New Zealand		Total
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	
Eastern Cape	7 359	8 066	2 242	1 284	5 996	5 952	1 392	1 119	210	246	369	377	103	125	34 840
Free State	25 125	18 299	1 284	187	1 676	1 447	746	491	71	54	153	137	26	29	48 928
Gauteng	201 017	104 442	14 522	7 117	58 092	55 359	11 569	8 870	2 076	2 079	2 259	2 967	1 025	979	473 073
KZN	24 324	20 368	7 117	2 089	18 293	18 928	2 837	2 406	614	705	852	781	385	397	96 764
Limpopo	40 194	33 390	2 089	388	1 147	991	1 700	827	135	123	124	100	33	21	79 840
Mpumalanga	48 502	26 933	653	389	2 503	2 291	569	300	110	92	145	135	33	38	82 693
Northern Cape	5 274	5 617	196	56	441	380	98	68	19	24	73	48	12	11	12 317
North West	58 484	21 486	793	361	2 245	1 715	1 233	705	98	100	236	179	43	29	87 707
Western Cape	20 153	18 645	4 305	2 296	25 211	25 651	3 418	2 541	1 141	1 252	1 545	1 610	532	610	108 910
Total from region	430 432	257 246	27 650	14 167	115 604	112 714	23 562	17 327	4 474	4 675	6 456	6 334	2 192	2 239	1 025 072
Total from region (males and females)	687 678		41 817		228 318		40 889		9 149		12 790		4 431		1 025 072

Source: SA Census 2001.

Foreign-born migrant workers in South Africa may be defined here as permanent residents (or immigrants), temporary residents (on work permits) or as contract workers (for instance mineworkers). Since 1990, there has been a significant increase in the number of other visitors to South Africa, particularly for business and other visits. Statistics South Africa (from figures provided by the Department of Home Affairs) provide data on the number of border crossings and purpose of visit. Since 1990 the annual number of border crossings by non-South Africans has risen from 1 million to over 7.5 million in 2005 (Table 5) and to 8.5 million in 2006. Close to 75% of these visits were from SADC nationals and over 5% from the rest of Africa.

Table 5: Total border crossings 1996-2005

	1996	1998	2000	2002	2003	2004	2005
Total	5 186 221	5 898 236	6 000 538	6 549 916	6 640 095	6 815 202	7 518 320
Europe	798 398	981 680	1 048 923	1 273 822	1 343 379	1 312 309	1 334 225
North America	144 592	203 065	210 349	222 345	228 244	251 536	280 808
Central and South America	33 603	46 870	47 348	39 486	41 778	46 625	49 417
Australasia	63 793	70 333	71 161	87 136	90 391	93 304	97 083
Middle East	25 064	28 570	29 297	34 112	32 860	32 831	34 913
Asia	142 240	138 478	156 600	184 555	186 274	195 943	196 702
Indian Ocean Islands	11 726	-	14 323	21 004	20 486	17 942	17 379
Africa	3 781 351	4 291 547	4 298 613	4 513 694	4 519 616	4 707 384	5 446 062
Unspecified	185 454	124 362	123 761	173 522	177 067	156 310	61 731

Source: Statistics South Africa, Tourism and Migration Reports, PS015.

Most of these border crossings were made by short term visitors to South Africa traveling for tourism, trade and family visits (Table 6). Again, Africans and SADC nationals dominate. Small scale cross border traders traveling to South Africa to buy goods for businesses back home account for a large proportion of visits/border crossings by

SADC nationals.

Table 6: Border crossings by visitors 1996-2005

	1996	1998	2000	2001	2002	2003	2004
Total	3 937 989	4 731 046	4 988 636	4 962 103	5 595 897	5 852 732	6 080 970
Europe	616 618	783 848	865 245	878 640	1 132 440	1 250 439	1 239 273
North America	92 984	147 324	161 245	164 528	185 307	205 426	232 278
Central and South America	22 639	37 281	37 820	36 422	31 173	36 558	42 420
Australia	47 648	54 135	55 522	61 917	74 928	83 720	89 655
Middle East	16 758	19 940	20 973	22 390	26 249	27 871	28 780
Asia	90 867	80 822	102 649	104 372	134 694	146 899	148 286
Indian Ocean Island	7 013		9 412	10 875	17 035	18 355	16 449
Africa	3 034 617	3 592 692	3 721 298	3 670 225	3 984 746	4 069 205	4 274 410
Unspecified	8 845	6 865	14 356	12 648	9 131	14 259	9 419

Source: Statistics South Africa, *Tourism and Migration Reports, PS015*.

Visitors to South Africa make a significant contribution to the South African economy. SA Tourism calculates the direct spend by visitors to the country (i.e. what a visitor spends each visit). Spending by visitors from Africa and the Middle East exceeded the combined expenditure of visitors from the Americas, Asia and Australasia and Europe. In terms of visitors total direct spend by country, in 2005 seven of the top 10 spending countries were from the SADC including the top four (Mozambique, Zimbabwe, Botswana and Lesotho).¹² These visitors include small scale cross border traders, as well as others, who contribute to South Africa's retail and wholesale economies.

Africa is also an important source of border crossings for business purposes (**Table 7**). In 2005, Africans comprised 65% of all border crossings for business purposes, but it should be noted that over 25% of these were from Lesotho reflecting the close ties between the two countries.

Table 7: Border crossings for business purposes, 1996-2005

	1996	1998	2000	2001	2002	2003	2004	2005
Total	621 836	676 521	572 114	478 572	445 753	278 111	223 607	201 522
Europe	110 036	123 654	116 779	97 576	84 767	48 741	40 583	36 098
North America	30 429	34 685	31 226	25 577	22 618	12 230	9 568	8 421
Central and South America	3 683	3 687	3 932	3 902	3 635	1 721	1 481	1 293
Australia	8 498	9 841	9 757	9 440	7 696	3 855	2 559	2 534
Middle East	5 558	5 795	5 833	5 802	5 230	3 019	2 135	1 254
Asia	23 336	27 510	26 259	23 738	23 656	18 074	24 276	19 245
Indian Ocean Islands	2 037	-	2 577	2 316	2 294	1 075	604	650
Africa	436 949	467 767	374 086	308 822	294 102	188 367	141 430	130 276
Unspecified	1 310	960	1 634	1 327	1 727	1 029	971	1 751

Source: Statistics South Africa, *Tourism and Migration Reports, PS015*.

¹² South African Tourism Strategic Research Unit, 2006 Annual Tourism Report, South African Tourism, August 2006.

The causes of the escalating migrant movement and visits to South Africa from the SADC region and the rest of Africa are various and complex, historical and contemporary. One economic analysis of the South African labour market concludes that “the elasticity of migrant labour (from the SADC region) may be effectively infinite” or, at the very least, that the potential labour supply is “enormous and elastic.”¹³ Some of the push factors promoting migration are specific to some countries (the aftermath of the civil war in Mozambique for example); others are more generalised (growing trade imbalances between South Africa and its SADC neighbours, structural adjustment programmes, domestic economic policy, drought and ecological degradation). Only a systematic household migration survey in the supplier states, would allow us to move beyond a general recounting of push-pull factors in explaining the supply-side pressures for migration.

The following parts of Section 2.0 examine the changes in migration to South Africa since the collapse of apartheid. The year 1990 is used as a convenient benchmark date. What has changed since 1990?

2.2. Mine labour migration

The first significant shift in patterns of labour migration to South Africa since 1990 has been the declining importance of traditional mine labour migration.¹⁴ In the late 1980s, the South African gold mining industry entered a long period of restructuring and downsizing as a result of declining ore reserves, rising costs and a stagnant gold price (**Table 8**). At the time of the 1987 Strike, 477 000 migrant workers were employed on the mines. By 2001, the figure had more than halved to just over 200 000 (**Table 8**). With rising gold prices, in the mid-2000s employment rose to over 260 000 in 2006. Retrenchments have exacerbated poverty in many rural mine-sending areas, shutting off remittances to many households and denying young school-leavers the chance to migrate to the mines.¹⁵

Table 8 shows that mine migration since 1990 falls roughly into two phases (1990-2001 and 2001-2006). However, overall between 1990 and 2006, employment has declined significantly for all sending areas except Mozambique. The drop in internal mine migration was particularly rapid between 1990 and 1999 (approximately 100 000 jobs lost). The most striking aspect of this phase of mine migration, however, was the proportional increase in foreign migrants. In 1987, an ILO-funded study predicted that there would be no foreign miners left on the mines by 1995.¹⁶ In fact, this phase saw a process of “externalisation” of the mine workforce. The proportion of foreign miners has risen from around 40% in the mid-1980s to nearly 60% in 1997. Mozambique was a particular beneficiary with more Mozambicans employed in 2000 than in 1990 (57 000 vs 45 000). By 2000 almost a quarter of all miners were Mozambicans (up from 12% in 1990).

¹³Guy Standing, John Sender and John Weeks, *Restructuring the Labour Market: The South African Challenge* (Geneva: ILO, 1996), pp. 61-2.

¹⁴Jonathan Crush and Wilmot James, ed., *Crossing Boundaries: Mine Migrancy in A Democratic South Africa* (Cape Town: Idasa, 1995).

¹⁵Jonathan Crush, Wilmot James, Fion de Vletter and David Coplan, *Labour Migrancy in Southern Africa: Prospects for Post-Apartheid Transformation*, Labour Law Unit, University of Cape Town, Labour Monograph No. 3, 1995.

¹⁶Fion de Vletter, “Foreign Labour on the South African Gold Mines: New Insights on An Old Problem” *International Labour Review* 126 (1987): 199-218.

Table 8: Mine labour recruitment, 1990-2006

Year	South Africa	Botswana	Lesotho	Mozambique	Swaziland	% Foreign	Total
1990	199 810	14 609	99 707	44 590	17 757	47	376 473
1991	182 226	14 028	93 897	47 105	17 393	49	354 649
1992	166 261	12 781	93 519	50 651	16 273	51	339 485
1993	149 148	11 904	89 940	50 311	16 153	53	317 456
1994	142 839	11 099	89 237	56 197	15 892	55	315 264
1995	122 562	10 961	87 935	55 140	15 304	58	291 902
1996	122 104	10 477	81 357	55 741	14 371	58	284 050
1997	108 163	9 385	76 361	55 879	12 960	59	262 748
1998	97 620	7 752	60 450	51 913	10 336	57	228 071
1999	99 387	6 413	52 188	46 537	9 307	54	213 832
2000	99 575	6 494	58 224	57 034	9 360	57	230 687
2001	99 560	4 763	49 483	45 900	7 841	52	207 547
2002	116 554	4 227	54 157	51 355	8 698	50	234 991
2003	113 545	4 204	54 479	53 829	7 970	51	234 027
2004	121 369	3 924	48 962	48 918	7 598	47	230 771
2005	133 178	3 264	46 049	46 975	6 993	43	236 459
2006	164 989	2 992	46 082	46 707	7 124	38	267 894

Source: TEBA.

Gains in gold prices since 2000 have allowed for expansion in the gold mining sector, and employment rose by over 60 000 between 2001 and 2006 (Table 8). This period appears to have seen a reversal of the “externalisation” of employment on the gold mines as South Africans have been the main beneficiaries of rising employment gaining over 60 000 jobs. At the same time, employment of foreign migrants has fallen. So, by 2006 the proportion of foreign mineworkers had fallen to 38% from its peak of nearly 60% in 1997 and 57% in 2000. Mozambican and Basotho mineworkers have been the main losers of employment in this process. It is not clear what underpins changing employment patterns on the mines since 2001. It is perhaps worth noting that as one the “Objects” of the “Fundamental Principles” of the Mineral and Petroleum Resources Development Act (Act 28 of 2002) is to “promote employment and advance the social and economic welfare of all South Africans” (section 2(f)). However the Social and Labour Plan of the Department of Minerals and Energy (1999) highlights the need to protect all migrant labour and their employment including foreign labour.

Trade union gains for migrants in the mining industry in the 1980s were systematically rolled back in the 1990s through sub-contracting. Once dominated by a handful of powerful, centralised mining groups, the mining companies began to out-source non-production and production functions to a growing number of sub-contracting companies. These companies tended to hire more vulnerable non-South African workers, particularly from Mozambique and Lesotho. Research shows that the rise of sub-contracting has had a marked impact on trade union strength in the mining industry and led to a marked deterioration in wages, working conditions and underground safety.¹⁷

In 1996, the South African Cabinet reached agreement with the National Union of Mineworkers (NUM) to grant permanent residence to foreign migrant miners who had worked on the mines for more than 10 years. Around half of the 200 000-strong foreign workforce (52.5%) was eligible. The NUM unsuccessfully asked for a five-year period,

¹⁷ Jonathan Crush, Therea Ulicki, Teke Tseane and Elizabeth Van Veuren, “Undermining Labour: The Rise of Sub-Contracting in South African Gold Mines” *Journal of Southern African Studies* 27(1) (2001): 5-31.

which would have made 75% eligible. Only half of the eligible miners (and 26% of the total foreign workforce) actually applied. In other words, 51 504 migrants were granted permanent residence. The evidence suggests that many have continued to migrate but use their legal status in South Africa for other reasons (including easier visiting access by families).¹⁸

2.3. Migration to other sectors

A Southern African Migration Project (SAMP) study conducted in the late 1990s asked a nationally representative national sample in five SADC countries, the reasons for their last entry into South Africa (**Table 9**). Sixty seven percent of Mozambican migrants going to South Africa were labour migrants (i.e. going to work or look for work). In the case of Zimbabwe, only 29% were labour migrants and Lesotho, only 25%. Botswana had the lowest rate with only 10% being labour migrants.

Table 9: Reasons for entry to South Africa (%)

Reason for entry	Botswana	Lesotho	Mozambique	Namibia	Zimbabwe
<i>Employment related</i>					
Work	7	17	45	11	15
Look for work	3	8	22	2	14
<i>Business related</i>					
Business	6	2	2	8	7
Buy and sell goods	2	3	2	2	21
Shopping	24	19	4	1	21
<i>Other reasons</i>					
Visit family	23	34	12	13	39
Medical	5	6	4	4	2
Holiday	14	2	5	19	3
Study	3	1	1	3	2
Other	12	8	2	12	3

Source: SAMP Database.

A more recent survey (2004) shows that the mining industry remains the largest employer of migrants in South Africa (49.5%) (**Table 10**). But accompanying the mining industry's decline has been a rise in the number of migrants employed in other sectors. It is difficult to estimate absolute numbers. For example, 9% of Lesotho's migrants are domestic workers and 6% skilled manual labourers. Mozambicans are employed in a vast array of professions. After mining (at 30.5%) comes unskilled manual work (9%), skilled manual work (8%) and trading and hawking (6%). Zimbabweans, too, are employed in a variety of occupations, although only a third of those listed are actually working in South Africa.

¹⁸Riding the Tiger: Lesotho Miners and Permanent Residence in South Africa SAMP Migration Policy Series No. 2, Cape Town, 1997; Sons of Mozambique: Mozambican Miners and Post-Apartheid South Africa SAMP Migration Policy Series No. 8, Cape Town, 1998.

Table 10: Migrant occupations

Main occupation	Botswana		Lesotho		Mozambique		Swaziland		Zimbabwe		Total	
	N	%	N	%	N	%	N	%	N	%	N	%
Farmer	7	1.1	3	.3	1	.1	5	.4	6	.7	22	.5
Agricultural worker (paid)	1	.2	21	2.0	22	2.2	6	.5	10	1.2	60	1.3
Agricultural worker (unpaid)	0	.0	0	.0	0	.0	0	.0	1	.1	1	.0
Service worker	7	1.1	12	1.1	12	1.2	28	2.5	85	9.9	144	3.1
Domestic worker	11	1.7	97	9.0	9	.9	18	1.6	16	1.9	151	3.2
Managerial office worker	2	.3	2	.2	0	.0	9	.8	30	3.5	43	.9
Office worker	7	1.1	3	.3	4	.4	19	1.7	39	4.6	72	1.5
Foreman	4	.6	1	.1	5	.5	8	.7	4	.5	22	.5
Mine worker	552	87.2	736	68.4	301	30.5	705	62.3	26	3.0	2320	49.5
Skilled manual worker	5	.8	67	6.2	79	8.0	69	6.1	42	4.9	262	5.6
Unskilled manual worker	3	.5	16	1.5	94	9.5	88	7.8	18	2.1	219	4.7
Informal sector producer	1	.2	30	2.8	8	.8	5	.4	41	4.8	85	1.8
Trader/ hawker/ vendor	0	.0	21	2.0	59	6.0	8	.7	126	14.7	214	4.6
Security personnel	0	.0	2	.2	5	.5	22	1.9	1	.1	30	.6
Police/ Military	1	.2	0	.0	1	.1	2	.2	3	.4	7	.1
Businessman/ woman (self-employed)	4	.6	13	1.2	39	4.0	12	1.1	36	4.2	104	2.2
Employer/ Manager	0	.0	0	.0	0	.0	4	.4	11	1.3	15	.3
Professional worker	10	1.6	31	2.9	17	1.7	40	3.5	126	14.7	224	4.8
Teacher	0	.0	1	.1	1	.1	9	.8	60	7.0	71	1.5
Health worker	4	.6	3	.3	3	.3	6	.5	91	10.6	107	2.3
Pensioner	1	.2	1	.1	0	.0	0	.0	0	.0	2	.0
Scholar/ Student	0	.0	0	.0	0	.0	1	.1	11	1.3	12	.3
House work (unpaid)	0	.0	0	.0	1	.1	0	.0	0	.0	1	.0
Unemployed/ Job seeker	1	.2	0	.0	0	.0	0	.0	0	.0	1	.0
Other	5	.8	0	.0	167	16.9	49	4.3	25	2.9	246	5.3
Shepherd	0	.0	5	.5	0	.0	0	.0	0	.0	5	.1
Don't know	7	1.1	11	1.0	159	16.1	19	1.7	49	5.7	245	5.2
Total	633	100.0	1076	100.0	987	100.0	1132	100.0	857	100.0	4685	100.0

2.4. Declining legal immigration

South Africa was traditionally a country of (White) immigration. Racist immigration policies were unacceptable after 1994. However, the new government did not adopt a new de-racialised immigration policy immediately. Unlike many comparable countries, there was a consistent decline in the number of legal immigrants to South Africa in the 1990s (defined as those obtaining permanent residence status) reaching a low in 2000. Reflecting a change in policy, and later, legislation, immigration to South Africa has increased since then, but has not reached the levels of 1990. Africans constitute an increasingly significant proportion of permanent residents, constituting 47% of all new applications in 2004 (Table 11).

Table 11: Legal immigration to South Africa, 1990-2005

Year	Legal immigrants	African immigrants
1990	14 499	1 628
1991	12 379	2 065
1992	8 686	1 266
1993	9 824	1 701
1994	6 398	1 628
1995	5 064	1 343
1996	5 407	1 601
1997	4 102	1 281
1998	4 371	1 169
1999	3 669	980
2000	3 053	831
2001	4 832	1 584
2002	6 545	2 472
2003	10 578	4 961
2004	10 714	5 235
2005	2 138	n/a

Source: DHA annual reports; Statistics South Africa Tourism and Migration reports, PS015.

South Africa also saw a decline in the number of temporary work permits issued (**Table 12**). As with permanent immigration, changes in policy to encourage skilled migration appear to be reflected in available data, so the number of new work permits issued has risen from a low of 6 643 in 2000, to 17 205 in 2006. New policy means that work permits may be issued for the duration of contracts and may no longer need to be renewed each year.

Table 13 shows the number of border crossings to South Africa for work purposes, this is not the same as the number of work permits issued, but indicates that Africans constitute a significant proportion of people entering South Africa for work purposes (37% in 2005), but Africans may also return home and make work trips more often than other work permit holders.

Table 12: Temporary legal labour migration to South Africa, 1990-2000, and 2006

Year	New work permits	Renewals	Total
1990	7 657	30 915	38 571
1991	4 117	32 763	36 880
1992	5 581	33 318	38 899
1993	5 741	30 810	36 551
1994	8 714	29 352	38 066
1995	11 053	32 838	43 891
1996	19 498	33 206	52 704
1997	11 361	17 129	28 490
1998	10 828	11 207	22 035
1999	13 163	10 136	23 299
2000	6 643	9 191	15 834
2006	17 205	n/a	n/a

Source: DHA Annual Reports.

Table 13: Border crossings for work purposes, 1996-2005

	1996	1998	2000	2001	2002	2003	2004	2005
Total	118 449	81 442	68 979	62 437	58 747	71 714	83 264	94 679
Europe	27 126	31 359	26 392	22 900	21 080	24 178	25 239	26 695
North America	7 375	9 449	8 090	6 760	6 070	6 105	6 207	6 527
Central and South America	1 240	1 470	1 252	1 290	1 175	1 420	1 329	1 599
Australia	1 531	1 847	1 535	1 499	1 360	1 329	1 294	1 265
Middle East	1 081	1 185	818	820	942	1 045	1 185	1 362
Asia	8 257	8 279	7 951	8 075	7 140	9 708	13 952	17 590
Indian Ocean Islands	307		371	306	251	243	202	224
Africa	53 342	23 707	17 562	16 128	16 924	23 155	28 944	34 634
Unspecified	18 190	3 871	4 997	4 652	3 796	4 531	4 912	4 783

Source: Statistics South Africa, *Tourism and Migration reports, PS015*.

The inherited Aliens Control Act (ACA) of 1991 remained in force until 2002, when it was replaced by a new Immigration Act. The ACA was designed to control and prevent migration, not facilitate it. As a result, migrants and their employers both became increasingly frustrated at the inability to gain legal access to South Africa to work. The Immigration Act of 2002 is designed to reverse this situation and to actively facilitate temporary in-migration at the upper end of the labour market.

2.5. Rising irregular migration

Due partly to the relative absence of legal mechanisms for entry and work in South Africa, irregular migration increased in the 1990s. In addition, the collapse of apartheid made South Africa a more desirable destination than hitherto. Irregular migration was previously confined to migrants from neighbouring countries. After 1990, increasing numbers of migrants began to arrive from the rest of Africa. Undocumented migrants are extremely difficult to count since they, and their employers, have no interest in making their presence known to the authorities. The Human Sciences Research Council (HSRC) of South Africa originally claimed that there were 5 to 8 million undocumented people in South Africa. These figures were exaggerated by a poor methodology and have since been publicly withdrawn by the HSRC.¹⁹ Statistics South Africa and the Southern African Migration Project both estimated a figure of around 500 000 in the late 1990s. The primary sources of irregular labour migrants are still Mozambique, Lesotho, and Zimbabwe. The political and economic situation in Zimbabwe has caused an upsurge in economic migration to neighbouring countries such as South Africa and Botswana. It is not known how many irregular Zimbabwean migrants are now in South Africa, but it is probable that the estimate of 2 to 3 million is an over-estimate.

The number of undocumented residents of South Africa was reduced by two immigration amnesties offered by Cabinet between 1997 and 2000: (a) legalisation and permanent residence for SADC-country citizens who had entered South Africa illegally before 1990 (granting approximately 124 000 SADC nationals permanent residence); and (b) legalisation and permanent residence for Mozambicans who had settled in South Africa during the Mozambican war of the 1980s. In 1995, the government also offered mineworkers (in the country legally) who met certain conditions the opportunity to get permanent residence. Approximately half of those who qualified (50 000) took up the offer. With the exception of the miners, most of the amnesty beneficiaries were not migrants but de facto immigrants. Further amnesties are unlikely.²⁰

South African policy has not commonly made a distinction between different types of "illegal foreigner" as suggested by the ILO. One study distinguished four categories of migrant irregularity:

¹⁹ 'Making Up the Numbers: Measuring 'Illegal Immigration' to South Africa' SAMP Migration Policy Brief No. 3, 2001.

²⁰ Jonathan Crush and Vincent Williams, eds., *The New South Africans? Immigration Amnesties and Their Aftermath* (Cape Town: SAMP, 1999).

- Lawful entrants/lawful stay including: (a) skilled migrants on renewable temporary residence visas and work permits (about 60 000 in number); (b) contract migrants in the mining and commercial farming sectors (approximately 150-200,000).
- Lawful entrants/unlawful stay including (a) retrenched migrant miners who remain in South Africa and work (numbers unknown); (b) migrants who enter for a non-work related purpose (such as tourism or study) and are employed without a work permit or working in the informal sector (unknown); and (c) migrants with valid residence and work permits that have expired (unknown).
- Unlawful entrants/lawful stay including (a) asylum seekers and refugees (est. 80 000); (b) successful applicants for the immigration amnesties and (c) undocumented migrants legalized under exemptions in the Aliens Control Act (mainly farmworkers) (est. 20 000).
- Unlawful entrants/unlawful stay including migrants who have jumped the border, acquired false documentation or been trafficked.²¹

The same study of irregular migration and employment deduced the following figures for the four different categories of migrant (**Table 14**). These figures have a high margin of error but provide some basic sense of the likely extent of violations in each category.

Table 14: Estimated volume of irregular migration and work, 2000

	1. Entry and stay unlawful	2. Entry lawful stay unlawful	3. Entry unlawful stay lawful	4. Entry and stay lawful
Migrants	90-120 000	300-350 000	125-140 000	200 000
Employment permission contravention	90-120 000	300-350 000		10-15 000

Irregular migrants tend to be most common in the construction, services and commercial farming sectors. Informal trading is another common occupation.²²

Regional and international trafficking of women and children to South Africa is on the increase. The International Organisation for Migration has recently undertaken an investigation of trafficking methods and the South African Law Commission is currently examining legal options for South Africa to combat trafficking.²³ However, Chapter 18 of the Children's Act, (Act No. 38 of 2005), which came into force in 2007, is devoted to child trafficking. The Act gives effect to the provisions of the UN Protocol to Prevent Trafficking in People (which relates to adults and children) and aims to combat the trafficking of children as well as to protect children who have been trafficked.

2.6. New refugees and asylum-seekers

Prior to 1994, South Africa did not recognize the UN and OAU Refugee Conventions. The passage of South Africa's first-ever refugee legislation in 1998 establishing a new refugee determination system was therefore a landmark event. The Act did not come into force until 2000, however. Prior to the promulgation of the Refugee Act, asylum seekers and refugees were handled through the Aliens Control Act. Since 2000, asylum seekers (people waiting for their claims for refugee status to be decided) have had the right to work and study. Refugees also have the right to

²¹ Jonathan Crush, "The Discourse and Dimensions of Irregularity in South Africa" *International Migration* 37 (1999): 125-51.

²² Trading Places: Cross-Border Traders and the South African Informal Sector SAMP Migration Policy Series No. 8, Cape Town, 1998; Building Skills: Cross-Border Migrants and the South African Construction Industry SAMP Migration Policy Series No. 11, Cape Town, 1999; Borderline Farming: Foreign Migrants in South African Commercial Agriculture SAMP Migration Policy Series No. 16, Cape Town, 2000.

²³ Molo Songololo, *The Trafficking of Children for Purposes of Sexual Exploitation: South Africa* (Cape Town, 2000); IOM, *Seduction, Sale and Slavery: Trafficking in Women and Children for Sexual Exploitation in Southern Africa* (Pretoria, 2003); South African Law Reform Commission, "Trafficking in People" SALRC Issue Paper No. 131, 2004.

work. However, some struggle to find work because their refugee and asylum seeker papers are not recognised by employers. Refugees are now being issued with smart ID cards and special refugee ID books.

South Africa has experienced a significant increase in asylum-seekers from the rest of Africa and Asia since 1994. Between 1994 and 2004 around 150 000 claims/applications for asylum were received by the Department of Home Affairs. In the same decade 26 900 asylum seekers were granted refugee status.²⁴

In 2006, the highest ever number of asylum claims were made, an “estimated total of 53 363.”²⁵ Men comprised 78% (41 437) of claims in 2006, women 20% (10 769) and children 2% (1 155). Although, some 5 342 initial decisions were made on the 2006 claims for asylum it can take up to five years (and sometimes longer) for claims to be adjudicated. The Department of Home Affairs has established a “Backlog Project” in an attempt to reduce the number of people waiting for decisions on their claims. Of the 111 157 outstanding claims in the backlog project at the beginning of 2006, 29 325 were finalised leaving a balance of 81 832 people with the status of asylum seekers while they wait for decisions on their claims to refugee status.²⁶

The largest claimant-generating countries between 1994 and 2001 were those which one might have reasonably anticipated: Angola, Burundi, Zaire (DRC) and Somalia (**Table 15**). There have also been significant numbers of claimants from countries such as Cameroon, Nigeria, Senegal, India and Pakistan. Rejection rates are very high for claimants from these countries, perhaps suggesting that economic migrants have attempted to use the refugee system to establish themselves in South Africa (**Tables 16 and 17**).

Data for 2006 shows changes in the countries of origin of applicants for asylum from the period 1994-2001 (**Tables 15 and 18**). Most notable is that Zimbabwe was the largest source of asylum claims in 2006 comprising over a third of all claims (18 973). Also new to the list as a significant source of asylum claims was Malawi with 6 377 claims (12%). Other important source countries were the DRC, Ethiopia, Bangladesh and Somalia (**Table 18**). The length of time taken to process asylum claims, as seen in the backlog of claims awaiting adjudication, means that it is a route that economic migrants who do not qualify for entry under the Immigration Act may use to stay in South Africa.



Irregular migrants tend to be most common in the construction, services and commercial farming sectors. Informal trading is another common occupation.

²⁴Department of Home Affairs, unpublished data, 2005.

²⁵Department of Home Affairs, 2006 Annual Report on Asylum Statistics (January-December), unpublished, Department of Home Affairs, 2007.

²⁶Department of Home Affairs, 2006 Annual Report on Asylum Statistics (January-December), unpublished, Department of Home Affairs, 2007.

Table 15: Refugee applications by country of origin, April 2001

	#	%
Zaire/DRC	7 677	11.9
Angola	6 859	10.7
India	6 385	9.9
Somalia	5 952	9.3
Pakistan	5 336	8.3
Nigeria	5 302	8.2
Senegal	4 507	7.0
Ethiopia	3 239	5.0
Burundi	2 031	3.2
Congo-Brazzaville	1 618	2.5
Tanzania	1 473	2.3
Bulgaria	1 441	2.2
Bangladesh	1 310	2.0
Rwanda	1 203	1.9
Others	8 608	13.4
Top 15	55 733	86.6
Total	64 341	100.0

Source: UNHCR/Department of Home Affairs.

Table 16: Refugee applications (rejected) by country of origin, April 2001

	#	% Total	% Applications
Angola	1 640	5.1	23.9
India	5 625	17.5	88.1
Nigeria	4 338	13.5	81.8
Senegal	3 686	11.4	81.8
Ethiopia	1 934	6.0	59.7
Tanzania	868	2.7	58.9
Bulgaria	1 217	3.8	n/a
Ghana	1 076	3.3	n/a
Bangladesh	946	2.9	72.2
Others	6 695	20.8	n/a
Total	32 199	100.0	50.0

Source: UNHCR/Department of Home Affairs.

Table 17: Refugee applications (approved) by country of origin, April 2001

	#	% Total	% Applications
Zaire/DRC	4 886	28.4	63.6
Angola	4 471	26.0	65.2
Somalia	5 330	31.0	89.5
Burundi	941	5.8	46.3
Congo-Brazzaville	661	3.8	40.9
Rwanda	604	3.5	50.2
Others	305	1.5	
Total	17 198	100.0	26.7

Source: UNHCR/Department of Home Affairs.

Table 18: Refugee applications by country of origin, 2006

	Applications	
	#	%
Zimbabwe	18 973	35.4
Malawi	6 377	11.9
DRC	5 582	10.5
Ethiopia	3 916	7.3
Bangladesh	3 074	5.8
Somalia	3 024	5.7
Tanzania	1 838	3.4
Pakistan	1 363	2.6
Congo (Brazzaville)	1 207	2.3
India	1 175	2.2
Others	6 832	12.8
Total	53 361	100.00

Source: Department of Home Affairs

2.7. Transnational migrants

Transnational migration has been defined as “a pattern of migration in which people, although they move across international borders, settle and establish ongoing social relations in the new State, maintain ongoing social connections with the polity from which they originated.”²⁷ Extensive surveying suggests that few migrants to South Africa see it as a place to settle and most have strong intentions of returning home.²⁸

A recent collection raises important questions about whether transnationalism is a new phenomenon in South Africa and whether the concept can be applied to any of the current migrant streams.²⁹ Most research has been conducted amongst South Africa’s post-1990 Francophone and Nigerian communities. It is apparent that in these communities the practice of transnationalism as defined above does apply to migrant behaviour.³⁰

²⁷ N. Glick Schiller and G. Fouron, “Terrains of Blood and Nation: Haitian Transnational Social Fields” *Ethnic and Racial Studies* 22 (1999).

²⁸ McDonald, *On Borders*.

²⁹ Jonathan Crush and David McDonald, eds., *Transnationalism and New African Immigration to South Africa* (Cape Town: SAMP, 2002).

³⁰ Alan Morris and Antoine Bouillon, *African Immigration to South Africa: Francophone Migration of the 1990s* (Pretoria: Pretoria, 2001).

Migrants working in the informal trade and SMME sectors are tied into regional, continental and global trade networks. They, too, have been designated as transnational migrants in terms of their migration behaviour.³¹

The concept of transnational migration has also been applied recently to migrants from Mozambique in South Africa. These are male migrants who have left their families behind in rural Mozambique and have established second households in South Africa, often through marriage or co-habitation with South African women.³² The extent of this phenomenon is unknown but it may not only be confined to Mozambicans and could be of growing importance. Certainly “marriages of convenience” are identified as a significant problem by the Department of Home Affairs.

2.8. Skills emigration

Globalisation has fundamental implications for the mobility of people in general, and for skilled people in particular. As Iredale suggests, an increased level of mobility is one manifestation of the internationalisation of the professions and professional labour markets.³³ Sourcing of skills from outside the boundaries of the nation-state is an increasingly important method of making up for domestic training and experience shortfalls, for compensating for “brain drains” to other jurisdictions, and for countering the impact of aging populations.

The collapse of the apartheid system sparked a (primarily White) exodus from South Africa. Some of these emigrants are privileged Whites who, rather than contemplate the redistribution of privilege, left for other shores. Others are people with skills that are in high demand elsewhere. South Africa has easily the most advanced higher education sector on the African continent and in many fields (particularly health, IT, engineering, and accountancy), the skills produced are readily transferable to, and recognised and valued in, the industrial countries.³⁴ As such, the United Kingdom, Australia, New Zealand, Canada and the United States have emerged as the destinations of choice.

Official emigration statistics do not capture the full dimensions, and likely impacts, of the brain drain from the country. Statistics South Africa, for example, recorded a total of 92 612 people (including 20 038 with professional qualifications) emigrating from South Africa between 1989 and 2003 to the five main destination countries. However, destination-country statistics of immigrant arrivals from South Africa paint a rather different picture: they show 80 831 professionals and 368 829 total immigrants arriving from South Africa during the same time period (**Table 19**).³⁵ Official South African emigration statistics therefore undercounted the loss by around three-quarters.³⁶ This is a significant “brain drain” by any standards.³⁷

³¹ Sally Peberdy and C.M. Rogerson, “Transnationalism and Non-South African Entrepreneurs in South Africa’s Small, Medium and Micro-Enterprise (SMME) Economy, In Crush and McDonald, *Transnationalism*, pp. 20-40.

³² Steven Lubkemann, “The Transformation of Transnationality among Mozambican Migrants in South Africa” In Crush and McDonald, *Transnationalism*, pp. 20-40.

³³ Robyn Iredale, “The Migration of Professionals: Theories and Typologies” *International Migration* 39 (2001): 7-26., p. 7.

³⁴ David McDonald and Jonathan Crush, eds., *Destinations Unknown: Perspectives on the Brain Drain in Southern Africa* (Pretoria: Africa Institute 2002); Jonathan Crush, “The Global Raiders: Nationalism, Globalization and the South African Brain Drain” *Journal of International Affairs* 56 (2002): 147-72.

³⁵ Matthew Stern and Gabor Szalontai, “Immigration Policy in South Africa: Does It Make Economic Sense?” *Development Southern Africa* 23 (2006): 123-45.

³⁶ Official South African emigration statistics are based on self-declaration at the point of departure. The data does not capture emigrants who do not declare emigration as the reason for departure as well as those who initially leave for some other reason and do not return.

³⁷ South Africa’s skilled population was recently estimated as in the order of 1.6 million. Skill losses tend to be concentrated in certain sectors including health, engineering, finance and IT; see Robert Mattes and Wayne Richmond, “The Brain Drain: What Do Skilled South Africans Think?” In McDonald and Crush, *Destinations Unknown*, pp. 17-46.

Table 19: Emigration from South Africa, 1989-2003

	Total		Professionals	
	Departures	Arrivals	Departures	Arrivals
Australia	21 973	56 351	5 044	13 081
Canada	1 363	23 186	1 710	5 126
New Zealand	11 112	29 236	2 770	7 156
United Kingdom	40 408	219 856	7 245	46 841
United States	11 753	40 199	3 270	8 627
Total	92 612	368 829	20 038	80 831

Source: Stern and Szalontai, pp. 141-2.

In sectors such as health and education, skilled South Africans are being recruited for work overseas on fixed contracts.³⁸ While it might be argued that this is a “temporary” loss, the impact on these over-burdened and under-staffed sectors within South Africa is still considerable. And, it is unclear how often these contracts are renewed, or whether these professionals remain overseas at the end of their contracts.

Recent research by the Southern African Migration Project (SAMP) suggests that the outflow of skills is unlikely to slow in the foreseeable future.³⁹ In a sample survey of the skilled population, as many as 69% had given some thought to leaving permanently. A total of 58% expressed a desire to leave and 49% said it was likely or very likely that they would do so at some point. Although only 7% said that it was likely they would leave within six months, 25% said they would do so within two years, and 42% within five years. The figures are also high for the prospect of temporary (less than two years) residence and work abroad. A total of 55% had a strong desire to leave for this period and 32% said they were likely or very likely to do so.

Other findings provide insights into the dimensions of the ongoing brain drain:

- Of the 12% of the sample identified as having a very high emigration potential, 71% said they would go permanently, 89 % would take their savings with them, and 57% were willing to renounce South African citizenship. Indicators of a possible transnational migration pattern were not much in evidence
- Preferred countries of emigration were the big five: the United States (24%), Australia (22%), the United Kingdom (15%), New Zealand (12%) and Canada (11%). This suggests that these five countries will continue to both benefit from and actively recruit skilled South Africans
- The survey surprisingly discovered little racial difference; skilled Black South Africans were just as likely to want to leave as White. However, there was a distinct gender difference with males of all races more likely to want to leave than females.⁴⁰

The economic impact of the brain drain on South Africa is insufficiently researched, ambiguous, and deserving of more rigorous national-level study and analysis. Sectoral studies have suggested that the temporary and permanent loss of skilled people is having a negative impact.⁴¹ A recent survey of 200 private and public sector companies (employing an estimated 101 000 people) certainly unveiled considerable private-sector concern.⁴² The survey

³⁸SAITIS, *A Survey of the IT Industry and Related Jobs and Skills in South Africa* (Pretoria: Department of Trade and Industry, 2000); Steve Reid, “Compulsory Community Service for Doctors in South Africa: An Evaluation of the First Year” *South African Medical Journal* 91(4) (2001); DENOSA, “Migration of Nurses: Realities, Threats, Challenges and The Way Forward” Pretoria, 2001;

³⁹Mattes and Richmond, “The Brain Drain.”

⁴⁰Belinda Dodson, “Women in the Brain Drain: Gender and Skilled Migration from South Africa” In McDonald and Crush, *Destinations Unknown*, pp. 47-62.

⁴¹SAITIS, “Survey of the IT Industry.”

⁴²C.M. Rogerson and J.M. Rogerson, “Dealing in Scarce Skills: Employer Responses to the Brain Drain in South Africa” In McDonald and Crush, *Destinations Unknown*, pp. 73-98.

found that a third of the companies considered that post-1994 skills emigration has had a significant impact on their operations. Most affected was the high-tech sector (33%) followed by manufacturing (11%), education/health (10%), and business services (9%).

Attempts have been made in the health sector to minimise the brain drain of health workers and its effects. These attempts provide codes of practice for recruitment and treatment of health workers, exchange programmes for training and development and the provision of health professionals to South Africa from specific countries. They include the 2003 Commonwealth Code of Practice on the International Recruitment of Health Workers (**Annexure A**) signed by all Commonwealth countries as well as bilateral agreements with Britain, Cuba and Tunisia (see section on bilateral agreements).⁴³

These agreements allow South Africa to fill some of the gaps in the health service with doctors from countries which have an excess goes some way towards ameliorating the effects of the emigration of doctors. However, the bilateral agreements only appear to apply to doctors and not other areas of health work which have been affected by emigration (e.g., nursing). And, attempts to prevent the recruitment of South African health workers do not seem to be effective despite the intentions of signatory governments.

2.9. Feminisation of migration

The final post-1990 change in migration to South Africa is the increase in female migration. Data from the recent census, as well as other data sets (such as refugee claimants), demonstrate that males still predominate in cross-border migration to South Africa (**Table 4**). Of the 687 000 SADC-born residents of South Africa at the time of the 2002 census, 37% were women and 63% were men. The proportions were roughly similar for other African residents. In a SAMP survey in five SADC countries, over 60% of men, but only 16% of women had worked in South Africa, a dramatic difference.⁴⁴ Nevertheless, there has been an apparent increase in female migration to South Africa over the last two decades although Dodson questions whether some of it may represent “an increase in visibility rather than volume.”⁴⁵

Patterns and purposes of women’s migration differ significantly from those of men. Women’s migration is more varied, complex and multi-motivational and is driven by a wide range of social and reproductive factors in addition to economic incentives. Even the economic motives for migration are gender-specific, with women going to South Africa largely to trade and men to work, most in formal sector employment.” Asked about the reason for their last visit to South Africa, 40% of men and only 10% of women said they had gone to work or to look for work (**Table 20**). For women, visiting, shopping and trading are far more important motivators than employment or job-seeking.

The different patterns and purpose of male and female migration shows up in the timing of actual and anticipated migration periods, with males consistently staying for longer periods. Gender differences are also apparent in the frequency and duration of actual visits to South Africa. Women make more frequent visits but of shorter duration than men. Female migrants tend to be older, married women whereas male migrants come from a wide range of age groups and all marital status categories.

⁴³ Commonwealth Secretariat, Commonwealth Code of Practice on the International Recruitment of Health Professionals, adopted at the Meeting of Commonwealth Health Ministers, Geneva, May 2003.

⁴⁴ Dodson, “Women in the Brain Drain.”

⁴⁵ Ibid.

Table 20: Gender differences in migration to South Africa

Purpose of most recent visit to SA	Males	Females
<i>Employment related</i>		
Work	33	7
Look for work	17	3
<i>Other work related</i>		
Business	3	3
Buy and sell goods	4	10
<i>Other reasons</i>		
Shopping	13	23
Visit family/friends	17	38
Holiday	3	3
Medical	2	8
Other	8	5
Worked in SA at some point	63	16

Source: SAMP database

Critical gender differences in labour market opportunities for migrants need to be highlighted. The South African labour market is highly stratified by gender which provides very different incentives and opportunities for labour migration by males and females. For example, increasingly the only legal way for a non-professional SADC citizen to work in South Africa is in the mining industry. Yet, 99% of mine employees are male. There is no equivalent employment sector for women in which there is comparable ease of entry.

The feminisation of poverty in many countries has prompted female household heads and other members to seek work through migration. This process coincides with a growing preference among employers for female workers. Most work has been done on the commercial farming sector. Farmers in border areas show a distinct preference for employing female migrants from neighbouring countries in the fields and canning factories.⁴⁶ There is anecdotal evidence that child labour is also on the increase, particularly from Mozambique.⁴⁷ In addition, studies show that when a miner is retrenched, he tends to relinquish his career as a migrant and stay home. Instead women household members are forced to migrate for work in other low-wage sectors.⁴⁸

⁴⁶Borderline Farming: Foreign Migrants in South African Commercial Agriculture SAMP Migration Policy Series No. 16, Cape Town, 2000; and Theresa Ulicki and Jonathan Crush, "Gender, Farmwork and Women's Migration from Lesotho to the New South Africa" In Crush and McDonald, Transnationalism, pp. 64-79; Frantz, Peter and Shabangu, Peter, "Foreign Labour North of the Zoutpansberg in the Northern Province," Department of Labour, Northern Province, 2000.

⁴⁷The South African Minister of Labour recently made a personal visit to farms in the Limpopo Province following press reports of employment of children from Mozambique on farms in the Tzaneen area.

⁴⁸Undermining Labour: Migrancy and Sub-Contracting in the South African Gold Mining Industry SAMP Migration Policy Series No. 15, 1999.

3. Management of migration

“Current migration patterns, which mostly reflect individual or family initiatives, are in marked contrast to the 1950s and 1960s, when a significant proportion of migration took place under the aegis of bilateral agreements between governments. Today, most labour migration policies are unilateral, with destination countries announcing programmes to admit migrants without seeking to conclude an accord with sending nations” (ILO 2004: 4)

The ILO argues here that in terms of migration management, there was a shift in the later half of the twentieth century from bilateralism to unilateralism in migration management. At the same time, managing migration is seen as “inherently a multilateral issue.” The majority of cross-border movements still occur within regional blocs. As a result, there is considerable value to “regional accords and processes for managing migration.”

South Africa represents an interesting case study in the competing pressures for unilateralism, bilateralism and multi-lateralism in the search for workable instruments of migration governance. Historically, regional migration to South Africa was governed by bilateral accords. New immigration legislation in post-apartheid South Africa is unilateral. At the same time, South Africa has had to respond to regional initiatives for a multi-lateral approach within the SADC. Complicating matters further is South Africa's attractiveness as a destination for migrants from the rest of Africa and elsewhere. Traditional bilateral and new multi-lateral responses are difficult to envisage in this context.

3.1. Unilateralism and South African immigration legislation

In 1995, the Presidential Labour Market Commission noted that South Africa had a “two gates” migration policy.⁴⁹ Under existing (inherited) legislation, there was one door for individual immigrants from overseas and another for regional migrants. In the case of immigrants, admission was governed by the Aliens Control Act (ACA) of 1991. The new Immigration Act of 2002 (Act 13) replaces the ACA and promises greater ease of admission. The Immigration Act was amended in 2004 by the Immigration Amendment Act (IAA) (Act 19).

Section 2(1) of the original IA (now repealed by the IAA) gives an indication of the intentions of the IA stating that in the administration of the Act, government would pursue several objectives including regulating the influx of “foreigners” to promote economic growth by; (a) ensuring that South African businesses may employ foreigners who are needed; (b) facilitating foreign investment, tourism and industries which are reliant on international exchanges of people and personnel; (c) enabling exceptionally skilled or qualified people to “sojourn” in the country; (d) increasing skilled human resources; (e) facilitating the movement of students and academics within the SADC for study, teaching and research; (f) promoting tourism and (g) encouraging the training of citizens and residents to reduce employer dependence on foreigners and promote the transfer of skills from foreigners to locals. Although this section of the original IA has been repealed it does indicate the intent of migration policy, although the amended IA does seem somewhat more restrictive.

The Act therefore conceives of most labour migrants, including skilled migrants, as temporary residents or “sojourners.” A number of different permit categories have been designed to facilitate the entry of “sojourners.” These include (a) four different categories of work permit (quota, general, exceptional skills and intra-company transfer), (b) corporate permits; (c) business permits; (d) study and exchange permits, which allow only limited work activity under highly restrictive conditions; and (e) treaty permits. Other entry permits include (f) visitor's permits; (g) cross-border passes; and (h) relatives permits.⁵⁰ These explicitly prohibit work, although (f) and (g) do allow the conduct of business, including trade.

In the case of quota work permits, categories and quotas are to be “determined by the Minister at least annually ... after consultations with the Ministers of Labour and Trade and Industry” (Section 19(1)). The provisional regulations

⁴⁹Restructuring the South African Labour Market: Report of the Presidential Commission to Investigate Labour Market Policy (Pretoria: Department of Labour, 1996).

⁵⁰Other permits include: diplomatic, crew, medical treatment and retired people.