



# Migration – challenges for policy-makers

**L**abour migration within the southern Africa region is nothing new. For years, people have flocked to South Africa in search of work. Many have lived and worked in South Africa legally as a result of several bilateral agreements. However, many people have entered and are working in South Africa illegally, either on a temporary or permanent basis. Formulating new policy to regulate migration and immigration is a challenge facing South African policy-makers.

## Terminology and statistics

Illegal aliens, undocumented migrants, illegal immigrants, documented migrants – how do they differ from each other? According to current terminology, a migrant is someone who comes to a country, temporarily, to live and work. An immigrant intends settling permanently in another country. It is difficult to tell the difference. The new terminology distinguishes between a documented (legal) and undocumented (illegal) migrant, but the terms illegal immigrant and illegal alien are still used interchangeably.

The statistics available are also relatively confusing and not very accurate. According to the Human Sciences Research Council (HSRC), there were between 3 and 5 million illegal immigrants in South Africa in 1997. That is a wide

margin for error, probably because of the difficulty of separating out migrants from immigrants. According to the Department of Home Affairs, 176 000 undocumented migrants were repatriated (sent back to their countries) in 1997.

## Existing legislation

The previous government's Aliens Control Act, 1991, is still largely the instrument regulating migration, although the new government introduced some amendments in 1995.

These amendments attempted to address the problem of illegal entry to the country by tightening controls on entry and beefing up the action that could be taken against offenders. They also tried to bring the Act into line with the requirements of the new Constitution. However, despite these amendments, certain provisions are still not consistent with the Constitution.

An example is if a migrant is limited to working within a certain province, this might infringe his/her right to freedom of movement.

## New legislation

The new Constitution has therefore been one of the important factors to take into account in developing new migration policy. Other factors include international norms and standards established by the



ILO and other international experiences. On the regional front, there are historical commitments and relationships with South Africa's neighbouring countries and regional obligations in terms of SADC. On the local front, domestic macro-economic policy and domestic legislation must be taken into account.

The Department of Home Affairs has been developing new policy over the past two years or so. Representatives gave a briefing on the Green Paper on International Migration to Nedlac in October 1997. The Department of Home Affairs asked representatives from business and labour to serve on a task team to evaluate public comments on the green paper. Provincial public hearings on the green paper were held between September and October 1998. The Minister of Home Affairs launched the White Paper on International Migration in

March this year. The public is scrutinising the document. Although government has not yet indicated whether the white paper will be tabled

at Nedlac for negotiation, Nedlac was drawn into the process recently when the Department of Labour held a workshop on labour migration policy.

### Issues

The white paper spells out the balance that needs to be achieved. On the positive side, we need to take advantage of the unprecedented movement of people with skills, resources, entrepreneurship and capital that will support the growth and development of South Africa. On the negative side, we need to protect the interests of the domestic economy, including access to jobs and resources.

One of the most contentious and difficult issues that needs to be settled is determining criteria to be used to qualify potential migrants and immigrants for temporary and permanent work permits.

Other challenges facing the policy-makers involve deep-seated cultural and historical issues, which are not going to be solved easily. Popular perceptions that immigrants contribute to the current high levels of unemployment and crime in South Africa have led to increasing xenophobic attitudes. Some employers have used undocumented migrant workers to avoid having to comply with the minimum standards provided for in labour legislation. This has led to the exploitation of those workers as well as perceptions that local workers are being undercut. This has resulted in further tension within communities.

### Process

The question of migration policy and its subsequent implementation cannot be confined to the Department of Home Affairs. Intra-governmental co-ordination is going to be of paramount importance if administration of the policy is going to be a success - from border control, to internal policing, to the justice system. Apart from spanning across different government departments, this issue also affects all other Nedlac stakeholders:

- Business has an interest in being able to employ the skills it needs.
- Labour's interest is to ensure that the basic conditions of employment of migrants comply with existing legislation.
- The community constituency, representing the interests of civics, rural people, women, youth and disabled, needs to be drawn in so as to begin to address some of the problematic public perception issues mentioned above.

All three constituencies have emphasised the importance of a multi-facet approach: one cannot isolate migration policy from broader socio-economic development domestically and in the region.