

THESIS

SUBMITTED IN FULFILLMENT OF THE REQUIREMENTS FOR

THE

DEGREE OF

MASTERS OF SOCIAL SCIENCES

IN POPULATION STUDIES/POPULATION AND SUSTAINABLE

DEVELOPMENT

OF THE UNIVERSITY OF NORTH WEST

BY

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APRIL 2003

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ACKNOWLEDGEMENT

Without the assistance and generous encouragement of a multiple of people, this report would not have been realized. However, it would be appreciated to note that it would not be possible to list all their names while at the same time some need to be recorded. Dr. J.N. Pitso of the University of Botswana has been most helpful throughout the long gestation period of this research. He and Ms. E Mukamaambo also of the University of Botswana helped with the entire period of research proposal exercise and ensured that the research was methodologically sound and compatible. I also owe gratitude to Prof. J. Oucho for the period he spent for a brief course work exercise.

Much useful information, guidance and material was provided by Mr. V. Williams of IDASA, Mr. S. Santho of the Lesotho Institute of Labour Studies and Mr. M.I. Nong of the Department of Labour in South Africa, Mr. T. Makatjane of the National University of Lesotho. Many of their inputs have been incorporated into the writing of this report. I thank them like many others for advice and assistance rendered at every stage of the research. I also acknowledge colleagues at the University of North West criticisms on earlier drafts. A special gratitude should also be extended to Dr. E. Udjo of Statistics South Africa for his critique of the first draft of my research proposal.

I owe a dept of gratitude to my colleagues and friends for their many words of advice and contribution in typing and transcription of this work. These additional individuals are: Eunice Nchoe, Patience Poppy Seodi, Mavis Moshia and Olga Mabitsela. Noted in this regard also is Mr. Jacques van Zuydam, Chief Director in the Department of Social Development and Lindi Molefe as well as Dr. J. Parson and George Nsiah of the UNFPA in South Africa and their respective members of staff for the support.

Last but not the least, is to extend gratitude to the following interviewees for helpful information: officials of the Ministries of Labour and TEBA offices in Botswana and Lesotho as well as Malawi. I thank these informed persons for listening to my questions patiently and provided as complete answers as

possible. Dr. P. Kok of the Human Science Research Council (HSRC) and Prof. Mbao of the University of North West were invaluable in their prompt and accurate editing work and help conceptualise this report even at the eleventh hour.

ABSTRACT

This research report evaluates the South African labour relations framework that regulates labour migration from 5 selected Southern African countries. The study aims to conceptualise and evaluate the institutional arrangements in the five SADC countries that sent labour migrants to South Africa, and the associated national instruments governing labour migration to South Africa. It also aims to critically evaluate the similarities and differences of South African migration policies with those of the countries involved in this study.

Information and data used in this thesis were obtained from document review as well as through interviews conducted with knowledgeable key informants during visits to select countries. South African documents were also reviewed and evaluated. This approach provided detailed information and data about institutional arrangements regulating labour migration.

The study finds that South Africa had labour migration policies and programs dating as far back as 1800s. It indicated that there were some bilateral agreements between South Africa and migration source countries, and that changes to those agreements were not necessarily the prerogative of South Africa alone. The study concludes by recommending that in post- apartheid South Africa, the Southern African Migration Project and other research institutions in the migration field should be more holistic in their approach to coping with the new challenges of absorbing educated and skilled manpower.

Wesley Nimrod Malebo

DECLARATION

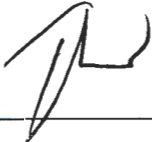
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I declare that the report presented here in this dissertation has not been presented before for any degree at any other university or institution.

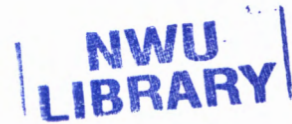


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CHAPTER ONE:

INTRODUCTION AND BACKGROUND

1.1 Introduction

This paper gives a brief historical and literature overview of labour migration, international arrangements and agreements between the countries under review. It further refers to the effects of labour regulatory mechanisms on both sending and receiving countries. The paper concludes by giving the methodology and analysis used as well as brief conclusions and recommendations.

A review of the literature revealed that international migration has become a major policy concern in both developing and developed countries. However, the field of migration is the least researched of the three components of population change: namely fertility, mortality and migration.

As an aspect of population change, migration is one of the most complex of the three mentioned demographic processes. Migration is a complex process of population movements that is influenced by often inter-related historical, geographical, economic, and political and socio economic factors. (MIDSA, 2000-2001)

This study will focus on the mining industry, which has been described in the historical literature as well-organised, and therefore easy to document and analyse. The major concern of this research is the South African labour relations framework on the regulation of African migrants from other countries, compared to the different and accommodative treatment accorded to whites from outside South Africa.

For the purpose of this study, and with a view to maintaining focus, five of the fourteen SADC countries have been selected for analysis of the issues around labour migration to South Africa; namely, Botswana, Lesotho, Swaziland, Malawi, and Mozambique. With the exception of Mozambique, which obtained its independence in 1975, all the countries included in this study obtained their independence in the mid-1960s. This study will therefore cover both the pre- and post-independence periods of these selected countries.

Breytenbach (1972) found that initially, long-distance workers moved out of their own volition and responsibility and without any assistance from governments. Governments then took an interest in migration patterns, and developed transportation systems, health services and other amenities, thereby influencing recruitment practices, employment conditions and safety regulations.

Diamonds were first discovered in Kimberly, South Africa in 1866. Wilson (1972) stated that soon after the discovery of diamonds and the opening of the diamond fields, control over the mining industry became centralised as employers developed a system of “closed compounds”, which were sealed off from all contact with the outside world.

According to Hance (1970) and Gould (1974), the history of population migration in Africa should be divided into three socio-economic and political periods, namely the: pre-colonial, colonial and post-colonial eras.

The South African government formulated a foreign affairs strategy for the mining houses, and subsequently a network of South African recruiting agencies was established across southern Africa to recruit a cheap African labour force.

This thesis seeks to evaluate and contextualize institutional arrangements that regulated the movement of migrants, and the associated national instruments governing labour migration to South Africa. A chapter will also be included on the effects of these arrangements and institutions on the people and countries involved.

1.2 Statement of the Problem

A number of studies have been undertaken on the causes, determinants and factors affecting migration in Southern Africa in general, and in Sub-Saharan Africa in particular. Extensive research has also been undertaken on the “pull and push factors” leading to migration, as well as on the advantages and disadvantages of migration for both countries of origin and countries of destination.

However, little research has been done on the international instruments and mechanisms that have regulated labour migration in Southern Africa. The first objective of this study, therefore, is to explore whether South Africa had international instruments that influenced migration into South Africa. Second, the study will determine whether such instruments were unilateral, or bilateral agreements between South Africa and sending countries. The study further aims to investigate and evaluate the impact of mechanisms, and analyse how they have changed over time.

The overall purpose of this study is thus to evaluate and contextualise the institutional arrangements between five SADC countries that sent labour migrants to South Africa, and the associated national instruments governing labour migration to South Africa. As such, this study aims to critically evaluate the connection between South African migration policies and those of Botswana, Lesotho, Swaziland, Malawi, and Mozambique. The study

further seeks investigate the effects of these arrangements and institutions on the people and countries involved.

1.3 Purpose and Objectives of the Study

1.3.1 Purpose

The overall purpose of the study is to analyse and evaluate migrant labour arrangements and agreements between South Africa and Botswana, Lesotho, Swaziland, Malawi, and Mozambique, with a view to firstly, identifying the effect of these arrangements, and secondly, understanding the policy implications of these arrangements.

1.3.2 Objectives of the Study

The specific objectives of the study are:

- To determine whether or not labour export mechanisms and arrangements existed in the periods prior to, during, and after apartheid,
- To evaluate South Africa's labour migration policies, programmes and legal framework in the period prior to, during and after apartheid,
- To study changes in the South African legal framework governing labour migration over time,
- To identify the factors that influenced South African instruments of labour migration and determine whether when these arrangements were changed or modified, the five selected SADC countries were involved in this process,
- To synthesise developments and changes to institutional arrangements with a view to informing policy formulation, and

- To identify the effects of these institutional arrangements and instruments on the people and countries involved.

1.4 Rationale for the Study

This study is timely in that it will shed light on the strengths and weaknesses of previous migration arrangements in South Africa, and in particular the much-outdated 1913 Aliens Control Act, which had its origins firmly, entrenched in apartheid policy. This study will facilitate effective policy formulation and strategies for implementation, and regionally- and nationally-appropriate approaches to the issue of cross-border migration in Southern Africa.

1.5 Research Design

The nature of research question required an analysis of a range of relevant documents to assess whether South Africa and the select SADC countries had policies and procedures in place that regulated migration. The research methodology entailed a combination of two approaches. First, visits to Lesotho, Botswana and Malawi to determine whether or not explicit policies and procedures for regulating migration existed between these and South Africa. This required in-depth analysis of policy papers from the three countries visited, as well as from South Africa.

To supplement the information available in my review of policy documents, I formulated an unstructured interview schedule to elicit information about the legal instruments and institutional arrangements that existed between South Africa and the selected SADC countries, and the impact of these on migration. That is, I used a substantive frame, or interview guide, to frame the set of topics that were to be explored.

The purpose of the substantive frame was to assist me in formulating research questions. The interview guide was used to interview knowledgeable respondents or key informants, who had been working in the migration field or had particular knowledge of the legal arrangements around migration. The respondents were mainly officials who dealt with issues of migration to and from South Africa. They formed a panel of informants providing information required by the study. These key informants were selected through purposive sampling, or snowball sampling, whereby I requested that key informants refer me to other people who could shed light on the questions of interest. These individuals were then visited and interviewed.

Interviews were conducted in four of the six countries included in the research: Botswana, Lesotho, Malawi and South Africa. The offices of the Employment Bureau for Africa in some Southern African countries were also visited for this purpose.

Country	Institution	Respondend
Botswana	Department of Labour	Mrs Molamu
	TEBA regional Office-Kgale	Mr. Ponoesele
Lesotho	Department of Labour.	Mr. Mantoro
	Lesotho Institute of Labour Studies	Mr. Sehoai Santho
	TEBA Regional Office-Maseru	Mr. Hechter
	National University of Lesotho	Mr. Makatjane
Malawi	Department of Labour.	Mr. Kambuto
	TEBA Regional Office-Lilongwe	Representative

The above table shows a list of respondents interviewed in the three countries of origin, namely Botswana, Lesotho and Malawi. Respondents were knowledgeable, and experienced individuals in their respective fields. Due to time and resource constraints, it was not possible to visit Swaziland. Also, language differences presented a barrier to visiting Mozambique. However, relevant information about these two countries was available in South Africa.

1.6 Analysis

The study adopted an issue-focused approach in analysing the results of the qualitative data. All interviews were tape-recorded to ensure accuracy of reporting, and excerpts used in the study are taken directly from interview transcripts.

The information collected was mainly in the form of documented text; hence, the study is qualitative in its approach. This was done because the focus of the study is on the exploration of mechanisms and strategies that regulated migration and their implications. The main aim of the empirical component of the study was to understand the processes through which migrants were regulated, and the impacts of these processes.



The report will therefore explore the labour arrangements between South Africa and Botswana, Lesotho, Swaziland, Malawi, and Mozambique. In each agreement examined, emphasis will be placed only on articles related to the objectives of the study, and exploring the existence of labour agreements. Moreover, the study will also examine changes in the arrangements and whether the selected countries were consulted during such modifications. This therefore means that, in all five labour agreements concluded with South Africa, only those articles addressing the broad and specific objectives of the study will be alluded to.

1.7 Historical Background

With the establishment of a prosperous mining sector during the phase of mineral revolution in South Africa from 1886-1906, concerted efforts were made to obtain cheap African labour, primarily from neighbouring African states, including Botswana, Lesotho, Swaziland, and Malawi (then Nyasaland). These African workers came as a result of the contract labour system. It is due to these efforts that hundreds of thousands of young African migrants crossed into South Africa to work in the country's gold and coalmines. The Employment Bureau for Africa (TEBA) was tasked with the duty of recruiting for the mining industry. TEBA manned the transportation network of ferries, trucks, trains, and planes to transport recruits from source countries to South African mines. The mine labour system became a labour empire, enduring because it continued to expand (Crush & James, 1995).

As described by Adepoju (1994), in the early 1970s, the main suppliers of labour to South Africa were Lesotho, Malawi and Mozambique. Adepoju (1995) further points out, however, that while labour supplies from Mozambique and Malawi dwindled in the late 1970s, the number of workers from Lesotho increased steadily over the years to become by far the most important foreign labour component (50%) in South Africa in 1982 (Chilivumbo, 1958; De Vletter, 1985).

Economically, migratory flows were dictated by South African white-controlled capital (Adepoju, 1995). However, several economic and political factors changed this balance immensely, including the independence of Mozambique, Angola, Zimbabwe, and later Namibia. Other changes were the case of membership of Southern African Labour Commission (SALC) by Botswana, Lesotho, and Swaziland (BLS) (De Vletter, 1966; Milazi, 1994).

In the 1970s and 1980s in South Africa, restrictive measures were adopted around issuing necessary documentation for immigrants, causing an increase in clandestine movements by desperate foreign workers to South Africa. At the same time, source countries began to express reservations over continued emigration (Adepoju, 1995).

Uncertainty over labour supplies from foreign sources and declining job opportunities for blacks in South Africa led the Chamber of Mines to start recruiting local labour. Consequently, by 1976, fifty-two percent (52%) of labourers recruited by TEBA came from within the Republic of South Africa (RSA). By 1982 this had increased to sixty-two percent (62%) (Adepoju, 1995).

According to Breytenbach (1972), "Southern Africa is the first region in Africa where early development in inter-territorial labour arrangements and agreements took place in the colonial times" (Breytenbach, 1972 p 20). Further, Crush (2000) describes four discreet streams of movement to South Africa from other neighbouring countries: contract mine migration, informal migration, white settler migration, and refugee migration.

Breytenbach (1972) opined that the growing and spontaneous oversupply, and continued recruitment of migrant labourers could perhaps best be explained in terms of the diverging interests of the state. These included a vested interest in maintaining order, lessening the burden of urban unemployment, and alleviating housing and other infrastructural shortages on one hand, and the interests of private enterprise in securing cheap labour to maximise profits.

According to Breytenbach (1972), the South African state sometimes acted on behalf of private industrial interests in concluding inter-territorial labour arrangements and/ or agreements with authorities of supplier countries. This

practice of indirect government involvement in the authorisation of private recruitment, which influenced labour flows from underdeveloped areas, especially at points of entry, was a particular feature of southern African migrant labour system (Breytenbach, 1972). Breytenbach (1972) concluded that this system distinguished the southern African pattern of controlled recruitment from patterns of seasonal migration in other parts of Africa. The general migration pattern, particularly in West Africa, is spontaneous, uncontrolled, and not necessarily tailored to short periods of employment (Byrlee and Eicher, 1972 p 20).

According to Moore (1964) and Schapera, (1943) cited in Breytenbach (1972), migrant workers from underdeveloped areas were primarily motivated by economic considerations, and left in search of cash-earning work opportunities to meet certain economic needs. Breytenbach writes that

“Initially, these long-distance workers moved of their own volition and responsibility. But during the late colonial and post-colonial era employers and/or recruiting organisations assumed liability for transportation. Governments took an interest, and prescribed, health and other standards thereby influencing recruitment practices, employment conditions and safety regulations”. (Breytenbach, 1972, p.3)

Breytenbach (1972) further emphasized that the administration and legal machinery regulating the migration system, both for source and recipient countries, tightened-up considerably. He writes that rudimentary labour arrangements between Mozambican authorities and the Transvaal Chamber of Mines started as early as 1878. Breytenbach (1972) states that a new labour agreement was concluded in 1909, to be amended in turn in 1914. The author further states that these agreements and amendments formed the basis of the Mozambique Convention of 1928 between South Africa and Portuguese Government. The Convention then superseded all previous arrangements and agreements on the recruiting and employment of

Mozambican workers in South African mines. Breytenbach (1972) states that this arrangement stayed in force and was also honoured by the FRELIMO Government.

The Witwatersrand Native Labour Association, formed by the Chamber of Mines in 1902, and the Government of Malawi (then Nyasaland) entered into the next set of international labour arrangements in 1936. This arrangement was replaced in 1965. Later in 1967, a further agreement was entered into between the two parties on the employment and documentation of Malawian nationals in South Africa. It is important to note that this contract involved the governments of two states, namely, Malawi and South Africa. The 1936 agreement was between Nyasaland and Wenela, a recruiting agency. This was the only case where a government entered an agreement with a recruiting agency, but it has since been reversed.

Botswana, Lesotho and Swaziland are also traditional labour suppliers to the South African mining industry. Breytenbach, (1972) suggests that migration from these three states has been governed by informal inter-territorial undertakings that have existed since colonial days. Breytenbach states further that workers normally living in Botswana, Lesotho and Swaziland were only classified as “foreign” workers in South Africa in 1963. Breytenbach (1972) concludes by saying the workers from these territories were subject to the same laws that applied to the indigenous South African black population.

Breytenbach further argues that although the conditions of employment and recruitment of Botswana, Lesotho and Swaziland nationals are not governed by specific international labour agreements, the South African Government applied the Recruiting Indigenous Worker’s Convention 50 of 1936, and the Migration for Employment Convention of 1939, as revised in 1949. In Breytenbach’s (1972) opinion, the governments of Botswana,

Lesotho and Swaziland nevertheless seemed satisfied with the existing arrangements on recruitment and employment of their nationals in South Africa. He further states that Botswana and Lesotho entered into new labour agreements with South Africa in 1973, as did Swaziland in 1975.

The early role of the Portuguese colonial government in Mozambique was limited to shaping and controlling labour outflows to the extent afforded by their bargaining position, channeling migrants to the Transvaal Chamber of Mines, and guaranteeing stable supply in exchange for maximum revenue and concessions. The Mozambican government's strategy was to create measures that ensured the circulation of workers back and forth from South Africa, bringing revenue home rather than emigrating permanently.

By 1887, only one year after gold mining began on the Witwatersrand, an estimated half of the adult male population in Lourenco Marques (now Maputo) was away working at any one time, mostly in the Transvaal (First 1993; Lenbogen, 1982). According to Mozambique Statute of 1897, the first statute on labour was decreed in Mozambique in 1897 with a view to increasing control and revenue. Following this, a Department of Emigration was established to prevent clandestine movements across the border.

According to First (1983), fees in gold were collected for each one hundred recruits, while migrants themselves were charged for an exit permit at the border. She further states that, any Mozambique nationals caught returning home without a permit would be sentenced to 90 days of unpaid labour. For instance, a deal was struck between Portugal and Transvaal but was not ratified. However, Portuguese administration pressed for a deal to keep supplying African labour to South African mines. Stoppage of labour supply to South African mines at that time would have seriously curtailed a source of revenue for the Portuguese Colonialists.

CHAPTER TWO

SOUTH AFRICAN LABOUR MIGRATION POLICIES AND PROGRAMMES

2.1 Introduction

This chapter analyses the evolution of South Africa's Aliens Control Act and its impact in the country, particularly on foreign migrant labour. The chapter will explore and evaluate South African immigration legislation and its practice since the discovery of diamonds and gold, through the period of the establishment of the Union of South Africa, the apartheid era, and the post-1994 political dispensation. That is, this research will evaluate South African immigration laws from the Act of the Union until after the 1995 Aliens Control Amendment Act.

The earliest reference to foreign blacks, including Malawian, Mozambican and Zambian nationals, in the Union of South Africa's statutes appears in the Native Labour Regulation Act 15 of 1911, (Breytenbach 1972) which was later consolidated and replaced by the Black Labour Act 67 of 1964. But according to Breytenbach (1972), this did not cover recruitment procedures for foreign black workers, and therefore it was the responsibility of countries of origin to arrange these. These measures were intended to support the South African Government in controlling the movement of foreign black workers to, and within South Africa.

2.2 The Aliens Control Act and Foreign Migrant Workers in South Africa

2.2.1 The Black (Urban Areas) Consolidation Act 25 of 1945 (as amended)

The act provides *inter alia* that foreign blacks shall not enter, be, or remain in a prescribed area, and no person shall employ or continue to employ such black persons within such an area, unless special permission has been obtained thereto.

2.2.2 The Black Labour Act 67 of 1964 (as amended)

This act also refers to foreign blacks and provides *inter alia* that foreign blacks shall not enter, be, or remain in any part of any district outside a prescribed area, and no person shall employ or continue to employ such blacks without the written permission of the Secretary for Cooperation and Development (Section 21(1)). As above

Breytenbach (1972) states that other legal arrangements controlling entry of foreign black workers into South Africa were contained in the Border Control Act 61 of 1967. Breytenbach (1972) further writes that the act stipulated that foreigners were to enter South Africa at a point where a passport control officer was stationed, and that authority to enter had to be obtained before arrival at the border post. In addition, he states that all other labour and general legislation affecting South African blacks was applied to foreign blacks as well.



According to Breytenbach (1972), other legislation applied to migrant workers is contained in a number of international and inter-territorial arrangements on the employment of foreign migrant workers in South Africa. Concerning these international instruments, Breytenbach (1972)

cites examples of the Mozambique Convention of 1909 (as amended) and the Malawi-Wenela Mine Labour Agreement (1965). The first mine labour agreement between Malawi and Wenela was concluded in 1936, coming into effect in 1938 (Breytenbach, 1972).

Regarding South African policy, as mentioned by Breytenbach (1972), prior to the unification of South Africa in 1910, little attention was paid to the labour, legal and political status of foreign black workers, and to some extent this continued even after unification. Policy did not distinguish between workers from former High Commission Territories such as Bechuanaland, Basotuland and Swaziland, and black indigenous South Africans. Breytenbach (1972) further states that initially, policy on foreign black labourers was regarded as a domestic concern of the Transvaal Chamber of Mines. He mentions that the South African Governments' practice of non-involvement in the Chamber of Mines' recruitment of foreign black labour was to some extent modified.

According to Breytenbach (1972), the South African Government policy towards foreign black workers was as follows:

- Foreign black workers were regarded as temporary labour;
- Foreign black workers were not regarded as integrated elements of the South African economy, but as a separate labour force;
- Foreign black workers were prohibited to work in the Western Cape;
- Foreign black workers were prohibited from bringing their wives and children into South Africa;
- Foreign black workers did not qualify for permanent residence in any prescribed area in terms of Section 10 of the said Act of 1945;
- Foreign black workers were not allowed to become tenants of homes in prescribed urban areas.

2.3 Development of Immigration Practice and Law in South Africa

The first Indians came to South Africa in 1850 as indentured labourers, with working agreements binding on apprenticeships. On completion of indenture, Indians could go back to India, but most preferred to stay in South Africa, which was perceived by the South African government to be a threat. The government therefore introduced the 1913 Immigration Regulation Act, which stipulated the grounds on which people would be allowed to enter South Africa.

After World War I, many migrants arrived in South Africa in the 1920s, the majority of whom were Jews from Eastern Europe. The South African government once again tried to use the 1913 Act to exclude Jewish immigrants. In 1946 the United Party of the English colonial South African government initiated an immigration drive in Britain. After their victory in the 1948 elections, the National Party government reversed the pro-British immigrant recruiting policy and focused instead on recruiting German and Dutch immigrants (Peberdy & Crush, 1998).

The 1937 Immigration Amendment Act stipulated that black migrant workers would lose their status if they changed or left their employment. In this way, the government entrenched a system of migrant labour that, until 1995, did not allow Africans with extended residence in South Africa to claim any rights of domicile (Peberdy & Crush, 1998). According to the ILO/SAMAT (1998), this legal and institutional framework was erected to ensure that all migrants retained their migrant status, and would not be able to settle in South Africa. The act further stipulated that under the South African immigration legislation, only whites could qualify as immigrants.

The 1995 Amendment Act removed some of the blatant violations of the rights of undocumented immigrants. Despite changes in the Act, the fact remains that the amended Act was a product of a policy deeply rooted in racial exclusion and domination, and the extension of unfettered state power (Peberdy & Crush, 1998).

Peberdy and Crush (1998) further state, however, that fundamentally immigration was defined as a "white issue". Immigrants were, by definition, white. While the government distinguished between "desirable" and "undesirable" whites in formulating its policies, there was no immigration policy for Africans from outside the country. Africans were considered migrants, and had to return home when they were no longer of use to South African employers (Peberdy and Crush, 1998).

2.4 Immigration Legislation during Apartheid Era.

As mentioned earlier on, when the National Party took power in 1948, it reversed the United Party's pro-British immigrant recruiting policy, and instead concentrated on recruiting German and Dutch immigrants. This created tension between English and Afrikaans speaking communities, who owed allegiance to their respective constituencies (Brownell, 1985).

The 1956 Amendment Act extensively extended the powers of the Minister and the State, to the detriment of the marginalized. The following are some of the characteristics of the 1956 Amendment Act:

- The Minister could issue warrants for the deportation of any person if he considered it to be "in the public interest" to do so, and
- The Minister had power to declare a person who was not a South African citizen by birth or descent or who had yet to acquire domicile,

and was convicted of any offence in the Union an "undesirable inhabitant," and to deport that person under a warrant.

The South African government also enacted two other pieces of legislation that affected the movement of people into and out of the country, namely the Population Registration (Amendment) Act of 1950 and the Admission of Persons to the Union Regulation (Amendment) Act of 1961 (Peberdy & Crush, 1998). The Population Registration Act divided the population into four racial groups, namely Whites, Blacks, Indians and Coloureds. People were therefore required to carry identity books that stated their race and place of birth. The purpose of this legislation was two-fold: namely to lay a foundation for the subsequent apartheid legislation, and as a means to identify or control immigrants inside South Africa (Peberdy & Crush, 1998). Peberdy and Crush (1998) further state that the apartheid strategy of demanding that people carry and show identity documents on point of arrest is still being used today in dealing with African immigrants.

The 1961 Admission of Persons to the Union Regulation (Amendment) Act came as a result of the South African government's paranoia about the longstanding movement of Africans from neighbouring states to and from South Africa. Movement was relatively free between South Africa and its Customs Union partners Botswana, Lesotho, Swaziland and Namibia. The purpose of this Act was to rid South Africa of foreign Africans, despite the continued need for cheap labour in the mines.

According to Peberdy and Crush (1998), in the 1960s, a significant number of whites left South Africa as a result of the following:

1. The impact of political resistance by Africans and campaigns against unjust laws,
2. The High Treason Trial;

3. The 1960 Sharpeville massacre and;
4. The declaration of a state of emergency.

The South African government therefore initiated a recruitment strategy by expanding immigration subsidies and assistance schemes for foreign whites. As a result, white immigrants increased by 300% in a period of 3 years. Whites leaving newly independent countries also flocked to South Africa as a result (Peberdy & Crush, 1998).

During this time, skilled white Europeans were actively recruited and encouraged to immigrate to South Africa. Once again, there were two levels of prejudice at work: a policy favouring white immigrants over blacks and, amongst potential white immigrants, distinctions were made on the basis of background and religion (Peberdy & Crush, 1998). This practice gradually led to the "two-gate" system, which will be discussed to at a later stage in this dissertation.

The Aliens Control Amendment Act of 1978 made it a criminal offence to employ, enter into business with, or accommodate immigrants without valid permits allowing them to work in South Africa. The 1984 Amendment to the Aliens and Immigration Laws Act removed the definition of "Europeans" from the Act, which had required all immigrants to be "assimilable" with the white South African population (Peberdy & Crush, 1998). This effectively meant that, for the first time, black people from other African states could officially immigrate to South Africa. According to Peberdy and Crush (1998), the lifting of racial restrictions in 1984 had more to do with political strategy than moral enlightenment or obligation.

The former South African Bantustans wanted to benefit from a growing brain drain of black skills from the rest of Africa (Peberdy & Crush 1998) and so began a massive campaign of the recruitment of skilled foreigners from

across the continent. The 1984 Aliens and Immigration Laws Amendment Act for the first time opened the doors for skilled African immigrants to come legally to South Africa. This applied specifically to the so-called “independent national states” such as Bophuthatswana and Transkei, which according to the South African law were recognized as “independent and sovereign”, and therefore subject to international law. By virtue of this “independent” status, these former homelands could decide to employ black migrants from the rest of Africa.

2.5 Recent Policy and Legislative Developments

In 1994, at the beginning of the new political dispensation in South Africa, the 1991 Aliens Control Act was reviewed and revised to create the Aliens Control Amendment Act of 1995, which shifted policy emphasis away from control, exclusion and deportation (Crush; 1998).

It should be noted, however, that the usual process of comprehensive policy formulation, whereby Green and White papers are developed, public consultations, adoption by the cabinet, presentation and enactment of legislation consistent with the vision laid out in a White Paper, had not preceded the Amendment Act. Nonetheless, a shift was achieved to a certain degree.

2.6 The Aliens Control Act and Foreign Migrant Labour (“Two Gates” System)

South African immigration policy has been described as having “two gates.” Under the Aliens Control Act, the statute governed immigration and temporary residence. There were exemption clauses in the Act that allowed for bilateral treaties with neighbouring states, which govern the entry of contract workers, primarily in the mining and commercial agricultural

sectors. According to ILO/SAMAT (1998:30), the two gates are “the Aliens Control Act and government-to-government agreements providing for temporary contract labour”. The ILO/SAMAT Paper No 4 goes on to state that migrants who enter through the first gate generally are accepted for their required skills.

The “second” entry gate applies to temporary contract labour in the mining industry and, to a lesser extent, agriculture (ILO/SAMAT, 1988). The Paper suggests that in such cases a South African firm enters a contract with a migrant pursuant to the bilateral agreement between the migrant’s home country and the South African government. It is important to note that contract workers can neither change jobs nor renew their contracts while in the country, nor obtain permanent resident status in South Africa.

Bilateral labour treaties between South Africa and the five selected SADC states date back SEVERAL decades and were last updated in the 1970s. These treaties still govern the entry of mine workers to South Africa from Mozambique, Botswana, Lesotho and Swaziland, but in the case of Malawi, the treaty is assumed defunct. These bilateral labour treaties have ensured that contract migration to South Africa is governed by regulation, and not by legal statute.

2.7 The system of Labour Recruitment

Black farmers in South Africa were weakened by the loss of land and they had to work for wages to pay for taxes. Yet, still there was a labour shortage on the mines. In 1901, the Chamber of Mines set up a recruiting organisation known as the Witwatersrand Native Labour Association (WNLA). WNLA sent agents all over Southern Africa, as far north as Zambia, Malawi, Tanzania and Zimbabwe. In 1912 the Chamber of Mines also set up the National Recruiting Corporation (NRC) in South Africa, which

became The Employment Bureau of Africa (TEBA) in 1977. By 1920 the NRC/WNLA had eliminated all competition in recruitment, and had become the only gate into the mining industry for migrants.

Recruiting stations were established throughout the region and modern transport systems set up for delivering migrants to the mines by road, rail, ferry, and eventually air. In exchange the chiefs would order young men to join the mines (Callinicos, 1981, 1982, 1985). Chiefs were therefore seen as playing a double role during industrialisation - on the one hand they were traditional protectors of their people, whilst on the other, they were subjects of the state. They could not challenge the state or would otherwise be deposed.



The wages of black South Africans were undercut by the influx of migrant labourers from outside the country. South African blacks complained that the system prevented mine workers from bargaining for better wages.

2.8 South Africa Curtails Labour Migrants from Outside the Country

During the 1970s and 1980s black South Africans, who were traditionally hesitant to work in the mines, made a dramatic shift by entering the industry in large numbers, pushing the foreign segment of the workforce down to 40% by 1980 (Crush, 2000). According to Crush (2000), nationals from Zimbabwe, Angola, Tanzania and Zambia withdrew from the mines altogether, while Malawian migrants were thrown out of South Africa after a dispute over HIV-testing. However, migrants from Lesotho, Botswana, Swaziland and Mozambique continued to come to South Africa (Crush, 2000). However, during the late 1980s and early 1990s, widespread retrenchments took place in the mines, affecting South Africans the most and bringing the workforce of foreign migrants back to over 50% (Crush, 2000).

While in South Africa the post-1948 apartheid government was firmly in place, many other African countries gained independence from European colonizers in the 1960s. Migrants from newly independent countries, once welcomed for their role in South Africa's economic growth, were now seen to be a political threat (Crush, 2000). According to Crush (2000), border posts were established for the first time between South Africa and Botswana, Lesotho and Swaziland in the early 1960s, and the apartheid government appointed the Foreman Commission of Inquiry to look into flows of foreign migrants. The Commission recommended that foreign Africans should no longer be allowed to come to South Africa (Crush, 2000), while the then-Department of Bantu Administration pressured South African employers to stop hiring foreign labourers, except in the mining industry (Posel, 1991). Crush (2000) suggests that black labourers from elsewhere in Africa continued to migrate through contract work, although they were unable to formally immigrate to South Africa because of policy restrictions.

Crush (2000) concludes that others would argue that the impact of migration policies has been exaggerated, in that even if immigration had been allowed most labourers would have continued to migrate on contract. Crush and Perbedy (1998) argue that migration legislation specified that all immigrants had to be "assimilable" by the white population, and that this restriction was on the statute books until 1986. The government's policy was different towards white immigrants from neighbouring countries. The racial underpinnings of South African immigration policy became particularly evident in the 1970s and 1980s, when whites threatened by political independence in neighbouring states were welcomed into South Africa with open arms (Crush, 2000).

White immigrants arrived in South Africa from Zambia, Kenya and Malawi in the 1960s. Similarly, white Portuguese migrants arrived from Mozambique

and Angola following independence in 1974 and 1975 respectively. Finally, the white population in South Africa was further augmented by the arrival of white Zimbabwean migrants after independence in then-Rhodesia in 1980. All new white arrivals were immediately given permanent residence and allowed to stay (Crush, 2000).

2.9 Summary

This chapter addressed the evolution and development of South African immigration practice, and the laws governing the regulation of foreign labour migrants in the country, from the establishment of the Union of South Africa in 1910, through the apartheid era, to the post-1994 political dispensation in South Africa.

The chapter covered the period from the discovery of gold and diamonds, and analyzed the effects of these discoveries on the South African labour force, which led to the outsourcing of foreign labour for the mines. While South African mines initially employed indentured Indians, after World War I, labour was sourced from Eastern Europe. After completion of their service indentured Indians were given the option of going back home or settling in South Africa, and the majority opted to remain here. The growing Indian population was of concern to the South African government, and through the 1913 Immigration Regulation Act attempts were made to repatriate migrants to India, although these attempts ultimately failed.

Discussions also focused on different periods of the British and Dutch colonial rule in South Africa. The English colonial government encouraged a pro-British immigration drive, while the subsequent Afrikaans National Party government reversed pro-British immigration policy, and instead recruited mainly Germans and the Dutch. This chapter critically investigates different racially biased labour laws regulating black foreign labourers in southern Africa, particularly from Botswana, Lesotho, Swaziland, Malawi and Mozambique.

CHAPTER THREE

INSTITUTIONAL LABOUR MIGRATION ARRANGEMENTS BETWEEN SOUTH AFRICA AND THE SELECTED SADC COUNTRIES

3.1 Introduction

This chapter will address inter-territorial labour arrangements and agreements in the pre- and post-colonial eras in the Southern African region, and in particular, in South Africa, Botswana, Lesotho, Swaziland, Malawi and Mozambique.

3.1.1 The 1901 Modus Vivendi

The draft version of Modus Vivendi was signed in 1901. Under this agreement, the labour recruiting agency of Transvaal was allowed to operate in Mozambique, whereas previously the Transvaal had paid Portugal administration fees. Further, under this pact, the Transvaal government was obligated to prevent clandestine migration into South Africa, while the Portuguese insisted that labour contracts be limited to one year. (Mozambique/Transvaal Modus Vivendi 1901, Article x.) First (1983) reveals that there was a secret deal between Mozambique and the WNLA intended to prevent other recruiters from obtaining licenses to solicit labour in Mozambique south of the 22° latitudinal line. The Mozambican experience with labour exportation is presented here as an example that best demonstrates the importance of geographical rivalry amongst states in governing the movement of their workers abroad.

There was widespread discomfort with the Modus Vivendi. According to Lenbogen (1983), many in Lisbon felt that the deal would retard Mozambique's own development. They felt that while migrant labourers

were developing South Africa, they were not contributing to the development of Mozambique. By some arrangements from July 1914, all Portuguese natives were recruited on an eighteen-month contract, the first 12 months of which were on deferred pay. Half of the contract wages were payable in Portuguese territory on return of any labourers.

A further turn of events faced by the Portuguese was brought about by the WNLA's practice of recruiting Mozambican women. The Portuguese considered the emigration of women to be one of the most formidable problems linked to labour migration, as they wished to prevent permanent emigration and promote circulatory movement back to Mozambique.

A deal was struck between the South African government and Portugal over negotiations to supply Mozambican labour to South Africa over a period of ninety years. The agreement stipulated that the conditions of the labour exchange would be reviewed in 1928 and 1964, though the essence of the arrangement would remain the same. Negotiations over this agreement continued through successive governments until the 1986 discussions between Presidents P. Botha of South Africa and Chissano of Mozambique.

3.1.2 The 1909 Convention

The 1909 Convention signed by the South African and Portuguese governments was known as the Mozambique/Transvaal Convention of 1909, and aimed at entrenching the 1901 Modus Vivendi. Central to the Convention, the Portuguese insisted that compulsory return to Mozambique was included in the worker's contracts, so as to be enforceable by law rather than a mere treaty obligation. It should be noted that the 1901 Modus Vivendi already specified that all Portuguese contract law be enforced, and thus it was only necessary to insert clauses into the contract to make them subject to Transvaal law.

3.1.3 The 1928 Convention

By 1921, the South African government had notified Portugal of its intention to do away with the 1909 Convention. Breytenbach, (1972: 9) wrote that the “Union and Portugal concluded a new agreement in 1928. Part 1 of the agreement, known as the Mozambique Convention, dealt with mine labour.” Breytenbach (1979) maintains that the 1928 Convention did not make significant changes in the existing recruitment agreement and procedures. Under Section 1V (Part 1) of the Convention, as stated by Breytenbach (1979), Wenela was recognised as the only recruiting agent for the Transvaal gold and coal mines in Mozambique. Therefore, from the South African perspective, the state had no control over the recruitment, importation, transportation, accommodation or repatriation of workers (Breytenbach 1972).

Wilson (1972) pointed out that under the Mozambique Convention of 1928, the maximum period of service for Portuguese Natives was limited to eighteen months. The South African government attempted to gain control over Mozambican ports and railways, to the extent that there was even a plan afoot to incorporate much of Southern Mozambique into the Union of South Africa for the provision of much-needed labour (Suell, 1928:30; Lenbogen 1982:128-30).

The Mozambican experience with labour exportation is presented here as an example that demonstrates the significance and depth of geographical rivalry amongst states in controlling the movement of their labourers abroad. After Portuguese settlers failed to stop the export of Mozambican labour to South Africa, the Portuguese Ambassador broke off the Labour Convention out of desperation without consulting Lisbon. Following this declaration, the number of new recruits was significantly reduced. In response, the government of the Union of South Africa blockaded international loans of

British capital to Mozambique, as the country's potential repayment revenue would depend on a trade and transport agreement with the Union.

The 1928 Convention was essentially the same as that of the 1909. All bilateral payments were to be made in gold. The Convention was confirmed in a revision of six clauses in 1934. Amongst other changes, one article obliged South Africa's government to assist in prohibiting Mozambican women from migrating to South Africa. The South African government also agreed to repatriate illegal immigrants; whose numbers in the Union had reached alarming proportions. Relations between the South African and Portuguese governments, and the conditions of the agreement were so stable that the deal was extended for five years in 1939. There was even an option for the Portuguese be paid in gold if they so wished.

The *Modus Vivendi* essentially defined the relationship between Portuguese-ruled Mozambique and South Africa, and its contents remained basically intact until 1975. Wilson (1972) suggests that white settlers in Mozambique were preoccupied with selling labour to South Africa because this trade was estimated to be far more lucrative than any alternative development course. Wilson states, (1972 pp111),

“ Whilst Mozambique is probably not as dependent on South Africa as is Lesotho, the evidence nevertheless suggests that there is a close symbiotic relationship between the two so that any attempt by one side or the other to break the economic ties, either by Mozambique refusing to allow her workers to go to the mines, or by South Africa refusing to accept workers from the East Coast, would be economically disadvantageous to both.”

3.1.4 Post-Independence and Labour Export

During the liberation struggle in Mozambique, FRELIMO vowed to end labour migration, especially to South Africa. As a result of South Africa's

policy-driven destabilization of the Mozambican economy, the FRELIMO government inherited from the Portuguese a range of social and economic problems caused by longstanding underdevelopment. In the light of this, the young democratic government of Mozambique offered more and more concessions in a desperate bid for a new labour export agreement. Taking advantage of Mozambique's vulnerability, the South African government blockaded labour migrants from Mozambique, and this was only lifted when the Chamber of Mines begged the South African government to remove the blockade. The Portuguese removed documents relating to the Lisbon/Pretoria mineworkers Agreements, believed to have been highly favourable to Lisbon at the expense of Maputo, when they left power in 1974 (Milazi, 1975:30). In response to this crisis situation, the Mozambican leader, Samora Machel, announced that the FRELIMO government would discuss the labour contract with Pretoria rather than abruptly stopping the flow of workers to South Africa.

In a bid to reduce Mozambique's dependence on labour exports to South Africa, the FRELIMO government adopted a long-term plan to absorb Mozambique's migrants through the growth of the state agricultural sector, development of the areas, and industrialization, although it was estimated that it would take ten years before migration to South Africa could stop altogether. But the predicament faced by the Maputo government was that mineworker's contracts were providing 7-10% of the total annual budget.

The South African Government also announced general labour arrangements for Mozambican workers in South Africa. These arrangements came into operation on 1 July 1966.

The Agreement of 1964 is essentially a continuation of the Mozambique Convention of 1928. This Convention covered only mine labour in particular, and therefore did not apply to other Mozambican workers in

South Africa. The agreement contains 32 articles and came into effect on January 1, 1965. Amongst others, the contents include:

Article I

The Government of the Republic of Portugal and the Government of the Republic of South Africa regulate according to the provisions of this Agreement the employment of Portuguese workers from the Province of Mozambique on the gold and coal mines of the Provinces of the Transvaal and of the Orange Free State (hereinafter termed “mines”, affiliated to the recruiting organisations referred to in Article III.

Article XXXII

Notwithstanding the provision of Article LIV of the Convention of 11th September 1928, this Agreement shall come into operation on the 1st January 1965, and shall remain in force for five years. It shall be subject, however, to any article or articles thereof being amended by mutual consent during that period, after five years from such coming into operation, it may be revised either partly or total at the request of one or other of the governments concerned and if revised shall thereafter remain in force until either of the governments shall have given twelve months notice of its termination.

The above are examples of different labour agreements entered into between South Africa and Portugal pertaining to Mozambican labour migrants in the South African mines.

3.1.5 Summary

The first section of this Chapter referred to the existence and evolution of labour agreements between South Africa and Portugal in the then-Province of Mozambique. Also explored were mechanisms used to modify the different agreements, and the role players responsible for this. The second section on Mozambique analyzed the 1901, 1909 and 1928 Labour Conventions, as well as the 1964 labour agreements between South Africa and Mozambique.

3.2 Migratory Institutional Arrangements between South Africa and Malawi

Malawi was said to be the third largest supplier of migrant labour to the South African mines in the 1950s and 1960s. According to van Velsen (1959), the majority of Malawian migrant labourers in the South African mines were illegal workers without valid travelling documents. It was not until the introduction of tight passport controls in South Africa in the 1960s that the number of illegal migrants decreased (Wilson, 1972).

Organised recruitment of Malawian labour migrants to the South African mines only started in 1936 (Breytenbach, 1979). However, it has been noted that prior to 1938 Malawians had been working voluntarily in South Africa. According to Breytenbach (1979), these early movements to South Africa were encouraged by missionaries and colonial authorities, both of which imposed taxes on the native population.

The conditions under which Wenela could recruit in Malawi were outlined in the Nyasaland African Employment Ordinance. Native authorities and/or chiefs could not recruit for Wenela. In addition, the head of a family could not be recruited, nor could men 16 years be contracted. Every worker had to be medically examined, and each was required to be vaccinated against yellow fever and smallpox. Each worker also had to be issued with a valid travel document, which was actually a work permit. From 1 July 1963, recruits from Malawi needed to have valid passports.

There are two separate agreements between the Malawian Government and the South African authorities governing labour migration – the Wenela Agreement of 1965 and the General Labour Agreement of 1967.

In 1974, a group of Malawian migrants were returning home from South Africa via Botswana. The plane in which they were traveling crashed in Francistown, killing seventy-two Malawi national. As a result, the Malawian government, under the Presidency of Dr. Hastings Banda, imposed a total ban on the recruitment of labour from Malawi to South Africa. However, this ban was short-lived, as within five years of the plane crash the ban was lifted, and normal recruitment operations by Wenela continued as before. It is for this reason that the number of Malawians working in South Africa subsequently dropped each year to only 12,761 in 1977 (Breytenbach 1979). Chirwa (1995) argues that the plane crash in 1974 gave the government of President Banda good reason to restrict migration in order to divert the flow of labour to these sectors. At the same time, continues Chirwa (1995), there was increasing pressure on Dr Banda from the Women's League of the ruling Malawi Congress Party to restrict the outflow of men, and divert their labour into the Malawian peasantry (Chirwa, 1995).

3.2.1 Summary of the Agreement between Wenela and Malawi (November 1, 1965)



The agreement between Wenela and the government of Malawi consisted of six articles, which replaced all previous agreements between the recruiting agency and Malawi labour authorities. Between 1938 and 1965, Wenela handled its own recruiting in Malawi, as in Mozambique. But after 1965, Wenela was no longer able to recruit directly. It had a network of depots with headquarters in Lilongwe, and prospective workers reported voluntarily to these depots. Recruits must first get a tax clearance from Malawi. Then they register at a government labour office, and from there go to a Wenela depot for medical examination. If satisfactory, this is followed by an attestation procedure, where a government labour officer explains the contract before it is signed. The recruit then returns home for a few days before leaving for Francistown in Botswana by air, and from there he travels

by train to South Africa (see, Prothero, 1974: 390). These and other procedures were accepted by Malawi on the recommendation of the ILO. Malawi also ratified the ILO Convention No. 97 of 1949, although South Africa did not.

The Introduction to the Mine Labour Agreement reads:

“Whereas Wenela does not wish to undertake recruiting in Malawi but desires to agree with the Government terms, regulating the engagement in Malawi by Wenela, of persons who voluntarily present themselves at a Government Labour Office for service with members of Wenela... the following rules shall apply:

No modifications may be made to the agreement in question without the approval of the Malawian and South African governments.

The agreement may be terminated by any party upon 12 month’ notice. The administration of recruitment activities in Malawi falls under the Malawian Department of Labor: with it’s Representative based Johannesburg, South Africa.”

3.2.2 Summary of the Inter-State Agreement on the Employment and Documentation of Malawi Nationals in South Africa, 1 October 1967

The reason for the Inter-State Agreement on the Employment and Documentation of Malawi Nationals in South Africa is as follows:

“It is the desire of the Republic of Malawi to secure continued employment for these Malawians and also additional possible outlets for the employment of Malawians in the Republic of South Africa, and having regard to the spirit of friendly co-operation and good neighbourliness which characterizes the relations between both Governments”.

The agreement consists of 20 articles and contains various arrangements. Article 20 reads:

“This arrangement came into effect on 1 October 1967 and will remain in operation for five years, until 1 August 1972. Thereafter it will automatically be extended annually subject to notice. Thereafter the following will occur: The two Governments agree to consult should one of them find it necessary to suspend the operation of any or all provisions of this Agreement for any significant length of time”.

3.2.3 Migrant Labour and HIV/AIDS Incident (Politics of 1985)

The politics of disease had always been at the center of labour migration agreements between Malawi and recruiting organizations (Chirwa 1995). He further states that the 1913 ban on migrants from north of latitude 22°S was prompted by the high death rate amongst northern migrants, the majority of whom were Malawians and Mozambicans.

The first case of AIDS in Malawi was diagnosed in 1985. Chirwa (1995) states that by June of 1993 some 29 194 cumulative cases of HIV/AIDS have been reported from hospitals throughout Malawi. Chirwa (1995) has further stated that in 1987, South Africa used the politics of disease in a manner reminiscent of old colonial attitudes on the relationship between migrant labour and the spread of deadly infectious diseases. In earlier years, the South African government used disease as a reason to retrench African migrant labourers from the North, who were adversely affected by the arid South African climate. In this way, South Africa was able to curtail the number of Malawian migrants.

3.3 Migratory Institutional Labour Arrangements Between South Africa and Botswana

3.3.1 Background

Colclough and McCarthy (1980) and Taylor (1970) reported that amongst the principal factors accounting for the growing dependence on migrant labour in South Africa was the encouragement of labour recruitment, combined with a failure to develop the Batswana land economy and generate domestic employment opportunities during 80 years of British rule.

The earliest record of labour migration from Botswana to South Africa dates from the time of the first contact between white settlers and Tswana Chiefdoms located in the centre of the subcontinent (Taylor 1980). In 1912, the Chamber of Mines formed a more structured and formalised labour organization called the Native Recruiting Corporation (NRC). Local European traders were employed as NRC agents to recruit labour in exchange for cash advances.

In the late 1930's, the Chamber of Mines phased out the system of employing trader-recruiters, and instead established permanent NRC offices in different centers of the southern Botswana in Kanye, Lobatse, Kgale, Molepolole, and Palapye.

By the late 1930's, the Chamber of Mines had achieved a virtual monopoly over the recruitment of mine labour from Botswana, a position achieved through the compliance of the Protectorate administration, which sought to discourage recruitment by smaller organisations (Taylor 1979: 107-108). The establishment of these labour offices in Botswana created a conducive environment for further recruitment (Taylor 1986).

3.3.2 Botswana's National Framework

The legal regulations around recruitment of Botswana migrant workers date back to the colonial period. The African Labour Proclamation of 1941 required persons wishing to recruit labour from the then-Bechuanaland, such as South African businessmen, to be in possession of a valid license issued by the Resident Commissioner (Molamu et al; 1987).

Prior to the formalisation of the agreement between Botswana and South Africa, Botswana and Swaziland had offices in South Africa for the purpose of collecting tax from migrant workers from these territories. Botswana's South African office was also charged with the responsibility of looking after the welfare and working conditions of all Botswana nationals working abroad. In 1973, the function of this office was crystallised in the agreement between Botswana and South Africa.

3.3.3 The Recruitment Process

TEBA had been responsible for executing employment contracts on behalf of various mining companies in Botswana through its recruiting offices around the country. The labour contract was a one-page document printed in the form of an agreement of service, with the terms and conditions of employment in small print on one side (Molamu et al; 1987). The document had seven clauses containing arrangements relating *inter-alia* to transport, the nature of the work, wages payable, wage deductions, terminations of contract, housing, and other rights and duties related to the job (Molamu et al; 1987). Of importance to note, this agreement was interpreted and applied in accordance with the law of the Republic of South Africa.

On completion of the labour contract, signatures were required from the TEBA labour agent, the Labour Department's Attesting Officer, an

interpreter, and a witness. The impression given was that the prospective worker understood the terms and implications of the labour contract. But, according to the findings of Molamu *et al* (1987) in their research into the “Assistance to Migrant Workers in Southern Africa” project, the vast majority of workers were not aware of their rights and duties under the contract. The labour agreement with Botswana and Lesotho in 1973 and with Swaziland in 1975 testifies to this awareness.

3.3.4 Labour Agreement and Arrangements between Botswana and South Africa (1973)

“Preamble”

The full title is: “Agreement between the Government of the Republic of South Africa and the Government of the Republic of Botswana, relating to the establishment of an office, for a Botswana government labour representative in South Africa, Botswana citizens in the Republic of South Africa and the movement of such persons across the international border.”

Article III:

The functions of the Labour Representative and his staff shall be as follows:

Consultation with the South African authorities on the conditions of employment of Botswana citizens in South Africa and matters relating thereto;

Ensuring the employees from Botswana comply with South African requirements concerning entry, identification and documentation; assisting, when necessary, with such identification and with applications for documentation; and generally encouraging compliance with those requirements.

Article X1: (a) “This Agreement shall enter into force on the date of signature, and shall be valid for an initial period five years from that date. Thereafter it shall automatically be extended for periods of one year at a time but may be terminated by either Government giving twelve months’ written notice to the other government, of its intention to terminate it. Such notice shall be given through the diplomatic channel.”

(c) This agreement may be amended by agreement between the two governments and any amendment shall be effected by exchange of diplomatic Notes between them.

(d) This Agreement or any of its provisions, may at anytime be suspended by agreement between the two Governments, and any such suspension shall be effected by exchange of diplomatic Notes between them” (Breytenbach1972 p 21).

3.4 Migratory Institutional Labour Arrangements between South Africa and Lesotho

3.4.1 Introduction

This section concentrates on the case of Lesotho, and will address the historical background, migratory labour arrangements, and the regulatory mechanisms for the movement of contract mine workers between Lesotho and South Africa. The Section will therefore concentrate on labour migration from Lesotho to South Africa terms of operationalisation, as well as on the international bilateral arrangements entered into between Lesotho and the South African mining industry.

Migrants from Lesotho came and went through South Africa virtually as they pleased until pass laws and compounds were introduced to curtail and control their movements (Crush, 2000). The mines had a voracious appetite for cheap male labour, and the rural areas of the subcontinent had begun to supply their demand. In Lesotho, there was a particularly high level of male labour migration to South African mines. Makatjane (1991) notes that because Lesotho became dependent on South Africa for the employment of the male labour force, work in South Africa has become a perceived part of the Basotho life cycle.

3.4.2 Background and Labour Regulatory Mechanisms

Labour migration from Lesotho to South Africa dates back to the period immediately after the formation of the Basotho nation, in the aftermath of Lifaqane from 1818 to 1824 (Foulo, 1991:13). The labour relationship entered into by the Basotho and South Africa's white farmers at that time was semi-feudal in nature, with labour tenancy and squatting being the most common forms. During the period from 1856 to 1869, there was also a boom in commercial wool farming in the Cape Colony, which coincided with the establishment of the sovereign Orange Free State (Foulo, 1991). The discovery of diamonds in 1867 and gold in 1886 in South Africa also brought about the establishment of a multiplicity of new towns (Foulo, 1991).

According to Wallman, (1969), although Lesotho became a British colony in 1868, this was not Britain's original intention. While Britain ultimately agreed to have Lesotho as a colony, it was understood that that Lesotho would eventually be incorporated into South Africa (Wallman, 1969:13, Mueller 1977:36). Because eventual incorporation into South Africa was assumed, little was done to develop the economy of Lesotho (Wallman 1969:13; Kowet 1978:94). Some research contented that the increase in labour migration was partly due to manipulation of Lesotho's economy by South Africa, so as to ensure that Basotho provided the badly needed cheap labour in the South African farms and mines, and simultaneously ensuring that Basotho could not compete agriculturally with white South Africa (Mueller, 1977:36, Von der Weil 1977:13; Horschman, 1981:8; Keegon 1986:210 – 211, cited in Makatjane, 1991).

Experience from other countries indicates that imposition of poll and hut taxes was the most common British strategy for forcing subjects in the colonies to provide required labour (Hance 1970 cited in Makatjane, 1990). The practice of demanding hut tax supports the hypothesis that this was

meant to force Basotho to provide the labour required in the South African mines, rather than raising money to meet the financial burden of administering Lesotho as a colony (Makatjane, 1990).

The role of tax as a catalyst in encouraging labour migration is further reflected by the relationship between institutional recruitment, and the payment of tax advances. As a strategy to induce men to join the mining sector, the recruiting agencies were prepared to give advances in the form of tax payment for men upon enrolment in the mines. During that period, chiefs were said to have played a major role in the enrolment of migrant labourers. Chiefs were not only responsible for the collection of taxes, but used all means at their disposal to ensure that men enrolled into migrant labour, under threat of persecution by the colonial government for collecting less than the average amount of hut taxes (Kowet, 1978:98 cited in Makatjane, 1990).

In the Colonial Annual Report for Herschel, Halse (1876) reported that during shearing and reaping seasons, large parties rushed into the adjacent districts and returned quite satisfied if they have realised enough to pay their hut tax. Makatjane (1991) concluded that it was for this reason that the declaration of Lesotho as a British Protectorate in 1868 was followed by the introduction of hut tax, which later acted as a strong facilitator of labour migration.

With effect from 1896, the Chamber of Mines began to consolidate a uniform strategy of recruitment and wage determination. This led to the emergence of monopolistic market structure in the mining labour market, with the result that black wages were maintained at low levels (Foulo, 1991).

The South African government introduced a series of measures designed to control the influx of labour into "white areas", culminating in the

establishment of the Black (Urban Areas) Act of 1923 (Foulo, 1991). The laws essentially stated that black Africans should only be allowed to enter “white areas” when he or she was willing to minister to the needs of whites, and should depart there from when here or she ceased to so minister (Faulo1991). These laws and regulations were to force black workers to oscillate between rural homes and their places of work.

The Black Laws (Amendment) Act of 1963 required all foreign Africans including Basotho labourers entering South Africa to work to have prior permission from the Secretary of Bantu Administration, with the exception of those specifically recruited to work on the mines and in other specified industries, (Foulo, 1991).

The enactment of the Bantu Law (Amendment) Act No 76 of 1963 prohibited Africans from Botswana, Lesotho and Swaziland (known as the BLS countries) from entering South Africa except for work in specified industries (Stah1, 1983), which considerably reduced the flow of Basotho migrants to South Africa. Thomas (1977) concludes that Basotho could no longer enter South Africa in search of work, but rather, they were to be recruited and contracted while in Lesotho.

The other major development in labour migration was brought about by the South Africa's mining industry's intention to replace foreign labour by Black South Africans. (Makatjane, 1990) The rationale behind this stemmed from increasing unemployment among Black South Africans due to rapid population growth, which necessitated the introduction of proactive measures to employ black South Africans over of foreigners (Thomas, 1977:18). The ever-increasing risk of dependence on foreign labour culminated in the withdrawal of Malawian workers, and the change of government in Mozambique (Thomas, 1977; Yuldeman and Jeeves 1986 cited in Makatjane 1990).

The mines employed a new strategy of reducing reliance on foreign African labour. According to Cobbe (1983), the mines increased wages in 1971 and 1975, improved working conditions and safety standards, and mechanised certain areas of mining. The idea behind these changes was to attract the South African urban population to the mines, and to put mining on par with other sectors of employment in South Africa.

Number of Basotho Workers in South Africa: 1875 – 1990

Year	Number	Sources:
1875	15 000	1875 Kimble (1978)
1885	30 000	Deduced from Accounts in Murray (1981)
1890	20 000	Deduced from Accounts in Murray (1981)
1911	21 000	Monyake (1974) and Bureau of Statistics and census preliminary results (1976)
1921	37 827	Monyake (1974) and Bureau of Statistics and census preliminary results (1976)
1936	78 604	Monyake (1974) and Bureau of Statistics and census preliminary results (1976)
1946	95 697	Monyake (1974) and Bureau of Statistics and census preliminary results (1976)
1956	112 790	Monyake (1974) and Bureau of Statistics Census preliminary results (1976)
1966	96 350	Monyake (1974) and Bureau of Statistics Census preliminary results (1976)
1976	129 103	Monyake (1974) Bureau of Statistics Census preliminary results (1976)
1986	121 450	Central Bank of Lesotho
1990	127 385	Central Bank of Lesotho

In 1875 and 1885, the increase of Basotho workers was primarily due to first, “gun fever”, and second, the increased need for cash for the payment of hut tax. The decline of numbers in 1890 and 1911 is as a result of massive repatriation following the outbreak of rinder-pest in 1896. Besides the declines in 1890 and 1911, the table shows gradual growth in numbers of Basotho workers in South Africa.

The change of South African policy on the recruitment of foreign labour was also reflected in employment statistics (Makatjane, 1991). For instance, employment statistics for the whole mining industry indicate that in 1973, 80% of black labourers in the mines were foreign, and this declined to 45% by 1978 (Murray, 1981:30, cited in Makatjane, 1991)



Distribution of Black Workers in Gold Mines in South Africa by Country of Origin

Country of Origin	Number (in Thousands) 1973	%	Number (in thousands) 1985	%
South Africa	81	22	240	55
Botswana	20	5	18	4
Lesotho	76	20	97	22
Malawi	109	29	16	4
Mozambique	83	22	50	12
Swaziland	4	1	12	3
Others	2	1	-	-
Total	375	100	433	100

Source: Calculated from Timaeus and Graham 1989: 371, Table 8.3.

According to Yuldeman and Reeves (cited in Makatjane, 1991), by mid-1985 some mines had achieved 90% return of migrants, and the enrolment of novices was running at only 15% of the workforce, resulting in the lengthening of the average stay of miners from 8 months under the old system, to 13.5 months in early 1984.

According to Makatjane (1991), one other change was in the provision of transport for labour migrants by the South African mines to visit their families regularly. Figures from the Lesotho 1978/79 Labour Force and Migration Survey showed that one quarter of labour migrants visited their homes at least twice a year.

The last, and most important change for Lesotho, according to Makatjane (1991), was a series of migrant labour retrenchments resulting from the closure of mines and reduction of their labour forces, in an effort to reduce high production costs.

The Basotho miners constituted the most skilled and experienced black labourers (Makatjane 1991), and therefore any skills shortage in the South African mines would have been advantageous to the Basotho. But according to Phillip (1990)(cited in Makatjane, 1991), the increasing recruitment of novices from within South Africa, coupled with the labour stabilisation policy of the Chamber of Mines and South African workers' proximity to the mines, the Basotho advantage was only temporary (Metter 1990).

It is important to note that South African mining industry was affected by political developments as well as market-based changes. The four major players in the industry were the South African government, the mining houses, the National Union of Mineworkers, and most recently, the Southern African Labour Commission (Foulo, 1996).

The year 1995 marked a definite policy change by the new South African government with regard to the migrant labour system. The fate of black workers from foreign countries remained unclear for quite some time following the birth of the new political order in the Republic of South Africa (Foulo, 1996), and no definite policy was adopted towards foreign migrants.

It was not until President Mandela's visit to Lesotho in 1995 that the direction of South African policy towards Lesotho began to emerge (Foulo, 1996). The President outlined the broad parameters of the policy towards migrant workers in South Africa. It was a policy based on a regional approach to economic and political problems (Foulo, 1996). He argued that South Africa had a role to play in ensuring that the economies of neighbouring states were not unduly disrupted by South Africa. President Mandela reassured the people of Lesotho that Basotho employment in the Republic of South Africa mining industry was guaranteed for as long as market conditions permitted (Foulo, 1996). He further stated that there would be no South African government policy that consciously discriminated against foreign workers in the mining industry (Foulo, 1996).

3.4.3 Labour Agreement between Lesotho and South Africa (1973)

"Preamble

The full title is: Agreement between the Government of the Kingdom of Lesotho and the Republic of South Africa relating to the establishment of an office for a Lesotho government Labour Representative in South Africa, Lesotho citizens in the Republic of South Africa and the movement of such persons across the international border.

Article I:

The Government of the Kingdom of Lesotho shall establish in the Republic of South Africa, a Lesotho Government Labour Office (hereinafter called "the Labour Office")

The Government of Lesotho shall with the concurrence of the Government of South Africa appoint an official to be designated the Lesotho Government Labour Representative (hereinafter called "the Labour Representative") who shall be a citizen and full-time government official of Lesotho and who shall be in charge of the Labour Office and stationed in South Africa.

Article X1

(a) "This Agreement shall come in force on the date of signature and shall be valid for an initial period of five years from that date. Thereafter it shall automatically be extended for periods of one year at a time but may be terminated by either Government giving twelve months written notice to the other Government of its intention to terminate it. Such notice shall be given through the diplomatic channel" (Breytenbach 1972 p. 24).

(b) "This Agreement may be amended by agreement between the two Governments and any amendment shall be effected by the exchange of diplomatic Notes between them" (Breytenbach 1972 p 24).

(c) "This Agreement or any of its provisions may, at any time, be suspended by Agreement between the two Governments and any such suspension shall be effected by an exchange of diplomatic Notes between the two Governments" (Breytenbach 1972 p. 24).

3.5 Migratory Institutional Labour Arrangements between South Africa and Swaziland

3.5.1 Introduction

The aim of this sub-section is to briefly examine the institutional mechanisms that regulated the export of mine labour from the Swazi Kingdom to South Africa mines. Commonalities between Swaziland and the other two High Commission Territories, Botswana and Lesotho (otherwise known as BLS countries), will also be analyzed, particularly in their relationships with England and South Africa.

3.5.2 Background

Swaziland has been one of the traditional suppliers of migrant labour to the South African economy. The National Recruiting Agency has a long history of labour recruitment in Swaziland, but because of the country's small population, the NRA placed limitations on the number of migrants exported. Wilson (1972: 116) emphasises that it seemed "...reasonable to conclude that of all former High Commission Territories, Swaziland is, from a labour (though not an investment) point of view, the least dependent upon South Africa and vice versa." However, Milazi (1984) argues that while the three High Commission Territories were totally dependent on the South African economy, through Mozambican independence Swaziland was able to be the first to establish an economic structure and pattern of trade outside South Africa's immediate control. Milazi (1984) goes on to say that though Swaziland boosts the economy with sub-continental modern sector, comprising mining, manufacturing and commercial farming the country still heavily depends on income from migrant labour to South Africa.

Whereas in South Africa Forced Removals were facilitated by the Land Acts, in Swaziland mobility and movement have been facilitated by the division of land into freehold titles, and Swazi National Land (SNL) (Legassick and Wolpe, 1976). One interesting feature of this tiny Kingdom is that the King holds ultimate control over all Swazi Nation Land (SNL) (Levin, 1993:20-21). A key aspect of royal rule in the past colonial period was control over land allocation by the King and chiefs. The institution of chieftainship has empowered authorities to extract tribute labour from their subjects. Milazi (1984) further explains that as control mechanism in both colonial and post-colonial periods, money was substituted for tribute labour. Such controls and forced contributions, says Milazi (1984), are the basis for power relations.

Milazi (1984) states that the holding of land and assets in trust for the community has given the King a powerful basis for capital accumulation. Milazi (1984) concludes that indeed, the land question and related power pressures could well be regarded as push factors in labour migration. According to Russell *et al* (1984), the Swazi Government views the immigration level as insignificant and satisfactory, and the amount of emigration as significant and satisfactory. It is further stated that, Swaziland policy is to maintain levels of both.

3.5.3 Labour Agreement and Arrangements between Swaziland and South Africa (1975)

“Preamble

The full title is: Agreement between the Government of the Kingdom of Swaziland and the Republic of South Africa relating to the establishment of an office for a Swaziland Government Labour Representative in the Republic of South Africa, certain Swaziland citizens in the Republic of South Africa, the movement of such persons across the common border and the movement of certain South African citizens across the common border.

Article I:

The Government of the Kingdom of Swaziland, shall establish in the Republic of South Africa a Swaziland Government Labour Office (hereinafter called “the Labour Office”)

The Government of Swaziland shall with the concurrence of the Government of the Republic of South Africa appoint a Swaziland Government Labour Representative (hereinafter called “the Labour Representative”) who shall reside in the Republic of South Africa and shall be in charge of the Labor Office established in terms of Article 1 (a) hereof. The Labour Representative appointed in terms hereof shall be a citizen of Swaziland and a full-time official of the Government of Swaziland.

The Government of Swaziland may appoint such other staff to this office as may reasonably be required.

The Government of the Republic of South Africa shall, with due regard to South African legislation, assist the Government of Swaziland to acquire suitable office and residential accommodation for the Labour Representative and members of his staff and their families.

Article III:

The functions of the Labour Representative and his staff shall be as follows:

Consultation with the Government of the Republic South African authorities on the conditions of employment of Swaziland citizens in the labour market in the Republic of South Africa and matters relating thereto;

Article X1

(a) This Agreement shall come in force on the date of signature and shall be valid for an initial period of five years from that date. Thereafter it shall automatically be extended for periods of one year at a time but may be terminated by either Government's giving twelve months' written notice to the other Government of its intention to do so. Such notice shall be given through the diplomatic channels.

(b) Notwithstanding the possible termination of this Agreement, a contract of employment in existence at the date of such termination shall remain in force and run its ordinary course.

(c) This Agreement may be amended by agreement between the two Governments and any amendment shall be effected by the exchange of diplomatic Notes between them.

(d) This Agreement or any of its provisions may at any time be suspended by agreement between the two Governments and any such suspension shall be effected by the exchange of diplomatic Notes between them.

3.6 A Summary of Bilateral Treaties

1. Treaty Series No. 11/1964: Agreement between the Government of the Republic of South Africa and the Government of the Republic of Portugal regulating the employment of Portuguese workers from the Province of

Mozambique on certain mines in the Republic of South Africa. (1st October 1964, amended 24th February 1971. and 11 May 1971)

2. Treaty Series No. 10/1967: Agreement between Government of the Republic of South Africa and Malawi relating to the Employment and Documentation of Malawi Nationals in South Africa. (1st August 1967)

3. Treaty Series No. 1/1973: Agreement between the Government of the Republic of South Africa and the Kingdom of Lesotho relating to the establishment of an office for a Lesotho Government Representative in the Republic of South Africa, Lesotho Citizens in the Republic of South Africa and the movement of such persons across the international border. (24 August 1973.



4. Treaty Series No 3/1986: Agreement between the Government of the Republic of South Africa and the Kingdom of Swaziland relating to the establishment of an office for a Swaziland government Labour Representative in the Republic of South Africa, certain Swaziland citizens in the Republic of South Africa, the movement of such persons across the common border and the movement of certain South Africans citizens across the common border, and addendum thereto (22 August 1975).

The Labour agreements will be evaluated separately according to countries.

CHAPTER FOUR

THE EFFECTS OF LABOUR MIGRATION ON SOUTH AFRICA AND THE FIVE SELECTED SADC COUNTRIES

4.1 Introduction

This chapter looks into the impact of labour migration in South Africa and the five selected source countries, including the effects on the families involved. Many studies have been conducted on this subject, but the focus of these studies has largely been on either South African gains, or the losses experienced by countries of origin. Therefore, this chapter will cover the economic, social, political and cultural costs and benefits of the long tradition of labour migration between South Africa and the five selected SADC countries, with particular emphasis on the policy implications generated. My review of the literature revealed that there is little scientific data on this subject in southern Africa, especially around the economic impacts, which have far-reaching implications.

The Southern African Migration Project (SAMP) Migration Policy Series (1998: 17) states:

“It is impossible to say with absolute certainty what motivates people to cross (or not to cross) borders. Decisions of this nature involve a complex set of criteria, some of which may not be conscious on the part of decision-makers.”

This again signifies the importance of scientific information, which unfortunately Southern Africa lacks.

The potential advantages and disadvantages of labour migration to receiving countries, such as South Africa in this case, are explored in this

chapter, as are the potential advantages and disadvantages to countries of origin, including Botswana, Lesotho, Malawi, Mozambique and Swaziland. Costs and benefits of labour migration to South Africa cannot be evaluated without addressing the issues around the factors that led to migration in the first place. For instance, the need for money to buy cattle, agricultural equipment, and even for acquiring guns is some of the main factors that caused labourers to migrate to South Africa. In the case of Lesotho, chiefs encouraged their male subjects to migrate so that they could acquire guns for national defence.

According to Makatjane (1990), by 1880 the Basotho had been so successful in their objective of accumulating weapons for national defence that they became a threat to South Africa, leading to the 1880 Disarmament Act which required that non-Europeans, Basotho included, surrender their guns. Whereas it was initially advantageous for South Africa to exploit foreign labour from neighbouring African countries, the accumulation of weapons in other African countries ultimately posed a threat to national security (Makatjane, 1990).

According to the SAMP Policy Migration Series Paper No. 7 (1998), the bulk of the literature on cross-border migration points to the negative consequences of migratory labour, and apartheid-era migration laws. Furthermore, it is said that the overwhelming sense from the literature is that cross-border movement had a deleterious impact on individuals, families, communities and states in the region.

But surprisingly, SAMP's findings were in direct contradiction to the statements above. The report states that the overwhelming majority of respondents feel that cross-border migration has had positive effects on themselves, their families, their communities, and their home countries.

Kowet (1978) argues that the colonial administrators in the Cape Colony wanted an expansion of British possession in southern Africa to fill their coffers with taxes from subjugated people but at the same time the government did not want to assume any of the financial responsibilities of running the colonies. Poulter (1976), Kowet (1978), and Murray (1981), observed that the hut tax was introduced soon after Lesotho was declared a Protectorate in 1868. For this reason, Van der Wiel (1977) argues that imposing monetary taxes upon the Basotho, while at the same time failing to develop an economic environment in Lesotho capable of generating employment and capital, was intended to drive them into South Africa to work. Hance (1970) concludes that experiences from other countries indicate that the imposition of taxes was one of the most common British strategies used to force subjects in the colonies to provide the labour required.

4.2 Implications for Individuals

Kowet (1978) argues that chiefs used all the means at their disposal to ensure their male subjects became migrant workers. Furthermore, Kowet (1978) states that chiefs increased their incomes by taxing recruits as a traditional tribute. It is further argued that the chiefs also used their judicial powers to perpetuate labour migration by imposing severe fines on the offenders amongst their subjects.

The arguments above clearly indicate that while recruits wanted to benefit from the remittances of migratory labour, they fell victims to fines imposed by their own chiefs. At the same time, the colonial government pressured chiefs for collecting less tax. Once fines were imposed on migrant workers, recruiting agencies were prepared to pay tax on their behalf upon enrolment to help them avoid exploitation by chiefs. Kowet (1978) further observes that recruits also benefited from small amounts of credit given to their families

before workers left the country for South Africa. However, the ultimate beneficiaries remained the mining houses, as well as the South African authorities through tax income.

4.3 National Effects

The ILO/SAMAT (1998) Policy Paper argues that, despite the widespread belief in South Africa that foreign labour migration has primarily benefited neighbouring African countries, historical evidence documents both gains and losses to labour-sending states, as well as considerable net benefits for South Africa. However, cognisance should be taken of the fact that labour migrants have significantly benefited their home countries through substantial remittances. Further, the absence of migrants in their home countries has considerably reduced unemployment in the supplier states. The ILO/SAMAT (1998) report states:

“In South Africa, foreign workers have typically been employed in the worst jobs for little pay, minimal social protection and no political representation; effectively constituting a relatively docile source of cheap labour for South African employers.”

However, whilst migration was seen to reduce unemployment in source countries, the report states that migration also caused the depletion of human resources, creating severely negative pressures on rural household economies and social structures.

The ever-increasing emigration of men from the five SADC countries to the South African mines seriously depleted much-needed manpower for agricultural production in countries of origin. For instance, in Malawi women formed lobby groups to pressure the government to discourage the export of male labour to South Africa. According to interviewed officials from the

Ministry of Labour in Malawi, some of these attempts by Malawians succeeded.

De Vletter (1995) is of the view that the returns of capital and labour from mining have been conspicuously imbalanced in favour of South African urban centres. Due to manpower shortages in labour supply regions and lack of capital, productivity in the rural areas remained unchanged or declined, thus creating further dependence on the migrant labour system (Brown, 1983).

According to the 'Report of the Committee of Inquiry into a Comprehensive System of Social security for South Africa (2002)', the Constitution of South Africa states that "everyone" has a right to social security, but current social assistance mostly excludes non-citizens. The Report further states that there will likely be pressure on the government to ensure that all people have access to certain basic services, such as emergency healthcare. In 1996, labour migrants from SADC countries working in South Africa for specific periods were accorded permanent residence, and this new policy changed their status. The ILO/SAMAT Report (1998) reveals that on the other side, the then-Department of Welfare partially negated migrants' access to these benefits. In the same year that amnesty was introduced the Department of Welfare issued new regulations implementing a little-known provision of the 1992 Social Assistance Act. This provision restricted state old age and disability pensions to South Africans only. The ILO/SAMAT Policy Series Paper No. 4 reports that as amnesty was effected, the Department of Welfare introduced the regulation that any labour migrant seeking permanent residence no longer qualify for social protection equal to that of South Africans. It is reported that the Social Protection Scheme was intended to insure workers against lost wages, retrenchment, disability, and poverty in old age, but in most cases the Scheme did not cover migrant labourers.

The government was faced with a situation where the provision of social protection to migrants as dictated by new regulations seemingly contradicted the Constitution. It is reported that eventually the officials of the North West Provincial government, faced with this contradiction, decided to follow the Constitution and withhold social protection from migrants. Who reported this? Source? All this is as a result of the two-gate system perpetuated by the then apartheid South Africa.

Adepoju (1995) argues that superficially, labour migration appeared to be advantageous to all parties: it overcame labour shortages to sustain economic development in host countries, and it benefited sending countries through reduced unemployment and remittances sent home by migrants. However, a large number of migrants were retrenched and sent home, leaving source countries with the difficult task of re-absorbing those workers.

4.4 Effects on Families and Households

South African labour laws originally prohibited labour migrants from relocating their wives and families to South Africa. A large proportion of married women from the five sending countries were wives of absent husbands. It is for this reason that some analysts suggest that labour migration has weakened the “social sanction” that used to inhibit marital breakdown, and that prolonged separation increased the likelihood of marital breakdown (Timaues & Graham, 1989). On the other hand, according to Sibisi (1977) and the Lesotho Bureau of Statistics (1981A: 72), data suggests that marriages in Southern Africa are stable despite the long separation periods stemming from labour migration, and thus these analysts refute the correlation between long periods of separation and marriage breakdown.

Brown (1983 p. 370) states: "Today, household income derives in large part from activities of individuals who work away from the family and are paid wages on an individual basis" In analysing migration and women-headed households, Brown (1983) stated that the Kgatleng district in Botswana had the highest percentage of such households, and also the highest rate of out-migration. Brown (1983) further states that within the same district, a study of three different villages showed that the village with the highest level of migration also had the highest number of single women heading households.



South African workers, like those in other countries, are affected by the possibility of retrenchments. Because of the inadequacy of scientific information on labour migration and job shortages, xenophobia began to spread amongst the general public. SAMP's Migration Policy Series Paper No. 7 (1998 p. 17) has also alluded to this. According to this Paper, the former Director-General of the Department of Home Affairs, Mr. Piet Colyn, was quoted as saying, "Africans consider the new South Africa a paradise where they are welcomed. But they are wrong. Our country cannot take the entire continent's misery on its shoulders". According to the findings of the SAMP paper, many South Africans don't think about the impact of cross-border migration on the migrants' countries of origin, and concern over these issues seems to be limited to a handful of academics and NGOs. The report states that as a result, a number of stereotypes have developed.

Foreign migrants spend most of their time in the mines and compounds of South Africa, and return home only on annual leaves or at the end of their contracts. This means that the shortest period a miner can spend away from his country of origin is six months, although in some cases husbands workers can spend up to 24 months in the South African mines. This may have an impact on the women's normal childbearing cycles, as husbands can return home at a time when their wives are not ready to have more

children. Ultimately, the wives and partners of migrant workers are thus deprived of choice in child spacing due to long absences and pre-determined leave periods.

Experience has shown that many migrant labourers begin relationships with local South Africans. In some cases children are born out of such relationships, and this can lead to the breakdown of existing marriages in home countries. Migrants may eventually spend most of their time with new partners, rather than with partners in their countries of origin. Once children are born out of such relationships, migrant workers may assume the responsibility of maintenance. Miners' already-depleted wages are thus further split between the individual personal needs, families in countries of origin, and maintenance of new partners and children in South Africa. In most cases, new families in South Africa benefit more than existing families in countries of origin. It is reported that out-migration of young men from sending states to the South African mines thus entailed considerable social cost to local households and communities, as families have been fragmented and the burden of traditional work left to women and children. I

Because old South African labour laws did not permit black migrants in South African to be accompanied by their families, the system of male hostels developed. As a result, a large portion of married women from sending states was separated from their husbands for extended periods. For instance, in Lesotho it was estimated that 40 to 60 percent of married women are wives of absentee husbands at any given time (Makatjane, 1991).

Since South African migratory labour law supported the separation of couples, men and women may have rarely, or never cohabited, and conception occurred as a result of periodic, short-term visits. Makatjane (1991) suggests that high rates of fertility in Lesotho in the past were the

result of such enforced separation of couples (Makatjane, 1991). For this reason, some researchers have concluded that separation caused by labour migration is the major factor behind long birth intervals in Lesotho, (Mpiti and Kalule-Sabiti 1985; Makatjane, 1987). Makatjane, (1991), therefore argues that Basotho women's long birth intervals have resulted in low fertility levels in Lesotho relative to those in other African countries. Makatjane (1991) further argues that high rates of widowhood are partly due to heightened male adult mortality as a result of labour migration. Collectively, these consequences suggest that even though labour migration brings income in the form of remittances and deferred payments to countries of origin, it has also brought about family breakdown and low fertility rates.

According to Brown (1983), evidence shows that high levels of male migration led to a modification in the structure of family life, and has transformed women's social and economic position, to their detriment.

The issue of uncontrolled and clandestine movement of migrants into South Africa has controlled and compromised state-to-state bilateral agreements on labour migration. Sending states no longer enjoy revenue on foreign remittances by contracted migrants to the fullest. The exact number of illegal immigrants working in the country is not known, but estimates indicate that it is increasing in both the formal and agriculture sectors. It has always been the duty of the sending state to ensure that migrant labourers adhere to the terms and conditions of recruitment and employment in South Africa, as stipulated in government-to-government bilateral agreements. The increasing, but unknown number of undocumented migrants is contributing to the reduction of sending states' efforts to control cross-border movements, as remittances from labour migrants through bilateral agreements are gradually diminishing.

Brown (1983 p. 386) concludes: "Migration became a necessity to insure the economic survival of the family, even while it undermined family". He further says that consequently, both women's and men's lives became structured by migration patterns.

4.5 Conclusions

From the Chapter, it is clear that governments, communities, households, families and individual workers were all affected by cross-border labour migration, though to different degrees. All of the parties concerned were affected economically, socially and culturally. A cursory glance gives an impression that the foreign migrants were the most affected, although locals ultimately fell victim to retrenchments as well. Davies (1990) states that supplier states, once staunch supporters of the liberation struggle, could argue that they are owed some form of compensation in terms of outright capital transfers or investment programmes.

CHAPTER FIVE

RESEARCH FINDINGS

5.1 Introduction

The main thrust of this Chapter is to give account of the results of the qualitative research conducted in Botswana, Lesotho, Malawi and South Africa. In Botswana, I visited regional labour and TEBA offices in Gaborone, while in Lesotho I visited the National Department of Labour and the offices of TEBA in Maseru. Interviews were also conducted at the Ministry of Labour and the offices of TEBA in Lilongwe. In South Africa, interviews were only conducted at the Department of Labour. It should be noted that no tangible results came from the TEBA office in Lilongwe.

5.2 South Africa's view on the bilateral agreement with the selected SADC countries

On the question of labour agreements in general, the official I interviews at the Department of Labour in South Africa shared similar views as with the representative of the Lesotho Institute of Labour Studies. He argues as follows:

“The earliest agreement was in 1964 and the latest in 1975. However, because they are agreements, you cannot change them, you've got to obey and that has brought into effect the entry mechanism to be what we call a 'two-gate' system. According to the Aliens Control Act, the criteria that allows someone to come in for the purpose of exercising economic activity in South Africa is such that it is aiming at people who've got what we generally call 'scarce skills' or 'highly managerially skilled' which, by its nature, excludes the majority of our member suppliers in SADC. Therefore these agreements then offer another gate for group applications. The bilateral agreements have what we call a 'no objection permit system' which allows that you to get a group of say, Mozambicans to come and work in the mines, officially what it was meant for, but like you once mentioned, Zimbabwe is not part of the

agreements and, Namibia is not part of the agreement, The Malawi agreement just faulted as someone observed”.

The official at the Department of Labour in South Africa was also asked if the labour agreements entered into were between the sending country and the mining houses through TEBA, and he replied as follows:

“The signatory is the country, we would not mention departments. TEBA happened to be a recruiting agency. S.A. and other countries agree without an agency, they agree directly. TEBA concludes a business transaction and not a political agreement. S.A. is currently having a lot of bilateral commissions, not necessarily treaties, with all those SADC countries. Our position is that why not put a labour court in one of our commissions to regulate labour migration between S.A. and those SADC countries that can be regarded as friendly SADC members. The aim is specifically to harmonise relations between S.A. and the other SADC members”.



The official further stated:

“The treaty was signed when Mozambique was a pure colony of Portugal even the agreement says that it is an agreement between the RSA and the Portuguese government, with the province of Mozambique; hence, the agreement was not with Mozambique”.

5.2.1 Labour Arrangements between Lesotho and South Africa

On the existence of labour arrangements between Lesotho and South Africa and regarding the movement of migrants to the South African mines, the representative of the Lesotho Institute of Labour Studies explained as follows:

“The legal framework that existed was based on bilateral agreements between South Africa and Lesotho (the sending state). Initially, in 1964 there was already an agreement between Lesotho and South Africa. In 1963, the regulation of borders and the need for a passport to cross borders was put in place. Before 1963 there was just free movement. After 1963 the regulation of border crossings by official passport was put

in place. So there was the 1964 framework, which was updated by the 1973 Labour Agreement between Lesotho and South Africa. This agreement was in the main, based on contract labour system and it was confined mainly to recruiting for the mines. For other sectors, such as farming, manufacturing and construction, there was no framework or regulation. The idea of the old system was that those sectors, namely farming and manufacturing, were going to be confined to South Africa's own people."

The official from the Ministry of Labour in Lesotho only referred to the contract between prospective miners and recruiting agents in the presence of the official from the Lesotho Department of Labour. Are these two different people? She explained the following about labour agreements:

"It is a contract, which contains the condition of employment, entered into between the recruit and the labour recruiting agency in the presence of an attesting officer from the Lesotho Labour Department. Lesotho needs to have such a policy."

5.2.2 Labour Arrangements between Botswana and South Africa

The respondent from TEBA in Botswana also referred to agreements of service as follows:

"There were no formal and written agreements that were used. What was used at that time as a formal agreement was an agreement between the miner and the employer, certified by the Commissioner of Labour or the labour office, which was called agreement of service, and it was just a single paged document. We were using this form of agreement (showing sheet to the interviewer)".

When asked a similar question about the existence of labour arrangements between Botswana and South Africa, an official of the Regional Office of Labour in Gaborone said:

"If you are a Motswana, and you want to go and work in South Africa, you just come here to collect forms (special contract forms). Well the answer to that question you can get at TEBA".

5.2.3 Labour Arrangements between Malawi and South Africa

A respondent from the Malawi Labour Commission was asked if he knew of any agreements between South Africa and Malawi on the movement of labour migrants to the South African mines. He replied as follows:

“The first groups or contingents of Malawi migrant labourers working in South Africa were not regulated, that is, there were no structured arrangements requiring them to travel to South Africa. All what they knew was that there is a gold mine somewhere in South Africa, and I think at -that time the problems were not as serious as they are today between Malawi and other countries and between Malawi and South Africa”.

The Commissioner further said:

“The other reason is that young men wanted to marry but because they did not have wealth to pay the parents of the girls, they had to migrate to the places where they could get that wealth and come back home to get married. The other reason is that for some Malawian’s it was like a prestige that is, when one finds himself having crossed borders of some few countries and has to tell his colleagues about the experience. So I think, that is one of the reasons why the young Malawi men had to work in South Africa.”

The Labour Commissioner continued as follows:

“There was no development in Malawi, Tanzania and Mozambique because they were regarded as reservoirs for labour. So there was labour reserved, just like a game reserve. Malawi had sealed the agreement with the white government in South Africa, but we understood that it was not the agreement that should be on the development here. So, that, there is continuous dependence on South Africa’s economy. These are some of the major reasons, I don’t know whether my colleagues here have other reasons that might have forced people to move to South Africa before independence”.

The second respondent from the Ministry of Labour gave a detailed explanation as follows:

“There was a train network from Blantyre, down to Beira in Mozambique, followed by another one from Beira to Zimbabwe and finally from Harare to South Africa. That was during the free flow of migrants that created serious problems in South Africa. The South African government signed an agreement to formalize the standards of these free flow of labourers from Malawi as international migrants staying in South Africa, and to do that they established an office, called by that time, the Labour office headed by the Malawi’s. This was a way to keep the free flow of labourers because these people did not have passports or traveling documents, so it was not easy for the South African government to know how many people foreign people are in the country. So they reached the agreement and decided to establish an office in Johannesburg where representatives worked hand in hand with the Bantu Affairs Commissioner, so we had the record book.”

This respondent continued report:

“There was now some structured kind of arrangements of labour movement from Malawi to South Africa and back. So these “MABAKA” (Malawi Employment Agency) and “WENELA” are now responsible for the movement of these people’s lives between Malawi and South African mines and back to Malawi. But when they are in South Africa, they are in the hands of the mine owners. Whenever they have problems in the mines they would go to WENELA to assist them, if they were sick, suffering maybe from TB, they would be taken back to WENELA, and it would then arrange for their return.

So the system went on up to 1974 when we had the plane crash in Botswana and the then President, (Banda) decided to do away with the arrangement that Malawians should go to South Africa. I think that was the first decision by a country regarded as a traditional supplier of labourers to South Africa, to make that kind of decision to suspend the movement of migrant workers. It was a unilateral decision by the President so that was the beginning of changes. After that plane crash, Kamuzo Banda stopped the Malawians from going to South Africa especially the most experienced and most energetic ones were also stopped. So there was a lot of shortage and the whites, the owners of the mines were taught a big lesson and then they started planning the future, saying if all these countries supplying labour to us can make the same decision, how will our mines progress here, so they started changing the policies in South Africa”

Asked about the latest developments with regard to labour agreements, the third official said:

“There was need for South African government to know how many Malawians were entering South Africa for employment with documents (passports). At the that time also an agreement between the independent Malawi government and the white South African government signed in 1967, so as to regulate the movements of migrants (government to and government), whereas the 1986 one was between TEBA and Malawi government.”

Asked about the factors or reasons that let Malawi workers travel so far as South Africa in search of work, the Malawi Labour Commissioner said:

“So people believe, Malawi going through Mozambique and from Mozambique going through Zimbabwe to South Africa to find jobs there either on the mines and there were several reasons why people were doing that. From what I've been reading is that, poverty is one of the reasons for the migration to South Africa. People were poor here, and we did not have sufficient means of labour and therefore people were trying to look for means for living. They did that by working in places where they thought they could get what they wanted for them to survive”.

The above excerpts support the information deduced from the documents analyzed earlier, which confirm that bilateral agreements existed between South Africa and migration source countries. The excerpts also attest to the fact that though these agreements were supposed to be bilateral, the South African government often had the upper hand in deciding what suited its country best, sometimes to the detriment of sending countries, as in the case of Malawi and the HIV/AIDS crisis.



5.3 Retrenchments

The process of labour recruitment was followed by retirements and retrenchments, the latter of which became the order of the day in the early 1980s and 1990s.

The respondent from the Lesotho Ministry of Labour was asked how retrenchments were brought about by South African mining houses, and the reasons for these. The answer was as follows:

“The market and price of Gold went down, hence no reason for extra labourers. We are unable to trace how migrants are sent back. We do not even know their numbers; we just see them on streets. We were expecting TEBA to know the reason for retrenchments. The retrenched migrants do not even come to our offices (Labour Department) to report their state of affairs or retrenchments”

When asked whether the Ministry of Labour in Lesotho was notified or consulted on the retrenchment of miners, she replied as follows:

“The fact that we do not have statistics on retrenched Basotho workers is an indication that somehow Lesotho was not consulted, and not even TEBA, the recruiting agency”

Nest, I asked what measures or interventions the Lesotho government had taken regarding the silence around these retrenchments, and the answer was:

“Lesotho and South Africa had a standing agreement that a Lesotho Labour office be established in Johannesburg to safeguard the interests and looking into all matters relating to Basotho migrants in South Africa. Any interventions with regard to these retrenchments should be done through the labour office, but unfortunately of late that office deals with issues of the Lesotho Department of Foreign Affairs. However, the Department of Labour, did make some interventions by contacting TEBA offices”.

The Regional Manager of TEBA in Maseru, Lesotho was asked if the Lesotho government is kept informed of the retrenchment processes taking place, or if South Africa takes unilateral decisions. He answered as follows:

“TEBA only supplies the government with a copy of the agreement of the men going to work in South Africa. We don't supply an individual's information regarding retrenchment. We inform the government that there are retrenchments taking place in such mines in South Africa and

that so many people are expected to be retrenched, e.g. that 500 people are expected to lose their jobs and a breakdown of those, say, 150 Bathos to be retrenched. We definitely inform the Lesotho government. We are very close and have a good working relationship with the Labour Commissioner and the Department of Labour. We try to keep them as close as possible to what is going on in the industry itself”.

Asked to explain the Malawian government’s perspective on how the South African mines conducted the process of retrenchments, the second officer said:

“The mining houses started improving the condition of service in the mines in South Africa so that now the South Africans who were by then not working in the mines because of the poor conditions of poor work started to work. They started improving the conditions to attract the local South Africans who were given independence in their own country so to start labour migration in their own country to the mines. This meant the local South Africans started taking up the jobs in the mines and at the end of the day, they started to say now for Malawi we only need experienced ones to go to the mines and start training the South Africans who just joined the mines and this now also started the policy of introducing the quota system as part of the policy for all countries sending their labour to South Africa with the view to become now simple reliant in terms of labour supply from within South Africa. And then we of course had lots of changes that time because of the decision by the President. We had now the employment bureau, which was the same as WENELA but then went to agreement with the new ‘Kamuzo’ (Malawi government) in 1986, and what I was told was that there was an amendment on the same agreement.”

A large number of Malawi migrants were returned in the late 1980s, and the third official reported as follows:

“We had lots of changes in 1986 and then by that time of course the advent of HIV AIDS in Malawi and South African government then introduced the compulsory test for HIV AIDS. We had the first HIV case in 1985 and this news went to South Africa, so the South African mine owner had demanded compulsory testing for HIV and AIDS for the Malawians only, not Swazis or other countries by the chamber of mines. TEBA took the people there, because here we had the policy of protesting for employment and we do not have it now. When they arrive in South Africa, these guys have been taken for HIV/AIDS test, which

was contrary to the policy of our country. Now that was not pleasing our President who was himself the medical doctor and therefore demanded that our office and TEBA should stop facilitating people going to South Africa? So, if people wanted to go, they should do that on their own. That was the directive in 1988. Some people were not given notice in South Africa that the President was annoyed for the practice of compulsory HIV testing so he demanded that it must be stopped to organize the migrant labour to South Africa. The President made it clear that if people wanted to go, they must do so on their own. This obviously created another problem of free labour flow. They went out of the country as if they were going to shop in South Africa. And as you are saying now it causes migration problems in South Africa because you do not know who is there and not. The office that we had in Johannesburg for those early migrants who left after the closure of TEBA, all what they did was to purposely loose their passports, throw the passports away and go the office obtain the passport. We were told that when they obtain the passports, in South Africa, they got better chances to stay in South Africa and then obtained a passport in Malawi and receive a visa in South Africa and they are still in the employment books in South Africa but we do not know how and who is employing them”.

On the question of the plight of Malawian workers who migrated on their own despite the fact that the government had already abrogated its agreement with South Africa, the officer said:

“The decision by the President killed WENELA operations or TEBA operations in Malawi and the people started going to South Africa underground and is still going on now and we are having reports of people being trained there. People were eaten-up by crocodiles in the Limpopo river where these people are dumped and left with nothing to come back here. This is a serious problem. The other problem concerns a labour trade along the borders of Botswana, Mozambique and Zimbabwe; where there is slave labour trade. There are people sold along the borders and it is the slave owners who know where to take them”.

The case of Malawi is peculiar in that had it not been for the HIV/AIDS issue, we do not know what could have happened. Retrenchments were mainly due to South African’s localization policy, and lessening dependence on foreigners. The qualitative data suggests that TEBA offices kept countries abreast of what was happening in South African mines.

5.4 The “Two Gate” Policy

The representative of the Lesotho Institute of Labour Studies was asked to briefly comment on the “two gate system”, and he had this to say:

“The Labour Market Policy Commission referred to the then South African Immigrant policy as a “two-gate system”, whereby one gate was for whites who came through borders in terms of the Aliens Control Act and within five years, acquired permanent residence, and were allowed to come with their families. On the other hand, there was a “contract gate” where those people never acquired any rights. Such a migrant could work on contract for five to twenty years that is up to 20 phases of one year, but never acquiring any rights of citizenship. Toward the '94 elections the National Union of Mineworkers questioned this particular dispensation”.

On the same issue, the respondent from the Department of Labour in South Africa stated that:

“There has been a Commission of Enquiry; commissioned by then President Mandela in 1996. The Commission recommended, inter alia, that in the mining industry for instance we gradually ban the dual entry system where some people were coming through contract labour and perpetually be temporary citizens of South Africa and never qualify for citizenship. Whereas others come through individual work permits, and after five years are granted citizenship. You find that most of these are the highly qualified or skilled labourers and by coincident they are likely to come from further than the SADC region”.

The representative of the Lesotho Institute of Labour Studies was also asked if other categories of labourers, such as farm workers or construction workers, were covered under the framework of these bilateral agreements. He explained that farm labourers and other secondary industry workers did not fall within the bilateral labour agreement, and that the provisions of the old system were that foreign Africans should not fall in this category of the non-mining sector. So, whatever was happening was extra-legal. For instance, for a Mosotho to work in the South African factories or secondary industry he or she would have to obtain a pass or somehow an employer

would be taking advantage of the bilateral framework, though it was necessary to fall in the category “Mining Industry”. Those working in the secondary industry or in farming were employed in South Africa on an *ad hoc* basis, and the regulatory framework was silent on this. These *ad hoc* arrangements were therefore not systematised. The system favoured white farmers recruiting Basothos in the Free State, Mozambicans in Mpumalanga and Zimbabweans in Northern Transvaal (Soutpansberg).

According to the respondent the system overlooked transgressions to allow white farmers to satisfy their short-term, seasonal labour needs. It was found that the local police, immigration officials, and white farmers around the three areas listed above actually preferred these informal arrangements because the migrant workers were without rights, and if any of them thought of complaining about working conditions or irregular practices, they would be reminded or threatened that they were illegal immigrants, and therefore could be arrested and deported.

He went further to say:

“It was on the basis of the above that the Commission suggested that the more legal grey zones we have, the more abuse of workers’ rights would be allowed”.

5.5 The System of Recruitment

The Regional Manager of TEBA in Maseru was asked how the recruitment system of Basotho miners is conducted and operationalised. His reply was as follows:

“The engagement offices in Lesotho for labour-recruiting purposes are Maseru, Leribe and Mafeteng. The system of labour recruitment in Lesotho is completely computerized. Recruitment can actually be done from various districts around Lesotho, but the actual engagement, that is

where the documentation is processed, will only be done at one of the already mentioned centres (Maseru, Leribe and Mafeteng). For instance, if a person is recruited in one of the ten districts, he will get in touch with one of the three engagement offices where the work permit, residence permit, attestation and other processing takes place electronically, and then the man is actually transported to the employer in South Africa. The system of searching for miners (especially experienced workers) between South Africa and Lesotho is as follows: Next or around each mining area in South Africa, e.g. Westonaria or Welkom, they have what they call Urban Offices. So, all the mining houses in South Africa deals directly through the TEBA urban operation. Say, if a mine is looking for a category of employees, they will then make contact with the urban office. Because of the computerized system, the urban area will then send an e-mail saying for instance that they are looking for five machine operators, between the ages of 25 and 35, with the necessary certificate. That is to say they will give the Lesotho engagement office the entire set of requirements for a suitable candidate. The Maseru office will then contact the district offices about the opportunity in South Africa and the criteria for selection. These offices already have (electronically, on computer) all the information, such as registers of work seekers. The district offices will then endeavour to find such individuals and report back to my office in Maseru. The received information will be consolidated and the urban office in South Africa asked for authorization to send the recruits. The prospective recruits will then be summoned to one of the three the engagement offices, complete their documentation (i.e. passports, according to their personal details, work and residence permits, get it attested through the border authorities, and be transported to designated mines. So besides urban offices run by mining houses (TEBA) in South Africa, TEBA also has satellite offices on each of the mines (called "TEBA office on the mine"). So the prospective worker from Lesotho is sent directly to the TEBA office on the Mine and by the time he gets there, the information containing the details of the new recruit has already been electronically sent by the urban office. Therefore, the normal administrative documentation of a recruit is completed at the mines".

The respondent from the Department of Labour in South Africa was also asked how the system of recruitment of foreigners is conducted in South Africa. He said the following:



" Now we've got what we call a protectionist law outlook when it comes to international migration, even if from the neighbouring states, because both the legislation (Section 25) and the bilateral agreements (Article 4

or Article 5(b), they do allocate the fact that we welcome this to exercise economic activities in our country. Only when and where we do not have sufficient skills for the type of occupations one has to recruit from abroad, that is across an international border. Our instruments of regulation are protective. As a matter of fact, these international agreements are binding us with those countries, and what I've said earlier, we may not amend them but are just to follow them because they are internationally binding agreements. When you amend them, you need diplomatic notes, and you need to go through the Department of Foreign Affairs. They are country-to-country agreements – they cannot be amended”.

He further stated:

“We are also responsible for developing regulations, or rather procedural guidelines with regard to recruitment of foreign labour and to determine the availability of skills in South Africa. We are also responsible for connecting and collecting data, which will be useful for our processing and development of those guidelines on the question around the issue of the protective clause. That law is common within the four treaties because those are four law-authoritative documents, and they are operational at the moment in Article 5. They state that the engagement of Botswana, Lesotho, Swaziland and Mozambique citizens for employment in South Africa shall be subject to the availability of South African labour and maybe regulated by the South African authorities accordingly. This is also in comparison with Section 25 of the Aliens Control. That section of the Aliens Control Act declares that the Regional Committee, appointed by the Minister or Director-General of the Department of Home Affairs, can authorise a work permit to a foreigner provided that the particular applicant may not pursue any occupation of which there are people in South Africa who can do or have the skills relevant to that particular occupation”.

Asked about the recruitment system in Botswana, the TEBA representative said:

“Well, in the 1970s recruitment of labour to South African mines was not a difficult thing. The jobs were there, not like these days. Let me start with transport. Train to South Africa transported our people here. In the southern part of Botswana there was transport that was provided by TEBA and all over Kgalagadi bringing them to Molepolole office. Some were recruited from Thamaga and from other places. Small offices were scattered all over the country. There was one at Thamaga where the

men were picked up and brought here to the main office. From here train to South Africa transported them. In the northern part of Botswana, there were vehicles that picked people from Shakawe and some flights by Wenela. These people were then brought to Francistown from where they were sent to work. We were not sending them straight to the mines. Instead they were first sent to Mzilikazi (a reception area in Johannesburg). It was to Mzilikazi where all foreign labourers were sent from their countries”.

When asked about the attitude of employers in South Africa towards foreign and local labour in terms of the government policy of internalisation, the respondent from the Department of Labour replied:

“We might be having a protectionist policy towards foreign workers, we call it internalisation. Obviously the employers tend to prefer foreigners to locals at least in the semi-skilled and unskilled labour categories and the inducement there is that our foreigners, especially from the SADC countries, being those in the category of unskilled and semi-skilled, tend to be very much in the heist of the employ because there are perceptions of greener pastures here. Some of them ran away from a malicious situation of fighting in their countries, but when it comes to economic considerations, which is our perspective, they seem to perceive that there are better opportunities in South Africa and they tend to accept any offer in terms of remuneration”.

The official further stated:

“The employers favour foreigners to locals because our locals are aware of the labour legislation and therefore they can say the wages are too low to live on, and they are aware of their rights of association. They can opt to belong to unions and therefore they are at liberty to oppose to whatever extent the sub-standard conditions of work around them. It is mostly within the mines and agriculture where you find such situations. That’s what makes this seem like a situation where our employers “favour” foreigner over the locals, especially in those categories. Although in higher categories we do have some employers tending to want to advertise internally or practice nepotism, like Chinese saying “I want a Chef in a Chinese restaurant who can prepare Chinese meals”, with the implication of wanting to bypass our nepotism laws or rather try to say that there are no sufficiently qualified locals according to the job description or job specification for “someone to prepare Chinese meals in a Chinese restaurant. That is what we find in the skilled and professional categories. You do find that employers tend to favour

mostly their fellow citizens of their country of origin and that gives us in the Department of Labour a problem in managing the situation”.

On the issue of maintaining contact with the miners that were recruited through the offices of TEBA, the Manager of TEBA said:

”Yes, we maintain our relationship with the man while he is employed with our member mine. TEBA provides finances services, for instance in the case of Lesotho, it is compulsory that the migrant labourers take part in the deferred payment system. Only Lesotho and Mozambique carry the deferred-pay system as part of the agreement to send labourers to South Africa. With regard to Botswana and Swaziland, the deferred-pay system has been scrapped. The situation is that Botswana and Swaziland have insignificant (or at least fewer) migrants in South Africa. The estimated figures of labourers from Botswana could be in the region of 10 000 whilst Swaziland had about 15 000, whereas the numbers for Lesotho and Mozambique (both having run-down economies and statistics) are in the region of 50 000 to 60 000 each. Therefore, with such numbers it is implied that a substantial amount of money (revenue) is brought to those countries through our migrant labour system. I cannot really speak for Mozambique, but with regard to Lesotho, I can safely say that I am aware of the serious economic impact that the recent retrenchments of Basotho have brought on the economy”.

CHAPTER SIX

DISCUSSIONS

6.1 Introduction

The aim of this Chapter is to give the author's perspective on the arguments and issues raised by previous research through a literature review. I will also analyse issues raised by respondents during in-depth interviews pertaining to the existence and evaluation of migrant labour agreements in Southern Africa, as in keeping with the broad objectives of the study. My aim is to comment and express my point of view on contributions made by other researchers in the field, and by interview respondents who participated in this research.

Uncoordinated, uncontrolled and unmanaged cross-border migration has prompted governments in the SADC region along with the research community to come together with a view to finding interventions to resolve these problems. To a certain extent, some SADC governments have developed policies and strategic interventions to address the problem of managing migrants on the home front and regulating cross-border activities, but a coordinated approach is a prerequisite. South Africa is a magnet for cross-border activities, and a destination point for migrants from most SADC countries. After years of speculation and debate, the South African Parliament has ultimately adopted an Immigration Policy.

The SAMP Policy Series No. 7 states that most research has demonstrated the largely negative effects that the migrant labour system in Southern Africa has on sending country societies in general. But surprisingly enough, the findings of this paper seemingly contradict the above statement. The report states that the overwhelming majority of respondents feel that cross-

border migration has had positive effects on them personally, on their families, their communities and their home countries.

Although a number of policy implications could be drawn from the study's findings, only a few of these will be discussed in this section. The South African legal framework on foreign labour migrants created what has been termed the "two-gate system". According to analysts, these "two gates" are the Aliens Control Act and government-to-government agreements over temporary contract labour.

This effectively meant that black migrant labourers in South Africa were to permanently remain foreign migrants without any option to obtain South African citizenship, while their white counterparts from newly independent African states and Europe were warmly welcomed, and often offered South African citizenship along with their families. In fact, the South African government had an open policy of recruiting Europeans by enticing them with lucrative jobs and citizenship.

SAMP's study informs us that the South African government distinguished between desirable and undesirable whites in formulating its policies. Further, there was no immigration policy for Africans from outside the country. This tells us that immigration policy favoured whites, while Africans were forced into perpetual cycles of contract labourer migration. As a result of deepening fear over the longstanding movement of foreign Africans in the country, the South African government enacted the 1961 "Admission of Persons to the Union Regulation Amendment Act". The ultimate purpose of this piece of legislation was to rid South Africa of foreign Africans.

However, contrary to the government's position, the Chamber of Mines badly needed foreign labour. It is important to note that the South African

government gained financially from the mines' proceeds, and therefore could not risk antagonising the management of mining houses.

6.2 South African Foreign Labour Framework

Breytenbach's (1972) studies show that the instruments regulating the earliest foreign black workers in the Union of South Africa did not take into account recruitment procedures. The government of the day was motivated to control the movement of foreign blacks because of the racial segregation laws of the country, which included apartheid "pass laws" requiring that individuals carry and show identity documents revealing their names, nationalities and occupations. One of the tenets of the South African Government policy towards foreign blacks was that they were not regarded as integrated elements of the country's economy. They were to be in the so-called white areas for the sole purpose of selling their labour power. Once that mandate was exhausted, they were to leave "white areas"; that is, they were to return home once they were no longer of use to the South African employers.

The South African government also enacted two other pieces of legislation, the Population Registration (Amendment) Act of 1961 and the Admission of Persons to the Union Regulation (Amendment) Act of 1950 as described by Perbedy and Crush (1998). These pieces of legislation affected the movement of people into and out of the country, though the former was specifically meant for the division of the South African people on the basis of their racial groups. This, it is argued here, is typically of the British policy of divide and rule.



The South African government has always been unsettled by the growing numbers of Blacks in South Africa, such that this was also extended to

foreign Africans as a result of their paranoia about their increasing numbers in the mines and other sectors in the country.

The South African racial system has always shown its fear of competition by relying on the use of its racial segregatory laws. For instance, in the case of the first Indians who arrived in South Africa as indentured labourers in 1850, the South African government tried to use the 1913 Immigration Regulation Act to expel Indians who decided to settle in South Africa.

The South African government again tried to use 1913 Act to exclude the Jewish community, which arrived after the 1st World War. It is contended here that this had everything to do with religious paranoia or so to speak, fear.

Also, I concur with Pebedy and Crush's (1998) critique that the purpose of the 1913 Immigration Regulation Act was racial exclusion and domination, as well as unfettered state power.

The South African government was always positioned to ultimately take over the three High Commission Territories of Botswana, Lesotho and Swaziland. But because of the introduction of apartheid and the declaration of South Africa as a Republic, national policies and practice were considered to be inconsistent with the norms of international law, and Britain retracted the possible hand-over of the three territories to South Africa. As alluded to by the representative of Lesotho Institute of Labour Studies, South Africa came with the idea of establishing a framework to govern cross-border traffic. This then gave birth to the idea of bilateral arrangements governing cross-border migration to regulate the movement of foreign labour migrants to the South African mines with their countries of origin. It should be noted that South Africa at the time already had agreements with Mozambique (1901, 1909, and 1928) and Malawi 1936.

Prior to British decision not to hand-over the three territories to South Africa, the movement of people across the borders was free. It is conjectured that because of Britain's decision, South African mining houses were no longer going to enjoy easy and free access to foreign labour because of the introduction of border controls.

In the South African migrant labour system, the mining houses provided single sex hostels for migrant labourers. The policy implications are that normal reproductive rights, including the spacing of children for migrant labourers, was disrupted as men spent long periods away from their wives and families. So, this had a bearing not only on South African migrants, but foreign workers as well.

The other dimension is that the hostel system was such that mineworkers lived in tribal compounds. Even as South Africans, a Motswana local migrant could not dwell with his fellow Zulu speaking countryman. Even foreign migrants were accommodated separately on the basis of country of origin. The strategy of the apartheid government and mining houses was manifold: migrant labourers were encouraged to see themselves as rival tribal groupings rather than as a working class with common objectives. Competition was encouraged based on tribal grounds rather than work ethics; migrant workers were prohibited from belonging to trade unions.

6.3 International Labour Arrangements/Agreements

South Africa had two main instruments or frameworks that created the “two-gate policy”, which were the Aliens Control Act as a statute, and government-to-government agreements dealing with immigration and temporary contract labour. According to the representative from the Lesotho Institute of Labour Studies, one “gate” was for whites that came through borders with their families via the Aliens Control Act, and within five years

acquired permanent residence. The other was a “contract gate”, under which migrants never acquired any rights such as permanent residence.

I argue in this thesis that this was an unacceptable dispensation, whereby whites from Europe and newly independent African states residing in South Africa for only five years were eligible to vote, while mineworkers who had lived and worked in South Africa and assisted in its massive development were regarded as non-residents, despite the duration of their stay in South Africa. The concept that foreign whites were immigrants and foreign Africans were to be perpetual migrants without accruing any rights was indeed a reality. There was a temporary, *ad hoc* dispensation, whereby the right to vote was granted to mineworkers in 1994. When the immigration policy was reviewed and formulated, the National Union of Mineworkers (NUM) again raised the issue. Mineworkers were given the right to vote, and towards South Africa’s 1995 local elections the extended pressure from the NUM led blanket franchise in 1996, which finally included Mozambican migrants in particular. It was at this particular moment that the Labour Market Policy Commission indicated to the Minister of Home Affairs that migration has a multi-jurisdictional function.

Breytenbach (1972) alludes to the fact that the state sometimes acts for private industrial interests in concluding inter-territorial labour arrangements with authorities of supplier countries. What does this statement mean? The state enters into this transaction because one of its fundamental duties is to control recruitment. This means that a state as a subject of international law can enter into inter-territorial, legally binding international obligations, as opposed to a mining house or labour recruiting agency such as Wenela or TEBA. These agreements were therefore legally binding between South Africa and the five sending States.

Breytenbach sees the pattern of recruitment in southern Africa as controlled and coupled with administrative machinery. On the other hand, Byrlee and

Eicher (1972) find the West African pattern of recruitment as spontaneous and uncontrolled. This is true because history has shown West Africa to be more agrarian, and with the most borders porous. There are no big commercial farmers who, need labour in large numbers and therefore organised and controlled recruitment. Even in the case of South Africa, farming sector is not controlled and falls outside the formal bilateral agreements.

There were only two instances when, in my view, the concept of labour agreements were not properly understood, as in the case of the official in the Ministry of Labour in Lesotho who only referred to the contract between the prospective miner and the recruiting agent in the presence of the official of the Lesotho Department of Labour. She stated:

“It is a contract, which contains the condition of employment, is entered into between the recruit and the labour recruiting agency in the presence of an attesting officer from the Lesotho Labour Department. Lesotho needs to have such a policy.”

The official of TEBA in Botswana also referred to the document on the agreement of service as follows:

“There were no formal and written agreements that were used. What was used at that time as a formal agreement was an agreement between the miner and the employer certified by the Commissioner of Labour or the labour office, which was called agreement of service, and it was just a single page contract.”

The definition and understanding of contract or agreement of service in the case of the two officials is absolutely correct. In my understanding, the contract between the miner and the recruiting agency in the presence of the official of the Ministry of Labour in the country of origin is the result of the overall bilateral agreement between the States.

One other important aspect regarding these contracts is that the impression given is that the prospective worker understood the terms, conditions and implications of the labour contract. But, according to the findings of Molamu *et al* (1987), the vast majority of workers were not aware of their rights and duties under the contract. The contract was therefore just a formality, without regard whether prospective miners knew of their rights and obligations in contracts they were entering into.

Otherwise, my research in Botswana, Lesotho, Malawi and South Africa confirms the existence of the bilateral labour agreements. The question in mind is: were these treaties concluded mutually, did they change over time, and if so, were these unilateral South African decisions? For instance, Article I (a) of the Labour Agreement between Lesotho and South Africa reads:

“The Government of the Kingdom of Lesotho shall establish in the Republic of South Africa a Lesotho Government Labour Office.

(b) The Government of Lesotho shall with the concurrence of the Government of South Africa appoint an official to be designated the Lesotho Government Labour Representative who shall be a citizen and full-time government official of Lesotho and who shall be in charge of the Labour Office and stationed in South Africa”. (Breytenbach 1972,p 22)

Further, Article X1 Of the agreement states:



“This Agreement shall come in force on the date of signature and shall be valid for the initial period of five years from that date. Thereafter it shall automatically be extended for periods of one year at a time but may be terminated by either Government giving twelve months written notice to the other Government of its intention to terminate it. Such notice shall be given through the diplomatic channel”. (Breytenbach 1972: 24)

The Article further states:

"This Agreement may be amended by agreement between the two Governments and any amendment shall be effected by the exchange of diplomatic Notes between them." (Breytenbach (1972,p24)

The above is clear evidence that the labour agreements exist, and involved the exchange of diplomatic Notes and consultation at state level. An official in the Malawi Ministry of Labour reported:

"We had lots of changes in 1986 and then by time of course the advent of HIV/AIDS in our country Malawi and South African government then introduced the compulsory test for HIV AIDS. We had the first HIV case in 1985 and the news went to South Africa, so the South African mine owner had demanded compulsory testing for HIV/AIDS for the Malawians only, not Swazis or other countries by the chamber of mines. TEBA took the people there, because here we had the policy of protesting for employment and we do not have it now. When they arrive in South Africa these guys have been taken for HIV/AIDS test which was contrary to the policy of our country. Now that was not pleasing our President who was himself the medical doctor and therefore instructed us and TEBA to stop the process of people going to South Africa. So, if people wanted to go, they should do that on their own. That was the directive in 1988. Some people were not given notice in South Africa that the President was annoyed for the practice of compulsory HIV testing so he demanded that it must be stopped to organize the migrant labour to South Africa".

The above statement from the Malawi official is also testimony to the fact that either Malawi or South Africa could abrogate the labour treaty at any time according to the terms of reference. In this case it was Malawi, which abrogated the 1967 Labour Agreement, which to this day is no longer operational.

When an official from the national Department of Labour in South Africa was asked if he knew of any international labour arrangements between South Africa and the neighbouring SADC countries, he confirmed by saying "The earliest agreement was in 1964 and the latest in 1975". He further said:

"...these agreements then offer another gate for group applications. The bilateral agreements have what we call a "no objection permit system"

which allows that you to get a group of Mozambicans to come and work in the mines, officially”.

The above statements and examples indicate that there is sufficient evidence to state the following:

- International labour agreements between South Africa and SADC countries existed and still exist, at least in four of them
- There was a 1964 framework which was updated in the 1970s meaning changes or modifications did take place;
- Labour Offices were established in Johannesburg on behalf of governments of the five SADC countries with the exchange of diplomatic Notes;
- In 1988 Malawi stopped the export of labour force to the South African mines due to the HIV/AIDS crisis, and in fact ordered the withdrawal of all more than 136 000 Malawi mineworkers already in South Africa. This is an indication that all were subjects of international law who entered into an international agreement as equal partners; hence Malawi unilaterally abrogated the treaty.

6.4 Retrenchments

6.4.1 Internalisation and Stabilisation

In the early 1990s South Africa experienced a sealing process in the mining industry. South Africa adopted two policies namely, internalization and stabilization. Internalization refers to shifting from reliance on foreign labour to local South African labour. On the other hand, and according to the representative of the Institute of Labour Studies in Lesotho, stabilisation means inducing workers to stay longer in their posts because a lot of money is spent on training novices. Also, during this time there was increasing

mechanisation of the mining industries. All the above contributed a great deal to the retrenchment of foreign migrants in the South African mines.

According to officials from the Ministries of Labour in Botswana, Lesotho and Malawi, TEBA was always present, and took part during the process of recruitment and the signing of the labour contracts. But surprisingly enough, during retrenchments, TEBA did not provide feedback to the Ministries of Labour about retrenched workers, or the reasons for retrenchments. However, the Regional Manager of TEBA in Maseru argues that the mines informed governments of sending countries about the overall figures of miners being retrenched, rather than giving information on individual workers. The unique dilemma among officials of sending countries is that they are faced with the problem of re-absorbing the unexpected retrenched labour migrants in their societies, and creating new jobs for them to return to.

On the issue of retrenchments of Malawi nationals, the second official from Ministry of Labour in Malawi argued as follows:

“The mining houses started improving the condition of service in the mines that now the South Africans who were by then not working in the mines because of the poor conditions of work joined the mines. This meant the local South Africans started taking up the jobs in the mines and at the end of the day, they started to say now for Malawi we only need experienced ones to go to the mines and start training the South Africans who just joined the mines and this now also started the policy of introducing the quota system as part of the policy for all countries sending their labour to South Africa with the view to become now simple reliant, in terms of labour supply from within South Africa”.

The implication is that South Africans took mining jobs because conditions of employment had been improved; otherwise, Malawi labour migrants could still be working in the mines. This in effect meant that the mines conducted unfair labour practice against the Malawi migrant workers.

The two critical incidents that impacted on Malawian nationals were the plane crash in Francistown, Botswana, and the HIV/AIDS tests on Malawi citizens in 1986. The officials at the Ministry of Labour in Malawi unanimously confirmed that South Africa had discriminated against Malawi migrants by only testing them for HIV, and not local South African workers. Contrary to this, the Regional Manager of TEBA in Malawi and Lesotho argued that the tests were random, and that no particular country was targeted. In my opinion, because of South Africa's dubious discriminatory policies, there is a strong likelihood that South Africa actually targeted Malawi migrants. It should be noted that the idea of testing only started after Malawi reported its first HIV/AIDS case.

Chijere-Chirwa also alluded to the fact that South Africa discriminated against Malawi migrants by targeting them for conducting HIV/AIDS tests.

In the 1970s Malawi temporarily halted the export of its labour to South Africa, and in the 1980s recalled all of the more than 130 000 Malawi citizens working in South Africa. This was a unilateral decision on the part of Malawi.

The Mozambican migrants in the mines were inspired by FRELIMO's advances towards the liberation of their country.

6.5 Recent Policy Changes

When immigration policy was reviewed and formulated, NUM again raised the issue of suffrage for mineworkers, and in 1994 they were granted the right to vote in South Africa. With extended pressure from the NUM around the 1995 local elections, blanket amnesty was granted in 1996, which this time included Mozambicans in particular. It was at time that the Labour Market Policy Commission indicated to the Minister of Home Affairs that

migration has a multi-jurisdictional function. It was suggested that the Department of Home Affairs review the “two-gate system” as it was discriminatory, and instead have omnibus migration law. I would suggest that the word “alien” be completely scrapped in policy, and be replaced with “immigrant”. According to the new dispensation, foreign labour migrants who, by 1994 had been in service in South Africa for more than five years could apply for permanent residence along with their families.

One of NUM’s objectives was the improvement of working conditions, and as soon as the mining industry complied with this demand, South African locals joined the mines in great numbers. For instance, the proportion of foreign labour in the mining system was 70% to 30% South African. By the end of the 1970s and the beginning of the 1980s, these figures had changed to 60% South Africans and 40% foreigners.

During this time, the mining houses improved their technology and mechanization, meaning less labour-intensity in operations. The new policy of internalisation meant a shift away from reliance on foreign labour, towards reliance on local labour. Standardisation also meant that workers were induced to stay longer in their posts to reduce the cost of training new novices, the labour force transitioned from unskilled to semi-skilled, and the combination of internalization and stabilization with the sudden depreciation of gold led to layoffs and retrenchments of foreign migrants.



The following are some of the incidents that led to policy change in the South African migrant labour system:

- The plane crash that killed returning Malawian mineworkers in 1967, and Malawian President’s decision to unilaterally stop labour export to South Africa,

- The discriminatory HIV/AIDS testing of Malawian mineworkers in South Africa, and the final stoppage of labour exportation by Malawian authorities, and
- The political changes in Mozambique by FRELIMO prior to independence, which influenced Mozambican migrants generally perceived as “docile”. The Mozambican migrants gained confidence through FRELIMO, and suddenly became undesirable from the perspective of the mining industry.

In a nutshell, interviews with key informants corroborated information obtained from documents suggesting that South Africa had bilateral agreements with migrant sending countries. Formal legal arrangements between South Africa and Botswana, Lesotho and Swaziland came into effect when it became clear that these countries were going to be independent states.

CHAPTER SEVEN

CONCLUSIONS AND RECOMMENDATIONS

7.1 Introduction

The discovery of gold, diamond, precious minerals, and coal in South Africa led to enormous industrialisation of a formerly agrarian country. Major industrial centres were established in Transvaal, Orange Free State and the Cape. As a result of these discoveries, there was a great need for unskilled labour that the local labour force could not fill. It became necessary therefore to look for foreign migrant labour in the southern African region.

This signified the beginning of a labour relations pattern between South Africa and neighbouring African countries, although the first migrants came from as far as Central and East Africa, China and India. The report reveals that at first foreign workers came to the mines relatively freely, but governments developed interest in controlling both temporary and long-term migration into South Africa. As a result, mechanisms were developed to regulate these movements to South Africa.

7.2 Conclusions

The study reveals that regulatory institutional mechanisms did, and still do exist between South Africa and the selected SADC countries analyzed. This hypothesis is supported by authors including Breytenbach (1972), Molokomme (1987) and Makatjane (1991). The first such a labour agreement was concluded in 1887 between the Transvaal chamber of mines and the Portuguese authorities in Mozambique.

The following bilateral labour agreements were particularly relevant:

- 1964 South Africa and Mozambique-Article 1,
- 1967 South Africa and Malawi-Article 1,
- 1973 South Africa and Botswana-Article 1,
- 1973 South Africa and Lesotho- Article 1, and
- 1975 South Africa and Swaziland-Article 1.

The following articles supported the hypothesis that there was consultation when labour agreements were modified, amended, or even suspended between South Africa and the five selected countries:

- 1964 South Africa and Mozambique-Article XXX11,
- 1967 South Africa and Malawi-Article XX,
- 1973 South Africa and Botswana-Article X1,
- 1973 South Africa and Lesotho-Article X1, and
- 1975 South Africa and Swaziland-Article X1.

The labour agreements in all five countries studied were found to have clauses that stipulated the right of each country party to the agreement to reserve the right to consult another in the event of modifying or suspending the agreement. For instance, suspension of, or amendments to the agreement were to be effected through the exchange of diplomatic Notes between the two Governments party to the agreement.

The report also found these agreements or movement of foreign labour migrants to and out of South Africa had effects on both the sending and the receiving states. These effects also influenced individual migrants, their families and their households.

Currently, there is clear evidence of less formal demand for labour through the bilateral labour agreements between South Africa and the five selected SADC countries. These countries of origin in turn benefited from revenue

brought through remittances and deferred payments of foreign labour migrants, and so controlled the movement of labour to South Africa.

Prospective miners from labour sending states first entered into contracts with recruiting agencies in the presence of a labour official and therefore understood the implications of the conditions of work and wages. However, many workers were not aware of their rights and duties under these contracts. (Molamu *et al*; 1987).

7.3 Recommendations

There are currently operative bilateral labour agreements between South Africa and four of the selected labour-sending states. While the constitutionality of these labour agreements is still questionable, other neighbouring countries such as Zimbabwe, South Africa's largest African trading partner, need to be considered.



The issue of excluding other countries was raised during interviews with representatives from the South African Department of Labour and the Lesotho Institute for Labour Studies.

Migration is a multi-jurisdictional function, but is operationally handled across line function ministries of the government. A separate institution tasked with the implementation, monitoring and evaluation of the new Immigration Policy needs to be considered.

There is a need to encourage the SADC Employment and Labour Sector to facilitate a labour migration focal point within the new SADC Directorate on Social and Human Development and Special Programmes. Labour migration-related issues in the SADC region should be approached in an

integrated manner, to avoid the exclusion of other members of SADC countries in multilateral and bilateral labour agreements.

It is increasingly becoming clear that the type of immigrants that come to post-independence South Africa are different from those that came during apartheid. This means that SAMP should be holistic in its approach. The majority of immigrants are mostly educated and skilled, with full knowledge of their labor rights and this means that SAMP should be cognisant of this very fact.

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