Chapter 7

Transition in Immigration Policy: Inclusion and Exclusion in the South African State after Democratisation

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INTRODUCTION

A series of xenophobic attacks in South Africa in May 2008 shocked not only South Africans but all followers of post-apartheid South Africa. Similar attacks have been reported in subsequent years (Breen 2010). Xenophobic attacks have been reported since the 1990s despite the anti-discriminatory spirit of South African society cultivated by the anti-apartheid movement (Crush 2001). The location of the 2008 attacks, Alexandra Township, saw similar incidents in 1994, in which Mozambicans, Zimbabweans and Malawians were targeted by armed South Africans. The victims included a Zimbabwean who had lived in South Africa for thirty years. The crisis lasted for several weeks and was known as "Buyele khaya (Go back home)" (Crush ed. 2008: 44). This incident was notable for its size and degree of violence, in addition to the fact that such violence happened in a South Africa which had abolished apartheid and experienced a historical reconciliation. Violent xenophobia is seen as a serious problem in post-apartheid South Africa and the situation has been described as a historical "amnesia" (Crush ed. 2008: 12).

The influx of migrants into South Africa since the end of apartheid shows that South Africa has emerged not only as a prominent economic centre, but also as a centre of political culture after its successful change in political regime. In addition to the history of international migration from neighbour countries in southern Africa such as Mozambique, Malawi and Lesotho, the increase in the number of migrants in South Africa after the end of apartheid was caused by political instability in the Democratic Republic of the Congo, Somalia and Zimbabwe, heightened enforcement of immigration laws in Europe, and

growing South African industries such as construction and tourism. At the same time, South Africa also sends many migrants to countries outside Africa. In this sense South Africa might be considered a hub in the global migrant flow.

The immigration policy of the South African government has become gradually stricter in the years since democratisation. This change was influenced by the xenophobia of 2008. South African immigration policy might be understood by examining the context in which South Africa finds itself in terms of its own society, southern Africa and the African continent as a whole. The purpose of this study is to examine the direction of the South African state through the transition of its immigration policy after the end of apartheid. In the following sections, we will first introduce the framework of recent discussions over immigration in the South African context. The second section gives an overview of post-apartheid immigration policy and migration trends. The third section examines policy under the Mbeki and Zuma governments. We conclude by considering the meaning and impact of South African immigration policy in the context of southern Africa and the African continent.

1. THREE APPROACHES TO SOUTH AFRICAN IMMIGRATION POLICY

Emigration has been seen as a negative phenomenon for the national economy of the sending country and immigration was viewed as a negative for the receiving country. In general, perceptions on immigration had been negative for a long time. However, with the rise of globalisation, new perspectives have changed the traditional way of thinking. The General Assembly of the United Nations adopted the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families in 1990, which detailed the rights of immigrants and their families both in the country of origin and destination, especially with regard to the importance of remittances and professional migrants. This international trend continues in the 2000s as the relationship between immigration and economic development is now an important topic in economic development at the global level. The United Nations first held high level meetings on international immigration and development in 2006. The various reports issued focused on the impact of remittances in international immigration (World Bank 2011).

In regard to Africa, there has been a special focus on international migration as one of the keys to achieving the reduction of poverty targets set in the Millennium Development Goals (Trung and Gasper eds. 2011). This discussion of migration with respect to poverty reduction has emphasised that migration is historically a survival strategy employed by those facing a crisis in a society which lacks disaster management and social security. It has also focused on migration's significant economic importance at the macro level in the sending country and also in certain industries in the receiving country, such as construction, retailing, security services and mining (UNDP 2009).

When examining South Africa as a migrant receiving country we find that as the diversity of the industries that employ migrants increased after democratisation, the number of female migrants increased. At the same time, there is a remarkable relationship

between the decrease in contract labour caused by changes in industrial structure and policy and the increase in the number of irregular migrants. The question then becomes how to treat irregular migrants. The increase of irregular migrants can make it difficult to address their needs and protect their human rights (Crush and Williams 2010). The migration of those who are not directly related to the labour market is also remarkable, as in the case of students and refugees. There are three perspectives in the discussion of the migration issue in South Africa. Supporters of each of them in today's South Africa reflect certain situations in South African society, and the different perspectives partially overlap with international trends of thought on migration as mentioned above.

The first perspective emphasises the positive aspects of immigration from a neoliberal economic viewpoint. According to Segatti, the post-apartheid South African government follows neoliberal economic policies, promoting the movement of workers toward certain industries (Segatti 2011b: 45-46). When introducing migrants into this framework, the South African government functions as an administrative coordinator between immigration control and employers, a motivator for the investors and high-skilled workers and a simplifier of official procedures. This strategy has been supported by the Ministry of Home Affairs, the industrial world and the opposition parties to at least some degree since the early period of post-apartheid government. From this perspective, the immigration issue is considered to be best handled by the Ministry of Home Affairs.

The second perspective regards national security and sovereignty as the most important issues when considering the effects of migration. It considers migrants a threat to the nation and to narrowly defined national interests, and it is less open to the acceptance of migrants. While the first viewpoint favors the free movement of people, goods and capital, the second limits, controls and regulates the movement of people who do not bring capital with them. Immigration has traditionally fallen under the exclusive jurisdiction of the Ministry of Labour or the Ministry of Home Affairs. However, during the regional re-integration of southern Africa in the 1990s, the character of the immigration issue changed from a matter that had been dealt with by the states unilaterally to one that required bilateral or regional negotiation. Moreover, the jurisdiction over immigration shifted from the Ministry of Labour and the Ministry of Home Affairs to the Ministry of Foreign Affairs and the Ministry of Defence after the terrorist attacks of 11 September 2001(Weiner and Russell eds. 2002).

The tone of the arguments made by South African scholars also reflects recent developments that have seen the immigration issue change from a matter of domestic politics into one related to diplomacy and regional security (Solomon 2003). The recent attitude of the South African state toward migrants is an example of how the movement of people is recognised as a threat to national security and political stability, and the immigration issue is ranked as a politically important topic. In addition, the question of how to maintain South African sovereignty makes the state sensitive to the immigration issue as nation building has been ongoing in South Africa even as southern Africa is in the process of regional re-integration. The desire to maintain national sovereignty is in direct opposition to the current regional re-integration. According to Segatti (Segatti

2011b), the second approach to immigration, which emphasises national security and sovereignty, is supported by the majority of the African National Congress (ANC) and the bureaucracy.

As a result of the increased emphasis on national security, the humanitarian and interventionist motivations that were lacking in the second viewpoint gave rise to a third perspective. This third approach is supported by a minority of the ANC and part of the Congress of South African Trade Unions (COSATU). This approach insists that the government must consider that the relationship between the government and migrants is so unequal that any slight change in immigration policy is likely to have an outsized effect on the welfare of millions of people in the region as long as migration is an important survival strategy, despite the exploitative nature of migrant labour. It demands that the government enact transparent, flexible immigration policy that addresses different circumstances and aims to gain the confidence of regional society.

Some non-governmental organisations working for human rights play the role of spokesman for migrants and side with the humanitarian and interventionist approach. These groups of NGOs have maintained social networks since the anti-apartheid movement and represent a framework based on the concept of human security, as opposed to the national security emphasis of the second approach.

The first and second approaches seem to have a point in common when it comes to promotion of the movement of people. However, in reality, the movement of people promoted by the neoliberal approach is judged by the degree of their economic contribution to the South African economy, more precisely whether these human resources are necessary or not. If not, the movement of these individuals would be restricted in the second national security and sovereignty approach. Supporters of the humanitarian and interventionist approach criticise the national security approach as infringing on human rights. The government, however, has adopted the national security and sovereignty approach and left the immigration issue as it was. Those who support the humanitarian approach also point out that despite the problems mentioned above, the neoliberal view of the movement of people as an engine for economic development justifies selective promotion of certain groups of migrants (Segatti 2011b).

The South African government has devoted itself to a policy of selective immigration while accelerating the movement of people, goods and capital in pursuit of the liberalisation of trade and rapid integration into the global economy that began with the end of apartheid. It has been noted that analysis of South African immigration policy has failed to offer a comprehensive view of the subject as it relates to the state of the nation beyond individual topics such as the socioeconomic condition of each migrant group (Ogura 2002: 225-229). A recent study by Peberdy fills this gap. According to Peberdy, whenever the South African government made substantial changes to immigration policy, it occurred when the state had recognised a particular group as a threat to the national interest, and coincided with drastic changes in the state, the way of governance, the political system or power relations (Peberdy 2009: 173).

While the legal standing of a person who moves beyond the national border does not

change, the classification of immigrants may change through a decision of the state, which has the power to regulate immigration through border control. The decision of a state, as we have seen in the relationship between the three approaches mentioned above, is a process of political antagonism and negotiation among the groups. For this reason, it could be said that the transition in immigration policy mirrors the political process in South Africa after the end of apartheid. Above all, the exclusionary attitude of the South African government against particular migrant groups is a theme which should be examined in the context of how the South African state presents itself within its own society, within southern Africa and even within the African continent as a whole.

2. POST-APARTHEID IMMIGRATION POLICY AND MIGRATION TRENDS

2.1 *"Moral Debt" and Social Inclusion of the Immigrants*

The migrant labour system in South Africa, especially in the mining industry, has been considered the basis of apartheid by not only anti-apartheid activists but also by scholars because of its function in pushing the social cost of labour onto the society of the migrants' origin while securing large quantities of cheap labour For example, Wolpe focused on South African labour migration from the homelands (Wolpe 1972). Wilson then developed Wolpe's perspective into an analysis of labour migration in the southern African region (Wilson 1972), while First analysed the bilateral agreement between South Africa and Mozambique as a model case of the impact of this labour migration (First 1983).

The background of the study by First shows the history of the liberation struggle in southern Africa and the historical consciousness behind it. In addition to being a sociologist, First was a member of the South African Communist Party and an ANC activist. After being exiled from South Africa for her political activities, she worked as the director of the African Study Center at Eduardo Mondlane University in socialist Mozambique, where she led a research team that conducted the 1983 study (Marks 1983). Since subversive activity by the apartheid government in South Africa, including military action, was the major cause of post-independent conflict in Mozambique, a bond was created between political leaders in Mozambique and the anti-apartheid movement.

This historical background and accumulation of studies laid the groundwork for the present discussion of the humanitarian and interventionist approach. The recognition of the migrant labour system as the basis for apartheid is shared not only by social activists but also by research projects such as Southern African Migration Project (SAMP), which studies labour migration in the post-apartheid era. Segtatti, who takes the humanitarian and interventionist approach, charges that even as the ANC did not make immigration reform a priority in the early 1990s, the South African Communist Party, which had been committed to a labour movement, did not bring the issue up for discussion (Segatti 2011b: 31). In fact, the ANC and the National Union of Mineworkers (NUM) required the

mining industry to abolish the migrant labour system soon after the end of apartheid but the mining companies rejected the request and the system still continues (Crush and Tshitereke 2001). This shows a point of compromise between the new government and a key industry.

After the establishment of the new government in 1994, most NGOs, lawyers working for asylum seekers and the industrial world expected that the new government would take a more lenient approach to immigration. However, when it became clear that there would be no change in immigration law, some scholars, liberal journalists, NGO workers and ANC politicians introduced the concept of "moral debt" which maintained that South Africa had been partially responsible for the economic disorder in neighbouring countries (Segatti 2011b: 40-41). In September 1994, an editorial in the South African newspaper *Mail & Guardian* warned against the xenophobia of the government and told South African citizens that "there are good moral reasons to warn against such sentiment. After all, this country, with its previous policy of destabilization, bears a good deal of responsibility for the economic chaos of our neighbors" (Segatti 2011b: 41).

According to a study by the Institute for Democracy in South Africa (IDASA) on the status of trans-border migration in southern Africa in 1995, the lack of change in the labour migration system after the end of apartheid is well-noted by South Africa's neighbours. They also recognise that even though it is exploitative, it is essential to sustaining their economies. The best evidence of this is the belief of Mozambican officials that South Africa has a moral responsibility to promote Mozambican economic development (Segatti 2011b: 40-42). They thus seek to maintain the migrant labour system.

Based on this recognition of "moral debt", the ANC government offered permanent residency status for immigrants from Southern African Development Community (SADC) countries three times between 1995 and 1999. The first offer was valid from November 1995 to March 1996 and was targeted at mine workers under the following conditions: applicants must have been working in South Africa before the revision of the Immigration Act in June 1986; they must have been ordinary residents of the country before that date; and they must have been in possession of a voter eligibility document allowing them to vote in the April 1994 elections (Sechaba Consultants 1997: 11)[1]. Although the ANC government offered residency for migrant labourers from neighbouring countries under these conditions, only 51,504 people applied, or about half of the number eligible.

The second amnesty was offered between July and November of 1996. This broadened the eligible categories to any citizens of SADC who had continuously resided in South Africa after 1991, who had been in a relationship with a South African partner or spouse, including customary marriages, and who had not committed a criminal offence. On this occasion, 201,602 people applied and 124,073 cases were approved.

The third offer, valid from August 1999 to February 2000, applied to Mozambican

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[1] In the general election of 1994, voting rights were given to non-citizens. Neocosmos pointed out that the Immigration Act of 1991 had been temporally withdrawn by the Department of Home Affairs in Circular No.9 of 1995. (Neocosmos 2006: 83-84).

refugees who entered South Africa between January 1985 and December 1992 in accordance with the 1992 agreement between the Mozambican and South African government, together with the United Nations High Commissioner for Refugees (UNHCR) (Johnston 2001). This opportunity was intended for Mozambican refugees who did not apply on the first occasion or those who applied but were not approved. About 350,000 people were estimated to have entered South African territory. Of these about 70,000 had voluntarily gone back to Mozambique in the early 1990s under the repatriation scheme led by UNHCR. During this amnesty, only about 130,748 people applied and 82,969 cases were approved (Crush and Williams 2001: 20). This was mainly due to conditions on place of residence: applications were restricted to those living in Limpopo, North West, Mpumalanga or Kwazulu-Natal province. Residents of other provinces, such as Gauteng, were not eligible though it was quite possible for the refugee to be engaged in informal business in the urban areas (Peberdy 2009: 157). In any case, the offer was the South African way of taking responsibility for its exclusive migration polity in the past and for the economic contribution made by SADC citizens.

2.2 *Increase of Irregular Immigrants and the Exclusive Tendency of Regulation*

It is worth noting that the South African government was tightening its regulation of irregular immigrants in general even as it granted certain irregular immigrants amnesty through the process mentioned above. The South African government formed the "Interdepartmental Committee on Illegal Aliens" with representation from the Ministries of Home Affairs, Justice, Correctional Services and Foreign Affairs, as well as the South African Police Service, the South African National Defence Force and National Intelligence. In 1996, the government gave official notice to all ministries to check documents required for residence when a foreigner asked for any administrative service (Peberdy 2009: 151-152).

The regulation of immigration can be linked to the police reform in post-apartheid South Africa. The South African Police Service has tried to justify its existence as a protector of the rights of new South African citizens in order to alleviate some of its historical stigma as a surrogate of the racist state (Landau 2004: 12-14). During the "community policing" work that sought to improve cooperation with citizens in order to improve security, vigilante township groups were mobilised. "Others" became a term for "illegal aliens" used by both the police and citizens.

In order to understand the historical stigma associated with policing, we must understand the role of the South African police force under apartheid. The police placed great importance on maintaining racial borders, regulating "migrant" influxes into urban areas, suppressing riots and keeping mass control, while putting less importance on preventing crime and conducting criminal investigations (Hornberger 2011; Abe 2012: 54; Shaw 2002). Most violent crimes were overlooked as long as they occurred within a township and did not damage white property. Under these circumstances, residents in the townships surrounding Johannesburg organised vigilante corps in the 1930s and

supported their activities for half a century (Kynoch 2005: 497, 499). After 1948, with the establishment of townships on a national scale, the same social atmosphere was created throughout the country.

In contrast to residents who were considered "insiders", migrants, including those who were originally from the homelands, were recognised as "outsiders". The latter has been consistently targeted for exploitation by residents who supported the activity of the vigilante corps (Ramphele 1993: 86). In this atmosphere, the South African police under apartheid lacked any legitimacy among blacks. This seemed to justify the elimination of "others" among the township residents.

The ANC government had become aware of occurrences of xenophobia due to competition over limited resources, but preferred to keep its distance while the position of Minister of Home Affairs was filled by Mangosuthu Buthelezi until 2004 (Segatti 2011b: 51). While regulations on immigration were tightened, a policy framework had not been shown in either the Reconstruction and Development Programme of 1994 or the Growth, Employment and Redistribution strategy of 1996, even as unemployment dropped from 20% in 1994 to 17% in 1996 before rising again to 21% in 1997. The negative influence of irregular immigrants on the South African economy became a topic of discussion under these circumstances. When Buthelezi, the Minister of Home Affairs, spoke in parliament in 1997 about the threat that immigrants posed to South African society and the economy, he caused considerable controversy (Crush et al. 2009: 260). In addition, a White Paper on International Migration published by the Department of Home Affairs in 1999 outlined the negative aspects of immigrants, linking them with crime and competition over employment. Selective immigrants such as skilled labourers and professionals were welcomed, however. In this white paper, the Department of Home Affairs referred to the border control and regulations of the movement of people between the United States of America and Mexico as a model for immigration and border control in South Africa since the two situations have several characteristics in common, including a long national border and the introduction of migrant labour on the basis of bilateral agreements. The paper also included an item in regard to future community policing, which could be recognised as official xenophobia (Solomon and Haigh 2010: 198).

The statements of Buthelezi might be understood domestically as those of the leader of the Inkatha Freedom Party (IFP), but internationally they could be understood as discriminatory statements by a South African minister. In order to avoid giving such an impression, in 1998 the South African Human Rights Commission developed an anti-xenophobia campaign along with UNHCR and other groups working for the protection of human rights. One of the results of this campaign was the enactment of the Refugee Act of 1998. Expectations for a post-apartheid South African society were symbolised by this progressive refugee law, and combined with economic growth, attracted plenty of migrants. The Refugee Act was approved in parliament in 1998 but was not enforced until 2000. During each of the gap years, 180,000 people were deported (Figure 1).

Despite the amnesty mentioned above, many migrants remained outside the amnesty process. The cumulative number of migrants repatriated from 1990 and 1997 is approximately 900,000 people, of which 82% were Mozambican and 11% Zimbabwean, with 99% of those deported coming from SADC nations (Human Rights Watch 2007: 17-18). The share of the deported who originated from Zimbabwe changed after 2000 when the economic situation in Zimbabwe went from bad to worse. The number of Zimbabweans deported from South Africa increased from 46,000 in 2000 to 72,000 in 2004 (Waller 2006). The proportion of Zimbabweans among the deported rose from 11% in the 1990s to 46% in 2005. It could be said that the South African government offered amnesty but linked it with the deportation of certain other groups, indicating its intentions for "clearance" of the previous amnesties.

Figure 1 Number of deportations per year
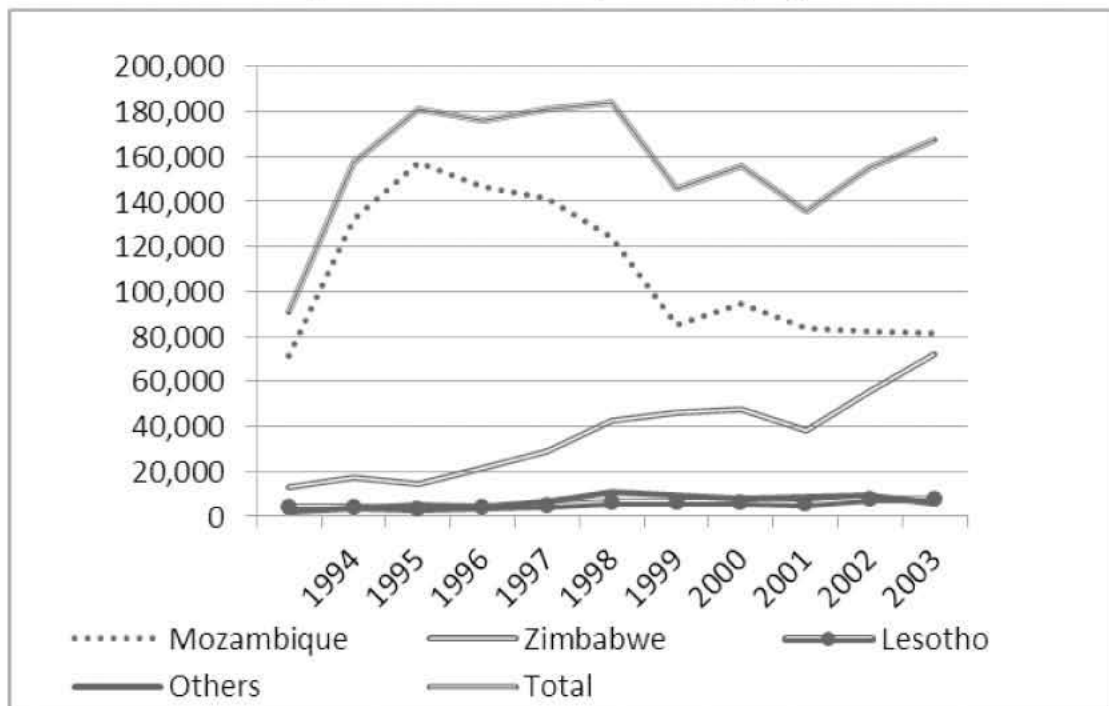
Source: Waller (2006: 2).

3.   IMMIGRATION POLICY UNDER MBEKI AND ZUMA GOVERNMENTS

3.1 *Transition in Economic Policy and the Selective Acceptance of Immigrants*

The intention to move to a system of selective acceptance of skilled and professional migrants had already been presented in a 1999 White Paper on International Immigration when Thabo Mbeki assumed the presidential office. Mbeki displayed fine leadership qualities during the adoption of the "New Partnership for Africa's Development" at a meeting of the African Union in 2001. While the New Partnership for African Development encouraged freedom of movement of the people, there was no progress in

terms of institutional reforms (Crush 2001: 33). On the other hand, in the Accelerated and Shared Growth Initiative of South Africa (ASGISA) presented in 2006, the government showed clear progress on the immigration issue. The promotion of the acceptance of skilled and professional migrants was a reaction to the large-scale brain drain that had affected the South African economy after apartheid.

After the release of the white paper in 1999, revisions were made to the apartheid-era Immigration Act of 1991 in the Immigration Act, No. 13 of 2002. Two main points were revised: the acceptance of skilled labour and investors and the introduction of a corporate permit for the employment of contract labour in certain industries. (Peberdy 2009: 139, 143-144). The 2002 law authorised immigration officers and the police to investigate resident qualifications. As a result, the number of deported people, especially Zimbabweans, increased drastically (Figure 1).

Most deportees enter the country illegally, although some are deported for overstaying legal visas. The change in the number of work permits issued might be an indicator of the degree of openness of legal entry for migrant applicants. Soon after the end of apartheid, the South African government reduced not only the number of new work permits issued but also curtailed the renewal of existing ones. In Figure 2 we can see a sharp reduction in the number of renewals after 1996. The number of new permits granted also reached its peak in 1996.

Figure 2 Number of Work Permits
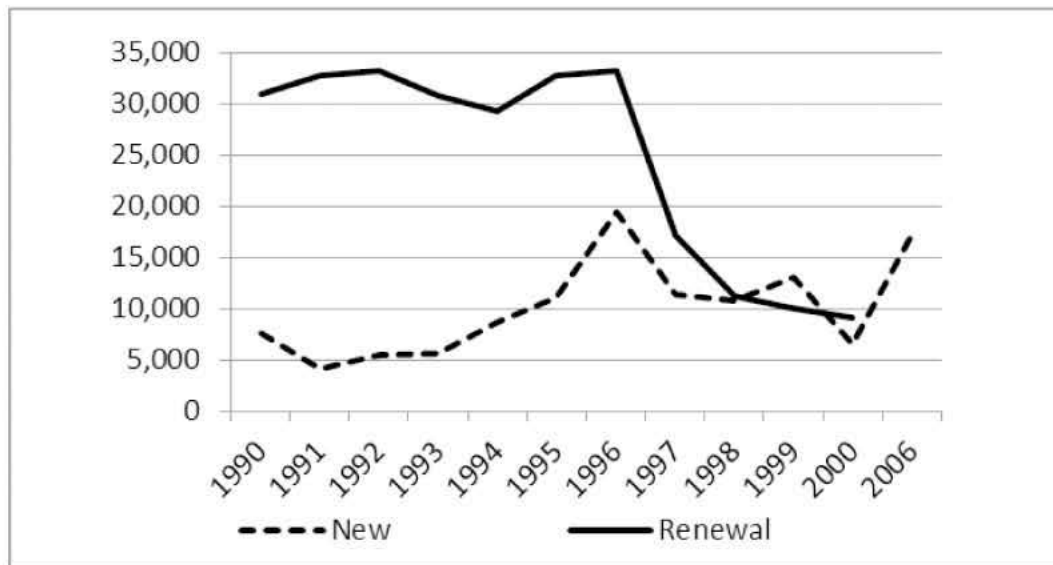
Source: Crush and Williams (2010: 16).

The number increased again after the introduction of the quota system for particular jobs with the amendment of 2004, which required specific skills and qualifications of potential migrants (Crush and Williams 2010: 16). It is important to understand that this increase was not simply a change in the number of permits but also a shift in focus. While

accepting skilled labour, the government maintained a way to secure unskilled labour in the corporate permit system. The corporate permit system enables companies, in particular commercial farmers, to employ foreign non-skilled or semi-skilled labour (Crush and Williams 2010: 13). Under the corporate permit system, women from Lesotho are employed in the Province of Free State, Mozambicans in Mpumalanga Province and Zimbabweans in Limpopo Province. These revisions of the immigration law clarified the types of migrant needed by the government, namely skilled professionals and unskilled labour for particular industries. As a result, the number of people deported increased after these revisions (Figure 1).

The mining industry also requires a great deal of unskilled labour. After experiencing restructuring and downsizing in the 1990s, there has been a change in the demographic composition of miners (Figure 3). Migrants from Lesotho and Mozambique were the major labour force until the 1990s, but the number of migrants from Lesotho fell in the latter half of the 1990s while the number of Mozambicans remained steady. This may be the result not only of the "moral debt" but more realistically because the rate of HIV infection among Mozambican miners was lower than migrant labour populations (Crush and Williams 2010: 10). The restructuring of the 1990s made subcontracting more attractive and, as a consequence, subcontractors continued to employ cheap migrant workers. In addition to these economic and social changes, a green paper published in 1998 for a public hearing on mineral and mining development policy specified that the government would continue to accept migrants from the member countries of the Southern African Customs Union to work in the South African mining industry within a certain tolerance level.

Figure 3 Number of African Miners
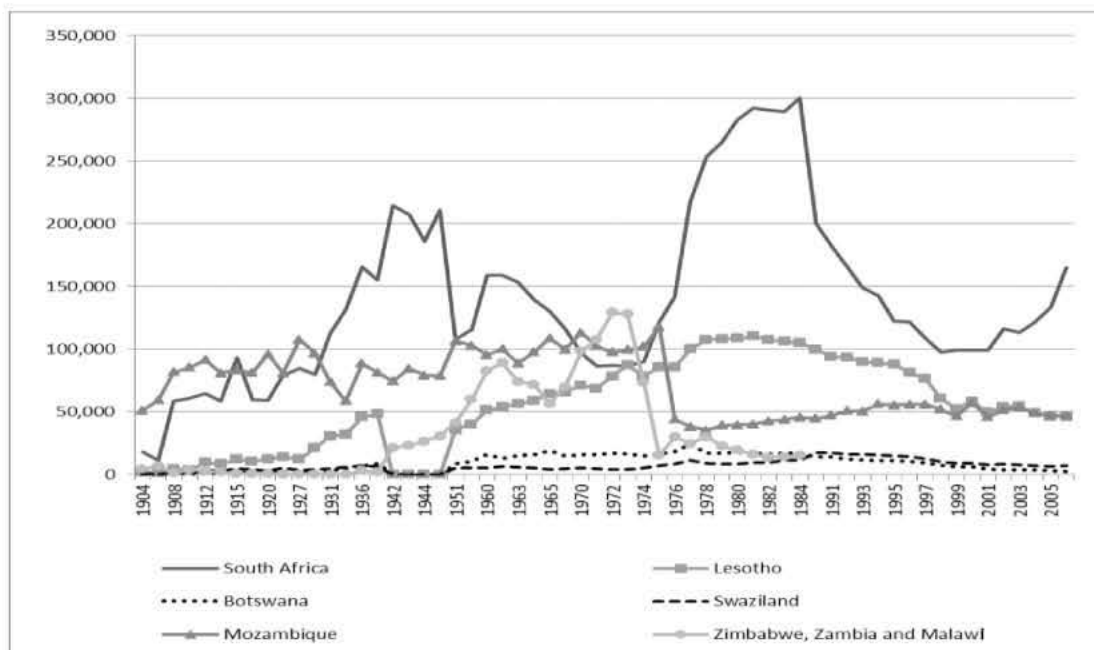
Source: Libby (1987: 38-39); Crush and Williams (2010: 11).

The amount of migrant labour from all sources increased in 2000 as the price of gold increased in the world market. However, the Mineral and Petroleum Resources Development Act, No.28 of 2002, established as part of economic policy of the Black Economic Empowerment system, aimed to promote the employment of South Africans. The act had a significant impact starting in the following year when there was a drastic increase in the number of South Africans employed in the industry while the numbers of migrants from Lesotho and Mozambique stayed the same. There was still, however, a possibility that South African miners would lose their jobs depending on fluctuations in the price of gold. If South African miners were to lose their jobs while a certain proportion of the migrant labourers kept theirs, the situation could easily generate xenophobic sentiment.

The problem of xenophobia was featured in major papers in South Africa during the next year, and two years after that the South African Association of Political Studies put together a special issue entitled "Xenophobia and Civil Society". While the large-scale violence of post-apartheid society was considered a serious problem, opinions on its causes vary. On one hand, some have pointed out that the violence is a sign of the fragile nature of South African democracy, but they are in the minority (Ramphele 2008: 29-30). Others, including the majority of the ANC and South African society, see the violence at that time as a "remainder" from South African nationals (Segatti 2011: 10). The xenophobic attacks did, however, have an impact on the ANC government, which had previously underrated the degree of social tension generated by the unsolved housing problem, chronic unemployment, poverty and inequality.

After receiving this "reminder", immigration policy once again changed under the Jacob Zuma administration established in 2009. The revisions to the migration act of 2011 made it more exclusive. For example, issuance of a business permit requires a certain amount of investment, and the application period for refugee status was shortened from two weeks to five days. The quota system for skilled and professional immigrants was abolished. Moreover, penalties for interference with the law were changed from fine to a maximum of fifteen years' imprisonment (Republic of South Africa 2011).

3.2 Dealing with Zimbabwean Migrants

The revisions of the immigration law in 2002 and 2004 caused an increase in the number of deportations, especially among Zimbabweans who had moved into South Africa to escape the political and economic crises that arose after 2000. Zimbabwean migrants include not only irregular migrants seeking work due to economic difficulties in their home country, but also regular visitors and even political asylum seekers. Responding to requests by NGOs working for the protection of refugees and migrants, and also reacting to the establishment of the coalition government by the Zimbabwe African National Union-Patriotic Front and the Movement for Democratic Change in Zimbabwe in 2009, the South African government temporarily halted the repatriation of Zimbabweans and offered two years of residence in South Africa in April of the same year.

The amount of communication among the government, the Department of Home Affairs, the police and the industrial world was unclear, but the "leniency period" when the repatriation process was interrupted corresponded precisely with the preparations for the FIFA World Cup in 2010, when there was a large demand for labour. The "leniency period" ended in September 2010, and the Department of Home Affairs declared the resumption of deportations in January 2011.

The South African government also took special measures to normalise Zimbabwean migrants during a three-month grace period since September 2010 until January 2011. Under this programme, known as the Zimbabwe Documentation Project (ZDP), Zimbabwean authorities issued passports and the South African Department of Home Affairs issued visas. There were approximately 275,000 applicants and 255,000 cases approved. However, the number of Zimbabweans residing in South Africa had been estimated as being at least between one and two million and possibly as high as three million (CoRMSA 2011). This excluded political asylum seekers, refugees and those who already held working permission, who were at risk of deportation even before the conclusion of the ZDP programme[2].

4.   EFFECTS OF SOUTH AFRICAN IMMIGRATION POLICY IN THE RE-GIONAL AND CONTINENTAL CONTEXT

As post-apartheid South Africa rejoined the political and economic framework of southern Africa, there were demands that it make its position as a receiving country of regional immigrants clear. The Protocol on the Freedom of Movement of Persons drafted in 1995 by SADC failed to be ratified due to objections from migrant receiving countries including South Africa. Discussions continued, aiming to reframe the document as the Draft Protocol on the Facilitation of Movement of People in 1997. During this process the word "freedom" was dropped and "facilitation" adopted, but even then the Draft Protocol remained unsigned at the 1998 SADC summit, even as the Protocol for Free Trade was quickly adopted.

SADC delegations soon divided into two factions: receiving countries such as South Africa, Botswana and Namibia, and sending countries such as Zimbabwe and Mozambique. After negotiations over the Draft Protocol broke down in 1998, in 2000 SAMP and the International Organization for Migration (IOM) set up an inter-governmental meeting, the Migration Dialogue for Southern Africa to propose a regional policy framework. However, it has been noted that because of the institutional nature of IOM, it thinks of immigration as a movement of labour rather than a movement of people, and as such its mentality as an immigration controller biases it toward migrant receiving countries such as the developed countries in the north and regional powers (Carrete and Gasper 2011).

In 2003, a discussion over the protocol on the movement of persons was opened but

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[2] *Mail and Guardian Online*, 7 October 2011
(http://mg.co.za/article/2011-10-07-home-affairs-resumes-zim-deportations, accessed 10 January 2013).

this time within the Organ on Politics, Defence and Security Co-operation of SADC. The setting of the discussion led to a tendency to view immigrants as a threat. Finally, SADC adopted the Protocol on the Facilitation of Movement of Persons in 2005, which recommended the strict regulation of migration and bilateral agreements in order to meet labour demands. South Africa signed this protocol in 2008 (Crush et al. 2009: 263-264).

South Africa cannot become a major power in the African Union while its present immigration policy continues, even though the Minister of Home Affairs, Nkosazana Dlamini Zuma, was elected as the new head of the African Union Commission in June 2012 (Wheeler 2012). In fact, South African immigration policy is a topic of discussion around the continent. An editorial in the Zimbabwean paper *The Sunday Mail* reported on a series of actions by the South African and Nigerian governments over immigration in February 2012 when South African immigration authorities deported 125 Nigerians within 48 hours over alleged fake certificates for yellow fever vaccination. In retaliation, the Nigerian government deported 131 South Africans within 72 hours and moreover threatened to impose sanctions on South African companies operating in West Africa, including MTN, the largest mobile phone network in Nigeria with 42 million of the country's 95 million subscribers[3].

CONCLUSION

There is no doubt about the economic competitiveness of South Africa in the African market. If there is a weakness, though, it is in the country's labour market. The challenge is to create a framework for a southern African free trade area and keep and create employment for South Africans within the southern African labour market. This problem is evident in the migration issue. The choices made by the South African government just after apartheid of emphasising social inclusion of immigrants grew out of a sense of regional solidarity and a political culture of anti-discrimination. The two subsequent shifts in policy, however, foreshadowed the future of South African migration policy in their offers of amnesty for SADC citizens and the forced repatriation of irregular immigrants.

Under the Mbeki and Zuma governments, the framework of migration policy of South Africa became narrower and narrower through revisions of migration law in 1994, 2002, 2004 and 2011. Moreover, recognition of the xenophobia of 2008 as a "remainder" from the South African nation to ASGISA made under the Mbeki administration made the Zuma administration populist. South Africa emphasises national security in the development of the country through passive means by setting up new "others" and then working to deny it.

As we have seen, discussion in SADC over the movement of people concluded by recommending bilateral agreements, which South Africa accepted. South Africa may have

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[3] "A taste of things to come," *The Sunday Mail*, 31 March 2012 (http://www.sundaymail.co.zw/index.php?option=com_content&view=article&id=27965%3Aeditorial-comment-a-taste-of-things-to-come&catid=46%3Acrime-a-courts&Itemid=138, accessed 10 January 2013).

seized the initiative in that discussion, but the opportunity for SADC to exercise its function as a community was lost. It became obvious that SADC was not prepared for the immigration that arose as a result of the political and economic crises in Zimbabwe. The position taken by South Africa, however, did not help to reinforce SADC's function. Finally, when we look at South African immigration policy in the context of the African continent, we find that although it occupies an important economic position, reported incidents of South African government intransigence give the impression that South African democracy is narrowly defined, and this might lessen South Africa's status at regional and continental levels.

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