DEVELOPMENT STUDIES RESEARCH GROUP

Working Papers

STATE POLICY ON FOREIGN AFRICAN LABOUR
IN SOUTH AFRICA: STATUTORY,
ADMINISTRATIVE AND CONTRACTUAL FORMS

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DSRG Working Paper No.4.

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September

1977

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This paper, dealing with statutory, administrative and contractual aspects of policy on foreign African labour supply to South Africa, examines six inter-related issues:

(a) the concept and definition of *foreign* or *alien* African workers;
(b) the relation between policy and social and economic requirements of the state;
(c) the various forms of existing policy;
(d) the legislation governing foreign workers in South Africa;
(e) the historical and contractual conditions of inter-state agreements, firstly with reference to existing suppliers and then with respect to previous or prospective suppliers; and
(f) various *conditional elements* which help to define policy as implemented in its statutory, administrative and contractual forms.

THE CONCEPT AND DEFINITION OF *FOREIGN* OR *ALIEN* AFRICAN WORKERS IN SOUTH AFRICA

A foreign African worker is generally understood in South Africa to be a worker born outside of South Africa and Namibia/South West Africa. However, even this requires qualification in the light of the *Status of Transkei Act* of 1976, the coming independence of Namibia and some existing measures designed to exclude from certain regulations those aliens who were living and/or working in South Africa before 1 July 1963.

The approach to foreign workers has become more sharply exclusive in recent years. The Froneman Committee, which inquired into foreign workers in South Africa in 1961/2, expressed many of the fears of officials in respect of foreign African workers.[1] It cited reasons for identifying and excluding foreigners (unless in South Africa for contract or temporary work) and it advocated their forced repatriation together with their dependent women and children, the objective being the systematic replacement of foreign African men in employment. A major constraint was thought to be the estimated level of unemployment of local African workers in South Africa (then believed to be low). But it was argued that substitution of foreign by domestic Africans could help to diminish dependence on uncertain foreign supplies.

/The realisation ...

The realisation of a growing labour surplus in the South African economy has subsequently brought more support for this substitution which appears to have the implication of solving both (some of) the unemployment problem as well as coping with the problem of continued dependence on foreign labour. Thus fewer concessions have been allowed foreign workers in general; and conscious moves to replace foreign with local workers have been encouraged at local labour bureau level and in terms of national labour policy.

THE RELATION OF POLICY TO ECONOMIC AND SOCIAL REQUIREMENTS

Policy on foreign African labour supply may be almost wholly related to the collectively-assessed needs of employers within a context of securing a low-cost and relatively secure source of (mostly) unskilled labour, notably for primary industries. There also exist a set of social requirements, e.g. the need for *domestic stabilisation* in the short-term and long run. In part, of late, this has been achieved, or at least sought, by means of adjustment to foreign labour supply volume and composition, the express purpose being to diminish growing local unemployment.[2,3]

Changes in state foreign African labour policy to meet changing broad economic and social needs mainly appear firstly in administrative form. Changes to legislation and re-negotiation of inter-state contracts, or their abrogation usually take much longer. Of course, statutory and contractual conditions normally define the limits within which administrative regulation takes place.

EXPRESSIONS OF POLICY: VARIOUS FORMS

A number of forms may be used to give articulation to policy. Here concern is primarily with the policy of the recipient state - South Africa. This policy may be mediated or qualified by tendencies or policies of various employers representing different branches of capital as well as compromises secured by supplier states or other interest groups through negotiation or pressure. A notable absentee amongst the latter has been and remains unionised or organised African labour. This, however, is one of the typical structural features of the foreign labour supply pattern.

/The principal ...

The principal forms of policy to be distinguished are the legislative, the contractual and the administrative. They may be operative at different levels of the state system or over different phases in the articulation of a specified policy. Major problems of management of the state apparatus involve not only shaping policy in the direction of specified group interests, but also realising it in the various mechanisms at the disposal of those charged with controlling the political system. Thus, it may be that at certain junctures some contradictory components are to be found between different forms of policy, if not in implementation, then in *de jure* enunciation. However, over a longer-term period, these may be expected to be eliminated, given a modicum of *systems efficiency*.

It is thus possible to view administrative changes or new amendments to legislation as precursors of the longer-term policies embodied in inter-state contracts or agreements on the question of (foreign African) labour supply. The choice of mechanism of implementation of new policy may itself be dependent on political-economic considerations.

LEGISLATION GOVERNING FOREIGN AFRICAN WORKERS IN SOUTH AFRICA

It has been through legislative definition that foreign or alien Africans (and African workers) have become so classified for the purposes of policy. Legislation has also defined the requirements of entry, work securement and eventual departure.[4]

The first systematic controls over foreign African workers were expressed in the Native Labour Regulations Act No. 15 of 1911. This was soon followed by the Admission of Persons to the Union Regulation Act No. 22 of 1913 (revised as Act 59 of 1972). It defined classes of persons who are *prohibited immigrants*. This definition included persons deemed by the Minister of the Interior on economic grounds or on account of standards or habit of life to be unsuited for entry. This was re-affirmed in the Aliens Act No. 1 of 1937.

Most foreign Africans were defined as, and today are considered as, prohibited immigrants because: (a) they are unable, by reason of deficient education

/(i.e. a Standard VII ...

(i.e. a Standard VII Certificate) to read and write a European language; (b) they lack means of support and could become a public charge; (c) they previously entered without acceptable passports. Foreign *migrant workers* may be exempt from these disqualifications and thereby enter South Africa provided they: (a) enter a service contract with an employer; (b) they leave the country at expiration of contract without cost to the state. In addition, migrants may enter South Africa under the terms of a specific inter-state agreement.

Further Acts of relevance, which will not be detailed here, include the following: Bantu Labour Regulations Act No. 67 of 1945; Bantu (Urban Areas) Consolidation Act No. 25 of 1945; Departure From The Union Regulations Act No. 34 of 1955; the Bantu (Abolition of Passes and Coordination of Documents) Act No. 67 of 1952; the Border Control Act No. 61 of 1967; and the Bantu Taxation Act No. 92 of 1969. Regulations made under these Acts must also be taken into account.

Inter alia, these Acts in effect keep foreign workers out of certain defined areas, except under exemptions. In this way, foreign labour is made *supplementary* to local labour. The legislation also defines the work options allowed foreign African workers, applies restrictions on their entry into the Western Cape and most urban areas, while it also excludes employment in domestic work in many areas. Significantly, it also prohibits permanent migration and migration with families. Under it, foreign workers may not become tenants in urban areas. Clandestine migration is forbidden, and termination of service is defined as a condition leading necessarily to repatriation.

Whilst workers are in employment, most labour legislation generally applicable to South Africa as a whole also applies to foreign Africans, e.g. the Pneumoconiosis Act No. 57 of 1956 and Workmen's Compensation Act No. 30 of 1941. However, the Unemployment Act does not apply; nor do any statutory pension arrangements. The indirect costs of labour associated with these latter components and the cost of reproduction of labour are explicitly shifted onto supplier states.

/The rationale ...

The rationale for existing legislation has been outlined by Breytenbach who notes, as if it were a virtue in itself, that it enables the state to 'mobilise the labour force.'[5] This is undoubtedly an understatement since the enforced mobility burden and costs placed on foreign workers is enormous. But the further rationalisation offered by the same author is little short of disingenuous, ... that it 'protect(s) the unskilled indigenous (rural or urban) labourer against alien competition on the labour market and (it) forces the foreign workers to do full-time work and therefore safeguard(s) him from expulsion and from socioeconomic problems such as unemployment and subsequent loss of income and accommodation.'[6] As will be argued, other reasons and interests account for the existence, form and changes in legislation and policy applicable to foreign African workers in South Africa.

HISTORICAL AND CONTRACTUAL ASPECTS OF INTER-STATE AGREEMENTS

The largest number of foreign African migrant labourers enter South Africa under explicit inter-state agreements between South Africa and supplier states. These agreements date from 1928, the time of the Mocambique Convention. Prior to this, arrangements were made directly between private recruiters and supplier states.

As of the middle of 1977, agreements existed in both *de jure* and *de facto* terms with Mocambique, the BLS states and Zimbabwe. *De jure* agreement existed with Malawi and Angola; since 1974 and 1973 respectively, these agreements have been effectively suspended. Recruitment has also taken place in the past from Zambia and Tanzania. The most recent change concerns a labour treaty made with the administration of Transkei. Because this latter case is very different from that of internationally acknowledged, independent states, and is also explicitly regarded on a different level by the Chamber of Mines, it should be considered as a special category in discussions on the internal labour reserves of South Africa.

Despite some variations, a number of common principles and points underlie or are contained in these international agreements. The major aspects covered include: numbers permitted or required to be recruited; (sometimes) minimum basic rates applicable; compulsory deferred pay regulations and the mode of payment; minimum contract length and definition of options for

extension, with conditions for renewal of contract; restrictions on eligible recruitees (by sex, area, age, nationality etc); liability for transport and repatriation; applicable legislation in supplier and recipient states; fees and/or taxes; documentation required by contracting parties; restriction on occupational and area mobility of contract workers whilst in South Africa; length of duration of agreements; and conditions for termination.

Because agreements have been made at different times, subject to various economic pressures and legal necessities, and made applicable to differently structured (foreign) labour reserves, they are not identical. However, differences tend to be more those of degree than of kind and in recent years they have tended to become smaller.

The BLS States as the Dependent Micro-States

The BLS states - formerly colonial Protectorates under British control - have always had a special status in respect of the entry of their citizens into South Africa. This has applied particularly to Lesotho, a micro-state completely surrounded by the Republic, from which it has been estimated that around 262,000 workers were permanently absorbed into South Africa from 1911-56.[7]

During the colonial period, informal labour arrangements governed movement across the borders of BLS states to South Africa, there having been substantial independent migration over decades. Subsequently, several private recruiters operated in these territories, among them Wenela/NRC, Anglo-Colliery Recruiting Organisations, the Natal Coal Owners' Labour Association, Amalgamated Recruiting Organisation, Theron's Recruiting Corporation and Hadley's Bantu Labour Organisation. Since 1958, domiciled workers from BLS states have been classified as foreigners and passports/documents have been compulsory since 1963-66. Since this date points of entry have been restricted to 51 border control points. Subsequently, labour agreements have been drawn up with Botswana and Lesotho (but not as yet Swaziland). According to Breytenbach, these agreements have rested on established policies of what could be called preferential displacement, in that whilst South Africa, attempting 'to reduce the number of non-Republican Bantu as fast as feasible in practice', has recognised the special position of BLS workers.[8]

Today Botswana has a Labour Representative in South Africa and negotiations have been proceeding towards similar arrangements for other countries. The Botswana Labour Representative performs a variety of roles: the soliciting of data on conditions confronting Batswana in the South African labour market; consideration of the welfare and housing of Batswana migrants in South Africa, acting as an authority to ensure that workers comply with South African laws regarding identification, entry and departure; administration of deferred pay, remittances, taxes and a welfare fund; assisting with the repatriation of ill, injured or destitute Batswana who are required to leave South Africa; the provision of liaison functions with employers and the South African government; the provision of liaison functions on behalf of workers, in respect of Workmen's Compensation and Pneumoconiosis claims.

Formerly, a large portion of labour supply from BLS states was of a non-recruited character. While a sizeable element of labour supply is still of this form, evidence suggests that it has become relatively less important in recent years. In other words, contract arrangements have come to be of greater relative significance, thereby giving the state and employers in South Africa more control over foreign entrants onto the local labour market from these sources. Further, it has been the Chamber of Mines, through Wenela/NRC, which has controlled a growing share of this increased volume of recruited labour supply. Thus, whilst the NRC accounted for 22 percent of recruited labour from BLS in 1960, this proportion was 68 percent in 1970.[9] The bulk of non-recruited workers have traditionally fallen into, and continue to be employed in, the short-term/casual labour markets in agrarian production, notably those near BLS borders.

In all BLS states, recruiting by public authorities and chiefs has now been prohibited. Laws dealing with recruitment are similar; however, in Botswana and Lesotho (but not in Swaziland) compulsory deferred pay schemes operate. Before early 1975, remittances to Lesotho were on a voluntary basis. Thereafter 60 percent of each worker's basic rates were compulsorily placed in the Lesotho National Bank and were not withdrawable until the expiration of his contract. One exclusion operating - resulting from the Department of Bantu Administration *General Circular Minute 32 of 1966* - has been that no domestic workers may be recruited from BLS states.[10] Nor may they work in the Western

Cape, all such foreign workers in this area having been subject to forced dismissal after 25 September 1954, and repatriation after 6 November 1958.

Workers recruited from BLS states are controlled by defined procedures. They may enter South Africa only on a supplementary basis, after the relevant South African District Labour Bureau has been satisfied that no South African workers are available. At such a point, it issues approval through a *No Objection Certificate*. This does not, however, apply to mines affiliated to the Chamber of Mines. Employers must recruit workers themselves, such workers being restricted to *non-dependent families or dependents*. Employers must obtain consent of the Labour Commissioner in the supplier state as well as meet any required fees due.

For employment on farms or in non-affiliated mines, the recruiting license fee in Botswana is presently set at R2,00 for the recruitment of less than 100 farm workers but at R50,00 for the recruitment of 100 or more workers. In Lesotho, where more short-term employment near the border is involved, license fees for recruitment have been set at R5,00 for 30 days (for farm workers), and R50,00 per annum for other employment. Swaziland has not charged license fees if less than 19 workers are recruited per calendar year. In other circumstances, the fee has been set at R50,00 per annum.

Advances, recoverable from recruitees, have also been required under law. Advances have been used to cover annual basic taxes due and passport fees (usually between R1,00-R2,00 each). Non-recoverable payments have also been necessary: for an attestation fee (R10,00 in Botswana, R11,50 in Lesotho and R1,00 in Swaziland), for forward travel costs, for medical examination, and rental of workers' accommodation pending departure to South Africa. These financial inflows to supplier states have been quite apart from others in the form of remittances and recruitment expenditures on staff, equipment and stores.

No Objection Certificates have not applied to the Chamber of Mines (i.e. Wenela/NRC and Anglo Colliery Recruiting Corporation or ACROL in Lesotho) in BLS states, for which there has to date existed no restriction on recruitment levels. They may be issued for *all* mines and all farms in districts bordering on, or near, BLS (and Mocambique), *provided* jobs for local workers

are not jeopardised. Employers bear a liability for accommodation. The certificate's currency in the first instance is six months. Employers undertake liabilities for repatriation and also agree not to re-employ the worker for 6 months following contract expiration.

All workers recruited privately have required a valid passport, a travel document or employment record book, a smallpox vaccination, a set of certified fingerprints and a copy of the employment contract as attested in the supplier state. Recruits must enter from Botswana through Ramatlabama, from Swaziland via Golela, and from Lesotho through Marseilles. Passports must also be endorsed for the period of work concerned.

Pre-1963 arrivals from BLS, who have also been in lawful employment, may remain in employment (excluding the case of the Cape Province). Such workers may change employers but restrictions regarding prescribed areas still apply. For post-1963 entrants, entry is subject to a maximum of two years at any one time, passports being so endorsed and employers being required to sign the endorsement monthly. This procedure operates as a check against absconding or evasion of the system of control.

The labour agreements reached with BLS states have come to have greater significance since their proportion of foreign labour supply has risen following Malawi's withdrawal in April 1974, and the diminution in Mocambican supplies in 1976-77.

From Colonial Necessity to Socialist Pragmatism

The history of active recruitment of Mocambican labour for South African employers predates this century, workers initially coming to farms in the Eastern Transvaal. The first agreements made by the colonial authorities were with private recruiters.

When Wenela began its operations after 1902, over 80 percent of its first recruits were Tonga workers from southern Mocambique. A 1909 Convention regularised and revised arrangements between Wenela and the Portuguese Authorities. Further negotiations took place in 1912, the compulsory deferred

pay scheme stemming from this time. Minimum service periods then were 12 months. In 1914 it was decided that no recruitment could occur north of latitude 22 South.

The Mocambique Convention, formulated in 1928, dealt in one part with mine labour exports to South Africa. Under it, Wenela received a recruitment monopoly. Compulsory remittances were initially set at 20 percent of cash wages, this proportion later being amended to 50 percent of cash wages. The Convention, together with subsequent amendments, fixed Wenela's annual recruitment maximum 100,000 (1929), falling to 80,000 (1933-35) during the height of the Depression, rising to 100,000 (1940-64). Minimum quotas were fixed at 65,000.

In 1964 a new Agreement or Labour Treaty was made with the government of Portugal on behalf of its colonial dependency (the Province of Mocambique). Additionally, Government Notice No. 2056 of 1939 (repealed 1956) in South Africa provided that recruitment in Mocambique was prohibited except for affiliated mines. Subsequently, all employers (excluding domestic employers and industrialists) could use but not recruit Mocambican workers. Such recruitment was carried out by Mocambican recruiters, mostly for Natal and Transvaal farms. The South African government has also stipulated general labour arrangements for Mocambican workers (as of 1966).

At least up to independence in 1975, the delegate of the Portuguese Institute of Labour acted as labour representative for Mocambique and Angola. This functionary's role was to promote the registration of workers, to organise a deposit and transfer agency, to *monitor* conditions of labour and to help organise repatriations. In addition, inspectors were stationed in nearly a dozen locales.

Recruits from Mocambique, except those coming through Wenela agencies, have since 1966 been subject to controls similar to those that have applied to BLS workers since 1963. The major difference has been that all recruitment has had to be done by Mocambican recruiters.

Employers have been required to apply to the Mocambique labour representative for labour and to pay designated *employment agencies* for transport, repatriation

fees and advances, there being three such agencies in 1974. Charges varied by district, transport being highest for the Porto Amelia District (R77,00) and lowest for South of the Save River (R46,00). Repatriation fees were also highest for Porto Amelia (R40,50) and lowest for South of the Save River R8,00. Most of the latter workers were from Kazai, Inhambane, and Lourenco Marques (now Maputo). Advances were a standardised R5,00. Additionally, the Portuguese authorities were to be paid registration fees through employment agencies: R4,50 for agricultural labour of contract duration less than 18 months; R3,00 for agricultural employment of less than 12 months; and R1,50 if the period was less than 6 months. The respective charges for similar time periods, but for non-agricultural work, were R6,00, R4,00 and R2,00. All monies had to be paid in escudos in Mocambique. Wenela met its own license fees, payable direct to the government.

Since 1975 the precise extent to which there arrangements and charges might have changed is not known.

Special provisions have applied to Wenela and workers for employment on affiliated mines. Contract lengths are specified at 12 months (or 313 shifts: a relatively large number). Options for a 6 month extension of contract are provided. The period of contract begins when the worker arrives at the point of employment. Contracts had to be registered with the Delegate. Persons under 18 years of age, or those unfit, could not be contracted. Repatriation is at Wenela's expense if the recruitee is found to be unfit before placement and at the mine's expense if afterwards. The provisions of the agreement do not apply to workers earning over R80,00 monthly. Provisions exist for compensation in the event of occupational injury. Contracts can be extended, with approval of both the Delegate and the South African authorities, together with payment of a *pro rata* fee to the employment agency, for a length of time up to a maximum period of 18 months. Failure of workers to perform contract entitles employers to a *pro rata* refund on the registration fee.

These provisions fell under the 1964 Treaty between Portugal and South Africa (itself validated for 5 years). This Treaty also gave Mocambican authorities power to limit or stop recruitment in certain zones on economic, social or medical grounds.

[illegible] From Labour Importer to Independent Supplier State?

Zimbabwe today occupies a unique position amongst supplier states. A state with a settler political and economic structure, and a former importer of a substantial foreign African labour supply for primary industries from Malawi, Mocambique and Zambia, it has adopted a foreign labour displacement policy since 1958 and now receives almost no new inflows of foreign workers, and since December 1974 has been a contract labour supplier for the affiliates of the Chamber of Mines. This new outflow formalises a supply pattern, or clandestine exodus, which has operated from the turn of the twentieth century whereby migrants have sought entry into South Africa through illicit border crossings into the Northern Transvaal - eventually to seek work through Messina Transvaal Development Ltd., NRC offices on the southern bank of the Limpopo east of Messina, on farms in the Transvaal or in *illegal* urban-industrial jobs (notably domestic work) on the Rand.

Up until late 1974 the state resisted overtures towards contracting into the Wenela system but it subsequently - for economic and political reasons - actively sought such a relationship leading to an agreement on the international division of labour reserves in Zimbabwe.

The agreement, which nominally runs for 5 years (with one year's notice thereafter on either side) was made in accordance with the provisions of the (Rhodesian) African Labour Regulations Act (1911) and Rhodesian Government Notice No. 150 of 1939 between the state and Mine Labour Organisations (Wenela) Ltd., acting on behalf of its 55 listed gold mining companies. The South African Bantu Labour Act (1964) and relevant sections of the South African Mine and Works Act (1956) apply to these contracts. The agreement provided for a *minimum* of 20,000 workers to be contracted.

Under the agreement, workers are transported at Wenela's cost to Johannesburg where they must remain until placed in mining employment. The exclusion of dependents reduces indirect costs associated with employment.

Wages are set at minimum rates stipulated in South African currency in the agreement. Over-time is paid at more than normal rates and food is provided as prescribed by government regulation. Quarters are provided free, though no stipulations regarding quality are provided. Hospitalisation costs are

/borne ...

borne by employers. All transport costs from the depots of recruitment to the mines are borne by Wenela.

After completion of contract, should the recruitee not wish to return home, employment may continue for a period not exceeding a further 6 months but only on the mines. One month's notice must be given if the extra period is for less than 6 months. Thereafter the contractee must return to Zimbabwe - either to the point of attestation or the nearest Wenela office thereto - at the cost of Wenela. After the first three months of work, 60 percent of basic rates of pay per shift (of 8 hours) is retained from earnings by the employer. It is then paid through Wenela to the contractee in Zimbabwe, the monies going into a Post Office Savings Bank account. However, employees may agree to Wenela withholding any amount required to liquidate admitted debts in the Republic. These forced savings can be considered an eventual source of small-scale accumulation, but during the contract they typically act as an insurance that funds are kept aside for dependents in the country of origin. Further, the withholding of earnings by the state emphasises the disadvantaged status of workers who effectively do not control receipts from the sale of their labour. Desertion, or *absconding*, as the Chamber of Mines now prefers to call it, thus becomes an expensive action.

The completion of contract, which involves at least 270 shifts of 'continuous underground employment', entitles contractees to receipt of a certificate which, on presentation to any Wenela employer *within a period of 9 months* from the date of discharge, enables the worker to recommence work at the basic rate of pay cited on the certificate. Thus the contract provides for some wage advancement in the case of regular workers who effectively tie themselves to mine labour, even though they switch employers. Of the 1,000 contractees who returned in the first three months of 1976, about half had already re-contracted with Wenela before mid-April. The clauses represent an attempt by the industry as a whole to mitigate the *repulsion* effect structurally built into contracts by establishing a countervailing, albeit mild, *attraction* effect.

To some extent, enforced contractual turnover is functional to the supplier state. The migrant's return facilitates lump-sum expenditures of accumulated savings and helps conserve familial, kinship and social links with dependents and others in the reserve economy. In the case of Zimbabwe, the clause also

/provides ...

provides local employers with an option to compete for the labourer's services after he has returned. The state also ensures a higher probability that tax liabilities are met. The injection of monies into either rural areas or low-income urban households is facilitated, and at probably a much higher level than if migration involved a permanent move. In the latter instance, also, the supplier state could be burdened with an even greater cost in terms of caring for those left behind, usually the aged and/or young.

On the other hand, the South African employer is provided with an opportunity to weed out lax workers from the labour force while the recipient state avoids social security costs for workers and dependents. The regularised turnover also builds into mining employment a predictable degree of worker insecurity in that the latter can never anticipate permanency and security in employment because workers are forced to oscillate periodically under conditions which necessarily require them to become divorced from their families for lengthy periods at a time. The agreement itself, upon which the individual's contract ultimately depends, is beyond his power to influence. These conditions would seem (at least superficially) to suit management. They tend to reduce the prospects of successful and sustained collective worker organisation against employers. Spontaneous and sporadic upheavals in mine compounds, a common feature for many years, would thus appear to express a structural incapacity on the part of contractees to negotiate benefits or even influence conditions of contract and labour. Any benefits workers might achieve are likely to be only temporary in character insofar as the individual is concerned. On a subsequent contract the worker may not be able to guarantee return to the mine which offers the precise benefit he requires and about which he may have previously expressed preferences or even gone on strike. The structure of contracts would thus appear to have a major importance which seems to have been overlooked in much analysis to date on the question of social control over mine workers. These pressures operate independently of the state's non-recognition of African unions in South Africa for the purpose of collective bargaining.

The agreement further noted that persons found 'medically unfit' for underground labour may be used for surface work (to which lower wages pertain) or, if the employer so desires, the workers can be repatriated at the employer's

expense. The application of restrictive criteria (concerning age, weight and health) in the area of origin help reduce the degree of repatriation for medical reasons from South Africa. Such policies reduce labour costs and facilitate accumulation in South Africa.

Employees are required to work on every working day, on day or night shift, on piece work or daily rates, at the employer's option. When called upon, workers must work on a number of specified public holidays and Sundays. Workers are required to do over-time as and when management decides. These aspects of the contract heighten managerial control over the labour process and enable management discretion to be serviced as a priority before employee considerations come to bear.

When acts of God prevent a worker from working he is entitled to half pay calculated at the average pay earned by him during the previous 3 months, or any shorter period worked to that date. In such circumstances, workers may be reallocated to jobs for which they did not originally engage and remuneration is determined at the rate for the job, not in terms of the rate of pay on the worker's original contract. This is provided that the pay is not less than the level of half pay stipulated above. This work counts towards the fulfillment of contract. In such instances, either party has the option of cancellation of the contract. Where employers cancel, the worker is offered to other members of Wenela, provided that conditions of service are no worse than those previously pertaining.

Apart from Africans entering South Africa from Zimbabwe under Wenela's charge, there have been and remain other independent migrants entering the Republic. In theory, such persons must enter via border posts. In practice, many have not. To regularise such past inflows, the South African Department of Bantu Affairs and Development (BAD) has required workers who have been in South Africa at least since 1 March 1968 to apply in South Africa for a Rhodesian Worker's Travel Document (WTD). They could remain in employment until 31 August 1969, thereafter having to return to Zimbabwe. The WTD has a 5-year validity with a 5-year renewable option. But in order for it to become effective the worker had to go to Zimbabwe for one month. Thereafter, he could be re-engaged.

For legal and regularised workers, employers had to pay R20,00 (to cover eventual repatriation costs after the second contract of service). The fee was refundable only if there was proof that the workers arrived back in Zimbabwe. Further, re-entry permits may only be issued 'if no indigenous labour is available'.

However, workers who were in illegal employment in South Africa as of March 1968 were given permission to take up or remain in employment if in mining or agriculture. At the time, these were low-wage sectors. Other occupational categories were permitted in prescribed areas if an urban local authority gave explicit permission. For such illegal workers so regularised, contracts could not extend beyond 18 months after which repatriation ensued.

These attempts at regularisation sought to expose illegal Zimbabwean workers and eventually set in motion processes of displacement. They were not wholly successful, workers (and in some cases employers) seeking to avoid detection. Thus in April 1976 another regularisation exercise was conducted.

The 1976 'legalisation of Rhodesian male Bantu' was based on a labour agreement with the Rhodesian Ministry of Labour. Persons illegally employed in South Africa, but excluding the Western Cape, (as of 1 April 1976) had 6 weeks up until 15 May 1976 'to legalise their position and to become registered for employment'. Those workers employed outside of prescribed areas were not allowed to become registered for prescribed areas. Occupational categories permitted were: domestic labour, waiters in licensed restaurants, hotel jobs, farming and mining. The new agreement excluded independent contractors or daily labourers working on their own account, who could nonetheless register for legalised work. However, it allowed for those in gaol under the Bantu (Urban Areas) Act No. 25 of 1945 or the Bantu Labour Act No. 67 of 1964 or under the Admission of Persons to the Republic Regulations Act No. 59 of 1972, and others awaiting repatriation, to take up legal work provided they had no serious criminal convictions. Once again, as in 1968, a TWD was required - valid for 5 years with an option for a further 5 years renewal. But employers were required to pay labour bureaux 'all outstanding registration/contribution fees'. This could amount to quite a sum in retrospective liabilities. Further a non-refundable repatriation fee of R50,00 was now needed (except in the cases of employers who had met the R20,00 requirement of the 1968 regularisation and

/for farmers ...

for farmers in non-prescribed areas). And, whenever the worker sought new employment, the same fees were required of the new employer. This provision, to the extent it is implemented, would have the effect of taxing employers of legalised Zimbabwean Africans, thereby encouraging their more rapid displacement.

The agreement also introduced a compulsory remittance scheme for all non-Wenela recruitees or legalised Africans from Zimbabwe already inside South Africa. If workers received below R30,00 monthly in wages, R10,00 was to be deferred monthly; for wage ranges R31,00-R40,00 it was R15,00; for R41,00-R50,00 it was R20,00; and so on, up to R100,00 remittance for a wage range of R141,00-R150,00. In the case of wages received in excess of R151,00 the remittance was 66 percent. These extremely onerous conditions have made legalisation undesired by many workers, especially those who have been in South Africa for years, or who have families in South Africa, or who have lost contact with their home districts.

Workers entering South Africa illegally after 1 April 1976 are now prosecuted and repatriated. Their employers, where they are found in illegal employment, also face 'steps against them'. This threat implies initially a refusal to issue further *No Objection Certificates*, but may eventually mean prosecution.

The net effect of the new agreement with Zimbabwe is to subject illegal Africans to a bureaucratic control designed to implement displacement, inflict penalties on non-compliant employers, restrict occupational mobility to low-wage or designated sectors for which foreign labour may be used, ensure that legalised workers remit monies home, and in consequence make the Wenela contract agreement the most prominent form of labour supply arrangement between the two countries.

Malawi: The Experiment of Unilateral Withdrawal under a Conservatice Economic Policy

The origins of Malawi's formal supplier state status stem from 1938, following a 1936 agreement, when Wenela began recruitment for 12-month contracts from the Southern Province. Up to 1947 Wenela had a recruiting monopoly in Malawi. Since April 1974, however, Malawian contract labour has been systematically withdrawn from South Africa on Dr Banda's and (subsequently) the

Malawi Congress Party's explicit instruction. This exercise remains a unique experiment in (relatively sudden and unplanned) supplier state withdrawal - providing some lessons for other supplier states contemplating a re-defined relationship with South Africa.

Because Malawi could easily, or may have to in the short-term, re-contract with South Africa, it is necessary to consider the character of its past labour supply pattern to South Africa. There it little doubt that a legalisation of Wenela's operations in Malawi could in a short period lead to at least an inflow level of 20-25,000 workers. The re-entry of Malawi could also potentially preface that country's return to a supplier status vis-a-vis Zimbabwe, through the historical link with the Rhodesian African Labour Supply Commission.

The latest Wenela/Malawi government agreement was signed on 1 November 1965 whilst a Malawi/South African inter-state labour agreement stems from 10 May 1967. Under the 1965 agreement active recruitment in Malawi was stopped, workers thereafter voluntarily presenting themselves at depots for attestation, sometimes with the assistance of the Employment Services Division of the Malawian Government.

The Wenela/Malawi agreement provided for Malawi to deliver contractees to South Africa, a move which greatly assisted the finances of Air Malawi. Wenela's supply was restricted to men over 18 years of age. The agreement also restricted access to persons of non-Malawian origins, e.g. many Tanzanians and Zambians or northern Mocambicans who legally or illegally entered Malawi to contract with Wenela. Contracts were restricted to a 2-year maximum, though the basic minimum contract was for 18 months. Workers had to have passports (R6,00 each). Free of charge, Wenela also provided a medical examination at the end of service, transport to the place of residence, clothing for work, an advance for the cost of passports and for one blanket (and other clothing), a guide/interpreter *en route*, means for the deduction of Malawian taxes and levies owing to local authorities inside Malawi, and means for the sending of remittances (R8,00 after 6 months, thereafter 60 percent of monthly earnings - all to be paid immediately after return to Malawi). In addition, Wenela paid a 50 cent attestation fee and a 10 cent fee for each recruit in respect of each month's service in South

Africa. On top of this set of current charges, Wenela outlayed a fixed sum of R240,000 per calendar year for 20,000 recruits, the amount being reduced *pro rata* for any lower figure. For higher numbers, the Malawian Government received R6,00 for each additional worker recruited above the 20,000 level. The agreement was subject to 12 month's notice by either party.

The Wenela/Malawi agreement was amended in 1967. Significantly, it provided for the South African Government to terminate contracts with 12 months' notice 'if indigenous labour (was) available', provided also that (other) existing contracts be honoured.

The 1967 South African/Malawian agreement covered a wide range of issues. These included the requirement that Malawians entering South Africa have a passport and a separate *Employment Record Book* (R0,50 each). It also made arrangements for other workers not in employment with Wenela on affiliated mines. It divided the latter group into four categories - A, B, C and D.

Category A - long time workers in South Africa - could visit Malawi periodically while their residence permits for South Africa were to be revised on a 5-year basis. Their repatriation became suspended. They could never obtain South African citizenship, work in the Western Cape or take up domestic employment anywhere in South Africa. These workers also paid taxes to the South African Government.

Category B workers were those authorised to work for a specific period and purpose. Contracts would normally be of a 2-year duration but could upon South African approval be extended for further periods. When contracts expired for those in employment as of 1 October 1967, workers would be repatriated if contracts were not renewed. Where renewed, workers would have to spend 6 months in Malawi, employers would have to review contracts by paying a fee (of around R39,00) and there would have to be no indigenous labour for the job. Such workers could not work in the Western Cape or as domestic workers.

Category C covered illegal workers as of 1 October 1967. They could stay on in (urban) prescribed areas only if labour bureaux agreed, and then only

/for a period ...

for a period of 2 years. If permission was refused, they could work for the same duration in a non-prescribed (rural) area. Failing this, repatriation ensued, the liability falling on employers, in respect of both workers and dependents.

Category D covered illegal entrants after October 1967. For this group, immediate repatriation was planned.

The 1967 agreement also covered fees payable to the Malawian Government Labour Representative. Medical requirements were stipulated for entry. Further, absconders who were two-time offenders faced repatriation (the cost of which was recoverable from wages) and permanent exclusion from ever entering South Africa again. The worker was black-listed for future employment. Repatriated persons were also forbidden further entry. Employers of illegal Malawians were to bear the costs of repatriation. Malawians were prohibited from seeking work in South Africa on their own initiative. Deferred pay was to be deducted as per contract. The Malawian Labour Representative would look after the interests of Malawians (in a fashion similar to other representatives). The agreement ran until 1 August 1972. Thereafter it was to be automatically extended on an annual basis, subject to notice.

Angola: The Latecomer and Early Leaver

Angola, under Portuguese domination, was never a significant supplier state for South Africa. Since independence in 1975, the prospect of it becoming so has receded, although in that year 3000 Angolan workers were employed on affiliated mines (following an agreement which took effect on 1 January 1973), and possibly others were employed elsewhere. In 1970, the Census recorded 7000 Angolans in employment in South Africa. However, Angolans have regularly migrated across the Namibian border to take work in that country. These movements, as also those to Zambia, have been much reduced of late, following the onset of civil war in Angola in 1961.

Prior to independence, workers from the Province of Angola contracted outside the country under the Portuguese Native Labour Code of 1928 (amended by the

Angolan Ordinance 2797 of 1956). Such controls regulated recruitment inside Angola also - through the South West African Native Labour Association (SWANLA), which recruited around 15-20,000 contractees for work in Namibia (during the 1960s).[12]

Special provisions apply to Angolan workers in South Africa. Contracts may not exceed 12 months but can be extended for a further 6 months. Once contract has been terminated, the worker may not be again employed (in South Africa or in Namibia) for at least 6 months from the date of termination. Employers must apply for permission to recruit Angolans (through, prior to 1975, the Employment Service of Angola). Fees are levied. Deferred pay (at 60 percent of net earnings) is to be provided for in contracts. No other deductions for advances were permitted. Angolans were precluded from working in the Eastern or Western Caprivi Strip.

Namibia/South West Africa: Foreign State With a Disputed Status

There is no agreement between Namibia and South Africa regarding migrancy or recruitment. In general, Namibians may not enter South Africa, though in 1970 there were a number of Namibians in employment in South Africa. Conditions might, however, be expected to alter after independence.

Zambia: Prospective Supplier?

Recruitment from South Africa began in 1938 through Wenela in the Western Provinces under a quota arrangement in respect of 12-month contracts (extendable for a further 6 months). Wenela enjoyed a recruitment monopoly in Zambia in the colonial period, though many Zambians went south independently to South Africa or Southern Rhodesia, notably up to 1958 on the *Ulere* travel service organised by the Southern Rhodesian state on behalf of its employers.

Following independence on 1 October 1964, President Kaunda prohibited all Zambians from working in South Africa. Prohibitions on working in Zimbabwe

/followed ...

followed UDI in that country. This mostly affected Barotseland (Western Province), the labour reserve which had been the focus of Wenela's recruitment efforts. However, in 1976, following disturbances in Western Province and agitation amongst some M.P.s in the Zambian Parliament, calls were again made for the re-contracting back into the South African labour supply system. It is also believed that advisers may have recommended such a policy to the Zambian government. Wenela, aware of the prospect and desirous of maximising the number of supplier states, has alway kept this possibility in mind. However, with generalised labour surpluses in South Africa and adjacent supplier states, its need for Zambian labour must be regarded as marginal at best.

Tanzania

Tanzanian workers have often in the past left the country to go to Zambia, Malawi or Zimbabwe as well as South Africa for work. Since 1967 a prohibition has existed on Tanzanians seeking work in South Africa. In 1960, there were 18,000 Tanzanians working in the country. The numbers have fallen since this date. At present, it appears most unlikely, if only for political reasons, that an inter-state contract could be made between South Africa and Tanzania. The growth of labour surpluses in closer proximity to South Africa also makes this improbable.

Transkei/Bophuthatswana

The forced *balkanisation* of South Africa is also leading to the creation of incipient states, the status and legitmacy of which is internationally disputed. However, for the purposes of labour supply to South Africa they will probably come to assume a special position. Such areas as the Transkei have already been given special prominence in the labour demand strategy of the Chamber of Mines. Furthermore, a labour treaty has been made between Transkei and South Africa. A further one might be expected when Bophuthatswana becomes *independent* in December 1977.

CONDITIONAL ELEMENTS DEFINING POLICY

Although for the most part, policy on contracts operates with a focus on a specific state, these policies are articulated with one another in response to basic socioeconomic requirements. As shown earlier, a general policy of extending control over foreign African workers has characterised the 1960-77 period. For effective functioning, these broad inter-state contracts and policies have required conditioning by other elements of the legal/contractual/administrative package. Brief comments are made on some of these elements in this section.

Foreign Africans Employed by Diplomatic Missions

Diplomatic missions may recruit and employ domestic workers from outside South Africa, but only in the case of accredited personnel. There must be no objection to the person employed. Such workers may be re-employed by other diplomats, provided application for a change in employment status is approved. These provisions exclude the employment of foreign African women.

Self-Employed Foreign Africans and Traders

The express objective of policy is to restrict foreign Africans to a *formal* job status. Very few qualify, or are permitted, to trade on their own account. As a result, the petty production sector, to the extent that it exists, is almost wholly rooted in the local population. The inflow of foreign Africans is thus almost entirely a movement of workers.

Repatriation

Employers are liable for repatriation fees in the case of all foreign employees except (a) those from BLS states, (b) contractees introduced under agreements, (c) lawfully employed Africans from Malawi (except category B Malawians), Mocambique and Angola, and (d) those persons for whom repatriation has been suspended. Repatriation fees are non-refundable but can be reclaimed, except in the case of Mocambican workers, from the wages of workers being repatriated.

/Various classes ...

Various classes of worker may obtain suspension from repatriation on a five-yearly basis, *viz.* nationals from Malawi, Mocambique and Zimbabwe who can prove that they have been continuously employed in South Africa, and Angolans who have been continuously employed by more than one employer since 1953 or one employer since 1958. Such provisions promote a form of labour stability within the migrant system. Those so suspended may change employment, but only if they do so legally and if the new employer pays the repatriation fee.

Since various dates, entry, except under agreement or with proper documentation by specified nationals, has been made subject to immediate repatriation: BLS states (1 July 1963); Mocambique (1 July 1966); Malawi (1 November 1967); Zimbabwe (1 March 1968); and Angola (1 January 1974). These restrictions reflect the labour conditions and surpluses of labour in South Africa as they have changed since 1960.

Repatriation routes have been clearly established along with procedures for repatriation.

Control of System Deficiencies

In order to control the system effectively, periodic reviews of conditions have been necessary. Legislation has been updated and loopholes closed or watched.

The Froneman Committee also considered 'the problems of deficiencies in the system'. Implicitly, it recommended further control over private recruiters, special controls over 'Protectorate' Africans (those from (BLS states) and a more pervasive control of clandestine labour.

The Froneman Committee also pointed to desertion as a loophole for workers to obtain illegal entry into non-mining jobs. Undoubtedly, some inter-sectoral mobility of this sort has taken place. Some of these absconders are traced by the Central Bantu Reference Bureau, extensive documentation controls and monitoring being used for this task.

Greater controls have thus been put on deportation and repatriation, especially to prevent such persons re-entering South Africa, either *before* or after departure.

/The growth ...

The growth of labour bureaux and their focus on urban areas has also brought about greater control over foreigners in these areas. It is now difficult for foreign Africans to take urban jobs illegally. It is likely to become more so in the future.

Privileges

Foreign workers suffer various disabilities compared to local workers, even though for the latter these may not amount to much (e.g. in the case of access to Unemployment Insurance Fund benefits).

Some foreign workers have, however, obtained urban housing facilities. In some areas, foreign workers have been able to obtain some schooling for their children (around 13,338, as calculated for 1960 by the Froneman Committee).

In general, however, substantial disabilities have affected foreign migrants primarily because they have been denied the right to bring their families with them and hence obtain the benefits to which citizens have had some access.

Constraints on Withdrawals

Most agreements provide conditions for contract termination. In theory, these cannot be unilaterally abrogated. In practice, however, legal niceties seldom prevail (and did not do so in the Malawian case in 1974). Thus withdrawal is more likely to be a function of socioeconomic or political conditions. Given present trends, however, it is now more the case that foreign African labour is being phased out by employers and the state in South Africa itself. Thus, to speak of withdrawal in these conditions is different in character from such withdrawal as understood (say) in the mid-1960s.

CONCLUSIONS

It is not really necessary today that legislation be fundamentally altered in order to displace foreign African workers. This has for the most part

/been done ...

been done already. Nonetheless, certain changes in stringency might be expected to be introduced, as South Africa continues to apply its policy of phasing-out dependence on foreign labour. In the application of this policy, it is also likely to mount direct action against offending employers in order to make the latter conform with state requirements.

Analysis of the character of policy change over the last 15 years clearly indicates the direction involved and points to the longer-term objectives of the state in South Africa, *viz.* the internalisation of the labour reserves. It may be that such a process will take a number of years. At the same time, it is probably that a residual demand for (certain) foreign African workers will exist even when the process is far advanced. However, the volume of such demand is unlikely to be anything like what it has been in the past.

FOOTNOTES

[1] See Ken Owen, *Foreign Africans: A Summary of the Report of the Froneman Committee*, Johannesburg, South African Institute of Race Relations, 1963.

[2] On the local labour surplus see especially C.E.W. Simkins, Measuring and Predicting Unemployment in South Africa, 1960-1977, in C.E.W. Simkins and D.G. Clarke, *Structural Unemployment in Southern Africa*, Pietermaritzburg, Natal University Press, 1977.

[3] See D.G. Clarke, Foreign African Labour Inflows and *Unemployment* in Southern Africa, in C.E.W. Simkins and D.G. Clarke, *Structural Unemployment in Southern Africa*.

[4] See Ken Owen, *Foreign Africans*, but also the policies of the Department of Bantu Administration and Development, various Gazetted regulations and changes in administrative practice.

[5] W.J. Breytenbach, *Migratory Labour Arrangements in Southern Africa*, Pretoria, Africa Institute, 1976, p. 17.

[6] *Ibid.*

[7] *Ibid.*, p. 39.

[8] *Ibid.*

[9] *Ibid.*, p. 41.

[10] *Ibid.*, p. 42.

[11] For further details see D.G. Clarke, Contract Labour From Rhodesia to the South African Gold Mines: The International Division of a Labour Reserve, (SALDRU Working Paper, No. 6), University of Cape Town, SALDRU, 1976.

[12] See John Kane-Berman, *Contract Labour In South West Africa*, Johannesburg, South African Institute of Race Relations, 1972.

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BOOKS

1. CHARLES SIMKINS AND DUNCAN CLARKE, *Structural Unemployment in Southern Africa*, Natal University Press, 1978. R3,75 (Order from the Press at P.O. Box 375, Pietermaritzburg, 3200).
2. CHARLES SIMKINS AND COSMAS DESMOND, (eds.), *South African Unemployment:A Black Picture*, Development Studies Research Group and Agency for Industrial Mission, 1978. Price: R3.

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