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HUMAN RIGHTS AND THE MIGRATORY LABOUR SYSTEM

BY

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CHAPTER I

INTRODUCTION

The migrant labour system in Southern Africa did not come into being overnight. A complex set of economic and political factors have contributed to the present formation. Before human rights issues can be delineated, it is necessary that a brief outline of the relevant historical development should be presented.

The essence of the current political economy, that is, a large black working class supervised and controlled by whites, has its roots as far back as the seventeenth century even before the first permanent European settlement appeared at the Cape of Good Hope in 1652. In fact, from early in the seventeenth century, local Khoikhoi (referred to as Hottentots by the Dutch) herdsmen had been co-opted as interpreters and as trading middlemen.¹

With the arrival of Van Riebeeck and his band of colonizers, the pattern of utilizing Africans as wage or, more frequently, as slave labourers was quickly and firmly established. In a matter of a few decades, the delicately balanced economies of the Khoikhoi and San peoples of the Western Cape had been utterly demolished.

Elphick had graphically described the situation:

"By 1720 the transformation of the Western Cape Khoikhoi into 'colonial Hottentots' was almost complete. The Khoikhoi had been reduced to a small fraction of their former population, their ancient economic and political institutions had virtually disappeared, and even their traditional culture was showing signs of erosion".²

Those members of the indigenous population who survived were reduced to serving as slaves, either domestically or as herdsmen, for their European masters.

Throughout the eighteenth century, the slave mode of production predominated. In fact, during this period slaves, often imported from the East Indies, "outnumbered the European colonists".³ At the same time, the inexorable movement of the Dutch pastoralist in a north-easterly direction soon brought them into contact with the Xhosa population, which constituted a much larger and more firmly entrenched black ethnic group than had been encountered previously. With both whites and blacks seeking more land while moving in opposite directions, major conflict was, inevitable.

The British (who had ceased the Cape during the Napoleonic Wars) soon implemented two new policies which attempted to alter white-black relations. The first, the abolition of slavery, was only tangentially related to the border clashes, and had been brought about owing to a variety of factors. The second decision - separation and non-contact between whites and blacks at the border areas - was of much more momentous nature. However, as has always been the case, economic realities superceded legal proclamations. Especially among the Dutch, forced labour of one form or another remained a central institution for many decades. And these same colonists were, of course, in constant, often times violent contact with the Xhosas, and subsequently with the Basotho and other ethnic groups. Indeed, an intense struggle over land and labour was already underway. In the face of these actualities, the British policy had to change. One of the most significant of the alterations came in the form of the Cape Colony Ordinance 49 of 1828. This act

"Introduced a pass system to control the admission of natives belonging to tribes beyond the frontier. Natives entering the Colony to seek work were to obtain written passes from the landdrost or field-cornet of the district which they first entered. Contracts of service were also regulated and were not to exceed one month unless they were entered into before a public officer, when they might be for twelve months".⁴

Although it was repealed the very next year, Ordinance 49 was nonetheless a landmark in Southern African history, for it established the principle - still in force today - that blacks could not move to white centres of economic activity without the permission of the authorities. Many other laws of the Ordinance 49 variety have been promulgated in subsequent years; the current pass law system can thus be traced back at least one hundred and fifty years.

The numerous pieces of labour legislation during the nineteenth century vacillated between restricting and expanding access to black workers. The former policy was used whenever there was a labour surplus (e.g. Cape Colony Ordinance 2 of 1837), the expansive policy was employed whenever a shortage existed (see, for example, Transvaal Act 9 of 1870, which imposed higher taxes on blacks not working for whites than on those in white employ).⁵

On the whole, however, the main form of incorporation of the African into the market economy during this period was through trade. Most Africans remained independent cultivators and herdsmen, and the key elements of their traditional economic and political structures were kept generally intact. Although many people were left homeless by the dislocations caused by white incursions and the difeqane, few were proletarianized.

It was with the discovery of diamonds in Kimberly in 1868 - and, coincidentally, of gold at the same time at Tati, Botswana - that the political economy of South Africa was dramatically and irrevocably altered. A whole new set of labour relationships (albeit ones based firmly on legal precedent and customary practices) emerged in a matter of a few years. What had been almost exclusively an agrarian colony at the periphery of the international imperialist system was transformed into an important centre of activity for the world capitalist mode of production. The major demand of the new economy was for a substantial supply of cheap labour.

However, for a few years after 1867, the number of black workers rose slowly; a fact largely attributable to the alluvial surface nature of the initial mineral deposits. Soon enough of these easily extractable deposits had been depleted, so that even before the discovery in 1886 of the main reef of gold deeply buried under the Witwatersrand, there were reports of hundreds of thousands of blacks flocking to the mining areas. It is clear that for the majority of Africans migrant labour was, at that time, discretionary. That is to say, traditional agricultural production predominated; wage labour was utilized as a means of accumulating the capital necessary for the purchase of such manufactured goods as plows, clothing, and weapons.⁶

For the most part, African societies remained stable and prosperous during the latter half of the nineteenth century. A frequent response to the booming economy was to take advantage of the new opportunities. Colin Bundy has documented in detail "the virtual explosion of peasant agricultural activity during the 1870's, which affected the lives of the great majority of the Cape's Africans".⁷ A similar process was taking place in Basutoland. According to Colin Murray:

"The Basotho bought ploughs, planted assiduously and sold the grain to meet the needs of the distant mining camps. They responded to the incentives of the market with such zeal and success that .. the missionaries expressed anxiety lest their material prosperity endanger their spiritual progress .. In 1873 they exported 100,000 bags of grain - maize, wheat and sorghum - and 2,000 bags of wool".

But this period of prosperity was transitory. A combination of factors, the most important of which was governmental legislation (but which also included war, population pressure, private expropriation of land, and various natural disasters), contributed to the rapid decline of the traditional economies. Many writers have made the mistake of viewing these various factors as being independent of each other. However, the thread which ties together all these events is capitalism.

The discovery of gold and diamonds in South Africa meant a rapid penetration by the capitalist markets. Capitalism cannot thrive without a substantial body of "free" workers; the direct producers (i.e. peasants and communal cultivators) must be separated from their means of production. The story of the past century in Southern Africa has been, above all else, the story of the articulation of the capitalist and pre-capitalist modes of production, resulting in the proletarianization of millions of blacks. It would be wrong, though, to suggest that the peasant way of life, and traditional institutions, crumbled without a fight in the face of the capitalist onslaught. On the contrary, the fierce resistance of African societies to the capitalist social relations is remarkable.

The mainspring of the capitalist system - without which the South African economy and society would be altogether different - has been the state apparatus. In the words of Harold Wolpe,

"since the establishment of the Union of Africa Africa in 1910 (to go back no further), the state has been utilized at all times to secure and develop the capitalist mode of production".

Probably the most renowned piece of legislation, and certainly the one with the greatest impact, was the Natives Land Act of 1913. This law strictly limited land available to black peasants, destroyed the system of squatter tenancy, and ratified the numerous seizures of black lands by whites during the previous thirty years.

While the articulation of modes of production did not take place everywhere with the same speed or with similar results, the general pattern was one of rapid incorporation into market relations as well as into labour migrancy as a major form of supplementing subsistence agricultural produce.

Initially, Xhosa and Basotho societies were the hardest hit by the various machinations of the mine owners, farmers, and their state allies; soon enough, however, the entire sub-continent was affected. The Swazis, for example, were drawn into the cash economy at an accelerating pace during the first decade of the twentieth century¹⁰, and Mozambique became a source of migrant labour on a regulated basis as early as 1897, when the first inter-state agreement between the Transvaal government and the Portuguese was signed.¹¹

There was, nonetheless, a short period of time when, owing to the extremely low wages on the mines, a labour shortage existed. Over 50000 Chinese had to be imported in 1905 to make up for this shortage. It was not long, though, before the deteriorating economic situation in the rural black areas, combined with intensified efforts of the government and of the monopsonistic mine labour recruiting agency (WENELA) obviated the need for external supplies of labour.

It should also be noted that even at these early stages of capitalist development, there were many migrants employed in sectors other than mining. The census of 1911, for instance, enumerated 530,000 black workers in the urban areas of South Africa, of which less than half (240,000) were in mining. After mining, the second largest source of employment was domestic service, with 129,000 workers. This fact suggests that many women were following their husbands to the employment centres. It is also worth mentioning that more than 50,000 Africans could be found working in the industrial sector.¹² Although accurate information is scanty, we can also be sure that hundreds of thousands of Africans made their living working as migrants on white farms.

It has often been urged that the advent of the apartheid system in 1948 marked a clear break with the past, that the apartheid ideology is not economically rational, and that apartheid works counter to the interests of capitalists.

In reality, the evidence does not support any of these three contentions. In the first place, the South African economy has been exceedingly healthy. During the 1960's, for example, only Japan had a higher rate of economic growth.¹³ It is clear, secondly, that the policies of separate development, of the job reservation system, and of the perpetuation of migrant labour, all serve the interests of capitalism. That is to say, by forcing labourers to return to their rural homes, the state enables mine owners and industrialists to pay workers less than the amount necessary for the worker's subsistence. Normally, capitalists' ability to extract surplus from workers is limited by the obvious constraint that, if these workers are not paid at least subsistence wages, there would soon be no workers left. In South Africa, on the other hand, by reserving land for the Africans, and by ensuring that African migrants have had access to that land, the state has been able to guarantee that some of the costs of the reproduction of the migrant labour class have been borne by their families in the rural areas.¹⁴ A third proof of the economic rationality of apartheid lies in the fact that since 1948 the full force of the state coercive machinery has been used to subdue the black working class. As conditions in the rural areas deteriorated, and as, at the same time, migrant workers became more class conscious and more militant, new means had to be invented in order to protect the supply of cheap labour. Apartheid has been, since its inception, a convenient ideological cover for the ultra-exploitation of black labour. It should also be mentioned, finally, that the propagation of the apartheid myth has effectively served to co-opt the white working class into the ruling coalition. When all the layers of mystification have been torn away, we can see the linkages among capitalists, Boer nationalists, and the apartheid ideology.

The history and present status of the migrant labour force cannot be understood outside of this context. Furthermore, a discussion of the human rights situation of these migrants cannot take place outside the confines of the realities of exploitation and oppression.

The main purpose of this brief historical overview has been to establish a number of interrelated points. First, the central features of the current political economy of Southern Africa were established long ago; adjustments have been made as conditions warranted, but the needs of capitalism have always been paramount. An enormous coercive apparatus has been established, second, to protect the interests of the ruling class. White domination has served as the framework within which coercion has taken place; a situation, in other words, of racial capitalism. Third, blacks have always resisted subjugation. As class consciousness and organized resistance have increased, the coercive organs of the state have also grown in power and importance. Migrant labour, finally, has been an underpinning of the capitalist system. Migrancy has in turn necessitated strict coercive measures, ultra-exploitation, the collapse of the non-capitalist economies, and a high degree of oppression.

In the following chapters, we will examine the relationship between human rights and migrant labour in Southern Africa, in order to clarify the human rights issues involved. The future of the migrant labour system, as well as the current and possible future responses of independent states in the region to the migrant labour problem, will also be discussed. The discussion will focus on migrants from the independent states to South Africa, rather than on internal migrancy within South Africa. The main reason for this limitation is the fact that, short of revolution, there is little that can be done about ameliorating the human rights situation for blacks inside South Africa; while, on the other side, the independent states, theoretically at least, have options short of revolutionary activity, for protecting the rights of their migrant citizens.

In any event, the two types of migrancy differ only superficially. A second limitation to this study is that, while migrants to South Africa are drawn from every country in the region, and while each of these countries will be mentioned in this study, Lesotho will be employed as the major example. Lesotho has been chosen not only because it currently supplies the largest number of migrants to South Africa, but also because its economy and society have arguably been most seriously affected by the migrant labour system.

CHAPTER II

HUMAN RIGHTS ISSUES

Since the end of the Second World War a wide variety of regional and global documents - resolutions, conventions, charters, and statements - on human rights have been issued. To try to distil all these pronouncements into an agreed upon definition of just what constitute basic human rights would be a fruitless and irrelevant endeavour. A more cogent approach for purposes of this paper is simply to take one of these documents and apply it clause by clause to the actual situation of migrants in Southern Africa. The United Nations Universal Declaration on Human Rights represents one of the most sweeping and most widely accepted of the proclamations on the subject; however, it is too general to be of much use when applied to the specific needs of migrants. ILO Conventions Nos. 97 and 143, and ILO Recommendations Nos. 86 and 151 (see Appendices 3,4,5, and 6) are much more relevant and precise. However, the Resolution on the Charter of Rights for Migrant Workers in South Africa (Appendix 1 - which we will refer to from this point on as the Lusaka Charter), which was passed by the independent states of Southern Africa in 1978, incorporates the key elements of the ILO documents, and has the added advantage of being written for the Southern African region. The Lusaka Charter begins by "Noting that Apartheid has been declared a crime against humanity by the United Nations", that must be the point of departure in this paper as well. So long as the apartheid system exists, it is difficult to speak of improving the human rights situation for any black people exposed to it. Thus, this chapter is not merely dealing with migrant labour, but with the general effects of the racist ideology of South Africa as well.

There are three central themes to the Lusaka Charter: protection of family life, economic rights and benefits, and non-discrimination. In the discussion which follows, the clauses of the Charter dealing with each of these themes are listed and considered individually.

A. Family Life

Clause number THREE of the Lusaka Charter states that: All workers have the right to be accommodated near their place of work with their families in suitable houses under home ownership schemes, or to reside elsewhere if they so choose. Foreign migrants in South Africa are indeed housed near their place of work, but not under conditions that they would freely choose. Almost all labourers reside in single mens' hostels. Families may never join them. Home ownership is out of question for migrants, as it is for blacks living permanently inside South Africa. It is only within the last few years that a few South African blacks have been allowed 99 year leases on houses in certain restricted areas.

It would be difficult to avoid noticing the similarity between the mine compound and prison: the setting is identical, even down to the armed guards and fences; the results are also similar - crime, corruption, disease, homosexuality, internal strife. Conditions in the different compounds vary widely. The quality of food, cleanliness, space, orderliness, all range from relatively high levels to very low standards. During the 1970's significant improvements were made at many mine hostels in general living conditions. According to Lipton,

"In new compounds, there has been a move from the vast de-humanizing barracks to smaller buildings in village type conditions..."¹

The point nonetheless is that the individual migrant miner has little or no choice in his living and working environment and very limited ability to instigate positive changes.

Some migrants especially those working at mines close to their home country, manage long weekends at home during the term of their contract, but they constitute a minority. According to one survey 67% of mine workers from Lesotho never visit their families during the length of their contracts.² In essence, the migrant is lost to his family for a period of six to twenty-four months. Visitation of the miner by his family is generally out of the question.

We will return to look at the effects of this system on family life, but first Clause EIGHT of the Charter should be introduced: Every worker is entitled to a minimum basic wage sufficient for the maintenance of health and well being of his family. In the previous chapter, it was suggested that low wages on the mines (and in other areas of migrant labour) were possible because part of the cost of the reproduction of that labour is borne by the home areas of the migrants. The actual wages paid to miners until 1970's would certainly bear out this thesis. Between 1889 and 1966 the real wages in constant rands paid to black miners actually declined (from 84 rands per annum in 1889 to 70 rands per annum in 1966 - see Appendix 7). How then is it possible to account for the rapid rise in real wages during the 1970's? Two plausible explanations have been suggested. First, the mine owners, in collusion with the government of South Africa, have been trying to recruit indigenous blacks to replace foreigners; higher wages are necessary to lure these blacks to the mines.³ This is, of course part of the effort to make the Homelands viable economically. Second, conditions in the sending states have deteriorated so much that the families of migrants can no longer come close to sustaining themselves. A higher percentage of the cost of the reproduction of the labourer must therefore be subsumed by the capitalists. The mercurial rise in the price of gold during the 1970's ensured that higher wages did not make a dent in mine owners' profits.

Another way of demonstrating that miners are not paid a minimum basic wage is to look at conditions in their home countries. According to Murray, "in 1976 at least two thirds of the rural population were living at a level below that specified in the PDL (Poverty Datum Line) as necessary to maintain a minimum level of health and decency".⁴

Explicit in both the aforementioned clauses of the Lusaka Charter is the principle that people have the right to a stable family existence - the rights to marry, to raise children, and to provide them with adequate support. We can see, by looking at Lesotho, that the migrant labour system has seriously eroded these fundamental human rights. As Murray notes,

"A system in which large numbers of men spend long periods away at work, leaving their wives and children at home, generates economic insecurity, material disharmony, material and emotional misery and problems related to sexual morality and legitimacy of children irrespective of the cultural definition of these matters".⁵

The average miner spends about fifteen years of his life away from his family, "and that migration tends to occur when a man is in his twenties, thirties and forties. These findings point to the migrant's being mostly absent during the critical years of his marriage and during the years when his children are growing up".⁶

The culture of African societies, particularly concerning marriage and kinship, is complex, rich in tradition, and integral to the cohesion and stability of these societies. Basotho culture is no exception to this generalization. Migrant labour, as the main form of capitalist penetration of Lesotho during the past century, has had a major and deleterious impact on traditional patterns of behaviour. At the base of this impact is a fundamental paradox: "A man's absence as a migrant labourer is a condition of his family's survival.

But his absence also undermines the conjugal stability from which his family derives its identity".⁷ Aside from the more visible social costs of migrant labour, such as increases in alcoholism, disease, violence, illegitimacy, adultery, etc. the less measurable psychological costs, in terms of the multitude of dislocations involved, are also significant ⁸

Economically, the costs to the family in Lesotho have also been high. Agriculture has been neglected; it is a less reliable, less viable means of making a living than is migrant wage labour. Working the land has become a mere supplement to working on the mines, not just for migrants' families, but for the nation as a whole. Spiegel has described a "modal development cycle" for families in Lesotho. It is worth quoting at some length from his description:

"Households comprising young newly married couples are unlikely to hold arable land but they almost invariably receive a wage income earned by the absent household head. In time... these households...(are) allocated fields. But they continue to depend directly on wages. At a later phase we find households which have reached a developmental zenith. They can depend on wage income from adult sons while working their fields ... The next phase sees the decline from this peak as the wage earning sons establish homesteads and ... agriculture has taken on added importance. The phase that follows is still less secure ... income through irregular petty trading ... may provide a significant part of the household's income ... fields will have to be worked by an outside contractor".

Three caveats need to be added to this description. First, many families (single women, widows, families without access to migrant income) do not fall into this developmental category. A second, related limitation of the model is that it does not fully capture the precariousness of the cycle.

There are many ways in which a family can lose whatever security it might have. Landlessness is increasing rapidly in Lesotho, and may be as high as twenty percent. Furthermore, the growing number of share-cropping arrangements tends to favour the wealthy farmers at the expense of the marginal citizens. Also, the number of job-seekers is increasing at a time when the number of available jobs is going down (see Chapter IV). Third, it must be stressed that this development cycle does not supercede class analysis, but supplements it. Classes, in the form of a small petty bourgeoisie, most of whom are located in bureaucracy, substantial rural proletariat, and a rapidly growing army of structurally unemployed, certainly exist. The structure is also changing as incorporation into the South African economy proceeds. The peasantry has been almost totally destroyed. It would be difficult to find more than a handful of people who subsist on agriculture with no supplemental source of income. The most tragic of the families are those headed by females, and with no access to either land or wages. Spiegel describes five such families in Southern Lesotho:

"All five of these households were unsure of their sources of income which were quite irregular....they brewed small amounts of beer they receive small gifts from their lovers and they also received small payments in kind for assisting other households".¹⁰

To this point only Lesotho has been mentioned; that does not mean that similar processes are not at work elsewhere in Southern Africa. Wherever there are migrants, family instability, proletarianization, and economic insecurity are there as well. Migrant labour is, furthermore, just one part of the extension of capitalism throughout the region, and capitalism - which by now has left no corner of Southern Africa untouched bring with it a multitude of dislocations and exploitative activities.

B. Economic Rights and Benefits

It is no accident that the FIRST Article of the Lusaka Charter is directed to the issue of trade unions, since strong independent unions must constitute the first step in establishing other rights for migrant workers. The Article reads as follows: All workers have the right to (a) Form and join trade unions of their own choice; (b) participate in collective bargaining on equal terms with all other workers regardless of race, sex, political affiliation, religion; and (c) withhold their labour by strike action in support of their demands. Article THIRTEEN also is concerned with this area of rights: All workers have a right to determine, by agreement their working hours and any other working conditions through collective bargaining.

For over half a century, relations between management and black workers in South Africa were governed by Industrial Conciliation Act of 1924 (amended in 1937 and 1956). By the simple expedient of excluding all blacks from the definition of the term employee, the state managed to legally deprive blacks of their rights to organize, bargain collectively, and to strike. Naturally, this Act also served the purpose of protecting the interests of white workers, and brought them into a close alliance with the state (and with capital as well). Job reservation has always been a cornerstone of the Industrial Conciliation Act.

In spite of the ICA, in spite of a host of security laws (The Internal Security Act of 1950, The Terrorism Act of 1967, The Riotous Assemblies Act of 1914, The Sabotage Act of 1962) used at one time or another to persecute the working class, blacks have persistently managed to form illegal, unregistered trade unions.

The existence of these unions, and their tenacious activity, is a tribute to the courage and determination of the leadership and of rank and file members, as well as an indicator of the intensity of the class struggle in South Africa. Migrant workers have by no means abstained from such activity. For example, during the widespread worker actions of 1973, the bloodiest incident occurred at Western Deep Levels gold mine, where 12 workers were killed by the South African police.¹¹ The intensity of the state reaction to any "disturbance" on the mines is a good indicator of the justifiable fear that the authorities have of independent trade unions forming in the mining sector.

The Wiehan Commission Report - which resulted in The Industrial Conciliation Amendment Bill of 1979 - was hailed in many quarters as a major step forward in labour relations in South Africa.¹² This act provides for, among other things, the registration of black trade unions and for a collective bargaining process.

The reality of Wiehan and the new ICA is, however, far different than its appearance. One actual purpose of the Commission and the resultant Act was to further divide the black working class. As one source states, "However it seems clear that it was not the intention of the Commission that large numbers of black workers should join registered unions ... the working class is to be further fragmented by the incorporation of some categories and the 'freezing out' of others".¹³ A second goal of Wiehan was to bring select black unions under tight governmental control, particularly through the device of a National Manpower Commission. The process for registering as a legal union is a highly restrictive and complex one; the opportunity for collective bargaining and strikes after registration is very meagre.

"The NMC is in reality a threat not only to black workers ... but to the entire working class. The NMC will determine nothing less than the parameters of 'legitimate trade unionism' within the context of apartheid society".¹⁴

White jobs, white privileges, white salaries are all protected in this new legislation. It is thus not surprising that black unions have almost uniformly avoided registering under provision of the Act, to do so would be tantamount to committing suicide.

The Wiehan Commission was internally divided on the question of including migrants in the new unionization provisions, with a slim majority in favour of doing so. The government, too, was hesitant about extending statutory rights to migrant workers, and only did so, on a very limited basis, at the last moment. Once again, this provision is nothing more than an intentionally created chimera:

a careful reading of the report also shows that the Commission assumed that the gigantic task of organising such transient workers would in fact mean that they would not become members of black trade unions eligible for registration. This suggests ... that the WCR's 'liberalism' was rhetorical, more for international consumption than for any other reason".¹⁵

The Wiehan Commission candidly noted that foreign workers could always be sent home and never be allowed to return, if they caused trouble (i.e. tried to organize their fellow workers).¹⁶

In recent years the gold mines have become armed camps; the owners have been allowed to recruit what amounts to their own private armies with license to shoot to kill. Even the most "liberal" of the capitalists resort to these barbaric measures - the previously mentioned Western Deep Levels mine is owned by Anglo-American. In spite of all these enormous obstacles, substantial numbers of migrants are joining the newly formed National Union of Mineworkers. It remains to be seen how effective the N.U.M. can be.

Two other clauses of the Lusaka Charter deal with the free movement of labourers; they are the SECOND, which states that All workers have the right to freedom of movement without the necessity to carry a pass and the FIFTH, which says that Everyone regardless of race or sex, has the right to work, choose his occupation, and change from one employer to another without loss of accrued benefits and claims to promotion.

Briefly, there is no such thing as freedom of movement for migrant workers; there is no choice of place of work, no ability to change jobs, and no transfer of benefits (if there are benefits in the first place)". According to Van der Wail, "No Mosotho may enter South Africa for work unless he has a temporary permit which indicates the purpose, period and conditions of his residence. This in effect means that a Mosotho is not allowed to enter South Africa to seek work".¹⁷ The labour bureau, of which TEBA (The Employment Bureau of Africa, formerly WENELA) is the most important owing to its monopsonistic hiring authority for the mines, are at the heart of the means of controlling migrant labourers. TEBA can be likened to one end of a pipeline, at the other end is a job. If one wants a job there are few legal means of avoiding this pipeline; once in it, there are even fewer means of escape. Since apartheid is constructed on the concept of racial separation, much of the legislation of the past thirty years is meant to ensure that migrants do not move from neighbouring countries into South Africa with relative ease. With the passage of the Aliens Control Act No. 30 of 1963, the situation was irrevocably changed. It became "an offence for any African to enter South Africa without a travel document issued by his own country".¹⁸ Border control posts were also introduced in 1963.

The net effect of these new measures was a sharp decline in the number of migrants, especially those working in agriculture and domestic service, where many had been working illegally. Women especially were affected - one suspects that this stemmed from a desire on the part of the authorities to ensure that women stayed in the rural areas to work the farms. The 1963 Act also put a virtual end to the practice of migrants settling permanently in South Africa. This change is demonstrated by the fact that in Lesotho the population growth rate from 1936-56 was only 0,7%; while it shot up to 2.9% for the ten year period between 1956-66.

Many other laws exist which ensure that blacks cannot live, settle, work, or even stay for more than 72 hours, in areas not "reserved" for them. Perhaps the most detested of all apartheid laws are the various pass laws, under which tens of thousands of Africans are arrested every year. Since as long ago as 1877, Basotho migrants have been forced to carry such pass documents.¹⁹

There are six clauses in the charter which prescribe benefits to which all migrants should be entitled. These are: Article SEVEN: All workers have equal rights to vocational training and adult education for the purpose of acquiring skills and increasing their awareness.

Article NINE: All workers have the right to adequate protection against occupational accidents and diseases by means of approved safeguards and close supervision by an independent industrial and farming inspectorate operating in conjunction with representatives or workers.

Article TEN: All workers and their families have an equal and absolute right to adequate, immediate and effective compensation for death or disability arising out of occupational disease and accident.

Article ELEVEN: All workers have a right to (a) free medical services for themselves and their families; (b) sick leave and, where applicable, maternity leave with full pay; (c) annual paid holidays.

Article TWELVE: All workers are entitled to retire on full pension or with gratuity proportionate to their period of service.

Article FOURTEEN: All workers have the right to unemployment benefits.

One focal point of the Wiehan Commission Report was on the training of blacks. Needless to say, since almost all skilled jobs in South Africa are reserved for whites, there has never been a real effort to train blacks. The entire Bantu educational system is, of course, a concerted effort to "keep blacks in their place". Thus Wiehan recommended that the National Manpower Commission establish separate training centres for blacks, which would be little more than propaganda schools. Interestingly enough, Wiehan also suggested "coordinating and standardizing the training efforts within neighbouring Southern African countries".²⁰ This proposal is largely directed at the homelands, but does indicate the extent to which the South African state is willing to go to ensure that Africans do not get too much training (and incidentally do not learn dangerous ideas). All the independent states of Southern Africa do have vocational training programmes; these are meant to produce skilled workers for domestic purposes, and often do not apply to migrants. In any event, so long as apartheid exists, adequate vocational training for migrants will not be provided.

Between 1939 and 1966, "no less than 19,000 men, 93% of the black, died as a result of accidents in the gold mines".²¹ Although working conditions have improved recently, the lives of Africans have never been of much concern to South African capitalists. The danger aspect is compounded by the fact that "the Witwatersrand is the most dangerous area (in the world) for the rock-bursts that account for the highest proportion of deaths and accidents".²² Whites, of course, take many fewer risks than do blacks. Disease is also rife on the mines; an average of 5,775 blacks per year died of disease during the period from 1968 to 1974.²³

Safeguards exist, but to make mining less risky would cost the owners much more money than they are willing to spend.

A state accident insurance scheme, provided for by the Workman's Compensation Act, exists in order to compensate workers and their families for job related injuries or death. As would be expected, the amount of compensation is less than adequate. The main problem with the system, however, is that many workers do not receive their compensation awards. Answering a question in parliament on March 19, 1971, the Minister of Labour revealed that there were 144,000 unclaimed compensation awards, amounting to R2,016,686.²⁴ One reason for this problem lies with the poor record keeping done by employers, another cause is the migrant labour system - after injury men return home, far away from the urban areas where they worked. This is one area in which the Labour Representative could be effective (see Chapter III), but except in the case of Lesotho, has done little thus far. It is also obvious that independent trade unions would serve to protect migrant interests in these areas.

Migrants get their holidays (unpaid) between contracts; free medical attention is often available for them while on the job. The shortcoming with regard to these benefits is that neither the employer nor the South African state incurs any obligation to care for migrants when they are not on the job. While in his home state, the migrant must take care of himself, or his government must do it for him. A Mosotho who contracts tuberculosis on the mines must be cared for by the health system of Lesotho upon his return home.

No reliable pension scheme, nor any unemployment insurance programme exist for the migrant worker. Once again, he is left to his own devices. The onus for providing for the unemployed or "retired" worker fails on the supplying state. No country in the region could possibly undertake such a programme, the costs would be far too high.

The benefits which by right should be awarded to migrants are simply not there. By forcing the worker himself, along with his home country, to absorb these necessary costs, the capitalist system has refined yet another method of guaranteeing sources of cheap labour.

Although many sections of the Lusaka Charter mention the issue of equality, two clauses are especially relevant with regard to discrimination. Article FOUR contends that All workers have the right of occupation free from colour bar, job reservation, and all other kinds of discrimination. And according to Article FIFTEEN All women workers have the right to participate in all branches of production without discrimination in wages, training, job allocation and pension benefits.

The colour bar in labour is the backbone of the apartheid system. Any attempt to modify this structure would cause open rebellion by the white working class. All the benefits we have discussed are amply provided to whites. Although black wages rose rapidly in some sectors during the 1970's, wages for whites rose just as fast, so that the enormous gap between the two groups remains substantial (this gap, by the way, is on the order of a ratio of 5 to 1, and often times more, depending on the sector). There is no area of life in South Africa in which white workers did not enjoy the bulk of the privileges.

As is the case elsewhere in the world, women remain the most oppressed group in society. In South Africa, women receive the lowest wages, perform the most menial tasks, and are generally neglected when reforms are instituted. In spite of the many laws limiting their access to jobs, women still constitute a substantial proportion of the migrant labour forces; 15.4% of the absentees from Lesotho in 1976 were women.²⁵ Most of these migrant women are employed in domestic service or agricultural. They have almost no legal rights, their pay is incredibly low, and the work is especially demanding.

For those former migrants who have been forced to return to their home countries, the situation is especially dire.

"All that most of them can do now is to remain on South Africa's periphery, reproducing its labour force, doing unpaid domestic work, cultivating impoverished fields, seeking low-paying local employment, providing a market for South Africa's products and becoming increasingly dependent on undependable male wage earners".²⁶

To be black, a woman, and a migrant is to be a member of the most highly exploited group in South Africa.

We would be remiss if we did not mention in this section the fact that migrant workers are also at a disadvantage vis-a-vis black workers inside South Africa. Not only are South African blacks being given preference in hiring over migrants as previously mentioned, but also many South African blacks enjoy access to unemployment insurance, pension schemes, and trade unions (although that is a dubious privilege under present conditions). Also, many of these blacks can obtain urban resident status, which migrant workers can never do. It would be an error to make too much of this distinction; in the final analysis, all black workers are in the same oppressed state. One must remember that it is in the interest of the South Africa regime to divide the working class by all means available. The whole purpose of the Riekert Commission, for example, was to divide South African blacks into a small privileged urban elite on the one hand, and the masses of rural proletariat on the other.

In no country in the world today are all of the rights that we have been discussing in this chapter totally and scrupulously honoured. However, in no other country of the world is the legal system so meticulously constructed as to systematically deprive workers of their rights as it is in South Africa. Migrant workers enjoy few rights in theory, in practice they enjoy even less. In the following chapters we will examine the various suggestions that have been made for improving the human rights situation of migrant workers.

CHAPTER III

TO ESTABLISHING THE RIGHTS OF MIGRANTS

Thus far, this paper has emphasized the struggle between racial capitalism on the one side, and the working class on the other. Of the fact that class warfare is at the core of the struggle, there can be no doubt. That capitalism - in the particular form it has assumed in Southern Africa - is to blame for the numerous human rights violations that we have been describing is also clear. However, the superstructure of the system - the apartheid regime - is the main agent through which the basic rights of migrant labourers have been systematically violated. The struggle is both an economic and a political one, and in the political arena especially there are other actors than just the South African state.

During the 1970's the various newly independent black ruled countries of the region endeavoured, both singly and as a group, to find ways to protect their citizens. Given the virtual monopoly of power enjoyed by the Republic of South Africa, the task of improving the human rights situation of the migrants has proven to be a very difficult one.

One by one over the last ten years, all the main sending states with the exception of Mozambique have negotiated separate agreements with the South African government concerning migrant labour. Mozambique is still using the agreement signed between Pretoria and the Portuguese in 1965. The other documents were produced in 1968 with Malawi, in 1973 in the cases of Botswana and Lesotho, and in 1975 with Swaziland. These agreements (see Appendix 8) are almost identical in their wording, and serve four major purposes.

The agreements' foremost achievement lies in establishing the post of Labour Representative, whose tasks are outlined in Article III of the various agreements.

Essentially, the representatives are in charge of looking after the well-being of the migrant workers, and are responsible for liaising between their own governments and that of the Republic of South Africa whenever the need arises. Unfortunately, as the documents are written, South Africa incurs few, if any, obligations with regard to the representatives. The Republic has veto rights over the appointment of the Labour Representative, and does not, furthermore, have to consult with the representatives if it does not wish to do so. In fact, much of the agreement seems to be written more for the benefit of the South African authorities than for the sending states or, still less, for the migrants themselves. Clause (ii) of Article III, for example, charges the Labour Representative with the responsibility for "Ensuring that employees from Lesotho comply with South African requirements concerning entry, identification and documentation ..." Clause (v) states that the representative should assist "the South African authorities with the repatriation of sick, injured, or destitute Lesotho citizens..." And Clause (viii) calls for the representative to provide "at the request of the South African authorities, interpreters..."

It would, nonetheless, be wrong to discount the post of Labour Representative. It does permit, at the least, for the migrant's government to make investigations into almost every aspect of the migrants life, including welfare and housing (Clause (iii)), workmen's compensation (Clause (ix)), and, indeed, their general "conditions of employment" (Clause (i)). Admittedly, these powers are limited to "consultation", but at least the groundwork is there, and there is always the possibility of future agreements (they are all reviewed at five year intervals) strengthening the representatives position.

Wallis mentions a number of practical problems that the labour representatives from Lesotho have encountered.

A lack of specificity in the agreements themselves accounts for one area of difficulty.

"Although the agreement stipulates that the representative shall consult with the South African authorities on the working conditions of Basotho, there is no agreement as to what these conditions should be. This means that the Labour Representative is negotiating in a vacuum...."

The fact that the representatives' offices are understaffed, and that the representatives are treated in a cavalier fashion by the mine staffs also contribute to the general tendency for representatives to become administrators rather than advocates.² The main role of the representatives - a hold-over from the colonial era - is as tax collectors.³

A second significant proviso of the agreements allows for a compulsory deferred-pay scheme. Many miners have voluntarily had part of their pay deferred and/or remitted home. Since 1975, the government of Lesotho has had 60% of the pay of Basotho mine workers remitted to the Lesotho Bank. This move serves the dual purposes of providing the government of Lesotho with investment capital, while at the same time ensuring that most of the miner's pay is spent inside Lesotho. The substantive drawback to the programme is that it would appear to be a straight-forward violation of the workers rights. In reality, two sets of rights are in conflict. By forcing the miner to bring the majority of his wages back to Lesotho, the government is restricting his freedom to spend his net earnings as he pleases; at the same time, though, the deferred pay scheme does tend to act as a form of insurance to guarantee that the worker's family will at least be able to maintain itself. Actually, this latter argument is something of a spurious one; better ways than a remittance scheme should be found to ensure the welfare of the worker and his family. The decisive consideration for the Government of Lesotho in this case is the fact that the Lesotho economy desperately needs the income. In 1977/78 remittances totalled M117,420,000.⁴

Gross Domestic Product for that same year was only 22 million Maloti greater than net remittances. Or, to put it differently, in 1977/78, miners remittances accounted for 7.9% of Lesotho's Gross National Product.

A third function^{SYS} of the various agreements is to consolidate and streamline the entire system of labour recruitment. Articles V, VI, and VII all deal specifically with this subject; also, the Addendum to the Lesotho, Botswana, and Swaziland agreements go into more detail with regard to labour recruitment. The overall effect of these various provisions is to further entrench the Chamber of Mines virtual monopsony on labour recruitment. The ability of the workers to choose or change their place of work is almost totally extinguished by these agreements. Moreover, the capacity for the governments of the sending countries to plan for the future of their own labour deployment is severely constricted. As Article V(b) states: "The engagement of (Lesotho, Botswana, and Swaziland) citizens for employment in South Africa shall be subject to the availability of South African labour and may be regulated by the South African authorities accordingly". The agreement between South Africa and Mozambique is more equitable in this respect (Article XVII reads as follows: "The number of workers from the province of Mozambique to be employed by the mines shall be mutually agreed upon between the two governments" only because it was negotiated between Portugal and South Africa. As we shall see in Chapter IV, Mozambique has been since its independence in 1975 as powerless as the other states with regard to regulating labour supply. Of course, all the countries retain the right to reduce the number of migrants leaving their confines. What cannot be done is to choose to increase the totals; that privilege is entirely in the hands of the South Africans.

We have mentioned before the obvious, but easily forgotten fact that the apartheid ideology has as its heart the tight control on the movement of blacks - where they can live, where they can work, down to such relatively trivial details as where they can sit and where they can use toilet facilities. The final purpose of the labour agreements, and undoubtedly the one that is most important to the South Africans, is to ensure that miners and other migrants go only where they are instructed to go, when they are instructed to go, and that they go in an appropriate manner (i.e. with the proper documents). This policy is consistent with other efforts to gain total control over the black population. The Orderly Movement and Settlement of Black Persons Act proposed 1982, for instance, provided for the incredible fine of R5 000 for a person who illegally employs a black.

While these bilateral agreements may be improved in the future so as to become effective instruments for the protection of migrants rights, they have to the present juncture mainly served the interests of the governments involved, often at the expense of the workers.

Since dealing with South Africa on an individual basis has not proven to be very fruitful for the countries of the region, the question arises concerning the viability of a united approach. The five nations which supply the bulk of the migrants working in South Africa - Lesotho, Botswana, Swaziland, Mozambique, Malawi - differ greatly in many respects. Their histories, cultures, and forms of government, as well as their economies, are widely divergent. The similarities among these five nations are nonetheless significant. Aside from their obvious proximity to South Africa, all the supplying states are recently independent, and all are struggling to establish a measure of economic autonomy to match their hard-won political freedom.

Efforts throughout the mid-1970's to get the supplying states together culminated in the Conference on Migratory Labour in Southern Africa, held from the fourth to the eighth of April 1978, in Lusaka, Zambia. One of the major outcomes of this ministerial meeting was the Lusaka Charter on the rights of migrants. A second decision was to establish a Southern African Labour Committee, whose main purpose was to implement a series of resolutions passed at the conference (see Appendices 1 and 2). It is worth examining each of these two products of the Lusaka Conference in turn.

The Lusaka Charter, which was utilized as the framework in the previous chapter, is both an idealistic and a pragmatic document. That is to say, it is idealistic in the sense that it prescribes a human rights situation for migrants which bears little resemblance to reality. The chance that mine owners or the South African states will act to improve appreciably conditions on the mines or in South Africa in general is very small. As suggested previously, substantive improvements mean substantive changes to racial capitalism. On the other hand, the Lusaka Charter does have a practical aim - to focus international attention on the enormous gap between a reasonable treatment for migrants, and the present abominable set of circumstances under apartheid. Also, the Charter can serve as a starting point for negotiations among the parties involved.

The duality of purpose inherent in the Lusaka Charter has, meanwhile, created a complex problem for the Southern African Labour Committee - the body charged with the task of attempting to implement the Charter. The clauses of the Charter themselves are unequivocally meant to pave the way for improvements in the social and economic conditions under which migrant labour takes place. At the same time, underlying the document is a clear desire to dispense with the migrant labour system altogether.

As one summary of the Lusaka Conference phrased it:

"the first ever conference of migratory labour in Southern Africa decided that the system should be completely eliminated. Thus any measures that are not in compliance with this fundamental objective should not be encouraged. In this connection it should be observed that 'welfare measures'... will not change the system".

In other words, any attempts to put the Charter into effect are unconditionally in conflict with the spirit as well as the letter of the Conference which produced the Charter in the first place.

Behind the overt contradiction lie a pair of widely divergent exigencies. At the political and ideological level, there is almost universal agreement on the need to disengage from entanglements with South Africa in all fields. Apartheid is denounced as a totally evil system; co-operation with Pretoria is unacceptable. The aim must be to bring about the destruction of the entire system. Economically, however, the deep penetration of South African capitalism into every state in the region is indisputable. Without migrant labour several countries - most notably Lesotho - would face rapid economic collapse and general societal chaos. Neither individually, nor yet as a group, are the independent black states able to cut themselves off from South Africa.

Thus, rhetoric, resolutions, conferences, and committees are all utilized to appeal to the international community for aid and assistance, to satisfy internal constituencies, and to build the foundation for an inevitable future confrontation. In the interim, day to day business must be conducted. The welfare of the migrants is most important in this regard.

The three meetings of the Southern Africa Labour Committee held to date have all been taken up with resolving this basic contradiction.

As a result, little real progress has been made. The planning sessions for the third meeting, which was held in Maseru in 1981, illustrate the extent of the problem. The bulk of the preparatory business was with regard to reports on such matters as licensing fees for recruitment, repatriation of deceased miners, prompt payment of miners' earnings, and data collection about migrant labour. These issues are important for the migrants, as well as for the governments involved, but they are hardly designed to bring an end to the migrant labour system. In an entirely different vein, the last item on the agenda - a paper from the ECA - outlined in detail the discrepancy between what had been authorised at Lusaka (engendering a rapid end to migrancy) and the actual "welfare measure" functioning of SALC. The responses of the planners was to aver that the "ECA should rest assured that SALC's objective will always be in line with the resolutions and charter of rights of the 1978 Migratory Labour Conference".⁶

Notwithstanding its protestations to the contrary, SALC is now and will continue for the foreseeable future to be primarily oriented toward secondary issues, precisely because it is with those peripheral areas that SALC has some power to achieve positive results.

While SALC, the Lusaka Charter, and the bilateral agreements constitute the main avenues that have been explored in order to facilitate the human rights position of migrant workers, they by no means exhaust the range of proposed and ongoing efforts to bring about positive change. These other propositions will be discussed in Chapter V.

CHAPTER IV

THE FUTURE OF MIGRANT LABOUR

In many respects, 1973 was a landmark year for the mines. It was during that year that the number of foreign workers reached an all time high of almost 300,000 men. Also, in 1973 the percentage of the total workforce coming from outside South Africa reached its peak - 70% of the black miners were migrants (see Appendix 9). Since 1973 there has been a steady, indeed, a remarkable and unprecedented decline in both the total number of migrant workers going to the mines, and the percentage share of the total workforce which they comprise. In 1980, for example, the tables reveal that only 182,337 foreign workers were employed in mining, a drop of well over 100,000 in just 7 years. Over the same seven year period, the percentage of migrants dropped from 79% to a mere 44%. How is it possible to account for this rapid decline?

One element of the explanation for this drop-off lies with the nature of the labour recruitment system. As we noted previously, the Chamber of Mines has, throughout the twentieth century, acted so as to completely stifle competition for black labour. This control, through the vehicle of the Employment Bureau of Africa, not only has kept wages down, but also has allowed the Chamber of Mines to choose areas from which it recruits its labour supply. As with all monopsonistic situations, it is impossible to analyse the future of mine labour in normal supply and demand terms. One would expect, for instance, that there would be a positive correlation between the international price of gold and the demand for labour. If anything, the correlation has been negative. At the beginning of the 1970's the price of gold was fixed at \$35 an ounce - as it had been for decades.

The war in Vietnam, world-wide inflation, the decline of the dollar, and the oil price increases, all contributed to a rapid escalation in gold prices. By the middle of the 1970's, the price was over \$100, and rose to over \$700 before the end of the decade.¹ Thus, even though miner's wages tripled over this period, profits soared by an even greater amount. At the same time, the number of blacks working on the mines was fluctuating, but never strayed too far from the total of 400,000 of 1970 - the high was 479,000 in 1979, the low was 364,000 in 1974.

Since supply and demand, or at least demand, is artificially controlled, other factors must be found to account for the fall in the total number of migrants throughout the 1970's. The precipitous withdrawal of almost all Malawian workers in 1973 was clearly a major contributing factor in the decline. Even the Chamber of Mines was unprepared for Hastings Banda's sudden decision (ostensibly because of an airplane crash that killed 74 miners) to recall all migrants to Malawi. As a result of this loss of 100,000 men, there was a temporary labour shortage on the mines. However, this total withdrawal (which was not, by the way, a permanent one; there were close to 20 000 Malawians on the mines in 1979 does not account for all of the decline in migrant labour.

Political factors inside South Africa are of prime significance in determining employment levels and countries of recruitment for the mines. At no time has the political dimension of migrant labour been illustrated more overtly than in the aftermath of the Maseru Massacre, when South Africa's Minister of Foreign Affairs avowed that if Lesotho continued to harbour "terrorists", then not only would the attacks continue, but also migrant workers would be sent back to Lesotho. Nor was this the first time that migrants had been used for political purposes.

After independence in Mozambique, the attitude of the South African toward labourers from Mozambique changed dramatically.

"From October 1976, the new South African strategy towards Mozambique began to be effected. Restrictions in labour recruitment were instituted through a system of re-engagement certificates.... Throughout 1977, almost no new workers or novices were engaged".

The ideological imperative of cutting back on labour supplies from an avowedly socialist state must have been the paramount consideration. It should also be noted that collusion between the Chamber of Mines and the South African government would have been necessary.

However, the Maseru massacre and the moves against Mozambique are only parts of a much larger tapestry being woven by the Pretoria regime. P W Botha's Total Strategy is meant to create "A new constellation of economic, political and ideological policies with the precise objective of reconstructing the basis for stable capitalist rule..."³ Internally, the Total Strategy is endeavouring to divide the masses of the population into a small petty-bourgeois element owing its continued existence to the state, opposed to the majority living in homelands, unemployed or underemployed, and with few privileges. In order to achieve this goal of splitting the oppressed majority, the homelands must be turned into viable economic enterprises. One way to keep the Transkei, Venda, et. al. afloat is through outright monetary gifts, another method is decentralized industrialization, a third way is to substitute black South Africans of homeland origin for foreign migrants on the mines. The explicit strategy of the South African policy makers, since the early 1970's, has been to utilize black South Africans instead of migrants whenever and wherever it was possible to do so.

The foreign policy corollary to sewing discord internally can be summarized in one word: destabilization. Pretoria is trying, by all means available to weaken the governments of the independent black nations in the region for a variety of reasons. First, the liberation movements (specifically the ANC and SWAPO) represent the greatest threat to the continuation of white rule, and thus must be destroyed. The displacement of hostile governments is a second goal. Therefore, counter-revolutionary movements have been created, trained, armed, and financed by South Africa throughout the region. As a third objective, the Total Strategy aspires to create a Constellation of States in Southern Africa; this constellation would be economically, as well as politically, dependent on South Africa. As the aftermath of the Maseru massacre has unambiguously demonstrated, migrant labour has become a tool for Pretoria to wield without hesitation in the furtherance of its ends.

Having briefly summarized recent developments, we can now turn our attention to exploring likely scenarios for the future. Two trends would seem likely to dominate in the area of migrant labour for some time to come. One such trend is a rapid rise in the supply of labour prepared to go to South Africa, the other is a steady decline in the demand for foreign workers.

Eckert and Wykstra conservatively estimate that the Lesotho's labour force will increase by 400,000 over the next twenty years. If the current situation were to continue, wherein over half of the workforce is employed in South Africa, then 200,000 people, mostly men, would have to find employment outside Lesotho.⁴ But conditions are even more desperate than that, since at the current moment very few jobs are being created in Lesotho. Although 1982 figures are not yet available, it is possible that with the closure of Lesotho's only diamond mine the net total of new jobs created will approach the zero mark. The international airport currently under construction, and the proposed Malibamatso water project will provide some jobs; permanent employment prospects in the mining and manufacturing sectors, however, are negligible.

Most employment in Lesotho is in agriculture, where productivity is actually declining. The interlocking difficulties of soil erosion, overgrazing, overpopulation, and landlessness all result in increasing impoverishment in Lesotho's rural sector.

The fact that the other independent states of the region do not supply as many migrants as does Lesotho, will not make these countries immune to the same kinds of labour difficulties. For a period of almost fifty years Swaziland had consistently supplied between 7,000 and 8,000 mineworkers per annum. This supply, moreover, was generally unrelated to a shortage of jobs in Swaziland. But a new era, one of high unemployment, is beginning. According to de Vletter "events over the past few years have made it clear that external and internal employment opportunities have been and will continue to be outstripped by a rapidly growing labour force".⁵

Addressing himself to the employment situation in Botswana, Parson finds a similar problem:

"In the ten years 1978-88, then, the estimated 'shortfall' is in the region of 35,000 jobs per year or 350,000 over a ten year period, an additional number of places in production equivalent to more than 2½ times the number existing in 1978".⁶

In spite of the fact that Botswana and Swaziland have more potential in the areas of mining and agriculture than does Lesotho, there is no guarantee that they will develop the industrial infrastructure mandatory if they are to absorb the tens of thousands of men and women coming on the job market every year.

For all three of these nations, the nature of the domestic class structure is also significant. The governments of Lesotho, Botswana, and Swaziland are not automatically allies of their working classes.

In reality, the two groups are of ten natural enemies, in that

"the expanded reproduction of the petty-bourgeoisie requires, within certain limits, the expanded reproduction of the un- and under-employment of the working classes; capitalist agriculture requires new and expanded landlessness, bureaucratic salaries for ... investment".

The bureaucratic bourgeoisie throughout Africa are in a paradoxical situation. Increasing the reserve army of labour is necessary for the creation of capitalist opportunities; a large force of unemployed is, however, a threat to the stability of the same bourgeoisie which has engendered that force in the first place. This paradox explains why the policies of governments throughout Africa - and Southern Africa is no exception here - are often times so confusing and contradictory.

Once again with Mozambique, we find a familiar historical evolution of the migrant labour system: "the rural areas of the Southern provinces ... became converted under colonial rule into areas harbouring the industrial reserve army of labour from which the labour power for the South African mining complex was drawn ..."⁸ Widespread unemployment in Southern Mozambique has been the primary result of the cut-back in migrancy from Mozambique. The one respect in which Mozambique differs from its neighbours lies in the fact that it has proclaimed itself as a socialist country, and has therefore been actively involved in trying to break away from the international capitalist system. Mozambique's experiment in socialism is only a few years old; it is too early to pass judgment. The achievement of economic development, equality, and conditions resembling full employment will undoubtedly be most difficult, especially in the light of the fact that Mozambique would appear to be especially targeted by South Africa as part of its campaign of destabilization.

Overall, then, the picture in the supplying states is a gloomy one. In the course of the next decade a million or more people will be coming on to the job market.

Internal wage labour will be available to only a small fraction of this enormous number. Furthermore, the subsistence agriculture sector, traditionally used as a safety net, will become less and less productive, less and less capable of sustaining the rapidly growing population.

From what has already been said in this chapter, it should be obvious that, not only will there be a growing labour force, but also that South Africa will be unwilling to absorb more workers from outside its borders. The primary motivation for spurning migrant labour from foreign countries is political - as we have already suggested, manipulation of the workforce is an integral part of the apartheid formula. There are also a number of economic factors involved, all of which indicate that fewer migrants will be hired on the mines in the future. Eckert and Wykstra delineate some of the more important of these factors specifically with reference to Lesotho:

- "1. The prospect of reserve depletion in several good mines now employing Basotho.
2. The mechanization of underground coal mining...
3. A geographical shift of the balance of gold output beyond economical reach of Basotho...
4. An increasing proportion of both gold and coal to be derived from surface operations, which can use capital intensive techniques".

Over the past few years the decline in the number of foreign migrants has been of a slow and steady nature, rather than in rapid spurts. Such a trend can be expected to continue into the future. Most migrants, almost 80% of them, are to be found in the mining sector. The chance that such migrants can find employment in areas other than mining once they are made redundant is practically non-existent. The legal structure of apartheid militates against such shifts - the rights of the migrants do not extend to the privilege of changing jobs, or even to going to South Africa to search for different employment.

We are not, of course, dealing with random events here. It is the nature of capitalism to reduce most of the population to proletariat status with limited rights including the right to sell their labour power on the open market.

Under racial capitalism, even this dubious right is abridged for the vast majority of the population. It is also in the nature of capitalism.

It is also in the nature of capitalism to constantly revolutionize the means of production, to foster technological innovation in order to keep the rate of profit from declining.

Having outlined the most likely future course for migrant labour, we will turn in the following chapter to an exploration of the various methods possible for improving the human rights of migrants.

CHAPTER V

POLICY RESPONSES

A wide variety of individuals, organizations, and governments are actively involved in seeking ways to improve the human rights environment of migrant workers in Southern Africa. Three alternative paths are being pursued. One suggestion often made is to withdraw, either immediately or on a phased basis, all migrants from South Africa. A second, related option, is to strengthen politically and economically the supplying states, so that they might be able to better resist South African pressure, and thus be able to assist the migrants. The final method is to seek, by all means available, to improve the human rights conditions of migrants within the existing framework. Let us look at each of these three alternatives in turn.

We have already mentioned that there is strong sentiment among policy makers in the independent black states of the region for an immediate stoppage of all migrant labour. The logic behind this proposal is that migrancy which takes place under apartheid conditions can never be justifiable. Withdrawing from the system would be a blow to apartheid and would, in the long run, be healthier for the economies of the supplying states. The proposal of immediate withdrawal has its problems, however. From the point of view of Lesotho, for example, the prospect of having 100,000 or more men returning to the country overnight is not a pleasant one to contemplate. Aside from the immediate problem that would arise - how to avoid widespread starvation - the very real possibility that the government would collapse is enough to deter Lesotho's leadership from choosing such a radical option. Naturally, massive injections of international financial assistance could prop up the country for some time, but such aid is by no means guaranteed. The United States, which dominates the international aid hierarchy, has not shown itself in recent years to be sympathetic to anti-South Africa measures.

The world-wide recession, furthermore, means that there is generally not much money being spent on foreign aid projects. Even if Lesotho could get some short-term help, there is less likelihood that such help would last long enough for Lesotho to be able to create internal job opportunities sufficient to obviate the need to rely on migrant labour. The ultimate consideration for the workers themselves is, naturally enough, that they cannot eat abstract concepts such as human rights.

Realistically to contemplate the termination of the migrant system means to be capable of providing viable alternate means of employing returning workers. To do so requires, in turn, much more solid economies in the supplying states than currently exist. Many policy advisors therefore advocate some sort of phased disengagement from the migrant system, based on the ability of the supplying states to absorb the labour. The case in favour of a "phased withdrawal" is a strong one; Stahl and Bohning go so far as to declare that "The moral, social, economic and political liabilities of the migrant labour system make an unanswerable case for withdrawal".¹ The most cogent reason for considering this option is that it is happening in any event, only now it is under the supervision of the South Africans. Better to retreat in a planned and orderly fashion than to "drink to the bottom the bitter cup of migration sorrow".²

Stahl and Bohning have made a detailed, carefully considered set of proposals for just such a withdrawal. The centrepiece of their programme would be an Association of Home Countries of Migrants (AHCM). This organization, a more powerful version of the already existant SALC, would

"drain off the potential dissension on the withdrawal question... hammer out a jointly agreed timetable for gradually pulling out of the migrant labour system and ... present a joint case for the necessary support to the United Nations".

The problems with the approach are first, that the necessary United Nations support is unlikely to be forthcoming, and second, that, as the experience with SALC well illustrates, agreement among the supplying states is difficult to obtain except on relatively minor issues. Also, the authors tend to overestimate the economic power of the supplying states. South Africa is a growing capitalist power, willing to make many economic sacrifices in order to protect the position of the ruling class. By comparison, the supplying states are extremely fragile, unstable entities.

If the Southern African Development Coordinating Conference could be strengthened, then a viable economic base for the black states of the region might become available. It must be kept in mind, though, that South Africa is well aware of the potential threat posed by SADCC, and has been taking numerous steps over the past two years to sabotage the efforts of SADCC to establish an independent economic network. The attack on the fuel depot in Beira in December 1982, and the resultant fuel shortage in Zimbabwe, is only one example out of many. It would also be apparent that the member states of SADCC, while they have much in common, also have many differences - their stage of development, political system, and ideology, are all widely divergent. Given these constraints, it is hard to imagine either a detailed plan for withdrawal or the capability (or the will, for that matter) to carry one out, emerging in the near future.

What, then, of the possibility of implementing welfare measures to improve the lot of migrants? The efforts of SALC, and of the Labour Representatives discussed in Chapter II, as well as of many non-governmental organizations, are all oriented in this direction. While none of these groups has been very effective to date, there is some hope for the future. On issues such as accommodation, working conditions, compensation and benefits, the possibility exists that the Chamber of Mines and the South African regime will be willing to make adjustments, if enough pressure is brought to bear.

The migrant miners do eat better food, enjoy better living conditions, and have more freedoms than they did ten years ago. Progress is also being made in the following areas:

1. Providing health care for migrants upon their return home. The Chamber of Mines may be willing to give some money toward the establishment of treatment centres, especially with regard to tubercular cases. It is doubtful, however, that such money would be sufficient to cover recurrent costs.
2. More rapid and accurate payment of compensation benefits.
3. Better living conditions for migrants waiting at recruitment centres. Some prospective migrants in Lesotho have been reduced to living in caves until such time as they find employment. Hopefully, this deplorable state of affairs will not be permitted to continue.
4. An improved system for the repatriation of the bodies of deceased migrants.

SALC and the Labour Representative can also assist in aiding the migrants to be better educated, to know their rights, to readjust to life in their home areas, and to organize for their collective benefit. However, on the central issues of trade unionism, strikes, freedom of movement, family contact, and resettlement, welfare measures will continue to be singularly ineffectual.

The prime reason for this lack of impact on the main human rights concerns is that in order to achieve significant changes in these areas one would have to make major alterations to the racial capitalist system. Obviously, the authorities in South Africa are reluctant to make these alterations, and few weapons are at hand to make them do so.

The one way to establish the human rights of workers in Southern Africa is indeed to end the migrant labour system - but end it under certain specific conditions. The apartheid superstructure must be destroyed, but that is still not enough.

In order for the human rights of migrants to be firmly established, the entire exploitative capitalist economy must also be replaced. The full realization of workers rights can best be obtained in a workers state.

Black majority rule does not guarantee that migration and exploitation will end; it only means that perhaps the most extreme oppression will stop. As Perrings so aptly points out:

"It is no solution to suggest the replacement of international migration by internal migration ... it is not sufficient to promote a programme of employment generation within the labour supplying territories that is predicated upon a pattern of 'development' that merely repeats internally the exploitative relationship..."⁴

If, as Stahl and Bohning suggest, United Nations money is poured into the supplying states, the probability is high that money will be utilized to further the interests of the ruling class at the expense of the workers.

Even if apartheid were to end tomorrow, exploitation inside and outside of South Africa would continue, so long as the capitalist base remained intact.

One group remains to be discussed - the workers themselves. The struggle in Southern Africa involves an alliance of many classes and interests, but it is the workers who are in the vanguard of the struggle. Whatever anyone else does or fails to do, the conscientization of the working classes will continue. Worker unity will be fostered, and their level of activity will move forward. The class struggle is not an artificial, abstract concept, but a real battle that is going on day by day. In the final analysis, it will be the triumph of the workers themselves which will ensure the achievement of their human rights.

CHAPTER VI

CONCLUSION

The human rights condition of migrant labourers in South Africa is an appealing one. The right to form viable unions, to strike or to bargain collectively are all extremely restricted. Migrants are entitled to few benefits, and those that are available to them are poorly administered. Migrants are separated from their families for long periods, live in prison-like compounds, cannot move freely, and cannot choose their place of work. The apartheid system ensures that workers have few chances to change place of employment, and have even less of an opportunity for advancement. The work itself is arduous and often dangerous; the reward for long hours working in hazardous conditions is a wage which is, if the miner is lucky, barely sufficient to feed and clothe himself and his family. In few other places in the world today do workers exist under such terrible circumstances.

It would be wrong, nonetheless, to argue that conditions have not improved in the past couple of decades. In some of the areas cited above, most notably wages and benefits, the improvement has been significant. On the other hand, the efficiency of the operation of racial capitalism has also grown, and with it have come additional violations of rights, notably in the area of freedom of movement.

The prospects for the future development of human rights for migrants are not very promising. Certainly, demand for workers from the independent states of Southern Africa will decrease, but this has both good and bad aspects to it.

It is unlikely, so long as the Pretoria regime survives, that the central features of the oppressive migrant labour system will be appreciably altered.

The sending states are too weak, international pressure is half-hearted at best, and in any event, the South African government has been generally incentive to outside pressures.

The most probable occurrence is for the swelling of the ranks of unemployed in the supplying states, as fewer and fewer men are employed on the mines and elsewhere in South Africa. To be unemployed is not a very good situation in so far as human rights are concerned, either; particularly when the home countries cannot provide unemployment insurance.

The way to guarantee the basic human rights of migrant labourers is to end the migrant labour system. In order to end the migrant system, the entire apartheid structure must be dismantled. Most important of all however, is the establishment of a socialist mode of production in Southern Africa. Only then can the rights of all workers be firmly entrenched. The goal of all people concerned with the well-being of migrant workers should be the success of the liberation struggle, and the overthrow of racial capitalism.

A final note should be added in the role of academic research in regard to migrant labour. Several specific areas of research can be enumerated in light of the findings of this paper. First, ways must be found to foster unity among the black independent states of Southern Africa, to strengthen their economies, to enhance their abilities to resist attempts at destabilization, and to promote autonomous development. The various research institutes in Southern Africa should be supported of their efforts to promote SADCC; SADCC itself, especially in its co-operative efforts at industrialization, communication and transportation, should be the focal point of all efforts to break away from apartheid. The more viable the economies of the supplying states, the less need for reliance on migrant labour. A second area of study should be concerned with ways and means of organizing migrants into unions, and of raising their political consciousness.

Obviously, this is a touchy subject, in so far as South Africa realizes that unions represent the greatest threat to the continuation of the apartheid structure, and in as much as any "troublemaker" among the migrants gets sent home, never to find a job on the mines again. Nonetheless, the effort must and will be made to gain basic workers rights.

Many of the basic pieces of information concerning the numbers of migrants, their pay, their location, etc., come from the Chamber of Mines. The supplying countries themselves have a very poor statistical base. The third research priority should be collecting data concerning migrants: their backgrounds, their objective conditions both inside South Africa and at home, their attitudes, and their future prospects. One of the main purposes of our research is to give international publicity to the conditions under which migrant labour takes place, and to illuminate the exact nature of apartheid; international unity against apartheid is essential if the system is to be ended.

Finally, academics should be involved - so long as migrant labour exists - in finding ways for such bodies as SALC, the Labour Representatives and Labour Departments, to gain the fundamental benefits that all migrants should have as their inalienable human rights.

CHAPTER I

1. Elphick, pp. 78-85
2. Ibid., p. 235
3. Van der Horst, p. 8
4. Ibid., p. 13
5. Breytenbach, p. 1
6. Ibid., p. 2
7. Bundy, p. 167
8. Murray, p. 11
9. Wolpe, "Capitalism", p. 429
10. Daniel, p. 92
11. Centro, "Mozambique", pp. 1-2
12. Van der Horst, p. 235
13. Legassick, "South Africa", p. 267
14. Wolpe, pp. 433-35

CHAPTER II

1. Lipton, p. 123
2. Van der Wiel, p. 46
3. Bardill, p. 32
4. Murray, p. 96
5. Ibid., p. 71
6. Gorden, p. 115
7. Murray, p. 202
8. Cobbe, in Another Blanket, pp. 36-37
9. Spiegel, Migrant Labour, pp. 6-7.

10. Ibid., p. 160
11. Luckhart and Wall, p. 23
12. SALDRU, pp. 25-44
13. Ibid., pp. 7-8
14. Luckhart and Wall, p. 44
15. Ibid., p. 46
16. SALDRU, p. 23
17. van der Weil, p. 29
18. Bardill, p. 32
19. Rugege, p. 7
20. Luckhart and Wall, p. 52
21. Wilson, Gold, p. 20
22. de Vletter, in Black Migration, p. 94
23. Hepple, p. 34
24. Ibid., p. 51
25. Gay, "Migrants", p. 1
26. Ibid., pp. 9-10

CHAPTER III

1. Wallis, p. 15
2. de Vletter, in Black Migrants, p. 109
3. Wallis, pp. 15-17
4. Eckert and Wykstra, p. 3
5. SALC, "Note by the ECA", p. 6
6. SALC, "Draft Report", p. 24

CHAPTER IV

1. Stahl, in Black Migration, p. 37
2. Centro de Estudos, "Mozambiquan", p.
3. Davies and O'Meara, p. 8

4. Eckert and Wykstra, p. 19
5. de Vletter, "Labour Migration", p. 128
6. Parson, p. 276
7. Ibid., pp. 276-277
8. Centro de Estudos, "Mozambiquan", p. 13
9. Eckert and Wykstra, p. 15

CHAPTER V

1. Stahl and Bohning, in Black Migration, p. 150
2. Ibid., p. 151
3. Ibid., p. 152
4. Bardill, p. 49

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APPENDIX 1

RESOLUTION ON THE CHARTER OF RIGHTS FOR MIGRANT WORKERS
IN SOUTHERN AFRICA

We the Representative of Southern African States and Peoples; Noting that Apartheid has been declared a crime against humanity by the United Nations; Noting the work done by ILO on the problems of migratory labour in Southern Africa; and Recalling ILO conventions 87 and 98;

Recognising that the migratory labour-system is a major instrument of Apartheid; Mindful of the gross indignities it inflicts on the workers;

Further noting that it undermines family life and disrupts agrarian economies; Concluding that migrant workers are denied basic human rights;

Hereby Pledge ourselves to strive for the abolition of migratory labour and pending its elimination, Declare the following charter of rights for migrant workers in Southern Africa

RIGHTS OF ASSOCIATION, MOVEMENT AND RESIDENCE

1. All workers have the right to:
 - a) Form and join trade unions of their own choice;
 - b) participate in collective bargaining on equal terms with all other workers regardless of race, sex, political affiliation, religion; and
 - c) withhold their labour by strike action in support of their demands.
2. All workers have the right to freedom of movement without the necessity to carry a pass.
3. All workers have the right to be accommodated near their place of work with their families in suitable houses under home ownership schemes, or to reside elsewhere if they so choose.
4. All workers have the right of occupation free from colour bar, job reservation and all other kinds of discrimination.
5. Everyone regardless of race or sex, has the right to work, choose his occupation, and change from one employer to another without loss of accrued benefits and claims to promotion.
6. All workers, without exception, have the right to equal pay for equal work.

7. All workers have equal rights to vocational training and adult education for the purpose of acquiring skills and increasing their awareness.

RIGHT TO A DECENT STANDARD OF LIVING

8. Every worker is entitled to a minimum basic wage sufficient for the maintenance of health and well being of his family.
9. All workers have the right to adequate protection against occupational accidents and diseases by means of approved safeguards and close supervision by an independent industrial and farming inspectorate operating in conjunction with representatives or workers.
10. All workers and their families have an equal and absolute right to adequate, immediate and effective compensation for death or disability arising out of occupational disease and accident.
11. All workers have a right to:
 - a) free medical services for themselves and their families;
 - b) sick leave and, where applicable, maternity leave with full pay;
 - c) annual paid holidays.
12. All workers are entitled to retire on full pension or with gratuity proportionate to their period of service.
13. All workers have a right to determine, by agreement, their working hours and any other working conditions through collective bargaining.
14. All workers have the right to unemployment benefits
15. All women workers have the right to participate in all branches of production without discrimination in wages, training, job allocation and pension benefits.

DONE at Lusaka, Republic of Zambia, this SEVENTH day of April, One thousand nine hundred and seventy-eight.

APPENDIX 2

RESOLUTION ON THE CREATION OF THE SOUTHERN AFRICA

LABOUR COMMITTEE

Recognising the existence of the intergovernmental agency composed of the supplier states i.e. the Ministerial Consultative Committee.

Recognising also that the Ministerial Consultative Committee fulfills the need to monitor the socio-economic conditions affecting migrant workers in apartheid South Africa during the period of withdrawal.

Taking note of the need to eliminate the migratory labour system and hasten the withdrawal process of migrant labourers from South Africa.

Resolves that a Southern Africa Labour Committee comprising the supplier States and the Workers Organisations in Southern Africa be created;

Recommends that the Southern Africa Labour Committee be entrusted with the following terms of reference;

- i) To find ways and means of eliminating the migratory labour system;
- ii) To ensure that the objectives of complete withdrawal are realised;
- iii) To co-ordinate policies aimed at eliminating the migratory labour system;
- iv) To implement the terms of the Charter of Rights for migrant workers in Southern Africa.

APPENDIX 3

CONVENTION NO. 97

Convention concerning Migration for Employment
(Revised 1949)

The General Conference of the International Labour Organisation.

Article 1

Each Member of the International Labour Organisation for which this Convention is in force undertakes to make available on request to the International Labour Office and to other Members -

- a) information on national policies, laws and regulations relating to emigration and immigration;
- b) information on special provisions concerning migration for employment and conditions of work and livelihood of migrants for employment;
- c) information concerning general agreements and special arrangements on these questions concluded by the Member.

Article 2

Each Member for which this Convention is in force undertakes to maintain, or satisfy itself that there is maintained, an adequate and free service to assist migrants for employment, and in particular to provide them with accurate information.

Article 3

1. Each Member for which this Convention is in force undertakes that it will, so far as national laws and regulations permit, take all appropriate steps against misleading propaganda relating to emigration and immigration.
2. For this purposes, it will where appropriate act in co-operation with other Members concerned.

Article 4

Measures shall be taken as appropriate by each Member, within its jurisdiction, to facilitate the departure, journey and reception of migrants for employment.

¹ Date of coming into force: 22 January 1952

Article 5

- Each Member for which this Convention is in force undertakes to maintain, within its jurisdiction, appropriate medical services responsible for -
- a) ascertaining, where necessary, both at the time of departure and on arrival, that migrants for employment and the members of their families authorised to accompany or join them are in reasonable health;
 - b) ensuring that migrants for employment and members of their families enjoy adequate medical attention and good hygienic conditions at the time of departure, during the journey and on arrival in the territory of destination.

Article 6

1. Each Member for which this Convention is in force undertakes to apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favourable than that which it applies to its own nationals in respect of the following matters:
 - a) in so far as such matters are regulated by law or regulations, or are subject to the control of administrative authorities -
 - i) remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age for employment, apprenticeship and training, women's work and the work of young persons;
 - ii) membership of trade unions and enjoyment of the benefits of collective bargaining;
 - iii) accommodation;

b) social security (that is to say, legal provision in respect of employment injury, maternity, sickness, invalidity, old age, death, unemployment and family responsibilities, and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:

i) there may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;

ii) national laws or regulations of immigration countries may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of normal pension;

c) employment taxes, dues or contributions payable in respect of the person employed; and

d) legal proceedings relating to the matters referred to in this Convention.

2. In the case of a federal State the provisions of this Article shall apply in so far as the matters dealt with are regulated by federal law or regulations or are subject to the control of federal administrative authorities. The extent to which and manner in which these provisions shall be applied in respect of matters regulated by the law or regulations of the constituent States, provinces or cantons, or subject to the control of the administrative authorities thereof, shall be determined by each Member. The Member shall indicate in its annual report upon the application of the Convention the extent to which the matters dealt with in this Article are regulated by federal law or regulations or are subject to the control of federal administrative authorities.

In respect of matters which are regulated by the law or regulations of the constituent States, provinces or cantons, or are subject to the control of the administrative authorities thereof, the Member shall take the steps provided for in paragraph 7 (b) of article 19 of the Constitution of the International Labour Organisation.

Article 7

1. Each Member for which this Convention is in force undertakes that its employment service and other services connected with migration will co-operate in appropriate cases with the corresponding services of other Members.
2. Each Member for which this Convention is in force undertakes to ensure that the services rendered by its public employment service to migrants for employment are rendered free.

Article 8

1. A migrant for employment who has been admitted on a permanent basis and the members of his family who have been authorised to accompany or join him shall not be returned to their territory of origin or the territory from which they emigrated because the migrant is unable to follow his occupation by reason of illness contracted or injury sustained subsequent to entry, unless the person concerned so desires or an international agreement to which the Member is a party so provides.
2. When migrants for employment are admitted on a permanent basis upon arrival in the country of immigration the competent authority of that country may determine that the provisions of paragraph 1 of this Article shall take effect only after a reasonable period which shall in no case exceed five years from the date of admission of such migrants.

Article 9

Each Member for which this Convention is in force undertakes to permit, taking into account the limits allowed by national laws and regulations concerning export and import of currency, the transfer of such part of the earnings and savings of the migrant for employment as the migrant may desire.

Article 10

In cases where the number of migrants going from the territory of one Member to that of another is sufficiently large, the competent authorities of the territories concerned shall, whenever necessary or desirable, enter into agreements for the purpose of regulating matters of common concern arising in connection with the application of the provisions of this Convention.

Article 11

1. For the purpose of this Convention the term "migrant for employment" means a person who migrates from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant for employment.
2. This Convention does not apply to -
 - a) frontier workers;
 - b) short-term entry of members of the liberal professions and artistes;
and
 - c) seamen

Articles 12 and 13: Ratifications and entry into force: standard final provisions.

Article 14

1. Each Member ratifying this Convention may, by a declaration appended to its ratification, exclude from its ratification any or all of the Annexes to the Convention.

2. Subject to the terms of any such declaration, the provisions of the Annexes shall have the same effect as the provisions of the Convention.
3. Any Member which makes such a declaration may subsequently by a new declaration notify the Director-General that it accepts any or all of the Annexes mentioned in the declaration; as from the date of the regulation of such notification by the Director-General the provisions of such Annexes shall be applicable to the Member in question.
4. While a declaration made under paragraph 1 of this Article remains in force in respect of any Annex, the Member may declare its willingness to accept that Annex as having the force of a Recommendation.

Articles 15 and 16: Declarations of application to non-metropolitan territories.

Article 17: Paragraph 1 and 2: standard final provisions of denunciation.

3. At any time at which this Convention is subject to denunciation in accordance with the provisions of the preceding paragraphs any Member which does not so denounce it may communicate to the Director-General a declaration denouncing separately any Annex to the Convention which is in force for that Member.
4. The denunciation of this Convention or of any or all of the Annexes shall not affect the rights granted thereunder to a migrant or to the members of his family if he immigrated while the Convention or the relevant Annex was in force in respect of the territory where the question of the continued validity of these rights arises.

Article 18-21: Notification, registration and examination of revision:
standard final provisions.

Article 22

1. The International Labour Conference may, at any session at which the matter is included in its agenda, adopt by a two-thirds majority a revised text of any one or more of the Annexes to this Convention.
2. Each Member for which this Convention is in force shall, within the period of one year, or, in exceptional circumstances, of eighteen months, from the closing of the session of the Conference, submit any such revised text to the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action.
3. Any such revised text shall become effective for each Member for which this Convention is in force on communication by that Member to the Director-General of the International Labour Office of a declaration notifying its acceptance of the revised text.
4. As from the date of the adoption of the revised text of the Annex by the Conference, only the revised text shall be open to acceptance by Members.

Article 23: Authoritative texts: standard final provisions.

ANNEX 1

RECRUITMENT, PLACING AND CONDITIONS OF LABOUR
OF MIGRANTS FOR EMPLOYMENT RECRUITED
OTHERWISE THAN UNDER GOVERNMENT-SPONSORED
ARRANGEMENTS FOR GROUP TRANSFER

Article 1

This Annex applies to migrants for employment who are recruited otherwise than under Government-sponsored arrangements for group transfer.

Article 2

For the purpose of this Annex -

a) the term "recruitment" means -

i) the engagement of a person in one territory on behalf of an employer in another territory, or

ii) the giving of an undertaking to a person in one territory to provide him with employment in another territory,

together with the making of any arrangements in connection with the operations mentioned in (i) and (ii) including the seeking for and selection of emigrants and the preparation for departure of the emigrants;

b) the term "introduction" means any operations for ensuring or facilitating the arrival in or admission to a territory of persons who have been recruited within the meaning of paragraph (a) of this Article; and

c) the term "placing" means any operations for the purpose of ensuring or facilitating the employment of persons who have been introduced within the meaning of paragraph (b) of this Article.

Article 3

1. Each Member for which this Annex is in force, the laws and regulations of which permit the operations of recruitment, introduction and placing as defined in Article 2, shall regulate such of the said operations as are permitted by its laws and regulations in accordance with the provisions of this Article.
2. Subject to the provisions of the following paragraph, the right to engage in the operations of recruitment, introduction and placing shall be restricted to -
 - a) public employment offices or other public bodies of the territory in which the operations take place;

- b) public bodies of a territory other than that in which the operations take place which are authorised to operate in that territory by agreement between the Governments concerned;..
 - c) any body established in accordance with the terms of an international instrument.
3. In so far as national laws and regulations or a bilateral arrangement permit, the operations of recruitment, introduction and placing may be undertaken by -
- a) the prospective employer or a person in his service acting on his behalf, subject, if necessary in the interest of the migrant, to the approval and supervision of the competent authority;
 - b) a private agency, if given prior authorisation so to do by the competent authority of the territory where the said operations are to take place, in such cases and under such conditions as may be prescribed by -
 - i) the laws and regulations of that territory, or
 - ii) agreement between the competent authority of the territory of emigration or any body established in accordance with the terms of an international instrument and the competent authority of the territory of immigration.
4. The competent authority of the territory where the operations take place shall supervise the activities of bodies and persons to whom authorisations have been issued in pursuance of paragraph 3(b), other than any body established in accordance with the terms of an international instrument, the position of which shall continue to be governed by the terms of the said instrument or by any agreement, made between the body and the competent authority concerned.

5. Nothing in this Article shall be deemed to permit the acceptance of a migrant for employment for admission to the territory of any Member by any person or body other than the competent authority of the territory of immigration.

Article 4

Each Member for which this Annex is in force undertakes to ensure that the services rendered by its public employment service in connection with the recruitment, introduction or placing of migrants for employment are rendered free.

Article 5

1. Each Member for which this Annex is in force which maintains a system of supervision of contracts of employment between an employer, or a person acting on his behalf, and a migrant for employment undertakes to require -
 - a) that a copy of the contract of employment shall be delivered to the migrant before departure or, if the Governments concerned so agree, in a reception centre on arrival in the territory of immigration;
 - b) that the contract shall contain provisions indicating the conditions of work and particularly the remuneration offered to the migrant;
 - c) that the migrant shall receive in writing before departure, by a document which relates either to him individually or to a group of migrants of which he is a member, information concerning the general conditions of life and work applicable to him in the territory of immigration.
2. Where a copy of the contract is to be delivered to the migrant on arrival in the territory of immigration, he shall be informed in writing before departure, by a document which relates either to him individually or to a group of migrants of which he is a member, of the occupational category for which he is engaged and the other conditions of work, in particular the minimum wage which is guaranteed.

3. The competent authority shall ensure that the provisions of the preceding paragraphs are enforced and that appropriate penalties are applied in respect of violations thereof.

Article 6

The measures taken under Article 4 of the Convention shall, as appropriate, include -

- a) the simplification of administrative formalities;
- b) the provision of interpretation services;
- c) any necessary assistance during an initial period in the settlement of the migrants and members of their families authorised to accompany or join them; and
- d) the safeguarding of the welfare, during the journey and in particular on board ship, of migrants and members of their families authorised to accompany or join them.

Article 7

1. In cases where the number of migrants for employment going from the territory of one Member to that of another is sufficiently large, the competent authorities of the territories concerned shall, whenever necessary or desirable, enter into agreements for the purpose of regulating matters of common concern arising in connection with the application of the provisions of this Annex.
2. Where the members maintain a system of supervision over contracts of employment, such agreements shall indicate the methods by which the contractual obligations of the employers shall be enforced.

Article 8

Any person who promotes clandestine or illegal immigration shall be subject to appropriate penalties.

ANNEX II

RECRUITMENT, PLACING AND CONDITIONS OF LABOUR
OF MIGRANTS FOR EMPLOYMENT
RECRUITED UNDER GOVERNMENT-SPONSORED ARRANGEMENTS
FOR GROUP TRANSFER

Article 1

This Annex applies to migrants for employment who are recruited under Government-sponsored arrangements for group transfer.

Article 2

For the purpose of this Annex -

a) the term "recruitment" means -

i) the engagement of a person in one territory on behalf of an employer in another territory under a Government-sponsored arrangement for group transfer, or

ii) the giving of an undertaking to a person in one territory to provide him with employment in another territory under a Government-sponsored arrangement for group transfer,

together with the making of any arrangements in connection with the operations mentioned in (i) and (ii) including the seeking for and selection of emigrants and the preparation for departure of the emigrants;

b) the term "introduction" means any operations for ensuring or facilitating the arrival in or admission to a territory of persons who have been recruited under a Government-sponsored arrangement for group transfer within the meaning of subparagraph (a) of this paragraph; and

c) the term "placing" means any operations for the purpose of ensuring or facilitating the employment of person who have been introduced under a Government-sponsored arrangement for group transfer within the meaning of subparagraph (b) of this paragraph.

Article 3

1. Each Member for which this Annex is in force, the laws and regulations of which permit the operations of recruitment, introduction and placing as defined in Article 2, shall regulate such of the said operations as are permitted by its laws and regulations in accordance with the provisions of this Article.
2. Subject to the provisions of the following paragraph, the right to engage in the operations of recruitment, introduction and placing shall be restricted to -
 - a) public employment offices or other public bodies of the territory in which the operations take place;
 - b) public bodies of a territory other than that in which the operations take place which are authorised to operate in that territory by agreement between the Governments concerned;
 - c) any body established in accordance with the terms of an international instrument.
3. In so far as national laws and regulations or a bilateral arrangement permit, and subject, if necessary in the interest of the migrant, to the approval and supervision of the competent authority, the operations of recruitment, introduction and placing may be undertaken by -
 - a) the prospective employer or a person in his service acting on his behalf;
 - b) private agencies.
4. The right to engage in the operations of recruitment, introduction and placing shall be subject to the prior authorisation of the competent authority of the territory where the said operations are to take place in such cases and under such conditions as may be prescribed by -
 - a) the laws and regulations of that territory, or

- b) agreement between the competent authority of the territory of emigration or any body established in accordance with the terms of an international instrument and the competent authority of the territory of immigration.
5. The competent authority of the territory where the operations take place shall, in accordance with any agreements made between the competent authorities concerned, supervise the activities of bodies and persons to whom authorisations have been issued in pursuance of the preceding paragraph, other than any body established in accordance with the terms of an international instrument, the position of which shall continue to be governed by the terms of the said instrument or by any agreement made between the body and the competent authority concerned.
6. Before authorising the introduction of migrants for employment the competent authority of the territory of immigration shall ascertain whether there is not a sufficient number of persons already available capable of doing the work in question.
7. Nothing in this Article shall be deemed to permit the acceptance of a migrant for employment for admission to the territory of any Member by any person or body other than the competent authority of the territory of immigration.

Article 4

1. Each Member for which this Annex is in force undertakes to ensure that the services rendered by its public employment service in connection with the recruitment, introduction or placing of migrants for employment are rendered free.
2. The administrative costs of recruitment, introduction and placing shall not be borne by the migrants.

Article 5

In the case of collective transport of migrants from one country to another necessitating passage in transit through a third country, the competent authority of the territory of transit shall take measures for expediting the passage, to avoid delays and administrative difficulties.

Article 6

1. Each Member for which this Annex is in force which maintains a system of supervision of contracts of employment between an employer, or a person acting on his behalf, and a migrant for employment undertakes to require -
 - a) that a copy of the contract of employment shall be delivered to the migrant before departure or, if the Governments concerned so agree, in a reception centre on arrival in the territory of immigration;
 - b) that the contract shall contain provisions indicating the conditions of work and particularly the remuneration offered to the migrant;
 - c) that the migrant shall receive in writing before departure, by a document which relates either to him individually or to a group of migrants of which he is a member, information concerning the general conditions of life and work applicable to him in the territory of immigration.
2. Where a copy of the contract is to be delivered to the migrant on arrival in the territory of immigration, he shall be informed in writing before departure, by a document which relates either to him individually or to a group of migrants of which he is a member, of the occupational category for which he is engaged and the other conditions of work, in particular the minimum wage which is guaranteed to him.
3. The competent authority shall ensure that the provisions of the preceding paragraphs are enforced and that appropriate penalties are applied in respect of violations thereof.

Article 7

1. The measures taken under Article 4 of this Convention shall, as appropriate, include -
- a) the simplification of administrative formalities;
 - b) the provision of interpretation services;
 - c) any necessary assistance, during an initial period in the settlement of the migrants and members of their families authorised to accompany or join them;
 - d) the safeguarding of the welfare, during the journey and in particular on board ship, of migrants and members of their families authorised to accompany or join them; and
 - e) permission for the liquidation and transfer of the property of migrants for employment admitted on a permanent basis.

Article 8

Appropriate measures shall be taken by the competent authority to assist migrants for employment, during an initial period, in regard to matters concerning their conditions of employment; where appropriate, such measures may be taken in co-operation with approved voluntary organisations.

Article 9

If a migrant for employment introduced into the territory of a Member in accordance with the provisions of Article 3 of this Annex fails, for a reason for which he is not responsible, to secure the employment for which he has been recruited or other suitable employment, the cost of his return and that of the members of his family who have been authorised to accompany or join him, including administrative fees, transport and maintenance charges to the final destination, and charges for the transport of household belongings, shall not fall upon the migrant.

Article 10

If the competent authority of the territory of immigration considers that the employment for which a migrant for employment was recruited under Article 3 of this Annex has been found to be unsuitable, it shall take appropriate measures to assist him in finding suitable employment which does not prejudice national workers and shall take such steps as will ensure his maintenance pending placing in such employment, or his return to the area of recruitment if the migrant is willing or agreed to such return at the time of his recruitment, or his resettlement elsewhere.

Article 11

If a migrant for employment who is a refugee or a displaced person and who has entered a territory of immigration in accordance with Article 3 of this Annex becomes redundant in any employment in that territory, the competent authority of that territory shall use its best endeavours to enable him to obtain suitable employment which does not prejudice national workers, and shall take such steps as will ensure his maintenance pending placing in suitable employment or his resettlement elsewhere.

Article 12

1. The competent authorities of the territories concerned shall enter into agreements for the purpose of regulating matters of common concern arising in connection with the application of the provisions of this Annex.
2. Where the Members maintain a system of supervision over contracts of employment, such agreements shall indicate the methods by which the contractual obligations of the employer shall be enforced.
3. Such agreements shall provide, where appropriate, for co-operation between the competent authority of the territory of emigration or a body established in accordance with the terms of an international instrument and the competent authority of the territory of immigration, in respect of the

assistance to be given to migrants concerning their conditions of employment in virtue of the provisions of Article 8.

Article 13

Any person who promotes clandestine or illegal immigration shall be subject to appropriate penalties.

ANNEX III

IMPORTATION OF THE PERSONAL EFFECTS,
TOOLS AND EQUIPMENT OF MIGRANTS FOR EMPLOYMENT

Article 1

1. Personal effects belonging to recruited migrants for employment and members of their families who have been authorised to accompany or join them shall be exempt from customs duties on arrival in the territory of immigration.
2. Portable hand-tools and portable equipment of the kind normally owned by workers for the carrying out of their particular trades belonging to recruited migrants for employment and members of their families who have been authorised to accompany or join them shall be exempt from customs duties on arrival in the territory of immigration if such tools and equipment can be shown at the time of importation to be in their actual ownership or possession, to have been in their possession and use for an appreciable time, and to be intended to be used by them in the course of their occupation.

Article 2

1. Personal effects belonging to migrants for employment and members of their families who have been authorised to accompany or join them shall be exempt from customs duties on the return of the said persons to their country of origin if such persons have retained the nationality of that country at the time of their return here.

2. Portable hand-tools and portable equipment of the kind normally owned by workers for the carrying out of their particular trades belonging to migrants for employment and members of their families who have been authorised to accompany or join them shall be exempt from customs duties on return of the said persons to their country of origin if such persons have retained the nationality of that country at the time of their return there and if such tools and equipment can be shown at the time of importation to be in their actual ownership or possession, to have been in their possession and use for an appreciable time, and to be intended to be used by them in the course of their occupation.

APPENDIX 4

CONVENTION NO. 143

Convention concerning Migrations in Abusive Conditions
and the Promotion of Equality of Opportunity and Treatment
of Migrant Workers

The General Conference of the International Labour Organisation.

PART I. MIGRATIONS IN ABUSIVE CONDITIONS

Article 1

Each Member for which this Convention is in force undertakes to respect the basic human rights of all migrant workers.

Article 2

1. Each Member for which this Convention is in force shall systematically seek to determine whether there are illegally employed migrant workers on its territory and whether there depart from, pass through or arrive in its territory any movements of migrants for employment in which the migrants are subjected during their journey, on arrival or during their period of residence and employment to conditions contravening relevant international multilateral or bilateral instruments or agreements, or national laws or regulations.
2. The representative organisations of employers and workers shall be fully consulted and enabled to furnish any information in their possession on this subject.

Article 3

Each Member shall adopt all necessary and appropriate measures, both within its jurisdiction and in collaboration with other Members -

- a) to suppress clandestine movements of migrants for employment and illegal employment of migrants, and
- b) against the organisers of illicit or clandestine movements of migrants for employment departing from, passing through or arriving in its territory, and against those who employ workers who have immigrated in illegal conditions,

in order to prevent and to eliminate the abuses referred to in Article 2 of this Convention.

Article 4

In particular, Members shall take such measures as are necessary, at the national and the international level, for systematic contact and exchange of information on the subject with other States, in consultation with other States, in consultation with representative organisations of employers and workers.

Article 5

One of the purposes of the measures taken under Article 3 and 4 of this Convention shall be that the authors of manpower trafficking can be prosecuted whatever the country from which they exercise their activities.

Article 6

1. Provision shall be made under national laws or regulations for the effective detection of the illegal employment of migrant workers and for the definition and the application of administrative, civil and penal sanctions, which include imprisonment in their range, in respect of the illegal employment of migrant workers, in respect of the organisation of movements of migrants for employment defined as involving the abuses referred to in Article 2 of this Convention, and in respect of knowing assistance to such movements, whether for profit or otherwise.

2. Where an employer is prosecuted by virtue of the provision made in pursuance of this Article, he shall have the right to furnish proof of his good faith.

Article 7

The representative organisations of employers and workers shall be consulted in regard to the laws and regulations and other measures provided for in this Convention and designed to prevent and eliminate the abuses referred to above, and the possibility of their taking initiatives for this purpose shall be recognised.

Article 8

1. On condition that he has resided legally in the territory for the purpose of employment, the migrant worker shall not be regarded as in an illegal or irregular situation by the mere fact of the loss of his employment, which shall not in itself imply the withdrawal of his authorisation of residence or, as the case may be, work permit.
2. Accordingly, he shall enjoy equality of treatment with nationals in respect in particular of guarantees of security of employment, the provision of alternative employment, relief work and retraining.

Article 9

1. Without prejudice to measures designed to control movements of migrants for employment by ensuring that migrant workers enter national territory and are admitted to employment in conformity with the relevant laws and regulations, the migrant worker shall, in cases in which these laws and regulations have not been respected and in which his position cannot be regularised, enjoy equality of treatment for himself and his family in respect of rights arising out of past employment as regards remuneration, social security and other benefits.
2. In case of dispute about the rights referred to in the preceding paragraph, the worker shall have the possibility of presenting his case to a competent body, either himself or through a representative.
3. In case of expulsion of the worker or his family, the cost shall not be borne by them.
4. Nothing in this Convention shall prevent Members from giving persons who are illegally residing or working within the country the right to stay and to take up legal employment.

PART II. EQUALITY OF OPPORTUNITY AND TREATMENT

Article 10

Each Member for which the Convention is in force undertakes to declare and pursue a national policy designed to promote and to guarantee, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, of social security, of trade union and cultural rights and of individual and collective freedoms for persons who as migrant workers or as members of their families are lawfully within its territory.

Article 11

1. For the purpose of this Part of this Convention, the term "migrant worker" means a person who migrates or who has migrated from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant worker.
2. This Part of this Convention does not apply to -
 - a) frontier workers;
 - b) artistes and members of the liberal professions who have entered the country on a short-term basis;
 - c) seamen;
 - d) persons coming specifically for purposes of training or education;
 - e) employees of organisations or undertakings operating within the territory of a country who have been admitted temporarily to that country at the request of their employer to undertake specific duties or assignments, for a limited and defined period of time, and who are required to leave that country on the completion of their duties or assignments.

Article 12

Each Member shall, by methods appropriate to national conditions and practice -

- a) seek the co-operation of employers' and workers' organisations and other appropriate bodies in promoting the acceptance and observance of the policy provided for in Article 10 of this Convention;
- b) enact such legislation and promote such educational programmes as may be calculated to secure the acceptance and observance of the policy;
- c) take measures, encourage educational programmes and develop other activities aimed at acquainting migrant workers as fully as possible with the policy, with their rights and obligations and with activities designed to give effective assistance to migrant workers in the exercise of their rights and for their protection;
- d) repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy;
- e) in consultation with representative organisations of employers and workers, formulate and apply a social policy appropriate to national conditions and practice which enables migrant workers and their families to share in advantages enjoyed by its nationals while taking account, without adversely affecting the principle of equality of opportunity and treatment, of such special needs as they may have until they are adapted to the society of the country of employment;
- f) take all steps to assist and encourage the efforts of migrant workers and their families to preserve their national and ethnic identity and their cultural ties with their country of origin, including the possibility for children to be given some knowledge of their mother tongue;
- g) guarantee equality of treatment, with regard to working conditions, for all migrant workers who perform the same activity whatever might be the particular conditions of their employment.

Article 13

1. A Member may take all necessary measures which fall within its competence and collaborate with other Members to facilitate the reunification of the families of all migrant workers legally residing in its territory.
2. The members of the family of the migrant worker to which this Article applies are the spouse and dependent children, father and mother.

Article 14

A Member may -

- a) make the free choice of employment, while assuring migrant workers the right to geographical mobility, subject to the conditions that the migrant worker has resided lawfully in its territory for the purpose of employment for a prescribed period not exceeding two years or, if its laws or regulations provide for contracts for a fixed term of less than two years, that the worker has completed his first work contract;
- b) after appropriate consultation with the representative organisations of employers and workers, make regulations concerning recognition of occupational qualifications acquired outside its territory, including certificates and diplomas;
- e) restrict access to limited categories of employment or functions where this is necessary in the interests of the State.

PART III. FINAL PROVISIONS

Article 15

This Convention does not prevent Members from concluding multilateral or bilateral agreements with a view to resolving problems arising from its application.

Article 16

1. Any Member which ratifies this Convention may, by a declaration appended to its ratification, exclude either Part I or Part II from its acceptance of the Convention.

2. Any Member which has made such a declaration may at any time cancel that declaration by a subsequent declaration.

3. Every Member for which a declaration made under paragraph 1 of this Article is in force shall indicate in its reports upon the application of this Convention the position of its law and practice in regard to the provisions of the Part excluded from its acceptance, the extent to which effect has been given, or is proposed to be given, to the said provision and the reasons for which it has not yet included them in its acceptance of the Convention.

Article 17-24: Standard final provisions.

APPENDIX 5

RECOMMENDATION NO. 86

Recommendation concerning Migration for Employment
(Revised 1949)

The General Conference of the International Labour Organisation.

I

1. For the purpose of this Recommendation -
 - a) the term "migrant for employment" means a person who migrates from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant for employment;
 - b) the term "recruitment" means -
 - i) the engagement of a person in one territory on behalf of an employer in another territory, or
 - ii) the giving of an undertaking to a person in one territory to provide him with employment in another territory, together with the making of any arrangements in connection with the operations mentioned in (i) and (ii) including the seeking for and selection of emigrants and the preparation for departure of the emigrants;
 - c) the term "introduction" means any operations for ensuring or facilitating the arrival in or admission to a territory of persons who have been recruited within the meaning of subparagraph (b);
 - d) the term "placing" means any operations for the purpose of ensuring or facilitating the employment of persons who have been introduced within the meaning of subparagraph (c).
2. For the purpose of this Recommendation, references to the Government or competent authority of a territory of emigration should be interpreted as referring, in the case of migrants who are refugees or displaced persons, to any body established in accordance with the terms of an international instrument which may be responsible for the protection of refugees and displaced persons who do not benefit from the protection of any Government.

3. This Recommendation does not apply to -

- a) frontier workers;
- b) short-term entry of members of the liberal profession and artistes;
and
- c) seamen

II

4. (1) It should be the general policy of Members to develop and utilise all possibilities of employment and for this purpose to facilitate the International distribution of manpower and in particular the movement of manpower from countries which have a surplus of manpower to those countries that have a deficiency.

(2) The measures taken by each Member should have due regard to the manpower situation in the country and the Government should consult the appropriate organisations of employers and workers on all general questions concerning migration for employment.

III

5. (1) The free service provided in each country to assist migrants and their families and in particular to provide them with accurate information should be conducted -

- (a) by public authorities; or
- (b) by one or more voluntary organisations not conducted with a view to profit, approved for the purpose by the public authorities, and subject to the supervision of the said authorities; or
- (c) partly by the public authorities and partly by one or more voluntary organisations fulfilling the conditions stated in subparagraph (b) of this Paragraph.

(2) The service should advise migrants and their families, in their languages or dialects or at least in a language which they can understand, on matters relating to emigration, immigration, employment and living conditions, including health conditions in the place of destination, return to the country of origin or of emigration, and generally speaking any other question which may be of interest to them in their capacity as migrants.

(3) The service should provide facilities for migrants and their families with regard to the fulfilment of administrative formalities and other steps to be taken in connection with the return of the migrants to the country of origin or of emigration, should the case arise.

(4) With a view to facilitating the adaptation of migrants, preparatory courses should, where necessary, be organised to inform the migrants of the general conditions and the methods of work prevailing in the country of immigration, and to instruct them in the language of that country. The countries of emigration and immigration should mutually agree to organise such courses.

6. On request information should be made available by Members to the International Labour Office and to other Members concerning their emigration laws and regulations, including administrative provisions relating to restrictions on emigration and facilities granted to emigrants, and appropriate details concerning the categories of persons wishing to emigrate.

7. On request information should be made available by Members to the International Labour Office and to other Members concerning their immigration laws and regulations, including administrative provisions, entry permits where needed, number and occupational qualifications of immigrants desired, laws and regulations affecting admission of migrants to employment, and any special facilities granted to migrants and measures to facilitate their adaptation to the economic and social organisation of the country of immigration.

8. There should, as far as possible, be a reasonable interval between the publication and the coming into force of any measure altering the conditions on which emigration or immigration or the employment of migrants is permitted in order that these conditions may be notified in good time to persons who are preparing to emigrate.
9. Provision should be made for adequate publicity to be given at appropriate stages to the principal measures referred to in the preceding Paragraph, such publicity to be in the languages most commonly known to the migrants.
10. Migration should be facilitated by such measures as may be appropriate -
 - (a) to ensure that migrants for employment are provided in case of necessity with adequate accommodation, food and clothing on arrival in the country of immigration;
 - (b) to ensure, where necessary, vocational training so as to enable the migrants for employment to acquire the qualifications required in the country of immigration;
 - (c) to permit, taking into account the limits allowed by national laws and regulations concerning export and import of currency, the transfer of such part of the earnings and savings of migrants for employment as the migrants may desire;
 - (d) to arrange, in the case of permanent migration, for the transfer, where desired, to the country of immigration, of the capital of migrants for employment within the limits allowed by national laws and regulations concerning export and import of currency;
 - (e) to provide access to schools for migrants and members of their families.
11. Migrants and the members of their families should be assisted in obtaining access to recreation and welfare facilities, and steps should be taken where necessary to ensure that special facilities are made available during the initial period of settlement in the country of immigration.

12. In the case of migrants under Government-sponsored arrangements for group transfer, medical assistance should be extended to such migrants in the same manner as provided for nationals.

IV

13. (1) Where necessary in the interest of the migrant, Members should require that any intermediary who undertakes the recruitment, introduction or placing of migrants for employment on behalf of an employer must obtain a written warrant from the employer, or some other document proving that he is acting on the employer's behalf.

(2) This document should be drawn up in, or translated into, the official language of the country of emigration and should set forth all necessary particulars concerning the employer, concerning the nature and scope of the recruitment, introduction or placing which the intermediary is to undertake, and concerning the employment offered, including the remuneration.

14. (1) The technical selection of migrants for employment should be carried out in such a way as to restrict migration as little as possible while ensuring that the migrants are qualified to perform the required work.

(2) Responsibility for such selection should be entrusted -

(a) to official bodies; or

(b) where appropriate, to private bodies of the territory of immigration duly authorised and, where necessary in the interest of the migrant, supervised by the competent authority of the territory of emigration.

(3) The right to engage in selection should be subject to the prior authorisation of the competent authority of the territory where the said operation takes place, in such cases under such conditions as may be prescribed by the laws and regulations of the territory, or by agreement between the Government of the territory of emigration and the Government of the territory of immigration.

(4) As far as possible, intending migrants for employment should, before their departure from the territory of emigration be examined for purposes of occupational and medical selection by a representative of the competent authority of the territory of immigration.

(5) If recruitment takes place on a sufficiently large scale there should be arrangements for close liaison and consultation between the competent authorities of the territories of emigration and immigration concerned.

(6) The operations referred to in the preceding subparagraph of this Paragraph should be carried out as near as possible to the place where the intending migrant is recruited.

15. (1) Provision should be made by agreement for authorisation to be granted for a migrant for employment introduced on a permanent basis to be accompanied or joined by the members of his family.

(2) The movement of the members of the family of such a migrant authorised to accompany or join him should be specially facilitated by both the country of emigration and the country of immigration.

(3) For the purposes of this Paragraph, the members of the family of a migrant for employment should include his wife and minor children; favourable consideration should be given to requests for the inclusion of other members of the family dependent upon the migrant.

V

16. (1) Migrants for employment authorised to reside in a territory and the members of their families authorised to accompany or join them should as far as possible be admitted to employment in the same conditions as nationals.

(2) In countries in which the employment of migrants is subject to restrictions, these restrictions should as far as possible -

(a) cease to be applied to migrants who have regularly resided in the country for a period, the length of which should not, as a rule, exceed five years;

(b) cease to be applied to the wife and children of an age to work who have been authorised to accompany or join the migrant, at the same time as they cease to be applied to the migrant.

17. In countries where the number of migrants for employment is sufficiently large, the conditions of employment of such workers should be specially supervised, such supervision being undertaken according to circumstances either by a special inspection service or by labour inspectors or other officials specialising in this work.

VI

18. (1) When a migrant for employment has been regularly admitted to the territory of a Member, the said Member should, as far as possible, refrain from removing such person or the members of his family from its territory on account of his lack of means or the state of the employment market, unless an agreement to this effect has been concluded between the competent authorities of the emigration and immigration territories concerned.

(2) Any such agreement should provide -

(a) that the length of time the said migrant has been in the territory of immigration shall be taken into account and that in principle no migrant shall be removed who has been there for more than five years;

(b) that the migrant must have exhausted his rights to unemployment insurance benefit;

- (c) that the migrant must have been given reasonable notice so as to give him time, more particularly to dispose of his property;
- (d) that suitable arrangements shall have been made for his transport and that of the members of his family;
- (e) that the necessary arrangements shall have been made to ensure that he and the members of his family are treated in a humane manner; and
- (f) that the costs of the return of the migrant and the members of his family and of the transport of their household belongings to their final destination shall not fall on him.

19. Appropriate steps should be taken by the authorities of the territories concerned to consult the employers' and workers' organisations concerning the operations of recruitment, introduction and placing of migrants for employment.

VII

20. When migrants for employment or members of their families who have retained the nationality of their State of origin return there, that country should admit such persons to the benefit of any measures in force for the granting of poor relief and unemployment relief, and for promoting the re-employment of the unemployed, by exempting them from the obligation to comply with any condition as to previous residence or employment in the country or place.

VIII

21. (1) Members should in appropriate cases supplement the Migration for Employment Convention (Revised) 1949, and the preceding Paragraphs of the present Recommendation by bilateral agreements, which should specify the methods of applying the principles set forth in the Convention and in the Recommendation.

(2) In concluding such agreements, Members should take into account the provisions of the Model Agreement annexed to the present Recommendation in framing appropriate clauses for the organisation of migration for employment and the regulation of the conditions of transfer and employment of migrants, including refugees and displaced persons.

APPENDIX 6

RECOMMENDATION No. 151, 1975

The General Conference of the International Labour Organisation.

1. Members should apply to provision of this Recommendation within the framework of a coherent policy on international migration for employment. That policy should be based upon the economic and social needs of both countries of origin and countries of employment; it should take account not only of short-term manpower needs and resources but also of the long-term social and economic consequences of migration for migrants as well as for the communities concerned.

I. EQUALITY OF OPPORTUNITY AND TREATMENT

2. Migrant workers and members of their families lawfully within the territory of a Member should enjoy effective equality of opportunity and treatment with nationals of the Member concerned in respect of -

- (a) access to vocational guidance and placement services;
- (b) access to vocational training and employment of their own chance on the basis of individual suitability for such training or employment, account being taken of qualifications acquired outside the territory of and in the country of employment;
- (c) advancement in accordance with their individual character, experience, ability and diligence;
- (d) security of employment, the provisions of alternative employment, real work and retraining;
- (e) remuneration for work of equal value;
- (f) conditions of work, including hours of work, rest periods, annual holidays with pay, occupational safety and occupational health measures, as well as social security measures and welfare facilities and benefits provided in connection with employment.

(g) membership of trade unions, exercise of trade union rights and eligibility for office in trade unions and in labour-management relations bodies, including bodies representing workers in undertakings;

(h) rights of full membership in any form of co-operative;

(i) conditions of life, including housing and the benefits of social services and educational and health facilities.

3. Each Member should ensure the application of the principles set forth in Paragraph 2 of this Recommendation in all activities under the control of a public authority and promote its observance in all other activities by methods appropriate to national conditions and practice.

4. Appropriate measures should be taken, with the collaboration of employers' and workers' organisations and other bodies concerned, with a view to -

(a) fostering public understanding and acceptance of the abovementioned principles;

(b) examining complaints that these principles are not being observed and securing the correction, by conciliation of other appropriate means, of any practices regarded as in conflict therewith.

5. Each Member should ensure that national laws and regulations concerning residence in its territory are so applied that the lawful exercise of rights enjoyed in pursuance of these principles cannot be the reason for non-renewal of a residence permit or for expulsion and is not inhibited by the threat of such measures.

6. A Member may -

- (a) make the free choice of employment, while assuring migrant workers the right to geographical mobility, subject to the conditions that the migrant worker has resided lawfully in its territory for the purpose of employment for a prescribed period not exceeding two years or, if its laws or regulations provide for contracts for a fixed term of less than two years, that the worker has completed his first work contract;
- (b) after appropriate consultation with the representative organisations of employers and workers, make regulations concerning recognition of occupational qualifications acquired outside its territory, including certificates and diplomas;
- (c) restrict access to limited categories of employment or functions where this is necessary in the interests of the State.

7. (1) In order to enable migrant workers and their families to take full advantage of their rights and opportunities in employment and occupation, such measures as may be necessary should be taken, in consultation with the representative organisations of employers and workers -

- (a) to inform them, as far as possible in their mother tongue or, if that is not possible, in a language with which they are familiar, of their rights under national law and practice as regards the matter dealt with in Paragraph 2 of this Recommendation;
- (b) to advance their knowledge of the language or languages of the country of employment, as far as possible during paid time;

(c) generally, to promote their adaptation to the society of the country of employment and to assist and encourage the efforts of migrant workers and their families to preserve their national and ethnic identity and their cultural ties with their country of origin, including the possibility for children to be given some knowledge of their mother tongue.

(2) Where agreements concerning the collective recruitment of workers have been concluded between Members, they should jointly take the necessary measures before the migrants' departure from their country of origin to introduce them to the language of the country of employment and also to its economic, social and cultural environment.

8. (1) Without prejudice to measures designed to ensure that migrant workers and their families enter national territory and are admitted to employment in conformity with the relevant laws and regulations, a decision should be taken as soon as possible in cases in which these laws and regulations have not been respected so that the migrant worker should know whether his position can be regularised or not.

(2) Migrant workers whose position has been regularised should benefit from all rights which, in accordance with Paragraph 2 of this Recommendation, are provided for migrant workers lawfully within the territory of a Member.

(3) Migrant workers whose position has not been or could not be regularised should enjoy equality of treatment for themselves and their families in respect of rights arising out of present and past employment as regards remuneration, social security and other benefits as well as regards trade union membership and exercise of trade union rights.

(4) In case of dispute about the rights referred to in the preceding subparagraphs, the worker should have the possibility of presenting his case to a competent body, either himself or through a representative.

(5) In case of expulsion of the worker or his family, the cost should not be borne by them.

II. SOCIAL POLICY

9. Each Member should, in consultation with representative organisations of employers and workers, formulate and apply a social policy appropriate to national conditions and practice which enables migrant workers and their families to share in advantages enjoyed by its nationals while taking account, without adversely affecting the principle of equality of opportunity and treatment, of such special needs as they may have until they are adapted to the society of the country of employment.

10. With a view to making the policy as responsive as possible to the real needs of migrant workers and their families, it should be based, in particular, on an examination not only of conditions in the territory of the Member but also of those in the countries of origin on the migrants.

11. The policy should take account of the need to spread the social cost of migration as widely and equitably as possible over the entire collectivity of the country of employment, and in particular over those who profit most from the work of migrants.

12. The policy should be periodically reviewed and evaluated and where necessary revised.

A. Reunification of Families

13. (1) All possible measures should be taken both by countries of employment and by countries of origin to facilitate reunification of families of migrant workers as rapidly as possible.

These measures should include, as necessary, national laws or regulations and bilateral and multilateral arrangements.

(2) A prerequisite for the reunification of families should be that the workers has, for his family, appropriate accommodation which meets the standards normally applicable to nationals of the country of employment.

14. Representatives of all concerned and in particular of employers and workers, should be consulted on the measures to be adopted to facilitate the reunification of families and their co-operation sought in giving effect thereto.

15. For the purpose of the provisions of this Recommendation relating to the reunification of families, the family of the migrant worker should include the spouse and dependent children, father and mother.

16. With a view to facilitating the reunification of families as quickly as possible in accordance with Paragraph 13 of this Recommendation, each Member should take full account of the needs of migrant workers and their families in particular in its policy regarding the construction of family housing, assistance in obtaining this housing and the development of appropriate reception services.

17. Where a migrant worker who has been employed for at least one year in a country of employment cannot be joined by his family in that country, he should be entitled -

(a) to visit the country of residence of his family during the paid annual holiday to which he is entitled under the national law and practice of the country of employment without losing during the absence from that country any acquired rights or rights in course of acquisition and, particularly, without having his employment terminated or his right to residence in the country of employment withdrawn during that period; or

(b) to be visited by his family for a period corresponding at least to the annual holiday with pay to which he is entitled.

18. Consideration should be given to the possibility of giving the migrant worker financial assistance towards the cost of the travel envisaged in the preceding Paragraph or a reduction in the normal cost of transport, for instance by the arrangement of group travel.

19. Without prejudice to more favourable provisions which may be applicable to them, persons admitted in pursuance of international arrangements for free movement of labour should have the benefit of the measures provided for in Paragraphs 13 to 18 of this Recommendation.

B. Protection of the Health of Migrant Workers

20. All appropriate measures should be taken to prevent any special health risks to which migrant workers may be exposed.

21. (1) Every effort should be made to ensure that migrant workers receive training and instruction in occupational safety and occupational hygiene in connection with their practical training or other work preparation, and, as far as possible, as part thereof.

(2) In addition, a migrant worker should, during paid working hours and immediately after beginning his employment, be provided with sufficient information in his mother tongue or, if that is not possible, in a language with which he is familiar, on the essential elements of workers and the prevention of accidents as well as on safety regulations and procedures particular to the nature of the work.

22. (1) Employers should take all possible measures so that migrant workers may fully understand instructions, warnings, symbols and other signs relating to safety and health hazards at work.

(2) Where, on account of the migrant workers' lack of familiarity with processes, language difficulties or other reasons, the training or instruction given to other workers is inadequate for them, special measures which ensure their full understanding should be taken.

(3) Members should have laws or regulations applying the principles set out in this Paragraph and provide that where employers or other persons or organizations having responsibility in this regard fail to observe such laws or regulations, administrative, civil and penal sanctions might be imposed.

C. Social Services

23. In accordance with the provisions of Paragraph 2 of this Recommendation, migrant workers and their families should benefit from the activities of social services and have access thereto under the same conditions as nationals of the country of employment.

24. In addition, social services should be provided which perform, in particular, the following functions in relation to migrant workers and their families -

(a) giving migrant workers and their families every assistance in adapting to the economic, social and cultural environment of the country of employment;

(b) helping migrant workers and their families to obtain information and advice from appropriate bodies, for instance by providing interpretation and translation services; to comply with administrative and other formalities; and to make full use of services and facilities provided in such fields as education, vocational training and language training, health services and social security, housing, transport and recreation: Provided that migrant workers and their families should as far as possible have the right to communicate with public authorities in the country of employment in their own language or in a language with which they are familiar, particularly in the context of legal assistance and court proceedings.

(c) assisting authorities and bodies with responsibilities relating to the conditions of life and work of migrant workers and their families in identifying their needs and in adapting thereto;

(d) giving the competent authorities and, as appropriate, advice regarding the formulation, implementation and evaluation of social policy with respect to migrant workers;

(e) providing information for fellow workers and foremen and supervisors about the situation and the problems of migrant workers.

22. (1) The social services referred to in Paragraph 24 of this Recommendation may be provided, as appropriate to national conditions and practice, by public authorities, by approved non-profit-making organisations or bodies, or by a combination of both. The public authorities should have the over-all responsibility of ensuring that these social services are at the disposal of migrant workers and their families.

(2) Full use should be made of services which are or can be provided by authorities, organisations and bodies serving the nationals of the country of employment, including employers' and workers' organisations.

26. Each Member should take such measures as may be necessary to ensure that sufficient resources and adequately trained staff are available for the social services referred to in Paragraph 24 of this Recommendation.

27. Each Member should promote co-operation and co-ordination between different social services on its territory and, as appropriate, between these services and corresponding services in other countries, without, however, this co-operation and co-ordination relieving the States of their responsibilities in this field.

28. Each Member should organise and encourage the organisation, at the national, regional or local level, or as appropriate in a branch of economic activity employing substantial numbers of migrant workers, or periodic meetings for the exchange of information and experience. Consideration should also be given to the exchange of information and experience with other countries of employment as well as with the countries of origin of migrant workers.

29. Representatives of all concerned and in particular of employers and workers should be consulted on the organisation of the social services in question and their co-operation sought in achieving the purposes aimed at.

III. EMPLOYMENT AND RESIDENCE

30. In pursuance of the provision of Paragraph 18 of the Migration for Employment Recommendation (Revised), 1949, that Members should, as far as possible, refrain from removing from their territory, on account of lack of means or the state of the employment market, a migrant worker regularly admitted thereto, the loss by such migrant worker of his employment should not in itself imply the withdrawal of his authorisation of residence.

31. A migrant who has lost his employment should be allowed sufficient time to find alternative employment, at least for a period corresponding to that during which he may be entitled to unemployment benefit; the authorisation of residence should be extended accordingly.

32. (1) A migrant worker who has lodged an appeal against the termination of his employment, under such procedures as may be available, should be allowed sufficient time to obtain a final decision thereon.

(2) If it is established that the termination of employment was not justified, the migrant worker should be entitled, on the same terms as national workers, to reinstatement, to compensation for loss of wages or of other payment which results from unjustified termination, or to access to a new job with a right to indemnification. If he is not reinstated, he should be allowed sufficient time to find alternative employment.

33. A migrant worker who is the object of an expulsion order should have a right of appeal before an administrative or judicial instance, according to conditions laid down in national laws or regulations. This appeal should state the execution of the expulsion order, subject to the duly substantiated requirements of national security or public order. The migrant worker should have the same right to legal assistance as national workers and have the possibility of being assisted by an interpreter.

34. (1) A migrant worker who leaves the country of employment should be entitled, irrespective of the legality of his stay therein -

(a) to any outstanding remuneration for work performed, including severance payments normally due;

(b) to benefits which may be due in respect of any employment injury suffered;

(c) in accordance with national practice -

i) to compensation in lieu of any holiday entitlement acquired but not used;

ii) to reimbursement of any social security contributions which have not given and will not give rise to rights under national laws or regulations or international arrangements: Provided that where social security contributions do not permit entitlement to benefits, every effort should be made with a view to the conclusion of bilateral or multilateral agreements to protect the rights of migrants.

(2) Where any claim covered in subparagraph (1) of this Paragraph is in dispute, the worker should be able to have his interests represented before the competent body and enjoy equal treatment with national workers as regards legal assistance.

APPENDIX 7

Table 3. Average annual cash wage current and real, and number of Africans employed in the gold-mining industry (1881-1966 = base year 1938 = 100. 1969-80 = base April 1970 = 100)¹

Year	Current rands	Real wage (rands)	No employed ('000s')
1885	72		6
1889	72	84	51
1906	68	80	81
1911	60	72	190
1916	65	70	204
1921	69	58	173
1926	71	67	182
1931	69	69	210
1936	71	75	297
1941	71	67	368
1946	88	67	305
1951	110	64	299
1956	133	64	336
1961	146	64	399
1966	183	70	370
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1969	199	209	371
1970	208	208	401
1871	221	209	386
1972	257	227	414
1973	350	282	422
1974	565	408	364
1975	948	602	365
1976	1103	631	361
1977	1235	634	422
1978	1420	656	456
1979	1669	675	479
1980 ²	1813	682	

¹ Cash wages only, not including payment in kind, which forms a considerable proportion of Black labour costs. In 1972 it was estimated that the value of payments in kind to Black workers was R589, of which food accounted for Resi. ² First quarter grossed up to annual data.

Sources: As for table 1; Bureau of Census and Statistics: Statistical year book, various issues; idem. Monthly Bulletin of Statistics (for consumer price index).

from Bohning, W.R. Black Migration to South Africa I.L.O.: Geneva, 1985, P.15.

APPENDIX 8

LABOUR AGREEMENT BETWEEN LESOTHO AND
SOUTH AFRICA (1973)

"Preamble

Whereas certain arrangements governing the employment of Lesotho citizens in the Republic of South Africa, the movement of persons across the international border, the documentation of Lesotho citizens and the establishment of border posts along the international border have been in existence since July 1, 1963; and

Whereas it is in the interest of both Governments that a Lesotho Government Labour Representative be stationed in the Republic of South Africa; and

Whereas it is considered necessary also to make sundry provision for additional matters affecting Lesotho citizens in the Republic of South Africa;

Now, therefore, the Government of the Kingdom of Lesotho and the Government of the Republic of South Africa have agreed as follows:

Article 1

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

- (c) The Labour Representative may appoint such staff to his office as he may reasonably require, provided that all such appointments shall be made only after consultation with the South African authorities.
- (d) The South African authorities shall, with due regard for South African legislation, assist the Lesotho authorities to acquire suitable office and residential accommodation for the Labour Representative and members of his staff.

Article II

- (a) The Labour Representative and such members of his staff as are citizens of Lesotho shall be accorded the following privileges and immunities while employed in the Labour Office as full-time government officials:
 - i) Inviolability of their offices and archives from search or seizure;
 - ii) Immunity from prosecution by the South African authorities in respect of acts committed in the exercise of their official functions;
 - iii) Protection of their residences; provided that the privileges and immunities set out in this and the two preceding sub-paragraphs may, upon written notice by the Government of South Africa to the Government of Lesotho be withdrawn in the case of an official who engages in activities which are in the opinion of the South African authorities, prejudicial to the security of the Republic of South Africa.
 - iv) Exemption from South African income and personal taxes, provided that such officials are not ordinarily resident in South Africa.
- (b) It shall be the duty of officials who enjoy the privileges and immunities referred to in paragraph (a) to respect the laws and regulations of the Republic of South Africa.

- (c) The South African authorities shall issue to the officials mentioned in paragraph (b) Identification cards, suitably inscribed, for the purpose of facilitating the implementation of the provisions of paragraph (a). The Lesotho authorities shall for the same purpose furnish the South African authorities with the names and residential addresses of all such officials..
- (d) Upon the completion of the tour of duty of the officials mentioned in paragraph (b) the Identification cards referred to in paragraph (c) shall be returned to the South African authorities.

Article III

- (a) The functions of the Labour Representative and his staff shall be as follows:
- i) Consultation with the South African authorities on the conditions of employment of Lesotho citizens in South Africa and matters relating thereto;
 - ii) Ensuring that employees from Lesotho comply with South African requirements concerning entry, identification and documentation, assisting, when necessary with such Identification and with applications for documentation and generally encouraging compliance with those requirements.
 - iii) Consultation with the South African authorities on matters affecting the welfare and housing of Lesotho citizens employed in South Africa or whose employment contracts have expired.
 - iv) Administering in consultation with the South African authorities, tax collections, deferred pay, family remittances and workers' welfare funds in respect of Lesotho citizens employed in South Africa.

- v) Assisting the South African authorities with the repatriation of sick, injured or destitute Lesotho citizens who are or were employed in South Africa and of other such citizens whose presence in South Africa is or has become unlawful;
 - vi) Encouraging Lesotho citizens in need of advice and assistance to utilize the facilities of the office of the Labour Representative;
 - vii) Consulting with the concurrence of the South African authorities, the employers concerned with regard to the attestation, repatriation and other matters relating to the employment of Lesotho citizens in South Africa.
 - viii) Providing at the request of the South African authorities, interpreters in matters involving Lesotho citizens employed in South Africa.
 - ix) Liaising with the South African authorities on behalf of Lesotho citizens employed in South Africa or their dependants in regard to workmen's compensation and pneumoconiosis claims by or on behalf of such citizens.
 - x) Any other function relating to Lesotho citizens in the Republic which may by agreement between the South African and Lesotho authorities be assigned to the Labour Representative or which are necessarily incidental to the proper discharge of the functions specified in this paragraph.
- (b) In order to discharge their functions, the Labour Representative and his staff shall, by arrangement with the South African authorities, be permitted access to the employers and places of employment of Lesotho citizens in South Africa.

(a) Regarding taxation:

- i) Lesotho citizens employed in South Africa shall be liable to pay taxes levied upon them by the Government of Lesotho and the primary obligation to pay such taxes shall rest upon the citizens concerned;
- ii) The South African authorities shall, however, endeavour to ensure that the employers of such citizens deduct such taxes at the rates prescribed by the Lesotho authorities from the wages of the employees and remit any monies so deducted to the appropriate Lesotho authority;
- iii) The South African authorities shall further endeavour to ensure that the employers of such Lesotho citizens give every assistance to Lesotho tax inspectors who may visit such employers from time to time to examine the nominal rolls of Lesotho taxpayers and generally shall endeavour to assist in the collection of taxes in respect of such citizens;
- iv) The fact of payment of such taxes shall be endorsed by the Labour Representative or his authorised deputy on the local passport of the citizen concerned.

(b) Where a contract of employment entered into in terms of the Addendum to this Agreement specifies that there shall be deducted from the wages of a Lesotho citizen employed in South Africa -

- i) deferred pay to be paid to such citizens in Lesotho upon his return thereto; or
- ii) allowances to be paid to his family residing in Lesotho; or
- iii) monies to be paid into a welfare fund which the Lesotho authorities may establish in Lesotho for the purpose of supporting such citizen

during periods of disablement upon his return to Lesotho;
the employer of such citizen shall make such deductions at the rates specified in the contract and shall pay to the Lesotho authorities the amounts so deducted in such manner and at such intervals not exceeding three months as the latter may request.

The South African authorities shall endeavour to ensure that employers carry out their obligations in this regard.

Article V

- (a) The engagement of Lesotho citizens for employment in South Africa shall not be permitted except in accordance with the provisions of the Addendum to this Agreement. The Labour Representative and his staff shall not canvass employers in South Africa for the introduction into South Africa of citizens from Lesotho.
- (b) The engagement of Lesotho citizens for employment in South Africa shall be subject to the availability of South African labour and may be regulated by the South African authorities accordingly.

Article IV

The Lesotho authorities shall establish suitable facilities at convenient places in Lesotho where Lesotho citizens can apply for employment in South Africa and where prospective employers or their authorised representatives can interview, select and engage such citizens and where the necessary processing of contracts and the documentation of recruits as well as their medical examination can be undertaken.

Article VII

Arrangements between the Lesotho authorities on the one hand and any recruiting organisation on the other pertaining to the recruitment of Lesotho citizens in Lesotho for employment in the Republic of South Africa, whether existing or new, shall be subject to the two respective Governments.

Article VIII

All persons entering or leaving either the Kingdom of Lesotho or the Republic of South Africa shall comply with the laws and regulations governing the admission to, residence in and departure from the two respective countries.

Article IX

- (a) As from the date of entry into force of this Agreement the arrangements in regard to the introduction of Lesotho citizens into South Africa and the movement of persons across the border between Lesotho and South Africa shall be those set out in the Addendum to this Agreement and the arrangements which entered into force on July 1, 1963, in this regard, shall lapse.
- (b) Such Addendum shall be deemed to form part of the Agreement.

Article X

- (a) Where either the Government of Lesotho or the Government of South Africa wishes to make representations to the other on matters arising out of this Agreement or its Addendum, such representations shall be made by an exchange of diplomatic Notes.
- (b) The appropriate authorities of Lesotho and of South Africa may nevertheless consult directly with one another in regard to the actual implementation of this Agreement and its Addendum and on routine administrative matters arising therefrom.
- (c) The South African authorities may also specially designate one or more senior government officials to liaise directly with the Labour Representative or with the appropriate authorities in Lesotho in regard to such implementation and such administrative matters.

Article XI

- (a) This Agreement shall come into force on the date of signature and shall be valid for an initial period of five years from that date. Thereafter it shall automatically be extended for periods of one year at a time but may be terminated by either Government giving twelve months written notice to the other Government of its intention to terminate it. Such notice shall be given through the diplomatic channel.
- (b) Notwithstanding the termination of this Agreement a contract of employment in existence at the date of such termination shall remain of force and run its ordinary course.
- (c) This Agreement may be amended by agreement between the two Governments and any amendment shall be effected by the exchange of diplomatic Notes between them.
- (d) This Agreement or any of its provisions may at any time be suspended by agreement between the two Governments and any such suspension shall be effected by the exchange of diplomatic Notes between them".

ADDENDUM

ARRANGEMENTS REGARDING PASSPORT CONTROL POSTS, THE EMPLOYMENT AND DOCUMENTATION OF LESOTHO CITIZENS AND THE MOVEMENT OF PERSONS ACROSS THE COMMON BORDER BETWEEN THE KINGDOM OF LESOTHO AND THE REPUBLIC OF SOUTH AFRICA

Article 1:

- (1) No person shall enter the Republic of South Africa from Lesotho or shall enter the Kingdom of Lesotho from South Africa, as the case may be, except through the passport control post established in the country of entry at one of the posts of entry specified in the annexure hereto: Provided that a citizen of South Africa or a citizen of Lesotho who needs to enter Lesotho or South Africa, as the case may be, periodically, may enter at such other place and under such

conditions as may be specified in his passport or other travel documents.

- (2) No person shall enter South Africa from Lesotho by rail (or enter Lesotho by rail) except through the ports of entry of Marseilles and Maseru, respectively.

Article 2

- (1) No person shall enter South Africa from Lesotho unless he has obtained the prior permission of where applicable the necessary visa from the appropriate South African authorities and has in his possession and produces to a passport control officer at a passport control post on the South African side of the border, the following documents:-

- (a) a valid passport, Lesotho local passport, or other travel document recognized by the South African authorities as a valid travel document;
- (b) an international Certificate of Vaccination against smallpox or such other vaccination certificate as may be prescribed by the South African authorities.

- (c) such other documents as may likewise be prescribed:

Provided that in respect of Lesotho citizens in a case of emergency or in respect of a visit for a period not exceeding fourteen days, the South African passport control officer concerned may at his discretion waive the requirement that prior permission for entry must be obtained from the appropriate South African authorities.

- (2) The passport control officer concerned shall endorse upon the passport or other travel document that the holder thereof is permitted to enter South Africa and the conditions as to the purpose, place and period of his sojourn.

- (3) In the case of a citizen of Lesotho referred to in the proviso to paragraph (1) of Article 1, the endorsement required in terms of paragraph (2) need be obtained only once in every six months.
- (4) The provisions of paragraph (3), shall apply also in the case of a citizen of South Africa referred to in the proviso to paragraph (1) of Article 1..

Article 3

A citizen of Lesotho who enters South Africa for the purpose of employment shall, in addition to the documents required in terms of paragraph (1) of Article 2, have in his possession and produce to the passport control officer referred to in that paragraph the following:

- (a) a written contract of employment attested in Lesotho in respect of a period of employment not exceeding two years; and
- (b) a duly completed set of fingerprints taken under the supervision of a Lesotho official in the form agreed upon between the Lesotho and South African authorities and signed by such official and dated by means of an official date stamp.

Article 4

An employer in South Africa, excluding the gold and coal mines represented by the Mines Labour Organization, the Natal Coal Owners Native Labour Organization or the Anglo Collieries Recruiting Organization, who wishes to introduce a citizen of Lesotho into South Africa for the purpose of employment, shall -

- (a) be permitted to do so only after he has obtained from the South African authorities a certificate indicating that he may recruit such citizens to a number stipulated in the certificate;

- (b) if he enters Lesotho to recruit such citizens, be in possession of a valid passport or other travel document from the South African authorities and produce it on demand to a Lesotho passport control officer at the port of entry;
- (c) advise the appropriate authorities in Lesotho at which places such citizens are to be recruited and obtain from those authorities permission to engage the citizens concerned;
- (d) pay to the Lesotho authorities such fees as may be prescribed by them in consultation with the South African authorities, and
- (e) enter into such written contract of employment in Lesotho as may be required by the authorities there.

Article 5

A Lesotho citizen who was in authorized employment in a specified area in South Africa, excluding the Western Cape, as at the date of the coming into operation of passport control between the two countries, that is to say July 1, 1963, shall not in such specified area be subject to the restriction of employment by one particular employer and to the two years maximum period of employment which apply in respect of engagements entered into after that date: Provided that this provision shall apply only in the case of Lesotho citizens who are in possession of valid local passports and can adduce proof that they are in such authorized employment, and only where no indigenous worker is available for employment in the place of such citizen.

Article 6

Any citizen of Lesotho who is found in South Africa and any citizen of South Africa who is found in Lesotho, as the case may be, and who is not in possession of documents authorizing his presence there, shall, upon his being identified as such a citizen, be liable to be dealt with according to the laws relating to prohibited persons applicable in the country in which he is found and repatriated to the other country and pending such identification and repatriation he may be detained by the authorities concerned.

Article 7

Lesotho citizens who wish to extend the period of a visit to the Republic of South Africa, shall apply to the appropriate South African authorities for such extension".

APPENDIX 9

Average Number of Black Workers on Gold Mines 1911-1980
(Members of the Chamber of Mines of South Africa)

Year	South African Migrants				Total South African migrants	Foreign Migrants					Total foreign migrants	All Migrants	
	Cape Province	Natal and Zululand	Orange Free State	Transvaal		Lesotho	Botswana	Swaziland	Mocambique	Others		Grand total	Percentage of foreign workers
1911	-	-	-	-	69 000	-	-	-	-	-	104 000	174 000	60
1921	-	-	-	-	73 000	-	-	-	-	-	114 000	188 000	61
1931	-	-	-	-	113 000	-	-	-	-	-	113 000	226 000	50
1939	-	-	-	-	155 000	-	-	-	-	-	168 000	323 000	52
1950	85 910	12 152	3 311	20 236	121 609	34 467	12 390	6 619	86 246	33 094	172 816	294 425	59
1951	77 263	13 312	2 841	19 676	113 092	31 448	12 246	6 322	91 978	31 602	173 596	286 688	61
1952	77 241	13 379	2 685	17 349	110 654	32 777	13 071	5 866	95 485	28 476	175 675	286 329	61
1953	79 676	13 458	2 543	15 041	110 718	30 843	12 135	5 988	91 637	27 006	167 609	278 327	60
1954	84 448	13 501	2 400	15 840	116 189	31 705	13 268	6 631	102 974	30 531	185 109	301 298	61
1955	89 444	13 184	2 762	15 984	121 364	36 332	14 195	6 682	99 449	36 276	192 934	314 298	61
1956	91 286	12 997	3 061	15 305	122 649	39 037	14 727	6 400	99 189	41 512	200 866	323 514	62
1957	87 152	12 509	3 183	15 011	117 855	38 586	15 749	6 507	103 008	42 876	206 726	324 581	64
1958	88 846	12 702	3 500	15 623	120 671	41 222	17 067	6 405	99 277	45 283	209 254	329 925	63
1959	102 141	14 189	4 388	17 357	138 075	48 896	19 219	6 766	103 125	53 945	231 951	370 026	63
1960	103 731	15 007	4 935	18 133	141 806	48 842	21 404	6 623	101 733	55 206	23 808	375 614	62
1961	107 372	15 198	5 425	18 610	146 605	49 050	20 216	6 784	100 678	65 012	241 740	388 345	62
1962	109 876	15 271	5 987	19 670	150 804	51 169	20 044	7 179	101 092	53 206	232 690	383 494	61
1963	109 270	14 388	5 979	20 412	150 049	52 279	19 947	6 688	89 694	55 301	223 909	373 958	60
1964	107 527	12 572	5 968	18 617	144 684	53 292	21 277	5 862	87 418	61 922	229 771	374 455	61
1965	104 603	10 482	6 506	14 960	136 551	54 819	23 630	5 580	89 191	59 390	232 610	369 161	63
1966	98 669	9 245	7 385	13 511	128 810	56 558	25 175	4 880	88 949	58 860	234 422	363 232	65
1967	97 308	8 505	7 628	13 421	126 862	57 853	21 507	4 800	91 797	50 379	226 336	353 198	64
1968	100 824	8 083	7 703	12 557	129 167	59 325	21 353	5 183	90 580	55 124	231 565	360 732	64
1969	96 277	7 452	7 610	10 980	122 319	59 661	19 571	5 586	88 117	59 560	232 495	354 814	66
1970	82 694	6 264	7 057	9 154	105 169	62 461	19 703	6 184	93 203	83 592	265 143	370 312	72
1971	68 384	5 090	5 205	7 189	86 868	64 056	20 498	5 640	95 430	98 055	283 679	370 547	77
1972	62 153	4 348	5 971	6 270	78 742	67 046	19 873	4 778	80 243	110 913	282 53	361 595	78
1973	64 125	4 105	6 646	6 499	81 375	76 403	20 352	4 826	83 390	112 480	297 451	378 826	79
1974	59 587	3 840	7 299	6 624	77 350	72 169	17 047	5 168	80 740	97 511	272 635	349 985	78
1975	75 374	5 691	10 535	9 953	101 553	75 397	17 440	7 356	91 369	28 731	220 293	321 846	69
1976	102 490	10 796	14 185	16 038	143 509	81 973	19 871	9 948	67 439	19 767	198 998	342 507	58
	White South Africa	Transkei	Bop- hutha Tswana	Other Home lands									
1977	50 410	87 952	-	50 744	189 106	92 026	20 267	9 335	36 922	25 812	184 3 2	373 468	49
1978	50 355	97 908	12 523	43 532	204 318	91 278	17 647	8 269	35 234	32 048	184 476	388 794	48
1979	51 138	103 721	12 692	47 726	215 577	94 379	17 645	7 976	38 995	24 551	183 546	399 123	46
early 1980+	51 180	115 106	12 407	53 062	231 755	98 028	17 672	8 047	34 467	24 123	182 337	414 092	44

*Granted 'independence' by South Africa
+Average over first three months (January-March).

Source: From 1950 onwards, Chamber of Mines of South Africa and author's calculations for selected earlier years, author's calculations based on table in S van der Horst.
Native Labour in South Africa, page 216-7.



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