



International liaison, dialogue and research

Reg no: 2006/020285/08

The Southern African Liaison Office (NPC)

Regus - Black River Park
1st Floor, Block B, North Park, Black River Park
2 Fir Street, Observatory, Cape Town, 7925

Email: info@salo.org.za
www.salo.org.za
@salo_info

Policy Brief

27 July 2022, Zoom Platform

Public Dialogue on Zimbabwe Ahead of the ANC Policy Conference

- By Resoketswe Tjie

SALO PUBLIC POLICY DIALOGUE ON ZIMBABWE AHEAD OF THE ANC POLICY CONFERENCE.
WEDNESDAY 27 JULY 11:00 - 13:00 (CAT)

@salo_info
 salo.org.za
 LIVESTREAM:
fb.com/saloinfo



MABEL SITHOLE
NELSON MANDELA SCHOOL
OF GOVERNANCE, UCT



BRAM HANEKOM
ACTIVIST



BERTHA CHIGVARE
PROGRAMME COORDINATOR,
LAWYERS FOR HUMAN RIGHTS



CO CHAIR:
BUSISIWE NXUMALO
SALO



PROF BRIAN RAFTOPOLOUS
SALO BOARD



LWAZI SOMYA
SALO



PHILLIP DEXTER
ACTIVIST



CO CHAIR:
MILISA MBETE
SALO

Executive Summary

On 27 July 2022, the Southern African Liaison Office, in partnership with the Olof Palme Centre, hosted a public dialogue on Zimbabwe ahead of the ANC Policy Conference. Speakers included Mabel Nederlof-Sithole, Nelson Mandela School of Governance, UCT; Bram Hanekom, Activist; Bertha Chiguvare, Programme Coordinator at Lawyers for Human Rights; and Phillip Dexter, Activist. The dialogue was chaired by SALO Research, Development, and Programmes Coordinator, Lwazi Somya and Research and Advocacy Officer, Busisiwe Nxumalo. Dr Brian Raftopoulos, SALO Board member, did the closing remarks.

The dialogue brought together representatives of national, regional, and international civil society as well as other relevant stakeholders to build consensus and solidarity with Zimbabweans and to discuss the upcoming ANC Policy Conference, the cancellation of the Zimbabwe Exemption Permit (ZEP), as well as migration challenges.

Context/Importance of the Problem

SALO held this dialogue to share different perspectives on the ANC Policy Conference and what should happen regarding potential policy changes of the ANC. In its capacity as the government with the current democratic mandate, the ANC sets the tone for South Africa's policy reference points and how it intends to proceed in the future. The migration issue has recently been at the forefront of the national conversation. The ANC has proposed a tightening of its migration policies.¹

Migration policies are currently in the spotlight in South Africa due to rising tensions between locals and foreign nationals as well as the non-extension of the ZEP. The Zimbabwean Exemption Permit expired in December 2021, with South African authorities stating that the permit will not be extended - affecting between 182,000 and 250,000 Zimbabweans living in the country. Cabinet announced on the 25th of November 2021 that ZEP holders will be granted a 12-month grace period wherein they *“should apply for other permits appropriate to their particular status or situation. Those who are not successful will have to leave South Africa or face deportation.”*² These tensions have become a threat to social cohesion as ongoing economic hardships and conflicts, among

¹ Plessis.C.(2022). ANC wants tighter citizenship laws to keep out ‘undeserving’ foreigners.29 July. Available:<https://www.businesslive.co.za/fm/fm-fox/2022-07-29-anc-wants-tighter-citizenship-laws-to-keep-out-undeserving-foreigners/> [29 July 2022].

²Washinyira, T. 2021. Cabinet announces Zimbabwe Exemption Permits will not be extended. Ground Up. 25 November. Available: <https://www.groundup.org.za/article/cabinet-announces-zimbabwe-exemption-permits-will-not-be-extended/>

other things, drive millions of people to leave their homes in search of a better future.

ANC Policy Conference

The ANC Policy Conference discussed many topics, including a variety of immigration-related issues. During the SALO dialogue, it was noted by some speakers that the ANC lacks clear immigration policies, which has influenced how it handles the issue, and there has been a resurgence of anti-migrant sentiments in South Africa. Several groups accuse migrants of exploiting the perception that foreign labour is less expensive and thus should be preferentially employed over citizens. This scapegoating of migrants has become more prominent with the rise of populist groups such as Operation Dudula and Put South Africa First. Many people in South Africa remain undocumented. The Department of Home Affairs has contributed to the problem by failing to assist asylum seekers and migrants who apply for documentation at their offices. The Department has indicated that a process will be implemented to identify and deport undocumented migrants.³

The cancellation of the Zimbabwe Exemption Permits

The dialogue highlighted how the Department of Home Affairs' decision to cancel the permits, effective December 2021 with a grace period until December 2022, will inevitably disrupt and increase the vulnerability of more than 170 000 families. The termination of the ZEP exposes thousands of people who have made South Africa their home, raised families, and built careers over the past decade, to either be forced to remain in the country as undocumented foreign nationals or to return to a Zimbabwe that is still economically and politically uncertain.⁴ As Mabel Nederlof-Sithole pointed out, "*without valid documentation, access to basic services such as banking, healthcare, education, and housing is jeopardised.*" Children will be removed from their schools, breadwinners will be unable to provide for their families, and those with housing loans may lose their assets if they fail to regularise their stay in South Africa.

Legal teams working with the African Diaspora Forum have also pointed out inconsistencies in the department's handling of the ZEPs. They argue that the department did not follow due process by cancelling the ZEP in December 2021, because the announcement was made without consulting affected interest groups, businesses, and civil society groups.

³ Radio786.(2022).Motsoaledi: ANC needs clear policy on immigration. 30 July. Available at: <https://www.radio786.co.za/motsoaledi-anc-needs-clear-policy-on-immigration/> [30 June 2022].

⁴ Daily Maverick. (2022). Termination of Zimbabwean Exemption Permits smacks of xenophobia, says Helen Suzman Foundation.21 June. Available: <https://www.dailymaverick.co.za/article/2022-06-21-termination-of-zimbabwean-exemption-permits-smacks-of-xenophobia-says-helen-suzman-foundation/> [21 June 2022].

Philip Dexter explains that the large migration of people into South Africa is a result of a domestic political crisis in countries of origin. Receiving such people differs from receiving people who are solely trying to trade, because people who come as refugees are fleeing a situation that they did not choose, and they are fleeing as a last resort, they are in a state of desperation. He highlighted:

“It is irresponsible to propose an administrative measure to remove these permits, given the very real challenge of what to do about people who have been living here under these permits.”

Framework for Human Rights Protection

South Africa's Constitution is regarded as one of the world's most progressive in the world. The Bill of Rights is extensive and the Constitution provides for the implementation of international treaties that provide a framework for the protection of these rights for all citizens of the Republic. Customary international law recognises a universal moral commitment to human rights treaties and South Africa has gone above and beyond the call of duty to ensure that its laws reflect these provisions. The ZEP cancellation and the requirement to apply for a new visa aligning with the department's review of all visas issued since 2004, do not uphold the protection of immigrants as set out in the Bill of Rights. At the moment, Zimbabweans are the only ones required to apply for new visas.⁵ Institutions tasked with implementing the Constitution under customary international law have a moral obligation to uphold these values in their communications and the policies they draw up, as well as to carefully consider the human toll these decisions will have. Mabel Sithole further highlighted:

“To clarify what might result in a violent crackdown along the borderline between Zimbabwe and Mozambique, it is crucial to understand cross-border movement realities. There is concern about the possibility of human rights violations as people attempt to cross the border for food or medical care”.

Tighter SA citizenship laws at Policy Conference

The ANC is teasing a range of proposals ahead of its policy conference, including tightening citizenship laws and reviewing naturalisation laws. The ANC has stated that any citizenship grant must be in the national interest and naturalisation laws must be overhauled. With no overarching immigration policy, gaps were left in the immigration

⁵ News24.(2022). This is going to cause chaos in SA: Fears expressed over Zimbabwe Exemption Permit cancellation.27 June. Available:<https://www.news24.com/news24/southafrica/news/this-is-going-to-cause-chaos-in-sa-fears-expressed-over-zimbabwe-extension-permit-cancellation-20220626> [27 June 2022].

system, resulting in abuse and contradictions. At present, there is no distinction between refugees and asylum seekers, resulting in the cancellation of permits by the government.⁶

Bram Hanekom identified that those who have fled their countries because they cannot survive are not covered by the Refugee Act. In reality, such individuals are referred to as economic migrants and are often accused of taking advantage of a variety of documentation systems, including asylum seekers' permits, which are backed up, and the refugee determination process is overflowing with applicants.

Deportation and arrest of Zimbabweans in SA

The South African authorities have deported about 89 000 undocumented immigrants to Zimbabwe after they were arrested upon trying to cross the border. The mass emigration from Zimbabwe to South Africa is driven largely by chronic unemployment and extreme poverty in Zimbabwe.⁷ There is a lot of pressure on the government due to the rise of populism and xenophobia attitudes within the country. The dialogue highlighted that deporting and jailing undocumented immigrants is impractical and a waste of money. Bram expanded on this point:

“while somebody's in jail in South Africa, they are being fed, they're being accommodated, they are being supported by the South African government anyway, so it is illogical to say ‘we'll arrest the 50,000 or 100,000 Zimbabweans who we find are still coming back after being deported and we will put them in jail.’”

He believes that the deportation and arrest of undocumented immigrants are completely impractical and unachievable for our government to implement. This will create a crisis that our country cannot handle. Another massive problem that needs to be addressed is the data from the Department of Home Affairs that indicated a pattern of undocumented migrants who re-enter South Africa after being deported within six months. Most of these returnees are from SADC countries. This phenomenon implies that the deportation process does not have much preventative effect. If irregular migrants are not stopped by their experience of deportation, the process becomes redundant.⁸

⁶ News24.(2022). ANC branches to mull tighter SA citizenship laws at policy conference. 26 July. Available at:<https://www.news24.com/news24/southafrica/politics/anc-branches-to-mull-tighter-sa-citizenship-laws-at-policy-conference-20220726> [26 July 2022].

⁷ Capetalk.(2022). 'SA's deportation policy of Zimbabweans addresses symptoms, not causes. 10 Jan. Available at:<https://www.capetalk.co.za/articles/436189/sa-s-deportation-policy-of-zimbabweans-addresses-symptoms-not-causes> [10 January 2022].

⁸ Jackson, J., Hoque, M., 2022, 'Effective Management of Deportation of Undocumented Migrants from South Africa', in M. Mohiuddin et al. (eds.), Leadership in a Changing World - A Multidimensional Perspective, IntechOpen, London. 10.5772/intechopen.101768. Available at: <https://www.intechopen.com/chapters/80453>

Immigrant crime narratives

The narrative that deporting or removing a large number of foreign nationals to reduce crime in South Africa is untrue and will not help the situation at all. Data published by state authorities contain insufficient information about perpetrators' identities to establish a clear relationship between international migration and crime rates in the country.⁹ It is unlikely that getting rid of foreign nationals will have a materially improved effect on crime prevention in South Africa.

Why South Africa decided to implement the policy of the ZEPs

Bertha Chiguvare articulated, considering the cancellation of the ZEP, that it is imperative to examine the initial reasons for its implementation in 2009. *"It's actually due to some of the realities that the Zimbabweans were faced with and also how South Africa chose to manage [the] migration issue."*

The ZEP was introduced by South Africa and allowed Zimbabweans to live and work there. The ZEP was issued after a call to all Zimbabweans living in the country, whether documented or undocumented, to come forward and regularise their stay. There were three classes of permits issued: one for work, one for business and one for study. Work permits allowed Zimbabweans to seek employment without going through a rigorous process of eliminating alternative candidates. The business permit allowed Zimbabweans to set up businesses without being required to first invest R5 million in South Africa, and the study permit was a permit that allowed Zimbabweans to live and study in South Africa until the end of their studies.¹⁰

She concluded that improved inter-agent, inter-government, and inter-departmental coordination is required to address the challenges associated with Zimbabwean migration. She also posed the questions:

- *"Is it humane to force people to leave?"*
- *"What other parties will be involved? We will be dealing with a situation in which people who were forced to leave will return, face the soldiers, and face the new border guards; is this sustainable in terms of the costs, and the costs associated with the South African government?"*

⁹ 7-Gordon, S.L. (2022). Immigration Policy in South Africa: Public Opinion, Xenophobia and the Search for Progress. In: Rugunanan, P., Xulu-Gama, N. (eds) Migration in Southern Africa. IMISCOE Research Series. Springer, Cham. Available at: https://link.springer.com/chapter/10.1007/978-3-030-92114-9_5#citeas

¹⁰ Mail & Gaurdian.(2022).Zimbabweans and the ZEP. 02 June. Available at:<https://mg.co.za/africa/2022-06-02-zimbabweans-and-the-zep/> [02 June 2022].

- *“What are the African Union and SADC doing about it?”*
- *What are we doing as member states [of SADC and the AU] to address the real causes, real scenarios, and political, economic, and social instabilities that exist in Zimbabwe?”*
- *“What are the progressive responses or measures that can be implemented to address the Zimbabwean situation or the humanitarian crisis, if you will? And will returning people, deporting them, and arresting them be the only solutions?”*

Critique of policy options

- The impracticality of the measures to cancel the ZEP is simply not going to work.
- Putting a time limit on the permit is inhumane and exacerbates the problem. It creates significant uncertainty and will have significant humanitarian consequences for permit holders.
- Arresting and deporting undocumented immigrants is also impractical because deportation will cost at least R5000 per person.
- Jailing undocumented Zimbabweans is not an option in South Africa, and deporting them is a waste of money because they will return.
- South Africa's immigration policies will cause remittances to its neighbouring countries to decline dramatically, pushing people back into extreme poverty, especially those at the low end of the income distribution.
- The immigration policies are fueling the already present xenophobia in South Africa.

Policy Recommendations

- The extension of the permits should be fought for.
- Policies should be investigated that will ensure that people who stay in the country for a long enough period are considered eligible for permanent residence and citizenship.

- Efforts and interventions that will result in long-term peace, stability, and development in Zimbabwe, Lesotho, and other neighbouring countries should be increased and intensified.
- Migrants need to write to the Department of Home Affairs individually and inform them of their cases so that the department can address the issue. If the majority of people do not write to the department or respond to the emails that were sent to them, the department will assume that people have moved to other visas or relocated to Zimbabwe or other countries.
- The authorities should be asked to go into all the schools that have students from Zimbabwe, interview them, speak to them, and find out how they feel about the entire move.
- A position paper should be drafted and submitted to the policy conference together with an op-ed piece and a couple of articles that can be published in newspapers and on social media.
- It would be appropriate to have some kind of demonstration or picket. If it cannot be done at the policy conference itself, an appropriate venue, perhaps the Department of Home Affairs, should be chosen.
- Once the position paper is completed, it should be submitted to SADC to be discussed with the working group that deals with migration issues in the region.

Questions and Comments From the Participants

- **Nggabutho Mabhena** made the following comment: *“What we are dealing with currently, which we need SALO to assist with, is to say how do we accommodate workers that might not be able to renew their permits? Because these permits, in terms of the grace period, expire on the 31st of December 2022, meaning on the first of January 2023 bank accounts will be closed.”*
- **Sandy:** *“My application was made last year when they asked us if we would migrate, and now that it's July, I haven't heard anything. I emailed to inquire about my waiver but received no response. The Minister is the one who will decide on it. The system of saying people can migrate does not work, it does not help us.”*

And

- *“For that certificate, you must go through the Department of Labour. When they*

say they want a person to show that [they] have certain skills that a South African does not have, that is next to impossible. I've tried it several times, but nobody qualifies to get that. What abilities does a domestic employee possess? It's similar to a general work visa in the form of critical skills. They are saying exactly that. In light of this, it is absurd to claim that Zimbabweans can migrate when they are aware that no one is permitted to apply. Even though my bosses tried their hardest and I tried several times, you cannot obtain that labour certificate.”

And

- *“Another point that I'm going to raise is the children. I've got a 12-year-old, whom I've started preparing to say, 'You know what, my son, the reality that I'm faced with, even my employers have told them, this is my reality. I want to be in this country, but I cannot afford to be legal. He says to me, 'Mommy, what does that have to do with me? Imagine you pulling me out of my friends from school'. And I've listened to my son sharing his version of all this, how it's affecting him. It's a child who doesn't know anything that is happening, and I stopped to think how many more children are going to be affected by this whole move. How do you uproot a child to take him back to Zimbabwe, where he's visited one or two times during holidays, and then you expect that child to start all over?”*
- **Questions from the chat:** *Dr Chikwanda states that “recently the electronic media reported a constitutional court ruling, which provided that children born in South Africa to foreign parents qualify for South African citizenship upon turning 18. If this is true, how do they see this playing out especially given that the said children should have continuously stayed in the Republic until they turn 18?”*
- **Tlamelelo:** *“Bertha raised a very important point around [what] SADC and its member states are doing to address migration issues and causes of migration. This question must also be extended to NGOs, CSOs, etc. We need a collective pressure to ensure that countries are addressing economic, political and social instability in our countries, which are starting [to mean] people having to leave their homes for greener pastures.”*
- **Mabel Nederlof Sithole:** *“From the speakers, it's clear that raising immigration issues in populist language and applying policies that are not necessarily based on evidence are counter-productive, and that more research should be done to assess the impact it will have on the economy and communities of South Africa, and to ensure that South Africa remains a moral leader, not just because it upholds core values within its Constitution, but also due to how it defines and applies policies domestically, regionally, and internationally. There is a link between all of these areas.”*

And

To clarify the question by Dr Chikwanda, who raised the point about a Constitutional Court ruling

- *“What I have seen is that there was a judgment issued, which said that if foreigners who are married to South Africans or permanent residents terminate their relationships with their spouse, especially when they have children together that were born in South Africa, they may not have to leave the country, as was the previous regulation under the Immigration Act.”*

Conclusion

This dialogue brought forward many vital issues and talking points for further discussion. The speakers and participants made it clear that this is not the end of the migration discussion and that foundational principles of the Freedom Charter are being challenged. It is necessary to place human rights debates firmly at the centre of the debates once more. A central takeaway from this dialogue is that migration is not a new phenomenon. It has historically been a long-term issue in this part of the continent, but it is now being built in increasingly narrow terms. There is incisive criticism of the impracticality of the measures to cancel the ZEP, which simply will not work. Migrants will return, there will be increased corruption and violence at the borders, and migrants who are desperate for work will be criminalised. A larger focus should be placed on an alternative narrative of solidarity, and parties that once led the liberation movements should be challenged on the regressive narratives that have started to take precedence. This is because there will be an increased expression of nationalism, xenophobia, and authoritarian politics. This does not address the broad demands and the broad needs of our citizenry as a whole.

The analysis and recommendations included in this brief do not necessarily reflect the view of SALO or any of the donors or conference participants, but rather draw upon the major strands of discussion put forward at the event. Participants neither reviewed nor approved this document. The contents of the report are the sole responsibility of SALO, and can under no circumstances be regarded as reflecting the position of the donors who provided financial assistance for this policy dialogue session.

About the Southern African Liaison Office:



The Southern African Liaison Office (SALO) is a South African-based not-for-profit civil society organisation which, through advocacy, dialogue, policy consensus and in-depth research and analysis, influences the current thinking and debates on foreign policy especially regarding African crises and conflicts.

*SALO would like to thank the Olof Palme International Center
for their direct support of this event*

