

South Africa's Migration Policy Review: The Human Security Impacts



- *By Ineke Stemmet, SALO*

Executive Summary

The Southern African Liaison Office (SALO), in partnership with the Norwegian People's Aid, hosted a dialogue on South Africa's migration policy review and the human security impacts thereof. This policy brief provides a concise overview of the insights and key takeaways from a high-level dialogue convened to discuss pressing issues related to governance and human rights in South Africa. The dialogue featured

prominent speakers and respondents, each offering their expertise and perspectives on these critical matters. Speakers included **Naseema Fakir**, Director of Legal Programmes, Helen Suzman Foundation; and **Mabel Nederlof Sithole**, Leadership and Governance Specialist. Respondents included **Lucian Segami**, National Education, Health, and Allied Workers Union (NEHAWU) International Relations Secretary and SALO Board Member; and **Corlett Letlojane** Executive Director, Human Rights Institute of South Africa. The dialogue was chaired by Lwazi Somya and Munjodzi Mutandiri (SALO).

Somya gave a historical context to the dialogue; from the historic migrations in Southern Africa during the 15th and 16th centuries to the establishment of modern borders, migration has been a fundamental aspect of the region. It served various purposes, including expanding cattle farming to fleeing conflict and famine, ultimately shaping the fabric of Southern Africa.

However, significant shifts occurred with the introduction of colonial borders and the discovery of resources in Gauteng, primarily diamonds and gold. The Berlin Conference of 1886 played a pivotal role in creating these borders, while the Gauteng region's gold discovery altered the dynamics. Migration was initially associated with the mining industrial complex but evolved into a regional phenomenon – this system has been entrenched within the Southern African region, with South Africa's neighbouring countries migrating to mining areas. People moved to labour hubs like Johannesburg and other productive centers to support their livelihoods and societal progress.

This shift recognised that migration was essential for sustaining the capitalist industrial complex and fostering economic growth. It became clear that South Africa's prosperity relied on collaboration with regional populations. Today, as we consider migration in the 21st century and its implications within the African Continental Free Trade Agreement (AfCFTA), promoting people-to-people interaction, regional migration, and skill sharing are crucial for the region's development.

Context/Importance of the Problem

At the African National Congress' (ANC) 55th national conference in 2022, several recommendations concerning migration were announced. These recommendations

included the need for reforms in the National Migration Act, the National Asylum Seekers Act, and the National Immigration Act.¹ Additionally, there were suggestions regarding South Africa's adherence to international protocols, such as the UN Convention on Refugees and Immigration. This presents a complex situation as South Africa appears to be tightening its borders, while the aspirations of the African Continental Free Trade Agreement emphasise the importance of greater people-to-people migration.

Furthermore, the rise of right-wing vigilante groups within South Africa, such as Operation Dudula² and Put South Africa First³, has infiltrated mainstream political discourse. Political parties like Put South Africa First and Action SA have adopted highly anti-migrant positions within South Africa's politics, exacerbating social tensions, particularly among the working class in townships. This has filtered into mainstream political thinking as well, with dominant political parties afraid to make pro-immigrant commentary⁴. In situations of conflict, those perceived as outsiders, in this case, migrants, often bear the brunt of social violence and inequality. This situation underscores the pressing need for a balanced and inclusive approach to migration policy in South Africa.

The Zimbabwe Exemption Permit

Naseema Fakir explained why the Helen Suzman Foundation (HSF) became involved in the legal matter of the ZEP (Zimbabwean Exemption Permit). HSF believes that the decision to terminate the permit was made without due consideration. HSF does not contest the idea that the permit could be terminated but rather argues that the decision

¹ Maphanga, C. 2022. ANC proposes a migration policy framework to improve the immigration system. SABC News. Available: <https://www.sabcnews.com/sabcnews/anc-proposes-a-migration-policy-framework-to-improve-the-immigration-system/>

² Mueni, T. 2022. What is Operation Dudula, South Africa's anti-migration vigilante? Al Jazeera. Available: <https://www.aljazeera.com/features/2022/4/8/what-is-operation-dudula-s-africas-anti-immigration-vigilante>

³ IOL. 2022. #PutSouthAfricaFirst movement causing alarm with xenophobic sentiment. Available here: <https://www.iol.co.za/capeargus/news/putsouthafricafirst-movement-causing-alarm-with-xenophobic-sentiment-6d917a50-69a4-46fe-9fbb-8a081452df61>

⁴ Landau, L. B., and Misago, J. P. 2022. Rising xenophobic violence vigilantism in South Africa is reaping fruits of misrule. *Daily Maverick*. Available: <https://www.dailymaverick.co.za/article/2022-04-05-rising-xenophobic-vigilantism-in-south-africa-is-reaping-the-fruits-of-misrule/>

lacked adequate consideration of human rights and the potential impact on the 180,000 ZEP holders and their families.

HSF's main contention was that the Minister of Home Affairs had decided irrationally and impulsively, without engaging in proper consultation with the ZEP holders. Therefore, the foundation's involvement in the matter aimed to ensure that there was a more considered and consultative process before any decision regarding the ZEP permit termination was finalised.

One of the critical concerns highlighted by HSF was the challenging situation faced by children affected by the ZEP permit termination. Naseema Fakir explained that they raised questions about where these children would attend school, how they would access healthcare, and where they would find suitable living arrangements. What compounded this issue was the apparent lack of substantial discussions between the South African Minister and his Zimbabwean counterpart. This absence of meaningful dialogue created a climate of panic and uncertainty, leaving 180,000 families on the brink of being relocated across the border without clear provisions to protect their rights and well-being.

The legal proceedings took place on April 14th, and HSF received the judgment on June 28th. HSF faced significant media attention throughout this time regarding the anti-migration sentiment and encountered pushback, including threats from groups like Operation Dudula and Put South Africa First.

The judgment, delivered at the end of June, ruled in the favor of HSF. The Minister's decision to terminate the ZEP permit was set aside. Subsequently, the Minister was granted a year to conduct a public consultation process involving all interested parties. This extended beyond just ZEP holders to include businesses, South Africans, and anyone with an interest in the cancellation of the ZEP. Following this comprehensive participation process, the Minister is then tasked with reevaluating the decision. What this means is that, until June 2024, while the Minister completes this process, the ZEP permit remains valid and in effect.

Following the judgment received on June 28th, the situation has evolved. The Minister has chosen to appeal the decision to the Supreme Court of Appeal (SCA). It is important to note that the Minister is appealing all of the orders made in the judgment; essentially, he is appealing the entire judgment. In response, HSF is preparing to enter

this legal matter to oppose the appeal. This means it will actively defend the judgment and the orders that were issued, as it believes in the merits of the case and the importance of upholding the rights and interests involved.

Migrant Rights

Mabel Nederlof-Sithole started her input by pointing out the rights of migrants and how these are often infringed upon:

“Migrants are entitled to the respect of their human rights by host countries. Although there are clear human rights linkages, migrants and refugees are often on the periphery of effective international protection.”

There are significant human rights challenges faced by migrants from West African countries seeking to reach Europe through North Africa. Reports from the International Organization for Migration highlight that younger and male migrants are particularly vulnerable to experiences such as unpaid or forced labour and being held against their will.

In Tunisia, there has been a troubling rise in racist policies and actions targeting African migrants. Recent reports from Human Rights Watch document serious abuses committed by Tunisian authorities, including the police, military, the National Guard, and the Coast Guard, against black African migrants, refugees, and asylum seekers. These documented abuses encompass a range of violations, including beatings, the use of excessive force, instances of torture, arbitrary arrests and detention, collective expulsions, perilous actions at sea, forced evictions, and theft of money and valuables belonging to migrants.

The escalating issue of human displacement within Africa is a pressing concern, and South Africa, as a host country, continues to receive migrants from various parts of the continent and the world. However, the support from states, particularly those that are already grappling with their own national, political, social, and economic challenges, appears to be diminishing. Some states are either unwilling or unable to effectively manage large foreign populations in addition to their existing domestic difficulties. Analysts within South Africa have argued that certain aspects of the Migration Policing

Policy, which originated during the apartheid era and continued post-1994, have retained an intrusive and extensive internal military-style approach, particularly concerning migrants. This perspective suggests that some elements of the policy have persisted in their enforcement tactics, resembling the heavy-handed methods employed during apartheid, despite the political changes that followed in 1994.

Recent actions taken by the police minister, including launching raids and roadblocks to identify foreign nationals without documents or permits, have been framed as efforts to address high crime rates. These actions seem to assume that foreigners are the primary perpetrators of crimes in South Africa. However, research conducted by the Institute for Security Studies suggests that police evidence indicates that the majority of criminals in South Africa are, in fact, South African citizens. Furthermore, this trend of attributing blame to foreign nationals contradicts statements made by the police minister himself in 2022. At that time, he stated that over half a million South Africans were incarcerated in the country's 243 prisons, which implies that immigrants are not disproportionately involved in criminal activities compared to South Africans.

These actions are reminiscent of the Aliens Control Act 96 of 1991, which was employed by the apartheid regime to regulate the entry of foreigners into South Africa. The historical context underscores the importance of addressing issues related to migration, crime, and law enforcement in a balanced and evidence-based manner, rather than resorting to discriminatory or prejudiced measures.

Despite the existence of both international and national policies, the application of the law and policies in South Africa does not always align with the principles enshrined in the country's constitution. This inconsistency between policy and practice is evident in various areas, including education.

The right to basic education is considered a fundamental human right, and this right extends to refugees, asylum seekers and undocumented or stateless individuals in South Africa. However, in practice, individuals from these groups often encounter barriers when attempting to access education. One of the primary barriers relates to documentation. In cases where individuals lack the necessary documentation, such as birth certificates, children may be denied access to schools.

South Africa's challenges in managing migration and refugee issues are indeed unique compared to countries where migrants or refugees are often placed in designated

housing or residence areas, including refugee camps. South Africa has taken a different approach by adopting a progressive policy that encourages migrants and refugees to integrate into society, with access to basic services and a broad spectrum of human rights, similar to citizens and non-citizens. The progressive policy framework itself reflects a commitment to human rights principles and inclusivity. However, the significant gap lies in the application and implementation of these laws and policies.

The African National Congress

The ANC, as articulated by its National Executive Committee member David Mahlobo, has recognised the need for a comprehensive overhaul of migration laws in South Africa. This acknowledgement stems from decisions made by the party's Peace and Stability Commission during the 55th National Elective Congress. The ANC has taken several significant stances:

1. **Rejection of Xenophobic Acts:** The ANC has affirmed that it does not support xenophobic acts of violence or any form of institutionalized xenophobia against foreigners residing in the country. This position underscores the commitment to fostering a more inclusive and tolerant society.
2. **Clarity in Law Enforcement:** There is a recognition that there needs to be clearer provisions in how law enforcement entities handle asylum seekers, immigrants, and refugees. This aims to ensure that the rights and well-being of these individuals are protected within the legal framework.
3. **Alignment of Migration Laws:** The ANC acknowledges the existing disconnect between various policies and laws in South Africa, including the Immigration Act and the Refugee Act. The agreement is that these laws should be brought into alignment with international instruments that inform their drafting, particularly the Refugee Act. This alignment is intended to promote the integration of migrants and foreign nationals in a manner that respects their dignity and human rights.

While these steps are indeed progressive, they also represent a complex undertaking. Engaging with the United Nations to address the assumptions underlying migration laws and ensuring the dignified integration of migrants and foreign nationals within South Africa is a multifaceted challenge that requires careful consideration and collaborative efforts. Nonetheless, this recognition by the ANC marks a significant step

toward addressing the complexities and improving the legal framework surrounding migration in the country.

The Trade Union Movement

Lucian Segami added that the trade union movement in South Africa, as a civil society organisation, strongly believes in the right to administrative justice. This belief is rooted in the understanding that administrative justice plays a crucial role in ensuring that government decisions regarding migrants are fair, transparent, and accountable.

When migrants encounter bureaucratic, adverse, or unfair treatment, whether from the police or other authorities, it not only affects their lives but also reflects on the nation's commitment to upholding human rights and the rule of law. It is essential to recognise that migrants are not just statistics or numbers; they are human beings with their own aspirations, families, and histories. This perspective emphasizes the importance of treating migrants with dignity and respect, upholding their rights, and ensuring that administrative processes are just and equitable.

The recent judgment on the ZEP underscores a critical point that the government should recognise: collaboration and dialogue among governments, civil society, and international organizations are essential in addressing the challenges associated with migration. This collaborative approach is vital for fostering a comprehensive response that takes into account the various dimensions of migration. Furthermore, it is important to emphasise the development of policies that not only address security concerns but also respect the rights and dignity of migrants.

“South Africa—as the ZEP judgment highlights—has to strive to strike a balance between the enforcement of immigration laws and the upholding of the rights and dignity of migrants, including international law.”

Acknowledging the concerns of citizens and ensuring that migration policies take those concerns into account is an important aspect of fostering a balanced and inclusive approach. Migration policy must not be perceived as neglecting the needs of the South African population. Instead, these concerns should be addressed in a way that promotes understanding and garners support for a more inclusive migration policy.

Advocating for Migrant Rights

Corlett Letjoane emphasised that the recent judgment can be seen as another valuable instrument or tool that advocates for migrants' rights in South Africa can utilise

in their efforts. It aligns with the advocacy for South Africa to implement resolutions that have been pushed for adoption at the African Commission on People's Rights.

One of these resolutions calls for South Africa to protect the lives and properties of migrants, refugees, and asylum seekers within its borders, as well as to prosecute those responsible for violating their rights.

The lack of political will to effectively address the challenges faced by migrants in South Africa is a significant concern. While the country has progressive laws and policies in place for migrants, including asylum seekers and refugees, there are troubling aspects to the implementation of these measures.

When people arrive in South Africa, whether fleeing persecution or seeking better economic opportunities, their immediate needs for basic human dignity, livelihoods, shelter, and support should be a top priority. However, the government's existing reporting centres, where individuals must report within 14 days, often do not adequately cater to these essential needs. The environment in these centres can be negative and non-enabling, lacking the solidarity and empathy needed for individuals who arrive in a country populated by fellow Africans.

The lack of understanding among people in South Africa regarding the situations in neighbouring countries like Eswatini, Zimbabwe, Kenya, Angola, and others is a common challenge in many regions. It can contribute to misunderstandings, misperceptions, and sometimes even stereotypes about the circumstances and challenges faced by people from these nations.

Strengthening mechanisms within the Southern African Development Community (SADC) region, such as the SADC National Point, is a valuable step towards addressing migration issues more holistically and comprehensively. This approach encourages collaboration and cooperation among SADC member states and enhances the region's capacity to effectively manage migration and its associated challenges.

Comments and Questions:

Miriam Saohatse (ANC): *“But I also want to say maybe it is time - and I know that there are various platforms and forums and committees that have been established - to monitor the application of the policy, and I've put my hand up to say, maybe out of*

this platform, we need a dedicated team of people. I have time on my hands, so I can be part of that team, that on a regular basis, visit some of these health centres, especially the ones that have been identified as being problematic. So, I'm just saying, let's really make this a practical thing of once or twice a week, we're able to truly visit either a centre. Some of these centres are where migrants arrive and expect to be housed in government facilities, how many of us have been to those facilities, just to see with our own eyes, the conditions and to interact?"

Aletta Mzimela: *"Good day, everybody. My name is Aletta Mzimela. I'm a retired social worker.*

I just needed to add emphasis on what Miriam has said. I have worked extensively within the communities for over 33 years. One of the issues that we find when it comes to the issues of migration is that there's a lack of understanding in terms of the legislation, in terms of the treaties, as well as in terms of policy implementation. So, I will buy into the issue that while we look at the human rights issues of migrants and all others, we need to also be taking our communities along in terms of educating them. There's a lack of understanding. My suggestion would be to support what Miriam has been saying, that we need a whole-scale education. Maybe if we bring the communities on board in terms of understanding, we will be able to deal with these anti-migrant issues."

Policy Critiques and Policy Recommendations

South Africa's approach to migration reflects a progressive stance on paper, but in practice, several areas warrant critical examination and improvement. This policy brief highlights key areas of concern and offers recommendations for a more effective and humane migration policy:

1. Policy-Practice Gap:

- *Critique:* South Africa's migration policies often do not align with their practical implementation, leading to significant disparities between what is promised on paper and the experiences of migrants on the ground.
- *Recommendation:* Bridge the gap between policy and practice by ensuring that laws and regulations are effectively enforced and aligned with international human rights standards.

2. Treatment of Asylum Seekers and Refugees:

- *Critique:* While South Africa is praised for not confining refugees and asylum seekers to camps, the conditions at government reporting centres are often deplorable, failing to provide adequate shelter, dignity, and support.

- *Recommendation:* Improve the facilities and conditions at reporting centres to meet the basic needs of asylum seekers and refugees, fostering an environment of dignity and respect.

3. Public Awareness and Understanding:

- *Critique:* There is a significant lack of public awareness and understanding among South Africans regarding the situations in neighbouring countries and the challenges faced by migrants.
- *Recommendation:* Launch awareness campaigns, educational programs, and cultural exchanges to enhance public knowledge and empathy regarding regional and global migration issues.

4. Political Will:

- *Critique:* A lack of political will hampers effective policy implementation, making it challenging to address the rights and needs of migrants adequately.
- *Recommendation:* Encourage political commitment and leadership to ensure that policies are translated into meaningful actions that uphold migrants' rights and well-being.

5. Collaboration with SADC:

- *Critique:* South Africa's role within SADC is pivotal, yet there is room for improvement in regional collaboration on migration matters.
- *Recommendation:* Strengthen mechanisms within SADC, such as the SADC National Point, to facilitate regional cooperation, information sharing, and policy harmonisation for more effective migration management.

6. Addressing Citizen Concerns:

- *Critique:* While migrants' rights are a crucial consideration, South Africa must also address the concerns of its citizens to foster a more inclusive and supportive migration policy.
- *Recommendation:* Engage in open dialogues with citizens and stakeholders to better understand their concerns, aiming for policies that balance security and the protection of migrants' rights.

Conclusion

South Africa's migration policy stands at a pivotal juncture where intentions must align with practical implementation. This brief offers key insights and opportunities for improvement in the nation's approach to migration. Acknowledging the deep historical roots of migration within Southern Africa is vital. Migration has evolved into a regional phenomenon that fosters economic growth, regional integration, and societal progress.

Recent commitments by the ANC mark significant progress. Rejecting xenophobia, seeking clearer law enforcement provisions, and aligning migration laws with international instruments demonstrate a move toward addressing migration complexities. The recent Zimbabwe Exemption Permit (ZEP) judgment emphasises the importance of balanced immigration enforcement and upholding migrants' rights.

However, migrants and refugees face significant human rights challenges in South Africa, including forced labour, detention, torture, and racist policies targeting African migrants. South Africa's unique integration-focused approach to hosting migrants is progressive in theory but faces implementation challenges. Addressing these issues is essential.

Key critiques and recommendations call for bridging the policy-practice gap, improving conditions for asylum seekers and refugees, enhancing public awareness, fostering political will, strengthening regional collaboration, and addressing citizen concerns. By addressing these challenges, South Africa can fulfill its commitment to a more effective, inclusive, and humane migration policy.

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.

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