

SOUTH AFRICAN MIGRATION POLICY AND MIGRANT RIGHTS, 27 YEARS POST-INDEPENDENCE. HAS IT WORKED OR NOT?

By Tawanda Matema

When the freedom charter was formally adopted in 1955 apartheid South Africa, it was a declaration of a free and peaceful society. The charter proclaimed, '[South Africa belongs to all who live in it](#)' and it was rooted in the spirit of fostering cooperation, peace and a respect for equal and basic human rights for all persons living in the country. But is there a place for the respect of African migrants' human rights, 27 years into independence?

The challenge is in the migration policy framework and implementation process. According to the International Organization for Migration (IOM), one of the major challenges that South Africa faces is '[inadequate migration management policies and border management processes](#).'

The South African migration policy framework is influenced by three factors. First, the country inherited a reclusive policy framework from the apartheid era that was not accommodative of migrants. According to Crush, during apartheid, African migrants who came to South Africa were not considered immigrants but rather temporary contract workers, the concept of immigrants was formally acknowledged in 1991 and refugees were only recognized formally in 1993, which opened up access for migrants to be integrated into the country.

Second, the belief in South African exceptionalism - that the country was different from the rest of Africa, having gone through apartheid and successfully transitioned to a stable democracy in 1994 without support from other African countries – [encouraged anti-foreigner sentiments, particularly of African migrants](#). The African Centre for the Constructive Resolution of Disputes (ACCORD) published survey results on xenophobia in 2011 and asserted that post-independence, South Africans considered immigration to be unwanted and this was also reflected in the national policy, for instance, the Refugee Act to replace the Aliens Control Act of 1991 '[took four years to draft and eight years to negotiate](#).'

Third, a 2019 migration policy study by van Lennep found that there was '[not enough work and welfare for South African citizens](#)' after 1994 - which begged the questions, should migrants be permitted into the country and should their rights be protected when the country is failing to provide for its own citizens? The country was not capacitated enough to cater to both the social welfare needs of its citizens and immigrants coming into the country.

As a result, migration policy has been restrictive since 1994, positioning migrants as one of the sources of crime in the country and therefore undesirable. Similar sentiments are echoed by Mbiyozo from the Institute of Security studies (ISS) who notes that, '[Home Affairs is prioritizing restrictive measures that disproportionately and negatively impact African migrants from the country's immediate and regional neighbours](#).'

The Refugee Act of 1998 granted asylum seekers and refugees the right to work and to gain education. In 2002, the Immigration Act was passed and while it refined migration policy to ensure continued immigration of skilled labour, it introduced stricter border controls and

placed responsibility on South African citizens to report foreigners in the country's establishments like workplaces and schools.

The amendments to the Refugee Act and the Immigration Act became restrictive over the last two decades for instance in 2004, the amended Immigration Act allowed immigration officers to detain an immigrant without documents without a warrant – in 2008, the Refugee Act amendment expanded to protect children and spouses of immigrants on one hand but removed the right of refugees to have the same basic education and healthcare provision as South African citizens. A fuller analysis of these policies is found in a 2019 publication [Migration II: The South African migration policy landscape by Tove van Lennep](#).

In 2017, the amended Refugee Act limited the time refugees can apply for permanent residency from five to 10 years and introduced imprisonment as a punishment for expired asylum seeker visas. In the same year, the [White Paper on International Migration](#) was published which withdrew the rights of asylum seekers to gain employment, gain education and move freely in the country. According to ACCORD, these conditions have further degenerated over the past 27 years - the increasingly restrictive migration policy coupled with poor social welfare characterized by rising unemployment, inequalities and poverty – [all together created a seedbed for xenophobia](#).

However, the 2017 White Paper on International Migration also took a pro-African stance to consider ways of integrating migrants under a national policy framework demonstrating political will to reform and enhance the rights of migrants. The first steps of this national policy were realised in March 2021 with the United Nations Refugee Agency and South African Home Affairs Department signing [an agreement to eliminate delays](#) in processing- and clearing the backlog of asylum seeker applications.

The South African government can bolster this policy move by delivering tangible results on the agreement that is, publishing the number of asylum seeker application processed and actual dates of when they expect to clear the backlog, especially in preparation for the October 27, 2021 municipal elections.

Integration of immigrants in South Africa is a largescale endeavor that requires the government's immigration policy to be responsive to the changing times. Government must collaborate with civil society organizations (CSOs) and social partners as well as the local and national mass media in order to inform the South African populace and migrants alike on migrant policy provisions. Migrants can also air their concerns which CSOs and journalists can bring to the attention of government to inform policy reform.

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This op-ed was published in the Mail & Guardian: [South Africa's policy on migrants is inadequate and at odds with the Freedom Charter - The Mail & Guardian \(mg.co.za\)](#)

