



## **The ANC Policy Conference and Migrants**

### **1. Introduction**

Over the weekend of 29-31 July, the ANC held its 6<sup>th</sup> National Policy Conference at Nasrec, Gauteng. These conferences are meant to be held approximately thirty months into every administration's term of office, but this time round the COVID pandemic delayed the conference.<sup>1</sup> Since the ANC is the governing party, and its decisions are likely to translate into national policy, they deserve close scrutiny.

Before the conference, Stephen Grootes wrote as follows: "While the ANC's policy conference is officially about the battle of policy ideas, there are strong indications already that the power contest(s) will overshadow debates around ideology and delivery. And yet, the policy documents published by the party ahead of its conference are important, as they give an indication of what officially the future direction of the party could be."<sup>2</sup>

Prior to the conference, analysts suggested that three issues were likely to come under close scrutiny, namely the question of the 'step aside rule' (which the provinces of Limpopo and KZN wanted scrapped); the question of nationalisation, especially of the Reserve Bank (which had come up in the 2017 conference); and the vexed issue of immigration.<sup>3</sup> The latter appeared in the conference's policy papers for the first time.<sup>4</sup>

(As a footnote to the above, it should be noted that the 'step aside rule', despite intense discussion, remained unchanged and undiluted and was adopted by the conference. The nationalisation of the Reserve Bank, about which nothing has been done since 2017, was kicked down the line.)

### **2. Key Immigration Themes at the Conference**

In the build-up to the conference, the questions of immigration, undocumented migrants, the issuing of various permits and visas, corruption in the Department of Home Affairs, the spike in xenophobia, and the move of anti-foreigner sentiments from the margins of political rhetoric to centre stage, were all major discussion points in the public domain. All this must be viewed through the prism of the President's intention that this policy conference should provide solutions, and not merely further analysis, to the difficult problems in South Africa, including immigration issues.<sup>5</sup> Minister Aaron Motsoaledi led the discussion on immigration within the committee dealing with peace and security. The conference gave its approval for the Minister to develop an overarching and coherent policy on immigration.<sup>6</sup> "Giving feedback on the national policy conference discussion on migration, ANC peace and security subcommittee chair David Mahlobo indicated the conference agreed to proposals from Motsoaledi that the permits and visas system should be overhauled so [that] there was clarity and proper legislation on migration."<sup>7</sup>

For some time, Dr Motsoaledi has been championing the idea that part of the solution to the many problems and inconsistencies in the immigration field lies in developing a coherent and clear overall policy on immigration.<sup>8</sup> He has pointed out that, despite key pieces of legislation being in place, namely the Citizenship Act 1998, the Refugee Act 1998, the Immigration Act 2002 and, more recently, the Border Management Authority Act 2020,<sup>9</sup> they do not speak to each other; they overlap and have different systems of

command, thus rendering immigration management complex and incoherent. He has also spoken about “picking up the pieces that have been problematic over the past 28 years”.<sup>10</sup>

As indicated above, the conference backed Dr Motsoaledi’s proposals for an overarching immigration policy and for clarity around visas and permits. According to the *Citizen* newspaper, the conference also proposed “the establishment of refugee reception centres near the borders with neighbouring countries. When implemented, the new set-up would see refugees being treated in terms of the United Nations conventions for the first time since 1994.” In addition, “the ANC suggested that SA must withdraw from 1951 Convention on Refugees that it assented to, considering the experiences of other countries. They believe the withdrawal would help SA deal with its refugee crisis without being bound by the agreement. ‘South Africa must withdraw but will deposit a new instrument to be able to manage our own issues and pressure it faces,’ [Deputy Minister David] Mahlobo went on to say. Without the ANC framework, Motsoaledi had made great progress towards addressing the migration crisis. His initiatives included appointing an internal investigative committee to review all fraudulent permits and visas issued since 2004. The committee, chaired by former director-general Dr Cassius Lubisi, has former sleuths from the Special Investigating Unit, the Zondo Commission and the Auditor-General.”<sup>11</sup>

### 3. Immigration as a Security Issue

It is worth noting that the discussion on immigration was part of the peace and security commission. Since 2017 DHA has been part of the governments security cluster, “enabling it to contribute to national security while protecting citizens, systems and data.”<sup>12</sup> This strengthens the impression that the question of migration is seen primarily as a security issue and not a humanitarian issue. This has important consequences that are often overlooked. Khalid Koser of the Brookings Institute says: “Labelling any issue a security threat has significant implications in terms of the laws, norms, policies, and procedures that become justified in response. In the migration context, for example, the label has been used to justify greater surveillance, detention, deportation and more restrictive policies.

Such responses in turn can impact the migrants involved, for example, by denying asylum seekers access to safe countries, driving more migrants into the arms of migrant smugglers and human traffickers, and by contributing to a growing anti-immigrant tendency among the public, within the media, and in political debate in many countries.”<sup>13</sup>

He goes on to note: “Given such consequences, it is worth asking whether, and if so when, migration really does represent a threat to national security. Common responses to this question are that migration can be a vehicle for importing terrorists and criminals, or for spreading infectious diseases. These are dangerously misleading perceptions, but nonetheless widespread. First, there is very little evidence from any country in the world that there is a greater concentration of terrorists, potential terrorists, or criminals among migrant populations than among local populations. Similarly, only in very exceptional circumstances have migrants been found to be carriers of diseases that threaten to infect significant numbers of people. Second, imputing migrants with tainted intentions without substantiation risks further antagonizing public attitudes towards them. Third, to focus only on these extremes risks diverting attention from circumstances where migration can actually pose a threat to national security.”<sup>14</sup>

He concludes: “The question is whether viewing the current migration crisis through a security lens is likely to promote the most effective responses. As Beth Ferris has suggested, it is more accurately considered a humanitarian crisis, comprising migrants in need of assistance and refugees in need of protection. The threat to human security is still far more real than any threat to national security.”<sup>15</sup> Koser’s analysis is close to the approach of Pope Francis, who urged world leaders “to defend migrants, saying their safety should take precedence over national security concerns and that they should not be subjected to collective deportations.”<sup>16</sup> While no responsible person or nation wishes to promote terrorism or has anything to gain from it, it also behoves us not to use scare tactics to strengthen xenophobic attitudes. It is our duty also to analyse migration policy not only through the lens of securitisation but also through a humanitarian one. This pertains to the conference discussions and resolutions as well.

#### 4. Reception Centres on the Border

A second recommendation of the conference deliberations centred on the establishment of reception centres. “The policy conference also reiterated the plan for reception centres on the borders with neighbouring countries.”<sup>17</sup> This option, which has been on the table since at least 2011/2012,<sup>18</sup> has always been a controversial one. A key criticism is the fact that this approach can be seen as a stealthy move towards a policy of encampment, and away from South Africa’s much lauded policy of integration. The civil society group CORMSA says: “Though the South African government has never conceded that it is moving from integration to an encampment system, the move of refugee reception offices (RROs) to the border areas implies a move in that direction. The question is how far. Moving from a European-like integration system to an African encampment approach, with its sprawling refugee camps, would tarnish the image of South Africa on the international level. Experiences from other countries with refugee camps show that concentrating refugees in camps creates conditions ripe for contagious diseases, poor education, organized crime, sexual abuse and domestic violence. [...] The decision to process applications for asylum from the border areas could, if not well managed, contravene the national and international law on refugees. It may also impinge on the principle of non-refoulement and it could affect people’s freedom of movement.”<sup>19</sup>

The same paper spells out the rationale of the DHA, and presumably that of the ANC delegates to the conference. “The DHA claims that moving the RROs to the border areas will speed up asylum application processing times while separating economic migrants from genuine refugees. Nothing guarantees the success of this approach. Many failures in the processing of asylum applications are caused by the Department’s management of the asylum system itself. Moving RROs to the border areas would not eventually alleviate these challenges. Improved service within the Department is the key to an effective asylum management system.”

The argument that a move to the border will reduce crime by asylum seekers is equally fallacious. If asylum seekers are not given the opportunity to document themselves, the number of undocumented migrants is likely to increase. Undocumented asylum seekers would be hard to

track. The fight against crime is won through a proper asylum management system and an appropriate immigration control strategy. Many countries have successfully managed to control people’s movements by simply improving their asylum and immigration services.

The DHA’s decision to move RROs to the border areas could also have been motivated by the need to address unemployment in the country. However, the government’s inability to create new jobs cannot be blamed on the presence of foreign nationals in the country. There are better ways to address unemployment than opting for a policy that seeks to exclude foreigners to help South Africans get jobs. Studies reveal that many refugees take on jobs that local South Africans would not take. This shows that the exclusion of refugees and asylum seekers from the labour market cannot be an alternative for job creation. Restricting documentation to refugees likely has the opposite effect. When migrants are denied documentation, and the accompanying protection of labour laws, they are vulnerable to exploitation by employers. Unscrupulous employers would prefer to hire such undocumented workers, knowing they can pay them less and treat them poorly. The solution to this problem is to make documentation easier, not harder, to obtain. Moving the RROs to the border areas, and making documentation harder to come by, will increase the exploitation of refugees to the detriment of South Africans and migrants alike.<sup>20</sup>

It is clear that this proposal is to a large degree seen as a quick-fix solution for complex problems and as a way of shielding some of the DHA’s failures from deeper scrutiny. It would be, as the article points out, better to commit to fixing the various systems in DHA and to facilitate claims for entering South Africa, offering protection and expanding the economy. This seems to be the wrong fix for the problems it seeks to solve.

Pope Francis, in his visits to Cyprus and the island of Lesbos, asked governments not to return migrants to Libya, amongst other countries. He said, “there are real *lagers* there” using the Italian term for the concentration camps established during World war II.<sup>21</sup> The Pope likened the treatment of migrants in camps to the mass-killing campaigns of Hitler and Stalin. “We read stories of the concentration camps of the last century,” he said, “and we say, ‘How could this possibly have happened?’ Brothers and sisters, it is happening

today, on nearby coasts!”<sup>22</sup> The Pope’s way forward is not through camps, but through integration and welcome, which is a very different way of assessing the situation of mobile people.

## 5. Withdrawing from the 1951 United Nations Convention on Refugees

The third suggestion raised at the conference was that South Africa withdraw from the 1951 Convention on Refugees, as this would allow the country to deal with its refugee and migration problems without being bound to the Convention. South Africa would in its place deposit a new instrument.<sup>23</sup> We would then join countries which have not signed – or which have withdrawn from – the Convention, including Eritrea, Cuba, Libya, Pakistan and Mongolia. Withdrawal can happen with one year’s notice.<sup>24</sup>

There are at present also strong voices urging that the US withdraw from the Convention, probably for similar reasons: it is thought that the Convention empowers refugees and asylum seekers to seek protection indiscriminately. Those advocating withdrawal feel that agency should lie in the hands of governments, which could entertain immigrant applications on well-founded grounds, thus being more discriminating about whom they let in. Something of this dynamic was seen recently with regard to refugees from the war in Ukraine, in the way that countries which had consistently barred other refugees from entering extended an open hand to Ukrainians. Mark Krikonan, arguing the case for the USA’s withdrawal from the Convention, says: “Withdrawing from the Refugee Protocol won’t fix everything immediately. The 1980 Refugee Act will still have to be changed by, at the very least, removing ‘particular social group’ from the grounds for asylum. Better yet, we could scrap the entire judge-heavy process, snatching the crowbar away from the anti-borders crowd, and devise a new, streamlined asylum system that is premised on U.S. interests, not international ‘human rights’ law.”<sup>25</sup>

We have noted that the ANC policy conference believed “that the withdrawal would help SA deal with its refugee crisis without being bound by the agreement. South Africa must withdraw but will deposit a new instrument to be able to manage our own issues and pressure it faces.”<sup>26</sup> There seems to be a similarity in the language and intention of ‘finding its own solutions with an eye to context without being bound to inter-

national law’. These criticisms of the Convention are probably tied to aspects of the Convention’s basic purpose: “Obligations come into effect after an asylum seeker has entered a signatory country, and fall squarely on that country. The core obligation is that of ‘non-refoulement’, not sending someone back into a situation of possible persecution. Another important obligation is not to penalise asylum seekers for entering a country ‘illegally.’”<sup>27</sup>

An Australian study concludes on a more positive note, calling for complementarity in terms of the Convention. It says: “The UNHCR and other asylum seeker supporters, while acknowledging that there are problems with the operation of the Convention, are concerned that opening it up to review could lead to restriction, rather than expansion, of refugee rights. They argue that avenues for legal migration should be opened up to insulate the Convention from migration pressures, and that governments should work with the UNHCR to supplement, not supplant the Convention, in response to the changed refugee context.”<sup>28</sup> An obvious fear is that, given the context of xenophobia and the politics of exclusion so rife in South Africa, as well as strong political narratives around refugees and migrants, the call to exit the obligations of the Convention will not be a move in the direction of expanding protection and enhancing the dignity of refugees and migrants, but will in fact remove a safety valve which mobile people can rely on. It will thus increase refugees’ and migrants’ vulnerability and exclude or diminish the processes of accountability which international conventions impose upon nations.

The UN High Commissioner for Refugees, after a visit to Pope Francis, spoke about the shared vision, the mutual support, between the Vatican and the UNHCR and the need to explore ever deeper co-operation. This marked a move towards support for such agencies and a desire to strengthen them – rather than to supplant them, as we see evidenced in many political narratives. As recently as April 2022, Pope Francis renewed his support for the UN and for multilateralism, and repeated his call to strengthen the UN<sup>29</sup> and, by implication, to strengthen its structures such as the UNHCR and its conventions and protocols.

## 6. Conclusion

Even a casual reading of the recommendations of the ANC policy conference with regard to migra-

tion shows a definite paradigm shift away from the values contained in the international protocols to which South Africa is a signatory and from the values of its own domestic legislation, such as those contained in the Refugee Act of 1998. The shift is one towards a more exclusive policy, framed no doubt by the political currents running through the international and local political environments, which play into the hands of those promoting populism, a narrow version of nationalism, and ever more strident xenophobic discourses.

This is a shame. We would do well to recall Nelson Mandela's words to the people of Alexandra, after clashes with foreign nationals in 1995: "It saddens and angers me to see the rising hatred of foreigners. We had a legacy of unity and solidarity here. This great legacy has been undermined by recent attacks on foreigners, some of whom are naturalised citizens. We cannot blame other people for our troubles. We are not victims of the influx of foreign people into South Africa. We must remember that it was mainly due to the aggressive and hostile policies of the apartheid regime that the economic development of our

neighbours was undermined. Through a regional development strategy, under the auspices of the Southern African Development Community, we can ensure that the region is reconstructed. The government is addressing the problems of illegal immigrants through new legislation that is before Parliament. Meanwhile, no individual must take the law into their own hands."<sup>30</sup>

Given the sentiments and values expressed in Mandela's words, one cannot but note the different direction that the ANC is following now in finding solutions to issues of immigration. It would have been better served if it had explored the direction offered by Mandela, and thus drawn from its own wells, rather than pursuing the expedient, populist trajectory which distances it from Mandela's vision and the values contained in the Freedom Charter. It would also have done well to have imbibed the vision offered by Pope Francis, and to have considered for this country the policy and practical import of the four verbs he refers to so often, namely welcoming, integration, protection and promotion.<sup>31</sup> These would have helped form a more inclusive and humane response to the reality of mobile people.

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<sup>1</sup> <https://www.sabcnews.com/sabcnews/anc-policy-conference-sa-needs-an-overhauling-of-the-immigration-system-motsoaledi/>

<sup>2</sup> <https://www.bee.co.za/post/anc-s-policy-document-wish-list-may-yet-alter-south-africa-s-future-for-the-better>

<sup>3</sup> <https://headtopics.com/za/anc-policy-conference-step-aside-rule-nationalisation-and-immigration-to-dominate-discussions-th-28563026>

<sup>4</sup> <https://www.citizen.co.za/news/south-africa/politics/3162981/anc-policy-conference-step-aside-rule-nationalisation-immigration-30-july-2022/>

<sup>5</sup> <https://www.sabcnews.com/sabcnews/anc-policy-conference-sa-needs-an-overhauling-of-the-immigration-system-motsoaledi/>

<sup>6</sup> <https://www.sabcnews.com/sabcnews/anc-policy-conference-sa-needs-an-overhauling-of-the-immigration-system-motsoaledi/>

<sup>7</sup> <https://www.citizen.co.za/news/south-africa/politics/3163598/anc-laxity-on-migration-laws-1-august-2022/>

<sup>8</sup> <https://www.citizen.co.za/news/south-africa/parliament/3104271/motsoaledi-south-africa-immigration-system-25-may-2022/>

<sup>9</sup> <https://www.youtube.com/watch?v=FceOx1CZSQo>

<sup>10</sup> <https://www.iol.co.za/the-star/news/immigration-system-lacking-needs-overhaul-says-motsoaledi-782da582-71f2-4885-bbb0-b0cb41d28537>

<sup>11</sup> <https://www.citizen.co.za/news/south-africa/politics/3163598/anc-laxity-on-migration-laws-1-august-2022/>

- <sup>12</sup> <http://www.dha.gov.za/index.php/statements-speeches/939-director-general-of-home-affairs-mkuseli-apleni-to-brief-media-on-repositioning-of-home-affairs-within-security-cluster>
- <sup>13</sup> <https://www.brookings.edu/opinions/when-is-migration-a-security-issue/>
- <sup>14</sup> <https://www.brookings.edu/opinions/when-is-migration-a-security-issue/>
- <sup>15</sup> <https://www.brookings.edu/opinions/when-is-migration-a-security-issue/>
- <sup>16</sup> <https://www.reuters.com/article/us-migrants-pope-idUSKCN1B11RX>
- <sup>17</sup> <https://www.citizen.co.za/news/south-africa/politics/3163598/anc-laxity-on-migration-laws-1-august-2022/>
- <sup>18</sup> <https://www.news24.com/news24/plans-to-build-refugee-centres-along-borders-20150429>
- <sup>19</sup> <https://static.pmg.org.za/docs/121126cormsa.pdf>
- <sup>20</sup> <https://static.pmg.org.za/docs/121126cormsa.pdf>
- <sup>21</sup> <https://www.newyorker.com/news/daily-comment/pope-francis-is-still-trying-to-call-attention-to-the-migrant-crisis>
- <sup>22</sup> <https://www.newyorker.com/news/daily-comment/pope-francis-is-still-trying-to-call-attention-to-the-migrant-crisis>
- <sup>23</sup> <https://www.citizen.co.za/news/south-africa/politics/3163598/anc-laxity-on-migration-laws-1-august-2022/>
- <sup>24</sup> <https://cis.org/Oped/Time-Withdraw-UN-Refugee-Treaty>
- <sup>25</sup> <https://cis.org/Oped/Time-Withdraw-UN-Refugee-Treaty>
- <sup>26</sup> <https://www.citizen.co.za/news/south-africa/politics/3163598/anc-laxity-on-migration-laws-1-august-2022/>
- <sup>27</sup> [https://www.aph.gov.au/about\\_parliament/parliamentary\\_departments/parliamentary\\_library/pubs/rp/rp0001/01rp05](https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/pubs/rp/rp0001/01rp05)
- <sup>28</sup> [https://www.aph.gov.au/about\\_parliament/parliamentary\\_departments/parliamentary\\_library/pubs/rp/rp0001/01rp05](https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/pubs/rp/rp0001/01rp05)
- <sup>29</sup> <https://www.vaticannews.va/en/pope/news/2022-04/pope-francis-united-nations-war-ukraine.html>
- <sup>30</sup> [http://www.mandela.gov.za/mandela\\_speeches/1995/950819\\_alexandra.htm](http://www.mandela.gov.za/mandela_speeches/1995/950819_alexandra.htm)
- <sup>31</sup> <https://popefrancisdaily.com/popes-4-verbs-on-migration-welcome-protect-promote-integrate/>

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