

## ***From the Director:\* A Reflection on South Africa's Migration Policy***

Albeit geographically distant, Europe and South Africa have a great deal of similarities in their management of migratory flows. As many countries in Europe, South Africa is a migration hub attracting numerous migrants, including refugees, seasonal workers, students, cross-border traders and entrepreneurs from both the rest of Africa and Asia. South Africa is also considered, like European states, a country with a generous welfare system, where over 10 million people are living below the poverty threshold and are relying on social grants as a main source of income. Moreover, because of its strong social and economic contradictions, South Africa is not immune to divisive populist politics and xenophobic reactions. Although up to now no nationalist anti-immigration party has emerged in the political arena, immigrant workers (*amakwerekwere*<sup>1</sup>) are often accused of stealing jobs and being a burden on the country's economy. On many occasions, the discontent of poor and disenfranchised black communities has raised tensions and led to violent clashes between locals and foreign nationals.

Since 1994, the post-apartheid government has implemented, on one side, a benevolent policy towards African refugees fleeing conflicts and persecutions and, on the other side, approved overly restrictive immigration policies. This is evidenced by a variety of procedures and measures across the social, political and legislative frameworks. Such restrictive measures in the immigration regime, coupled with the lack of legal avenues for unskilled and semi-skilled migrants from the SADC region to enter the local job-market, have resulted in large numbers of migrants turning to the country's asylum system as a means to temporarily regularise their stay. This fact has contributed to a toxic culture of suspicion amongst politicians and bureaucrats who perceive the liberal refugee framework as a 'loophole' that undocumented and unskilled migrants exploit to legalise their stay. During a Portfolio Committee

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<sup>1</sup> This is a term used by Black South Africa to refer to foreign Africans.

Meeting held on 11 October 2016<sup>2</sup>, the Deputy Minister of Home Affairs went even further stating that that “the country could not allow undocumented or bogus asylum-seekers to have rights. For them to claim rights, asylum-seekers ought to possess, at least, immigration visa and immigration visa could not be applied for while staying in the country.” In this regard, I emphasise that irregular migrants possess the same basic human rights (e.g. the right to fair trial, the right to security and the right to receive medical health care) possessed by all individuals including citizens, legal residents, tourists and temporary visitors.

Furthermore, some of the negative attitudes and preconceptions towards asylum seekers are reflected in the proposed 2015 Refugee Amendment Bill which seeks to restrict, as a deterrent measure, the possibility for asylum seekers to work while in South Africa. This proposal raises several concerns with regards to its actual implementation, due to the many administrative challenges and rampant corruption within the Department of Home Affairs, and it is my view that the deprivation of the freedom to work may threaten to degrade asylum seekers in South Africa. The limitation of the right to work might, in fact, deprive asylum seekers of the only means to support themselves while their applications for asylum are pending and represents a violation of the constitutional right to dignity.

Beside the Refugee Amendment Bill and other piece-meal legislative amendments, in June 2016, the South African government released a Green Paper on International Migration initiating a process that is going to lead to comprehensive overhaul of legislation. The Green Paper focuses on several areas (e.g. the management of residency and naturalisation; the management of international migrants with critical skills and capital and the management of international migration in the African context, amongst others) but despite presenting some commendable proposals, it was disappointing in terms of certain expectations. For instance, it has raised numerous concerns regarding

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<sup>2</sup> Government Printing Works & IEC audit outcomes: AGSA briefing; Refugees Amendment Bill: Deputy Minister & Department briefing, 11 October 2016. Available at: <http://bit.ly/2fH8s35>.

the intention of delinking permanent residency from the length of stay in the country by not allowing long-term temporary residents, including recognised refugees, to apply for permanent residency. I believe this proposal to be morally unjust as it contravenes the ethical principle that “the longer people stay in a society, the stronger they are morally entitled to the same civil, economic, and social rights as citizens, whether they acquire formal citizenship status or not.”<sup>3</sup> Temporary workers, both skilled and unskilled, who have spent at least five years in the country participating in the domestic market and civil society, develop a moral claim to membership through their participation in the receiving society’s market and are not a threat to the collective. I argue that, for such immigrants, the claim to membership is an inalienable right and should not be restricted. I further believe that the length of stay in the country should be the guiding moral principle and the cornerstone of a full socio-economic integration and promotion of social cohesion.

In this regard, the Green Paper is silent on how robust and effective integration policies should be enforced. If it is, on one side, the responsibility of immigrants to integrate themselves in the local communities, receiving states need to ensure that they can offer immigrants concrete opportunities to learn the national language and the country’s basic social and civic norms. As stated by the European Commission, “the integration of migrants is a two-way process involving adaptation on the part of both the immigrant and of the host society<sup>4</sup>.” The Commission has further called on receiving states to: fight discrimination and xenophobia; integrate immigrants into the labour market; grant civic and political rights to longer-term immigrant residents; and to establish a civic citizenship; measures directed at women and families from immigrant backgrounds; a welcoming society (the responsibility of national political leaders); specific integration programmes at national, regional and local levels; and long-term, comprehensive integration programmes

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<sup>3</sup> See, Joseph H. Carens, “The Ethics of Immigration” (Oxford University Press, 2013), pp. 89.

<sup>4</sup> See, “Integration of third-country migrants”, Background Paper, European Foundation for the Improvement of Living and Working Conditions, (2007), available at: <http://bit.ly/2dyGBFB>.

developed through partnerships involving national, regional and local authorities and civil society. None of these issues have been sufficiently addressed by the Green Paper and integration still remains a great challenge to the governance of migration. I concur that human mobility in South Africa is largely characterised by temporary circular migration by individuals who are not in search of permanent integration, but the country is also home to tens of thousands of asylum seekers and refugees who do not want, or simply are unable, to return to their countries of origin.

My concern is that the new migration policy intends to facilitate forms of temporary labour migration that might resemble exploitative and old fashion *Gastarbeiter* systems of immigration, depriving undesirable migrants such as low-skilled/unskilled workers, refugees and their families from the right to reside permanently.

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