



POLICY BRIEF

Aligning South Africa's migration policies with its African vision

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Despite its commitment to prioritise Africa-oriented migration measures, domestically, South Africa is advancing some concerning policies. The result is institutionalised negative attitudes towards low-skilled African migrants and asylum seekers. But South Africa can turn the tide. It can do this by embracing migration's development potential and following through on promises to provide legal pathways that promote orderly, regular migration, instead of continuing to prioritise punitive measures.

Key findings

- ▶ There is a disjuncture between South Africa's desire to align its migration policies and practices with its African-centred foreign policy and its efforts to manage migration risks.
- ▶ Home Affairs articulates a clear policy vision that seeks to harness the strategic potential of migration, grounded in African realities.
- ▶ Home Affairs has made promising policy proposals focused on addressing the realities of economic migration to South Africa from neighbouring countries, but has stalled in their implementation.
- ▶ Home Affairs is prioritising restrictive measures that disproportionately and negatively impact African migrants from the country's immediate and regional neighbours.
- ▶ Home Affairs sometimes over-reaches to problematise asylum seekers and low-skilled Africans despite a lack of evidence.
- ▶ Existing policy developments attempt to shift blame onto migrants instead of addressing endemic administrative issues within government.
- ▶ Home Affairs is prioritising deterrent measures, including highly controversial asylum processing centres. These are expensive, ineffective and a distraction from real issues.
- ▶ There is no evidence that migrants are an elevated security risk or justify heavy-handed military or criminal responses. Instead, they pose a management challenge.
- ▶ There are few international examples of countries or regions with comparable dynamics. South Africa cannot expect to follow protectionist international examples while simultaneously achieving development and prioritising human rights in the African context.
- ▶ Harnessing the benefits of migration while managing the risks is difficult. South Africa should be realistic about the true threats and opportunities it faces and implement progressive migration tools.

Recommendations

- ▶ SADC visas for low-skilled workers should be prioritised and should match the demands of the South African labour market.
- ▶ Regularisation programmes should urgently be executed, as proposed in the white paper.
- ▶ Plans for asylum processing centres should be abandoned. Resources should be diverted to improving immigration management.
- ▶ The president should consider the impact the Border Management Authority Bill could have on trade and legitimate travel, and reject its approval.
- ▶ Home Affairs should be open about the challenges it faces.
- ▶ South African politicians and the public should oppose institutionalised xenophobia at all costs.
- ▶ South Africa should avoid paying lip service to policies and practices if it is not willing to implement them.

Introduction

South Africa is a major destination for African migrants of all classes – tourist, study, business, economic, irregular and asylum seeking. Some estimates indicate as many as 90% of migrants in South Africa are Africans.¹ The country’s migration policies and practices have a significant impact on millions of people, particularly Africans.

While South Africa insists upon its own commitment to Afrocentric ideals, an examination of current policies reveals worrying inconsistencies. On the one hand, recent policy documents and developments express a clear intent to strategically harness migration’s ability to achieve national and regional goals. On the other hand, the country is prioritising restrictive measures that disproportionately and negatively impact African migrants from neighbouring countries.

Most migrants from neighbouring countries are low-skilled and seek temporary work. Currently, they do not have access to legal visa pathways. As such, many enter or stay irregularly. The most effective measure to reduce irregular migration is a visa regime that reflects the actual migration reality. Among other progressive measures, the Department of Home Affairs has promised to implement

visa pathways for migrants from South Africa’s immediate and regional neighbours. These plans, however, appear stalled. The department’s insistence on moving forward with expensive and ineffective measures that restrict African migrants while delaying the implementation of progressive measures reveals an underlying xenophobia that must urgently be addressed.

Current South African migration policy developments

South Africa has several migration policy instruments and there are on-going policy developments. This brief references national and international frameworks that impact migration in South Africa, but focuses its analysis on recent and on-going legislation authored and/or administered by Home Affairs in 2017 and 2018.

The White Paper on International Migration of 2017

is a policy statement that guides the comprehensive review of immigration legislation across eight areas:

- Admissions and departures
- Residency and naturalisation
- International migrants with skills and capital
- Ties with South African expatriates

Table 1: South African migration Instruments²

South African Migration Law	Immigration Act 2002
	Immigration Amendment Act 2011
South African Refugee Law	Refugees Act 1998
	Refugees Amendment Act 2017
Current South African policy documents under discussion	Border Management Authority Bill 2016
	International Migration White Paper 2017
International refugee conventions adopted by South Africa	1951 Geneva Refugee Convention Relating to the Status of Refugees
	1969 Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa
Regional migration protocols ratified by South Africa	SADC Protocol on the facilitation of movement, 2005
Current international migration processes South Africa participates in	Global Compact for Safe, Orderly and Regular Migration, 2018
	Global Compact on Refugees, 2018

 Analysed in this policy brief

- International migration within the African context
- Asylum seekers and refugees
- Integration process for international migrants
- Enforcement

Some elements of the white paper require only administrative action, while others require legislative amendments. Certain elements are reflected in the Border Management Authority Bill of 2016 and the Refugees Amendment Act of 2017. The process of amending legislation is expected to be completed by March 2019.³

The Green Paper on International Migration of 2016 preceded the white paper,⁴ and was gazetted between 1 July 2016 and 30 September 2016.⁵

The **Border Management Authority Bill of 2016** (BMA) was passed by the National Assembly on 8 June 2017 and is under consideration by the National Council of Provinces.⁶

The BMA aims to address threats to the country's territorial integrity and improve border security by addressing the fragmented nature of border management. The BMA empowers Home Affairs to establish and control a new state organ to oversee the country's borders. Home Affairs will become the lead agency for the entire border environment, including customs administration, management of movement of persons and policing.

The **Refugees Amendment Act 11 of 2017** (Refugee Amendment Act) was signed into law on 14 December 2017. The act claims to address the challenges in the asylum management system. Key amendments include providing conditions for exclusions and cessation from refugee status, granting authority to Home Affairs to close or designate a refugee reception office and restricting the rights of asylum seekers to work, study or be self-employed.⁷

An Africa-centred vision?

Home Affairs repeatedly claims to prioritise African agendas. The white paper, specifically, articulates a clear policy vision that seeks to harness the strategic potential of migration, grounded in African realities. It dedicates an entire chapter to managing migration in

the African context. Here it concedes that no national economy can grow in isolation from its region and that South African migration policies are not sufficiently aligned with the country's African-centred foreign policies or with commitments to increase freedom of movement on the continent.⁸

It further acknowledges the positive contributions migrants have made in developing the South African economy and states that economic migration to South Africa is inevitable. It concedes that its response to mixed migration flows from neighbouring countries has been inadequate and that the lack of legal pathways for unskilled and semi-skilled migrants leads to asylum system abuse.⁹

South Africa's response to mixed migration flows from neighbouring countries has been inadequate

The chapter proposes various progressive policy interventions. These include:¹⁰

- Offering visa regularisation schemes to nationals of Zimbabwe, Mozambique, Malawi, Botswana, Namibia, Swaziland and Lesotho already living in South Africa
- Introducing Southern African Development Community (SADC) visa options for some economic migrants as an alternative to irregular means (these include work, trader and small business permits)
- Ensuring better enforcement of immigration and labour laws that target unscrupulous employers rather than individual migrants

These policy interventions would have a substantial impact on African migrants from neighbouring countries. Safe and legal avenues for low-skilled migrants are the most robust and successful migration management tools available and hold the most potential to reduce irregular movement.¹¹

Accurate immigration data is unavailable, owing to its irregular and clandestine nature. While different authorities have reported varying numbers, all agree that migrants from neighbouring countries make up the largest volumes of economic migrants and are the most likely to arrive

irregularly seeking work. The 2016 Statistics South Africa community census indicated that more than 90% of foreigners living in South Africa are from African countries, with 85% from SADC countries.

Table 2: Migrant stock in South Africa by sending country

2016		
Sending country		%
Zimbabwe	574 047	39.6
Mozambique	293 405	20.2
Lesotho	160 749	11.1
Malawi	78 796	5.4
United Kingdom	56 412	3.9
Swaziland	38 038	2.6
Democratic Republic of Congo	31 504	2.2
Namibia	30 701	2.1
Nigeria	30 314	2.1
India	25 063	1.7
Ethiopia	22 148	1.5
Zambia	19 119	1.3
Germany	13 894	1.0
Bangladesh	12 764	0.9
Pakistan	11 157	0.8
Somalia	10 954	0.8
Botswana	10 759	0.7
Congo	10 686	0.7
Portugal	9 931	0.7
Ghana	8 943	0.6

Source: Statistics South Africa, Community Survey 2016¹²

Since 1994 South Africa has implemented six migrant regularisation schemes that have provided legal status to over 500 000 migrants.¹³ While these processes have not been perfect, they have provided legal channels for those affected, protected recipients from extortion and abuse, lessened opportunities for corruption and reduced asylum system abuse.¹⁴ Home Affairs is currently adjudicating more than 196 000 applications for the Zimbabwe

Exemption Permit (ZEP), the third round of Zimbabwe regularisation permits since 2009.¹⁵

While Home Affairs is concerned about the 'pull' effects of offering permits, it has been argued that the SADC region is already operating as a de facto free movement zone and that removing restrictions would not significantly impact flows.¹⁶ Migration in the region is already happening at very high rates, and has become increasingly informal and unregulated.¹⁷

The ZEP process is currently underway and was expected to be completed in September 2018.¹⁸ However, as of the most recent white paper progress update on 24 October 2017, no headway has been made in any of the other proposed measures, including SADC visas or new regularisation programmes.¹⁹ According to all publicly available accounts, progress in the implementation of these visa regimes has stalled.

Meanwhile, the same progress update indicated that there has been significant progress in building an asylum processing centre on the border.²⁰ The Refugees Amendment Act has been enacted and Parliament has passed the BMA Bill. Both of these focus singularly on tightening security and restricting provisions for migrants, without any progressive inclusions.

Some estimates indicate that more than 90% of foreigners living in South Africa are from African countries

The stalling of the visa regimes, coupled with the fast-tracking of restrictive measures, shows a troubling lack of political will. It is perturbing that the most restrictive measures aimed at low-skilled migrants and asylum seekers from neighbouring countries are moving forward, with little progress in the provision of legal options. South Africa is at risk of aligning itself with countries that extol the benefits of migration and human rights while simultaneously implementing xenophobic practices.²¹

Anti-African measures

Problematising asylum seekers and low-skilled migrants without evidence

At the core of most existing Home Affairs policy developments is the implied or expressed problem

statement that low-skilled migrants and asylum seekers pose elevated risks and burdens. Most migrants in these categories come from neighbouring African countries.

Home Affairs has repeatedly claimed that the asylum system is primarily an avenue for economic migrants to enter and remain in the country. While it is uncontested that some economic migrants are abusing the asylum system, Home Affairs routinely overstates the problem.

Using Home Affairs statistics, the white paper claims that in 2015 more than 15.6 million foreign arrivals were recorded, compared to only 14.2 million foreign departures in the same period, meaning 1.44 million people remained in South Africa. It goes on to state that, 'while most of the international visitors and migrants do return to their countries ... some overstay and in most cases apply for asylum to legitimise their stay in the country'.²² The same section establishes that 62 000 people applied for asylum in 2015. Simple math shows that 62 000 does not compose 'most' of 1.44 million. There is no evidence that 'most' mixed migrants apply for asylum. The annual total of asylum applications year on year makes up only a fraction of total migrant populations.²³

Detention does not deter migration; instead, it results in migrants' taking greater risks

These poorly developed positions are part of an effort to label low-skilled migrants and asylum seekers as particularly problematic compared to other migrant classes. This premise conceptually reduces them to fraudsters and, in turn, justifies heavy-handed responses.

Home Affairs demonstrates a similar low regard for low-skilled migrants from neighbouring countries. The white paper emphasises a desire to prioritise 'sought-after' or 'high-value' migrants over economic migrants. It claims to use the National Development Plan (NDP) as a guiding framework and references the NDP multiple times to justify recruiting highly skilled migrants.²⁴

Meanwhile, the white paper omits the NDP's other migration-specific calls, including adopting 'a much more progressive migration policy for skilled and unskilled

workers'.²⁵ This cherry-picking of the NDP indicates worrying positions regarding migrants' respective worth and intentionally problematises the biggest classes of African migrants.

Prioritising detention

Home Affairs' decision to prioritise asylum processing centres as a solution to the over-burdened asylum system is particularly concerning. The proposed centres will operate on land borders and will have sweeping impacts on African asylum seekers and migrants.

Although Home Affairs has gone to great lengths to avoid labelling the asylum processing centres as 'detention' centres, the proposed methods contain many detention properties. The list of problems associated with detention centres is lengthy and beyond the scope of this brief. It includes high human rights and financial costs and a historical failure to sustainably reduce illegal migration or strains on immigration systems.²⁶

The estimated cost of building one processing centre is between R266 million and R298 million.²⁷ This does not include operations. By Home Affairs' own admission, 'the business process of a Refugee Processing Centre does not support revenue generation'.²⁸ Funding for on-going operations at the centres will come from South African taxpayers.

The white paper justifies the centres in part on the basis that the current system is expensive. It maintains these centres will reduce migrant flows and thereby reduce costs to the system:

By reducing the incentive for abuse by economic migrants, the asylum system will be transparent and responsive. It will also reduce the cost of managing a large number of asylum seekers.²⁹

This logic is deeply flawed. In particular, building and operating a series of processing centres is unlikely to reduce department costs. It also conflates asylum seekers with economic migrants. In doing so, it relies on the false premise that economic migrants rely exclusively on the asylum system for entry or stay. A high number of irregular migrants enter either clandestinely or legally and then overstay.

It is further unclear how processing centres will streamline or reduce asylum claims. If the number of asylum claims

falls, it will be because economic migrants use alternative, irregular means. Evidence shows that detention does not deter migration; instead, it results in migrants' taking greater risks. In addition, it weakens other migration management outcomes, reduces case resolutions, wastes resources and clogs the court system.³⁰

South Africa currently has one the biggest asylum backlogs in the world, with most asylum seekers waiting several years for processing.³¹ The centres are not feasible solutions to backlogs or endemic management issues, but will increase the hardships of legitimately vulnerable people.

At a time when Africa is agreeing to move away from detention models, it is alarming that South Africa is prioritising them

In addition to financial costs, the human rights costs of operating detention centres could be steep. Other countries have been widely criticised for inhumane practices.³² No good examples exist of detention centres providing humane treatment while reducing system abuses. Instead, there are numerous examples of human rights violations, abuse of authority, corruption and the use of detention as a cruel means to deter future arrivals.³³

Home Affairs already has a problematic history with running detention centres. In 2014 the South African Human Rights Commission released a report detailing on-going human rights abuses at the Lindela Repatriation Centre. These included procedural violations, inhumane and unsafe conditions, violence and the unlawful detention of high numbers of people.³⁴

The Common African Position on the Global Compact for Migration specifically calls on all countries to

[d]iscourage and abolish the utilization 'migrant holding camps' or 'processing centres' (or whatever names they are called), as they are de facto detention centres and [a] serious violation of human rights of migrants, regardless of their status.³⁵

At a time when Africa is agreeing to move away from detention models, it is alarming that South Africa is prioritising them despite the high costs and low effectiveness.

Ignoring real problems

Shifting blame from department failures

Several policy developments ignore departmental issues and attempt to shift the blame onto migrants themselves.

Home Affairs repeatedly claims that irregular migration leads to corruption.³⁶ Evidence indicates the inverse is true. It has been established that migrants experience corruption at multiple stages of the documentation process³⁷ and

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that existing laws and norms in fact compel participation in the illicit document market.³⁸ Home Affairs employees themselves have estimated that as many as 85% of staff members participate in corrupt practices.³⁹ This corruption leads to the inconsistent and obtuse application of immigration policies, such that even lawyers and government officials themselves struggle to interpret and apply them.⁴⁰

The white paper and Refugee Amendment Act routinely cite a 90% asylum rejection rate as the basis for many restrictive measures.⁴¹ For years, refugee advocates and others have challenged the poor quality of refugee status determination processes and outcomes. In 2016/17, 1 232 immigration and 1 900 asylum litigation cases were brought against Home Affairs.⁴² Recent statements from judges who overturned rejections have included strong indictments of the state of the asylum system. These include labelling it as ‘incompetent’⁴³ and ‘deplorable’ and accusing Home Affairs officials of ‘showing blatant disregard for the law, dereliction of duty and bad faith’.⁴⁴

Restricting people's rights to deter future arrivals follows a troubling and ineffective international trend

Home Affairs further focuses on volume as the precipitating issue in immigration systems.⁴⁵ It justifies decreasing ‘pull’ factors as a means of ultimately reducing volume.⁴⁶ Yet reducing numbers is not a viable alternative to addressing management issues, particularly when African migrant and refugee populations are at record levels.⁴⁷ Furthermore, subjecting people to harsh policies and restricting their rights in order to deter future arrivals follows a troubling and ineffective international trend of using cruelty as a deterrent.

Are migrants actually a security risk?

Home Affairs insists that a ‘risk-based approach’ is required to achieve its objectives. It is unclear what this approach entails specifically. It can be inferred from the policy documents that it primarily involves keeping perceived threats out of the country. To this end, the BMA seeks to militarise borders and consolidate border functions under Home Affairs.⁴⁸

In order to justify this approach, the BMA and white paper indicate that the borders are routinely under attack by criminal syndicates, and repeatedly link migrants to a long list of threats:⁴⁹

Immigration that is not managed through a risk-based approach is poorly managed immigration. This gives rise to systemic corruption as well as exposing all who live in the country to serious risks such as terrorism and drug smuggling. If risks are not managed, instability will increase and skilled migrants will not be recruited efficiently, thus undermining development. Job opportunities will not expand and this in turn will generate xenophobia and more instability.⁵⁰

The statement above forms part of a larger pattern of making problematic links between migrants and threats without substantiation. The leap from terrorism and drug smuggling to expanding job opportunities lacks evidence and accurate conceptual links.

There is no evidence that migrants pose elevated security risks. Most irregular entrants are Africans seeking temporary work. While this does undermine border control and integrity and must be managed, it does not constitute a significant national security threat. Properly administered visa and asylum regimes also contain security properties, as they allow migrants to be screened, counted and tracked.

Treating migrants as high risk distracts from true threats. Expending South Africa’s limited security resources on non-security threats will do little to close gaps in the existing and proposed systems for criminals to exploit. Migration management is important, but should not be conflated with national security risks without clear associations.

Conclusion

As a continental economic and migration hub, South Africa is uniquely positioned to chart a new migration management course. There are few international examples of countries or regions with comparable dynamics. At a time when many economic powers are prioritising protectionist measures, South Africa cannot expect to draw from these while simultaneously achieving development and advancing human rights priorities in the African context. Harnessing the benefits of migration while managing

the risks is extremely difficult. South Africa must be realistic about the true threats and opportunities it faces. It cannot make progress towards regional development without progressive and sophisticated migration tools.

Migration is an increasingly politicised issue. It has given rise to nationalist, anti-immigrant platforms in many countries. South Africa and South Africans should put aside xenophobic policies and practices. Politicians and government departments should recognise the dangers of this rhetoric and avoid institutionalising it. They should counter these narratives and establish progressive migration norms that maximise opportunities and benefits for all. A truly Africa-oriented migration management approach will prioritise development and free movement.

There is no evidence that migrants pose elevated security risks and treating migrants as high risk distracts from true threats

Progressive measures that are more effective and less expensive can and should replace existing proposals. These include:

- SADC visas for low-skilled workers should be prioritised. These visas should match the demands of the South African labour market.
- Regularisation programmes should urgently be executed, as proposed in the white paper. These should build on lessons learned in previous waves and be implemented in an inexpensive and accessible manner.
- Plans for the asylum processing centres should be abandoned. Resources set aside for building and operating these centres should be diverted to improving immigration management.
- South Africa should recognise the developmental impact of migration on the country, region and continent. All relevant departments should work towards eliminating barriers to free movement.
- Home Affairs should stop wilfully problematising asylum seekers and low-skilled migrants. It should recognise that most are our African neighbours fleeing difficult or dangerous situations.
- President Cyril Ramaphosa should consider the impact the BMA Bill could have on trade and legitimate travel and reject its approval.
- By Home Affairs' own admission, managing economic migrants is the most difficult aspect of migration. The department should be open about the challenges it faces.
- South African politicians and the public should recognise the dangers of xenophobia and oppose institutionalised xenophobia at all costs.
- South Africa should be realistic about the true migration-related threats and opportunities it faces and implement progressive migration tools. It should avoid paying lip service to policies and practices if it is not willing to implement them.



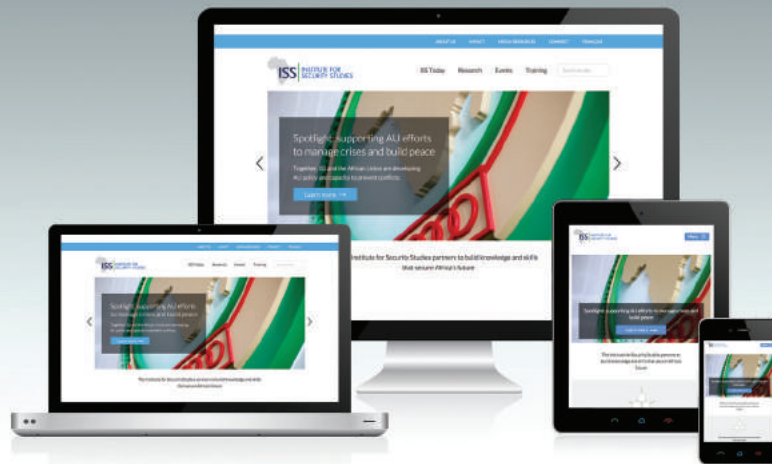
SOUTH AFRICA SHOULD
PUT ASIDE XENOPHOBIC
POLICIES AND PRACTICES

Notes

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