



An Altogether Better Path for Migrants

1. Introduction

On 23rd August 2023 the German Federal Government approved new legislation that will potentially give millions of immigrants in Germany a process for safe, legal residence in the country, with a path to citizenship.¹ It “will also bolster the integration of immigrants and help an economy that is struggling with a shortage of skilled workers.”²

The legislation passed by the Chancellor and his cabinet still needs to go to the lower house of Parliament for approval. The lower house has a coalition of three socially liberal parties and the legislation is expected to pass easily and come into effect early in 2024.³

2. Substance of the New Legislation

Key amongst the new rules are the following concessions:

- The length of stay before applying for citizenship has been reduced from eight to five years.
- German citizenship will be given to children born in Germany if one of their parents has been living in Germany for more than five years.
- Restrictions on holding dual nationality have been dropped.

In a statement on 24th August the Ministry of the Interior, referring to the establishment of a rights based framework for foreign nationals, pointed to the deficit that had so long existed in this regard. The Minister said, “This shows that a significant part of the people who have had their centre of life in Germany for years and have long been an integral part of society are not able to participate and contribute democratically on an equal footing.”⁴ This Citizenship Act will begin to

reverse this situation. She went on to say: “We are creating a modern immigration law that does justice to our diverse society.” The new law follows years of debate which the Minister characterised as marked by exclusion, resentment and cheap propaganda.⁵

Those applying for citizenship must have a good knowledge of German, have shown that they have successfully integrated into German society, and have an ability to earn an independent living. These will be mandatory expectations. Naturalisation after three years will be possible for those who have achieved outstanding performances at work or who do voluntary work, speak good German, and are financially independent. Naturalisation tests will be abolished for guest and contract workers who have made a significant contribution to the development of Germany.⁶

Amongst the requirements set out for a passport, there must be a commitment to respect the values of freedom and democracy. Foreigners who disregard the equality of men and women, and those in polygamous relationships, will be excluded from the benefits of this law; so will people who exhibit anti-Semitic and racist behaviour.⁷

The Minister also underlined the important economic advantages of such legislation: “A modern citizenship law is therefore key for the competitiveness of Germany as a business location. The Skilled Immigration Act has already been passed – now we are taking the important next step with the new citizenship law. We are in the middle of a worldwide competition for the best people. Germany could only attract them if they can in the foreseeable future become part of our society will full democratic rights.”⁸

Three positive aspects stand out. Firstly, this is a good basic model of a safe, legal pathway for

welcoming and integrating foreign nationals. Secondly, it speaks to an orderly way of helping the economy grow. Thirdly, Germany has forged these paths despite growing agitation politically around issues of immigration. It has been able to make a strong political choice and not bow to populist pressure. These progressive, even if modest, laws have occasioned considerable attention also because they appear to counter the growing tendency to exclude foreign nationals and to deconstruct safe paths for integration.

It should not be forgotten, if one follows the Minister's comments, that this decision is obviously largely motivated by the needs of the economy. It is nonetheless noteworthy because it takes place against a background of spiralling anti-immigrant feeling across the world, definitely across Europe, and also in Germany. It makes the point that difficult political decisions can be made if there is political will, no matter the circumstances.

But this certainly does not mean that there is unanimity on this question in Germany. In an article in June 2023, the following was noted:

"Far-right parties have gained ground across Europe. In France, the far-right has become a stronger rival at the ballot box, while in Italy and Sweden they are now in government. But the rise of the AfD (the German right wing party), which lambasts the German government for high immigration levels, surging inflation and a costly green transition, touches a particularly sensitive nerve in Germany because of the country's Nazi past. 'We are seeing the rhetoric on topics like migration get shriller,' said Stefan Marschall, political scientist at the University of Düsseldorf. Migration is moving up Germany's political agenda. Michael Kretschmer, the premier of the east German state of Saxony, and who is from the right of centre Christian Democratic Union (CDU), said last week that the number of migrants was 'too big', calling for limits on refugees allowed in and cuts to benefits."⁹

3. A Note on Safe and Legal Routes

The concept of 'a safe and legal route for mobile people' is a critical one. It implies not only the creation of more routes or possibilities for safe entry and protection in the host countries, but also the optimal functioning of those which already exist, with a strong human rights cul-

ture. The Global Compact on Refugees, adopted in 2018, has this to say: "There is a need to ensure that such pathways are made available on a more systematic, organised and sustainable basis, that they contain appropriate protection safeguards, and that the number of countries offering these opportunities is expanded overall."¹⁰ Some examples, often referred to as pilot examples, have emerged: in the area of labour there are 'seasonal visas', while there are 'humanitarian visas' for instances where mobility follows disasters. "It should come as no surprise that most of the orderly pathway initiatives introduced in recent years (such as privately sponsored resettlement, humanitarian corridors, evacuation, and relocation programmes) have all operated on a modest scale and have often been established on a pilot basis, with no guarantee of them being expanded."¹¹

4. South African Comparison

Despite the fact that South Africa has boasted of a more humane, inclusive immigration regime, including the policy of non-encampment and access to basic educational and health care for refugees and *bona fide* asylum seekers,¹² which should logically show congruence with the recent German approach, the contrary seems increasingly to be true.

4.1. Political Will

There is a sharp divergence between Germany and South Africa when it comes to the exercise of political will. In the German case as noted above, despite populist rhetoric and protestations, the government acted in favour of boosting the economy and building social cohesion, as these are both deemed necessary for a prosperous nation. One point of comparison here would be the numbers. In this exercise Germany seeks to regularise three million people, while South Africa does not have the political will to regularise the situation of 178 000 Zimbabweans who have been in the country legally for a minimum of twelve years.¹³ It has been well argued that the South African government knows what the right thing to do is since it did the correct thing with regard to Mozambican migrants in 1999/2000. In this instance, South Africa granted permanent residence to about 220 000 Mozambican refugees from the earlier civil war in that country. So it is not that South Africa is without a good precedent in this regard.¹⁴ It is also important to note

that in the Mozambican case the South African government involved NGOs and other interested organisations in the process,¹⁵ but as of 2023 this practice seems to have dried up completely, to our detriment. It seems that the government is currently paralysed by the spiking anti-immigrant rhetoric and that it fears losing votes to smaller parties which espouse ant-immigrant positions. These considerations are seen as more important than boosting our economy or building social cohesion, both of which are critically needed if the country is going to hold together.

As a footnote, it is important to say that even though the Mozambican case provides a worthy precedent, it was not a perfect one. For one thing, it was not a national amnesty but one offered only in those provinces where Mozambicans were most concentrated. It thus missed many who qualified but were in provinces with smaller numbers. Secondly, it did not include seasonal workers who spend most of the year in South Africa and do so over many years, even decades.¹⁶ The point is, however, that despite these omissions and discrepancies the model is still one worth following.

4.2. Documents and procedures

A second area of comparison is the decision of the German government to make access to documents easier to obtain, rather than more difficult. This is contrary to the trend in most other parts of the world, including South Africa. One huge obstacle is of a procedural nature; Human Rights Watch puts it thus:

“The obstacles in the system in Johannesburg are apparent from the first moment the asylum seeker tries to enter the refugee reception office to the moment – often years later – when he or she receives a decision on refugee status. For example, given the difficulty asylum seekers have in gaining access to the Johannesburg refugee reception office, the fourteen-day permit issued at initial points of entry does not provide enough time for most asylum seekers to obtain asylum seeker permits under Section 22 of the Refugees Act. This is the first of several ‘documentation gaps,’ which can leave asylum seekers in situations of insecurity and jeopardy. Lack of clear, easily available rules regarding the asylum process and the operation of the Johannesburg office and the lack of official interpreters complicate the pro-

cess and contribute to the pervasiveness of corrupt practices in and around the office. Insufficient staff and inadequate equipment, such as functioning computers, are major causes for long delays in the asylum procedures. This situation is made worse because of inconsistent DHA decisions regarding work authorization. Many asylum seekers unable to support themselves are left destitute. There has also been insufficient public education regarding the asylum seekers’ right to work and study.”¹⁷

These difficulties are compounded by the fact that, for example, the backlog in appeals for asylum seeker refusals is around 133 000.¹⁸ Not only are the procedural aspects stacked against the immigrant, but the requirements themselves are onerous. Whereas the Germans have lowered the number of years of presence in the country required before applying for more permanent documentation, the South African government has made conditions more difficult. For instance, refugees need to have been on refugee status for ten years before they can begin the process of applying for permanent residence.¹⁹ All these difficulties taken together make for a difficult and drawn out procedure with a very high number of rejections. Businesses are also on record decrying these backlogs, and the often arbitrary reasons for rejection, as providing a stumbling block for business and thus for the economy.²⁰ It is all rather dismal.

5. Conclusion

This is a Kairos time for South Africa with regard to its treatment of mobile people of various status. The present trajectory is neither just nor practical and robs South Africa of skills needed in the economy, especially scarce skills. It takes South Africa nearer to a social meltdown due to xenophobic responses which the already fragile social and political domains will not be able to sustain. The government should adopt a model nearer to the one crafted for the Mozambicans’ situation in 2000. We have the examples in front of us; all that seems to remain is to find the political will to follow them.

The failure to exercise that political will, the ethos of exclusion, and the negligence demonstrated by the procedural breakdowns noted above, must all be construed as signs of indifference towards these vulnerable communities. On 10th August this year, Pope Francis challenged

the world not to remain indifferent to the tragedies affecting migrants. The terrible indifference which our present attitude displays is a real blot

on a nation that prides itself on having moved beyond disdain for others, and one that needs to be changed forthwith.

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¹ According to the German Ministry of the Interior, roughly 5.3m of the 12m foreign nationals currently in Germany have been living in the country for more than ten years.

² <https://abcnews.go.com/Business/wireStory/germany-moving-forward-plan-ease-citizenship-rules-seeks-102477588>

³ <https://abcnews.go.com/Business/wireStory/germany-moving-forward-plan-ease-citizenship-rules-seeks-102477588>

⁴ <https://abcnews.go.com/Business/wireStory/germany-moving-forward-plan-ease-citizenship-rules-seeks-102477588>

⁵ <https://abcnews.go.com/Business/wireStory/germany-moving-forward-plan-ease-citizenship-rules-seeks-102477588>

⁶ <https://apnews.com/article/germany-government-citizenship-rules-7638771d85a52ad30f90153c-c762bda8>

⁷ <https://abcnews.go.com/Business/wireStory/germany-moving-forward-plan-ease-citizenship-rules-seeks-102477588>

⁸ <https://abcnews.go.com/Business/wireStory/germany-moving-forward-plan-ease-citizenship-rules-seeks-102477588>

⁹ <https://www.reuters.com/world/europe/germanys-far-right-rides-high-anti-immigration-anti-green-agenda-2023-06-07/>

¹⁰ <https://mixedmigration.org/articles/unpicking-the-notion-of-safe-and-legal-routes/>

¹¹ <https://mixedmigration.org/articles/unpicking-the-notion-of-safe-and-legal-routes/>

¹² <https://www.dailymaverick.co.za/opinionista/2020-07-22-politicians-have-a-duty-to-make-it-clear-that-immigrants-are-allowed-to-live-in-sa/>

¹³ <https://www.polity.org.za/article/zimbabwean-migrants-south-africas-anti-immigrant-sentiments-are-hindering-policy-reform-2023-07-21>

¹⁴ <https://scholars.wlu.ca/cgi/viewcontent.cgi?article=1063&context=samp>

¹⁵ <https://scholars.wlu.ca/cgi/viewcontent.cgi?article=1063&context=samp>

¹⁶ <https://scholars.wlu.ca/cgi/viewcontent.cgi?article=1063&context=samp>

¹⁷ <https://www.hrw.org/reports/2005/southafrica1105/5.htm>

¹⁸ <https://help.unhcr.org/southafrica/get-help/asylum/>

¹⁹ <https://help.unhcr.org/southafrica/get-help/asylum/>

²⁰ <https://businesstech.co.za/news/government/707738/massive-visa-backlog-crippling-south-africa/>

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