

Courts ‘draining’ resources



There are more refugees and asylum seekers in the world today than there were at the end of World War II. This major crisis came under the spotlight at last week’s UN High Commissioner for Refugees conference in Geneva. South Africa was represented by Professor Hlengiwe Mkhize and Fatima Chohan, respectively Minister and Deputy Minister of Home Affairs. Chohan highlights key challenges that pertain to refugees and asylum management in South Africa.

SOUTH AFRICA’S obligations include the duty to share the responsibility of hosting refugees fleeing persecution and insecurity. From 2006 to 2015 South Africa received approximately 1.08 million asylum seekers compared with 3.7 million for the 28-member EU, an average of 132 000 persons for each European country for that period.

Without doubt, South Africa carries a fair share of the burden of displaced persons. Since 2010, we have afforded work and study permits through sequential special permit regimes to no fewer than 280 000 Zimbabweans seeking jobs in South Africa in the wake of that country’s economic crisis.

International law does not require refugees to seek asylum in any particular country. There is, however, the principle of “first country of asylum” which directs countries to welcome refugees fleeing from persecution in a neighbouring state. This principle has developed so that, in practice, an asylum seeker who had the opportunity to claim asylum in another country is liable to be returned to the neighbouring country to have his or her claim determined there.

The UK unsuccessfully tried to invoke this principle during the exodus of Syrian refugees, returning them to first safe countries like Greece while shutting their borders to the newcomers, who resorted to camping in the French city of Calais.

Despite resource and capacity challenges related to managing



‘GIVE ME SHELTER’: Raho Hassen waits with others under the Nelson Mandela Boulevard Bridge for her name to be called by Home Affairs officials.

Picture HENK KRUGER

migration, South Africa has not closed its ports of entry to asylum seekers. Consequently, much of our resources have been diverted to dealing with challenges arising from so called “mixed migration”. This refers to migration motivated by a variety of reasons including insecurity, persecution and better economic prospects.

It also includes irregular (or illegal) migration, as well as the heinous practice of trafficking. Irregular migration is not benign to a mixed economy such as ours and already the strain on the Health Department’s resources is becoming evident in Gauteng, where most undocumented migrants are concentrated.

South Africa’s post-apartheid human rights orientation does not sit comfortably with the notion that poor people merely looking for a better life should be dealt with as criminals who stand to be arrested and deported. Instinctively, South Africans understand and can relate to the plight of poverty and the human desire for new pastures.

However, our constitution itself is a law, and an essential principle of any constitutional state is respect for the law. Our Bill of Rights reserves the right to enter and reside in the country only to citizens. Everyone else is required

to enter the country in accordance with immigration laws. If you enter illegally, you should surely not have an automatic right to remain and have equal access to state resources. As a country we must strike a balance between our humanitarian values and our responsibility to ensure safety and security for all citizens, as well as those migrants and refugees who take the trouble to comply with our laws.

This emphasis is increasingly being overlooked in subsequent court-made policy decisions. Notwithstanding the fact that a correct application of the Bill of Rights would leave no room for contradiction of its provisions, the state is increasingly being directed by the courts to afford rights to persons who have entered and remain in the country illegally.

In this regard, it has previously been understood that the separation of powers doctrine retains the executive’s remit in relation to the deployment of state resources.

Increasingly, the executive is made to give effect to court-made policy. This has serious implications for the deployment of scarce resources and entails the reappropriation of budgets determined by the cabinet. In some instances, these court determinations result in the direct displacement of gov-

ernment policy determined through democratic processes and commitments to the electorate.

Placing the refugee reception centres at the land borders in the north, is one such policy. The UNHCR Report on Protection, delivered in Geneva on October 5, states among others:

“The orderly processing of asylum claims, either in an individualised procedure or through group procedures, enables states to be confident about who is on their territory and, at the same time safeguards the rights of refugees and asylum seekers. This includes prompt registration of new arrivals and appropriate status determination mechanisms.”

Similar considerations prompted the governing party’s policy conferences since 2012 to affirm the government’s intention to relocate the refugee reception centres to our northernmost land borders.

Our statistics, and strategic analysis indicate that a new refugee centre at the border with Mozambique, together with the existing Musina Refugee Reception Centre will be able to process most newcomers upon their arrival at our borders.

Given the blatant corruption experienced in the Port Elizabeth Reception Refugee Centre in 2011, the director-general announced a closure of that reception centre to all newcomers. Likewise, a later decision was taken to close the Cape Town Refugee Reception Centre to

national protection to be detected and referred to the appropriate services, while simultaneously advancing national security.

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new asylum seekers. Resident refugees in both those cities would continue to be serviced by those centres operating leaner bureaucracies. It was intended to deploy the residual resources from the scaled-down operations towards the new borderline reception centre.

Due to subsequent court challenges by NGOs based in Port Elizabeth and Cape Town, our courts have ordered the Department of Home Affairs to reopen both those reception centres to first-time applicants.

Meanwhile, the department’s resources have come under significant strain due to budget cuts.

This effectively means that any further resources acquired by the department in the future will have to be prioritised towards the reopening of these two centres, in cities situated far from where most new arrivals enter the country.

This deals a blow to the protection of vulnerable asylum seekers who arrive at our borders and constrains the state’s attempts to contain illegal movement through the hinterland of the country, undermining our collective security.

This state of affairs benefits neither our humanitarian values nor our aspiration for greater safety.

● Chohan is the Deputy Minister of Home Affairs

How Ntsikana brought the new religion of the gospel to his own

Ncebakazi Mnukwana

UNIVERSITY of Stellenbosch musicology students studying the history of the prophet Ntsikana (1780-1821) and black theology in southern Africa recently visited St George’s Cathedral in the heart of Cape Town.

On October 1, at 9.30am, the students rendered a musical item in the church service and sang the *Great Hymn of Ntsikana*. There was also a narrative informing congregants of who Ntsikana was.

This previously Afrikaans university has started to decolonise its curriculum by including the music of black theologians and African indigenous music alongside Western classical music.

It is important, however, that young people who learn and sing the music of Ntsikana and others have an audience beyond the Stellenbosch community.

Intsimbi ka Ntsikana/Ntsikana’s Bell

1. Ulo Tixo omkulu ngosezul-wini;
2. Ungu Wena-wena Kaka lenyaniso.
3. Thou art Thou, Shield of truth
4. Ungu Wena-wena Hlati lenyaniso.
5. Thou art Thou, Thicket of truth
6. Ulo dal’ ubom, wadala pezulu.
7. Lo Mdal’ owadala wadala izulu.
8. Lo Menzi wenkwenkwezi noZi lime la;
9. Yabinza inkuenkuezi, isixelela.
10. Lo Menzi wemfaman’ uzenza ngabom?
11. Lateta ixilongo lisibizile.
12. Ulongin’ izingela imzpefumlo.
13. Ulohlanganis’ imihlamb’ eyalanayo.
14. Ulomkokeli wasikokela tina.
15. Ulangub’ irikul’ esiyambata tina.
16. Ozandla Zako zinamanxeba Wena.
17. Onyawo Zako sinamanxeba Wena
18. Those feet of Thine, they are wounded.
19. Thy blood, why is it streaming?
20. Lemali enkulu-na siyibizile?
21. Lomzi Wako-na-na siwubizile?
22. This home of Thine, have (In Hodgson 1980) Narrative
23. The singing of the Ntsikana Bell is a celebration of the heritage of black theology in South Africa. One has to go beyond the memories of KwaNoCollege, Healdtown, Lovedale and Lovedale Press, where the Holy Bible was first translated into Xhosa.
24. We are to critically reflect on the arrival of the settler communities, missionary education and the converting of the red ochre people.
25. Ntsikana ka Gaba (1780 to 1821) was born in Gcalekaland. Ntsikana moved from African traditional religion to Christianity in two stages. Stage one, following his conversion, incorporated a relationship to a “God” rather than the ancestors, without it being clear how much this was “God” as understood in the Xhosa tradition, and how much the concept at this stage owed to Christianity.
26. The second stage followed after

the establishment of Williams’ Mission in Fort Beaufort, eBofolo. For years Ntsikana regularly visited the station to receive religious instruction and take part in worship, so gaining a deeper insight into the Christian tradition.

Oral tradition, however, maintains that he heard (Johannes) Van der Kemp preach when he was a boy of cattle-herding age and that he later listened to (James) Read during one of his preaching tours.

Certainly, the specific content of his teaching suggests contact with the missionaries. Ntsikana’s conversion experience is thought to have taken place in 1815, prior to (Reverend Joseph) Williams’ coming. The story goes that early one morning, as he was admiring his cattle in his kraal, he saw a bright ray of light from the rising sun strike the side of his favourite ox, Hulushe. But a young boy rounding up calves saw nothing peculiar.

There are said to have been further strange happenings later that day, when Ntsikana took his family to a dance at a neighbouring kraal. Three times, as he started to dance, a raging wind arose out of a clear blue sky, forcing all the dancers to stop. Tradition has it that he now became aware that the Holy Spirit had entered him, but the people thought him bewitched. He promptly took his family home and they were amazed when on the way he washed the red ochre from his body in the Gqora River. The next day, Ntsikana continued to act

strangely (Hodgson 1980:35)

Further on, Hodgson (1980) discusses Ntsikana’s impact on Christianity in southern Africa. Ntsikana introduced a number of innovations clearly reflecting missionary influence such as the regular meeting of a non-kinship group for worship, the singing of hymns, prayer in the sense of communion with God, and teaching about sin and repentance. Ntsikana’s services were popular and he attracted many hearers among the amaNgqika, but his disciples were comparatively few.

Although Ntsikana probably had never heard a church bell rung he most likely heard the missionaries calling the people to worship by striking a piece of iron. Of interest is the bell stone, intsimbi, on the hill above the site where Ntsikana is reputed to have lived at Thwatwa (near Hertzog in the Seymour district), which he is said to have used to summon his followers to worship. The bell stone is rung by being struck with another stone. The sound resembles the ringing of a church bell and it can be heard over the same distance.

At the end of the singing of the “Bell”, Ntsikana is said to have gone into his hut followed by his congregation. He would then settle the assembly down with the singing of *Dalibom – Life Creator* (Hodgson 1980:37).

The text *ele, ele, ele, ahom* is the Bell in Ntsikana’s great hymn *Ulo-Thixo Omkhulu*. As a biblical text

wounded

17. Onyawo Zako sinamanxeba Wena

Those feet of Thine, they are wounded.

18. Ugazi Lako timrolo yinina? Thy blood, why is it streaming?

19. Ugazi Lako lipalalele tina. Thy blood, it was shed for us

20. Lemali enkulu-na siyibizile? This great price, have we called for it?

21. Lomzi Wako-na-na siwubizile? This home of Thine, have (In Hodgson 1980) Narrative

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we are familiar with, *ele, ele, ele, maSabbata*. Here the *ele* is accompanied with *Ahom hom-na*, which is sung in the 6/8 time signature. Herein we get the swinging pendulum effect in the time signature like that of the ringing bell.

We have to appreciate that an indigenous theology was born when Ntsikana added to the expression of the new religion, in ritual, the expression of the new religion in a language of faith.

The conceptual aspect was the Word of God and he articulated it in the form of preaching, prophecies, prayers, praise and singing. Ntsikana’s statement of Christian belief was in an African idiom and his teaching gained its impact by being related to the existential situation of his people.

The four hymns that Ntsikana penned, including the great hymn *Ulo-Thixo Omkhulu*, illustrate how he made wise use of imagery and symbolism relating to fighting, hunting and the pastoral life to convey the meaning of his message, so matching new concepts with such of the old as were common to their everyday experience (Hodgson 1980:36.)

● Source: Hodgson, Janet (1980) *The Great Hymn of the Xhosa prophet Ntsikana: an African expression of Christianity, 1815 – 1821 in Religion in southern Africa. 1 (2), 33 – 58.*

● Mnukwana is a lecturer in Music Education and Ethnomusicology.

I AM not being original, but today’s judgment in the re-opened Timol inquest is a classical affirmation of the old adage that “the wheels of justice may grind slowly – and they do – but they grind exceedingly fine”!

It also vindicates our own findings in the TRC on Ahmed Timol, in which we rejected the then magistrate’s finding that he had jumped to his death from the room in which he was being tortured and abused. We found that this was one of those so-called “staged suicides”.

The findings should be a message to those current authorities, who foolishly think they can get away with proverbial “blue murder” – in some cases, literally so.

They may delude themselves that in the commission of their crimes they have covered their tracks or because they are holding the levers of power, they can harm society in the furtherance of their own interests with absolute impunity.

This Timol inquest result should be a reminder that the truth will out and that victims do get vindicated – no matter how long it takes. While one can fool some people, even all of the time, one cannot fool all the people all of the time.

One trusts that the verdict will lead to the National Prosecuting Authority giving the prosecution of former members of the police, who recalcitrantly sought to evade justice through perpetuating lies – your Rodrigues’s – a good shot!

Let us hope there is political will to follow this verdict with prosecutorial action.

● Advocate Dumisa Ntsebeza, SC, is a former commissioner of the Truth and Reconciliation Commission and head of the commission’s investigative unit

Timol inquest ruling lauded



Statement from Archbishop Emeritus Desmond Tutu

I WISH to pay a very warm tribute to Ahmed Timol’s family. Nineteen years after the Truth and Reconciliation Commission found the police directly responsible for Timol’s death, and the inquest a sham, the family finally succeeded in persuading the State to re-examine the case.

While it is sad that it took so long, and that there are many other TRC matters that have been left unresolved, it is exhilarating that the Timol family has been driven not by vengeance but by the pursuit of the truth and justice.



Statement from advocate Dumisa Ntsebeza, SC,

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