

12 July 2018

TO: Minister of the Department of Home Affairs
Honourable Malusi Gigaba
minister@home-affairs.gov.za

C/O: Assistant to the Minister, Ms Vuyisa Frans
vuyiswa.frans@dha.gov.za

AND TO: President of the Republic of South Africa
His Excellency, President Cyril Ramaphosa
presidentrsa@presidency.gov.za

C/O: Assistant to the President, Ms Malebo Sibiya
malebo@presidency.gov.za

CC: Minister of the Department of International Relations and Cooperation
Honourable Minister Lindiwe Sisulu
minister@dirco.gov.za

C/O: Assistant to the Minister, Ms Mareldia Chowglay
chowglaym@dirco.gov.za

CC: Minister of the Department of Justice and Constitutional Development
Honourable Minister Advocate Tshililo Michael Masutha
Ministry@justice.gov.za

C/O: Assistant to the Minister, Ms Shoneez Africa
shafrika@justice.gov.za

CC: Minister of the Department of Health
Honourable Minister Pakishe Aaron Motsoaledi
minister@health.gov.za

CC: Minister of the Department of Labour
Honourable Minister Nelisiwe Mildred Oliphant
moliphant@parliament.gov.za

C/O: Private Secretary to the Minister, Ms Pamela Salusalu
pamella.salusalu@labour.gov.za

Dear Honourable Minister,

URGENT NEED TO IMPLEMENT NEW VISA OPTIONS AND REGULARISATION PROGRAMMES OUTLINED IN THE WHITE PAPER ON INTERNATIONAL MIGRATION

The undersigned organisations – the Consortium for Refugees and Migrants in South Africa, Lawyers for Human Rights, the Legal Resources Centre, the Scalabrinii Centre of Cape Town, and the Southern Africa Litigation Centre – write in regards to migration policy in South Africa and the critical challenges with migration management. Our organisations have an interest in advancing democratisation, human rights protections, development, and the rule of law in South African society.¹

We believe that the current continental and regional climate, namely the African Union (AU) and Southern African Development Community (SADC) commitments to increase integration and free trade within Africa, presents an opportunity for South Africa to take leadership in this arena and begin to implement aspects of the rational, practical and regionally beneficial migration policy as outlined in the White Paper on International Migration ('the White Paper'), developed by the Department of Home Affairs ('the Department') and published in July 2017.

We are strongly encouraged by the Department's progressive and pragmatic policy proposals for regional economic migration and integration outlined in the White Paper, specifically the SADC visa regime and the complementary regularisation programmes for irregular migrants.² We note that the Department's current Annual Performance plan states that the Department is now developing amendments to the Immigration Act (No 13, 2002) that are scheduled to be finalised and submitted to Parliament by the end of the 2018/19 financial year to bring the Immigration Act in line with the White Paper's proposals.

We believe it is vital that the SADC visa regime be incorporated into the current amendments and that targeted regularisation programmes commence immediately, with these regularisation programmes strategically connected to the SADC visa regime. The introduction of these proposals will, as the Department has noted in the White Paper, reduce irregular migration with the following specific benefits:

- Reduce downward pressure on wages and conditions in the lower end of the economy, flowing from abuse of migrants by unscrupulous employers;
- Improved social cohesion as citizen perceptions of migrants improves;
- Relieve pressure on asylum seeker management system; and
- Reduced 'revolving door' deportations to neighbouring countries.³

The current migration framework has resulted in a system where low- and semi-skilled migrants are unable to legally conduct work or establish and run businesses in South Africa. The Department, civil society, and migration experts have identified the primary

¹ See Annexure 1 for a brief overview of each signing organisation.

² These proposals are outlined on pages 55-57 of the White Paper. The White Paper is available at: www.dha.gov.za/WhitePaperonInternationalMigration-20170602.pdf.

³ White Paper, p. 58.

challenge in South Africa's migration framework in recent years as the lack of legal avenues for regional economic migrants to sojourn in the Republic lawfully. The lack of legal options, coupled with a lack of awareness among refugees, migrants and the citizenry on the purpose and intent of the asylum system, has led to many individuals lodging asylum applications that do not meet the definition of a refugee in sections 3(a)-3(c) of the Refugees Act. At the same time, the asylum system provides much-needed protection for many vulnerable refugees fleeing persecution and conflict throughout the continent. The systemic challenges in the first-instance refugee status determination process have resulted in these legitimate refugees receiving rejections and being placed in a protracted appeal process and treated as illegitimate claimants.

The result is an asylum system is now characterised more by arbitrary 'cut and paste' refugee status determination decisions, delays, expired permits, backlogs, access issues, and the creation of networks of corruption than by its original purpose – to identify and provide protection to those fleeing persecution and conflict. The most recent statistics released by the Department detail the total collapse of the system: nearly 700,000 'inactive' files still requiring consideration and a backlog in the appeal process of at least 133,000 cases,⁴ and possibly as high as a quarter of a million when considering 'inactive' files.⁵ Amidst the collapse of the system, the portrayal of legitimate refugees as 'illegitimate' leads to heightened social tensions. For legitimate refugees, the difficulties have meant repeated visits to Refugee Reception Offices (RRO) and indefinite uncertainty. Many are forced into a precarious position with expired documentation, and have been so for years, vulnerable to abuse, and remain invisible to government in critical areas such as public health and public safety.

The situation is clearly untenable and has been at a crisis point for too long. Further inaction will only result in more undocumented asylum seekers vulnerable to abuse, increased and enduring backlogs, and the further entrenchment of networks of corruption that penetrate beyond the asylum and immigration regimes, with connections spreading to police services and local government. Undocumented individuals face difficulties in accessing critical medical services, including preventative care, which weakens public health both in South Africa and in the region. The continuation of these trends has serious implications for national security, public safety and social cohesion, public health, and the rule of law.

We are encouraged by the White Paper's recognition of the need to pragmatically approach migration in a manner that balances the reality of regional economic migration to South Africa with the need to ensure unemployed, poor and working class South Africans benefit from migration. This approach has been vigorously supported by civil society and aligns with the National Development Plan ('NDP') which identifies the need to harness migration to break patterns of poverty and to create more

⁴ Asylum Seeker Management (Department of Home Affairs), '2016 Asylum Report for UNHCR', 2016.

⁵ As referenced in Parliament. Question NW267 to the Minister of Home Affairs, 9 March 2017, available at: <https://pmg.org.za/committee-question/4690/>.

opportunities for decent work. The NDP recognises that migration can contribute to local and national development and foster the growth of diverse, cosmopolitan populations that drive cultural, economic and intellectual innovation.⁶ A more integrated approach will also facilitate the strengthening of bilateral relations between South Africa and migrant-sending countries which can open up new avenues for cooperation, investment and development.

There has been much apprehension about adopting a more pragmatic migration framework. Public officials and articles have cautioned against a 'flood' of migrants to South Africa when in fact estimates by Statistics South Africa estimates the figure to be between 1.6 and 2.1 million.⁷ Further concerns have centred on migration resulting solely in increased competition for resources when in fact recent research has highlighted how intra-African migration can play a key role in the structural transformation of the continent's economies.⁸ Legalising avenues for regular migration will allow for improved management of migration and may also facilitate return migration enabling individuals to gradually invest and establish livelihoods in their country of origin. Further, increasing legal avenues for migration will enable border control initiatives to be more effective by reducing the need for irregular cross-border entry, thereby enabling authorities to focus on serious cross-border crimes. We stress that even when resources are severely constrained, vulnerable members of society, including migrants in irregular situations, must be protected, and the cost of targeted programmes to protect the rights of such groups need not be high.⁹

To realise this vision, there is an urgent need to implement the White Paper's proposals guided by decisive leadership utilising a rights-based approach. We believe that this could begin with immediate effect through the creation of a strategic regularisation programme for irregular migrants residing in South Africa. To exemplify possible outcomes of such implementation, in terms of the asylum system and expired documentation, the most critical regional countries are Zimbabwe, Malawi, and Mozambique that, as of 2016, account for 633,150 cases out of the 893,111 inactive cases in the asylum system – roughly 71%. These three countries have been identified in the White Paper as major source countries and special dispensations introduced in the near-term, coupled with the development of a SADC visa regime in the medium term, could allow those regularised an opportunity to join a mainstream visa regime when the special dispensation permits expire. This transfer could be subject to

⁶ National Planning Commission, *National Development Plan 2030: Our future—make it work*. (Pretoria, Presidency of South Africa, 2012), pp. 97, 105.

⁷ For discussion and analysis of these figures, see Sintha Chiumia, ' FACTSHEET: How many international migrants are there in SA?', AfricaCheck, 14 August 2016, available at:

<https://africacheck.org/factsheets/data-migrants-numbers/>.

⁸ United Nations Conference on Trade and Development (UNCTAD), *Economic Development in Africa Report 2018 - Migration for Structural Transformation*, UNCTAD/ALDC/AFRICA/2018, 31 May 2018, available at: http://unctad.org/en/PublicationsLibrary/aldcafica2018_en.pdf.

⁹ Office of the High Commissioner for Human Rights, 'Protecting the rights of migrants in irregular situations', Global Compact for Migration Technical Note, 2018, available at:

<http://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/IrregularMigrants.pdf>.

conditions made by the Department to ensure migrants are contributing to the South African economy and are abiding by the country's laws. The Department's previous special dispensations for citizens of Zimbabwe, Lesotho and Angola could provide a model to improve upon for this process.¹⁰ Asylum seekers whose permits have expired but believe they require international protection should be allowed to renew their permits and continue their claims.

We firmly believe that the implementation of these interventions could assist in addressing the current dysfunction and stagnation in the asylum system and reduce pressure on officials and infrastructure at RROs, enabling it to better achieve its primary – and desperately needed – purpose of providing critical protection to those fleeing persecution and conflict. In the long term, this could contribute to the achievement of the NDP's vision for South Africa and the African Union's vision for a more integrated Africa as set out in Agenda 2063.

The White Paper discusses the need for a holistic approach to migration and we believe the above policies will begin to set the tone for a more holistic migration policy. The White Paper states that capacity issues extend beyond the physical and financial, and extends to leadership. We believe that the current time requires bold leadership to begin to address the challenges in migration policy and set the agenda for the building of national consensus on migration in South Africa going forward.

We therefore request your considered response by **20 July 2018** and a meeting in the near future to discuss these urgent issues and share ideas on the way forward.

Yours faithfully,

Thifulufheli Sinthumule
Director, Consortium for Refugees and Migrants in South Africa
thifulufheli@cormsa.org.za

Sharon S Ekambaram
Manager: Refugee and Migrant Rights Programme, Lawyers for Human Rights
sharone@lhr.org.za

Sherylle Dass
Regional Director: Cape Town Office, Legal Resources Centre
sherylle@lrc.org.za

Miranda Madikane
Director, Scalabrini Centre of Cape Town
mmadikane@scalabrini.org.za

¹⁰ Roni Amit, 'The Zimbabwean Documentation Process: Lessons Learned', University of the Witwatersrand African Centre for Migration & Society Research Report, January 2011, available at: <http://www.migration.org.za/wp-content/uploads/2017/08/The-Zimbabwean-Documentation-Process-Lessons-Learned.pdf>.

Kaajal Ramjathan-Keogh
Executive Director, Southern Africa Litigation Centre
Kaajalr@salc.org.za

- CC: Deputy Minister of Home Affairs
Honourable Ms. Fatima Chohan
fatima.chohan@dha.gov.za
- CC: Personal Assistant to the Deputy Minister
deseree.brinkhuis@dha.gov.za
- CC: Director: Policy Development, Department of Home Affairs
Mr Sihle Mthiyane
sihle.mthiyane@dha.gov.za
- CC: International Relations, Department of Home Affairs
Ms Maria Marques
maria.marques@dha.gov.za
- CC: Intergovernmental Relations, Department of Home affairs
Mr Jonathan Morifi
jonathan.morifi@dha.gov.za
- CC: Chief Director, Human Rights and Humanitarian Affairs, Department of International Relations and Cooperation
Mr Pitso Montwedi
montwedip@dirco.gov.za
- CC: Deputy Director: Social Development, Department of International Relations and Cooperation
Mr M A Conradie
conradiem@dirco.gov.za
- CC: Chairperson of the Portfolio Committee on Home Affairs, Parliament
Mr Hlomane Patrick Chauke
pchauke@parliament.gov.za
- CC: Secretary of the Portfolio Committee on Home Affairs, Parliament
Mr Eddy Mathonsi
eddy.mathonsi@parliament.gov.za