

25 October 2019

Portfolio Committee on Home Affairs, (National Assembly), [Engagement with Non-Governmental Organisations on how they want to interact with the Portfolio Committee on Home Affairs on matters that affect citizens and migrants

Submission by Lawyers for Human Rights:

Work of LHR

Lawyers for Human Rights is a non-governmental, non-profit organisation whose vision is to be: a leading, effective human rights and constitutional watchdog and advocate; a key actor in the development and delivery of human rights, with a primary focus on South Africa and the continent; and a key contributor to clear strategic policy on the delivery of rights for the marginalised. LHR uses the law as an instrument for change and to deepen the democratisation of South African society by undertaking impact litigation, community education and advocacy initiatives, contributions to law reform efforts, and participation in broader social justice movements through collaboration with other organizations and institutions seeking to promote human rights and strengthen democracy.

LHR's work is effected through six thematic programmes: Strategic Litigation, Refugee and Migrant Rights, Penal Reform, Gender Equality, Environmental Rights, and Land and Housing. Together, these work to facilitate LHR's vision of a South Africa in which all people enjoy their human rights, are free to pursue their own development, and in which all are afforded the equality and human dignity consonant with a value-based democracy.

Advocacy:

Lawyers for Human Rights was part of a delegation from the Consortium for Refugees and Migrants in South Africa (CORMSA) that met with the Minister of Home affairs on the 06th August 2019.

Key outcome: The Minister committed to ensure that the Stakeholders meeting be reconstituted. This meeting is scheduled to take place on the 08th November 2019.

Xenophobia

LHR is part of the Protection Working Group – which is co-chaired by the UNHCR and the government.

LHR has engaged with the South African Human Rights Commission on the issue of Xenophobia.

LHR is part of the Peoples' Coalition Against Xenophobia, which organised a march on the 04th September 2019 to denounce Xenophobia.

The key focus areas that LHR would like to present on are:

1. Corruption

In a report produced in 2015 by Lawyers for Human rights [Queue Here for Corruption](#), A number of recommendations were made. Can the Port Folio Committee for Home Affairs respond to the following recommendations made in the report in line with the mandate to *Facilitate public participation in Parliament relating to issues of oversight and legislation*

- 1.1. Request for exercise of greater oversight of the Department of Home Affairs (DHA) in its management of the asylum process by the committee.
 - 1.1.1. Have you exercised greater oversight of the DHA in its management of the asylum process since 2015? If yes, how so? What actions have you taken or policies have you developed in order to ensure greater oversight? Has this greater oversight resulted in a decrease in corruption or any other benefit to your knowledge? Is there anywhere you could improve oversight, and if so, how?
- 1.2. The committee needs to demand greater accountability from the DHA in its efforts to combat corruption.
 - 1.2.1. Have you demanded greater accountability from the DHA? What actions have you requested the DHA take? Do you receive reports from the DHA regarding corruption?
- 1.3. The committee needs to encourage increase the resources directed at operating the asylum system to ensure adequate service delivery.
 - 1.3.1. Have you increased the resources directed at operating the asylum system? If yes, in what way and by how much? Have you observed any improvements that this has resulted in? currently the Port Elizabeth Refugee Reception Office is understaffed. In PE, PTA and Durban people are given appointment slips to be assisted several months ahead of time and this leaves people undocumented which fuels xenophobia and general insecurity.

2. National Health Insurance

Various NGOs are in the process of making submissions on the NHI Bill. A glaring weakness in South Africa's proposed NHI is care for migrants. Rather than addressing its aims of ensuring equitable access to quality healthcare for all, the NHI – in its current form – legitimises the persistent exclusion of international migrants from South Africa's public health system.

But migrants living in South Africa struggle to access public services – including healthcare. This is the case even though they are legally entitled to these services. Reports of people being turned away from government health facilities due to immigration status, nationality or language spoken are widespread.

It is of concern that unsubstantiated statements blaming [foreign nationals for the crisis in the public health system](#). The issue of accurate data is critical.

The [Migration Dialogue for Southern Africa \[MIDSA\]](#) made the following recommendation with respect to Data collection *Generate accurate and reliable data on which to base policy; in a section six dealing with Ancillary Matters the report makes the following recommendations:*

6.1 Migration Data in Southern Africa

6.1.1 Develop standardized templates for data collection

6.1.2 Ensure that migration data is collected in LFS, as well as censuses and household surveys

6.1.3 Enhance intra- and inter-regional collaboration on data collection and analysis

6.1.4 Develop ongoing interventions for capacity-building and training at national and regional levels

6.1.5 Develop systems and mechanisms for ongoing evaluation of the quality of data and data collection and analysis processes

The issue of scientific based research and statistics about movement and migration, including refugees, asylum seekers and “economic migrants are highlighted as an area that members of civil society would like to collaborate on with Parliament.

3. Detention:

Despite the legal protections afforded to asylum seekers, refugees and migrants in South Africa, the detention and deportation of foreign nationals continues to be carried out in an unlawful manner. LHR Detention Monitoring Unit aims to ensure that immigration detention in South Africa is carried out within the boundaries of the safeguards in South Africa’s Constitution and legislation,

Detention and deportation have proven ineffective as an enforcement strategy, while exposing migrants, asylum seekers and refugees to an inefficient and corrupt system subject to abuse.

On 28 March 2019, both houses of Parliament ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). The OPCAT establishes international and domestic mechanisms for torture prevention through a system of regular visits to places of deprivation of liberty in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

The South African government has designated the South African Human Rights Commission (SAHRC) to perform a coordinating and functional role in the NPM together with other oversight bodies such as the Judicial Inspectorate for Correctional Services (JICS) and the Independent Police Investigative Directorate (IPID) subject to legislative review relating to their independence.

LHR won a significant victory in 2017, when the constitution court ruled that Sec 34(1) of the Immigration Act 13 of 2002 was unconstitutional – *Lawyers for Human Rights v Minister of Home Affairs and Others (CCT 38/16) [2017] ZACC 22*. The organisation continues to monitor to ensure that the changes that the DHA were instructed to make are being implemented.

LHR is working closely with the SAHRC in contributing as civil society to strengthen monitoring and oversight of existing procedures.

Key gaps in monitoring:

- Monitoring whether detainees have been brought before a court within 48 hours of arrest for the purposes of confirming the detention. These proceedings are purely to confirm the detention (and to make assessments on aspects of vulnerable groups: minors, stateless individuals, asylum seekers, refugees) and not to charge individuals as illegal foreigners;
- During the court appearance, was the client afforded an opportunity to legal representation or provided such?
- What are the conditions of their detention? Access to medical treatment & medication, food, water, sanitation particularly in police cells that are not designed for long term detention.

We would like the Portfolio Committee to seek answers from DHA, the Department of Justice and SAPS regarding these gaps.

4. Right to work

Way forward in growing inclusive local economies[Input by Socio Economic Rights Institute]

I. Adopting a consistent approach

In a bid to grow the productivity and employment creation within informal business, it is imperative that local government take a broad view of all informal business that has the potential for growth and for contributing to the economy. Local government should reduce the impediments facing these businesses and to create further opportunities for growth where possible. This requires that local government pay attention to the constraints facing various businesses and business owners. Local governments approach must treat all informal workers and economic units (including foreign traders) equally. This also means giving special attention to the needs of marginalised informal workers and economic units. Given the particular challenges of marginalisation facing migrant entrepreneurs it is necessary for local government to address these particular needs.

II. Local government must be accountable to uphold a rights-based approach

All state institutions must actively uphold the rights of foreign nationals and foreign migrant entrepreneurs that are enshrined in the Constitution.

All workers and economic units in the informal sector (including foreign nationals) must be treated equally.

There is an urgent need to tackle violence against foreign owned businesses and against foreigners. This requires action to be taken against perpetrators. It also requires strong messaging - against xenophobia and in favour of South Africans and non South Africans working together - from local politicians and from local community leaders.

Local government politicians and officials must condemn any act of hostility or violence against foreign nationals.

Any municipal bylaws preventing foreign nationals to engage in informal trading are invalid, unconstitutional and need to be amended.

All claims against police or any local government officials involved in perpetuating looting, bribery or hostility towards migrant entrepreneurs must be investigated and dealt with (Skinner, 2018)

Foreign migrant informal businesses need to enjoy the same rights and privileges and comply with the same laws as any other informal businesses. No distinction should be made between migrant and local businesses.

III. Reorientate the public discussion and the political discourse

The role and contribution of foreign migrants in the economy needs to be known and publicised.

Research into the real economic threats facing local business needs to be undertaken and action taken to address these concerns.

The skewed perspective upheld in the media and by politicians needs to reorientate towards facts. These include facts on what the real economic threats are that face the poor in cities and towns of South Africa.

Threats against foreign businesses are born in a context of high unemployment and inequality levels coupled with inadequate service delivery.

South African informal business is under threat from a monopolised retail sector. It is big chain stores and formal business that has controlling interests in retail that squeeze out opportunity for micro and informal business. This threat exists for local and for foreign traders.

IV. Attend to service delivery

Service delivery and support to all informal business needs to be enhanced.

The systemic issues that threaten the livelihoods of poor South Africans must be addressed including the delivery of basic services.

V. Promote a range of productive informal industries

The promotion of job creation in the informal sector- not only in trade but also in other industries including waste, manufacturing and services, should be actively promoted.

VI. Build understanding and knowledge

There needs to be concerted efforts to understand the role and contribution of migrants to the economy and devise means to manage and regulate their economic activities in ways that do not drive their activities underground or marginalise their activities as different from other informal operations.

There is a need for facilitated engagement and robust dialogue between foreign nationals in the informal economy and their South African counterparts in order to understand and share common interest and assist one another.

In addition there also needs to be dialogue and negotiation between foreign nationals and the state at various levels in order to understand the role and place of migrants in the informal economy and how to better support and enable their operations.

VII. Establish negotiating platforms and dialogues

The formation of Informal Economy Forums, which represent informal business across various sectors regardless of ethnicity of the business owners, is important for allowing for the voices of the sector to be heard and needs of the informal businesses and traders to be met. It is also important for allowing informal business operators to work together to solve their common problems. Skills transfer could be a component of joint dialogues.

5. SADC visa

Refer to letter sent to Minister of Home Affairs dated 12 July 2018 – sent jointly by Scalabrini, LRC, LHR, CoRMSA, SALC and LHR

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