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MINISTRY OF
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REPUBLIC OF SOUTH AFRICA

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BRIEFING BY THE DEPARTMENT OF HOME AFFAIRS (DHA), THE CITY OF CAPE TOWN, THE PROVINCIAL JOINTS COMMITTEE (PROVJOINTS), THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION (SAHRC) AND THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR) ON THE SITUATION OF THE REFUGEES IN CAPE TOWN WHO ARE DEMANDING TO BE RESETTLED TO A THIRD COUNTRY

10 MARCH 2020: HOUSES OF PARLIAMENT (CAPE TOWN)

BACKGROUND

1. It all started with a letter from a little known organisation, namely Women and Children at Concern (“WCC”) led by JP Balus and his wife, Aline Bukuru.
2. In or about July 2019, the WCC addressed a letter to the United Nations High Commissioner for Refugees (“UNHCR”) in Pretoria. The letter implored the UNHCR to resettle asylum seekers and refugees to another country because of “*xenophobic attacks*” in South Africa.
3. In August/ September, the UNHCR responded to the letter and indicated that resettlement to another country was a remote possibility as South Africa was regarded as a stable and peaceful democracy with enviable progressive immigration and refugees

laws. The UNHCR also engaged the leadership of the WCC and conveyed the same message.

4. I wish to deal with protest actions first in Pretoria and then in Cape Town.

GATHERING OUTSIDE THE UNHCR OFFICES IN PRETORIA

5. In or about October 2019 a gathering started outside the offices of UNHCR in Pretoria led by Aline Bukuru, in the form of a protest. As days went by the unruly crowd increased around Brooklyn area. They started erecting make-shifts tents in the streets, pavements and gates of homesteads.
6. The residents of Brooklyn and Waterkloof reported the matter to the South African Police Service (“SAPS”) and City of Tshwane and requested the two state organs to take appropriate action. The City of Tshwane in particular, was requested to enforce its bylaws.
7. By November 2019, the residents had had enough and approached the High Court in Pretoria on urgent basis. The Department of Home Affairs (“DHA”) was also cited a party to the proceedings. In Court, the City of Tshwane adopted the attitude that the issue of foreign nationals falls squarely on the shoulders of the DHA. We disagreed, because mainly the issue of enforcement of bylaws falls under the jurisdiction of the City of Tshwane.

COURT ORDERS: HIGH COURT IN PRETORIA

8. The High Court issued two Orders annexed hereto marked “A” and “B”. The DHA, the City of Tshwane and SAPS were ordered to engage the protesters to ascertain their identities.

9. Prior to the Sheriff's announcement of the Order (which gave the protesters seven days to vacate the affected areas), they jumped the walls and invaded the premises of the UNHCR. The male protesters were arrested for trespassing as the UNHCR demanded protection from the South African Government.
10. The women and children were accommodated temporarily at Lindela Holding Facility after the City of Tshwane refused to offer temporary shelter as is enjoined by the Constitution and legislation.

VERIFICATION PROCESS IN PRETORIA

11. The verification process was conducted at various police stations and Lindela Holding Facility. A report is annexed hereto marked "C".
12. It would be seen from the report that the majority of the persons are in fact asylum seekers and refugees.
13. The undocumented persons would ordinarily have been deported. However, the Supreme Court of Appeal and Constitutional Court, ruled in **Bula**¹ and **Ruta**² judgments and international obligations under the 1951 UN Convention and related protocols, that an undocumented person who is encountered by authorities and indicate the intention to apply for asylum had to be given the opportunity to do so.

¹ **Bula v Minister of Home Affairs** [2012] 2 All SA 1(SCA); 2012 (4) SA 560 (SCA); paras 70,72 and 80.

² **Ruta v Minister of Home Affairs** 2019 (3) BCLR 383 (CC); 2019 (2) SA 329 (CC), paras 28 and 43.

Fourteen (14) days permits were issued accordingly in order for them to report to the Refugee Reception Office of their choice.

14. I must point out that while the events in Cape Town and Pretoria unfolded, I addressed a letter to the President of the South African Local Government Association (“SALGA”) in which I expressed strong sentiments of disapproval of the failure of the City of Johannesburg, City of Tshwane and City of Cape Town to enforce bylaws. I urged the Mayors of three municipalities to enforce their bylaws as it became clear that they were reluctant to do so, in cases involving foreign nationals. The letter is annexed hereto marked “D”.

LINDELA HOLDING FACILITY

15. The persons accommodated temporarily at Lindela Holding Facility were 433. After the verification almost half of them voluntarily returned to their homes in South Africa.
16. There are currently 122 women together with their children and children (127).
17. It is significant that those who voluntarily returned to their homes indicated that they were lured into joining the protest action because the leaders promised them greener pastures of resettlement by the UNHCR in other countries, such as Canada, News Zealand, Dubai and United States of America.

CAPE TOWN PROTEST ACTION

18. During the first week of October 2019, another group led by JP Balus (husband of Aline Bukuru) embarked on a protest action in or

around the Waldorf Building in Cape Town. The group addressed similar demands to the UNHCR.

19. The City of Cape Town failed to enforce its bylaws.
20. During October 2019, the former Acting Director-General of the DHA invited the group to a meeting to discuss their demands. JP Balus rebuffed the efforts in a strongly worded letter and flatly refused to meet. In its terms the letter states: *“There is no need of engaging with any department again, because we have been tortured enough, burnt alive, forced to pay fines, arbitrary detentions, being treated like people who have been sentenced to house arrest, being called names and threatened to be cleaned like rubbish and dust. We refugees have become scapegoating for the South African political gain, in order for you guys to win the voices of your people and win elections. Since 2008 up until now, what have you guys tried to improve in lives of refugees? Instead you continue forging ways of how to exterminate us all in silence, using the so called NGOs looting funds in detriment of our lives.”*
21. On 16 October 2019, the Court issued an interdictory relief sought by the owners of the building housing, *inter alia*, the UNHCR. The Sheriff assisted by the SAPS arrested some members of the group. However, the DHA aborted the planned verification because children were amongst those arrested. The arrest of the children was contrary to the agreement between the parties at various engagements of state organs.
22. The group sought sanctuary at the Central Methodist Church where they continue to live in unhealthy and hazardous environment.

SPLIT OF THE GROUP

23. During December 2019, a scuffle broke. The group split into two groups. One group led by JP Balus and the other by Papy Sukami.
24. The one group continued to occupy the Church and the other was ejected from the Church and occupied the Greenmarket Square until they were removed recently in terms of the Court Order.
25. At the same time, JP Balus was arrested on several counts of assault and Papy Sukami on charges of robbery. Both of them are out on bail with stringent bail conditions.

EVENTS ON FRIDAY, 06 MARCH 2020

26. On 28 January 2020 during the hearing of the application by the City of Cape Town, it is alleged that JB Balus threatened the Head of the SAHRC in the Western Cape who subsequently laid a criminal charge of intimidation.
27. On Friday, 6 March 2020 when JP Balus appeared in court on the previous charges, police wanted to effect arrest on the charges of intimidation. JP Balus and his bodyguards assaulted police and caused mayhem in court. The court had to adjourn. He was then arrested for intimidation, assaulting a police officer, trying to escape from custody and resisting arrest. He is remanded in custody. He appeared in court on 9 March 2020.

WHAT IS THE STATUS OF JP BALUS, ALINE BUKURU AND PAPY SUKAMI?

28. JP Balus and Aline Bukuru arrived in South Africa from the Democratic Republic of Congo (“DRC”) in 2007. They applied for asylum and were rejected.
29. Papy Sukami arrived from the DRC in 2017. His application for asylum was rejected.
30. The three have appealed the decision of the Refugee Status Determination Officer (“RSDO”) to the Refugee Appeals Authority (“RAA”).
31. In line with several court decisions and relevant Articles of the 1951 UN Convention, the three cannot be deported until such time that they have exhausted all the due processes of the law.

COURT PROCEEDINGS IN CAPE TOWN

32. On or about December 2019, the City of Cape Town launched an urgent application and sought relief against the group, DHA and SAPS.
33. The City of Cape Town pleaded in its court papers that foreign nationals are to be dealt with by the DHA and be “*deported*” accordingly.
34. The Court issued an Order in terms of which parties, including the protestors were to engage and find a “*lasting solution*”.

35. The parties deadlocked especially because the City of Cape Town continued to resist the issue of offering alternative emergency temporary accommodation in accordance with appropriate legislation.
36. The parties filed reports in Court. The Court delivered judgment on 17 February 2020. I annex hereto a copy of the judgment marked "E".
37. The Court heavily criticised the City of Cape Town for failing to enforce its bylaws and particularly failure to effect arrests by the Metropolitan Police Department (para 30 of the judgment) . Instead the City of Cape Town tried to shift the blame onto the DHA. It is upon this basis that the Court showed its displeasure of the conduct of the City of Cape Town by ordering it to pay the costs of the DHA, including the costs of two counsel as well the costs of SAPS.
38. Apart from the court granting the city the interdict to remove the protestors, the Court further ordered the City to assess persons who are in distress and provide the necessary assistance as required (para 4.4 of the Court Order)
39. The DHA welcomes the Court's acceptance of the offer made by the DHA in Court to conduct the verification of all the persons at a suitable venue (with transport provided by the City of Cape Town) (para 4 of the Court Order). This is in contrast to the position of the City of Cape Town that (in the words of Thulare AJ): "*DHA unarmed civilian personnel to walk in where the City's security and armed forces feared to tread*" (para 41 of the judgment).

45. The two incidents remind the state organs to co-operate with each other in the spirit of co-operative governance as enjoined by section 41 of the Constitution.
46. Municipalities are duty-bound to enforce bylaws and discharge their statutory and constitutional duties and responsibilities accordingly.

WAY FORWARD

47. In various meetings of state organs and other stakeholders, convened by the SAHRC, consensus was reached that the only way forward is reintegration of the protesters back to communities in which they were staying before embarking on the protest action. Indeed some have already gone back to such communities.

I thank you all for the opportunity to address this meeting

DR P A MOTSOLEDI, MP

MINISTER OF HOME AFFAIRS