



MINISTER OF
HOME AFFAIRS
REPUBLIC OF SOUTH AFRICA

Private Bag X741, Pretoria, 0001, Tel: (012) 432 6635 Fax: (012) 432 6675
Private Bag X9102, Cape Town, 8000, Tel: (021) 469 6507, Fax: (021) 461 4191

Cllr Thembi Nkadimeng
President
South African Local Government Association
Garsfontein Road
Waterkloof Glen
PRETORIA
0181

Email: lplaatjies@salga.org.za

Madam

**RE: ENFORCEMENT OF MUNICIPAL BY-LAWS AND REFUGEE AND
IMMIGRATION LAWS**

1. I address this letter as enjoined by sections 40(1) and 41 of the Constitution, including section 40 of the Intergovernmental Relations Framework Act 13 of 2005.
2. This letter is necessitated by a series of events in the areas of jurisdiction of the City of Tshwane Metropolitan Municipality ("City of Tshwane"), City of Cape Town Metropolitan Municipality ("City of Cape Town") and City of Johannesburg Metropolitan Municipality ("City of Johannesburg").
3. **EVENTS IN THE AREAS OF JURISDICTION OF THE CITY OF TSHWANE
METROPOLITAN**

- 3.1 On or about October 2019, a group of unknown protestors gathered outside the premises of the United Nations High Commissioner for Refugees ("UNHCR").
- 3.2 Within a short space of time, the number of unknown protestors grew and started erecting make-shift tents on the pavements and gates of homeowners in those areas.
- 3.3 The crowd became increasingly violent and as a result, access to certain roads was restricted.
- 3.4 The representative of the UNHCR convened a meeting with stakeholders and an official of the Department of Home Affairs ("DHA") was invited to the meeting. It became clear at the subsequent meeting with the leadership of the unknown protestors that they were not interested in the involvement of the DHA. Their demand is simply that they ought to be resettled to the countries of their choice as they were afraid of "*xenophobic attacks*" in South Africa.
- 3.5 At all material times hereto, the City of Tshwane was aware of the presence of the unknown persons in its areas of jurisdiction. The City of Tshwane bears the statutory duty of enforcing the by-laws and remove the unknown persons. It failed to do so.
- 3.6 The Brooklyn and Eastern Areas Citizens' Association and Waterkloof Home Association were forced to bring an urgent application in the North Gauteng High Court. The relief sought by the residents was substantially granted by the Court.

- 3.7 On or about 5 November 2019, the Director-General of DHA received a letter dated 30 October 2019 addressed to me from the Executive Mayor of the City of Tshwane, Cllr Stevens Mokgalapa. I annex hereto a copy of the letter marked "A".
- 3.8 Upon reading of the letter, I was alarmed by the tone and attitude of the Executive Mayor. Effectively, the Executive Mayor conveyed to me that the illegal occupation of the areas in question fell "*outside the mandate of the City*".
- 3.9 I responded to the letter and pointed out that "*the stance suggests to me that the City of Tshwane is abdicating its statutory duties and responsibilities*". I further indicated that the DHA remained committed to assisting the City of Tshwane in the spirit of co-operative governance. I annex hereto the letter dated 8 November 2019 marked "B".
- 3.10 The two letters were filed in Court in the urgent application referred to above.
4. The attitude and approach of the City of Tshwane is not an isolated incident. This brings me to the events in the City of Cape Town.
5. **EVENTS IN THE AREAS OF JURISIDCTION OF THE CITY OF CAPE TOWN**
- 5.1 On or about October 2019, a similar event as that in the City of Tshwane unfolded in Cape Town.

- 5.2 A group of unknown persons who later identified themselves as foreign nationals occupied the Waldorf Arcade in St George's Mall. Like the group in Pretoria, they had no permission to gather in those areas.
- 5.3 The Cape Town group was removed from the areas after the owner of the building obtained an eviction order in Court.
- 5.4 They were afforded a sanctuary at the Cape Town's Central Methodist Church. As matters stand, the group has been involved in unfortunate incidents, including attacks on persons who were assisting with the mediation process.
- 5.5 The conduct of the group has led to the church withdrawing the granting of sanctuary.
- 5.6 I was not aware until recently that the Director-General of the Western Cape Provincial Government had sent a letter to the Acting Director-General of the DHA dated 24 October 2019. I annex hereto the letter marked "C" and the response of the Acting Director-General of the DHA marked "D".
- 5.7 The tone of the letter followed a similar pattern as that of the City of Tshwane. Clearly the blame was laid at the door of the DHA for the incident in Cape Town. It was requested that the DHA needed "*to urgent action, as the national department with exclusive competence in relation to the immigration matters, to conduct an inspection and take such action as you may be obliged to take in terms of the Immigration Act, 2002*".

5.8 The attitude displayed in the letter is shocking to say the least. It should not matter as to who is involved in the violation of the laws of the country, the law is expected to take its course.

5.9 Any illegal gathering of any nature by either citizens or illegal foreigners or asylum seekers or refugees must be dealt with in terms of the existing laws. Government structures charged with the statutory responsibility of enforcing the laws must do so without fear or favour. The said incident behoves the City of Cape Town and the Provincial Government to take appropriate action. Of course, the DHA will reciprocate and take appropriate action (if necessary).

6. THE ATTITUDE AND APPROACH OF THE CITY OF JOHANNESBURG

6.1 Recently foreign nationals and other unknown persons illegally occupied certain buildings owned by the City of Johannesburg.

6.2 Instead of the City of Johannesburg enforcing its by-laws, the former Executive Mayor Herman Mashaba addressed a letter to the Portfolio Committee for Home Affairs in Parliament ("Portfolio Committee").

6.3 The former Executive Mayor made startling allegations. His letter was punctuated by shifting the blame onto the DHA. He accused the DHA of failure to enforce its immigration laws which had resulted in the illegal occupation of the buildings. According to him the DHA created an untenable situation by failing to, *inter alia*, screening the asylum seekers properly and neglecting of its duties to ensure that the asylum seekers were properly documented.

7. The former Executive Mayor wrote the said letter despite the fact that I had assured him that the DHA and the City of Johannesburg had to engage in a meaningful dialogue to jointly address the challenges. The Portfolio Committee correctly rebutted the political posture of the former Executive Mayor of the City of Johannesburg.
8. The approach of the three municipalities is in stark contrast to the visible steps taken by other municipalities recently. During the first week of November 2019, the Polokwane Local Municipality took steps to enforce its by-laws by evicting illegal occupiers and demolishing structures on large track of land. The same applies to the Ekurhuleni Metropolitan Municipality. When such actions are undertaken by the municipal authorities, it matters not whether the affected persons are citizens or immigrants (documented or not) or asylum seekers or refugees.
9. A further example is the recent operation conducted by the South African Police Service ("SAPS") in the City of Johannesburg whereby buildings were hijacked by unknown persons. The operation was aimed at various illegal activities of the persons involved regardless of their nationalities or status. During the operation undocumented foreigners were found and the SAPS handed them over to the DHA which carried out the necessary the necessary verification and identification process in terms of the law.
10. The Pretoria incident further demonstrates that other government structures in similar situations had to act first before the DHA embarks on the verification and identification process. The number of persons

involved in that incident is 604 and 85% of them were found to have been duly documented.

11. The DHA is bound by various international instruments and domestic laws in dealing with asylum seekers, refugees and illegal foreigners. The DHA has not shield away from its international and domestic obligations, including a body law of developed by our courts and in particular, the Constitutional Court.
12. I therefore urge you in your capacity as the President of the South African Local Government Association ("SALGA") to take steps to address this growing tendency of local and provincial government structures abdicating their constitutional and statutory responsibilities and duties. Particularly in that the impression created by the three municipalities in the minds of foreign nationals is that any illegal activity involving them must be dealt with by the DHA to the exclusion of other state organs.
- 1.3 The DHA is ready and willing to engage in a dialogue with the said local government structures in the spirit of co-operative governance in an effort to find amicable solutions to potential intergovernmental disputes.

Yours sincerely


DR AARON MOTSOLEDI, MP
MINISTER OF HOME AFFAIRS

DATE: 29/11/2019

CC: EXECUTIVE MAYOR: CITY OF TSHWANE

EMAIL: SallyM@tshwane.gov.za

EXECUTIVE MAYOR: CITY OF JOHANNESBURG

EMAIL: executivemayor@joburg.org.za

EXECUTIVE MAYOR: CITY OF CAPE TOWN

EMAIL: mayor.mayor@capetown.gov.za /dan.plato@capetown.gov.za



Office of the Executive Mayor

Block B | 2nd Floor | Tshwane House | 320 Madiba Street | Pretoria
PO Box 440 | 0001 | www.tshwane.gov.za
Tel: 012 358 4903

Email: sallym@tshwane.gov.za | www.tshwane.gov.za | www.facebook.com/CityOfTshwane

Minister of Home Affairs
Honourable Dr Aaron Motsoaledi
909 Arcadia Street
PRETORIA

30 October 2019

Dear Honourable Motsoaledi

RE REFUGEES OUTSIDE THE UN HIGH COMMISSION IN BROOKLYN

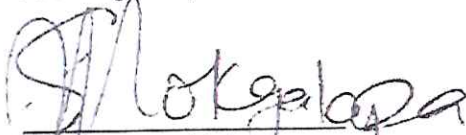
This serves as a request for the minister to respond to the matter raised by foreign nationals camping outside the UN High Commission.

I appreciate the sensitivity of the matter in so far as human rights are concerned. However, their demand is that the government move them out of South Africa.

This is outside the mandate of the City and it is unfortunate that the City is being held responsible for this. The City has been served with court application submitted by Members of the Brooklyn and Eastern Citizens Association as well as the Waterkloof Homeowners Association.

It has therefore become critical that the relevant sphere and departments respond to resolve this matter. The City will assist where necessary.

Kind regards,



Cllr Stevens Mokgalapa
EXECUTIVE MAYOR



OFFICE OF THE DIRECTOR-GENERAL

Tel: +27 21 483 6032
Fax: +27 21 483 4715

Ref. No.: 14//1/3/NATIONAL

Mr T Mavuso
Acting Director-General
Department of Home Affairs

Per e-mail: Thulani.Mavuso@dha.gov.za

Dear Colleague

WALDORF BUILDING OCCUPATION

I refer to our telephone conversation on 14 October 2019.

As you are aware, and as discussed telephonically, a large number of foreign nationals has, since around 8 October 2019, been occupying the foyer of the Waldorf building, as well as the two adjacent streets - Burg and St Georges streets - where the said building is situated in the Cape Town CBD.

According to the report from our International Relations and Priority Programmes unit, which, together with the United Nations High Commissioner for Refugees (UNHCR) office in Cape Town, is assisting with interventions on this impasse, the status of the foreign nationals who are protesting here differ. The majority of them are people whose applications have been turned down by your department and are currently appealing those decisions, while others have expired permits, thus are in the country illegally.

The nature of the group's grievances also differs, ranging from a demand to be re-settled in countries other than their countries of origin, to not receiving satisfactory support from your department in relation to the processing of immigration-related applications.

The Western Cape Government has since last week engaged with the UNHCR, the SA Human Rights Commission, various leadership formations of foreign nationals in the Western Cape and other organisations and institutions in an ongoing effort to diffuse the situation.

The group's occupation has had a significant adverse impact, not only on tenants of the Waldorf building, including four provincial departments, whose staff have had to vacate the building or use emergency exits in order to enter and exit from the building, but also on surrounding businesses that have been unable to conduct business since the sit-down action started. In addition, the group's continued occupation has given rise to serious health and safety concerns. The group includes women and children.



DEPARTMENT OF
HOME AFFAIRS
REPUBLIC OF SOUTH AFRICA

Private Bag 9741, Pretoria, 0001. Tel: (012) 806 2800. Fax: (012) 432 6675
Private Bag 30102, Cape Town, 8000. Tel: (021) 469 6507. Fax: (021) 461 4191

Mr H C Malla
Director General
Western Cape Government
CAPE TOWN
8001

Dear Colleague

**FOREIGN NATIONALS SITUATION IN THE CENTRAL BUSINESS DISTRICT OF
CAPE TOWN**

Your letter bearing reference number 14/1/3 refers.

The Department of Home Affairs acknowledges receipt of your letter where you raise concern relating to the situation of foreign nationals in the central business district of the City of Cape Town.

The Department of Home Affairs has been intimately involved with the South African Human Rights Commission and other stakeholders to address concerns and demands of foreign nationals who were offered sanctuary in the Methodist Church in Cape Town. Whilst the Department acknowledges and appreciates its responsibility to verify legal status of all foreign nationals within South Africa's borders, it should be noted that management of international migration is not the sole responsibility of the Department, as this requires a whole of government and society approach.

The erection of makeshift shelters, washing of clothes and cooking of food on the streets or pavements, are fully regulated in terms of Municipal bylaws.

No person irrespective of his/her legal status in the country should be allowed to undertake such activities in contravention of bylaws, on the basis that he/she is a foreign national, asylum seeker or refugee.

As you may know, the Republic of South Africa does not practice encampment system and as a result, the Department of Home Affairs has no place to house or accommodate foreign nationals that are legally documented. I will however, direct the Inspectorate Division of my Department to undertake status verification of the alleged foreign national as a matter of urgency to determine their status.

Best regards



THULANI MAVUSO
ACTING DIRECTOR-GENERAL: HOME AFFAIRS
DATE: 29/11/2019