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## **FEEDBACK FROM STAKEHOLDERS ON THE ASYLUM SEEKERS AND REFUGEES IN SOUTH AFRICA**

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### **REFERENCES**

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## **1. INTRODUCTION**

The Portfolio Committee on Home Affairs will host a virtual meeting with the Department of Home Affairs (hereafter the Department/DHA) and other stakeholders on 20 October 2020. The purpose of the meeting is for the DHA and other stakeholders to brief the PC on Home Affairs on the progress made regarding the refugees and asylum seekers who were removed from Green Market Square in Cape Town during March 2020 following a ruling by the Cape High Court on 17 February 2020.<sup>1</sup> In summary, the court granted the City of Cape Town an interdict to remove the protestors (refugees and asylum seekers) and further ordered the City of Cape Town to assess persons who are in distress and provide the necessary assistance as required.<sup>2</sup>

The purpose of this brief is to provide a brief overview of the of circumstances that led to the protest in and around the Green Market Square in Cape Town and summarise measures implemented by relevant stakeholders since the Cape High Court ruling on 17 February 2020. Since the issues under discussion affect migrants, in particular refugees and asylum seekers in South Africa, it will be appropriate to commence with a summary of the breakdown of the migrant population in South Africa and what the government has done to assist migrants during the national lockdown due to COVID-19.

## **2. MIGRANT POPULATION IN SOUTH AFRICA**

COVID-19 continues to have a devastating impact on all aspects of life, including the migrant population around the world. The global migrant population is estimated to be 272 million, comprising of 164 international labour migrants; 25,5 million refugees, 41,3 million internally displaced persons and 3,9 million stateless persons.<sup>3</sup>

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<sup>1</sup> City of Cape Town vs JB and Others (2020).

<sup>2</sup> City of Cape Town vs JB and Others (2020).

<sup>3</sup> IOM (2020)

Given its advanced economy and political stability in the continent, South Africa has experienced a high volume of immigrants in recent years. The country has become one of the most important destinations for migrants. The number of international immigrants in South Africa has increased from 2 million in 2010 to over 4,2 million in 2019.<sup>4</sup> This figure accounts for 7 percent of South Africa's population. Currently, the country is host to 89,285 refugees and 185,203 asylum seekers<sup>5</sup>. Many of them fled conflicts, persecution, political and economic distress in their countries, and these include the Democratic Republic of Congo, Somalia, Burundi, Ethiopia, Rwanda and Zimbabwe to mention but a few.<sup>6</sup>

Despite being a preferred destination for immigrants, South Africa has faced criticism for its handling of the migrant population, in particular asylum seekers and refugees. The DHA, which is responsible for managing immigration affairs, has been accused of restricting access by not processing applications, and securitisation of the migrants in the country. According to the Auditor General of South Africa, South Africa currently has 40,326 asylum-seeker applications before the Standing Committee on Refugee Affairs and 147,794 cases before the Refugee Appeals Authority.<sup>7</sup> This is one of the reasons advanced by immigrants interests groups in South Africa that despite its advanced laws concerning migration, implementation is not prioritised.

### 3. GOVERNMENT RESPONSE TO COVID-19 AND ASSISTANCE TO MIGRANTS

The South African Government, through the DHA and other related institutions, has implemented several measures to respond to the devastating effects of COVID-19 to assist migrants residing in the country during the pandemic. Below are some of the examples of government interventions:

- **VISAs:** in response to the pandemic and to legalise the stay of migrants in South Africa, Government responded by extending the validity period of all legally issued visas which expired during the lockdown period until 31 October 2020.<sup>8</sup> After the announcement of National Lockdown Regulation Alert Level 1, all legally issued Visas have been extended to 31 January 2021.<sup>9</sup> This implies that lawfully issued visas, which expired from 15 February and during the period of the lockdown, are deemed to be valid until the 31 January 2021. Holders of such visas are permitted to remain in the country under the conditions of their visas until 31 January 2021. Those wishing to be repatriated or depart to their countries within this period can depart without being declared undesirable persons.<sup>10</sup>
- **COVID-19 Relief Grant:** following the Pretoria High court ruling on 18 June 2020,<sup>11</sup> the Department of Social Development has agreed that permanent residence permit holders, special permit holders (from Lesotho, Zimbabwe and Angola), refugees and asylum seekers in South Africa are eligible to apply for the COVID-19 Social Relief of Distress (SRD) grant of R 350.00 per person per month as from May 2020 to October 2020. The relieve grant to refugees and asylum seekers is expected to cost Government approximately R 700 million.<sup>12</sup>

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<sup>4</sup> *Ibid.*

<sup>5</sup> United Nations High Commissioner for Refugees (2020).

<sup>6</sup> UNHCR (2020).

<sup>7</sup> Molo and Hlungwani (2020).

<sup>8</sup> Department of Home Affairs (2020c).

<sup>9</sup> Department of Home Affairs (2020a).

<sup>10</sup> Department of Home Affairs (2020c).

<sup>11</sup> Scalabrini Centre of Cape Town and other vs Minister of Social Development and Others (2020).

<sup>12</sup> Department of Social Development (2020).

- **Health Care**, the rights set out in Section 27 of the Constitution of the Republic of South Africa provides for all people within South Africa, regardless of their nationality or legal status to access basic health care. As such, everyone has the right to have access to health care services, and ‘no one’ may be refused emergency medical treatment. This is further confirmed in the Refugees Act (No 130 of 1998), which states that “Refugees in South Africa have the same right to access healthcare as South African citizens”.<sup>13</sup> Therefore, all immigrants living in South Africa have access to public health care in the country.
- **Accommodation during COVID-19**, South African government, through various stakeholders, has accommodated asylum seekers and refugees with accommodation in the City of Cape Town.

#### 4. BACKGROUND INFORMATION ON THE REFUGEES IN CAPE TOWN

On 10 March 2020, the Portfolio Committee on Home Affairs held a multi-stakeholder meeting to receive a briefing regarding the refugees and asylum seekers who were protesting because they wanted to be repatriated to other countries. The protests took place outside the premises of United Nations High Commissioner for Refugees (UNHCR) in Pretoria during October 2019 and in an around the Green Market Square in Cape Town between October 2019 to March 2020.<sup>14</sup>

The protest by the migrants (refugees and asylum seekers) came after a group known as Women and Children at Concern (WCC) led by JP Balus and his wife, Aline Bukuru had written to the UNHCR to request the organisation to resettle a group of asylum seekers and refugees to other countries due to ‘xenophobic attacks’ in South Africa.<sup>15</sup>

The UNHCR responded to the letter indicating that resettlement to another country/s was not possible as South Africa was regarded as a stable and peaceful democracy with enviable progressive migration and refugee laws. The group responded by launching protests in Pretoria and Cape Town.<sup>16</sup>

Following the protest in Pretoria and Cape Town by the refugees and asylum seekers, the Pretoria High Court made a ruling that the DHA, the City of Tshwane and the South African Police Service (SAPS) are ordered to engage the protesters to ascertain their identities. At the same time, the Cape High Court granted the City of Cape Town an interdict against protestors and ordered it to implement its by-laws as required.<sup>17</sup>

The Portfolio Committee on Home Affairs supported the Government’s decision to reintegrate the refugees who have been protesting in Cape Town back into the communities in which they lived previously. In addition, the Committee reiterated that refugees must comply with South Africa’s laws and the by-laws of the City of Cape Town or they must be deported back to their countries of origin.<sup>18</sup>

As a way forward, the Portfolio Committee on Home Affairs has urged the DHA to do a comprehensive assessment of who among the group is a refugee/asylum-seeker, as per international obligation, and allow those that do not have permits to undergo the requisite process.

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<sup>13</sup> Scalabrini (2020).

<sup>14</sup> Department of Home Affairs (2020a)

<sup>15</sup> Department of Home Affairs (2020c)

<sup>16</sup> *Ibid*

<sup>17</sup> *Ibid*

<sup>18</sup> Parliamentary Monitoring Group (2020).

Furthermore, all stakeholders were requested to submit to the Committee, by end of April 2020, an action plan on when all the procedures will be undertaken. However, due to the National Lockdown regulation, the stakeholders will be only reporting back to Parliament on 20 October 2020, after the initial meeting scheduled for 1 September 2020 was postponed.

## 5. PROPOSED QUESTIONS AND ISSUES FOR CONSIDERATION

The issues mentioned below are for the PC on Home Affairs considerations and possible questions to the stakeholders who were tasked to address the asylum seekers and refugees' issues in Cape Town as per the 17 February Cape High Court ruling.

### Issues for consideration and proposed questions to the Department of Home Affairs

1. South Africa has a huge backlog in the processing of refugees. According to the 2019 Auditor General's Report, South Africa has 40,360 asylum seekers application before the Standing Committee on Refugees and 147,794 cases before the Refugee Appeals Authority. **What are the measures being implemented by the Department to clear this backlog?**
2. How many migrants were processed by the DHA in terms of the February 17 Cape High Court Ruling? Of these, how many still need the decisions on their Asylum Applications decided?
3. On the letter dated 17 April 2020, National Treasury makes it very clear that the DHA is prohibited by law to incur an expenditure outside its mandate. However, in the Department of Public Works and Infrastructure (DPWI) letter dated 6 July 2020, the DHA is requested to reimburse the DPWI for an amount of R 1.1 million for the costs incurred in the temporary infrastructure accommodating the refugees and asylum seekers. **Did the DHA pay this amount and how much does the Department still owe the DPWI in total? Where did the DHA intend to get this amount from since it was not budgeted for and was prohibited by law to do so?**
4. On the same letter from the DPWI dated 6 July 2020, the DPWI is asking to hand over the temporary infrastructure accommodating asylum seekers and refugees to the DHA. **Did the DHA accept to take over the responsibility of the temporary infrastructure?** If so, on what basis or regulations did the DHA rely to accept the responsibility of the temporary infrastructure and to cater for the needs of the refugees and asylum seekers?
5. Was the option of repatriation accepted by any of the migrants but not fulfilled due to COVID-19 related travel restrictions?
6. Have the DHA assisted any migrants to procure emergency documents to access the social relief of distress fund extended to them?

### Issues for consideration and proposed questions to the City of Cape Town

7. At the PC on Home Affairs meeting held on 10 March 2020, the Committee instructed the DHA and the City of Cape Town to work together on a comprehensive plan to resolve the impasse with the migrants. According to the joint media statement issued by the DHA and the Department of Public Works and Infrastructure (DPWI) dated 5 April 2020, the City of Cape Town has not adhered to many of the agreements of the meeting between the DHA, DPWI, Western Cape Provincial Government and other stakeholders. **Why did the City of Cape Town renege on the agreements in relation to these migrants?**

8. The City of Cape Town offered resources to reintegrate the protestors, but none of the protestors came forward to take up the offer. **What does the City of Cape Town intend to do with those refugees and asylum seekers who refuse to be reintegrated back to the communities?**
9. How long will the City of Cape Town (and related stakeholders) intend to operate the shelters currently accommodating refugees and asylum seekers in Wingfield and Bellville? Who is funding the daily costs of the centres and what is the estimated cost since inception?
10. On the Joint media statement issued on 5 April 2020 by the Ministers of Home Affairs and Public Works and Infrastructure, the City of Cape Town is accused by the two Ministers of renegading on some of the agreements of the meeting held on 24 March 2020 including efforts to sabotage the implementation of some agreements. For example, the City of Cape Town is accused of embarking on clandestine activities to sabotage plans to evacuate asylum seekers and refugees by contacting bus companies to discourage them from ferrying the asylum seekers and refugees. **What is the City of Cape Town's response to the allegations that it has attempted to sabotage the outcomes of the meeting held on 24 March 2020?**
11. If such protests occur again, will the City use its mandate to enforce by-laws through the Metro Police to remove them rather than return to the courts as it did earlier this year?

**Issues for consideration and proposed questions to the South African Human Rights Commission**

12. Is there a case to be made against the City of Cape Town for dereliction of their duties in relation to the concerned migrants?

**Issues for consideration and proposed questions to the UNHCR**

13. Parliament could show appreciation on the efforts made by the UNHCR to harmonise relations between South African citizens and the migrant community in various communities.
14. Parliament could show appreciation to work being done by the UNHCR to assist the migrant community by providing food parcels and Personal Protective Equipment in various communities. UNCHR has served as a resource multiplier agency to help the South African Government to ensure that all who live in South Africa access coping mechanisms during the Coronavirus pandemic.
15. Parliament could seek feedback from the UNHCR on whether any of the states (countries) are willing to accept any of the refugees and asylum seekers who requested to be repatriated to third-party countries?

## **6. CONCLUSION**

The Cape High Court has made it clear that the City of Cape Town has all the legal rights to enforce by-laws of the City when they are violated by any person regardless of their nationality. Parliament, through its oversight function, should ensure that all spheres of Government enforce the rule of law, albeit in a humane manner. Moreover, the Committee should ensure that the Department of Home Affairs continues to implement measures to speed up the process of application of refugee status in the country.

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