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

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### **REFERENCES**

## **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 16 February 2021. 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>

President Ramaphosa announced the state of national disaster on 25 March 2021 due to the novel coronavirus (COVID-19), consequently putting the country into Level 5 of the National Lockdown Regulation. One of the government's decisions during national lockdown level 5 was to remove homeless people from the streets and accommodate them in shelters. Consequently, most refugees and asylum seekers who were part of the protestors were accommodated in two shelters in Goodwood and Bellville area.

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 and after the meeting of 20 October 2020. Since the issues under discussion affect migrants, particularly 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.

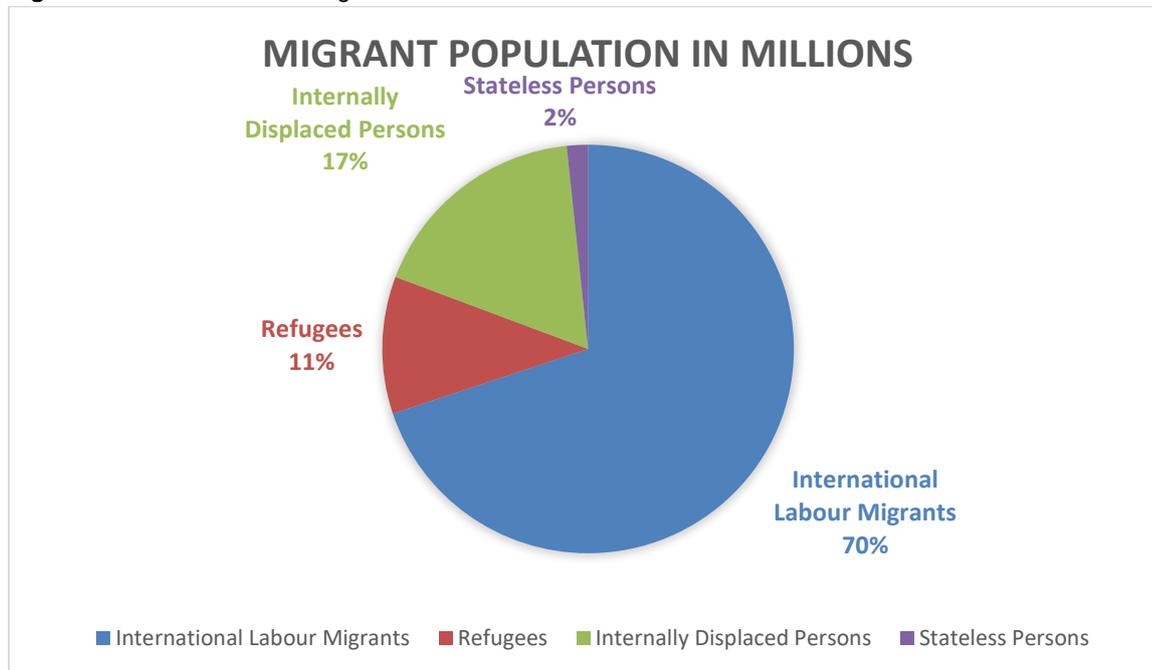
<sup>1</sup> City of Cape Town vs JB and Others (2020).

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

## 2. MIGRANT POPULATION IN SOUTH AFRICA

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

**Figure 1:** Number of Global Migrants



**Source:** International Organisation for Migration, 2019. adapted by Research Unit

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 preferred destinations for migrants. The number of international immigrants in South Africa has increased from approximately 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 (DRC), 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, particularly 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, as of 2019/20 financial year, South Africa had 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.

Most recently, it has been evident that there is a lack of cooperation between national, provincial and local government in addressing issues related to the migrant population in the country. As pointed

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

<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).

out by the PC on Home Affairs, Section 41 of the Constitution of the Republic of South Africa explicitly outlines the principles of cooperative governance and intergovernmental relations that all spheres of government must adhere to, and work together to resolve any challenges including immigration challenges in the country.<sup>8</sup>

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

It is almost a year since the President placed the country on national lockdown of various alert levels. The national lockdown regulations are having devastating effects on all South Africans, including the migrant community. In order to alleviate socio-economic hardships associated with COVID-19 lockdown regulations, the South African government has implemented several mechanisms to assist its citizens, including the migrant community residing in the country. Below are some of the examples of the interventions to assist migrant community.

- **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>9</sup> After the announcement of National Lockdown Regulation Alert Level 1, all legally issued Visas were extended to 31 January 2021.<sup>10</sup> This implied that lawfully issued visas, which expired from 15 February 2020 and during the lockdown period, were deemed valid until the 31 January 2021. Holders of such visas were permitted to remain in the country under their visas conditions until 31 January 2021. Those wishing to be repatriated or depart to their countries within this period were allowed to depart without being declared undesirable persons.<sup>11</sup>
- **COVID-19 Relief Grant:** following the Pretoria High court ruling on 18 June 2020,<sup>12</sup> the Department of Social Development 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 until October 2020. However, the Government extended the COVID-19 Relief Grant to the end of December 2020. The relief grant to refugees and asylum seekers was expected to cost Government approximately R 700 million for the three-month period between May and October 2020, implying that the amount could have since doubled to R 1,4 billion due to the extension granted by Government.<sup>13</sup>
- **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 access 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>14</sup> Therefore, all immigrants living in South Africa have access to public health care in the country. President Ramaphosa and the Minister of Health have also confirmed that all

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<sup>8</sup> Parliamentary Monitoring Group (2020).

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

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

<sup>11</sup> Department of Home Affairs (2020c).

<sup>12</sup> Scalabrini Centre of Cape Town and other vs Minister of Social Development and Others (2020).

<sup>13</sup> Department of Social Development (2020).

<sup>14</sup> Scalabrini (2020).

immigrants residing in South Africa, irrespective of their legal status in the country will be eligible for COVID-19 vaccination.<sup>15</sup> This announcement confirms that South Africa respects international laws and its Constitution, regardless of the prevailing socio-economic hardships aggravated by COVID-19 and severe shortages of vaccines.

- **Accommodation during COVID-19**, South African government, has accommodated asylum seekers and refugees with accommodation in the City of Cape Town, Belville and Goodwood.

#### 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 around the Green Market Square in Cape Town between October 2019 to March 2020.<sup>16</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>17</sup>

The UNHCR responded to the letter indicating that resettlement to other countries 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>18</sup>

Following the protest in Pretoria and Cape Town by the refugees and asylum seekers, the Pretoria High Court ruled that the DHA, the City of Tshwane and the South African Police Service (SAPS) are ordered to engage the protesters to ascertain their identities. Simultaneously, on 17 February 2020, 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>19</sup>

The Committee 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>20</sup>

As a way forward, the PC 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. Furthermore, all stakeholders were requested to submit to the PC on Home Affairs, by the end of April 2020, an action plan on when all the procedures will be undertaken. However, due to the National Lockdown regulation, the stakeholders only reported back to Parliament on 20 October 2020, and the DHA did provide a

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<sup>15</sup> Ramaphosa, C. (2021).

<sup>16</sup> Department of Home Affairs (2020a)

<sup>17</sup> Department of Home Affairs (2020c)

<sup>18</sup> *Ibid*

<sup>19</sup> *Ibid*

<sup>20</sup> Parliamentary Monitoring Group (2020).

breakdown of the profile of the asylum seekers and refugees accommodated in the two temporary shelters.

## 5. SUMMARY OF 20 OCTOBER 2020 FEEDBACK MEETING

Below is the summary of the feedback meeting that took place on 20 October 2020:

- The meeting established that there were 700 migrants accommodated on the temporary shelter in the Wingfield area (Goodwood) and a further 900 accommodated in Paint City, Bellville. Initially, only 400 immigrants were accommodated in Wingfield, but the numbers increased as more migrants moved in, thus causing a severe strain on the resources allocated to the two sites. These temporary shelters pose a significant security threat, and a potential to cause unrest from the nearby informal settlements as the City of Cape Town and other Non-Governmental Organisations (NGO's) have been supplying the migrants with water, ablution facilities, food and other associated supplies but the nearby informal settlements are not receiving the same support from local government.<sup>21</sup>
- It was evident from the deliberations of the meeting that there are no alignments of efforts to resolve the integration of migrants back into the communities. The Department of Home Affairs and the City of Cape were not in agreement on the process that should be followed and who must take responsibility to ensure successful integration as per the Cape High Court ruling of 17 February 2020. For instance, the City of Cape Town argued that the refugees are managed according to the Refugees Act (No 130 of 1998); therefore, they are the DHA's responsibility. The DHA argued that while this is true, its responsibility is limited to processing asylum and refugee status of migrants, not how they should be integrated into communities or assisted during disasters such as COVID-19. It was for this reason that the PC on Home Affairs reminded the DHA and the City of Cape Town that the court was explicit on what exactly should be done by both of them. The PC on Home Affairs further pointed out to Chapter 3, Section 41(2) of the Constitution that reads "An Act of Parliament must (a) establish or provide for structures and institutions to promote and facilitated intergovernmental relations, and (b) provide for appropriated mechanism and procedures to facilitate settlement of intergovernmental disputes".<sup>22</sup> In summary, the PC on Home Affairs expressed a view that the integration of the migrants back into the communities or their repatriation should not have required a Court Order, but all spheres of government should execute their mandated functions and together to resolve the immigration challenges in the country.<sup>23</sup>
- The meeting resolved that all stakeholders must go back to the drawing board and work together in resolving the matter, including the speedy reintegration of migrants to their communities as per the Cape High Court Order of 17 February 2020. The DHA was urged to speedily process asylum seekers' application and refugee status and deport those who do not meet the criteria according to the Refugees Act (No 130 of 1998) and other related laws.<sup>24</sup>
- Therefore, the purpose of the meeting on 16 February 2021 is for the Department of Home Affairs, City of Cape Town and other stakeholders to brief Parliament on the resolution taken on 20 October 2020. In the main, the stakeholders should provide a progress report regarding the reintegration of migrants to the communities and deportation of those who did not meet the criteria to legalise their stay in the country.

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<sup>21</sup> Parliamentary Monitoring Group (2020).

<sup>22</sup> Constitution of the Republic of South Africa.

<sup>23</sup> Parliamentary Monitoring Group (2020).

<sup>24</sup> Ibid.

## 6. PROPOSED QUESTIONS AND ISSUES FOR CONSIDERATION

The issues mentioned below are for the PC on Home Affairs considerations, and possible questions to the stakeholders tasked to address the asylum seekers and refugees' issues in Cape Town as per the 17 February 2020 Cape High Court ruling.

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

(It should be noted that by Friday, 12 February 2021, the Department had not submitted its presentation, therefore the brief may raise issues that are already addressed by the presentation)

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. **How far has the Department gone in reducing this backlog and what measures are being implemented to prevent such a backlog in the future?**
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?
3. On the meeting of 20 October 2020, it was established that the Department of Public Works and Infrastructure (DPWI) requested reimbursement of R1.1 million from the DHA for the expenditure incurred on the two temporary structures. The National Treasury made it clear that such an expenditure would be outside the DHA mandate it will appear as an unauthorised expenditure. Is this matter resolved? If not what is the status or how is it going to be resolved?
4. How many migrants approached the DHA for voluntary repatriation and how many did the Department repatriated?

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

5. It was resolved on the meeting held on 20 October 2020 that the City of Cape Town must abide by the Cape High Court ruling of 17 February 2020, including reintegrating migrants into the communities. How many migrants has the City of Cape reintegrated into the communities so far?
6. On slide number 8, the City of Cape Town still talks about important information it needs to plan further. The information required includes the legal status of the person, employment information, etc. Why does the City of Cape Town not have this information, almost four months after the previous meeting and a year later after the Cape High Court ruling? How does the lack of this information prevent the City of Cape Town from reintegrating the migrants into local communities as instructed by the Court Order of 17 February 2020?
7. On slide number 5, the City of Cape Town indicates that it is waiting for the PC on Home Affairs report after the oversight visit conducted during October 2020. Has the City of Cape Town made any effort to request the oversight report and how does the lack of this report prevent it from implementing the PC on Home Affairs' resolution and the Court Order?
8. The City should provide a breakdown of financial expenditure related to immigrants' accommodation in the temporary shelters. The City of Cape Town should indicate to the Committee how this expenditure affects its budget since this was not budgeted.
9. What are the Provincial Joc Meeting outcomes held on 30 November 2020, and what is the status update of the resolutions taken on this meeting?

10. Why is the exit plan by the stakeholders not completed four months after the previous meeting? At this stage, there should not be talks about plans but outcomes of the implemented plans.
11. How long is the City of Cape Town (and related stakeholders) intend to continue to operate the shelters currently accommodating refugees and asylum seekers in Wingfield and Bellville?

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

12. Parliament should note that the UNHCR is an international organisation with offices in South Africa and other countries. The UNHCR is not accountable to Parliament, but it has demonstrated a more extraordinary spirit of cooperation in relation to the migrant's situation in Cape Town.
13. Parliament should 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 should 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 should ask if the UNHCR is working with the Department of Affairs to process the voluntary repatriation requests it has received and if it is getting the necessary support from the government in relation to the migrant accommodated in Cape Town?
16. When does the UNHCR anticipate to finalise the repatriation of all the migrants who requested its assistance with repatriation? In order to complete this process, does the UNHCR require any assistance from the Department of Home Affairs?

## **7. 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. Through its oversight function, Parliament should ensure that all spheres of Government enforce the rule of law, albeit in a humane manner. Moreover, the PC on Home Affairs should ensure that the Department of Home Affairs continues to implement measures to speed up refugee status applications in the country.

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