**NATIONAL ASSEMBLY**

**QUESTION FOR WRITTEN REPLY**

**QUESTION NO. 1070**

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**INTERNAL QUESTION PAPER 19 – 2020**

**1070. MR A C ROOS (DA) to ask the Minister of Home Affairs:**

For each of the cases (details furnished) where his department has not complied or partially complied with the court order, (a) why has his department not fully complied with the court order, (b) what steps have been taken to fully comply with the order and (c) by what date will his department fully comply with the order? NW1365E

**REPLY:**

1. **LZ [Mathobula] Mathobela v Minister of Home Affairs & another (Case no. 98386/18 - Gauteng Division, Pretoria - Court Order Date: 12 June 2019)**

1.1 This matter involved the application for citizenship in case of doubt in terms of section 15 of the South African Citizenship Act 88 of 1995. The Court ordered that the applicant is a South African citizen and directed the Department of Home Affairs (“DHA”) to enter the applicant’s particulars in the population register and issue her with a South African citizen identity number, birth certificate and identity document within 30 days of the order.

**Why has his department not fully complied with the court order?**

1.2 The Court Order was issued in the Gauteng Division of the High Court. It later transpired that the applicant is ordinarily resident in Cape Town. The applicant approached the Cape Town and officials of DHA were not aware of the Court Order.

**What steps have been taken to fully comply with the order?**

1.3 An instruction has been given to the Cape Town office to assist on urgent basis. The applicant’ attorneys have been duly informed.

**By what date will his department fully comply with the order?**

The DHA will fully comply by 31 July 2020.

2. **Minister of Home Affairs v Miriam Ali and Others [2018] ZASCA 169 (SCA) (Case no. 1289/17, Supreme Court of Appeal – Court Order Date: 30 November 2018)**

2.1 The matter pertains to the interpretation of section 4(3) of the South African Citizenship Act 88 of 1995 (amendment that came into effect on 1 January 2013) in which the main issue was whether or not the section applies with retrospective effect and further is the respondents (on appeal) satisfy the requirements of citizenship by naturalisation. The question was whether in the absence of Regulations, the High Court was correct in directing the Minister to accept applications on affidavits as the order encroached upon the doctrine of separation of powers.

2.2 The Supreme Court of Appeal issued the order that:

*“The Minister shall –*

*3.1 Within one year of the date of this order make regulations in terms of s 23(a) of the South African Citizenship Act 88 of 1995 (the Act) in respect of applications for citizenship by naturalisation in terms of s 4(3) of the Act;*

*3.2 Pending the promulgation of the regulation in 3.1 above, accept applications in terms of s 4(3) South African Citizenship Act 88 of 1995, on affidavit.”.*

**Why has his department not fully complied with the court order?**

2.3 The DHA was advised to approach the Constitutional Court (“CC”) as the Order of the SCA had the effect of encroaching upon the subordinate legislative powers of the Minister. The CC declined to hear the matter largely because the DHA delayed in launching the appeal proceedings.

**What steps have been taken to fully comply with the order?**

2.3 The draft Amendment Regulations to deal with the procedure and requirements for making an application have been prepared and finalised. However, the draft Amendment Regulations must be published for public comments before they are promulgated and due to the National State of Disaster, especially the period between 26 March 2020 and early July 2020, a decision taken was that the DHA may not be able to obtain the adequate public comments due to lockdown Regulations. The draft Amendment Regulations ha been gazetted for public comments.

2.4 The applicants have been issued with certificates for citizenship by naturalization.

**By what date will his department fully comply with the order?**

The DHA will fully comply by 15 September 2020.

3.  **Scalabrini Centre of Cape Town & 4 others v Minister of Home Affairs & 4 Others, (Case no. 5242/2016 - Western Cape Division, Cape Town - Judgment date: 19 June 2019)**

3.1 This was an application to review the DHA’s failure to take a decision and make a determination regarding the refugees who are entitled to refugee status and asylum in South Africa by virtue of section 3*(c)* of the Refugees Act 130 of 1998 because they are dependent spouses and children of the applicants.

3.2 The Court Order dated 19 June 2019 reads:

*“The Standard Operating Procedures from the Department satisfies the requirements that entitles the Department to adopt appropriate policies and procedures which facilitate the reception and assessment of claims by dependents of refugees.*

*Further that such refugee applicants have the right to work, attend school, receive basis and emergency health-care and may not be detained, arrested or deported.”*

The Department has conducted training on the implementation of the Standard Operating Procedures and the same is being implemented.

**Why has his department not fully complied with the court order?**

3.3 The DHA has conducted training on the implementation of the Standard Operating Procedures and same is being implemented.

**What steps have been taken to fully comply with the order**?

The DHA has fully complied with the Court Order.

**By what date will his department fully comply with the order?**

The DHA has fully complied with the order.

4. **Lawyers for Human Rights v Minister of Home Affairs and Others [2017] ZACC 22 (CC) (Case no. CCT 38/16, Constitutional Court - Judgment date: 29 June 2017)**

4.1 This matter concerned the consideration of the conditions under which illegal foreigners are detained before deportation in terms of section 34 of the Immigration Act 13 of 2002. The applicant challenged certain provisions of section 34 relating to detentions . These conditions included a failure to inform foreigners of the rights. The section requires them to be notified of, the inability to exercise these rights owing to lack of resources and legal assistance.

4.2 The court ordered, *inter alia*, the following:

*“2. Section 34(1)(b) and (d) of the Immigration Act 13 of 2002 is declared to be inconsistent with sections 12(1) and 35(2)(d) of the Constitution and therefore invalid.*

*3. The declaration of invalidity is suspended for 24 months from the date of this order to enable Parliament to correct the defect.*

*4. Pending legislation to be enacted within 24 months or upon the expiry of this period, any Illegal foreigner detained under section 34(1) of the Immigration Act shall be brought before a court in person within 48 hours from the time of arrest or not later than the first court day after the expiry of the 48 hours, if 48 hours expired outside ordinary court days.*

*5. Illegal foreigners who are in detention at the time this order is issued shall be brought before a court within 48 hours from the date of this order or on such later date as may be determined by a court.*

*6. In the event of Parliament failing to pass corrective legislation within 24 months, the declaration of invalidity shall operate prospectively.*

*7. The Minister of Home Affairs and the Director-General: Department of Home Affairs shall, within 60 days from the date of this order, file on affidavit a report confirming compliance with paragraph 5, at the High Court of South Africa, Gauteng Division, Pretoria.”.*

**Why has his department not fully complied with the court order and what steps have been taken to fully comply with the order?**

4.3 The DHA has filed a report in Court and fully complied with paragraphs 4, 5, 6 and 7 of the Court Order. All illegal foreigners who are arrested and detained for deportation are brought before a magistrate within 48 hours for conformation of detention.

4.4 During 2018, the Portfolio Committee on Home Affairs introduced a Committee Bill to amend the Immigration Amendment Bill to address the defects in section 34(1) the Immigration Act as declared by the court to be invalid. However, at the end of the term of the fifth Parliament, the Bill was not finalised and therefore not saved. In this regard, the order of invalidity is applicable until proper provision is made in the Immigration Act.

4.5 The DHA has embarked on extensive Policy Review in line with international trends of dealing with immigration and refugee protection in one single legislation.

**By what date will his department fully comply with the order**?

4.6 The DHA has fully complied with the order. The section declared unconstitutional will be dealt in the said Policy Review.

5. **Scalabrini Centre of Cape Town v Minister of Home Affairs [2017] ZASCA 126 (Case no. 1107/2016, Supreme Court of Appeal - Court Order Date: 29 September 2017)**

5.1 The matter involved the decision to close refugee reception office under section 18(1) of the Refugees Act 130 of 1998 challenged on the basis of unreasonableness and rationality. The Court found that decision-maker failed to take into account relevant considerations, comply with the empowering provision and committed errors of law.

5.2 The procurement of infrastructure is made through the Department of Public Works and Infrastructure (“DPWI”). In this regard, the DHA had identified a site however confirmation was received that the service provider for the identified site will not be continuing with the process. As a result, the signing of lease agreement was not proceeded with.

**Why has his department not fully complied with the court order**?

5.3 I refer to my answer above.

**What steps have been taken to fully comply with the order?**

5.4 The DHA has engaged DPWI to restart the process for the new tender, and DPWI advised that the Bid Advertisement closed on 25 May 2020 and five (5) bids or responses were received. Due to restrictions on movements due to the National State of Disaster, the process of physical inspections of the five (5) sites as per the bids may be delayed.

5.4 I must add that National Treasury advised the DHA that its budget will be reduced by R562 million in the financial year 2020/2021. This will have a huge negative impact on the DHA’s procurement of infrastructure.

**By what date will his department fully comply with the order?**

5.5 Once the above processes are completed, the DHA would have fully complied with the order. The DHA is unable to provide an exact date of compliance as the successful implementation depends on DPWI’s assistance, but monthly reports are furnished to the applicant’s attorneys on progress.

6. **Ntumba Guella Nbaya v Director General of Home Affairs (Case No. 6543/15) (Case no. 6534/15, Western Cape Division, Cape Town - Court Order Date: 3 June 2016)**

6.1 In this matter, the Court ordered the DHA to extend asylum seeker permit applied for in Refugee Reception Offices other than Cape Town. The permits of all those who presented themselves were extended whilst their files were being transferred to the Cape Town Refugee Reception Office.

**Why has his department not fully complied with the court order?**

6.2 The DHA has fully complied with the Court Order.

**What steps have been taken to fully comply with the order?**

6.3 None as the DHA has complied with the order.

**By what date will his department fully comply with the order?**

See my answers above..

7. **Mzalisi NO & others v Ochogwu & another [2019] ZASCA 138 (SCA) (Case no. 630/2018, Supreme Court of Appeal - Court Order Date: 1 October 2019)**

7.1 This matter involved the eligibility of asylum seekers whose status has not been determined to marry whilst lawfully residing in South Africa. The validity of particular paragraph [2.1*(b)*(iii)(dd)] in the DHA circular imposing absolute ban on asylum seekers seeking to marry was found to be inconsistent with the law and invalid.

7.2 The DHA has since amended the circular to deal with the inconsistency and issued an amended circular during January 2020 to all the Offices of the DHA for implementation. Furthermore, an opinion has been sought from external Counsel on the issue of circulars and directives.

**Why has his department not fully complied with the court order?**

The DHA has fully complied with the Court.

**What steps have been taken to fully comply with the order?**

The DHA has fully complied with the order.

**By what date will his department fully comply with the order?**

See my answer above.

8. **OZM v Refugee Appeal Board & Others Case No. 44643/14 (Case no. 44643/14, North Gauteng High Court, Pretoria - Court Order Date: 4 June 2018)**

8.1 The matter involved a judicial review of the decision of the Refugee Appeal Board (“RAB”) for rejecting the application for refugee status. The Court ordered referral back to the Refugee Status Determination Officer (“RSDO”) for reconsideration within two months.

**Why has his department not fully complied with the court order?**

8.2 The application is yet to be reheard and contact will be made with the applicant’s attorneys to inform her to avail herself for a rehearing immediately the Refugee Reception Offices resume with their functions. Furthermore, the applicant’s asylum seeker permit has been extended pending the determination of her application.

8.3 The DHA will fully comply with the order within 30 days of the opening of the Refugee Reception Offices, as they are currently closed under Alert Level 3 Lockdown.

9. **KN & 3 Others v Standing Committee for Refugee Affairs & 7 Others Case No. 50342/16 (Case no. 50342/16, North Gauteng High Court, Pretoria - Court Order Date: 6 November 2019)**

9.1 This matter was for a judicial review of the decision of the Refugee Status Determination Officers for rejecting the applications for asylum and the decision of the Standing Committee for Refugee Affairs (“SCRA”) for upholding the decisions of the Refugee Status Determination Officers. The Court ordered that the matter be remitted for reconsideration by the Refugee Status Determination Officers.

**Why has his department not fully complied with the court order?**

9.2 See my answer below

**What steps have been taken to fully comply with the order?**

9.3 The application is yet to be reconsidered and contact will be made with the applicant’s attorneys to inform the applicants to avail themselves for a rehearing immediately the Refugee Reception Offices resume with their functions. Furthermore, the applicants’ asylum seeker permits will be extended pending the determination of their application.

9.4 **By what date will his department fully comply with the order?**

The DHA will fully comply with the order within 30 days of the opening of the Refugee Reception Offices, as they remain closed.

10. **Abdi Kadir Khalif vs The Refugee Appeal Board & 5 Others Case No. 32474/2017 (Case no. 32474/2017, North Gauteng High Court, Pretoria - Court Order: 15 May 2018)**

10.1 The Court ordered the DHA to release the applicant from Lindela Holding Facility to allow him to apply for asylum and the DHA duly complied.

10.2 The judicial review against the decision of the Refugee Appeals Board is still pending. The DHA has filed the record in terms Rule 53 of the Uniform Rules as the matter is opposed.

**Why has his department not fully complied with the court order and what steps have been taken to fully comply with the order?**

10.3 See answer above.

**By what date will his department fully comply with the order?**

**The DHA has complied with the order.**

**END**