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To: The Presidency: National Command Council
c/o Ms Khusela Diko and Mr Mike Louw
khusela@presidency.gov.za
presidentrsa@presidency.gov.za

And to: Minister, Department of Home Affairs
Dr Aaron Motsoaledi
minister@dha.gov.za

And to: Acting Director General, Department of Home Affairs
Mr Jackson McKay
Jackson.mckay@dha.gov.za

And to: Acting Chief Director: Asylum Seeker Management, Department of Home Affairs
Ms Antoinette Pretorius
Antoinette.Pretorius@dha.gov.za

And to: Minister, Department of Cooperative Governance and Traditional Affairs
Dr Nkosazana Clarice Dlamini-Zuma
c/o Ms Mandisa Mbele and Ms Pamela Salusalu
MandisaMB@cogta.gov.za PamelaS@cogta.gov.za

And to: Minister, Department of Health
Dr Zwelini Lawrence Mkhize
c/o Mr Popo Maja
popo.maja@health.gov.za

And to: Minister, Department of Finance
Mr Tito Titus Mboweni
minreg@treasury.gov.za and mary.marumo@treasury.gov.za

And to: Minister, Department of Social Development
Ms Lindiwe Daphne Zulu
c/o ZamaK@dsd.gov.za

And to: Minister, Department of Small Business Development
Ms Khumbudzo Ntshavheni
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- And to:** Minister, Department of Trade and Industry
Mr Ebrahim Patel
ministry@economic.gov.za and ineethling@thedti.gov.za
- And to:** Minister Department of Employment and Labour
Mr Thulas Nxesi
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- And to:** Minister, Department of Justice and Constitutional Development
Mr Ronald Ozzy Lamola
ministry@justice.gov.za and c/o ZaneNdlovu@justice.gov.za
- COPIED TO:** Parliamentary Portfolio Committee on Home Affairs
c/o Mr Eddy Mathonsi
emathonsi@parliament.gov.za
- And to:** South African Human Rights Commission, Commissioner Rights of Children & Migrants
Commissioner Angie Makwetla
amakwetla@sahrc.gov.za and oasuni@sahrc.org.za

25 March 2020

Dear President Ramaphosa and specified Cabinet Ministers,

URGENT

REQUEST FOR EQUAL TREATMENT FOR ASYLUM SEEKERS, REFUGEES AND MIGRANTS IN COVID-19 RESPONSES; INCLUDING FORMAL DIRECTIVES AND CIRCULARS; CLEAR COMMUNICATION; AND INCLUSION IN RESPONSE PACKAGES WHETHER ECONOMIC OR EMERGENCY RELIEF

1. We write with respect to the challenges reported to us by our client population during the Lockdown, as well as those that may take place once the Lockdown is relaxed.
2. The Scalabrini Centre of Cape Town is a registered not-for-profit organisation that perceives migration as an opportunity and is committed to alleviating poverty and promoting development with respect to migrants, asylum seekers and refugees. The Scalabrini Fathers have been providing welfare services in

2

Cape Town to displaced communities since 1994. In providing assistance, Scalabrini Centre advocates for respect for human rights and utilises a holistic approach that considers all basic needs. The Scalabrini Centre offers six programmes: Advocacy, Employment Access, Welfare, Unite, Women’s Platform and an English School. Our Advocacy and Welfare Programmes have noted increased vulnerability in our client population during the Lockdown period, and reduced access to vital needs.

3. We note President Ramaphosa’s [words](#) on 13 April 2020 in his “From the Desk of the President” letter:

“there is no excuse, nor will there ever be any excuse, for violence – against women, children, the elderly, members of the LGBTQI+ community, foreign nationals, nor against anyone.”

And on 24 April 2020, President Ramaphosa’s [remarks](#) to the AU Bureau of Heads of State and Government:

“Our work is underpinned by the principles of pan-African unity, solidarity and coordination

[...]

We agreed on the need for a comprehensive and coordinated continental approach

[...]

The COVID-19 virus does not respect borders.

With porous border and active cross-border communities, an outbreak in a neighbouring country will not remain contained there for long.

Either we contain the pandemic as a continent, or we do not contain it at all.

[...]

This is no ordinary moment.

This is a moment that calls for something more from all of us.

It is a moment to abandon the old ways of doing things, and to be confronted in the starkest terms with the reality of what our common humanity demands of us.

It is a moment to take action.”

4. In the spirit of these words and the sentiment of pan-Africanism, inclusion and ubuntu that underpins them, we urge the National Command Centre and all relevant Ministers to ensure a whole-of-society

approach in responding to the Covid-19 pandemic and impacts of the Lockdown (whether social or economic).

5. We recognise the difficult task that has confronted government in responding to the pandemic and the urgency under which measures have been introduced. However, through our work, and through the work of sister organisations, we have received numerous concerns with regard to the application of the COVID-19 Regulations, directions, directives and communications, and the gaps apparent. Specifically, the gaps in relation to asylum seekers, refugees, and foreign migrants.
6. Drawing from these reports, and referring to several documents, we have identified the need for certain gaps to be filled, clarified, or for further detail to be provided.
7. Specifically, there is an **urgent need for the following**:
 - a. **A Formal Directive or Circular to be published regarding the renewal of asylum seeker and refugee documentation**, with provisions no less favourable than those provided to persons in possession of visas issued in terms of the Immigration Act (2002).
 - b. **Clear guidelines prohibiting the suspension of any service normally provided to an asylum seeker or refugee document holder, where the suspension is the result of the expiry of such documentation**. This includes the potential freezing of bank accounts when an asylum or refugee document expires; as well as the denial of access to SASSA grants when a refugee document expires.
 - c. **The inclusion of refugees, asylum seekers, and migrants in the various economic and social relief packages** being provided by various levels of government, and a clear communication that such assistance should not be provided in a manner which unfairly discriminates against persons on the basis of their nationality or documentation status.
 - d. **Clear communication and public statements indicating that non-citizens will not be discriminated against in Covid-19 testing, screening and tracing measures**, and that any

nationality and immigration status information collected during testing, screening or tracing measures will not be shared with the Department of Home Affairs for any reason whatsoever, but specifically with regard to immigration enforcement.

Previous correspondence regarding measures in relation to Refugee Reception Centers, as well as documentation for asylum seekers and refugees

8. In regard to the above, we refer to our correspondence to the Presidency, dated 16 March 2020, where we addressed the urgent need to implement measures to contain the potential spread of the novel coronavirus at Refugee Reception Offices in South Africa. This correspondence has gone unanswered, and with the potential easing of the Lockdown, in stages, we believe there is an urgent need to address the points highlighted in this letter. **(Attached as Annexure A)**.

9. We specifically reiterate the call for:
 - a. A general amnesty or exemption from consequences of failure to timeously renew asylum seeker or refugee documentation, or apply for asylum until after the threat posed by Covid-19 has been sufficiently contained.
 - b. Temporary suspension on the issuing of negative first- or second-instance decisions on asylum applications, and the immediate suspension on the issuing of notices of withdrawal of refugee status, as well as the provision of a grace period for any decisions issued from 1 March onwards.
 - c. The temporary stay of arrest and deportation on the basis of immigration status.
 - d. Ensuring access to health care services for all, and effective communication thereof.
 - e. Effective communication of decisions regarding the abovementioned recommendations.
 - f. Ensuring that the principle of non-refoulement is respected, particularly in the context of the closure of South Africa's borders.

Previous correspondence calling for a moratorium on immigration arrest, detention and deportation during the lockdown

10. On 25 March 2020, the OPCAT Subcommittee on the Prevention of Torture has issued [Advice to States parties and national preventative mechanisms relating to the coronavirus \(COVID-19\) pandemic](#). In this advice, the Subcommittee urged States to “review the use of immigration detention [...] with a view to reducing their populations to the lowest possible level” and NPMs were advised to discuss “with relevant national authorities concerning the implementation and operation of mitigation measures” which would include the advice regarding the reduction of immigration detention.
11. This is in line with previous correspondence written by Lawyers for Human Rights, and endorsed by Scalabrini Centre and other organisations, dated 17 March 2020, which called for a moratorium on immigration arrest, detention and deportation in light of the COVID-19 pandemic. (**Attached as Annexure B**).
12. We note that while South Africa’s borders have been closed, there have still been instances of immigration enforcement, including the issuing of Form 21 documents to non-citizens indicating that they must leave the country within 15 days after the Lockdown was scheduled to end. This is clearly not possible given the continued closure of South Africa’s borders after 1 May, as indicated by the President in terms of Level 4 conditions.
13. We have also noted with concern the 9 April Directions issued in terms of Regulation 10(2) of the Regulations under the Disaster Management Act, (GN 43225, No. 460) providing that sentenced offenders who are illegal foreign nationals and whose sentences expire during the lockdown will be released into deportation facilities designated by DHA where the process of confirmation of detention for deportation will take place. This has the potential to severely undermine the rights of those persons, particularly as accessing legal assistance during the lockdown has been limited because of the

limited ability of attorneys to see clients, and specifically the limitations in relation to places of detention and correctional facilities. Thus, whereas such persons might under normal circumstances be able to access legal advice in regard to their potential deportation, this is not the case under the lockdown.

14. We reiterate the calls made in the abovementioned letter, specifically:

- a. The call for an immediate moratorium for six months or more on all immigration related arrests and detention.
- b. The call on DHA to issue an immediate and automatic extension on all asylum seeker permits and refugee recognition documentation, for a period of six months, without the need for the holder to attend a Refugee Reception Office in order to obtain such extension.
- c. The call for decisions in relation to the above to be well-publicised and communicated to the general South African population as well as the asylum seeker and refugee population specifically.
- d. Concern regarding the silence of the Department of Home Affairs on the topic of Covid-19 and its impact on asylum seekers and refugees.

Unfair discrimination regarding the treatment of refugees and asylum seekers

15. We wish to highlight the unequal treatment of asylum seekers and refugees in comparison to the treatment of those persons holding visas issued in terms of the Immigration Act.

16. We refer to Department of Home Affairs Immigration Directive No. 7 of 2020 (**attached as Annexure C**), titled “Temporary Measures in Respect of Foreign Nationals in Light of the COVID-19 Epidemic” and dated 19 March 2020.

17. This directive provided for temporary measures including visa exemptions in respect of only those foreign nationals who had been issued visas in terms of the Immigration Act (2002). Specifically, this Directive provided for certain temporary measures for visa holders whose visas had expired since 01 December 2019 and those that will be expiring up until 31 March 2020, to re-apply for such visa and to be issued with a visa valid until 31 July 2020 subject to certain requirements.
18. We also refer to the communication, dated 26 March 2020, sent by the Acting Chief Director: Asylum Seeker Management, to stakeholders and titled “Measures to Combat COVID-19 Pandemic at Refugee Reception Centres” (**attached as Annexure D**). This communication stated:
- a. That Refugee Reception Centres would not be assisting clients during the 21-day nation-wide lockdown from 27 March 2020 to 16 April 2020.
 - b. That those clients whose visas expire during the period 16 March 2020 to 16 April 2020 will not be penalized or arrested provided they legalise their visas within 30 calendar days of the lockdown being lifted.
 - c. That a further communique will be forwarded to all stakeholders stating the process to be followed by applicants after the lockdown period.
19. We note that since the Lockdown was extended to the end of April, there has not, to the best of our knowledge, been any further formal communication issued by Asylum Seeker Management Directorate pertaining to asylum seekers and refugees documentation. However, there is a note on the Department of Home Affairs website (**attached as Annexure E**), dated 14 April 2020, indicating:

“EXPIRY OF ASYLUM SEEKER PERMITS

Any asylum seeker whose visa expired from 16 March to the end of the lockdown period will not be penalized or arrested provided that they legalise their visa within 30 calendar days of the lockdown being lifted.”

20. An initial point regarding the quote above is that it only pertains to asylum seekers. There is nothing regarding those with refugee documents in similar situations.

21. Further, we are deeply concerned by the differentiation in approaches pertaining to non-citizens depending on whether their documentation is issued in terms of the Immigration Act or the Refugees Act. We believe this differentiation could amount to unfair discrimination in respect of asylum seekers and refugees. Specifically:

- a. Whereas a formal Immigration Directive (“Immigration Directive 7 of 2020”) was issued by the Department in respect of those holding visas in terms of the Immigration Act. A Directive is an official policy document that guides a Department in how to apply legislation, and regulates implementation and application of statutory powers granted to functionaries. Generally, a directive such as the one issued, would be treated as binding by the functionaries. This is important as it may be seen to carry more weight than another form of instruction, such as a communication.
- b. In comparison, the only information regarding the extension of refugee and asylum seeker documents (that we are aware of), was a communication to stakeholders (“the Asylum Seeker Management Communication”). This type of communication cannot be considered to hold the same gravitas or weight as a directive.
- c. In addition, the time periods provided in Immigration Directive 7 of 2020, are significantly more generous than those provided in the Asylum Seeker Management Communication.

COMPARISON OF PROVISIONS IN IMMIGRATION DIRECTIVE 7 OF 2020 AND ASYLUM SEEKER MANAGEMENT COMMUNICATION, IN RESPECT OF DIFFERENTIAL TREATMENT OF FOREIGN NATIONALS		
Category of persons	Immigration Directive 7 of 2020	Asylum Seeker Management Communication
Inbound travellers	(i) Visa exemptions for specified nationalities (high-risk countries) is withdrawn. (ii) Prohibition on entry for any foreign national travelling from specified high-risk countries.	No information provided on inbound travellers who might be asylum seekers.

	<ul style="list-style-type: none"> (iii) Withdrawal of visa exemption with respect to citizens of medium risk countries, and application process provided for. (iv) Cancellation of port of entry visas for citizens of Iran and China. (v) Prohibition on issuance of entry visa for persons who have travelled to specified high-risk countries since 15 March 2020. 	No mention of the importance that South Africa continues to adhere to the international law principle of non-refoulement in respect of inbound travellers.
Foreign nationals already present in RSA	<ul style="list-style-type: none"> (i) Visas valid until 31 July 2020 may be issued to specified categories of persons from countries impacted by Covid-19 or who are required to travel through such countries in order to reach their country of origin, and whose visa is due to expire, subject to application for a visa waiver. (ii) Persons whose temporary residence visa has expired since 1 December 2019, or due to expire up until 31 March 2020, permitted to re-apply for such visa without the need to first obtain a form allowing an illegal foreigner to remain in the country pending application status. 	Only those persons whose asylum or refugee documentation expires between 16 March 2020 and 16 April 2020 will not be penalised, provided they legalise their visa within 30 calendar days of the lockdown being lifted .

- d. The above table clearly shows distinctly more favourable provisions being applicable to those foreign nationals whose visas are issued in terms of the Immigration Act. In addition, the subsequent information published on the Department of Home Affairs' website, dated 14 April 2020, only provides for asylum seekers. No specific information is provided in respect of persons in possession of refugee recognition documentation. In addition, this type of informal communication has no weight or enforcement status in respect of officials tasked with implementing such measures. This puts asylum seekers and refugees at a distinct disadvantage.
- e. We further highlight that the dates provided in respect of expiry of asylum seeker or refugee documentation are limited in terms of the specific start date of the expiry period (16 March 2020). This start date does not provide for those persons whose documentation may have expired prior to 16 March 2020, and who ordinarily may have been able to renew without being penalised but who have now not been able to do so because the Lockdown was in effect. We are aware of a number of persons who sought renewals at Refugee Reception Offices prior to 16 March 2020, but who were not provided with renewals.
- f. In addition, it is concerning that the abovementioned measures, specifically those applicable to asylum seekers and refugees, have not been widely publicized by the Department and that there

does not appear to be a coordinated and widespread communication strategy in order to ensure that individual refugees and asylum seekers are aware of the information and that those other entities, such as SASSA and banks are made aware of the same. The latter is important because of the impact that an expired document may have on the freezing of one's bank account or the non-provision of grant benefits from SASSA, or in relation to one's ability to continue being employed.

22. In light of the above, we urge the Department of Home Affairs, and Asylum Seeker Management specifically, to publish a formal Directive or Circular that clearly protects, respects, fulfils and promotes the equal rights of asylum seekers and refugees – whether already within South Africa, or inbound – including ensuring adequate provision in terms of renewal of documentation and guidance ensuring that such document holders do not experience any adverse consequences as a result of the expiry of their documentation. Such a Directive or Circular should provide for renewal conditions and time lengths no less favourable than those afforded to persons in possession of visas issued in terms of the Immigration Act.

Adoption of a whole-of-society approach in combatting the adverse impacts of Covid-19 as well as the adverse impacts of the Lockdown

23. We are concerned that it appears that the response measures being implemented by the government may leave some vulnerable members of our society behind. We are confident that this cannot be the intention of government. It is clear that a whole-of-society approach is necessary in order for us to truly overcome the negative impacts of the pandemic and Lockdown. This must include inclusivity and equal provision of social and economic assistance measures implemented, as well as with regard to the screening, testing, and contact-tracing measures. It must also include clear and widespread public statements supporting such measures.

24. In this regard, Article 23 of the 1951 UN Refugee Convention provides that public relief made available to citizens must be made available to refugees. We urge the relevant Minister to ensure that all social relief, as well as economic assistance measures are in compliance with South Africa's international obligations.
25. It is estimated that less than 5% of South Africa's population is foreign born.¹ Further statistics specifically related to asylum seekers indicate that as at 30 June 2019 there were 186 210 active asylum seekers on the Department of Home Affairs' system in South Africa, and 60% of these had been active for more than five years.² It is an undeniable fact that as a group, refugees and asylum seekers are particularly vulnerable. It is imperative that members of this particularly vulnerable group of persons do not fall through the gaps in terms of the various responses to the Covid-19 pandemic.
26. We urge the National Command Centre, and respective ministries to ensure that emergency relief, as well as economic relief and stimulus packages are available and accessible to all, regardless of immigration status.
27. We note that the significant backlogs in the Department of Home Affairs' asylum process, which means that many asylum seekers who may be *de facto* refugees, remain on asylum documentation for many years while awaiting the adjudication of their asylum claim. This point was specifically highlighted in the November 2019 Auditor General's Report on the Department of Home Affairs, and follow up presentation to the Portfolio Committee in February 2020, where the Auditor General indicated that the backlog at the Standing Committee on Refugee Affairs was 1 year, and at the Refugee Appeals Board was 68 years (**in particular, see slide 11, attached as Annexure F**).

¹ FACTSHEET: How many international migrants are there in SA? Available at <https://africacheck.org/factsheets/data-migrants-numbers>

² Parliamentary Question for Written Reply, National Assembly, Question No. 1586, 22 November 2019, available at <https://pmg.org.za/committee-question/12936>

28. Thus, but for these backlogs, it is reasonably likely that there are individuals and families who would be entitled to the grants as a refugee but are not able to access them because the backlog has meant that they remain an asylum seeker. The backlogs notwithstanding, we urge that all persons be eligible to apply for the economic and social assistance made available. This would ensure a whole-of-society approach and would be the most reasonable way to achieve the intended impact of the assistance measure, which is to provide social relief of distress and economic assistance, specifically in light of the Covid-19 pandemic and the lockdown, to individuals who are currently unemployed and who do not receive any other form of social grant or UIF payment and to businesses impacted by the Lockdown.
29. We reiterate President Ramaphosa's words that there is no excuse for any form of violence toward children or foreign nationals, and that the COVID-19 virus does not respect borders. It also does not ask about nationality, age, or immigration status. We believe that the sentiment expressed by the President must be considered in light of the significantly violent impact that is felt by members of minority groups (such as foreign nationals) when access to relief or assistance is limited.
30. We urge all decision-makers to ensure equal access, and an approach that ensures no individual is left behind – whether it is a non-citizen child or family without documents needing a food parcel, or a non-citizen family with asylum seeker or refugee documentation.

We request the National Command Centre, and/or the relevant Cabinet Ministers to urgently provide us with a written response.

Yours sincerely,



Sally Gandar

Head of Advocacy & Legal Advisor

Scalabrini Centre of Cape Town

ANNEXURE A



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and

Dr Aaron Motsoaledi
Minister of Home Affairs
Minister@dha.gov.za

and

Dr Zwelini Mkhize
Minister of Health
Zwelini.Mkize@health.gov.za

16 March 2020

Dear President Ramaphosa, Minister Motsoaledi and Minister Mkhize,

URGENT

MEASURES TO CONTAIN ANY SPREAD OF COVID-19 AT REFUGEE RECEPTION OFFICES OR CENTRES IN SOUTH AFRICA

1. We write with respect to the COVID-19 pandemic and the Classification of a National Disaster by President Cyril Ramaphosa on Sunday, 15 March 2020.
2. Scalabrini Centre of Cape Town is a not-for-profit organisation assisting refugees and asylum seekers in the Western Cape. We assist over 6 000 individual clients per year, and we see over a hundred clients at our offices on a weekly basis. We have made the decision to suspend our services given the serious nature of the threat presented by COVID-19 to our staff and our client community as well as South Africa at large.
3. Having considered the recognition by President Cyril Ramaphosa of the COVID-19 epidemic as a national disaster, and the President's call for extraordinary measures to be taken to combat any further spread of the epidemic, as well as the decision to prohibit gatherings of over 100 persons, we urgently request that the Minister and Cabinet immediately implement safety measures at Refugee Reception Offices or Centres across the country. These are the Desmond Tutu Refugee Reception Office

1



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(RRO) in Pretoria, the Musina RRO, the Port Elizabeth RRO, and the Durban RRO, all of which accept new asylum applications as well as process renewals. It should also include the Cape town Refugee Reception Office, which is not fully functioning and only processes renewals at this time, despite a court order indicating that the Department should have re-opened a fully functioning RRO in Cape Town by the end of March 2018.

4. We highlight the following for Cabinet's attention:
 - 4.1. Accessing services at Refugee Reception Offices or Centres (RROs) in South Africa inherently involves a gathering of more than 100 persons per day in close and confined spaces, with limited access to sanitation facilities such as handwashing facilities;
 - 4.2. Accessing a RRO necessarily involves use of domestic public transport such as rail, taxi, or bus services in order to travel to the RRO;
 - 4.3. Many of those who access services at RROs in South Africa may live in high-density areas, where they are in close proximity to citizens as well as asylum seekers and refugees, with limited access to adequate water or sanitation services;
 - 4.4. The staff at the various RROs often see a significant number of persons on a daily basis, and while the Department has a responsibility to ensure orderly renewal of documentation for asylum seekers and refugees and access to documentation for newcomers, the Department also has a responsibility to ensure the health and safety of its own staff members and all those accessing services at one of its facilities.
5. With the above in mind, we make the following recommendations regarding the offering of alternative measures to reasonably accommodate asylum seekers and refugees in a manner that ensures the public health safety of all persons while acknowledging the gravity of the public health threat posed by COVID-19.

RECOMMENDATION 1: PROVIDE FOR A GENERAL AMNESTY OR EXEMPTION FROM CONSEQUENCES FOR FAILURE TO TIMEOUSLY RENEW ASYLUM SEEKER VISAS OR REFUGEE STATUS DOCUMENTS, OR LODGMET OF ASYLUM CLAIM, UNTIL THE THREAT POSED BY COVID-19 IS BETTER CONTAINED



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6. We note the obligation of asylum seekers and refugees to timeously extend their relevant documentation and the consequences of non-renewal, including being liable for fines or having a claim considered 'abandoned'.
7. We furthermore note the obligation of undocumented asylum seekers to lodge an application for asylum within a set time period after entry into South Africa.
8. We strongly urge the Department to provide for an exemption or general amnesty from the consequences of failure to timeously extend asylum seeker visas or refugee certificates or lodging an application for asylum as indicated above. Provision of this would ensure that asylum seekers and refugees who adhere to the President's call for "social distancing", which would include not attending an RRO where there would usually be in excess of 100 people at any one time, are not penalised for doing so. It would also ensure better health and safety for RRO-staff.
9. We urge the Minister to implement an automatic three- or six-month extension or amnesty period on any permit, document, refugee status that is due to expire between today's date and the end of April, subject to further extension should the immediate threat of COVID-19 spread not be contained by that time. This amnesty period should also be applicable to new applicants.

RECOMMENDATION 2: TEMPORARILY SUSPEND THE ISSUING OF NEGATIVE FIRST- OR SECOND-INSTANCE DECISIONS ON ASYLUM APPLICATIONS, AS WELL AS IMMEDIATE SUSPENSION OF THE ISSUING OF NOTICES OF WITHDRAWAL OF REFUGEE STATUS, AND PROVIDE A GRACE PERIOD FOR ANY DECISIONS ISSUED FROM 1 MARCH 2020 ONWARDS

10. We note that asylum seekers who have received negative decisions on their applications for asylum, including at the first- and second-instance, or refugees receiving notices of withdrawal of their refugee status, have fixed time periods within which they are required to submit notices of appeal or make written submissions or submit notices.
11. We note further that such persons may seek the assistance of civil society organisations or private lawyers in making such submissions, and that their access to such assistance may be hindered by general closures or restrictions of services rendered in response to the COVID-19 epidemic. Such applicants would have to go to a RRO to lodge any appeal, this attendance at a RRO should be considered non-



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essential and a grace period should immediately be implemented in order for persons in this situation to implement social distancing as per the President's instruction.

12. In light of the above, we strongly urge the Department to temporarily suspend the issuing of the abovementioned decisions, and, in the event that such decisions have been already delivered (since March 2020), provide a grace period or automatic granting of condonation of late submissions up until the end of April or such time as the threat of further spread of COVID-19 has been adequately contained.
13. The abovementioned measures would ensure the rights of asylum seekers and refugees are protected and respected, as well as ensuring that the South African government does not contravene the international law principle of non-refoulement.

RECOMMENDATION 3: TEMPORARY STAY ON ARREST AND DEPORTATION ON THE BASIS OF IMMIGRATION STATUS

14. The President suspended all visits to all correctional centres for 30 days with immediate effect. We urge the Department to extend a further suspension in relation to all immigration-related arrests and detentions for the same period.
15. Our reasons for this is that any person arrested on an immigration-related charge, may not have access to appropriate legal counsel with the abovementioned suspension in mind. This may result in persons being processed for deportation in violation of the principle of non-refoulement, or without that individual being able to exercise their right to a judicial review in terms of the Bill of Rights and Promotion of Administrative Justice Act.
16. Arrests of further individuals may also inadvertently introduce COVID-19 into the prison population, with disastrous and lethal consequences.
17. We propose that in addition to a moratorium on arrest and detentions on immigration related charges, as well as deportations, the Department could instead issue potential detainees with a DHA-1721 Form 23 – 'Notice By Immigration Officer To Person To Appear Before Director General', with the prescribed date to appear being after the end of April 2020, or after such time as the Minister of Health and National Institute for Communicable Diseases is satisfied that there is no longer a threat posed by the COVID-19 virus.



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RECOMMENDATION 4: ENSURE ACCESS TO HEALTH CARE SERVICES FOR ALL, AND COMMUNICATE THIS EFFECTIVELY

18. Diseases do not discriminate based on a person's country of origin or documentation status. In order to ensure the health of all persons present in South Africa's borders, Cabinet and the Ministers of Health and Home Affairs need to ensure not only that all persons are able to access health care services, but also that all persons know and are aware that they can access health care services. This is particularly important for persons whose immigration status in South Africa is not in order, as denial of health care services to such persons, or the perceived fear of accessing such services because of lack of documentation, would place all persons in South Africa at risk of further spread of COVID-19.
19. We urge the the Departments of Home Affairs and Health to continue working closely together in order to ensure that undocumented persons or persons with expired documentation, including South African citizens, migrants, asylum seekers and refugees are able to access health care services.
20. We urge the inter-ministerial committee and National Command Council to respond to the threat of the spread of COVID-19 to implement a comprehensive communications strategy in order to ensure that should any undocumented persons experiencing symptoms will not hesitate to access health services in the recommended manner and that they should not fear any reprisal, negative consequences or repercussions as a result of being undocumented. This is vitally important from a public health and containment perspective.

RECOMMENDATION 5: COMMUNICATE DECISIONS REGARDING THE GENERAL AMNESTY/EXEMPTION FROM EXPIRY DATES ON DOCUMENTATION (AS PER RECOMMENDATION 1) TO EFFECTIVELY COMMUNICATE THIS INFORMATION TO STAKEHOLDERS, IMPACTED INDIVIDUALS, AND OTHER CONCERNED PARTIES AND GOVERNMENTAL DEPARTMENTS

21. The Department should communicate decisions regarding Recommendation 1 and the provision of a general exemption or amnesty to asylum seekers and refugees, relevant stakeholders, other concerned parties, and other governmental departments on a urgent and effective basis to ensure that all persons and relevant parties are able to make informed decisions regarding their documentation status, adherence to social distancing, and public health.



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22. The Department should consult with relevant stakeholders regarding the implementation of the above recommendations.

RECOMMENDATION 6: ENSURE RESPECT FOR THE PRINCIPLE OF NON-REFOULEMENT IN RESPECT OF ANY PORTS OF ENTRY THAT ARE TO BE CLOSED

23. We urge the Minister of Home Affairs to ensure that the international refugee law principle of non-refoulement is adhered to, particularly in light of the decision to close some of South Africa's ports of entry.

CONCLUSION

24. The Scalabrini Centre kindly request that Cabinet and specifically the Departments of Home Affairs and Health consider the above recommendations on measures to be taken to contain the further spread of the COVID-19 virus, particularly amongst or via vulnerable populations such as asylum seekers and refugees, while still ensuring that the rights of this vulnerable population are respected, protected, promoted and fulfilled.

25. Scalabrini Centre commits to broadcast and circulating any decisions in relation to the above to our clients, partners and stakeholders. In this regard, we will ensure that we are available to work with government in efforts to ensure the health and safety of all persons in South Africa, particularly during this time where swift and positive action is so vital.

Yours sincerely,

A handwritten signature in black ink that reads 'Sally Gandar'.

Sally Gandar
Head of Advocacy & Legal Advisor
Scalabrini Centre of Cape Town

Kindly note that we have copied the following persons in on this correspondence:

Ms Thandi Modise
The Speaker
Parliament of the Republic of South Africa



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Parliamentary Portfolio Committee on Home Affairs

c/o Mr Eddie Mathonsi

Secretary Parliamentary Portfolio Committee on Home Affairs

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17 March 2020

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Tel (012) 320 2943
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Attention:

Commissioner Matlhodi Makwetla

Email: amakwetla@sahrc.org.za

Cc: Omolara Asuni

Email: oasuni@sahrc.org.za

Dr. Kwanele Pakati

Email: kpakati@sahrc.org.za

Research Advisor:

Commissioners C. Nissen & J.B Sibanyoni

RE: Moratorium –Immigration arrest, detention and deportation

Dear Commissioners, Kwanele and Omolara

In the context of the current global pandemic of COVID 19, and taking into consideration the statement by the President made on the 15th March 2020, the following organisations write to you to highlight the specific vulnerability of asylum seekers and refugees at this time.

1. The Consortium for Refugees and Migrants in South Africa [CoRMSA]
2. Lawyers for Human Rights [LHR]
3. Nelson Mandela University Refugee Rights Centre
4. Refugee Social Services
5. Scalabrini Centre of Cape Town
6. Sophiatown Community Psychological Services

This letter covers the following:

1. Vulnerability in respect of arrest and detention on immigration related charges;
2. Vulnerability in respect of continued need for documentation renewal for fear of arrest or detention;
and
3. Vulnerability in terms of accessing healthcare services with expired documentation.

We wish to highlight the issue of continued immigration arrest, detention and deportation of foreign nationals to the attention of the South African Human Rights Commission and the need for urgent and speedy intervention.

The continued repression and law enforcement in the form of arrests with respect to immigration, runs the risk of severely hampering our country's ability to mitigate against the spread of COVID 19, both in the general population, but particularly within places of detention, which are already overcrowded and where detainees are at higher risk of contracting the virus. The particular vulnerability of detainees has been recognised by the

President in the 30-day moratorium on visits to correctional centres which was announced in President Ramaphosa's address to the nation on 15 March 2020.

In addition, we refer you to a [report](#) done by MSF in 2009 during the Cholera outbreak which speaks to the danger of forcing people underground (through fear of being arrested because of lack of documentation) and how this impedes the State's ability to adequately enforce infection control measures and curb the spread of communicable diseases especially during outbreaks.

We would like to request the SAHRC to intervene and call on the Department of Home Affairs [DHA] to declare an immediate moratorium for 6 months or more on all immigration related arrests and detention.

In the same context we appeal to the SAHRC to call on the DHA to issue an immediate and automatic extension on all asylum seeker permits and refugee recognition documentation, for a period of six months, without the need for the holder of such permit going to a Refugee Reception Office [RRO] in order to obtain such extension. This will reduce the risk of infection at the point of RRO, as people queue to update their legal status as asylum seekers and refugees in the country. Asylum seekers and refugees are in an impossible situation if they are forced to renew their documentation due to expire in the next few weeks or months. They have to choose between attending a RRO to secure a renewal of documentation, which usually necessitates taking public transport to the RRO and standing in close proximity in queues at the RRO where there are little to no adequate sanitation facilities and no choice to practice social distancing which is critical to curb the further spread of COVID19. Alternatively, in the event that an asylum seeker or refugee stays away from the RRO for fear of infection or to reduce risk of spreading COVID-19 their asylum seeker or refugee documentation would expire/lapse, which forces them into a state of being undocumented and at risk of arrest, detention, and denial of access to services such as healthcare. If they are already infected with COVID-19 at that stage, any arrest and detention would risk introducing the virus into the place of detention, and other detainees.

A well-publicised and communicated immediate moratorium on immigration-related arrests and detentions, as well as an immediate and automatic six-month extension of all asylum seeker and refugee documentation set to expire in the months of March and April at least, is vital in order to ensure we flatten the curve and curb the spread of COVID-19 within the general South African population, as well as within the population of detainees, and in the already vulnerable asylum seeker and refugee population in South Africa.

We are concerned by the silence of the DHA on this matter. Especially in the context of the message from the cabinet through the statement by the President:

...Covid-19 is 'a medical emergency far graver than what the world has experienced in over a century'. He told the nation that: 'Never before in the history of our democracy has our country been confronted with such a severe situation.'

Specifically, the two sister organisations who are signatory to the letter confirm the following:

Nelson Mandela University Refugee Rights Centre: *We have been advised by the staff at the PE RRO that all of the RRO's have received notification from "head office" to send the public home and that they are only to start assisting the public again once they have been provided with protective gear, which includes gloves, masks, hand sanitizer, etc from the DHA. At present there is no indication when service to the public will recommence. We also do not know whether any steps have been put into place regarding renewal of permits, abandonment of asylum seeker permits, etc. We will share more information once it becomes available.*

Refugee Social Services: *The Durban RRO has indicated that they are closed to new comers but have advised that they will be attending to extensions- both asylum and refugee visas.*

Sent by:

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Partner organisation to: United Nation High Commission for Refugees (UNHCR) & Mennonite Central Committee (MCC)

Signed on behalf of organisations:

Sharon S Ekambaram
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REPUBLIC OF SOUTH AFRICA

REPUBLIC OF SOUTH AFRICA
 REPUBLIEK VAN SUID-AFRIKA

ANNEXURE C

DEPARTMENT OF HOME AFFAIRS :

HEAD OFFICE
 VISA FACILITATION CENTRES

DEPARTMENT OF INTERNATIONAL
 RELATIONS & COOPERATION

CONSULAR SERVICES

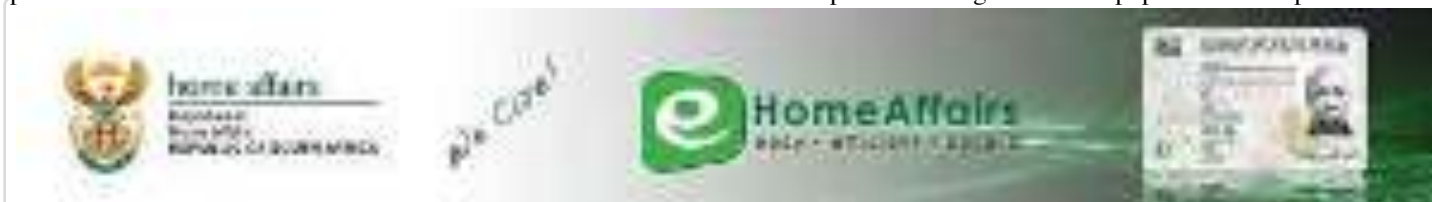
IMMIGRATION DIRECTIVE NO. 7 OF 2020

TEMPORARY MEASURES IN RESPECT OF FOREIGN NATIONALS IN LIGHT OF THE COVID-19 PANDEMIC

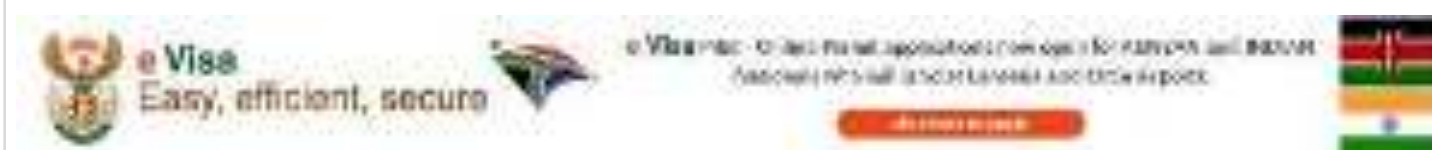
Further to Immigration Directive No. 23 of 2020 a copy of which is also available at H.E. Prudenz W.C. Simelane's residence on 15 Nkomo Street, 2020 containing the measures to control the COVID-19 epidemic in the country, by the Department of Home Affairs, the measures are to control temporary measures on all foreign nationals who intend to enter the Republic of South Africa or who already entered the Republic.

INSUBORDINATE TRAVELLERS

- a) The visa exemption granted in terms of section 10(4)(a) of the Immigration Act, 2002 (Act No. 13 of 2002) (the Act) enjoyed by citizens of Canada, the United States of America, South Korea, Spain, Germany, the United States of America and the United Kingdom, as well as holders of visas issued in terms of section 10(4)(a) of the Act. The citizens and visa holders mentioned in the listed countries are permitted to enter the country on a temporary basis, as well as to be received at any of the Republic's airports, by foreign nationals who departed from Italy, Iran, South Korea, Spain, Germany, the United States of America and the United Kingdom and to enter the Republic of South Africa with effect from 18 March 2020.
- b) The visa exemption granted in terms of section 10(4)(c) of the Immigration Act, 2002 (Act No. 13 of 2002) (the Act) enjoyed by nationals of Finland, Hong Kong and Singapore, as well as holders of visas issued in terms of section 10(4)(c) of the Act. Any foreign national from these countries may also enter the Republic of South Africa and Singapore, who wishes to visit the Republic as well immediately after and until 15 March 2020 to apply for a visa to enter the Republic of South Africa in the Republic of South Africa where they reside. They are required to submit a medical record to the relevant authorities in the Republic of South Africa to COVID-19.
- c) Any part of entry visa that was issued to citizens of Canada and the United States on 15 March 2020 for the purposes of visiting the Republic are, in terms of section 10(4)(a) of the Act, extended to all other countries and visa holders mentioned.



(1)

ANNEXURE E

(<https://ehome.dha.gov.za/epermit/home>)

We are on lockdown for Visa and Permit Services. Please ignore any SMS/Calls as "fake" | The DHA and its officials

TEMPORARY MEASURES TO DEAL WITH IMMIGRATION ISSUES DURING THE NATIONAL LOCKDOWN

Details

Published: 14 April 2020

Tweet

Like 200

Share

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14 April 2020

The Department of Home Affairs wishes to outline temporary measures which are in place to address immigration matters during the lockdown period.

The temporary measures were introduced after President Cyril Ramaphosa declared a national state of disaster on 15 March 2020 and, subsequently, a national lockdown from 27 March, extended until end of April 2020, to contain the spread of COVID-19.

Visa concessions listed below apply to those with visas which expired from 15 February 2020, unless a person has proof that he/she had already submitted an application for a visa extension prior to 15 February 2020 and the outcome is pending.

These temporary measures will remain valid until 31 July 2020 unless extended officially by the Department. They apply only to foreign nationals who have been legally admitted into the Republic.

The visa concessions are contained in the Directions which have been issued by the Department in terms of the Disaster Management Act, 2002.

EXPIRY OF VISAS

Holders of temporary residence visas which expired from mid February 2020, who did not renew their visas before the lockdown, will not be declared illegal or prohibited persons.

Any person whose visa expired before or during the lockdown will not be arrested or detained for holding an expired visa.

Those who opt to return to their countries of origin or residence after the lockdown instead of renewing their visas will not be declared undesirable upon departure.

VISA APPLICATION AND ADJUDICATION

During the lockdown, the Department is not receiving or adjudicating applications for visas and for permanent residence permits.

Foreign nationals whose visas expired after 15 February 2020 may reapply for their respective visas or relevant visa exemptions while in the Republic immediately after the lockdown has been lifted. They will not be required to apply for authorisation to remain in the country (Good Cause/ Form 20).

Foreign nationals whose visas expired after 15 February 2020 who had scheduled appointments on dates which fall within the lockdown period should reschedule their appointments to an available date after the lockdown has been lifted.

WORK, STUDY AND BUSINESS

People whose visa expired during the lockdown and those who have submitted their applications before the lockdown but their applications are still pending, will be allowed to work, study or conduct business after the lockdown while waiting for the outcome of their applications.

VISAS FOR HIGH RISK COUNTRIES

Visas issued to nationals of high risk countries who were outside the Republic on 15 March 2020 were revoked as per the Directions issued by the Department in terms of the Disaster Management Act, 2002. These visas remain revoked.

DEPARTURE OF FOREIGN NATIONALS

During the lockdown, except for cases relating to expatriation initiated by another state, all foreign nationals who are currently in South Africa may not depart.

LESOTHO EXEMPTION PERMIT

Holders of the Lesotho Special Permit have up to 15 June 2020 to submit their applications for the Lesotho Exemption Permit. The Lesotho Special Permits which expired on 31 December 2019 remain valid until 15 June 2020. No new applications will be taken.

EXPIRY OF ASYLUM SEEKER PERMITS

Any asylum seeker whose visa expired from 16 March 2020 to the end of the lockdown period will not be penalised or arrested provided that they legalise their visa within 30 calendar days of the lockdown being lifted.

Media Enquiries:

Siya Qoza, 082 898 1657 (spokesperson for the Minister of Home Affairs)

David Hlabane 071 342 4284 (media manager for the Department of Home Affairs)

ISSUED BY DEPARTMENT OF HOME AFFAIRS



(<http://www.gpwonline.co.za/Pages/default.aspx>)



(<https://ehome.dha.gov.za>)

/echannel)



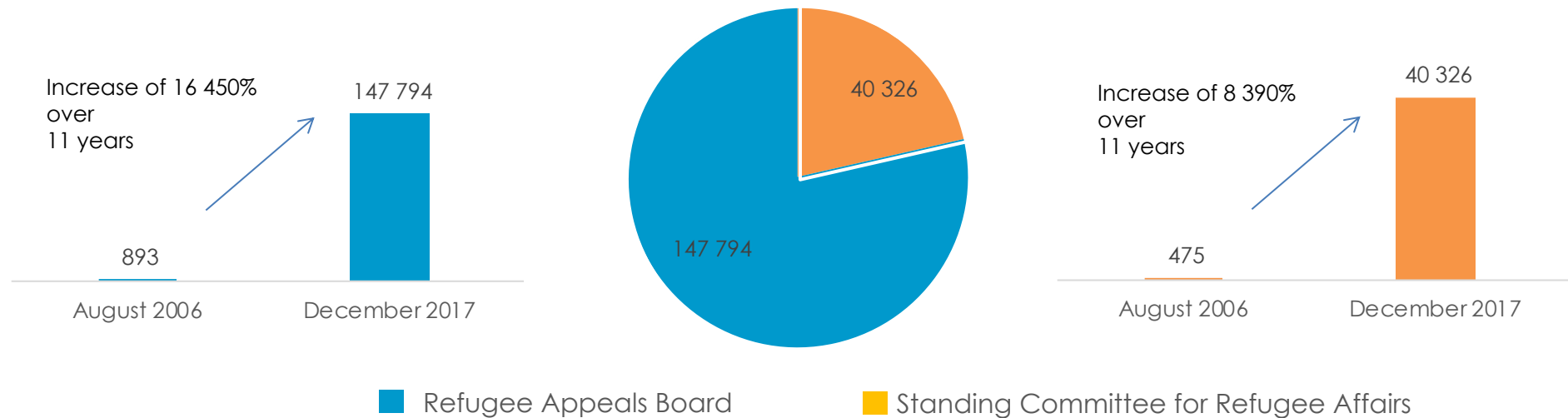
(<http://www.dha.gov.za/index.php/careers/35-careers>)



Asylum regime



- Backlogs in registering new asylum seekers up to 7 months and in some instances 19 months (cannot quantify backlog).
- Backlog in processing asylum seekers at independent bodies.



- If no new cases were received, it would take
 - **68 years** to finalise the backlog at RAB, and
 - Just over **1 year** to finalise the backlog at SCRA.

