

## LAWYERS FOR HUMAN RIGHTS SUBMISSION

Special Rapporteur on the Human Rights of Migrants

After one and half year: the impact of COVID-19 on the human rights of migrants

14 June 2021

### Introduction

1. Lawyers for Human Rights (“LHR”) welcomes the opportunity to make submissions to the Special Rapporteur on the Human Rights of Migrants report on the impact of Covid-19 on the human rights of migrants.
2. LHR established the Refugee and Migrant Rights Programme in 1996. This programme is the largest legal service provider to refugees and asylum seekers in South Africa and prior to the COVID-19 pandemic, assisted between 10 000 and 15 000 clients per year in its four law clinics; Pretoria, Johannesburg, Durban and Musina. The programme also builds networks and is part of the social justice movement to combat xenophobia through engagement and education at community level. We advocate for the prevention of xenophobia, and work to promote access to protection for asylum seekers and refugees.
3. The programme further operates a Statelessness Unit that advocates for universal access to nationality and the eradication of statelessness in South Africa through direct legal assistance, strategic litigation and advocacy.
4. **State response to COVID-19 pandemic:**

On 15 March 2020, South African President Cyril Ramaphosa declared a national state of disaster and a nationwide lockdown in terms of the Disaster Management Act. A National Command Centre chaired by the President was also established to enable government to have an integrated and coordinated disaster management mechanism in response to the outbreak of the COVID-19 pandemic.

From March to May 2020, the country went into a “hard lockdown” with strict curfews, restrictions on travel and bans on gatherings including funerals, weddings etc. All workers were ordered to “stay at home” or “work from home” except for essential service workers e.g. health care workers. On 1 May 2021, the country then shifted to a COVID-19 Risk-Adjusted Strategy to manage the gradual easing of the lockdown. The strategy distinguishes between five different alert levels from the highest being Level 5 (with the most restrictions) and the lowest being Level 1 (with the least restrictions). The strategy is guided

by several criteria, including the level of infections and rate of transmission, the capacity of health facilities, the extent of the implementation of public health interventions and the economic and social impact of continued restrictions.<sup>1</sup>

The country is presently at Level 2 lockdown and battling a third wave of the pandemic.<sup>2</sup>

## 5. **Access to refugee, immigration and civic services**

### *Refugee Reception Offices*

The Refugee Reception Offices (RROs) are the primary point of contact for asylum seekers and refugees with the government. It is where asylum seekers are required to apply for refugee status, where interviews are conducted, where permits are renewed, and where refugee status documents are handed out. Since the beginning of lockdown in March 2020, the RROs have been closed as part of the Department of Home Affairs' (DHA) attempts to curb the spread of the pandemic. In March 2020, the DHA issued a directive granting a blanket extension on the validity of all permits and visas that were due to expire during lockdown, including refugee and asylum seeker permits. This initial extension lapsed on 31 July 2020 and was extended again to 30 September 2020, to 31 January 2021, to 31 March 2021 and currently to 30 June 2021. On 6 May 2021, the DHA announced the implementation of an online renewal system to renew the estimated 230 000 refugee and asylum seeker permits that have expired from March 2020.<sup>3</sup> While this is a commendable effort, LHR has noted concerns regarding limited access to internet and e-mail facilities for some members of the refugee and asylum seeker community and the risk of exploitation and corruption.<sup>3</sup> The DHA has not communicated any plans with the regard to resuming all other refugee services offered at RROs such as processing new comers or processing family joinder applications for children of refugees and asylum seekers.

### *Immigration services*

The blanket extension on the validity of all permits and visas that were due to expire during lockdown, included all immigration permits and visas. All immigration permits and visas are submitted through the Visa Facilitation Center (VFS). VFS had been closed from March 2020, but resumed services in respect of temporary residence visas on 22 September 2020, however services in respect of permanent residence visas remain suspended indefinitely.<sup>4</sup> This has negatively impacted foreign born children who have no other pathway to obtain documentation or legal status in South Africa, except through an application for

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<sup>1</sup> The South African government "About the alert system" Also available at <https://www.gov.za/covid-19/about/about-alert-system>

<sup>2</sup> Chris Bateman (29 May 2021) "As the Covid-19 third-wave hits, how many South Africans have had the virus already?" available at <https://mg.co.za/health/2021-05-29-as-the-covid-19-third-wave-hits-how-many-south-africans-have-had-the-virus-already/>

<sup>3</sup> Press Statement "DHA announces online renewal process for asylum seeker and refugee documentation" available at <https://www.lhr.org.za/lhr-news/press-statement-dha-announces-online-renewal-process-for-asylum-seeker-and-refugee-documentation/>

<sup>4</sup> See link :<https://www.vfsglobal.com/dha/southafrica/>

permanent residence by exemption.<sup>5</sup> This includes the following categories of children; unaccompanied and separated migrant children, children of irregular migrants or stateless migrants and children who are abandoned, orphaned or foundlings.

### *Civic services*

In South Africa, birth registration must be completed within 30 days of the child's birth. If not, the birth of the child can be registered through what is known as a "late registration of birth" process, but this process is subject to more stringent requirements and additional fees (in the form of DNA tests). In the first three months of lockdown, birth registration services were completely suspended resulting in a backlog of about 100 000 babies born during that period without birth certificates.<sup>6</sup> In Level 4, the DHA resumed partial birth registration services, allowing for birth registration of only new born babies at health care facilities and local offices. In Level 3, DHA resumed all birth registration services including the late registration of birth service. The lockdown has only exacerbated already existing birth registration backlogs at DHA and while complete birth registration services continue to be offered, the following issues remain unaddressed:

- ongoing difficulties that government faces as it struggles to resolve cases of missed birth registration pre-COVID-19<sup>7</sup>
- difficulties experienced by migrant mothers with expired documents in obtaining proof of birth forms from health care facilities (the proof of birth form is required for birth registration)
- ongoing closure of the Citizenship Section where foreign birth registration applications are processed for foreign born South African citizens
- ongoing closure of RROs where refugee or asylum seeker mothers permits must be verified during the birth registration process
- other persisting administrative and practical barriers to universal birth registration in South Africa.<sup>8</sup>

It is worth noting that a birth certificate is vital as a pathway to nationality. In order for a child to obtain nationality in their parents' country of origin, a birth certificate from a country of birth- in this instance South Africa- is significant in ensuring that a child has documentation proving their place of birth and in so doing reduce the risk of the child from becoming stateless.

Under civic services, the Citizenship Section of DHA has been closed since March 2020 and remains closed indefinitely. This has meant that eligible applicants for citizenship are not able to submit their applications and foreign-born South African citizens have struggled to conduct foreign birth registration which is

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<sup>5</sup> Section 31(2)(b) of the Immigration Act 13 of 2002

<sup>6</sup> Phumzi Zuzile (15 May 2020) "Lockdown leaves thousands of newborns without birth certificates" available at [Lockdown leaves thousands of newborns without birth certificates \(timeslive.co.za\)](https://www.timeslive.co.za/news/south-africa/2020/05/15/lockdown-leaves-thousands-of-newborns-without-birth-certificates/)

<sup>7</sup> Pumla Rulashe, 'Birth registration gaps leave South Africans in limbo,' UNHCR, (December 2020), available at <https://www.unhcr.org/news/stories/2020/12/5fcf43df4/birth-registration-gaps-leave-south-africans-limbo.html>.

<sup>8</sup> Tshегоfatso Mothapo, Tim Fish Hodgson (March, 2021) "Human rights in jeopardy: Some SA born-frees are still denied their right to birth registration" available at <https://www.dailymaverick.co.za/article/2021-03-22-human-rights-in-jeopardy-some-sa-born-frees-are-still-denied-their-right-to-birth-registration/>

processed in the Citizenship Section. In terms of Section 4(3) of the Citizenship Act, children born in South Africa to migrant parents (who are not permanent residents) and have lived in South Africa all their lives, are permitted to apply for South African citizenship by naturalisation after they turn 18 years old. This is an important legal safeguard and pathway to documentation and citizenship for children born to refugees, asylum seekers and undocumented, irregular or stateless migrants in South Africa. The closure of the Citizenship Section has meant that these children cannot submit their applications for citizenship and cannot further their studies or secure job opportunities upon turning 18 years old. Their lives are therefore in limbo.<sup>9</sup>

## 6. **Actions taken to address racial discrimination, hate speech, xenophobia and related intolerance against migrants**

In South Africa, there has been a rise in xenophobia against refugees, migrants, and stateless people, with several recent attacks in Kwa-Zulu Natal province motivated by xenophobic sentiment. In March 2020, video footages surfaced showing the use of sjamboks on the migrants and arson to destroy their stalls and goods. The perpetrators claimed association to the ruling party.<sup>10</sup> Currently as the country gears towards celebrating youth day and youth month- marking the 1976 Soweto uprising- social media is flooded with postings calling for the people of South Africa to rid the country of foreign nationals.

Institutionalised xenophobia manifests itself through the manner in which Immigration detention has also continued,<sup>11</sup> despite attempts by human rights groups calling for a moratorium on the detention and the deportation of migrants. LHR addressed a communication to the South African Human Rights Commission calling for a moratorium on all immigration detention during the COVID-19 pandemic. Repatriation centers and prison stations, prone to overcrowding, are now high-risk sites for the spread of diseases.<sup>12</sup> The International Detention Coalition (“IDC”) recommended: Immediate release from immigration detention, that a moratorium on any further detention, non-discriminatory access to rights and services.<sup>13</sup> For those remaining in detention, conditions must meet international human rights standards, and must not be diminished due to COVID-19.

These calls and interventions have been ignored as the South African immigration officials and the police continued to arrest undocumented migrants throughout the lockdown. There no specific numbers for detained migrants during the outbreak, and this is in the context of a broader problem of a lack of disaggregated information on migration, including how many people are internal migrants

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<sup>9</sup> Petra Marais, Charlene Kreuseur “ Naturalised citizenship in SA limbo land: Not today, tomorrow or the foreseeable future” available at <https://www.dailymaverick.co.za/article/2021-05-19-naturalised-citizenship-in-sa-limbo-land-not-today-tomorrow-or-the-foreseeable-future/> ; <https://www.businesslive.co.za/bd/opinion/2021-06-03-snails-pace-at-home-affairs-set-to-build-up-backlogs-lasting-years/>

<sup>10</sup> Covid19 Coalition (March 2020) Stop Ongoing Xenophobic Violence in Durban:We demand full protection of our non local comrades in Kwa Zulu Natal available at <https://c19peoplescoalition.org.za/stop-ongoing-xenophobic-violence-in-durban-we-demand-full-protection-of-our-non-local-comrades-in-kwa-zulu-natal/>

<sup>11</sup> ISI Appeal for Information on Covid-19 and Statelessness (February 2021).

<sup>12</sup> Pragna Ragananan (July 2020) “South Africa belongs to all who live in it”, COVID-19 showed it does not” available at <https://www.opendemocracy.net/en/pandemic-border/south-africa-belongs-to-all-who-live-in-it-covid-19-showed-it-does-not/>

<sup>13</sup> International Detention Coalition “IDC’s Global Covid-19 Policy Position” available at <https://idcoalition.org/covid-19/>

and how many are international migrations. The LHR Detention Unit reports on cases of people being detained who are stateless during this time. South Africa has no stateless determination process. As a result, there is very little data as to how many of the arrested are in fact stateless.

The government has launched a National Action Plan to combat xenophobia, racism, and discrimination, marking an important step toward addressing the widespread human rights abuses arising from xenophobic and gender-based violence and discrimination that continue to plague South Africa. The five-year plan, developed in consultation with civil society, aims to raise public awareness about anti-racism and equality measures, improve access to justice and better protection for victims, and increase anti-discrimination efforts to help achieve greater equality and justice. The Action Plan fails to address a key challenge fueling the problem: the lack of accountability for xenophobic crimes.<sup>14</sup>

## 7. **Socio economic rights- lost livelihoods of migrant, undocumented and stateless persons**

In South Africa, the lockdown has made worse the inequality in South Africa in general, but has also left asylum seekers, refugees, and stateless people worse off. . The lock down regulations have had a disproportionate impact on the most vulnerable people in South Africa including all migrants including those who are stateless. Migrants in general suffered severely from loss of livelihoods during the pandemic. The government has also failed to consider these populations in economic, poverty, and hunger alleviation schemes. Excluding multiple populations from national response safety has impacted severely on coping strategies causing mental health issues and secondary health concerns.<sup>15</sup> While UNHCR and some of its social assistance partners such as Future Families has stepped in to provide assistance, the outreach is limited because of limited resources.

The government was challenged legally to extend the COVID grant to include asylum seekers, but there is very little evidence that asylum seekers were able to access this grant.<sup>16</sup> Reports also show that amongst stateless people, women have been most impacted, especially those who are the heads of households, who also had to find alternative ways to support their children as their work in the informal sector came to a halt unexpectedly.<sup>17</sup> This impacts gravely on the mental health of migrant children.

The government declared a state of disaster on 15 March 2020 and imposed a lockdown from 26 March 2020. Human rights groups and activists raised awareness of the need for an include response and to ensure stringent measures taken by the South African government did not adversely affect the most vulnerable , especially in relation to migrants. The hard lock down meant many who were trading in the informal sector could no longer do so as the regulations only made provision for essential workers to

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<sup>14</sup> Human Rights Watch (2019) "South Africa, events of 2019" available at <https://www.hrw.org/world-report/2020/country-chapters/south-africa#>

<sup>15</sup> Mukumbang FC, Ambe AN, Adebisi BO, 'Unspoken inequality: how COVID-19 has exacerbated existing vulnerabilities of asylum-seekers, refugees, and undocumented migrants in South Africa,' Int J Equity Health, (August 2020), available at <https://pubmed.ncbi.nlm.nih.gov/32819364/>.

<sup>16</sup> Cathy Kavuro (29 May 2019) "South Africa excludes refugees and asylum seekers from Covid-19 aid" available at <https://mg.co.za/coronavirus-essentials/2020-05-29-south-africa-refugees-coronavirus-exclude-law/>

<sup>17</sup> ISI Appeal for Information on Covid-19 and Statelessness (February 2021).

travel and go to work. Migrants as well stateless persons who rely on selling fruits and vegetables by sidewalks, selling clothes and plaiting hair and in general the majority of whom work in the informal economy, were unfairly prejudiced by this restriction. .

This was further exacerbated by the fact that they were not included in the social assistance plans. Only citizens, refugees and later asylum seekers were included. Three of our clients including many others who called our Help Line at the time reaching out for assistance in terms of social assistance.

It is also worth pointing out that a moratorium was issued stating that evictions could no longer take place as a measure to contain the further spread of COVID and taking into account that many families had fallen on hard times during the lockdown.<sup>18</sup> Lawyers for Human Rights received numerous calls during the lockdown to a Hotline line for those seeking legal recourse. This was a toll free line that was run with the support of a number of other organisations as part of the movement for social justice and some pro bono legal firms. Many of the calls were from predominantly migrants who were being evicted and seeking help. The government called for a closure of all schools during level 5 lockdown and remote learning was recommended. A large number of migrant children who could not afford data costs were severely impacted by this. The government did however shortly following the easing of restriction ensure that learners go back to the classrooms in phases.

Solidarity measures or initiatives that took place during covid-19 included calls from civil society networks calling on the government to do away with citizenship first approach in service delivery.<sup>19</sup> Initiatives like the Community Action Networks provided food parcels and other forms of support in an inclusive manner – and had a much further reach than most government initiatives as this did not require a means test, and there were no restrictions imposed if you were not documented.<sup>20</sup>

We also noted that a number of refugees and asylum seekers opted to voluntarily return to their countries of origin, citing a lack of government support in terms of social assistance and unemployment insurance. The closure of borders posed a serious barrier to allowing the safe, coordinated return to countries of origin where there would not be any risk of re-foulment. Children who were separated from their families, or arrived in South Africa without an adult caregiver were severely impacted in that family reunification was delayed due to the prolonged closure of borders.

## **8. Access to health care services (COVID-19 testing and treatment):**

The Constitution of South Africa states that everyone has the right to have access to health care services. The Refugees Act, which sets out the rights of refugees and asylum seekers in South Africa, states that

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<sup>18</sup> The South African 12 May 2020 “Covid-19 South Africa bans evictions during lockdown” available at <https://www.thesouthafrican.com/news/covid-19-south-africa-bans-evictions-during-national-lockdown/>

<sup>19</sup> Southern African Nationality Network (February 2020) Statement to SADC Member states: “Stateless in a global pandemic: inclusivity is key to ending the pandemic”

<sup>20</sup> Christi Nortier (3 March 2020) “Gauteng’s community action networks saved lives in a crisis — now it has to prepare for the long haul” available at <https://www.dailymaverick.co.za/article/2021-03-03-gautengs-community-action-networks-saved-lives-in-a-crisis-now-it-has-to-prepare-for-the-long-haul/>

refugees have the same right to access health care services as South African citizens.<sup>21</sup> This right is interpreted widely to include asylum seekers. The Immigration Act, however, states that staff at health care facilities must find out the legal status of the person before providing health care (except in an emergency).<sup>22</sup>

In the context of the COVID-19 pandemic, access to health care services is critical. Civil society organisations have urged government to create a firewall between health care services and immigration services during this time, in order to encourage as many people as possible to access testing and treatment.

The government initially issued contradicting statements on whether refugees, asylum seekers and undocumented, irregular or stateless migrants would be included in the vaccination roll out strategy until the President confirmed in an address to the nation that the vaccine would be made available to all “regardless of citizenship or residence status”.<sup>23</sup> The President further pledged to implement “measures to deal with the challenge of undocumented migrants so that, as with all other people, we can properly record and track their vaccination history”. The vaccination roll out has commenced and the online registration portal is accessible to those with a South African ID number, a passport, a refugee permit or asylum seeker permit but it is not accessible to those who are undocumented or have no proof of legal identity. Civil society has urged the government to be more transparent and to provide more detail on the “measures” to deal with undocumented people as contemplated by the President.<sup>24</sup> Civil society has further called for meaningful and adequate participation in the government’s plans.

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**For more details or question of clarity:**

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<sup>21</sup> See also Department of Health Circular 2007: [http://www.probono.org.za/Downloads/asylum\\_seekers.pdf](http://www.probono.org.za/Downloads/asylum_seekers.pdf)

<sup>22</sup> Section 44 of Immigration Act.

<sup>23</sup> <https://www.gov.za/speeches/president-cyril-ramaphosa-developments-response-coronavirus-covid-19-1-feb-2021-0000>

<sup>24</sup> Tshegofatso Mothapo (February 2021) “South Africa belongs to all who live in it, and so does the right to be vaccinated against Covid-19” available at <https://www.dailymaverick.co.za/article/2021-02-10-south-africa-belongs-to-all-who-live-in-it-and-so-does-the-right-to-be-vaccinated-against-covid-19/>