

13 December 2021

TO: Dr Aaron Motsoaledi

Minister: Department of Home Affairs
Email: minister@dha.gov.za

Mr Njabula Nzuzo

Deputy Minister: Department of Home Affairs
c/o Thabo Mokgola
Email: Thabo.Mokgola@dha.gov.za

Ms Phumla Williams

Cabinet Spokesperson
Email: precian@gcis.gov.za

CC: Commissioner Angie Makwetla

Commissioner Rights of Children & Migrants
South African Human Rights Commission
Email: amakwetla@sahrc.org.za; oasuni@sahrc.org.za

Parliamentary Portfolio Committee on Home Affairs

Committee Secretary Mr Eddy Mathonsi
Email: EMathonsi@parliament.gov.za

BY EMAIL

Dear Minister Motsoaledi:

RE: DECISION TO STOP ISSUANCE OF EXTENSIONS FOR ZIMBABWEAN EXEMPTION PERMITS (ZEP)

1. We refer to the above, the Ministry of the Presidency's statement at the Cabinet Meeting of 24 November 2021 made on 25 November 2021, and Immigration Directive 10 of 2021 dated 29 November 2021. Copies of the statement and directive are attached as "A" and "B", respectively.
2. We write on behalf of Zimbabwean Exemption Permit (ZEP) holders currently residing in South Africa whose lives will be thrown into disarray as a result of Cabinet's decision to stop issuing extensions to Zimbabwean ZEP holders with almost immediate effect. Lawyers for Human Rights (LHR), together with the organisations listed below, submit this letter as legal practitioners, service providers, community organisations, and activists dedicated to ensuring the rights of South Africa's refugee, asylum seeker and migrant communities

3. We write to you in the first instance to appeal for a rescission of this decision and directive on purely humanitarian grounds. Zimbabwe remains a country in turmoil and continues to experience serious economic and political challenges, as well as violence. Further, given that this special dispensation covers a time span of over a decade, many ZEP holders have built their families, lives, and homes in South Africa. Estimates indicate that up to half a million children will be affected by this decision, resulting in severe psychological impact through uprooting their lives in South Africa and exposing them to trauma and suffering in Zimbabwe, thereby undermining the best interests of the child principle enshrined in South Africa's Constitution.
4. In amplification of the above, thousands of ZEP holders have contributed positively to South Africa's economy, communities, and society more broadly. The Cabinet's decision to no longer issue extensions to ZEP holders will not only impact the individual permit holder but South Africa as a whole; all levels of society will also experience a great loss should these permit holders be forced to return to Zimbabwe. Respectfully, destabilisation of the broader region should also be a significant concern for Cabinet and the Department of Home Affairs (DHA) as a consequence of this decision.
5. We further note that the ZEP scheme was implemented by the DHA, with the aim of creating a record of Zimbabweans who had, until then, been living in South Africa undocumented, granting them an amnesty, and regularizing undocumented Zimbabwean nationals living in South Africa. The implementation of the ZEP scheme further alleviated the burden placed on the asylum system. It must be noted that the vast majority of ZEP holders would have been entitled to either refugee status or some kind of humanitarian protection in any event, and that they were entitled to protection in the first place.
6. We are concerned that the above decision is contrary to the DHA's initial, constructive initiative to address its backlog. It will more than likely significantly increase the category of undocumented persons in South Africa, undermining work that the DHA has undertaken in the past ten years to regularize undocumented Zimbabwean nationals living in South Africa. This would then mean that the original "problem" of the asylum system being overloaded with applications for refugee protection will once more prevail. It is anticipated that those individuals who have a well-founded fear or persecution, will then be entitled to apply for refugee status, resulting in another spike in the number of asylum claims.
7. Additionally, those ZEP holders who changed over from the asylum system to the immigration system are now at risk of *refoulement*. We are deeply concerned that the Cabinet's decision will directly result in affected people facing persecution, harm, and loss of life as a result.

Immigration Directive 10 of 2021 and Ministry of the Presidency: Statement on the Cabinet Meeting of 24 November 2021

8. In terms of the Immigration Directive 10 of 2021 (the Directive), holders of the ZEP "should apply for mainstream visas that they qualify for and ensure that their applications comply with the provisions and requirements of the Immigration Act and Immigration Regulations...". The Directive further notes that "[a]ll applicants with a ZEP must be allowed to travel freely in and out of South Africa until 31 December 2022."
9. Additionally, applicants are required to submit their passports together with their visa applications. As this process is likely to be lengthy, applicants will be without their passports for long periods of time resulting in them not being able to "travel freely in and out of South Africa until 31 December 2022." As you may know, many ZEP holders are employed in South Africa and will not be able to return to Zimbabwe to lodge a visa application without compromising their employment given these challenges. Further, many children of ZEP holders are enrolled in primary, secondary, and tertiary schools and education institutions for 2022 and will

now similarly need to return to Zimbabwe to apply for visas in terms of the Immigration Act; this will greatly compromise their education for reasons mentioned above, with significant long-term consequences for those individuals and the region.

10. Further, applicants aware of the option to apply for a waiver through Visa Facilitation Services Global (VFS Global) offices in South Africa will likely do so, but we are concerned about the burden this will place on VFS Global and the DHA. Many clients of Lawyers for Human Rights who have applied for visas through VFS Global in South Africa have waited for the outcome of their applications from DHA for longer than 12 months and in some cases, two years. This exceeds the grace period for ZEP holders.
11. The Directive goes on to state that “[a]ll companies, employers, learning institutes and banks are to kindly note that applicants who are in possession of a ZEP expiring on 31 December 2021 must be allowed to continue with their services, provided that they submit proof of application for a mainstream visa in terms of the Immigration Act and Immigration Regulations. Proof of application must be a VFS receipt.”
12. We submit with concern that a VFS receipt is not a form of valid documentation. In our organisations’ experiences, migrants are regularly denied services, including healthcare and education, and are arrested due to their irregular documentation status. This includes those who have received appointment slips for 2022 to apply for asylum at a respective Refugee Reception Office and those with VFS Global receipts for pending visa applications or appeals.
13. The Ministry of the Presidency’s statement at the Cabinet Meeting of 24 November 2021 (the Statement) is worryingly silent on this. Clause 6.3 of the Statement holds that “[f]ollowing its deliberations, Cabinet decided to no longer issue extensions [sic] to the Zimbabwean special dispensations. However, it decided on a 12 months grace period at the expiry of the current ZEP.”
14. Clause 6.4 states that “[d]uring this period, the holders of this permit should apply for other permits appropriate to their particular status or situation. At the expiry of this 12-month period, those who are not successful will have to leave South Africa or be deported.”
15. The Statement therefore makes no provision for the legal status of people who will wake up on the 1 January 2022 and have expired permits in their hands. The implications of this are already being felt. Children are being denied the opportunity to register for grade 1 and grade 8; employers are refusing to renew contracts of employment for those working as domestic workers because their permits will have expired; and banks are denying services or closing and/or freezing accounts of individuals affected.
16. Cabinet’s statement and the DHA’s subsequent Directive, both of which contain sparse and unclear information, have sparked panic and uncertainty for many Zimbabweans living in South Africa.
17. Section 195 of the Constitution underscores the basic values and principles governing public administration. The section provides that [p]ublic administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles: ... Public administration must be accountable. Transparency must be fostered by providing the public with timely, accessible and accurate information....”
18. Cabinet and the DHA, in their issuance of the Statement and Directive, respectively, have failed to provide written reasons as required by Section 33 of the Constitution, which states that “Everyone has the right to administrative action that is lawful, reasonable and procedurally fair. Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons”.

19. The Promotion of Administrative Justice Act of 2002 (PAJA) gives effect to the rights set out in Section 33 of the Constitution. PAJA section 3(2)(b) in particular provides that, in order to ensure procedural fairness, all persons whose rights are materially and adversely affected by administrative action are entitled to:
- 19.1. adequate notice of the nature and purpose of the proposed administrative action
 - 19.2. a reasonable opportunity to make representations (the *audi alteram partem* principle);
 - 19.3. a clear statement of the administrative action;
 - 19.4. adequate notice of any right of review or internal appeal, where applicable; and
 - 19.5. adequate notice of the right to request reasons in terms of section 5 of PAJA.
20. Whilst the ZEPs were enacted through Section 31(2)(b) of the Immigration Act, also referred to as the “ministerial discretion”, this discretion is not absolute. The Minister is still accountable under both the Constitution and PAJA.
21. In the absence of the Presidency and/or the DHA rescinding this decision, the Statement, and the Directive, we further seek clarity on the following critical questions:
- 21.1. What is the immigration status of ZEP holders whose permits expire on 31 December 2021?
 - 21.2. Will the grace period be extended to those who submit applications before 31 December 2022 but have not yet received the outcome of their applications before the end of the grace period?
 - 21.3. Will former asylum seekers, who opted into the immigration system through the ZEP scheme, be permitted to submit an application for asylum again?
 - 21.4. Is there any consideration of those who are *sur place* refugees?
 - 21.5. What steps have been or will be taken by the DHA to disseminate all of the above information [21.1 -21.3] to affected persons?
 - 21.6. What steps have been or will be taken by the DHA to disseminate this information to government service providers, banks, employers, police officials, and other service providers?
22. We kindly request your written response by no later than close of business on 17 December 2021. Should you have any queries regarding the above, you may contact sharone@lhr.org.za and jmunakamwe1@gmail.com [Zimbabwean Solidarity Network].

Yours faithfully,

Sharon S Ekambaram
Head of the Refugee and Migrant Rights Program
sharone@lhr.org.za

1. #CODERED
2. AFRICAN DIASPORA WORKERS NETWORK (ADWN)
3. AFRICAN LEGAL STUDENTS' ASSOCIATION AND JUSTICE CHAPTER
4. AFRICAN TRADERS ORGANISATION (ATO)
5. BRIDGING THE GAP BOTSWANA
6. CENTRE FOR APPLIED LEGAL STUDIES
7. CENTRE FOR SOCIOLOGICAL RESEARCH AND PRACTICE
8. CHRONICLES OF REFUGEES AND IMMIGRANTS
9. CONSORTIUM FOR REFUGEES AND MIGRANTS IN SOUTH AFRICA (CORMSA)
10. DISABLED MIGRANT RIGHTS NETWORKING ORGANISATION
11. FEDERICA MICOLI -INDIVIDUAL
12. GIRAFFE HEROES SOUTH AFRICA
13. GLOBAL SOUTH AGAINST XENOPHOBIA (C19 PEOPLE'S COALITION)
14. GUTU UNITED RESIDENCE AND RATEPAYEERS ASSOCIATION (GURRA)
15. HUMAN RIGHTS INSTITUTE OF SOUTH AFRICA (HURISA)
16. INSTITUTE FOR THE ADVANCEMENT OF JOURNALISM
17. INTERNATIONAL COMMISSION OF JURISTS- AFRICA REGIONAL PROGRAMME
18. JESUIT REFUGEE SERVICES (JRS)
19. KEEP LEFT/SOCIALISM FROM BELOW
20. LAWYERS FOR HUMAN RIGHTS (LHR)
21. LERATONG ADVICE CENTRE V
22. MAKANA CITIZEN'S FRONT
23. MIGRANT LABOUR GENERAL WORKERS UNION INTERNATIONAL
24. MIGRANT WORKERS ASSOCIATION OF LESOTHO
25. MIGRANT WORKERS PROJECT BOTSWANA
26. MIGRANT WORKERS UNION IN SOUTH AFRICA (MIWUSA)
27. OGONI SOLIDARITY FORUM
28. ONE VOICE OF ALL HAWKERS ASSOCIATION
29. PAN AFRICANIST LABOUR FORUM (PALF)
30. PHILAKAHLE FAMILY CENTRE
31. PUBLIC SERVICE INTERNATIONAL (PSI)
32. SALLY GANDAR INDIVIDUAL
33. SCALABRINI CENTER
34. SISONKE REVOLUTIONARY MOVEMENT
35. SISONKE GENDER JUSTICE
36. SOUTHERN AFRICA HUMAN RIGHTS DEFENDERS NETWORK (SAHRDN)
37. SOUTHERN AFRICA MIGRATION NETWORK (SAMIN)
38. SOUTHERN AFRICAN WOMEN FOR MIGRATION AFFAIRS (SAWIMA)
39. THE PUBLIC INTEREST PRACTICE
40. UNEMPLOYED PEOPLE'S MOVEMENT
41. UNITED DOMESTIC WORKERS OF SOUTH AFRICA (UDWOSA)
42. UNITED FRONT
43. UNIVERSITY OF CAPE TOWN REFUGEE RIGHTS CLINIC- SOUTH AFRICA
44. WORKERS AND SOCIALIST PARTY (WASP)
45. ZEP NATIONAL COORDINATING COMMITTEE
46. ZIMBABWE EXILES FORUM (ZEF)
47. ZIMBABWE ISOLATED WOMEN IN SOUTH AFRICA (ZIWISA)
48. ZIMBABWE MOZAMBIQUE SOLIDARITY ALLIANCE (ZIMOSA)
49. ZIMBABWE SOLIDARITY NETWORK (ZSN)

