



## Response

April 22<sup>nd</sup> 2021

### **Leaving Refugees in Limbo**

On 19<sup>th</sup> March this year a group of organisations representing refugee communities, civil society groups working in that sector, and human rights organisations staged a mock 're-opening' of the Department of Home Affairs' offices for service to the refugee and asylum seeker communities. They did this in order to draw attention to the tardiness, or possibly even lack of political will, behind DHA's failure to restore these services. In employing this creative form of advocacy, they underlined the dire consequences of the continuing closure for these mobile communities.

Mr Makushe Hupenyu of the Durban Catholic Church's Office for Refugees, taking the part of the Minister, pointed out in his 'speech for the reopening ceremony' that SA was committed to fulfilling its obligations to refugees and asylum seekers under the various international conventions to which it is a signatory. Indeed, Minister Motsoaledi had said some days earlier said that 'anyone crossing the border was afforded the protection of the Constitution and the Bill of Rights.' At the signing of the agreement with the UNHCR early in March, he had said that 'South Africa was implementing its immigration laws, guided by the Constitution.' Mr Makushe later added that the Minister has the mandate to make specific changes and that he should do so expeditiously. This should include upgrading its systems so as to process documents speedily, and creating a quick, clear route for genuine asylum seekers to have their claims adjudicated.

Mr Makushe was obviously alluding to the Auditor General's *'Follow-Up Performance Audit of Immigration Processes for Illegal Immigrants at the Department of Home Affairs'* (February 2020), which found that DHA's systems were 'not reliable, not integrated and not in real time, resulting in outdated information which could not form a basis for sound decision making.' The lack of integrated systems and the lack of MOUs with other government departments also resulted in long delays in the paying out of the special UIF payments for refugees during the COVID-19 pandemic later in 2020. This also made the verification process very drawn out, and led to the A-G's observation that the DHA had no idea how many of the 946 324 'live' cases were still in the country and thus needing processing. The Audit pointed to a lack of leadership and project control in this section of the department. All of this adds to policy incoherency and poor outcomes for these vulnerable groups.

Among the theological foundations for such advocacy, and especially underlining the call for help and redress, is what Pope Francis calls 'the virtue of welcome'. In the moral tradition of most faith communities there exists an obligation to provide redress for those who live under

conditions that are offensive to human dignity. Most applicants have come to this country fleeing such conditions, which include poverty, food scarcity, political instability and the like.

The street drama drew attention to three critical policy areas which negatively impact the mobile communities with reference to DHA's poor service and continued closure.

Firstly, DHA's services are freely available at the moment for SA citizens but not for refugees and asylum seekers. This feeds into a growing concern that the DHA is positioning itself somewhat stealthily as a department serving only South Africans and that mobile communities are beyond its remit, leading to their exclusion and further vulnerability. We had reason, in a recent submission to the DHA, to draw attention to language in the draft *'Official Identity Management Policy'* that spoke of the DHA as being of service to South Africans or, in other places, to SA citizens. In truth, its mandate also specifically includes services to refugees and asylum seekers. This includes the issuing and renewing of documentation and the regulation of such groups stay in the country. This differentiated pattern of services at DHA offices seems to reflect an attitude of washing its hands of refugee and asylum seekers' concerns, rendering such people invisible and thus absolving itself of its duty to them. It could also arguably be a first step towards making access to work, health care and education much more difficult. It is fundamentally discriminatory and hard to reconcile with the Minister's assurance that all who cross the border are protected by the Constitution and the Bill of Rights.

Secondly, despite the regular extension of the validity of expired documents, the very fact of expiry seems to have become a sufficient ground for not offering employment to people with such documents. We also have a growing number of reports of people being turned away from banking institutions, from SASSA, from registering businesses, because of expired documents. It seems clear that there is a growing culture of hidden, below the radar, non-compliance with official regulations and in the case of the admission of undocumented children to basic education, even non-compliance with legal judgements. As long as there is no accountability for such malpractices, or even a tolerance of them, this unofficial culture of exclusion will grow and ultimately become normative. It should also be noted, as the street drama portrayed, that short of carrying an armful of Government Gazettes, there is no easy way of proving these extensions.

Thirdly, despite many requests the DHA has yet to provide the public with plans for how it will cope with the processing of all the expired documents when the offices re-open. At this point every refugee and asylum seeker document has expired, given that they have either a three or six month validity. At the present rate of processing refugee and asylum seeker documents, according to the Auditor-General, it would take the DHA 68 years to clear the backlog. With thousands more to process now after the lockdown, it is foreseeable that mobile communities will now wait for unconscionably longer times for their documents. Last month the DHA and the UNHCR agreed to build capacity in order to try to eliminate the backlog in the next four years. The UNHCR hopes that its financial support will allow about 150 000 cases to be heard in this period. It should be added that it is not just about the numbers (important as those are) but also about the quality of decisions, if the process is going to be productive.

Linked to the DHA's ability to deliver, but not much spoken of, is the haemorrhaging of monies to meet claims against the department, as well as the dramatic increase in irregular spending. The A-G's report for 2019/20 showed that irregular spending had increased dramatically from R28m in 2018/19 to R284m in 2019/20. The report warned about these amounts negatively impacting the department's ability to deliver services; which will increase backlogs and impact on people's lives in ways too terrible to contemplate.

The street drama was correct in highlighting these policy areas. Without serious attention to these failures not only will thousands be left in limbo, but the social pathologies that often flow from a culture of neglect will inevitably lead to even greater social problems. In 2019 at a Mass for Migrants and Refugees, Pope Francis again denounced “the globalization of indifference” and said “a painful truth” is that “our world is daily more and more elitist, more cruel, towards the excluded.” It is our duty to ensure that our policies do not stealthily, even unintentionally, contribute to worsening the already difficult lives of the excluded.

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