



29th MARCH 2022

Recommendations on SAHRC Dialogue engagement on Section 34(1)(d) of the Immigration Act and related matters

It was a sad moment for us to be having such discussions (because we were supposed to be in discussion about positive impacts) hence we are here regarding the section to be applied unfortunately, but the discussion has shine many aspects to be dealt with and beyond. Foreign nationals in general face intricate system and difficulties that arise from it. Foreign nationals do not wish to move to other countries unless their countries of origin do not give them problems that are beyond their controls.

Background

According to SAHRC undocumented detainees are not afforded an opportunity to appear before presiding officers in person when extensions of court warrants in terms of section 34(1)(d) of the immigration Act 13 of 2002 and section 34 of the Constitution are considered, although the relevant section states clearly as to how to approach such issues, those that are having the power to implement the relevant section ignore that section and apply their own way of thinking without the fear of the law, this also implies that they are either not aware of the law which should not be an excuse or they are ignorant who does not feel the responsibility to implement what they have been ordered, one could also ask that the system lacks accountability on the hand of those that use it as they pleases.

Hence it shows the resentment against foreign nationals who are in the country and are undocumented, we specifically said undocumented, because the system of home affairs is unwelcoming to foreign nationals that do not have money to bribe the officials at the centre.

Let us start by commending the South African government for putting up a good and robust refugee policy. However, implementation of the policy by government officials often is the major problem. Many of the government officials either lack adequate knowledge of the policy content or act based on their sentiments. This is one of the factors that contributed to the illegal arrest and detention of asylum seekers and refugees in South Africa.

We are requesting to you chairperson of SAHRC to do the follow up on the issues of refugees and asylum seekers who have been detained at Lindela Repatriation Centre, these community members were among the people who were protesting in Cape Town in the year 2020. Their rights have been violated because there are not illegal in South Africa for being detained at Lindela Repatriation Centre.



Recommendations

African Refugee and Migrants Aid (ARMA) has faced many challenges in this regard as an organization who is assisting such people and other issues related to foreign nationals, we would like to recommend a few ways forwards in regard to the topic we had previously.

1. At every border in South Africa there should be a reception centre that should facilitate the way forward for those foreign nationals that ran away from their countries. Hence in many countries because the system is strict as soon as they enter the country they hand themselves to those around the border such as border patrols then they will be probed as to whether their story is legit or not during that process they will be kept at a camp or in other facilities until their issue is solved but in South Africa there are no such things as long as you entered through illegal way you have no right to apply for a refugee permit or for asylum you are labeled as illegal which is completely wrong.
2. Currently, the home Affairs reception is overwhelmed and over stretched as they are unable to meet the demand from foreign nationals if not that, one needs to bribe the officials in order to acquire their permits, this needs to change, by that we recommend that there should be other offices besides the 5 offices that handles more than 3 million foreign nationals. Hence even in small towns there should be offices and digitalize the system.
3. The section with the Constitution should be applied and those that do not apply such section should be accountable and face the mighty law in regards so that it can be strict to those that do not follow the law properly and do as they wish, which is abusing someone basic human rights such as the appearing at court.
4. As the Constitution is for every person living in South Africa, and as the Bill of Rights stated that every person has the right to appear as a basic human right the immigration Act must be in conjunction with the Constitution and that illegal migrants must be given the opportunity to appear at the court.
5. The department of Home Affairs to work closely with the National Prosecuting Authority (NPA) when it comes to the verification of the illegal foreigner's status in the country, because in some cases the accuse will wait for more than 14 days waiting for verification of his/her status in the country.
6. We'll also recommend that a special court should be established for refugees and asylum seekers with judges who are well trained and with a certificate in refugee/migration laws.



7. We'll also recommend that the department of home affairs must give the correct information about the status of any illegal foreign who have been arrested and detained in contravening the immigration Act and Refugee Act.
8. We are requesting the department of home affairs to make the process of renewal of refugee and asylum seekers permits more flexible to reduce the issues of illegal foreigners in the country. There is high number of refugees and asylum seeker who failed to renew their permits because they didn't have money for transportation to go and renew their documents.
9. There is also the issue of fine, when one failed to renew section 24/22 permits, we've been work with community, most of these people DO NOT have money to pay the fine requested by department of home affairs for failing to renew the permits. We are requesting the amount of R500 must be a fixed amount for those who failed to renew their permit on time, instead of paying R2000.00 because this amount contribute on the issues of illegal foreigners. This process of paying a fine should be delt with a judicial office and not at home affairs.
10. We are requesting the department to also consider a warning notice for those who failed to renew their permits on time.
11. Section34(1)(d) of the Immigration Act should not be extend for more than three times, if the department of home affairs failed to arrange the necessary paperwork for deportation, and that person must immediately be released from custody.
12. Place of detention; illegal foreigners must not be kept in the same cell with criminal offenders.
13. The department of home affairs must be able to give a correct and reliable report on the status of the illegal foreign who is being detained, because some officials are misleading the court about the status of the foreigners in the country.
14. The rights to legal representation, any illegal foreign has the constitutional right to legal representative, legal aid attorney needs training on immigration and refugee law.
15. The issue of language barrier should be delt with, when an illegal foreign is being detained, both the department of home affairs and the court of law must secure a language practitioner who will be able to assist for interpretation, to allow the detainee to understand the proceedings.
16. There is a need for radical attitudinal change on the part of South African government officials such as the DHA, Department of Justice, correctional services, the police and other government official dealing with refugees and asylum seekers.

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Many of them need to be trained and retrained on relevant refugee policy and as well as how to relate with the refugees.

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Port Elizabeth – Eastern Cape

Director and Chairperson of The African Refugee and Migrants Aid “ARMA”

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