

To: Chief Director: Strategy and Institutional Performance
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12 February 2026

Dear Mr. Sihle Mthiyane, Chief Director: Strategy and Institutional Performance

DRAFT REVISED WHITE PAPER ON CITIZENSHIP, IMMIGRATION AND REFUGEE PROTECTION

Introduction

The Scalabrini Centre of Cape Town (SCCT) is a registered NPO whose mission is to welcome, to protect, to promote and integrate people on the move in local society. In providing assistance to people on the move, we advocate respect for human rights and use a holistic approach that considers all basic needs. We strive to challenge, influence, and improve law, policy and practice impacting people on the move, and to ensure their agency, belonging and integration, in order to achieve a welcoming South Africa where the rights of people on the move are realised. The SCCT works with asylum seekers, refugees and other migrants on a daily basis, addressing obstacles many face to meaningfully contribute to society. We draw on this experience, along with relevant and contemporary research on migration, to offer our input on our input on the Department of Home Affairs' *Revised Draft White Paper on Citizenship, Immigration and Refugee Protection* (hereafter 'the Revised White Paper'). We appreciate the opportunity to share our knowledge and contribute to this process.

We support the Department's attempts to address some of the current gaps in law, policy and practice regarding, refugee protection, statelessness, civic registration, migration, and human mobility in South Africa. Our experience has shown that often the developmental power of migration has been squandered due to policies and practices that do not speak to each other or are not effectively implemented.¹ Developing and implementing a practical, consistent, and rights-based policy on human mobility, force migration and citizenship has the potential to assist in South Africa's development and enhance our security and economic prospects. At the same time, a more coherent policy can strengthen regional ties and integration across several sectors. Such a development would enhance the lives of both South Africans and non-nationals and establish South Africa as a leader in a more integrated and developed region. These submissions are set out in the following sections: introduction, general comments and recommendations, section specific comments including those relating to refugee protection, citizenship policy proposals, immigration and alternatives to detention and conclusion.

¹ See for example our short film on the challenges skilled refugees face in practising their profession in South Africa, *Critical Skills* (April 2021) and see *Belonging: An 8 year journey home* indicating challenges in law policy and practice faced by a child separated from her family.

The centre is registered with the South African Department of Social Development as a non-profit organisation (021-079 NPO), as a Child and Youth Care Centre (C7569) and as a Public Benefit Organisation with the South African Revenue Services (930075335) and governed by a Trust (IT2746/2006). Auditors: PKF Constantia Valley Cape Town Inc. VAT number: 4780251437.

General Comments and Recommendations

We support the Department's aim to improve IT systems and processes to improve efficiency and combat corruption which is endemic and widespread. It is without a doubt that more effective processes including border control measures are essential for the purposes of combating serious international crime such as smuggling and trafficking, and we support the Department's efforts to improve these critical functions. We also agree there is a need to align legislation and practices as the existing gaps have significant impacts on the lives of individuals – both citizens and non-nationals – and on governance. Digital transformation of citizenship, civil registration and immigration processes and services, structured pathways for citizenship, residency and refugee protection and improve efficiency, effectiveness, accountability and alignment with the rule of law and human rights along with afore-mentioned alignment of legislation with key priorities and crucial and important goals put forward in the Revised White Paper.

Accountability to rule of law and human rights is reflected in several areas in the Revised White Paper including:

- i. Affirming that there will be no steps toward withdrawal from the 1951 Convention and the 1967 Protocol and OAU Refugee Convention 1969 as envisaged in the April 2024 White Paper. Upholding the conventions is in keeping with domesticated refugee law in terms of the Refugees Act 130 of 1998 and indeed aligned with the Constitution.
- ii. Universal birth registration provided regardless of nationality or documentation and access for fathers to register their children's births are all in the best interests of the child in keeping with the constitution and the rights of the child.
- iii. Introduction of statelessness determination procedure and reducing the age for citizenship applications for stateless children born in South Africa to migrant parents is also in line with rule of law and human rights.

Likewise, efficiency, accountability and key priorities are served in ensuring that people on the move and citizens alike will have access to the financial sector including SARS and banking while the Intelligent Population Register capturing biometric data of everyone in the country will help to safeguard "invisible" and vulnerable, will help with controlled and economically beneficial regularization and will help with crime prevention. For instance, as pointed out by the High Court in Pretoria, documenting and regularizing children makes them less vulnerable to abuse or exploitation.²

However, we are concerned that the current Revised White Paper does not in some respects establish a solid foundation for an effective legislative and policy reform process and appears to be contrary to the law and the Constitution. Many of the issues with the current framework cited in the Revised White Paper are more related to bureaucratic challenges than legislative deficiencies, and many of the major proposals – such as limiting the right to work and study for asylum seekers, the movement of refugee reception offices to ports of entry, denied access to asylum in the absence of good cause and denying access to citizenship to children born in South Africa (save for stateless children), would result in a significant reduction of many fundamental constitutional rights and represent a retrogression from working towards the full realisation of those rights. Such a move would violate our obligations to work towards the 'full realisation of rights' set out in the Constitution and under international law, including the *International Covenant on Economic, Social and Cultural Rights*.³ It is

² Mubake and Others v Minister of Home Affairs and Others (72342/2012) [2015] ZAGPPHC 1037; 2016 (2) SA 220 (GP) (9 July 2015).

³ States have a primary obligation under universal human rights standards to work towards the progressive achievement of the full realisation of these rights to the maximum available resources, and to ensure that core obligations are met. For more detail on the progressive achievement of rights, see: Pia Oberoi, 'Defending the

hard to reconcile this with our commendable application to the International Court of Justice to ensure the international human rights law framework is upheld and respected for the protection of a vulnerable group. The proposal to delink access to permanent residence over time to temporary residence for survivors of human trafficking has the potential to further compromise witnesses and consequently effective persecution.⁴ What's worse, as explained below in our submission, is that the proposed move to reduce the rights of refugees, asylum seekers and of children, for whom our highest Court has confirmed as vulnerable groups.⁵ Unfortunately, many of the Revised White Paper's proposals are put forth based on misinterpretations of law, fact, and practice, lacking careful consideration and empirical evidence to justify the restrictions. While there is some data referenced the engagement with available data and research on migration is limited. For instance, the Revised White Paper proposes a shift from Permanent residence being link to duration in the country and related integration yet does not seem to consider the economic benefit from integration and naturalisation of refugees and/or survivors of human trafficking nor give an indication on how many people are naturalised. There is also minimal reference to regional and positive economic aspects of migration in our region.

As the current legislative and policy development process unfolds, we hope that a meaningful public consultation and engagement process leads to a more constructive and positive policy framework for human mobility and citizenship. We hope that our submission assists the Department in rectifying some of the inaccuracies and gaps, and that our suggestions for a migration framework that engages our continent and region positively are taken seriously. We thank the Department for the opportunity to contribute.

Our submission is structured as follows; in Section 2, we first set out our view of the developmental potential of migration and the need for a coherent and accessible regional migration visa scheme and provide general comments on some of the misconceptions, gaps, and inaccuracies in the Revised White Paper. We then provide specific comments on the proposals surrounding refugee protection in Section 3, on issues surrounding citizenship in Section 4, and on immigration matters in Section 5. At the conclusion of each section, we make recommendations as to how government could more appropriately deal with its concerns. **Annexure 1** contains our consolidated recommendations for ease of reference.

Towards a pragmatic and evidence-based migration policy to constructively engage with our region and harness the power of migration positively.

A major gap in the Revised White Paper is the lack of reference to the need to align our migration policies with regional integration and regional migration patterns. While we disagreed with some of the proposals and visions in the Department's 2017 *White Paper on International Migration* (hereafter the '2017 White Paper'), we strongly supported the Department's vision of an African-centric migration policy squarely positioned within the African development agenda. The 2017 White Paper endorsed the notion that migration can play a role in nation-building and social cohesion, and that this can strengthen regional integration and ties. Importantly, it noted all of this can be done in a secure manner.

Weakest: The Role of International Human Rights Mechanisms in Protecting the Economic, Social and Cultural Rights of Migrants', *International Journal on Multicultural Societies* 11(1) (2009) at p. 20.

⁴ S3.3.7.1 of the white paper states:– "Section 17 of the Prevention and Combating of Trafficking in Persons Act, 2013 (TIPA) shall be amended to align with the reformed immigration policy, which de-links temporary residence from permanent residence. Victims of human trafficking shall no longer qualify for automatic permanent residence based on their temporary residence status.

⁵ *Union of Refugee Women and Others v Director, Private Security Industry Regulatory Authority and Others* 2007 (4) SA 395, at para 28.

In doing so, the 2017 White Paper sought to align our policy to the developmental goals set out in the National Development Plan (NDP), developed, and adopted by the African National Congress and government in 2012/13, with the goal to eliminate poverty and reduce inequality by 2030 through drawing on the energies of the South African people and growing an inclusive economy. It engages with cross-border and internal migration through a pragmatic and constructive lens, identifying the need to harness migration as a means to address poverty and create more opportunities for decent work. Writing about the possibilities of migration, the NDP recognises that:

If properly managed, migration can fill gaps in the labour market and contribute positively to South Africa's development. Energetic and resourceful migrant communities can contribute to local and national development, and diverse, cosmopolitan populations are often the focus of cultural, economic, and intellectual innovation. If poorly managed, however, the skills and potentials of migrants will be neglected. Migration will remain a source of conflict and tension, and migrants will be increasingly vulnerable, subject to continued abuse, exploitation, and discrimination.⁶

The NDP further recognizes that human mobility will continue to feature prominently in South Africa and will likely become more diverse and complex.⁷

Building on the vision of the NDP, the 2017 White Paper contained a section on the management of international migration in the African context that addressed some of the gaps in current policy and put forth a vision for managing migration in a manner that aligns with our African-centred foreign policy by aligning our migration policy with continental processes advancing intra-African trade, sustainable development and increased regional integration.⁸

This policy proposal was summarised as:

a **pragmatic management approach** which balances acceptance of the reality that some economic migration to South Africa is inevitable with the need to ensure unemployed, poor and working class South Africans are the primary beneficiaries of employment and other economic opportunities in the country.⁹

The 2017 White Paper's vision emphasises the need for a pragmatic approach and aims to both harness the developmental power of migration while also ensuring that citizens also see these benefits.

To execute this pragmatic and balanced approach, it balanced strengthening certain aspects of border control focused on high-level crime along with proposing specific, achievable policy prescriptions such as *inter alia*:

- The elimination of visa requirements for African citizens in a secure manner;

⁶ National Planning Commission, National Development Plan 2030: Our future – make it work (Pretoria, Presidency of South Africa, 2012), p. 105.

⁷ Ibid, pp. 98, 103.

⁸ 2017 White Paper, p. 52.

⁹ Ibid, p. 53. Emphasis added.

- The introduction of regularisation programmes for undocumented migrants currently residing in South Africa subject to certain requirements such as possession of passports, lacking a criminal record and proof of valid basis for residing in South Africa; and
- The expansion of a regional visa regime – modelled on special dispensation visas established for nationals of Zimbabwe and Lesotho – to manage economic migration from key regional neighbours in the South African Customs Union as well as major source countries with deep historical ties to South Africa such as Malawi, Mozambique and Zimbabwe.¹⁰

Some aspects of this proposal have been implemented in part, such as the visa-free travel arrangement concluded with Kenya which has boosted intra-African tourism.¹¹ Indeed, the Department's previous regularisation projects and exemption permits, such as the Zimbabwean, Lesotho and Angolan dispensations, have largely been successful at their policy objectives. Other similar examples of pragmatic and development-focused policy from within our region highlight the potential of migration such as the 2022 Namibian-Botswanan visa-free deal which has fostered cross-border mobility through removing the requirement of passports, lessening the burden on government, and opening new avenues for tourism and trade.¹² These examples highlight the role migration can play in regional development and how practical, straight-forward policies can make migration more easily managed and reduce backlogs and our reliance on costly but ineffective policies such as detention and deportation.

It is our belief that the creation of more legal pathways for those in the region is the most critical gap in the current framework. Establishing a practical and accessible regional visa scheme would greatly enhance the Department's ability to more effectively manage some of the challenges listed in the Revised White Paper such as limited departmental capacity and an overburdened asylum system. It would also align our migration policy with continental initiatives such as the African Union's Agenda 2063 and SADC's ongoing integration efforts. It would create possibilities for other bilateral arrangements with our neighbours. This gap has also been recognised by the National Planning Commission, who has called for strengthened and harmonised border policies and that the SADC protocol on the free movement of persons be implemented to assist in alleviating domestic challenges as well as to improve access to regional and continental markets.¹³

We therefore believe the Revised White Paper falls short in this respect and does not offer a practical vision for a more holistic and balanced migration policy, nor for a more integrated region. We strongly recommend the Department include a regional visa plan in any reform of the migration framework and align future policy with the goals and benchmarks of the NDP. If such a scheme can be implemented and made accessible, many of the challenges listed in the Revised White Paper – corruption, limited capacity, costly and ineffective detention and deportation, issues of border control – would be made more manageable. At the same time, South Africa would effectively harness the benefits of migration and emerge as a leader of a more integrated and developed region.

¹⁰ Ibid, pp. 55-57.

¹¹ Vhangwele Nemakonde, 'Kenya and Zimbabwe drive African tourism boom in South Africa' (*The Citizen*, 24 December 2023).

¹² Gerhard Erasmus and Trudi Hartzenberg, 'Botswana and Namibia concluded an agreement on the movement of persons' (*Tralac*, 8 March 2023); Edith Mutethya, 'Visa-free travel seen as key to opening up African tourism' (*China Daily*, 27 November 2023).

¹³ National Planning Commission, '10 year review of the National Development Plan 2012-2022' (Pretoria, Presidency of South Africa, October 2023), p. 54.

Recommendation#1:

The SCCT recommends that the Department adopt a pragmatic approach to migration management that emphasises regional integration and development as the basis of an African-centric migration policy.

Recommendation#2:

The SCCT recommends that any new immigration legislation include mechanisms that account for and facilitate legal pathways for low to mid-skilled migration within the region as an integral component of a holistic and secure migration policy.

Recommendation#3:

The SCCT recommends that concurrent to the introduction of an expanded regional visa regime, that the Department implement a Regularisation Programme to allow for SADC migrants currently residing in South Africa to access documentation, and that such a programme is implemented in a secure manner and based on strict criteria. Any regularisation programme should be accompanied by a moratorium on deportation for individuals that may qualify to broaden the project's reach and ensure it is effective.

Comments on Management of refugee protection: refugee protection policy proposals

As mentioned at the outset, we are concerned by the Revised White Paper's proposals in relation to the management of South Africa's asylum seeker and refugee regime. We recognise that the Refugees Act is not perfect and requires readjustments, as does any piece of legislation, but a drastic and major policy change is unnecessary, especially if a practical and accessible regional work visa programme is implemented.¹⁴

a. **Definition of A Refugee**

1. In the Revised White Paper the definition of a refugee is limited to the 1951 Refugee Convention and its protocol's definition codified in section 3(a) of the Refugees Act 130 of 1998. The definition should be expanded to include the expanded second definition of a refugee as extended in the 1969 OAU Refugee Convention¹⁵ codified in Section 3(b) of the Refugees Act.

Refugee - 1951 Refugee Convention - A refugee is a person who has a well-founded founded fear of persecution due to race, religion, nationality, membership of a particular social group, or political opinion. Is outside their country of nationality and is unable or unwilling to avail themselves of its protection.

¹⁴ Portions of the refugee protection and citizenship sections of these submissions incorporate and are supported by a February 2026 memorandum for these submissions compiled for SCCT by Norton Rose Fulbright South Africa.

¹⁵ Convention Governing the Specific Aspects of Refugee Problems in Africa 1969, entered into force June 20, 1974.

OAU 1969 Refugee Definition - the term 'refugee' shall mean in terms of Article I (1) "every person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it." And in terms of Article I(2) "The term "refugee" shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of

Recommendation #4:

The SCCT recommends that the Revised White Paper includes the Article I(2) definition from the 1969 OAU Refugee Convention in the definitions section and acknowledging that both definitions apply concurrently and cumulatively, not selectively.

habitual residence in order to seek refuge in another place outside his country of origin or nationality."¹⁶

b. **'First Safe Country Principle and Route Based Approach'**

1. The Revised White Paper refers to the 'First Safe Country Principle and "Routes-Based Approach' as the preferred option rather than withdrawing from the Refugee Convention on Page 48 with the view that this will include strengthening border controls, reforming appeal processes, enhancing security measures and application of first country principle preventing those who have found protection from seeking it and returning transiting people through returns agreements. None of these are inclusive of or take cognisance of South Africa's international, domestic, and indeed constitutional obligation to protect the principle of *non-refoulement* which should be the cornerstone for any approach in relation to refugees.
2. In international law, there is no established mechanism to refuse asylum applicants who have transited other countries without an assessment of refugee protection needs.¹⁷ The First Safe Country Principle has no African refugee law basis and overlooks specific African dynamics. The designation of a country to be safe based on the ratification of 1951 Convention relating to the Status of Refugees overlooks critical factors like weak asylum systems in many African countries, endemic risks of detention and refoulement as has occurred in the past. The Revised White Paper's assertion that the Minister of Home Affairs would be responsible for designating countries as safe and reviewing it annually without independent oversight runs the risk of arbitrariness. Already the Refugees Act provides that those formally recognised as refugees in other states are not eligible for refugee protection as

¹⁶ Ibid

¹⁷ Roni Amit, *The First Safe Country Principle in Law and Practice* (Migration Issue Brief 7, African Centre for Migration and Society, June 2011).

under s 4(1)(d), but such an exclusion would require a thorough assessment of the individual facts and refugee protection needs.¹⁸

3. The Revised White Paper provides details regarding its proposed implementation of the first country principle. In particular, it provides that:
 - a) in order to prevent the risk of refoulement, the Minister of Home Affairs will designate “safe countries” on an annual basis, limited to countries that have ratified the 1951 Convention relating to the Status of Refugees, with such designation to be withdrawn as and when the need arises; and
 - b) the government will enter into bilateral agreements with designated safe third countries in order to promote a more equitable sharing of responsibility for migration in Africa.
4. While we do not support the introduction of the first safe country principle, we welcome DHA’s consideration that engagement and cooperation with South Africa’s neighbouring countries is essential to enhance refugee protection.
5. We submit that the introduction of a first safe country principle should not be applied or at a bare minimum requires further precautionary safeguards in order to ensure compliance with South Africa’s constitutional, statutory, and international law obligations.
6. Comparative jurisdictions such as the European Union, Canada, and Australia demonstrates that the designation of safe third countries is subject to extensive criteria and ongoing review. Even in these jurisdictions, safe third country arrangements are challenged and, in some instances, found unlawful where they result in indirect refoulement, denial of access to fair asylum procedures, or inhumane treatment.¹⁹
7. For example, there is ongoing litigation and advocacy concerning the US-Canada Safe Third Country Agreement which has been in effect since December 2004, in which both countries declared the other safe for refugees.²⁰ The Canadian Council for Refugees and Canadian Association of Social Workers have strenuously opposed the agreement on the basis that the United States is not safe for all refugees and currently has harsh and punitive asylum practices. Although the Canadian Supreme Court of Appeal previously upheld the designation of the United States as a safe third country, the constitutionality of the agreement has once again been called into question and is currently being litigated in Canada in light of the increasingly harsh immigration policies of the United States.²¹ Importantly, the Immigration and

¹⁸ UNHCR, *Guidance on Responding to Irregular Onward Movement of Refugees and Asylum-seekers* (September 2019) at para 26.

¹⁹ For example, in *NAVIG and NAGW of 2002 v Minister for Immigration and Multicultural and Indigenous Affairs* the High Court of Australia found that Australian authorities still owe asylum seekers protection in terms of international law and that sending the asylum seeker back to an unsafe country is against its objectives and obligations.

²⁰ See *Safe Third Country* | Canadian Council for Refugees.

²¹ See *Facing reality: Canada and the challenge of refugee protection - World Refugee and Migration Council* and *CASW Calls for Suspension of the Safe Third Country Agreement Amid Growing Human Rights Concerns* | Canadian Association of Social Workers

Refugee Protection Act (S.C, 2001, c. 27) requires the continual review of all countries designated as safe third countries based on four factors:

- (a) whether it is party to the 1951 Refugee Convention and the 1984 Convention Against Torture;
 - (b) its policies and practices with respect to claims under the 1951 Refugee Convention, and its obligations under the 1984 Convention Against Torture;
 - (c) its human rights record; and
 - (d) whether it is party to an agreement with the Government of Canada for the purpose of sharing responsibility with respect to claims for refugee protection.²²
8. Furthermore, in 2024 the Court of Justice of the European Union found that Member States cannot issue a decision rejecting an asylum application as inadmissible on the basis of the concept of a “safe third country” in cases where they have established that the asylum seeker will not be allowed to enter the territory of a country designated as safe. Therefore, the decision on the existence or not of the possibility of readmission to the third country becomes a prerequisite at the stage of issuing the decision on the asylum application. This decision is said to have “overturned an arbitrary and abusive practice of the Greek authorities which has been in force for many years, of wholesale rejecting asylum applications as inadmissible under the safe third country principle and puts an end to the denial of the rights of thousands of applicants”.²³
9. Therefore, in accordance with international law and these comparative insights, there can be no presumption of safety based solely on treaty ratification. The mere fact that a state has ratified the 1951 Refugee Convention does not guarantee effective protection in practice and prior to transfer it is importantly to individually assess whether the third state will:
- (a) (re)admit the person,
 - (b) grant the person access to a fair and efficient procedure for determination of refugee status and other international protection needs,
 - (c) permit the person to remain while a determination is made, and
 - (d) accord the person standards of treatment commensurate with the 1951 Convention and international human rights standards, including – but not limited to – protection from refoulement.²⁴
10. International and comparative standards emphasise that safety must be assessed on the basis of current conditions, with regular, independent review and the ability to suspend transfers immediately where conditions deteriorate.

²² Section 102.

²³ See CJEU ruling on the concept of "safe third country" - R.S.A.

²⁴ UNHCR Legal considerations regarding access to protection and a connection between the refugee and the third country in the context of return or transfer to safe third countries, see <https://www.refworld.org/policy/legalguidance/unhcr/2018/en/120729>.

11. We further submit that the contents of any bilateral agreements entered into with safe third countries are of critical importance. These should be legally binding, public agreements which outline state responsibilities in relation to the protection of those being transferred and have enforceable guarantees relating to:
 - (a) Admission and lawful stay of transferred asylum seekers;
 - (b) Access to a fair and efficient asylum procedure in the receiving state;
 - (c) Protection against detention solely on the basis of migration or asylum status;
 - (d) Access to basic services and the right to work pending determination of asylum claims; and
 - (e) Monitoring, oversight, and accountability mechanisms to ensure compliance in practice.
12. Importantly, the UNHCR has stated that “countries should not use this approach to avoid their responsibility to provide asylum on their own territory”.²⁵ Therefore, South Africa should not use this principle to effectively negate its responsibilities in respect of asylum seekers and refugees.
13. We support a more equitable sharing of these responsibilities with other safe third countries in Africa. However, although neighbouring countries such as Zimbabwe, Namibia, Botswana and Mozambique are parties to the 1951 Refugee Convention, 1967 Refugee Protocol and 1969 OAU Convention, we have our reservations about their possible designation as safe third countries for the following reasons:
 - (a) **Zimbabwe’s** refugee protection is primarily governed by the Zimbabwe Refugee Act [Chapter 4:03], which incorporates the 1951 Refugee Convention. However, its asylum process is heavily influenced by four critical reservations to the Convention, namely, Article 17 (wage-earning employment), Article 23 (public relief), Article 24 (social security) and Article 26 (freedom of movement).²⁶ These reservations form the legal basis for the state’s encampment policy, confining the majority of refugees to the Tongogara refugee settlement which is prone to flooding and remains unconnected to the national electricity grid.²⁷ Furthermore, the country’s socio-economic landscape is marked by macroeconomic instability, climate-related shocks and food insecurity.²⁸
 - (b) **Namibia** has similarly made a reservation to Article 26 of the 1951 Refugee Convention and maintains a stringent encampment policy at the Osire refugee settlement. Those who reside in Osire obtain "exit permits" to leave the settlement, even for medical emergencies. This confinement limits access to higher education and the labour market, rendering the population highly dependent on international assistance.²⁹

²⁵ UNHCR Press Release “UNHCR calls for stronger safeguards in EU proposal on asylum transfers to third countries” (12 June 2025). Access [here](#).

²⁶ [States parties, including reservations and declarations, to the 1951 Refugee Convention | UNHCR](#).

²⁷ UNHCR Annual Results Report, 2024, Zimbabwe p 6. Access [here](#).

²⁸ World Food Programme Zimbabwe Country Brief (May 2025). Access [here](#).

²⁹ Integral Human Development, Country Profiles, Namibia. Access [here](#).

- (c) **Botswana's** encampment and detention policies are “of grave concern to UNHCR”. The strict encampment policies restrict refugees’ movement, worsening food insecurity, limiting livelihoods and increasing GBV risks.³⁰
 - (d) **Mozambique's** capacity to protect asylum seekers and refugees is severely compromised by its own internal crises. Since 2017 northern Mozambique has been facing a severe humanitarian crisis caused by ongoing armed conflict between international non-state armed groups and the Government of Mozambique. This crisis has impacted 1.7 million people and has led to widespread internal displacement.³¹ Furthermore, the country is disaster-prone and climate-vulnerable, regularly experiencing extreme weather events which pose severe threats to food security.³²
14. The first safe country principle cannot simply be applied through compiling a list of supposed safe states, or through an asylum seeker simply transiting another state. Even these codified arrangements do not absolve states from responsibility for the rights and safety of asylum seekers, such as ruled by the European Court of Human Rights in *M.S.S. v Belgium*.³³ Further, there is evidence that these agreements in effect produce less secure borders through increasing the prevalence of human smuggling.³⁴
 15. In South Africa, jurisprudence in the Supreme Court of Appeal case *Abdi v Minister of Home Affairs* around this issue has been developed affirming that individuals cannot be sent to a third country without an agreement that the individual will not be returned to their country of origin where they may face harm or persecution.³⁵ In that case, the SCA involved refugees who were protected in South Africa and then went to Namibia. In Namibia they faced deportation to Somalia via South Africa where the responsibility of the South African government was evoked, and they could not be refouled. Return by Namibia without protection guarantees was unlawful. The Court held that the ‘deportation to another state that would result in the imposition of a cruel, unusual or degrading punishment is in conflict with the fundamental values of the Constitution’.³⁶ We are concerned about returns agreements including those between South Africa and countries like Uganda and Ghana. Any such agreements cannot and must not compromise refugee protection and the principle of non-refoulement. For instance, a Ugandan national with a sexual identity claim could not be returned to Uganda to face persecution. Likewise, the Revised White Paper’s assertion that a country that is signatory to the refugee conventions may be designated by the Minister to be a safe first country is problematic because a country may be safe for some but not for others, and

³⁰ UNHCR Annual Results Report 2024 p 4 & 8-9. Access [here](#).

³¹ UN Migration Global Crisis Response Platform, Mozambique Crisis Response Plan 2025. Access [here](#).

³² UNHCR Joint Programme Excellence and Targeting Hub, Mozambique. Access [here](#).

³³ Full judgment available at: <https://www.asylumlawdatabase.eu/en/content/ecthr-mss-v-belgium-and-greece-gc-application-no-3069609>.

³⁴ Efrat Abel and Alletta Brenner, ‘*Bordering on Failure: Canada-U.S. Border Policy and the Politics of Refugee Exclusion*’, (Criminal Justice and Citizen Research Paper No. 2420854, Harvard Law School, 2013).

³⁵ 2011 (3) SA 37 (SCA). Judgment available in full at: <https://www.saflii.org/za/cases/ZASCA/2011/2.html>.

³⁶ Ibid, para 26.

circumstances may shift in the course of a year. We have seen examples in which countries in the Great Lakes region have returned asylum seekers to their countries to face persecution and conflict despite being signatories to the refugee conventions and bound by their obligations to protect. We also observe that while a person fleeing religious persecution may find safety in a “safe first country” another person fleeing based on persecution based on gender or sexuality may be unsafe in the “safe first country,” facing persecution and violence in that country or being returned by that country.

16. The Revised White Paper’s assertion that implementing the ‘first safe country principle’ into domestic law will somehow absolve protection obligations in lieu of withdrawal from the conventions is simply not accurate. That is not to say that South Africa should bear the burden of refugee protection alone, but we believe South Africa should rather work within the region to strengthen international protection standards, reinforce the rule of law, and increase cooperation and coordination in relation to refugee and migration arrangements. The Revised White Paper unfortunately takes a singular approach based on an erroneous reading of refugee law. Moreover, as set out above the first country principle’s application presents a serious and substantial risk of legitimizing denial of access to asylum and giving rise to refoulement.

Recommendation #5:

The SCCT recommends that reference to and application of the first country principle is removed entirely from the Revised White Paper or failing which at the very least includes clear safeguard and a guarantee prohibiting refoulement. The Department, should rather work with relevant government departments, engage within the region to strengthen international protection standards, reinforce the rule of law, and increase cooperation and coordination on the continent to improve refugee and migration policy.

c. **Scene Setting, Context and Entry Requirements**

1. The Revised White Paper claims that “the asylum seeker regime is abused by economic migrants resulting in over 90% of the claims for asylum being rejected”.³⁷ This claim does not take into account that asylum seeker applications which are rejected by the RSDO are taken on review to SCRA or on appeal to RAASA and if rejected may be taken on judicial review to the High Court. It also fails to take into consideration that many of these initial decisions are of a poor quality and fail to properly assess the merits of an applicant’s claim.
2. The proposed merger of RAASA and SCRA should ensure that the combined body maintains the independence RAASA and SCRA currently have under the Refugees Act and that the inefficiencies and backlogs of one body do not compromise the efficiency of the other in the merger. While the DHA does not publish comprehensive annual statistics on SCRA review outcomes or RAASA appeal decisions, High Court

³⁷ Ibid p. 49.

judgments show a considerable number of unlawful or procedurally defective RSDO, SCRA and RAASA decisions being set aside on review.³⁸

3. Therefore, we encourage the DHA to provide the full details going beyond the percentage of initial rejections, to also include the percentages of those rejections that are then successfully reviewed or appealed. This indicates that the 90% rejection rate at the initial stage is not a true reflection of the number of genuine refugees who apply for asylum.

Recommendation #6:

The SCCT recommends that the Revised White Paper more accurately reflects statistics on the asylum process accounting for review and appeal outcomes and acknowledges the failings in first instance refugee status determination. The Revised White Paper should set out steps to improve this through extensive training for refugee status determination procedures.

4. Another contention that requires elaboration is that “in line with the Ashebo judgement, asylum seekers must show good cause for their unlawful entry or presence in the country”.³⁹ It should be noted that sections 4(1)(f), 4(1)(h), 4(1)(i) and 21(1B) of the Refugees Act as well as regulations 8(1)(c)(i), 8(2), 8(3) and 8(4), which disqualify an asylum seeker from refugee status due to non-compliance with procedural entry requirements, have been declared unconstitutional and invalid by the Western Cape High Court.⁴⁰ The confirmation proceedings were heard in the Constitutional Court on 12 February 2026 and judgement was reserved.

Recommendation #7:

The SCCT recommends that access to asylum is restored. DHA should halt implementation of unconstitutional and invalid asylum barring good cause and exclusion provisions under the Refugees Act sections 4(1)(f), 4(1)(h), 4(1)(i) and 21(1B) and related subsections of the Refugees Act regulations ss8(1)(c)(i), 8(2), 8(3) and 8(4).

³⁸ For examples see *M.A.M and Another v Director-General: Home Affairs and Another* (23987/2024) [2025] ZAWCHC 226 (29 May 2025), *Katabana v Chairperson of Standing Committee for Refugee Affairs and Others* (25061/2011) [2012] ZAGPPHC 362 (14 December 2012); *Mubala v Chairperson of the Standing Committee for Refugee Affairs and Others* (10971/2013) [2013] ZAWCHC 208 (8 November 2013); *Harerimana v Chairperson of the Refugee Appeal Board and Others* (10972/2013) [2013] ZAWCHC 209; *Consortium For Refugees and Migrants in South Africa v President of the Republic of South Africa and Others* (30123/2011) [2014] ZAGPPHC 753 (26 September 2014).

³⁹ 2025 White Paper p. 50.

⁴⁰ *Scalabrini Centre of Cape Town and Another v Minister of Home Affairs and Others* (8684/2024) [2025] ZAWCHC 202; [2025] 3 All SA 827 (WCC) (15 May 2025).

d. **Digital Transformation of the Asylum and Appeals processes and Policy Reforms.**

1. The Revised White Paper proposes, as a long-term objective, the relocation of Refugee Reception Offices to ports of entry to enable the immediate assessment of asylum claims, with the stated purpose of limiting the presence of asylum seekers within the country while their applications are pending. As a so called meaningful improvement, the Department proposes investment in digital platforms to enable the virtual lodging, adjudication, and appeal of asylum claims.⁴¹ The stated rationale for these proposals is to prevent undocumented asylum seekers from entering South Africa and applying for asylum inland, thereby centralising asylum processing at designated locations and reducing backlogs and administrative bottlenecks.⁴²
2. While we support measures aimed at reducing backlogs and improving administrative efficiency within the asylum system relocating refugee reception offices (RROs) may not achieve this end. Furthermore, the feasibility and lawfulness of the proposed approach is contingent upon the prior establishment of a fully functional, accessible, and reliable digital asylum system and/or processing infrastructure at ports of entry.
3. RROs function as a lynchpin of the asylum system – they are the facilities where most of the asylum process will take place and are thus critical to an efficient and functional protection system. There are potential hazards of basing a refugee protection system on ‘immediate assessments’ like language barriers, fear of authorities and trauma compromising claims. Challenges and implications of relocating refugee protection facilities and processes to our border areas include significant costs and implications of establishing new facilities such as staffing, infrastructure, file management, and the potential impact to border communities. The Revised White Paper does not provide information on how those challenges will be addressed.
4. This proposal disregards the long history regarding moving of refugee reception offices to ports of entry including lengthy litigation surrounding it, and the strategic importance of having facilities and processes in major urban areas. We agree that there may be a role for refugee protection mechanisms in border areas and ports of entry, but these must be protection-sensitive and in line with international legal guidelines and best practice.
5. This policy has been proposed several times, dating back to the early 2010s.⁴³ The thrust of the idea has been that urban areas are not conducive to operating RROs (or strategic), and that facilities on our borders would assist in separating economic migrants from refugees quickly. Closures of the Johannesburg Crown Mines RRO, Port Elizabeth RRO, and Cape Town RRO followed, resulting in lengthy litigation challenging the legality of the closure decisions, and in each case, the closures were found unlawful. New facilities were established per the orders of the court in both PE (now Gqeberha) and Cape Town. In that litigation, the courts held that border areas were not necessarily where facilities for asylum seekers and refugees would

⁴¹ 2025 White Paper p. 11.

⁴² Ibid p. 51.

⁴³ For an excellent overview of the situation at the time see Lawyers for Human Rights and the African Centre for Migration & Society, Policy Shifts in the South African Asylum System: Evidence and Implications (2013).

be needed, taking into consideration *inter alia* the realities of refugee status determination along with the needs for individuals to support themselves and lead dignified lives.⁴⁴ Given this history, it is difficult to understand why the Department continues to push for a policy it has been unable to implement, and that has not passed constitutional muster.

6. Beyond the legal aspects, there are also substantial risks to locating these facilities exclusively at border areas. There are significant cost implications of relocating staff, files and establishing new infrastructure. And given realistic timeframes for refugee status determination processes as outlined above, it remains unclear how asylum seekers would be able to live dignified lives in border towns for extended periods of time. With this comes the real risk of humanitarian crises developing where facilities are unable to cope with demand. Already we have experienced the development of makeshift informal camps outside of asylum facilities in Musina causing serious safety and health issues.⁴⁵ This situation was resolved in part by utilising section 31(2)(b) of the Immigration Act and the creation of the special dispensation for Zimbabweans, and we urge the Department to use the tools it has at its disposal to address the current backlogs and access issues rather than attempt a lengthy and complete overhaul based on inaccurate claims and evidence.
7. Available evidence demonstrates that the South African asylum system is currently experiencing delays and backlogs, with it taking years to finalise asylum decisions. As of December 2025, RAASA had a caseload backlog of 151 802 pending appeals, which reflects a significant bottleneck in the system.⁴⁶ Prior analyses by civil society and other commentators have identified a long-standing backlog of asylum applications and appeals in excess of 150,000 – 190,000 cases, with some asylum seekers reportedly spending more than a decade in limbo awaiting final status recognition.⁴⁷
8. These figures indicate that the system, as currently constituted, cannot meaningfully process claims in real time, whether at RROs inland or at ports of entry.
9. At present, the DHA's existing digital systems for asylum seekers are characterised by persistent technical failures, limited accessibility, and prolonged delays, as evidenced by ongoing challenges with online visa extensions. In this context, the proposal to require asylum seekers to lodge and await the adjudication of their claims at ports of entry is not practically viable. Given current processing times, such a system would require individuals to remain at ports of entry for extended and indeterminate periods, without adequate accommodation, support, or, significantly, access to legal assistance.

⁴⁴ *Scalabrini Centre, Cape Town and Others v Minister of Home Affairs and Others* (1107/2016) [2017] ZASCA 126; [2017] 4 All SA 686 (SCA); 2018 (4) SA 125 (SCA) (29 September 2017) at para 63.

⁴⁵ Shantha Bloemen, '[Migrants face humanitarian crisis on South Africa's border with Zimbabwe](#)' (UNICEF Press Release, 22 January 2009).

⁴⁶ National Assembly Questions for Written Reply, Question No. 6919, Internal Question Paper 52 – 2025. Accessed [here](#).

⁴⁷ Amnesty International "Asylum seekers living in limbo – no documentation means no rights" (20 June 2019). Access [here](#). Helen Suzman Foundation "The state of the South African refugee protection regime: part 1 – current status". Access [here](#).

10. In the absence of an effective digital or port-based processing system, restricting access to current RROs would result in the denial of meaningful access to the asylum procedure and risks contravening South Africa's constitutional obligations, the Refugees Act, and international refugee law principles. Additionally further designation of RROs to urban areas in other provinces where there are none would improve access to asylum and asylum processing.
11. Moreover, framing the presence of asylum seekers awaiting adjudication as "competition" with impoverished communities for resources risks entrenching stigmatizing and exclusionary narratives.
12. Asylum seekers are frequently called back to the RROs after their initial application, to conduct further interviews, to file documents and to facilitate family joinders. The movement of RROs to ports of entry will *severely* prejudice asylum seekers if they are still required to travel from city centres back to the RROs at the ports of entries for *any* reason. Asylum seekers are vulnerable individuals who are often indigent and cannot be expected to incur expense and take time off work to return to RROs.
13. The flouted idea of virtual refugee reception centres sounds like a great initiative when packaged as a mechanism to counter the perennial Department of Home Affairs issues of huge backlogs. The idea of digital platforms in its current Asylum System Management Systems has been affected by severe functionality problems, most notably being the extended offline periods in September and October of 2025 as well as the absence of automated application confirmation messaging. Given that background, it is inconceivable that the DHA would be able to support the virtual application and adjudication. Another concern stems from issues of credibility assessment that is critical to refugee status determination interview in digital applications. It should also be noted that whilst digital platforms can be convenient, they should not be a replacement but a complement to traditional physical application as overreliance on them can result in exclusion as some vulnerable asylum seekers lack access to technology mechanisms.
14. The DHA would need to build trust mechanisms and assurances that civil data supplied cannot be used in surveillance for immigration enforcement mechanisms as the impact can be particularly damaging. The DHA should adopt a "Hub and Spoke" model in maintaining urban offices for documentation and integration while using digital/virtual tools for specialized adjudication.

Recommendation#8:

The SCCT recommends the Department adopt a more flexible and adaptable policy position to address refugee protection, using all of the policy options available to it, and that facilities are strategically located in urban areas integrating digital enhancements. These facilities should be complemented by protection-sensitive entry systems at ports of entry to establish a holistic system that is realistic, pragmatic and accounts for the needs of refugees.

e. **Granting asylum and refugee status**

1. The Revised White Paper proposes that asylum seeker visas issued under Section 22 of the Refugees Act be granted “in line with the applicant’s needs”, for example for study, work, or business, and that such activities be subject to compliance with the legislative frameworks governing ordinary study, work, and business visas.⁴⁸ This departs from the current practice which is that Section 22 visas allow for work and study and do not delineate. We raise serious concerns regarding this proposal, both in principle and in practice.
2. The current challenges are that of capacity and commitment, not legislative. For instance, if a more accessible regional visa regime like SADC low skills visas or special dispensations is implemented, then the challenges associated with implementing the Refugees Act will become more manageable.
3. The rights of asylum seekers and refugees to work or study in South Africa were recognised in the Supreme Court of Appeal’s (SCA) decision in *Watchenuka*. On the basis of South Africa’s constitutional provisions, the SCA held that asylum seekers must be permitted to work. Specifically, the SCA held:

“In my view, there is no justification for limiting beyond that degree the protection that is afforded by s 10. As pointed out in *Makwanyane* (supra at para [102]), it is for the party relying upon the limitation to satisfy a court that the limitation is justified and not for the party challenging it to show that it was not justified. The appellants made little attempt to show why such a limitation would be justified. It was alleged that the prohibition on employment is consistent with art 17 of the 1951 United Nations Convention Relating to the Status of Refugees and its 1967 Protocol but those instruments are neutral on this issue . . . A prohibition against employment in those circumstances is a material invasion of human dignity that is not justifiable in terms of s 36.”⁴⁹

4. The SCA recognised that human dignity requires an ability to earn a living, because without such rights, asylum seekers residing in South Africa for any length of time would be doomed to penury and destitution. As the SCA concluded at paragraph 32: But where employment is the only reasonable means for the person's support other considerations arise. What is then in issue is not merely a restriction upon the person's capacity for self-fulfilment, but a restriction upon his or her ability to live without positive humiliation and degradation.
5. A Section 22 visa is a distinct legal instrument issued under the Refugees Act, intended to provide temporary lawful status to individuals who have applied for asylum and whose claims have not yet been finally determined. Its purpose is not to regulate migration for economic, educational, or commercial ends, but to give effect to South Africa’s constitutional and international obligations towards persons seeking protection.

⁴⁸ 2025 Revised White Paper, p. 51.

⁴⁹ *Watchenuka* at para 33. Emphasis added.

6. Asylum seekers are therefore not situated in the same legal position as foreign nationals applying for study, work, or business visas under the Immigration Act. Treating Section 22 visas as if they were activity-specific immigration visas conflates two separate legal regimes and undermines the protective function of the asylum system. Requiring asylum seekers to separately comply with the regulatory frameworks applicable to ordinary study, work, or business visas would impose additional barriers not contemplated by the Refugees Act.
7. South African law recognises that asylum seekers are entitled to lawfully reside in the Republic pending finalisation of their claims⁵⁰ and, subject to lawful and reasonable regulation, to work and study in order to sustain themselves with human dignity during often-prolonged adjudication periods.⁵¹
8. Courts have consistently affirmed that asylum seekers may not be prohibited from working or studying in a manner that infringes their constitutional right to human dignity and international law.⁵² It is also important to note that in terms of section 22(1), read with section 9C(1)(b) of the Refugees Act it is SCRA's function to determine the conditions of work or study and that this is not a determination that can be made by the Minister of Home Affairs.⁵³
9. The proposal would also impose a significant and unnecessary administrative burden on the DHA. Asylum seekers' circumstances frequently change over time: individuals may move between employment, study, self-employment, or periods of unemployment as they attempt to survive while awaiting the outcome of their claims.
10. Conditioning Section 22 visas narrowly "in line with the applicant's needs" at a particular point in time would require repeated applications to amend visa conditions whenever those circumstances change. Given the current capacity constraints, backlogs, and delays within the asylum system, this approach is likely to result in frequent lapses in lawful activity, increased non-compliance, and further strain on an already overburdened Department.
11. Further, the introduction of this proposal will inevitably result in delays between a request for a change of conditions and the DHA decision, leaving asylum seekers in a precarious position and potentially unable to take up studies or employment timeously.

⁵⁰ Section 22(1) of the Refugees Act.

⁵¹ *Minister of Home Affairs and Others v Watchenuka and Others* 2004 (4) SA 326 (SCA) (**Watchenuka**).

⁵² Section 9 of the Constitution; *Somali Association of South Africa and Others v Limpopo Department of Economic Development Environment and Tourism and Others* 2015 (1) SA 151 (SCA).

⁵³ This was confirmed in *Watchenuka* para 18.

Recommendation #9:

The SCCT recommends that asylum seekers continue to receive Section 22 asylum seeker visas endorsed with the right to work and study and that this is not conditional. This is in line with the right to human dignity and equality confirmed in jurisprudence and is beneficial to the state, and to those seeking protection alike.

f. **Management of citizenship: Citizenship policy proposals**

1. Removal of citizenship qualification for children born in South Africa, but whose parents are not South African citizens, to apply for South African citizenship upon being a major (except in instances of statelessness).

- a. Currently, children born in South Africa to parents who are not South African citizens or who do not have permanent residence have an avenue to citizenship through Section 4(3) of the *Citizenship Act, 1998* which allows them to make an application upon turning 18, if they have lived in South Africa from the date of their birth to the date of them turning 18 and if their birth has been registered in accordance with the provisions of the *Births and Deaths Registration Act, 1992*.
- b. The benefits of these provisions to children are incredibly important as, having been born and spent their entire lives in South Africa, these children already identify as South African and have known no other State as home. The importance of citizenship was also affirmed in the case of *Minister of Home Affairs v Miriam Ali* which states that “it is an affront to deny the respondent the right to apply for citizenship in a country where they were born, have lived and which is the only country they have ever known.”⁵⁴

Recommendation #10:

The SCCT recommends that Section 4(3) remains in place in accordance with jurisprudence and the clear intention of the legislature avoiding the affront to deny children the right to apply for citizenship in this circumstance. Furthermore, the reduction of the age for application of Section 4(3) proposed in the Revised White Paper is a positive development and is supported.

- c. Many of the young adults who apply for naturalisation under Section 4(3) are children of foreign nationals who have been displaced for many years and have inextricable and indisputable ties to South Africa. Considering the current state of the backlogs at the Department of Home Affairs (DHA) these children may spend their entire lives in South Africa while their parents’ documentation is precarious or pending. This will leave the children of such parents with limited options to remain in South Africa legally.

⁵⁴ *Minister of Home Affairs v Miriam Ali* 2018 para 24 - <https://www.saflii.org/za/cases/ZASCA/2018/169.html>

Accordingly, they would be immeasurably disadvantaged were they not to have the option to apply for South African citizenship.

2. Merit-based economic pathway to citizenship

The White Paper proposes a Points-Based System (**PBS**) for citizenship applications, which is a shift from the current system where the duration of an individual's stay in South Africa is the main qualifier. The PBS will score applicants on factors such as skills and qualifications, economic contribution, and social contribution. While there is currently insufficient information to understand exactly how points will be awarded/weighted on each assessment factor, we provide comment on factors to consider when this system is designed and implemented.

3. Non-economic pathways to permanent residence and citizenship

- a. We propose that refugee certificate holders receive points towards qualifying permanent residence based on their vulnerability as refugees. Refugees are in a particularly vulnerable position, and their connection to South Africa and need for permanence is as compelling (if not more) as those in other categories of permanent residence applications.
- b. It is widely documented that there are significant delays in the processing of asylum applications and the adjudication of appeals before the Refugee Appeals Authority of South Africa (**RAASA**) or reviews before the Standing Committee for Refugee Affairs (**SCRA**). These delays cause extreme prejudice to asylum seekers and are most often not a consequence of their actions. We propose that any eligibility requirement for permanent residence which is time-based starts running from when an applicant applies for asylum, rather than from when they are a recognised refugee. This follows the widely accepted principle that a refugee is a refugee from the moment they factually fit the definition, not from when they are recognised as one, the latter time period being entirely outside their control.

Recommendation #11:

The SCCT recommends that in terms of the Points Based System, Refugee certificate holders should receive points towards qualifying for permanent residence or citizenship under non-economic pathways based on their vulnerability as refugees.

Recommendation #12:

The SCCT recommends that permanent residence is granted to long stay refugees and that commencement periods for consideration starts at the moment of receiving a Section 22 asylum seeker visa.

4. Citizenship pathways for exceptional cases

- a. We support the recognition of exceptional circumstances that may warrant granting of South African citizenship outside the standard naturalisation process. We propose the below change to the humanitarian considerations:

“Humanitarian considerations – individuals who face extraordinary humanitarian crises. ~~and unable to acquire nationality of other country. This could include~~ unaccompanied and separated children, children unable to acquire nationality of another country and/or children who are separate from their parents for various reasons, including the death of a parent or abandonment.”

- b. This change is intended to protect children who, for example, moved to South Africa with their parents at a young age due of a humanitarian crisis in country of origin. Although they may technically be able to acquire the nationality of their country of origin, South Africa is the only home they have ever known.

Recommendation #13:

The SCCT recommends that the humanitarian considerations explanation is amended to: “Humanitarian considerations – individuals who face extraordinary humanitarian crises. This includes unaccompanied and separated children, children unable to acquire nationality of another country and/or children who are separate from their parents for various reasons, including the death of a parent or abandonment.”

- g. **Management of civil registration: population registry and civil registration policy proposals**

1. Universal Digital Registration of Births

1. We largely support the proposal of universal birth registration which would prevent the exclusionary birth registration practices that currently operate to exclude and discriminate against children based on their parent’s citizenship or immigration status, marital status or age, gender, or sex.
2. However, we have some concerns with the practical implementation of this proposal. The current proposal envisages that every child is to be registered immediately at birth prior to a parent’s departure from a health facility.⁵⁵ This fails to acknowledge that some children in South Africa are not born in health care facilities but are rather born at home, especially in isolated rural areas. This problem could be mitigated by the introduction of a remote digital birth registration and verification system. However, at this stage the policy only indicates that they are “exploring” the use of technology and does not provide a structured and time-based plan for its implementation.⁵⁶

⁵⁵ 2025 White Paper p. 24-25.

⁵⁶ Ibid p. 27.

3. Furthermore, we encourage the DHA to consider what further policy measures it can put in place to relieve the backlog in late birth registrations.⁵⁷ Although the implementation of a universal registration scheme will assist going forward, this will not relieve the current backlog. The proposal will also not entirely relieve the DHA of having to process late birth registrations, as it does not address some of the factors that lead to late birth registration, such as cultural practices and traditions, and distance from health care facilities, as well as DHA offices.
4. We further recommend that to achieve universal birth registration in cases of late registration of birth the requirement to appear before a late registration of birth panel is suspended except in exceptional circumstances as regardless of the reasons furnished for late registration, registration is the constitutional right of the child so an explanation to a panel is superfluous.
5. We recommend that previous handwritten birth certificates issued should be digitalised.
6. There will be no requirement to have a DNA test for fathers registering their children except as a last resort.
7. That there will be genuine implementation of universal birth registration for undocumented parents with no penalisation whether the parent is a South African citizen or not.

Recommendation#14:

The SCCT recommends that to achieve universal birth registration that:

- i. **Mobile clinics are established for birth registration assistance with registration of rural and home births;**
- ii. **The late registration of birth panel requirement is set aside;**
- iii. **All previous handwritten birth certificates are digitalised;**
- iv. **Non-penalisation of undocumented parents registering their child's birth and**
- v. **DNA verification is only required for birth registration as a last resort.**

2. Designation and functions of funeral undertakers

- a. The flouted proposal to clearly define the roles of medical practitioners, law enforcement officials, undertakers and the Department of Home Affairs in death certification is a huge milestone. These initiatives along with the Universal Registration of Deaths aligns with best international practices.

⁵⁷ This is the subject of ongoing litigation in the *Western Cape High Court in The Children's Institute & Others v Minister of Home Affairs & Others*, Case no. 2024-148658.

- b. We are however concerned by the proposal that only citizens and permanent residents will be designated as funeral undertakers". The policy provides that "in order to improve accountability, only citizens will, and permanent residents may, be designated as funeral undertakers".⁵⁸ In many migrant, refugee and asylum seekers communities, the non-citizens are often entrusted to assist with the process of burial and death registration as well as repatriation of the deceased. Such requirements would result will exclude a lot of reputable funeral providers that are already operating and may result in informal or unregulated arrangements. We urge the Department of Home Affairs to have a designation based on competence, compliance, and oversight.
 - i. We question how limiting eligibility to citizens and permanent residents improves accountability considering that immigrants, asylum seekers and refugees provide their biometrics to the DHA and can be traced. It is our submission that it is unnecessary to limit this role to citizens and permanent residents and exclude immigrants, asylum seekers and refugees from this sector. It should be noted that in line with South African drive for inclusivity, there should be respect of cultural sensitivities and logistical issues related to body repatriation.
 - ii. The Scalabrini Centre of Cape Town recognizes the importance of ensuring that sanity prevail in the South African civil registration system especially with regards to death certification and registration. This is very important given the problems of governance and fraud that repeatedly dogged the sector. Fraudulent death certification undermines the principles underlying the National Population Registry and can easily result in serious economic and legal consequences. Whilst we as the SCCT do understand the detrimental impact of fraudulent reporting, we do believe that holding individuals criminally liable may be counterproductive. Without adequate safeguards, the proposals may result in deterrence as far as death reporting is concerned especially with regards to irregular migrants and asylum seekers. This can then unfortunately result in underreporting and defeating the very same purpose that the civil registration is trying to implement.

Recommendation#15:

We recommend that the designation of undertakers be expanded to include non-citizens who meet the appropriate threshold of designation based on competence, compliance, and oversight.

h. **Visa policy reforms**

1. Quota and window period for PR applications

⁵⁸ 2025 White Paper p. 29.

We do not agree with the proposal that a quota-and-window system be introduced to regulate the annual number of permanent residence approvals. There are already inordinate delays that refugees and other vulnerable groups experience when applying for permanent residency. These will only be exacerbated if only a limited number of applications are permitted to be evaluated each year. We recommend that the Department's focus is redirected to improve its capabilities and capacity to process permanent resident applications timeously. In addition, we would caution that imposing a fixed annual cap in an environment where concerns about corruption related to the prioritisation of applications already exists.

Recommendation#16:

We recommend that the quota-and-window system is removed entirely, and that the Department's focus is redirected to improve its capabilities and capacity to process permanent resident applications timeously.

2. Policy proposals on bilateral migration and climate change migration

- a. We note the DHA's proposal to facilitate regional labour mobility. If properly managed, regional labour mobility across all skill levels can fill gaps in the labour market and contribute positively to South Africa's development.
- b. The DHA's previous regularisation projects and exemption permits, such as the Zimbabwean and Lesotho dispensations, have largely been successful at their policy objectives. If these permits are to be removed as proposed, we would recommend that the DHA ensures that the new labour migration policy includes avenues for those on these existing permits to remain in the country legally. Many Zimbabweans and Lesotho nationals on exemption permits have been in the country for decades and have established permanency here. For most of these permit holders existing visa pathways are not an option currently as they may not meet the eligibility criteria. We highlight that many of these permit holders may be categorised as low skilled workers.
- c. Examples of pragmatic and development-focused policy from within our region highlight the potential of such migration agreements such as the Economic Community of West African States (**ECOWAS**) which was set up to establish an economic union with the ECOWAS Revised Treaty.⁵⁹ The Community was to develop a common market through "*the removal, between Member States, of obstacles to the free movement of people, goods, services and capital and to the right of residence and establishment.*"⁶⁰ Article 59 of the Revised Treaty sets up the foundation for regulating the institution's free movement of persons initiative, it states that citizens of the community will have the right of entry, residence, and establishment, member States undertake to recognise these

⁵⁹ [Revised-treaty-ECOWAS.pdf](#).

⁶⁰ Article 3(2)(d) (i)–(iii) of the Revised Treaty Establishing the Economic Community of West African States (ECOWAS), 1993.

rights of community citizens in their territories under the provisions of the protocols relating to them and that member states are to adopt appropriate measures to ensure these rights and the implementation of article 59.⁶¹

- d. Likewise, there is in the region, the 2022 Namibian-Botswanan visa-free deal which has fostered cross-border mobility through removing the requirement of passports, lessening the burden on government, and opening new avenues for tourism and trade.⁶² These examples highlight the role migration can play in regional development and how practical, straight-forward policies can make migration more easily managed and reduce backlogs and reliance on costly but ineffective policies such as detention and deportation.
- e. Establishing a practical and accessible regional visa scheme would greatly enhance the Department's ability to more effectively manage some of the challenges listed in the Revised White Paper such as limited departmental capacity and an overburdened asylum system. It would also align our migration policy with continental initiatives such as the African Union's Agenda 2063 and SADC's ongoing integration efforts. It would create possibilities for other bilateral arrangements with our neighbours. This has been recognised by the National Planning Commission, who has called for strengthened and harmonised border policies and that the SADC protocol on the free movement of persons be implemented to assist in alleviating domestic challenges as well as to improve access to regional and continental markets.⁶³

Recommendation #17:

We recommend consideration and implementation of practical straight forward regional visa schemes and dispensations.

i. Comments on proposals relating to immigration and Definitions.

1. The Scalabrini Centre of Cape Town understands that definitions are not merely technical, but they shape access to protection, determine institutional practice and have profound consequences for people on the move. We note with concern that several definitions are incomplete, selectively framed or omit safeguards required by South Africa's Constitution, regional instruments, and international law.
 1. As set out in the Revised White Paper an **Economic Migrant** as from the **IOM Glossary, 2019**, "is a person who moves primarily for economic reasons, such as

⁶¹ Ibid, article 59(1)-(3).

⁶² Gerhard Erasmus and Trudi Hartzenberg, 'Botswana and Namibia concluded an agreement on the movement of persons', *Tralac*, 8 March 2023. Available at: <https://www.tralac.org/blog/article/15940-botswana-and-namibia-concluded-an-agreement-on-the-movement-of-persons.html>; Edith Mutethya, 'Visa-free travel seen as key to opening up African tourism', *China Daily*, 27 November 2023. Available at: <https://global.chinadaily.com.cn/a/202311/27/WS6563fbfea31090682a5f0298.html>.

⁶³ National Planning Commission, 10 year review of the National Development Plan 2012-2022 (Pretoria, Presidency of South Africa, October 2023), p. 54. Available at: https://www.nationalplanningcommission.org.za/assets/Documents/Ten%20Year%20Review%20of%20the%20National%20Development%20Plan_26%20September%202023.pdf.

seeking employment or better living conditions. -Does not qualify as a refugee under international law.

Our concern is that there has been a great deal of literature that has consistently shown a correlation between economic deprivation and persecution/conflict and systemic discrimination. In reality the distinction between economic need and protection may not be as apparent. This may result in inadvertently excluding people whose livelihoods has been destroyed by violence, persecution, or repression.

Recommendation #18:

It is imperative that definition should clarify that economic migration does not preclude eligibility for asylum or complementary protection.

2. As set out in the Revised White Paper a **Stateless Person** as from the **1954 Convention on Stateless Persons, Article 1** is a “person is an individual who is not recognised as a citizen by any country under its laws.”

Our concern is that while the definition correctly reflects the 1954 Convention position it falls short of addressing persons at risk of statelessness like children born to refugees or undocumented persons. Failure to expand definition may unfortunately result in intergenerational statelessness.

Recommendation #19:

Definition should include recognition of persons at risk of statelessness and link to safeguards for children’s right to nationality.

3. As set out in the Revised White Paper **Non Refoulement** conveyed in the **1951 Refugee Convention, Article 33**, “prohibits states from returning refugees or asylum seekers to a country where their life or freedom is at risk. This is codified in section 2 of the Refugees Act affirming that “no person may be refused entry into the Republic, expelled, extradited or returned...” Yet the prohibition of denied entry as article 33 is recognized to include and as codified in the Refugees Act is absent from the definition.

Recommendation #20:

Definition of non-refoulement should include express prohibition of denied entry.

4. **Immigration Control - IOM Glossary, 2022** -Immigration control includes a regulatory and enforcement measures states use to manage entry, residence, and exit of non-citizens. Our concern is that the definition should go beyond enforcement and right to human rights considerations and limitations.

Recommendation #21 :

It should be explicitly pointed that immigration control must be exercised in compliance with the Constitution and international human rights law.

j. **Comments on Immigration**

The Revised White Paper sets out a number of proposals to address some challenges related to immigration and the Immigration Act. Among the challenges listed are an ineffective immigration inspectorate, delays and challenges in immigration matters resulting in litigation in the courts. To address these issues, the Revised White Paper proposes to fortify immigration detention for deportation processes and establishing specialised Immigration Courts to more effectively address issues concerning immigration.

Regrettably, there is scant reference to the realities of regional migration patterns.

In this section, we address the potential challenges associated with specialised courts for immigration and on the need for a strong codification of Alternatives to Detention in our future legislation. We also address how many of the proposals, which aim to add further restrictions to our immigration system, are likely to have detrimental impacts on children. Again, in making our submission, we point out the need for practical and pragmatic policy that can be implemented realistically, within our fiscal reality, and that a more progressive and forward-looking policy is needed to adequately harness the developmental potential of migration.

1. *The potential benefits and pitfalls of establishing specialised immigration courts*

The Revised White Paper states that implementation of immigration, refugee and citizenship legislation in South Africa is challenging due to a number of factors such as abusive and corrupt activities involving state officials,⁶⁴ the lack of qualified officials,⁶⁵ and the delays and backlogs in the bureaucracy of appeals.⁶⁶ While there may be certain contexts in which it would make sense to introduce migration or immigration-specific courts, we believe the introduction of immigration courts in the South African context is problematic and impractical.

Research on immigration-specific courts in other contexts points to potential benefits of such a system but cautions that these potential benefits are dependent upon the form of specialisation adopted, the legislative structures, and available resources.⁶⁷ The literature reveals that resources, or lack thereof, are critical to the functioning of these courts. In the United States – again, a country with significantly more available resources – immigration

⁶⁴ At paras 9.5 and 98.

⁶⁵ Ibid, paras 9.7 and 104.

⁶⁶ Ibid, para 109.

⁶⁷ Lawrence Baum, 'Judicial Specialization and the Adjudication of Immigration Cases' 59 *Duke Law Journal* (2010) pp. 1501-1561.

caseloads remain high with minimal law clerk support. Commenting on the number and gravity of the cases allocated along with the lack of resources available, one immigration judge stated that '[t]hese are death penalty cases being handled with the resources of traffic court.'⁶⁸ The United States' immigration court system's resource-constraints are amplified by the disparity in resources compared to immigration enforcement (equaling roughly 3% of the budget given to agencies tasked with enforcement) resulting in immigration courts being the 'dumping ground' of the systemic failures of broader immigration policy.⁶⁹

In our own context, questions of available resources and independence are also pertinent. The experience of the Equality Courts has shown that the lack of available resources and poor administration has had a detrimental impact on cases.⁷⁰ One benefit of the current system is that there is a connection between cases before magistrates and judges outside of immigration matters heard by the courts. If there are separate immigration courts established, then there is a risk of the specialised court operating in a 'silo' becoming a possibility, as opposed to the more open manner that the system currently functions. This independence acts as an important safeguard. One cannot be the judge, jury, and executioner as it were.

As with other proposals offered by the Revised White Paper, there is little to no evidence offered to suggest more efficiency and timely processing from immigration courts and based on international experience and our own, the delays, corruption and capacity constraints in the current system would likely extend to any newly created system, but would come concurrently with the additional cost of financing new immigration courts and the time taken to establish these new mechanisms. We suggest there would likely be costs to the current judicial system as well which is under strain.⁷¹ This is not to say that immigration courts are inherently a poor avenue to reform our framework, but that this route depends heavily on financial and material resources.

The challenges of being under resourced or qualified, corruption, delays and backlogs **will not** be addressed simply by establishing immigration courts. On the evidence, a likely outcome is that these issues would be exacerbated at an increased cost.

Recommendation #22:

The SCCT recommends that any proposal to establish immigration courts or new processes to adjudicate reviews is based on transparent figures relating to cost and function, and that, if this policy direction is followed, that these courts be independent from the Department. In the interim, we strongly recommend that the Department pursue other targeted measures to increase efficiency

⁶⁸ Ibid, at p. 1516.

⁶⁹ Donald Kerwin and Evin Millet, 'The US Immigration Courts, Dumping Ground for the Nation's Systemic Immigration Failures: The Causes, Composition, and Politically Difficult Solutions to the Court Backlog', 11 (2) *Journal on Migration and Human Security* (2023) pp. 194-227.

⁷⁰ Justin de Jager, 'Addressing Xenophobia in the Equality Courts of South Africa' *Refuge: Canada's Journal on Refugees*, 28(2), pp. 107-116.

⁷¹ Faizel Patel, 'SA has desperate shortage of judges and it's creating serious backlogs' (*The Citizen*, 27 July 2023).

2. The Pressing need to adopt alternatives to immigration detention

We believe that the Department needs further capacity from both a resources perspective as well as knowledge on the complexities of immigration and refugee law. This would greatly assist the Department with implementing more efficient and effective and secure entry systems at ports of entry and in dealing with serious issues of cross-border crime that require interdepartmental coordination and specific skills. We believe there is a need for a balanced approach to migration management and the need for future policy to incorporate 'Alternatives to Detention' as our baseline for migration management.⁷²

The Revised White Paper speaks to a series of litigation staying deportation and pivotal case law that relates to deportation. Any reference in law to deportation should take cognizance of the importance of Alternative to Detention that is cost effective, reduces bureaucracy, and protects human rights.

Recommendation #23:

The SCCT recommends that Alternatives to Immigration Detention be incorporated into immigration policy and be considered the lens through which issues of immigration detention are approached. We recommend targeted amnesty projects, for those with expired or no documentation, along with increased legal pathways to facilitate legal regional migration as the pillars of our migration policy and law to lessen immigration detention and deportation.

Conclusion

We appreciate the opportunity to provide the Department with insights from our work. We confirm our availability to make further oral submissions and recommendations or to address any questions in relation to the comments on the Revised White Paper set out above. We hope that this submission is the beginning of a fruitful and effective migration policy development process.

The considerable concerns we have raised with the general policy direction of the Revised White Paper are not meant to be critical of the Department, but rather are to ensure our future legislative and policy adjustments are based on sound evidence and logic, and equally, are realisable in our context.

We are concerned that if we do not get this right, we will waste more time and resources without addressing the considerable challenges we are facing in relation to migration.

Scalabrini Centre of Cape Town

12 February 2026

⁷² We support and promote the International Detention Coalition's definition of alternatives to detention as *any legislation, policy or practice that allows for asylum seekers, refugees and migrants to reside in the community with freedom of movement while their migration status is being resolved or while awaiting deportation or removal from the country*. For more information, see: International Detention Coalition, 'There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention' (2011).