

White Paper sees more Home Affairs security meddling

Gathering a head of steam and running into trouble both at home and abroad, is Minister Siyabonga Cwele's Draft White Paper on Home Affairs, something that President has clearly attempted to avoid any discussion on before elections. One senses it is yet another leftover issue from the "wasted years".



Minister Cwele says his department is at present absorbing the submissions received from all stakeholders and citizens on his draft which was published on 30 January giving 30 days for comment. The document was mainly the work of past Minister of Home Affairs, Malusi Gigaba, now touched up by new-in-the position Minister Cwele, who was previously Minister of State Security under past President Zuma.

Nothing changes

The gazetted notice also reflected the state of dysfunction at Department of Home Affairs (DHA), all submissions having to be made to one, Sihle Mthiyane, 'Acting' Chief Director of Policy and Strategy meaning that the post for the job of compiling the new policy for DHA remained unsubstantiated.

The White Paper describes a new DHA policy towards immigration, whether it be for skilled personnel wanted by industry, or a foreign retiree wishing to live in SA or a hapless refugee seeking asylum.

Bad medicine

It is no secret that these categories and many more are the recipients of the atrocious service delivery damaging to the image of South Africa and its economy. Many in the law profession in recent weeks becoming more and more vocal, claiming that an uncaring Cabinet cluster seems preoccupied with a lock down on border movements in the belief that both the local workforce and industry need protection from the outside world.



Minister Cwele said at the launch of the White Paper that his proposals "would lead to a new Home Affairs Act that provides a coherent legal framework for a repositioned DHA to deliver a mandate appropriate for a sovereign state".

The final, final plan

The 82-page document talks to the management of 4,800kms of border and the controls for SA's 72 entry/exit points. It predicts a totally digitalised department that can issue passports, residence permits and visas in an orderly manner from a centralized digital system on a national basis.



At the same time the Minister conceded that the extraordinary number of mess-ups by DHA in was acknowledged by Cabinet, as was the dreadful service meted out to both SA citizens, international business and tourists.

He coined what must be the most outstanding political euphemism for many a year by stating, with a straight face, that DHA "was still suffering from a legacy model that prevented it from delivering on its full mandate."

Early stages

As a draft and exploratory Paper before becoming a draft Bill, the rejection when gazetted for comment has been extensive, ranging from trade union criticism to complete outrage from the immigration law profession and human rights groups.

Only DHA knows at this stage the full extent and coverage of submissions since Parliament is closed and a full summation has yet to be made to a relevant portfolio committee meeting.

The document gazetted is divided into three sections dealing with policy; the set-up of a re-constituted DHA; and implementation strategy to revise home affairs functions, using “a road map” of actions to achieve this.

The trigger

According to the Minister, the department is still busy processing comment received during the consultation period and “will also consult other relevant government departments in the redrafting process”.



He said that a final draft will “set the Department of Home Affairs on the path to play its role as an enabler of citizen empowerment and a force for inclusive development, efficient administration and for national security”.

The mention of “national security” has once again set alarm bells ringing in many quarters, it seems.



Parliamentarian John Steenhuizen (DA) has pointed to the fact that whilst Minister Gigaba was in control of DHA under past president Jacob Zuma, Minister Cwele was also Minister of State Security, inferring that the Bill reflected the tendencies of what Steenhuizen called “a Zuma national security cabal”.

Common thinking

A former minister, Hlengiwe Mkhize, sacked last year by President Ramaphosa, is on record as saying that “SA must tighten its immigration policy and protect its borders even if it was labelled anti-African behaviour on the continent”. She followed this with the remark: “Should poor foreigners somehow enter the country, they will be dealt with harshly and likely deported”.

In the one corner

On the left side of legal opinion, Sharon Ekambaram, Manager, Refugee & Migrant Rights Programme, Lawyers for Human Rights, said: “The new immigration plans are framed around national development and security goals. Poor and unskilled immigrants are essentially envisaged as a threat to SA’s security, stability and prosperity”.

She said, “Any Bill framed in such manner will certainly not pass constitutional muster and will place South Africa on the wrong side of the UN and probably most African nations.”



Number crunching

Ekambaram quoted in her conference presentation a number of facts seemingly to be in direct contrast to ANC and EFF claims on the numbers of ‘foreigners’ in the country.

According to Lawyers for Human Rights, in a 2011 census, 75% of 2m international migrants based in SA are from Africa. More than 90% of these are from the SADC region, with Zimbabwe and Mozambique contributing 46% and 27% of such international migrants, respectively.

In totalling things up, the Statistics SA Community Survey 2016 puts the percentage of foreign-born population in SA at a mere 2.8%. These numbers clearly show that the country is not flooded with foreign nationals even if the numbers had doubled in the intervening years, Sharon Ekambaram said.

Barriers, booms and camps

“Attacking the internationally accepted asylum system in order to make SA an unattractive destination for asylum seekers is both regressive and dehumanising,” she said.

“Worse is the plan to establish asylum-seeker processing camps for the blanket detention of asylum seekers whilst their applications are being processed. Those held in detention centres will only be able to leave when they receive refugee status or are declined and thus deported.”

Ekambaram said, “The blanket detention provision is inherent violation of the right to human dignity. It will not even meet the requirements of proportionality under the limitations clause, section 36 of the SA Constitution”.



She quoted investigations that revealed the “already dehumanising and oppressive conditions” at the Lindela Repatriation Centre, outsourced to the private security company, Bosasa, now African Global Ventures.

In the right-hand corner

Gary Eisenburg, the well-known immigration lawyer and expert on immigration matters, says the White Paper is critically flawed and “is a product of the Jacob Zuma presidency. Its conclusions derive from the deep corruption endemic to that era and its perpetrators.”



He feels that “the rule of law continues to remain deeply imperilled” by political interference in the area of immigration. He quotes Zuma as saying: “We cannot close our eyes to the concerns of the communities that most of the crimes, such as drug dealing, prostitution, and human trafficking, are allegedly perpetuated by foreign nationals.”

The same theme

Eisenburg points to that the fact that the Paper repeats this rhetoric by stating in its policy section “immigrants gives rise to systemic corruption as well as exposing all who live in the country to serious risks such as terrorism and drug smuggling”.

In his article, Eisenburg quotes the Institute of Security Studies in Pretoria who have said the White Paper contains a dangerous and xenophobic narrative. They say the only way to understand to what extent foreigners are involved in crime is by careful analysis of SAPS crime statistics which, he says, has not been done.

Homework missing

Eisenberg says, “The analytical underpinnings of the White Paper are, from the perspective of scaremongering, both specious and anecdotal and can never rationally serve as an appropriate basis for policy building. The Paper is blank on its sources and any statistical models it purports to rely on.”



Hot potato

On citizenship, Eisenburg says, “One of the most controversial aspects of the White Paper is the “de-linkage” of the length of residence away from the acquisition of citizenship.”

“The fallacy in the White Paper is that there is in fact no linkage between certain temporary residence visas and permanent residence permits that leads automatically to permanent residence status and

then citizenship. The White Paper's policy foundation and rationale for decoupling permanent residence from citizenship is therefore totally erroneous."

Big brother

Eisenburg concludes, "The building of an economically beneficial immigration policy depends on its decoupling from national security matters. Until this happens, South Africa cannot be considered 'open for business' in any sense".

The next move from the Ministry of Home Affairs is awaited.