



home affairs

Department:
Home Affairs
REPUBLIC OF SOUTH AFRICA

**TOWARDS A WHITE PAPER ON INTERNATIONAL MIGRATION IN SOUTH
AFRICA**

GUIDELINES FOR PUBLIC CONSULTATION

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1. DEFINITION OF COMMON INTERNATIONAL MIGRATION TERMS

- a) **Asylum seeker:** refers to a person who claims s/he is seeking safety from persecution or serious harm in a country other than his/her own and awaits a decision on the application for refugee status.
- b) **Border management:** commonly defined as the government functions of immigration, customs and excise, and policing, with the aim of controlling and regulating the flow of people and goods across a country's border in the national interest (particularly economic development, security and peace).
- c) **Critical skills list:** refers to a legislated list of scarce skills that are in demand for growing the economy.
- d) **Economic migrant:** refers to foreign nationals who migrate for economic reasons such as seeking employment or to conduct business. Often used wrongly to refer only to those with lower-level skills or small amount of capital.
- e) **Emigration:** refers to the act of departing or exiting from one's country (country of origin or of habitual residence) with a view to settling in another (host country). The historical migration of significant numbers of citizens to other countries is known as a "diaspora".
- f) **Family reunion/ family reunification migrants:** refers to people sharing family ties joining people who have already entered an immigration country.
- g) **Forced migration:** in a broader sense, this includes not only refugees and asylum seekers but also people forced to move within a state or across borders due to factors other than persecution, such as environmental catastrophes or development projects.
- h) **International migration:** refers to any movement by a person across an international border, regardless of (1) the person's legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of the stay is. Short-term international migration refers to at least three months duration of stay in the country, or away from the country of habitual residence. Long-term international migration exists when the period of stay is at least one year.¹

¹ International Organization for Migration

- i) **Irregular migrants (or undocumented / illegal migrants):** these are people who enter a country, usually in search of income-generating activities, without the necessary documents and permits; or who stay beyond the permitted period or acquire fraudulent documents.
- j) **Migration management:** this term is used to encompass numerous governmental functions within a national system for the orderly and humane management of cross-border migration. It refers to a planned approach to the development of policy, legislative and administrative responses to key migration issues.
- k) **Naturalization:** refers to an act of granting of citizenship by a state to a non-national through a formal act on the application of the individual concerned.
- l) **Permanent residence permit:** refers to authorisation granted to certain categories of foreign nationals by the state to reside in the country permanently.
- m) **Port of entry:** refers to a place designated by the Minister in the RSA where all persons have to report to an immigration officer before entering or leaving the country.
- n) **Refugee:** a person who, "owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinions, 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.
- o) **Resettlement:** refers to the relocation and integration of people (refugees, etc.) into another geographical area and environment, usually in a 3rd country.
- p) **Smuggling of persons:** The activities of criminal syndicates of persons who facilitate the illegal movement of groups of individuals across borders.
- q) **Temporary residence visa:** refers to any of the visas issued to a foreign national to enter and temporarily reside in a country. These include transit, visitors, work and business visa.
- r) **Visa exemption:** refers to the act of exempting any person or category of persons from requirements of obtaining a visa.
- s) **Trafficking of persons:** Involuntary enslavement of human beings who are entrapped or bought and then sold within a country or taken to other countries.
- t) **Xenophobia:** At the international level, no universally accepted definition of xenophobia exists, although it can be described as attitudes, prejudices and behaviour that reject, exclude and often vilify persons, based on the perception that they are outsiders or foreigners to the community, society or national identity.

2. INTRODUCTION

The Department of Home Affairs (DHA) is entrusted with a dual mandate to provide civic and immigration services to South African citizens and foreign nationals that are resident in the country. Firstly, the DHA executes the Constitutional obligation to determine and secure the identity and civil status of all South African citizens. The Department can thus enable access to rights and services through the issuance of birth, marriage and death certificates, identity documents and passports. Secondly, the DHA is responsible for ensuring the effective, secure and humane management of international migration. It has the sole legal mandate to issue visas and permits to foreign nationals who wish to reside in South Africa (SA) for various reasons, including study, work, investment and refugee protection.

While the Department has made great strides in transforming civic service processes and services save for challenges relating to late registration of birth and identity fraud, the same cannot be said about immigration services. The Department has therefore identified immigration services as the major area for focused attention going-forward, with regard to policy, legislation and service delivery.

The transformation of immigration management is high on the agenda of the DHA and the Minister of Home Affairs, Honourable MKN Gigaba, has identified the development of a new international migration policy as one of his top priorities during his term of office. It is against this background that the DHA has undertaken the process of reviewing the current international migration policy. The policy review aims to, among others, lay a solid policy foundation for SA as a nation and a state to understand and manage international migration securely and effectively, in line with the National Development Plan (NDP).

The current policy on international migration is set out in the 1999 White Paper on International Migration. It has been over 16 years since the White Paper on International Migration became the basis of immigration legislation and regulations. Although there have been significant economic, social, legislative and regulatory changes, there has not been a comprehensive review of policy. Essentially, the country's formal international migration policy has remained in place since 1999 despite significant changes in the country, region and world.

During the 2015/16 financial year the Department developed a Green Paper on International Migration. The Green Paper was approved by the Minister on 29 March 2016 and will be used as base document for the White Paper. The Cabinet meeting of 25 May 2016 approved the Green Paper for public consultation.

3. RATIONALE FOR A NEW INTERNATIONAL MIGRATION POLICY IN SA

The DHA amended the Immigration and Refugees Acts and implemented strategies to address gaps in legislation. What is required, however, is a comprehensive review of the policy framework that can inform systematic reform of the legislation and administration of immigration. The last comprehensive national discussion of the international migration policy was prior to the publication of the White Paper on International Migration in 1999. Since then, South Africa and the world have undergone profound changes and there is a better understanding of the way in which international migration should be managed by states, regions and internationally.

Within SA, as in many other countries, thinking and attitudes to international migration are currently influenced by an unproductive debate between those who call for stricter immigration controls and those who call for controls to be relaxed. The discourse is in general characterised by strong emotions, stereotypes and contested statistics. Discussions are usually limited by “us and them” thinking that contrasts the rights of immigrants to the rights of citizens and the state, or focuses on either our domestic or our global interests. SA has to overcome huge social and economic challenges and there is an urgent need to build consensus at policy, legislative and strategic levels on how to manage international migration for development. What is proposed in the Green paper is that by adopting a managed migration approach we can work together to achieve common national goals.

The Green Paper argues that the current international migration policy must be replaced as it does not enable SA to adequately embrace global opportunities while safeguarding our sovereignty and ensuring public safety and national security. What is put forward in the Green

Paper is based on desktop research, interviews and discussions with internal and external stakeholders (workshops, roundtables and colloquium); and domestic and international study tours. It is also informed by practical knowledge of problems that have emerged since the publication of the White Paper on International Migration in 1999.

4. BRIEF HISTORY OF INTERNATIONAL MIGRATION POLICY IN SA

Much of the international migration policy paradigm in SA in the late 19th and the 20th centuries was dominated by the discourse of recruiting “desirable” whites and excluding migrants from Asia and India in particular. In terms of acquiring citizenship, formal immigration under colonial and apartheid rule was essentially conceived of as being for whites only. With regard to African migrants, domestic and foreign, the primary concern of apartheid and pre-1948 South African governments was to ensure colonial domination and an abundant supply of cheap migrant labour from across SA and the region. It is mainly this labour that enabled SA to become the most advanced economy in Africa.

The apartheid government encouraged or turned a blind eye to clandestine migration in order to ensure an abundant supply of cheap labour, but was opposed to black migrants applying for citizenship. The major aim of the first nationwide immigration legislation passed in SA, the Immigrants Regulation Act of 1913, was to exclude Indian immigrants who had followed Indians who had entered after 1860 as indentured labourers to work in the sugar cane plantations. The growing Indian population was considered a major threat to the ideology of white supremacy.

The Aliens Control Act of 1991 was based on the 1913 Act that excluded blacks and was amended in 1930 and 1937 to exclude Jews, who were among categories of European migrants considered undesirable on racial, religious or political grounds. The racist orientation of South African international migration policy became very evident when the government welcomed whites from neighbouring states in Southern Africa who felt threatened by black majority rule. Between 1960 and 1980, skilled and semi-skilled white migrants from Zambia, Kenya and Zimbabwe were given citizenship to boost the local white population.

Under apartheid, immigration control manifested chiefly in tight border security and restrictions on Africans considered politically undesirable and others entering the country, and on Africans travelling abroad. Ports of entry were under the control of police directed by an intelligence unit until 1992 when immigration officers were introduced. The fragmented departments of “Home Affairs” (variously named) were responsible respectively for general control via the pass laws while delivering modern services largely to whites.

From 1994, the vision of SA’s first democratic governments was to reverse racially-based and exploitative laws, and integrate SA into the SADC region, the African continent and the world. The transition to democracy has enabled SA to play a full and active role in the family of nations. This is one of the fruits of a struggle in which the mobilisation of international support played a critical role, based on the principles of internationalism and universal human rights. The main focus now must be on international migration being a key driver of the development of SA and, through inter-state cooperation, the Southern Africa region.

SA has undergone a protracted process of developing policy and legislation on international migration and refugees since 1994. This process has included the drafting of a Green Paper on International Migration in 1997, a White Paper on International Migration accompanied by a Draft Immigration Bill, and the adoption of the first comprehensive Immigration Act in 2002, which has subsequently been amended. A Refugees Act was also legislated in 1998, and amendments to this Act are currently underway. Further details on the evolution of the international migration policy in SA are provided in the Green Paper.

5. OVERVIEW OF THE GREEN PAPER

Key sections of the Green Paper are briefly discussed below:

5.1 Vision for a new international migration policy

- South Africans embrace international migration for development while guarding sovereignty, peace and security.

Key principles

- SA has a sovereign right to manage international migration in its national interests. The national interests of SA should be defined in accordance with:
 - The principles underpinning the Constitution;
 - National priorities such as national security and development;
 - Promotion of human rights, peace and stability in the world.
- SA's international migration policy must be Africa-oriented.
- SA's international migration policy must contribute to nation-building and social cohesion.
- SA's international migration policy must enable South Africans living abroad to contribute to national development priorities.
- A whole of state and society management approach is the bedrock for the new international migration policy.

5.2 Policy and strategic issues for consideration

The following areas of international migration require policy and strategic interventions:

- **Management of admissions and departures:** The purpose of the policy is to underpin a strategic, integrated and risk-based approach in managing the secure and efficient movement of people, goods and conveyances.
- **Management of residency and naturalisation:** The purpose of this policy is to ensure strategic granting of residency and naturalisation to foreign nationals in order to achieve national goals.
- **Management of international migrants with skills and capital:** The purpose of this policy is to attract and retain high-value foreign nationals, including in some cases the fast-tracking of the granting of permanent residency and naturalisation.
- **Management of ties with SA expatriates:** The purpose of this policy is to harness emigration to contribute to achieving development goals.
- **Management of international migration in the African context:** The purpose of this policy is to manage continental and regional migration flows to and from the RSA in line with the AU 2063 Agenda (visa free regime for the African citizens).
- **Management of asylum seekers and refugees:** The purpose of this policy is to provide protection and basic services to asylum seekers and refugees in a humane and secure manner.
- **Management of the integration process for international migrants:** The purpose of this policy is to establish a secure, strategic and integrated approach for the integration of international migrants into communities.

5.3 National capacity for managing international migration

- The need for a whole of state and society approach for the management of international migration is one of the main themes of the Green Paper.
- The capacity of the RSA to manage international migration depends to a large degree on the capacity of the state to lead and to coordinate across the three spheres of government: local, provincial and national.
- This section highlights factors to be taken into account when deciding on how SA can build the capacity to manage immigration strategically, efficiently and securely.

For more details on the key sections of the Green Paper, the public is invited to study the Green Paper and submit comments as directed below.

6. GUIDING QUESTIONS FOR PUBLIC ENGAGEMENT

The Green Paper on International Migration is divided into seven thematic areas. To guide engagement on each area, a set of questions are asked to guide discussions and inputs. The following generic questions have been drawn to guide public comments on the international migration areas that require policy and strategic interventions (Please refer to 5.2). However, comments are welcomed in other areas that are deemed necessary by a contributor.

6.1 Generic questions for all international migration areas that require policy and strategic interventions

- a) Has the Department clearly articulated the problem/s and outcome/s that this policy area seeks to address? If not, please provide your input on your understanding of the problem/s and outcome/s that must be addressed by this policy area.
- b) In your view, is the proposed solution adequate and implementable? If not, critically assess the proposed solution and recommend an alternative solution where possible.
- c) In your view, how will the proposed solution (including your alternative solution) impact on the top five priorities of the state; that is, nation building and social cohesion, economic growth and economic inclusion (job creation and equality), national security, and a sustainable environment?
- d) In your view, does the proposed solution pose any Constitutional challenge? If so, please elaborate

and recommend an alternative solution that is in sync with the Constitution of the RSA.

e) In your view, is the proposed solution in line with SA's international obligations? If not, please elaborate and advise on how the proposed solution can be improved.

f) In your view, what capacity constraints should be addressed by the state, in particular the DHA, in order to improve the management of this policy area?

g) You are welcome to submit any other comment on areas that are not covered by the above set of questions.

7. PUBLIC CONSULTATION PROCESS: TOWARDS A NEW WHITE PAPER

The public consultation process will include the following activities:

- The Green Paper on International Migration has been gazetted for the public to submit comments from the **1st of July 2016 to the 30th of September 2016**.
- During this period, the Minister will also launch the Green Paper for public comments whereby he will unpack the rationale behind a new policy and provide further details on the consultation process.
- An electronic copy of the Green Paper is accessible from the Department's website: www.dha.gov.za.
- Written submissions should be forwarded to Mr. Sihle Mthiyane on Greenpaper@dha.gov.za. For further clarity on the content of the Green Paper or any other related issue Mr. Mthiyane can be reached on 27 (12) 406 4353 during office hours (8:00 - 16:30).
- The Department will be hosting various stakeholder engagements at national, provincial and local level. A communication team has been set-up to keep the public updated on key

events. For update on the upcoming events, the public is invited to keep in touch with the Department through the website: www.dha.gov.za or Department's social media platforms: facebook (Department of Home Affairs) and twitter account (@HomeAffairsSA).