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PRO BONO & HUMAN RIGHTS ALERT

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The fate of asylum seekers during lockdown in South Africa

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The fate of asylum seekers during lockdown in South Africa

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Many arrive in South Africa (SA) with the hope of a better future simply to face insurmountable hurdles such as unemployment, poverty, xenophobia and massive backlogs in the asylum process which results in many being present in the country for several years only to be ultimately denied refugee status. This is the unfortunate reality faced by many asylum seekers in the ordinary course without the added concerns that arise when a state of disaster is declared – as was recently done placing SA in nationwide lockdown due to the COVID-19 pandemic. As asylum seeker visas are a source of protection and livelihood for many, it poses the question of how the lockdown will affect asylum seekers in SA, in particular, the renewal of their visas?

Section 27 of the Disaster Management Act permits the designated minister to make regulations or issue directions or authorise the issue of directions provided that the regulations are only made to the extent necessary for the purpose of assisting and protecting the public, providing relief to the public, protecting property, preventing or combating disruption or dealing with the destructive and other effects of the disaster. In Regulations issued on 18 March 2020 (Government Gazette 43107, Notice 318), Regulation 10 confirms that any Minister may issue and vary directions, as required, within his or her mandate to address, prevent and combat the spread of COVID-19 from time to time as may be required. Despite all Ministers being empowered to issue directions within their mandate, the Department of Home Affairs (DHA) chose to merely circulate an "announcement" on 26 March 2020, confirming that no Refugee Reception Centres will be assisting any clients during the lockdown for 21 days with effect from 27 March 2020 to 16 April 2020. The announcement goes on to provide however that those whose visas expired during the period of 16 March to 16 April 2020 will not be penalised or arrested provided they

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The fate of asylum seekers during lockdown in South Africa...*continued*

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legalise their visas within 30 calendar days of the lockdown being lifted. Clients however confirmed that many of the Refugee Reception Centres were already closed to the public prior to the lockdown (as of 16 March 2020) citing COVID-19 safety concerns for the closure.

Despite directions being issued by the Minister of the DHA regarding temporary measures in respect of entry into or exit out of the Republic in order to combat the spread of COVID-19, at the date of publication of this alert, no such directions were issued in respect of the issuing or renewal of asylum seeker visas. Services provided by Refugee Reception Centres were also not listed as essential services unlike the issuing of birth and death certificates, and replacement identification documents.

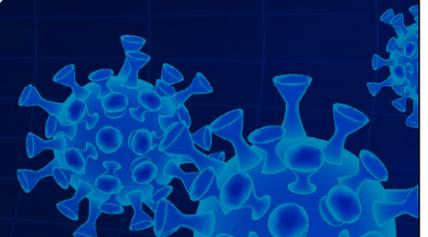
The indeterminate legal status of the "announcement" could pose a number of problems for asylum seekers should they be stopped by members of the SAPS or the SANDF as many would be in possession

of expired visas and therefore run the risk of being arrested and detained. Needless to say, that the detention of any individual including asylum seekers would be highly undesirable and even counter-productive to Government's fight against COVID-19 as detained individuals would be at higher risk of contracting and spreading the virus in over-crowded detention centres and police stations. This at a time when civil society organisations such as Lawyers for Human Rights are calling for a suspension on the detention and deportation of migrants as well as unnecessary arrests and detention for Schedule 1 offenses.

Expired visas pose further challenges as allegations have surfaced that some asylum seekers were instructed by their employers to go on unpaid leave until their visas were renewed. Other civil society organisations and law clinics have warned of bank accounts being frozen until such time as asylum seeker are able to provide renewed visas. This during a period of lockdown when financial and food security is a real concern.

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The fate of asylum seekers during lockdown in South Africa...*continued*

There has also been a call by a number of civil society organisations for the DHA to extend all asylum seeker visas for a period of six months to avoid asylum seekers having to return to Refugee Reception Centres more regularly

The recent Refugees Amendment Act creates further challenges as it includes an abandonment provision which provides for the deemed abandonment of asylum applications should the individual fail to renew their asylum seeker visa within one month after the expiry of same unless they are able to provide compelling reasons for their failure to renew their visa. Given that the Refugee Reception Centres will most certainly have a backlog once the lockdown is lifted there is a real concern that many asylum seekers will battle to renew their visas within the prescribed time and thus run the risk of their applications being deemed to have been abandoned. Civil society organisations have raised concerns in respect of this provision in the Act and suggested a period of 12 months before an application is deemed to be abandoned. There has also been a call by a number of civil society organisations for the DHA to extend all asylum seeker visas for a period of six months (once the lockdown is lifted) to avoid asylum seekers having to return to Refugee Reception Centres more regularly - this in order to curb the risk of the spread of COVID-19. Sadly, these challenges will be faced only by those "lucky" enough to be in possession of visas albeit expired ones. There are

many new asylum seekers who are yet to be issued with visas and who are currently undocumented – these individuals will no doubt face even further challenges as the DHA announcement makes it clear that priority will be given to legalising the visas of those whose visas were affected by the lockdown first.

On 9 April 2020, SA's lockdown was extended by an additional two weeks until 30 April 2020. Under these circumstances there is surely a need for the DHA to provide clarity in respect of the extension and validity of asylum seeker visas, however sadly it chose to release a mere media statement on 14 April 2020 repeating much of what was said in its initial announcement namely that "any asylum seeker whose visa expired from 16 March 2020 to the end of the lockdown period will not be penalised or arrested provided that they legalise their visa within 30 calendar days of the lockdown being lifted." It unfortunately seems as if the future of asylum seekers in SA will remain unclear regardless of the DHA's most recent media statement given that the Refugees Amendment Act is now in force and SA in the process of building a 40km fence along its border with Zimbabwe.

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