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**SUBMISSION WHITE PAPER ON HOME AFFAIRS. NO 8 OF 2019**

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Submitted by

Consortium for Refugees and Migrants in South Africa (CoRMSA)

To

Policy and Strategic Management – Department of Home Affairs

**Attention:** Mr. Sihle Mthiyane, Acting Chief Director. Email:  
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## A. Introduction:

The Consortium for Refugees and Migrants in South Africa (CoRMSA) is pleased to make this submission on the published **WHITE PAPER ON HOME AFFAIRS NO. 8 OF 2019** to the Department of Home Affairs for the attention of Chief Director: Legal Services, Department of Home Affairs, Pretoria. The Consortium for Refugees and Migrants in South Africa (CoRMSA) is a national network of organisations working with asylum seekers, refugees and other international migrants. CoRMSA currently has 25 member organisations across the country. It was established in 1996 as a loose network of organisations working with refugees as the National Consortium for Refugee Affairs (NCRA) and was later registered as an NPO. In 2007 NCRA's mandate was extended to include the protection of international migrants. Our members are made up of direct legal and social service providers; research institutions and refugee and migrant community groups. The CoRMSA model is such that through our members and partners, collectively we cover work at local, provincial, national, sub-regional, regional and global levels to ensure that the daily challenges faced by non-nationals are addressed through policy and practices. CoRMSA has over fifteen years of experience working on migration engaging in advocacy and lobbying; coordination and network building; capacity building; rights awareness and information sharing. CoRMSA's overall objective is the protection and promotion of asylum seekers, refugees and migrant's rights in South Africa, regionally and internationally.

CoRMSA welcomes this opportunity and below make recommendations (submissions) on specific sections on this White Paper on Home Affairs. CoRMSA take note of the foreword by the Minister of Home Affairs that this white paper presents a document that sets out the Department of Home Affairs' exclusive mandate and its central role in the state and society. A policy framework is provided that is firmly rooted in the Constitution. As CoRMSA, looking at the current Home Affairs unconstitutional practice and maltreatment of migrants in the republic, we are yet to be convinced that this white paper will be realistically rooted in the South African Constitution. Constitutionally, the Department of Home Affairs has regulatory, compliance and service delivery functions. Currently, the Department has been under-performing especially on asylum seekers, refugees and migrants' protection and not providing the most effective basic services expected of it. CoRMSA is worried and concerned if the Department really sees migration as positive factor to development. Migration management, including skilled immigration, is a politically sensitive issue. For this reason, policies need to be carefully framed, but must also be introduced with committed political leadership. This remain to be seen and CoRMSA hopes that this white paper addresses such.

CoRMSA is available to make an oral presentation regarding this submission should such an opportunity arise.

Lawyers for Human Rights endorsed this submission.

In our submission, the word "**Department**" refers to the Department of Home Affairs (DHA).

### **Section A. Policy foundation of the Department of Home Affairs.**

Under Introduction paragraph 4 (page 7), CoRMSA proposes the inclusion of "**migrants or non-nationals**" on the sentence to read "The reality is that the DHA is a critical enabler of citizen and "migrants" empowerment, inclusive development, efficient administration and national security. Leaving out "migrants" on this important section may subject even further

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the exploitation and discrimination of migrants not to receive proper and effective services from the Department.

### **Chapter One: The Importance of the Department of Home Affairs.**

On page 8, CoRMSA proposes the insertion of “**seek protection**” and the rewording of this sentence for the sentence to read: Decisions have to be made about migrants who cross the border, from those looking for economic opportunities to those who “**seek protection**” through claiming of an asylum. CoRMSA believes that ‘negative migrant stereotypes are a result, at least in part, of negative Departmental treatment, there is need for the Department to acknowledge the potential to reverse the trend and create a more positive view of migrants and their contribution to society through a more accurate, unbiased and realistic portrayal of migrants.

Page 9 paragraph 2, “*Affirming the identity and status of every citizen at birth is indispensable for the state, which must respect, protect, promote and fulfil their constitutional rights*”. CoRMSA finds this sentence not true and unconstitutional and draws the attention of the Department on the current proposed Birth and Death Regulations 2018. **Regulation 1** of the proposed regulations; “**confirmation of birth certificate**” means a certificate issued to a non-South African citizen confirming that the birth of his or her child occurred within the Republic and enables the holder thereof to approach the relevant authorities of his or her country of citizenship or nationality in order to register the birth of his or her child in his or her country of citizenship or nationality’s population register. Where is the respect if no certificate is issued for a child born in South Africa. This regulation must be read with the DHA 19 form with section 9 regulation 7 (2) and 8 (5).

The above unconstitutional regulation/s should be in line with the Refugee Act and the Constitution of South Africa as the white paper on Home Affairs claims to be in line with. To realise this white paper, CoRMSA proposes that the “confirmation of Birth” be considered as birth certificate. If not, it will be endorsing the misinterpretation and misapplication/interpretation of the documentation in by different government departments especially department of Education where access to education by non-South Africa citizen is a challenge because of documentation status- especially birth certificate. We cannot, in this democratic country afford to have regulation that forces and imposes asylum seekers and refugee to go back to their countries they fled away from fear of their lives. Furthermore, there are countries who do not issue birth certificate for children born outside their country. What is the department saying to these groups children? Should they remain undocumented in a democratic country like South Africa?

CoRMSA request that, with reference to the above regulation that both this regulation and the DHA 19 form reading with section 9 regulation 7 (2) and 8 (5) is totally irrelevant and unconstitutional and should be removed from the regulations or be amended for it to be a birth certificate. With a note that “this is not a birth certificate” and makes recommendation for parent to obtain a passport from their country of origin/nationality and thereafter apply for a Visa /permit for the child.

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[https://www.gov.za/sites/default/files/gcis\\_document/201810/41970gon1085.pdf](https://www.gov.za/sites/default/files/gcis_document/201810/41970gon1085.pdf)

“PUBLICATION OF THE DRAFT REGULATIONS ON THE REGISTRATION OF BIRTHS AND DEATHS, 2018”

Page 11 paragraph 5. CoRMSA proposes the revision of this sentence “*Only the DHA can grant asylum seeker or refugee status*”: to read “Only the DHA can grant asylum seeker or refugee status within the reasonable timeframe specified by the Refugee Act of 1998.

CoRMSA believes that this will help eliminate and address the issue of backlogs within the Department on Asylum Seeker applications.

Still on page 1 last sentence, CoRMSA proposes this sentence “*A foreign resident who gives birth or dies in South Africa must be registered here and their embassy enables the state to use it for national security purposes, whether that is checking fingerprints or identifying Bodies*” be revised as it does not address the situation where an asylum seeker of refugee gives birth in South Africa. CoRMSA believes the Department knows better that Asylum Seekers and Refugees cannot be in contact with their Embassies (government) as they have run away from the same government. If the Department is really concerned about the protection of asylum seekers and refugees, a provision should be put in place to prohibit asylum seekers and refugees to be subjected back to their government.

On page 12 paragraph 5 under the DHA’s mandate, CoRMSA submit that bullet point 3 be revised to read:

- Have the ability to deliver services according to local and individual needs with no prejudice and discrimination.

The revision of the above sentence will help the Department to address and combat institutionalised xenophobia currently happening on Departmental level. Non-South Africans face a more insidious form of prejudice inherent in the departmental system/s on a day-to-day basis. Therefore, the adoption of the proposed sentence above will play a key role in addressing these challenge.

Page 13 paragraph 1 and page 14 on the current DHA operating model, CoRMSA applauds the idea of the National Identity System (NIS) development by the Department. However, CoRMSA is concerned on the lack of explanation and direction on how the NIS will be inclusive of foreign nationals because as it stands for now, there is greater lack of inter-departmental identity systems that works to interpret one’s identity. For example, the Department of Labour through the Unemployment Insurance Fund (UIF) section does recognise nor verify the Asylum Seeker Permit (Section 22 of Refugee Act) for an asylum seeker to access UIF Benefits due to him/her. The NIS should be more accessible to all government departments and Civil Society including Chapter 9 Institutions and Private Sector. Another challenge on the ground with the current system, it is a difficult for foreign nationals especially asylum seekers and refugees to access or open bank account due to the fact that their permits cannot be recognised or verified by the Banks as a result of the lack of solid and effective identity system in place. CoRMSA believes that the South African Refugee Act 130 of 1998 mandated the Department to issue in a right manner appropriate

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permit to refugees and asylum seekers in order to protect their rights and legalise their stay in the country. In order to reinforce the Refugee Act mandate, the permits issued under this

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“Major Problems of Refugees in South Africa”

[http://wiredspace.wits.ac.za/bitstream/handle/10539/1536/05Enwere\\_Chapter5.pdf?sequence=5&isAllowed=y](http://wiredspace.wits.ac.za/bitstream/handle/10539/1536/05Enwere_Chapter5.pdf?sequence=5&isAllowed=y)

Act must be recognised by all spheres of government, private sector, Chapter 9 institutions and civil society.

## **Chapter Two: Current Status and Problem Statement.**

*On page 18 last paragraph that reads “South Africa has adopted a non-encampment policy for sound reasons: refugee camps can attract major risks in terms of humanitarian, cost and security considerations”. And page 19 paragraph 2. That read “The establishment of processing centres is proposed, where different categories of asylum seekers can be provided for while being processed through coordinating the work of government and non-government role players”.*

CoRMSA believes that this adoption of a non-encampment policy is not true as the White Paper on International Migration also suggested that “South Africa will establish Asylum Seeker Processing Centres. The centres will be used to profile and accommodate asylum seekers during their status determination process. During this process special services will be given to applicants in need of care and vulnerable groups. This will be a multi-stakeholder facility with stakeholders like the DHA, Refugee Appeal Board (RAB), SCRA, Department of Social Development (DSD), Department of Energy (DoE), Department of Health (DoH), and United Nations High Commissioner for Refugees (UNHCR) playing active and regulated roles”. <http://www.dha.gov.za/WhitePaperonInternationalMigration-20170602.pdf>. As CoRMSA, we are worried and concerned that these Processing Centres to be established by the Department are in reality “**Refugee Camps**” with a different name. CoRMSA proposes a stop in establishing these Processing Centres if the Department is really serious about promoting non-encampment.

Furthermore, these “Processing Centres” to be established, asylum seekers may face greater difficulties entering South Africa and once the department of home affairs opens new processing centres for asylum seekers. Asylum seekers in South Africa are already subject to a range of invasive practices, and holding them in a processing centre will subject them to greater levels of exploitation, organised crime and violence. These new processing centres are so unclear, even in the [Refugee Amendment Bill](#), the way it is worded means they will be detention centres established. This is because asylum seekers would only be allowed to leave the centres if they meet specific requirements before the interview deciding their refugee status is held. The South African Constitution section 12 outlined that everyone has the right to freedom and security of the person, which includes the right and not to be detained without trial; and section 21 suggests that everyone has the right to freedom of movement. Clearly, these Processing Centres will contradict and violate these constitutional rights given to asylum seekers.

CoRMSA proposes that the phrase ‘citizen-focused’ (pg 19) is removed and replaced with the phrase ‘people focused’. As stated earlier two of the DHA core mandates are focused on the management of people who are not recognised citizens of South Africa: ‘international migrants’ and ‘asylum seekers’ and ‘refugees’. The term ‘citizen-focused’ is exclusionary language which could result in primary and mandated services users being denied access to

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these professional and required services. Furthermore, this language is discriminatory on the basis of documentation status as the service principles proposed in the white paper prioritise citizens over people with a diverse range of statuses and have the right to these services.

Page 19 bullet point 3, CoRMSA submit to the Department to review its relationship with Visa Facilitation Partner in VFS Global and put in place agreed and binding key performance monitoring mechanisms for effective and reliable service delivery. There are a number reports coming from the applicants seeking the services of VFS Global indicating that VFS is significantly overwhelmed and is battling to correct an ever increasing backlog. It is further reported that there has also been an alarming increase in complaints relating to appointments not being carried through with on time and often applicants end up waiting 7 hours to be seen. There is also no solution for poor applicants who are paying VFS with no service delivery commitment to them (<https://www.nwivisas.com/nwi-blog/south-africa/visa-applicants-penalised-as-vfs-struggles-to-deal-with-application-backlog/>). These report clearly indicate the urgent need for the Department to act on its relationship with VFS Global for the better implementation of proper and sustainable mechanisms to avoid such backlog and complaints from applicants.

### **Chapter Three. A Coherent Department of Home Affairs Policy Framework.**

Page 24, CoRMSA proposes the insertion of additional bullet point under Values that read:

- Non-discriminative and non-biased

Page 25 outcome 1, CoRMSA is concerned with the meaning of or the use of the term **“South Africa’s interest”**, this needs to be thoroughly clarified or explained to avoid confusion during the implementation of this White Paper.

CoRMSA take note that this chapter focusses more on migration management. CoRMSA draws the attention of the Department to this words by [Jonathan Crush & Bruce Frayne on “Surviving on the Move” Of 2010](#) argues *that migration bring both challenges and opportunities and if governments fails to develop empirically informed and proactive migration policy responses, international migration will threaten sustainable and equitable economic growth rather than replacing divisions with shared rules of economic and social engagement, discrimination against non-citizens threatens further fragmentation and social marginalisation.* CoRMSA believes that migration is a feature of social and economic life across many countries, but the profile of migrant populations varies considerably and a well that a well-managed migration can maximise the skills and economic development in South Africa.

### **Chapter Four: A Future-Fit Model of the Department of Home Affairs.**

On this chapter, CoRMSA is concerned with the lack of clear model or section to address the high level of corruption at the Department. A section or model should be put in place geared towards addressing the level of corruption within the Department. This report indicate that corruption is real at the Department and it needs urgent attention. : <https://www.news24.com/SouthAfrica/News/home-affairs-officials-arrested-for-fraud-20170906>

Page 40, 4.2.2. CoRMSA supports the inclusion of mandatory training in the DHA organisational model. CoRMSA notes that the description under 'mandatory training' and 'ongoing training, skills and people practices' is focused on Department employees being technologically and system efficient. However, these sections exclude training which provide employees with sufficient people skills, sensitisation and diversity training while working with diverse and often vulnerable people. Including these forms of training are imperative to having a professional and effective DHA model and culture. CoRMSA encourages the DHA and government departments to work with or consult various commitment and highly skilled Non-governmental and human rights organisations in ensuring that DHA employees are equipped with the relevant knowledge and skills to act responsibly.

Page 42, under Client Service, CoRMSA proposes the insertion of the bullet points below:

- Adhere to and implement Batho Pele Principles
- A corruption Free service delivery

Page 43, under the value of the DHA in Combatting fraud and related crimes. CoRMSA welcomes the insertion on this section. However, this section is silent and does not provide anything tangible or mechanism on how the Department will address fraud, corruption and related crimes. This section needs to be revised to provide clear direction and policy mandate on addressing the above. In paving of the above, CoRMSA draws the attention of the Department's Portfolios Committee to the report compiled by Corruption Watch (CW) to the raising concerns over unchecked corruption at Refugee Centres on September 2018. Corruption Watch highlighted in its letter how it has tried for many years to work with the Department of Home Affairs (DHA) to resolve this issue and to pressure the DHA into taking more urgent and meaningful steps to address corruption at Marabastad. It was further indicated that the corruption at the Department is not only occurring at the refugee reception office in Pretoria but also at the skeleton office in Cape Town. The organisation has referred six cases to the Hawks in Cape Town relating to corruption in that area. DHA has failed to respond to these efforts to assist them in addressing corruption affecting refugees and asylum seekers. This is clear indication that there is no mechanism in place to address corruption at the Department (<https://www.corruptionwatch.org.za/cw-raises-concerns-unchecked-corruption-desmond-tutu-refugee-centre/>).

## **Chapter Six: An enabling Legislative Environment.**

Page 49, paragraph 3 under overview of current challenges. CoRMSA proposes the insertion of "**forced migration**" on the sentence to read "The DHA's work involves two of the most complex areas of legislation: international migration, forced migration and family law". The International Organisation on Migration defines Forced Migration (IOM) as "A migratory movement in which an element of coercion exists, including threats to life and livelihood, whether arising from natural or man-made causes (e.g. movements of refugees and internally displaced persons as well as people displaced by natural or environmental disasters, chemical or nuclear disasters, famine, or development projects).

J. Crush & B. Frayne: Surviving on the Move. "Migration, Poverty and Development in Southern Africa. 2010

"CW RAISES CONCERNS OVER UNCHECKED CORRUPTION AT REFUGEE CENTRE". 6 September 2018.  
<https://www.corruptionwatch.org.za/cw-raises-concerns-unchecked-corruption-desmond-tutu-refugee-centre/>

### **Concluding remarks:**

An analysis of migration trends indicates that migration is a global phenomenon since the end of colonial period. Migration has seen a great increase in the magnitude, density, velocity and diversity of global connection says J. Crush and B. Frayne (2010). The globalization of migration means that all parts of the world are now affected, to a greater or lesser degree by international migration. Public attitudes towards immigration are both reflected in and influenced by types of migration policies a country develops and treatment of migrants by public servants and policy implementers. How migrants and migration are described, categorised and represented matters to both economically and social development of the country. Therefore, South Africa as a country should adhere to its International and national mandate through the Department of Home Affairs of protecting and servicing migrants within the republic with no discrimination and prejudice.

CoRMSA believes that it is in the national interest for South Africa to continue to offer protection, basic social service and needs and economic rights to those fleeing war, conflict and persecution. Therefore, South Africa should develop policies and laws that does not hamper the development of this country and contradict the South African Constitution, policies that promote social cohesion and inclusivity.

We thank you.



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