



Draft One-Stop Border Post Policy. No 1426 of 2020.

Submitted by

Consortium for Refugees and Migrants in South Africa (CoRMSA)

To

The Director General: Department of Home Affairs

Attention: Mr. Sihle Mthiyane –Chief Director: Policy and Strategic Management
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1. Background:

Consortium for Refugees and Migrants in South Africa (CoRMSA/the Consortium) is pleased to make this submission to the **Draft One-Stop Border Post Policy. No 1426 of 2020**. CoRMSA is a national network with the current number of twenty-six (26) member organisations in good standing whose main objectives and mission are the promotion and protection of the human rights of asylum seekers, refugees and other international migrants in ways that promote the well-being of all in South Africa and the region. The Consortium has over twenty years of experience working on migration and refugee protection engaging in advocacy and lobbying, including policy submissions; coordination and network building; capacity building; community engagement and dialogue; rights awareness and information sharing. Our member organisations include legal practitioners, community-based refugee- and migrant-led organisations, advice offices, academic institutions, and social service providers amongst others.

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 makes recommendations (submissions) on specific sections on the proposed "**Draft One-Stop Border Post Policy**".

Furthermore, CoRMSA is available to make oral presentations regarding this submission should such an opportunity arise.

In our submission, the word "Department" refers to the National Department of Home Affairs (DHA). The abbreviation "DHA" will be used throughout this document in reference to the "Department of Home Affairs".

Before we begin with our submissions and comment on the policy we would like to quote the following from the statement issued by the Portfolio Committee on Home Affairs, **12 January 2021** to say "*The aim of One-Stop Border Post is to improve the efficiency of movement at the port of entry something which is lacking at Beitbridge currently. The efficiency of movement of people and goods is critical to*



achieving the objectives of the African Continental Free Trade Agreement. Furthermore, One-Stop Border Post (OSBP) will ensure that South Africa and its neighbouring countries operate on a similar platform which will make crossing at the border easy". CoRMSA believes that the words "**to improve efficiency of movement**" echoed from this statement are not just politician's favourite words but words that will be validated through this policy without prejudices based on one's nationality nor documentation statuses.

As argued that, the OSBP seeks to harmonise the movement of people and goods between South Africa's land ports of entry and its neighbouring countries. CoRMSA submits that this harmonisation of movement of people and goods should be conducted and facilitated in respect to all migration policies and laws in place and the South African Constitution especially section 1 (a) which states that "the Republic of South Africa is one, sovereign, democratic state founded on the following values: (a) Human dignity, the achievement of equality and the advancement of human rights and freedoms. This should be read with section 2 of the constitution imposing that "the Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled". CoRMSA raises this because it well documented and widely reported in the media that South Africa is gearing up or shifting its focus to manage migration through strict, repressive and policies and laws that make it difficult if not impossible for migrants especially from the SADC region to enter and leave the republic.

Below is our submission and comments to the draft policy:

Section A:

Chapter 1.

1.1

CoRMSA strongly submits that the word "**national interest**" be defined and inserted under the definition table of this draft policy. The government of South Africa through its different departments and institutions has used and made reference to this word on many occasions and in documents with no clear definition or meaning attached to it and its relevancy. There is need to define or clarify this word to avoid confusions including interpretations and its applications to this policy.

CoRMSA recommends that a list of South Africa's 72 Port of Entry (PoEs) be attached to this draft policy as an annexure for reference and validation purposes of all port of entries.

Furthermore, we submit that “**five organs of state**” that enforces the border laws and ensures that traffic is regulated be outlined and listed in this policy. This is to avoid and prevent misrepresentation and corruption including abuse of power by those not authorised to enforce the law at border lines.

The above also applies to the “**10 organs of state**” that are involved in managing aspects of the larger border environment. This must be listed and outlined.

CoRMSA is concerned that the roles and responsibilities including the functions of the South African National Defence Force are not outlined under this section. Therefore, their roles, responsibilities and function should be clearly defined in line with the human rights protection given the fact that South Africa is not a military state but a democratic state. We all know what happened when SANDF members were deployed during the Covid-19 pandemic National Lockdown Level 5 to enforce the lockdown regulations in 2020. Human rights violation was a result of SANDF deployment. This submission makes reference to the killing of [Mr Collins Khosa](#).

1.2

Building on the above, in this section it is only mentioned that the SANDF is responsible for the borderline and should be informed, for example, of smuggling activities across the borderline or if a person is suspected of crossing border illegally. CoRMSA submits that this explanation or emphasises does not explain or set out the SANDF roles and responsibilities. It is recommended that this policy must be supported by an annexure on both the SAPS and the SANDF roles and responsibilities at the borderlines to ensure the efficient movement of person and goods with no abuse of power, corruption and prejudices. This is in keeping with the Constitution of South Africa: *The Constitution states that South Africa is a sovereign and democratic state that is founded on the advancement of human rights and an accountable, responsive and transparent system of governance as part of its values. The system of government in South Africa before 27 April 1994 amongst others, resulted in a secretive and unresponsive culture in both public and private bodies which often led to the abuse of power and human rights violations. It is in this regard that section 32(1) of the Bill of Rights in the Constitution, provides for the right of access to information held by the state; and any information held by another person that is required for the exercise or protection of any rights.*

1.3

CoRMSA is concerned that the word “**poor control and weak management**” is vaguely used and not quantified in this draft policy. Using these words with no quantification on a national policy can be misleading as it is vague and subject to interpretation. . CoRMSA submits that the DHA must set out clearly what is meant by “**poor control and weak management**”.

Chapter 3.

3.1

CoRMSA welcomes the idea of establishing OSBPs where vehicles, goods and people stop only once for border processing formalities with negotiated bilateral agreement from both countries. CoRMSA believes that if this practice is done in a manner that respects enforces the policy which means respecting the human rights of every person and respecting their human dignity., it can play a critical role in facilitating and encouraging all SADC Member States to sign and ratify the “Protocol on the Facilitation of Movement of Persons within SADC (2005)”. CoRMSA believes that this may lead to fast-tracking the process of developing the Regional Migration Policy Framework in order to promote regular, safe and orderly migration. The Migration Policy Framework will outline key strategies and actions for regional response, as well as the roles and responsibilities of various actors in migration governance and also assist SADC Member States to align to Global, Continental and Regional frameworks on migration. As tabled before the International Organisation for Migration (IOM) Continental Strategy on Migration in Africa 2020-2024 on 19th October, 2020, by SADC Executive Secretary, Her Excellency Dr Stergomena Tax.

CoRMSA submits that this proposed OSBPs “stop only once border processing formalities” **must not** be turned into a refugee camp or immigration detention holding cells for both the persons migrating and vehicles carrying goods. CoRMSA has learnt through the White Paper on International Migration that the DHA is proposing a move towards an encampment system, the White Paper outlines plans by DHA to construct “Processing Centres” on South Africa’s borders. If these “**stop only once processing formalities**” are turned into a system of encampment, this will lead to gross human rights violation for asylum seekers, refugees, economic migrants and South Africans themselves. CoRMSA recommends that a proper and qualitative consultation and study should be carried out on how these one stop processing formalities will be formulated, costed and function thus avoiding constitutional contradictions and violations therein. Democratically and constitutionally, we all know that there is no room for any sorts of encampment system in South Africa.

3.3

CoRMSA submits that costing and cost sharing of this stop only once for border processing formalities does not make provisions for a situation where the other country refuses to bear the cost for such processing. This is based on the known facts that most of African countries politically, are reluctant or not willing to either discuss nor enter into any bilateral agreements involving migration and human rights or rights of migrants. This is supported by the statement made on the SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC) SADC LABOUR MIGRATION POLICY SADC/ELSJTSCM/1/2013/9 to say that “The Protocol on the Facilitation of Movement of Persons, drafted in 2005 currently provides a regional legal framework on migration in the SADC. Although the protocol has a legal binding mechanism, it has not yet come into force as too few Member States have ratified it to date. The explanation should also provide a clear position on the jurisdiction, political policy powers within countries and mandates between the two countries. Source: https://www.ilo.org/wcmsp5/groups/public/---africa/---ro-abidjan/---ilo-pretoria/documents/meetingdocument/wcms_239821.pdf

The above submission is supported by the remarks made on the SADC’s consultancy to engage individual consultants to develop the SADC Regional Migration Policy Framework and action plan (reference number: SADC/3/5/2/108) stating that “the region needs a comprehensive and cohesive approach to migration policy development and management, considering that the migration portfolio in most Member States is often divided among several ministries, which in some cases hampers effective coordination”. Source: (https://sadc.int/files/8915/9248/3542/RFP_Development_of_Regional_migration_policy_framework_and_action_plan_Final.pdf). Based on this statement, this is a clear indication that within SADC there is lack of well-coordinated political engagement on migration.

Section B:

Chapter 4.

4.3

CoRMSA welcomes under the OSBP objectives the fact that this policy seeks to achieve increased economic integration with neighbouring countries across SADC and the continent. However, CoRMSA reiterates that the DHA must take into consideration submission points 3.1 and 3.3. A comprehensive transparent strategy is needed to coordinate and facilitate this economic integration process within countries and the continent. CoRMSA submits that the Regional Indicative Strategic Development Plan of SADC provides the strategic direction for achieving



SADC's long term social and economic goals. This should also be looked into in conjunction with the SADC Trade Protocol.

4.4.1

CoRMSA reiterates its submission made in point 1.1 above on the question of what is in the “***national interest***”. Over the recent years in South Africa, what constitutes what is in the national interest, is a hotly debated subject especially with respect to country's role in the world's social and economic development. CoRMSA remains adamant that foreign policy development should be guided by our country's Constitution which provides important guiding principles. The Constitution instructs and guides relevant government authorities to base their foreign policy on the values expressed in the [bill of rights](#).

Chapter 5

5.1

CoRMSA supports the **Straddled OSBP Model**. CoRMSA does not rule out the possibility of preferred **Juxtaposed Model**. **CoRMSA raises the following points:**

We refer to points 3.1 and 3.2 above, and submit that these points must be taken into consideration to inform the decision on the most suitable OSBP model that will work for the two or more countries involved. CoRMSA raises concern in this submission with respect to the costing, the issue of political buy-in and transparency in relation to the bilateral or multilateral agreements to be involved therein. This will ensure the harmonisation and coordination of the management of the movement of persons, goods and vehicles within countries involved.

The submission makes reference to the Institute for Security Studies Report on “***Freedom of movement in Southern Africa A SADC (pipe)dream?***¹”: “*There isn't enough political will to advance freedom of movement in Southern Africa, with member states prioritising securitised approaches to border management and governance. They further argued that Decisions and policies on migration must be evidence based, and informed by sound research and analysis*”.

The report makes the following recommendation which is supported by CoRMSA that: In Southern Africa and the rest of the continent, migration management and

¹ Maunganidze, O.A.; Formica, J. Freedom of Movement in Southern Africa: A SADC (Pipe) Dream? Institute for Security Studies (ISS): Pretoria, South Africa, 2018; p. 24

governance should be primarily viewed as a developmental and socio-economic issue as opposed to a security concern. The report further recommended that SADC member states should improve their data collection means and develop a centralised system where data and information is accessible to relevant government departments². CoRMSA recommends that the DHA take into consideration this report's findings and recommendation in a process of establishing this proposed OSBP.

Section C:

6.3.1. and 6.3.3

CoRMSA recommends that if the DHA is to adopt and implement this policy, an annexure outlining **extraterritorial application of border law enforcement laws** and **extraterritorial application of criminal laws** should be attached to this policy to prevent abuse of power and corruption by the Officers working within the CCZ and OSBP. CoRMSA cites this based on an article done by Eugene Goddard for Southern African's Freight News titled "Truckers crack as corruption fuels Beitbridge tension" of 28 July 2020. Eugene in his article reported that "With trucks on the north-bound line stuck for days waiting to crawl through a notoriously problematic border, squeezed hard by Zimbabwe's decision to implement a dusk-to-dawn 12-hour curfew, allegations have emerged of officers taking bribes to bump trucks to the front of the queue. Bribes can vary from R500 to R1000 - and with the queue not getting any shorter, stretching all the way to Musina, corrupt cops are having a field day 'supplementing' their income". Hence CoRMSA feels strong on its recommendation above. Source: <https://www.freightnews.co.za/article/truckers-crack-corruption-fuels-beitbridge-tension>

CoRMSA also recommend to the DHA to adopt and follow the SADC Protocol against Corruption (2001) seeks to 'promote and strengthen the development, within each Member State, of mechanisms needed to prevent, detect, punish and eradicate corruption in the public and private sector in addressing and curbing corruption at the OSBP.

6.5.2.

CoRMSA welcomes the inclusion of the following categories of person to be welcomed through the PoEs:

- Citizens and permanent residents

² Ibid

- Visitors and tourists
- Traders or business persons
- Students and academics
- Migrants workers
- Asylum seekers and refugees

However, CoRMSA submits that “**statelessness persons**”, unaccompanied and separated children be included in the list of categories or persons to be welcomed through the PoEs.

6.5.3

On Cross-border clearing agents, CoRMSA recommends that clearing monitoring mechanism be put in place to monitor and scrutinise all clearing processes to be conducted by all cross-border clearing agents to promote free and anti-corruption clearing process. See points raised on **6.3.1. and 6.3.3.**

6.6.2

On **collecting and sharing of traveller’s information**, CoRMSA strongly submits that information on Asylum Seekers and Refugees be kept confidential to protect the identity of those who have fled their own government to seek protection from other countries. This should be done in accordance with the Refugee Act 130 of 1998 and its regulations including international agreement and treaties therein.

Chapter 7:

7.3

CoRMSA recommends the inclusion of the **Refugee Act 130 of 1998** and the **South African Citizenship Act 88 of 1995** under the list of changes to existing legislation. CoRMSA believes that these two pieces of legislations forms and plays an integral part in migration, identifications and protection of persons in South Africa.

Lawyers for Human Rights endorsed these submissions.



End of submission.

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