



SUBMISSION ON OFFICIAL IDENTITY MANAGEMENT POLICY

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 & Strategic Management at oimpolicy@dha.govt.za

28th February 2021



1. Background:

Consortium for Refugees and Migrants in South Africa (CoRMSA/the Consortium) is pleased to make this submission on the **OFFICIAL IDENTITY MANAGEMENT POLICY**. 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 OFFICIAL IDENTITY MANAGEMENT POLICY

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

The abbreviation "DHA" and the word "Department" refers the Department of Home Affairs on this submission.

The words in "**Bold**" are the one CoRMSA making submission on.

CoRMSA cautiously welcomes the vision of DHA of integrating the National Population Register (NPR) as it is deemed outdated and only data stored are limited to citizens and permanent residents. NPR will be integrated into a secure National Identity System (NIS), which will store particulars of all persons, citizens and non-citizens who are within the territorial jurisdiction of the country.



In making the submission below, CoRMSA acknowledges that the DHA is currently operating without an approved identity management framework and no proper registration of all persons, citizens and non-citizens. Even if they have documentation they are not well captured in the system.

Below are our submission and comments to the Policy:

Chapter 1:

1.1. The Constitution's provisions are accompanied by the concepts of sovereignty, identity, citizenship, *national security interests* and actively enabling citizen empowerment and economic development.

CoRMSA submits and commends the DHA in quoting the supreme law of the country the "*Constitution*" in the above paragraph. However, the use of the term national security is very broad and openly used in this paragraph without it being defined and explained, there is need to provide a definition of "national security". CoRMSA recommends that the word "**national security interests**" should be defined in line with this policy objective and be included in the glossary list of terms of this policy for easy reference and policy interpretation and to ensure that what constitutes what is in the national security interest" enshrines the ethos and values of the Constitution.

The South African Human Rights Commission on its featured article of 26 June 2018 titled "*SA legislation on migrants takes wrong path*" argued that: "In certain political situations, concepts become securitised, they become about security. Politicians convert agendas and frame them in security language. So, they will frame migration as a threat to national interest." The article further stated that "A lot of these policies are as a result of fear, fear that is being exploited by politicians in order to change legislature and often it has an irrational basis which is why we can question a lot of these policies.". Based on these statements, CoRMSA challenges the DHA to further investigate the relevant use of the word national security in this policy framework. Source: <https://www.sahrc.org.za/index.php/sahrc-media/news/item/1416-sa-legislation-on-migrants-takes-wrong-path>

1.1. (pg.8). And where those looking for economic opportunities and those who claim asylum create a movement of people, *managing migration means minimising risks* while maximising the benefits of migration in terms of knowledge, productivity and trade.

CoRMSA proposes that the risks associated with migration needs to be listed in the same manner the benefits have been highlighted. We also submit that when



the DHA addresses migration risks within the republic it should de-link the risks associated with economic migrants and the forced migrants (asylum seekers and refugees) as their struggles and vulnerabilities (push and pull factors) are not the same. Clustering the categories into one same risk may hinder the DHA chances of developing an effective policy that seeks to address identified policy challenges.

CoRMSA bases its above comments on the research done by *Callixte Kavuro in 2015 titled "Refugees and asylum seekers: Barriers to accessing South Africa's labour market"* which states that: More often refugees and asylum seekers are confused with economic migrants and the distinction between these two groups is progressively blurred by politicians. Logically, refugees and migrants are distinguished for the purpose of effectively responding to their different needs. Hence CoRMSA is making this submission for DHA to address the needs of forced migrants and economic migrants separately. Source: http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S2077-49072015000100012

1.2. However, as the NPR is outdated and only data stores are limited to citizens and permanent residents, it will be replaced by an inclusive and secure National Identity System (NIS). The NIS will store the particulars of all persons, citizens and non-citizens who are within the territorial jurisdiction of the country. The NIS will be the backbone of identity management and cut across the social, political and economic spheres.

CoRMSA commends this initiative because currently there is no proper and effective systems in place within DHA that stores or registers the particulars of non-citizens even if they have or possess documentation. CoRMSA welcomes the fact that all persons regardless of their nationality statuses but are within South Africa will be taken into consideration and integrated into the NIS system.

CoRMSA would like to draw the attention of the DHA to the meeting discussion and outcomes of the Portfolio Committee on Home Affairs Meeting on HANIS & Automated Biometric Identification System (ABIS); Bosasa contract at Lindela, with Minister that took place on 05 March 2019. The NIS, NPR and other related systems were discussed at length at this meeting especially the issue of the Automated Biometric Identification System (ABIS) and that the NIS would have functionalities to meet future plans for electronic visas and other services such as biometric based identity verification to private and public sectors. Source: <https://pmg.org.za/committee-meeting/28025/>.

While digitalisation is a progressive step, CoRMSA submits that DHA should put in place mechanisms to ensure that digitalisation does not leave other vulnerable groups such as, asylum seekers, refugees and stateless persons. The NIS should have functionalities that would be used to meet Home Affairs future plans,

including electronic visas and other services such as biometric based identity verification to private and public sectors.

Chapter 2:

2.2. Root cause analysis

For instance, there is a practice, especially in borderline communities, where birth certificates of deceased children are sold to foreign nationals. This happens when the death of a child is not reported to the DHA.

CoRMSA is worried and concerned on the above allegations and submits that, based on the above claim, it would be more beneficial for DHA to quantify the information before communicating to the general public and interested parties. DHA should provide evidence based arguments on how identity theft happens and how many cases have been recorded so far. Statements or narratives like this one can be very dangerous to the general public as it may be interpreted or paint a picture that foreign nationals are criminals or they are more involved in criminal activities than progressive activities such as economic and social development. CoRMSA recommends that this statement or narratives be revised as it misleads and prejudices. Such statements should not form part of a policy document. In its current form it is unsubstantiated. Law enforcement agents need to take the necessary measures to arrest people suspected of such criminal practices.

Chapter 4:

4.3. Repositioning programme

Establish and maintain a secure and efficient system of immigration management that is used strategically to *minimise risks and maximise the benefit of immigration.*

CoRMSA welcome the above suggestion and policy plan to maximise the benefit of migration and minimize the risks from all angles. DHA should when addressing this take into consideration points raised above on 1.1 (pg8) on segregation of risks and benefit between economic migrants and forced migrants. CoRMSA further submits that DHA should take into consideration that migration in South Africa is primarily managed by the Refugee Act of 1998 and the Immigration Act of 2002 and their amendments including the White Paper on International Migration. And any policy that is being developed should be in line with these two laws. DHA should therefore, include the list of risks and benefits of migration.

Chapter 6: Policy framework

6.3. Governance

CoRMSA welcomes the provision of user privacy to ensure that the service user is protected. This is because some of the service users will be forced migrants such as refugees and asylum seekers whom their information should be at all-time kept confidential. CoRMSA proposes that there should be more clarity on informed consent. The statement should include: Individuals must be informed whenever their data is processed, for what purpose, and by which means. If systems are not clearly explained especially to vulnerable communities such as asylum seekers refugees and migrants, they may abandon the process.

Chapter 7: Policy analysis and options

7.1 Principle 1: Ensuring universal coverage for individuals from birth to death, free from unfair discrimination

This requires practitioners to identify and mitigate legal, procedural and social barriers to enrol in and use identity systems, with special attention to poor people and groups who may be at risk of exclusion for cultural, political or other reasons (such as women and gender minorities, children, rural populations, ethnic minorities, linguistic and religious groups, persons with disabilities, migrants, the forcibly displaced and stateless persons).

CoRMSA submits that the above paragraph be revised to include; asylum seekers, refugees, statelessness, unaccompanied and separated children.

7.1.1 Lack of birth registration for all

CoRMSA welcomes the proposed policy options of registering every birth that takes place in the country, irrespective of the status of the parents.

CoRMSA welcomes DHA's suggestion that, there has to be a stronger cooperation between the DHA and the Department of Health on birth notification and birth registration, with a reasonable presence of the DHA services at the facilities of the Department of Health where births occur. CoRMSA agrees with this proposal because it will ensure that all births regardless of nationality statuses are recorded and registered accordingly. The process will also allow Department of Health and DHA to work collaboratively for efficient birth registration services. In some cases, the lack of resource capacity and constraints of the administrative systems, and weak cooperation between the Department of Health and the DHA contributes to unintended exclusion of birth registrations.

iv. The identity number of a child must be processed on the basis of biographic information and linked to their parents' identity numbers and mother's biometric data.

CoRMSA submits that this section should be revised to cater for undocumented and stateless mothers. DHA should also put in measures to ensure that this process does not compromise or pose a threat of arrest and detention to undocumented mothers.

v. When possible, the biometrics of a child must be collected at birth. A facial photograph must be taken for manual identification when needed. Children must be reregistered when they reach age five with ten fingerprints and iris and facial photographs.

CoRMSA proposes that, DHA should put in place mechanisms to ensure that their branches are well resourced for this process. Further, CoRMSA raises concern that biometrics of a child evolves as the child grows. CoRMSA submits that, this process needs to be reviewed to ensure that there is no compromise in collecting biometrics both at birth and at 5 years.

Equally, CoRMSA contends that, how will ensuring that the iris or foot of a 5-year-old when captured will prevent identity theft following registration?

On reregistration, CoRMSA, proposes that, there is need for DHA to clearly explain the process of reregistering children at 5 years old. The cost implications of this should be taken into consideration. The travel and hardships associated with this especially when children live with grandparents in remote areas.

7.2 Principle 2: Removing barriers to access and use of IDs, and removing disparities in the availability of information and technology

Consideration should be given to subsidising or waiving fees for poor and vulnerable persons. The indirect costs of obtaining identification – including fees for supporting documents, travel costs, and cumbersome administrative procedures – should also be minimised. For example, ID-related services should be available online and should routinely visit remote communities.

CoRMSA is in agreement with the DHA's position on subsidies for poor and vulnerable persons. CoRMSA proposes that, the categories of vulnerable persons should be specified which should include; asylum seekers, refugees, migrants, separated and unaccompanied migrant children and stateless persons. And this should not be subjected to a means test.

7.2.1 Removing barriers to access and usage

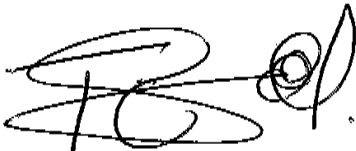
i.i. Replacements for lost or damaged cards should be charged on a sliding scale based on the number of replacements, with exemptions being available to persons with disabilities, the poor, senior citizens, *children below age*, victims of natural disasters and persons who lost their cards as a result of being a victim of crime.

CoRMSA proposes that the statement “children below age”, should indicate the exact age being referred to in this case. The specification of “age” will provide a clear indication instead of making assumptions.

This submission is endorsed by the:

Lawyers for Human Rights.

End of submission.



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