

IN THE HIGH COURT OF SOUTH AFRICA
NORTH GAUTENG DIVISION, PRETORIA

Case No:32323/2022

In the matter between:

ALL TRUCK DRIVERS FORUM AND ALLIED SOUTH AFRICA Applicant

Inre:

HELEN SUZMAN FOUNDATION 1st Applicant

and

MINISTER OF HOME AFFAIRS 1st Respondent

THE DIRECTOR - GENERAL OF HOME AFFAIRS 2nd Respondent

**NOTICE OF MOTION:
ATDFASA APPLICATION JOINDER AS RESPONDENT**

KINDLY TAKE NOTICE that the Applicant, All Truck Drivers Forum and Allied South Africa ("ATDFASA"), intends to make an application to be joined as a Respondent in the above matter and will therefore seek an order in the following terms:

1. That All Truck Drivers Forum and Allied South Africa ("ATDFASA") be admitted as a Respondent in this matter.
2. That ADTFASA be granted leave to file the necessary affidavits.

3. Any further and/or alternative relief the Court might deem necessary.

KINDLY TAKE NOTICE that the Founding Affidavit of **Mario Khumalo** together with necessary annexures will be used in support of this application.

TAKE NOTICE FURTHER that the Applicants have appointed the below mentioned Attorneys as their attorneys of record to receive and accept all processes in this matter (here set forth an address referred to in rule 6(5)(b)) at which he will accept notice and service of all process in these proceedings.

TAKE NOTICE FURTHER that if you intend to oppose this application you are required to:

- (a) Notify Applicants' Attorney in writing within fifteen (15) days by e-mail at mattorneys@telkom.net. And further file your opposing affidavits, if any.
- (b) And within fifteen (15) days after you have so given notice of your intention to oppose the application, to file your answering affidavits, if any; and further that you are required to appoint in such notification an address referred to in rule 6(5)(b) at which you will accept notice and service of all documents in these proceedings.

If no such notice of intention to oppose be given, the application will be made without further notice.

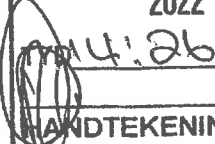
THUS, DONE AND DATED AT PRETORIA ON THIS THE 27 OF SEPTEMBER
2022.


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**TO : THE REGISTRAR OF THE ABOVE HONOURABLE COURT
NORTH GAUTENG, HIGH COURT**

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AND TO : THE MINISTER OF HOME AFFAIRS

The first Respondent

909 Arcadia Street

Pretoria, 0001

c/o State Attorney, Pretoria

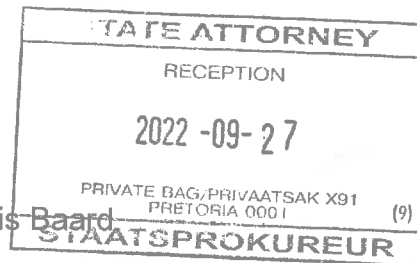
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Corner of Thabo Sehume & Francis ~~Baard~~

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**AND TO : THE DIRECTOR-GENERAL OF THE DEPARTMENT OF HOME AFFAIRS**

The Second Respondent

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**AND TO : SIGOGO ATTORNEYS**

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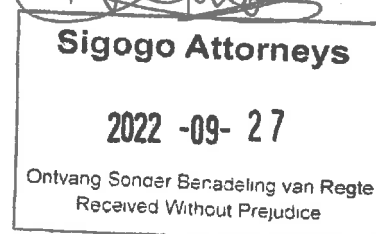
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IN THE HIGH COURT OF SOUTH AFRICA
NORTH GAUTENG DIVISION, PRETORIA

Case No:32323/2022

In the matter between:

ALL TRUCK DRIVERS FORUM AND ALLIED SOUTH AFRICA Applicant

In re:

HELEN SUZMAN FOUNDATION 1st Applicant

and

MINISTER OF HOME AFFAIRS 1st Respondent

THE DIRECTOR - GENERAL OF HOME AFFAIRS 2nd Respondent

APPLICANTS' FOUNDING AFFIDAVIT:

ATDFASA APPLICATION FOR INTERVENTION

I the undersigned;

MARIO KHUMALO

Do hereby make an oath and state that:

J/c MK

1. I am the Spokesperson of All Truck Drivers Forum and Allied South Africa ("ATDFASA") and duly authorised to depose to this affidavit on behalf of ATDFASA. I have the necessary authority to depose to this affidavit and to launch these proceedings on behalf of ATDFASA. I attach herein the resolution as Annexure "AT1".
2. The facts contained in this affidavit falls within my personal knowledge and they are to the best of my ability and recollection both true and correct.
3. I have access to the documents and files which are relevant to this matter. In order to prepare this affidavit, I have perused the documents and files pertaining to this matter.
4. To the extent that this affidavit contains submissions of legal nature the same has been made on the advice of the legal representatives of the Applicant.

INTRODUCTION AND OVERVIEW:

5. ATDFASA is a non-profit organisation which is registered as such with registration number: K2020760307.
6. ATDFASA is an organisation whose mission and vision is, amongst others, to promote truck driving as a professional sector to optimise and open job opportunities. Amongst others, ATDFASA aims to make

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sure that no undocumented workers are involved in the trucking industry.

7. It is therefore ATDFASA's view that the Zimbabwean Exemption Permits (ZEP) and their predecessors are unlawful and were unlawful from the beginning and should have never been granted at all. It is ATDFASA's view that there was no legislative authority for the Minister of Home Affairs to have extended such permits and/or dispensation.
8. It is further ATDFASA's view that the existence of the ZEP's and their predecessors contributes and continues to contribute in having illegal and undocumented truck drivers employed in the Republic. Such situation will be exacerbated if the said unlawful Zimbabwean Exemption Permits are to be continued or indefinitely extended. ATDFASA therefore has interest in this case and should therefore be admitted as a party.
9. Once admitted ATDFASA will make submissions to the effect that:
 - 9.1. The Zimbabwean Exemption Permits have contributed to the proliferation of illegal, undocumented drivers in the trucking industry in the Republic.

- 9.2. The Zimbabwean Exemption Permits and their predecessors were never lawful as there was no legislative authority to grant the same.
- 9.3. The extension or perpetual extension of the said Zimbabwean Exemption Permits will be unlawful.
10. To the extent that the Helen Suzman Foundation seeks an order that has the effect of extending the ZEP's beyond June 2023, ATDFASA opposes such an order. ATDFASA should therefore be admitted as the Respondent in this matter.

THE APPLICANT: ALL TRUCK DRIVERS FORUM AND ALLIED SOUTH AFRICA:

11. The Applicant in this application for intervention is All Truck Drivers Forum and Allied South Africa ("ATDFASA"). ATDFASA is a voluntary organisation that exist on its own, separate from its members and is able to sue and be sued in its own name. The Constitution of ATDFASA is attached herein as Annexure "AT2".
12. In its mission and vision ATDFASA aims to be part of the negotiations at National Bargaining Council for the Road Freight Logistics, Labour Sectors and Labours Laws in the trucking industry to implement a safety working condition in the workplace. It further aims to promote

truck driving as a professional sector to optimise and open job opportunities.

13. Relevant to this proceedings ATDFASA aims to make only citizens of South Africa get jobs, own businesses, and properties. It further aims to make sure that there are no undocumented workers in the trucking industry.

14. The objectives of ATDFASA are:

14.1. To build a healthy working environment in the trucking industry special on truck drivers.

14.2. To build a safety environment on all road users by reducing accidents on roads and compliance of everyone involved with the trucking industry.

14.3. To make sure all the workers from all the sectors or fields in South Africa are protected from nepotism, cheap labour and harassment from employers.

14.4. To build the economy of South Africa for the people of South Africa.

14.5. Nothing for us without us, South Africa for South Africans.

15. The membership of ATDFASA is open to all the people of the Republic of South Africa irrespective of their political background.

ATDFASA STAKEHOLDER INVOLVEMENT:

16. In the fulfilment of its mandate and objective ATDFASA has been effectively interacting with the stakeholders mainly in the government sector to further its vision and objectives.
17. As early as 2018, the South African road freight drivers started engaging with stakeholders, that is, Employers' Association and the Department of Labour through the National Bargaining Council for Road Freight and Logistics Industry. In this regard I refer to a letter written by Cowan-Harper Attorneys on 06 March 2018 to the National Bargaining Council for Road Freight and Logistics Industry wherein the truck drivers associations recorded their dismay on the apparent preference of foreign nationals as truck drivers by South African employers. According to ATDFASA the employers in the trucking industry prefers to employ foreign drivers as opposed to South African drivers.
18. It was recorded in the said letter that the Employment Equity Act, the Immigration Act, the Broad Based Black Economic Empowerment Act and the Employment Services Act all collectively favour the employment of South African citizens ahead of foreign citizens where

there is a South African citizen who have the required requisite skills to perform those jobs.

19. A list of companies who were suspected of employing foreign nationals was forwarded to the Bargaining Council for further investigations. I hereby attach the said letter as Annexure "AT3". The list of companies mentioned in the said letter will be redacted in order to protect their identity especially as the information is more than four (4) years old.
20. A report on the engagements of Ministers with the Road Freight Stakeholders in KwaZulu-Natal gives the outcome of the investigations of the forty-seven (47) companies that were referred to by ATDFASA. Out of those forty-seven (47) companies they were able to inspect thirty-eight (38) companies and could not inspect the others for various reasons. The investigations were, however, not limited to the forty-seven (47) companies that were referred to by ATDFASA. The investigations were wider.
21. The report records the findings as follows:

"The findings indeed confirm that there is a substantial number of foreign nationals employed as truck drivers with some companies having the majority of their drivers been foreign nationals whilst others have lesser number or zero (0) foreign nationals. The most common labour related non-compliances

relate to non-registration of employees with the UIF; failure to declare workers on a monthly basis to UIF; failure to pay the overtime, Sunday work; public holiday rate; and implementation of incentive scheme. Appropriate enforcement notices had been issued and followed up.”

22. Amongst the recommendation, it is recorded that the affected employers be directed to undertake a process of retrenching the foreign nationals who have no valid work VISA's following the due processes in line with the Labour Relations Act. And those employers who maintain that their employees have the correct documentation must submit such documentation to the Department of Home Affairs for validation on or before 30 June 2019.
23. It was further recommended that those South African truck drivers who are unemployed register as work seekers on ESSA database. I attach herein a copy of the said Report on Engagement of Ministers with Road Freight Stakeholders in KZN as Annexure “AT4”.
24. It will also be seen from the said report that whenever there are incidences of truck related riots ATDFASA as a stakeholder participate in stakeholder meetings and forums in order to assist in finding a resolution.

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25. On the said meeting the issue of the Zimbabwean Exemption Permits (ZEP) was raised by ATDFASA. ATDFASA wanted to know which permit is required when a person is under ZEP. And the response from the representative of the Government through Minister Cele supported by the Director-General was that; *“On the issue of ZEP his understanding supported by the Director-General from Home Affairs was that they do not need work permits as the process was started in 2010 to legalise their stay. There is also a similar dispensation for Lesotho. However, there are quotas of 40% that must not be exceeded”*.
26. The fact that no other permit is required for the holders of the ZEP's to be employed as truck drivers fortifies the submission by ATDFASA that those ZEP's were unlawfully in the first place. Truck driving does not fall under critical or specialised list of skills.
27. ATDFASA continues to participate in various stakeholders' meetings mostly including the Government authorities. During June 2022 ATDFASA participated in what is been called a; *“COMPACT BETWEEN MEMBERS OF VARIOUS ORGANISATIONS, STATE DEPARTMENTS AND STATE OWN ENTITIES CONSTITUTING THE TASK TEAM ESTABLISHED BY INTER-MINISTERIAL COMMITTEE ON MIGRATION ESTABLISHED BY THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA, HIS EXCELLENCY MR. MATAMELA CYRIL RAMAPHOSA*; to address challenges within the Road Freight and Logistics Industry.

28. The purpose of the said meeting has been captured as; *“an effort to address the grievances raised by South African truck drivers and to bring to a stop the blockade on national and secondary roads within the Republic of South Africa, which all parties condemn as unlawful and harmful to the economy”*. From the said meeting, the Task Team was established with Terms of Reference and the Implementation Plan. Copies of the said Compact Agreement, Terms of Reference of the Task Team and the Implementation Plan are attached herein as Annexure **“AT5, 6 and 7”**.
29. It will be seen from the terms of reference that ATDFASA is a participating member of this Task Team. The powers and functions of this Task Team included serving as a trucking and public transport industry stakeholder consultative forum on matter relating to road freight matters in the Republic.
30. On the implementation plan, part of the activities involved include the enforcement of the VISA requirements. The outcome thereof being the restriction of the use of temporary VISA's for employment as truck drivers. And further to investigate the issuing of work permits.
31. Further part of the implementation plan was to deal with the validity of foreign driving licences and to identify those foreign licences that are invalid.

32. ATDFASA and other organisations were requested to provide details of companies that they are aware of who are employing foreign nationals. The outcome thereof was for the assessment of drivers to ensure compliance with domestic legislative framework.
33. On its own ATDFASA has held various peaceful picketing demonstrations wherein demands have been made known to the authorities. I attach herein some of the memorandums that were part of the peaceful picketing and demonstrations by ATDFASA members as Annexure "AT8, 9 and 10".
34. On 08 March 2022 National Bargaining Council for Road Freight and Logistics Industry (NBCRFLI) responded to our memorandums of demand. The gist of their response is that the issues of illegal foreigners should be handled by the Department of Home Affairs. I attach herein a copy of the said response as annexure **AT10(a)**.
35. It is quite clear that ATDFASA is an active stakeholder in the truck driving industry and has been quite vocal on the employment of illegal foreigners in the trucking industry.
36. ATDFASA has been particularly successful in getting the authorities to focus on this issue of illegal foreigners being involved in the trucking industry. It quite encouraging to see the Minister of Labour emphasising this issue publicly and declaring that there will be some form of enforcements. In this regard I attach articles in the media with

reference to the Minister of Labour in relation to the issue of employment of foreign nationals.

- 36.1. The first article is; *"SA to Introduce New Quotas Limiting Hiring of Foreign Nationals-here is what you need to know"*. Annexure **AT11(a)**.
- 36.2. The next article is, *"New quotas limit hiring of foreigners in South Africa"*. Annexure **AT11(b)**.
- 36.3. The other article is, *"New quotas for foreigners workers, who will be banned from starting small business in small business sector."* **AT11(c)**.
- 36.4. Another article is; *"Government sends warning to business hiring foreign workers in South Africa."* **AT 11(d)**.
37. The Minister of Labour is not the only Minister who is vocal about the issue of employing foreigners. I would like to refer the Court to the speech of the erstwhile Minister of Finance, Mr. Tito Mboweni, where he commented that the "new" economy that will emerge after the devastation of the Covid-19 Pandemic should prioritise South Africans. That article is attached herein as Annexure "**AT11 (e)**".
38. I further attach herein also various articles from the Minister of Home Affairs reminding us of the applicable legal principles.

39. To demand that employment opportunities in the trucking industry should be given to South Africans is not an unlawful demand. It will be demonstrated hereinbelow the law supports the preference of South Africans over foreign job seekers.

THE LEGISLATIVE FRAMEWORK:

40. **Section 38(1) of the Immigration Act, Act 13 of 2002**, reads as follows:

“(1) No person shall employ-

- *an illegal foreigner;*
- *a foreigner whose status does not authorise him or her to be employed by such person; or*
- *a foreigner on terms, conditions or in a capacity different from those contemplated in such foreigner’s status.”*

41. **Sec 49 (3) of the Immigration Act 13 2002**

“Anyone who knowingly employs an illegal foreigner or a foreigner in violation of this Act shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding one year. provided that such person’s second conviction of such an offence shall be punishable by imprisonment not exceeding two years or a

fine, and the third or subsequent convictions of such offences by imprisonment not exceeding three 5 years without the option of a fine.”

42. **Employment Service Act 2014**

“8(1) An employer may not employ a foreign national within the territory of the Republic of South Africa prior to such foreign national producing an applicable and valid work permit, issued in terms of the Immigration Act.

(2) The Minister may, after consulting the Board, make regulations to facilitate the employment of foreign nationals, which regulations may include the following measures:

(a) The employers must satisfy themselves that there are no other persons in the Republic with suitable skills to fill a vacancy, before recruiting a foreign 30 national;

(b) The employers may make use of public employment services or private employment agencies to assist the employers to recruit a suitable employee who is a South African citizen or permanent resident; and

(c) Preparation of a skills transfer plan by employers in respect of any position in 35 which a foreign national is employed.

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- (3) A regulation made in terms of this section may—
- (a) include any other requirement necessary to implement the provisions of this section which are consistent with the Immigration Act; and
 - (b) differentiate between different categories of visas issued in terms of the Immigration Act and different categories of work.
- (4) An employee who is employed without a valid work permit is entitled to enforce any claim that the employee may have in terms of any statute or employment relationship against his or her employer or any person who is liable in terms of the law.

43. **The Labour Relations Act 66 OF 1995**, section 213 of the LRA defines an 'employee' as:

- “(a) any person, excluding an independent contractor, who works for another person or for the state and who receives, or is entitled to receive, any remuneration; and*
- (b) any other person who in any manner assists in carrying on or conducting the business of an employer.*

44. It is also relevant to consider the provisions of the Constitution of the Republic of South Africa, Act 5 of 2005 (“the Constitution”) which

provides in section 23(1) that everyone has the right to fair labour practices and not only citizens.

45. **BBBEE ACT 53 2003 (BROAD BASED BLACK ECONOMIC EMPOWERMENT).**

“Black people’ is a generic term which means Africans, Coloureds and Indians-

(a) who are citizens of the Republic of South Africa by birth or descent; or

(b) who became citizens of the Republic of South Africa by naturalisation-

(i) before 27 April 1994; or

(ii) on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date”

THE ZIMBABWEANS SPECIAL DISPENSATION:

46. On April 2009, the Cabinet of the Republic of South Africa approved the Dispensation of Zimbabweans Project (hereafter to be referred to as “DZP”), allowing Zimbabwean holders of this special permit to work, conduct business and study in South Africa.

47. It should be noted from the outset, by this Honourable Court, that the DZP was approved by the Cabinet of South Africa with the full knowledge that the recipients of the DZP were already unlawfully present in the Republic, that they had already contravened the immigration Act 13 of 2002 as amended. ~~A copy of a press release issued by the Department of Home Affairs is attached hereto as Annexure "AT12".~~ JK
MK
48. The then Minister of Home Affairs Mr. Melusi Knowledge Gigaba, sought to regularize Zimbabwean nationals residing in the Republic unlawfully, he sought to curb the deportation of Zimbabwean nationals residing unlawfully in the Republic, the former Minister also provided amnesty through the DZP to Zimbabwean nationals that had obtained South African documents by fraudulent means, thereby breaking a number of South African laws.
49. The then Minister of Home Affairs sought to regularize illegal activity perpetrated by Zimbabwean nationals within the borders of the Republic instead of prosecuting them and deporting them to their country of origin as prescribed by South African Law.
50. The said DZP expired and was replaced in 2014 by the Zimbabwean Special Permit (ZSP). The said ZSP was just another unlawful action by the Minister as there is no statutory justification for such.

51. The ZSP expired in 2018 and was replaced by the current Zimbabwean Exemption Permit (ZEP). Again, there was no statutory authority for the Minister to have extended or granted such a permit. The problem is now exacerbated by the fact that this unlawful permit is going to be extended once again.

GROUND UPON WHICH THE ZIMBABWEAN SPECIAL DISPENSATION AND EXEMPTION PERMITS ARE CHALLENGED:

52. I am advised, the advice which I duly accept, that the Immigration Act 13 of 2002 (hereafter to be referred to as the "Act") as amended makes no provision for the so-called special dispensation or exemption permits for illegal foreigners. Neither does any treaty make provision for such. If there are no legal grounds upon which the special dispensation or exemption permit has been entered into between the Republic of South Africa and any illegal foreign national, then there can be no justification to enter into such an agreement.
53. There is no legal basis for a special dispensation or exemption on the grounds of nationality. The Minister of Home Affairs issued special exemptions to illegal Lesotho and Zimbabwean nationals. It would appear that the decision to grant the impugned exemptions was based on a misinterpretation of section 31(2)(b) of the Act, I refer the Court to Minister Gigaba's press release at the announcement of the

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Zimbabwean Special Dispensation dated 12 August 2014, is attached
herein as Annexure "AT13".

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54. Section 31(2)(b) of the Act states as follows:

"Upon application, the Minister, as he or she deems fit, after consultation with the Board, may, under terms and conditions determined by him or her - grant a foreigner or category of foreigners the rights of permanent residence for a specified or unspecified period when special circumstances which justify such a decision...."

55. I am therefore advised that this section properly construed, applies to an **individual or a category** of foreigners such as critical skills, investors, students, etc. Foreign nationals who would have lawfully entered the Republic through any of the 72 ports of entry and **not nationality** - as is the case with the Zimbabwean dispensations.

Minister's actions are ultra vires

56. Most importantly, I am advised that section 31(2) (b) of the Act provides that: *"upon application, the Minister may..... grant a foreigner or category of foreigners the rights of permanent residence... when special circumstances exist which justify such a decision...."* This provision does not, however, find application in the case of illegal foreigners,

which the Act defines as “foreigners who are in the Republic in contravention of the Immigration Act 13 of 2002 (as amended).

57. A proper reading of section 31(2) (b) of the Act read with the Regulations suggests that **illegal foreigners** who entered the country unlawfully **do not qualify for special exemptions** contemplated in this section. Yet, former Minister Gigaba stated the following as the “objectives of the Zimbabwean Special Dispensation, to:
- (a) Regularize Zimbabweans residing in South Africa illegally,
 - (b) Curb the deportation of Zimbabweans who were in SA illegally,
 - (c) Reduce pressure on the asylum seeker and refugee regime, and
 - (d) Provide amnesty to Zimbabweans who obtained SA documents fraudulently.”
58. These so-called “objectives” of the Special Dispensation and by extension Exemption Permits are patently unlawful and tantamount to circumvention of the law. Section 42 of the Act prohibits anyone from aiding, abetting, enabling or assisting illegal foreigners, whilst Section 29 of the Act specifies that anyone found in possession of a fraudulent visa, passport, permanent residence or South African identification

document should be declared a prohibited person and does not qualify for admission into the Republic.

59. Furthermore, given the gravity of the offence Section 40(1)(l) of the Criminal Procedure Act 51 of 1977 provides for "anyone who is reasonably suspected of being a prohibited immigrant...in contravention of any law regulating entry into and residence in the Republic" to be arrested without a warrant. Instead of enforcing the law, the Minister deemed it appropriate to assist illegal foreigners who undermined the laws of the land which laws he is required by his oath of office to uphold in defense of the sovereignty of the Republic.

Illegal foreigners are not applicants contemplated in Section 31(2)

60. Section 31(2)(b) of the Act specifically states that, "*upon **application**, the Minister may, under the terms and conditions determined by him grant a foreigner or a category of foreigners the rights of permanent residence for a specified or unspecified period when special circumstances exist which justify such a decision...*". I am advised that to the extent that this section requires a foreigner to submit an application form, specifically Form 47 as per Regulation 28 of the Immigration Regulations of 2014 (or the Regulations), illegal foreigners who entered the country unlawfully cannot be deemed to be applicants, in terms of this section. In other words, they have not submitted Form

47 and obtained the approval of the Minister as contemplated in Section 31(2)(b).

61. Illegal foreigners that have entered the country illegally must be deported as required by Section 32 of the Act, not aided, abetted, enabled or assisted (section 42 of the Act). It is therefore submitted that the provisions of section 31(2)(b) refer to **applicants not illegal foreigners**. An **applicant** is someone who has either submitted application forms whilst still in the country of origin or has legally entered the Republic of South Africa.
62. Additionally, I am advised that Regulation 9(2) (a) specifically states *"any applicant for any visa...must submit his or her application in person to any foreign mission of the Republic where the applicant is ordinarily resident or holds citizenship"*.
63. It is important at this stage to acknowledge that section 31(2) (b) of the Act, pertains to the right to a permit (permanent residence) not a visa (temporary). However, it must be argued that Regulation 9(2)(a) finds application here because at the time of their (first) application for a section 31(2)(b) permit, a foreigner who is not yet admitted into the country is neither in possession of a visa nor a permit. At this point, the applicant is still in their country of origin or residence and exercises the option not to enter the country through a visa, which is the most basic requirements for admission into the Republic as per section 9(4) of the

Act. In this case, the applicant chooses to enter the Republic in terms of a "special permit" issued in terms of section 31(2) (b) of the Act.

64. It follows that such an applicant cannot enter the country until he or she has demonstrated, and the Minister has granted approval, that indeed special circumstances exist for him/her to be granted the rights of permanent residence, even though he/she did not meet the requirements for permanent residence as contemplated in sections 26-27 of the Immigration Act.
65. As for a foreigner who is already in the Republic, Regulation 9(5)(b) states that if he/she applies for a change of status or terms and conditions relating to his or her visa then he/she will provide proof that he or she has been admitted lawfully into the Republic. In this regard, it is critically important to point out that Regulation 9(5)(b) relates to a visa not a permit. However, it is contended that the starting point for a person who is already in the country is to prove that he/she has entered lawfully.
66. Put differently, they must prove that they have been issued a visa. Once this requirement has been met, then an application for section 31(2) (b) permit can be lodged. It therefore goes without saying that section 31(2) (b) of the Act is not open to illegal foreigners.

67. Clearly, Section 31(2) (b) of the Act did not empower the then Minister to issue any special exemptions to any illegal foreigner or group of illegal foreigners, as was the case with the Zimbabwean dispensation. Bizarrely, by his own admission, former Minister Gigaba stated as a condition that the Zimbabwean Exemption Permits did not entitle the holder the right to permanent residence. ~~See an article by Africa News Agency dated 19 January 2017 marked as Annexure "AT14".~~ JK
MK
68. This, it is respectfully submitted, contradicted the very section he sought to rely on for issuing special dispensations. The former Minister was in violation of the law. Section 2(a) of the Act further enjoins the Department of Home Affairs to amongst others **"...remove the pull factors of illegal immigration..."**. It is therefore submitted that the former Minister Gigaba had acted beyond the scope of his powers by issuing special dispensations to illegal Zimbabwean nationals.

Special circumstances

69. It is further noted that in her announcement, another former Minister, Ayanda Dlodlo, on the exemptions for illegal Zimbabweans, failed to disclose whether any **"special circumstances"** existed to justify her decision, as required by section 31(2)(b) of the Act. Her suggestion that the decision to extend the Zimbabwean Exemption Permit will *"greatly...advance the objectives of the National Development Plan... in attracting critical skills into the country"*, must be found to have been absurd.

70. The critical skills visa regime has been liberalized to an extent that unlike other categories of foreigners, those with critical skills are issued with work visas to enter the country even before they secure employment within the Republic - a generous concession indeed considering that even the Exemption Permits require applicants to submit evidence of employment in case of application for work rights. To the extent that the law already provides for this category of foreigners, there was certainly no need for a special dispensation for critical skills.

*Facilitation of movement of persons within the Southern African
Development Community (SADC)*

71. I have also noted that the former Minister Dlodlo posited in her press release that her decision "will help address the flow of labor in the SADC region". It is important to note that Section 2 of the Act enjoins the Minister to promote economic growth through the employment of **needed** foreign labor, exceptionally skilled labor, foreign investment, ...". I am advised that all these considerations are already provided for in the Act as evidenced by the different categories of visa: viz. student, critical skills, business, etc.
72. I have also noted that the Republic of South Africa has already ratified the SADC Protocol on the Free Movement of Persons of 2005 (the

Protocol). There is however nothing in the provisions of the Protocol that require a country to circumvent its own laws. In fact, the Protocol specifies that the rights of permanent residence, amongst others, be granted in line with the national legislation of the member states. Most importantly, the Protocol is not yet in force as it has not been ratified by the requisite number of contracting or consenting states. Therefore, I am advised, the First Respondent cannot even invoke the Protocol to justify unlawful conduct.

Contribution of illegal foreigners in the Republic

73. I have also noted that, at the announcement of the unlawful Zimbabwean Exemption Permit in 2017, the Minister expressed "hope that when it expired in 2021 there would be tangible economic developments *in the Republic*" (*my emphasis*). The former Minister's hope had no basis as she had not provided any evidence that similar dispensations granted since 2009 to illegal Zimbabweans had produced any positive effects for the South African economy. As a matter of fact, official statistics and the empirical evidence shows that the South African economy has been underperforming relative to its trading partners, and most other countries on the continent. For instance, South Africa ceded its position as the leading economy on the continent to Nigeria and Egypt, at positions 1 and 2, respectively, pointing to a decline in economic activity in South Africa.

Unemployment, poverty and scarcity of resources

74. It must also be pointed out that the economic growth rate in South Africa has also been hovering at approximately 0.3% over the last few years, until it reached a stage of negative growth, officially known as technical recession in 2017. At the time of the announcement of the Zimbabwean Exemption Permit, Statistics South Africa had for the first time put the unemployment rate amongst South Africans at unprecedented levels: approximately 27% using the narrow definition and over 35% using the expanded definition of unemployment which takes into account those who have given up the search for work. By comparison, the International Labor Organisation, which defines the measurement standards for work/unemployment, estimates the unemployment rate in Zimbabwe to be around 11%, albeit most work in the informal sector. This contrasts to the high unemployment rate here in South Africa, which accompanies dwindling economic opportunities for South Africans.
75. There is a high probability that the high unemployment rate in South Africa is driven by the unprecedented substitution of local labor by foreign nationals, especially if the expanded definition of unemployment is taken into consideration. The effects of the substitution of local labour by foreign workers are reflected in the recent official statistics released by Statistics South Africa which put the poverty rate amongst South Africans at approximately 55% of the total population.

76. In tandem with these statistics, there is also unprecedented demand for social services, as demonstrated by the crises in housing for foreign nationals (for example the City of Joburg), the demand by foreign nationals for placements of their children in schools and high rates of hospital bed occupancy by foreign nationals, as indicated by the MEC for Health in Gauteng and the Minister of Health, and most recently the MEC of Health in the Limpopo Province. This situation occurs in the context of a constrained fiscus and declining revenue base, as suggested by both the National Treasury and South African Revenue Services. These statistics point to a crisis by any standards. Thus, my submission that the Minister's hope is without factual basis and void of the reality of the socio-economic pressures in South Africa today.

Deportation

77. I am further advised that, the First Respondent has failed to consider sections 32(1) and 42 of the Act which prohibit everyone, including herself, from assisting or abetting illegal foreigners in the Republic unless on humanitarian grounds, and require that illegal foreigners should be deported. Indeed, section 32 of the Act provides that ***"Illegal foreigners shall depart, unless they are authorized by the Department to remain in the Republic pending the finalization of their status"***. In this regard, regulation 30(1)(a) determines that "upon requesting authorization a foreigner who wishes to apply for status

after the date of expiry of his or her visa shall demonstrate in writing to the satisfaction of the Director General that she or he was unable to apply for such status for reasons beyond his or her control". Therefore, a correct reading and interpretation of the regulations make it clear that the Department of Home Affairs can only give authorization to an illegal foreigner who entered the country lawfully in the first instance, that is, issued with a visa, but later failed to renew same when it expired. Put differently, the regulations do not provide for the Department of Home Affairs nor the Minister to authorize an illegal foreigner who entered the country unlawfully to remain in the Republic. Section 32(2) of the Act requires that such illegal foreigners be deported.

78. Zimbabwean nationals who entered legally or were issued with visas but failed to renew same are already catered for within the existing provisions of the law and therefore do not require a special dispensation. The law empowers the First Respondent to exempt a foreigner (not a group of foreigners) from deportation on humanitarian grounds. But this provision requires that each case be dealt with on its merits and that, in keeping with international law, economic circumstances cannot constitute humanitarian grounds. It is on these bases that I respectfully submit that the Zimbabwean "special and exemption permits" granted to illegal foreigners who entered the country unlawfully do not have basis in law and as such the grace period granted to these permit holders cannot stand.

J/c

79. I submit that the former Minister of Home Affairs, Mr. Melusi Gigaba, circumvented the law by creating the first DZP permits and the subsequent permits by misinterpreting section 31(2) (b) of the Act. It then follows that the Minister of Home Affairs cannot be allowed to grant a grace period based on the very same misreading of the same section of the Act.
80. If the so-called political instability and fear of persecution were considerations in these dispensations and permits, then the Minister applied the wrong Act of Parliament. The Refugees Act 130 of 1998 provides for the protection of immigrants who owing to well founded fear of persecution by reason of political opinion, tribe nationality, religion, race, gender or membership of a particular group is outside his country of origin and is unable or unwilling to avail themselves to the protection of that country.
81. To the extent that it can be argued that the Minister considered political situation in Zimbabwe, then the Minister should have used or referred those illegal foreigners to seek the protection of the Refugees Act. The Refugees Act also has its own requirements to be fulfilled. There was no justification at all to circumvent the provisions of the Refugees Act in granting those special permits and/or exemptions.

CONCLUSION:


S/K

82. In conclusion it is submitted that ATDFASA should be admitted as a Respondent in this matter. Once admitted ATDFSA reserves its right to supplement its papers.



DEPONENT

SIGNED AND SWORN BEFORE ME AT PRETORIA BY THE DEPONENT ON THIS THE 27 DAY SEPTEMBER 2022, AFTER HE HAS ACKNOWLEDGED THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT AND REGARDS SAME TO BE BOTH TRUE AND CORRECT AND HAS TAKEN THE PRESCRIBED OATH WHICH HE REGARDS AS BINDING ON HIS OWN CONSCIENCE AND UTTERED THE WORDS 'SO HELP ME GOD'




COMMISSIONER OF OATHS

FULL NAME JULY : KLEINBODI MASEKO

CAPACITY CAPTAIN

AREA : MAMELODI EAST

22694 MARISHANE STREET
MAMELODI EAST

SOUTH AFRICAN POLICE SERVICE
DETECTIVES
2022 -09- 27 
MAMELODI EAST
SUID-AFRIKAANSE POLISIEDIENS

RESOLUTION

Pursuant to an Executive meeting of ALL TRUCK DRIVERS FORUM AND ALLIED SOUTH AFRICA, (ATDFASA) held on 18 September 2022 it was resolved as follows:

- 1 That ALL TRUCK DRIVERS FORUM AND ALLIED SOUTH AFRICA, (ATDFASA), joins the application by Hellen Suzman Foundation v The Minister of Home Affairs under case number 32323/2022 and related cases as a party.
- 2 That Mr Joshua Mashao of M J Mashao Attorneys of Pretoria be appointed as an Attorney on behalf of ALL TRUCK DRIVERS FORUM AND ALLIED SOUTH AFRICA, (ATDFASA) in the above-mentioned cases.
- 3 That Mr Mario Khumalo the spokesperson of the ALL-TRUCK DRIVERS FORUM AND ALLIED SOUTH AFRICA, (ATDFASA) be hereby authorized to attest to affidavit in support of the application.

THUS, DONE AND DATED AT PRETORIA 18 SEPTEMBER 2022.


S NYATHI
GENERAL SECRETARY



CERTIFICATE OF REGISTRATION OF NONPROFIT ORGANIZATION

In terms of the Nonprofit Organisation Act, 1997, I am satisfied that

ALL TRUCK DRIVERS FORUM AND ALLIED SOUTH AFRICA NPC

(name of the organisation)

meets the requirements for registration.

The organisation's name was entered into the register on **17 November 2020**
(date)

Registration number **251-329 NPO**

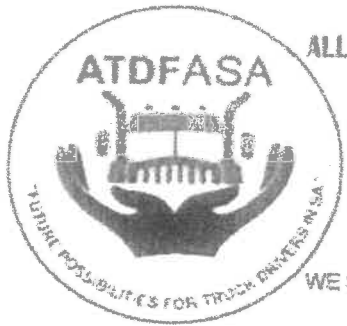
Director's signature

M. Diefenbach

Department of Social



Development



ALL TRUCK DRIVERS FORUM AND ALLIED SOUTH AFRICA
BRING BACK OUR JOBS. SOUTH AFRICANS FIRST

ATDFASA
"FUTURE POSSIBILITIES FOR TRUCK DRIVERS IN SA"

WE SAY NO TO THE TRANSFER OF POVERTY IN OUR COUNTRY

Constitution of All Truck Drivers Forum and Allied of South Africa

Content

1. Name
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3. Body Corporate
4. Objectives
5. Membership
6. Branch
7. Political Affiliates
8. Autonomy
9. Organization
10. The National Executive Committee and Duties
11. Position Duties and Responsibilities
12. Branch Executive Committee
13. Finance
14. Disciplinary Committee
15. Amendment of the Constitution
16. Authority, Jurisdiction, Limitations of the Rules
17. Logo and Letter Head

Constitution of All Truck Drivers Forum and Allied of South Africa

1. Name

The name of the organization will be All Truck Drivers Forum and Allied of South Africa shall be shortened as ATDFASA

2. Vision and Mission

To be part of negotiations at the national bargaining council for the road freight logistic, labour sectors and labour laws in the trucking industry to implement a safety working conditions in the work place.

To be independent partners of government on fighting poverty and eliminating poor trucking standards.

Promoting truck driving as a professional sector to optimize and open job opportunities

To act as an organization not as a union in any case arise to truck drivers

To educate, motivate the youth about opportunities in the trucking industry.

To set a good workmanship On and Off the road between the Driver and the Employer

To make only citizens of South Africa to get jobs, own business, and properties.

To make sure No undocumented workers in the trucking industry

To make sure No foreign nationals working in the work that can be operated by a

The government departments must respect the labour policies and the constitution of the Republic of South and shall enforce the employers to comply with the all labour act.

3. Body Corporate

The organization shall:

Exist on its own right, separately from its members.

Continue to exist even when its office bearer have changed

Be able to own property

Be able to be sue and sued in its own name.

All monies received and collected in the name of the organization shall be vested in the forum itself

The organization may own, purchase, lease, sell or in any other way alienate or deal with both movable and immovable properties. For the purpose of fulfilling the aims and objectives of the forum, and perform all such legal activities authorized by this constitution

4. Objectives

The organization's main objectives are as follows:

To build a healthy working environment in the trucking industry special on truck drivers

To build a safety environment on all the road users by reducing accidents on roads and compliance of everyone involve with the trucking industry.

To make sure all the workers from all the sectors or fields in South Africa are protected from nepotism, cheap labour and harassment from employers.

To build the economy of South Africa for the people of South Africa

Nothing for us without us, South Africa for South Africans

5 Memberships

All the people of the Republic of South Africa can join All Truck Drivers Forum and Allied of South Africa irrespective of their political parties.

The elected representatives of interested groups, from amongst members of the community from within the boundary of the Republic of South Africa shall be eligible for the membership of the organization, and become members on submission of the complete membership forms the Executive Committee of the forum.

No person residing outside the boundaries of the precinct may be, or can remain a member of organization unless such person is on visit outside South Africa.

All the members of the All Truck Drivers Forum and Allied of South Africa must respect the leadership of the forum and the organization at all times.

All the membership must be applied and collected from the office of the forum

All members joining the organization must take part in all the activities of the forum.

All the members must pay their organization fees for their membership.

On resignation of a member, the written letter given a reason of the resignation is required to be submitted to the organization committee within a month.

Any member can be elected to any position on the branch, or national level as long the member qualifies for the position, and be 6 months in the organization as a member in good standing.

No member is allowed to have meetings with companies on behalf of the organization.

No member from any committee is allowed to attend meetings with employers alone, all members of the committee must attend the meetings with employers

Membership shall be ceased to be member of the organization by the following:

In case of death, resignation, expulsion or suspension that membership shall be cancelled.

Failing to attend three (3) consecutive meetings of the organization without a valid reason. After a decision taken by the Discipline Committee.

If a member of the forum has acted contrary to the provisions of the constitution or has acted in a manner which in the opinion of the Executive Committee and other members is detrimental to the interest of the forum after a decision taken by the Disciplinary Committee.

6 Branch

The branch shall be opened with 50 or more members in good standing

The branch can be opened by a member who is within the organization for more than 6 months in consultation with the National Executive Committee

The branch members shall have signed and submit the membership forms before the branch have launched to the National Executive Committee.

7 Political Affiliation

The organization shall in every respect be non-political, non-sectorial and neutral in nature and without prejudice to gender or religion. 7.2 Any Political Party willing to affiliate with the organization, such political party shall come to the National Executive Committee of the forum and that party affiliation shall be discussed by both forum committee and party committee.

8 Autonomy

The All Truck Drivers Forum and Allied of South Africa shall be an autonomous body free to formulate and adopt its own rules and regulations and free to govern itself provided on conflict neither with its purpose nor with the provisions of an act of Government rules. 8.2 Notwithstanding the provisions of Clause 7, the forum may in the person of the National Executive Committee, form affiliations with similar bodies for reasons of expedience in negotiations where the same or similar aims are being pursued, and such periods as they deem fit. 8.3 Any person who does not attend the National Executive Committee Meeting more than three (3) months shall be automatically not be a member of such committee.

9 Organization

The organization shall have the National Executive Committee, Branch Executive Committee of ten (8) members all together, shall vested in the management and administration of the forum and it shall be responsible for fulfilment or implementation of the aims and objectives of organization

The Committees shall be the engine and the image of the forum, and shall be responsible for the solving of all the cases may rise within the organization.

The National Executive Committee shall agree to forward the report to the Forum's Lawyer for any cases may rise.

10 The National Executive Committee and Duties

The Committees shall be formed at the following structure:

The Chairperson

The Deputy Chairperson

The Secretary

The Deputy Secretary

The Treasurer

The Organizer

The Spokesperson

The Coordinator

The members of the Committee shall be elected every three (3) years of the office.

The national committee leadership must work together with a branch committees

No decision can be implemented without any consultation with the branch executive committees and make sure the members on the ground are aware of the decision.

No member of the National Executive Committee must hold meetings with employers without a written invitation from the Branch Executive Committee.

No member of the National Executive Committee must work alone without the executive committee members at all times.

Any member who does not attend the National Executive Committee Meeting more than three (3) consecutive months, the member shall be automatically not be a member of such committee.

No member of the National Executive Committee shall be allow to accept money or any form for the personal benefit using the name of the organization.

Any members of the National Executive Committee that will appear on the certificate of the organization that member must not treat the organization as his or her organization as the organization belongs to its members.

Any member of the National Executive Committee that must be bigger than the organization, and if the member is expelled from the organization, that member have no power to stop or disturb the operation of the organization.

No dictatorship manner that will be allowed in the National Executive Committee members

The quorum at the meetings must be met at all times and shall be chaired by the National Executive Committee Chairperson, and that meeting shall be called by the Chairperson in consultation with the Secretary of the National Executive Committee.

The Executive Committee members shall subject to the provisions of the constitution, also have power to:

To appoint from time to time the sub committees as it may require

To institute or defend illegal proceedings by or against the forum as the case may be.

To open and operate Banking Accounts in the name of the organization, the Chairperson, Secretary, and Treasurer are the management of the account reporting all the activities to the National Executive Committee.

To delegate any duties, or power through any person or organ of the forum in the interest of the forum.

To promulgated regulations and by-laws relating to any matter reasonably ancillary to the constitutions which it consider necessary to achieve the aims and further the objectives of the forum. These by-laws may determine and assign functions, duties and authority.

To add more Additional Members where opening occur from time to time.

The National Executive Committee shall be allowed to receive donations on terms of money or any other donations from the private businesses, or corporate bodies, and from Government. Any such donations shall be subjected straight to the organization for daily activities. The donation shall be received by all members of the National Executive Committee as no one (1) member is allowed to accept or receive the donations alone.

11 Position Duties and Responsibilities

The Chairperson and Deputy Chairperson shall:

Provide quality leadership and further maintains the proper functioning of the structure or committee

Provide support and further supervise the subordinates at all leadership levels as a figurehead of the organization.

Setting agenda for the meeting with the Secretary

Lead the meeting with fairness and quality without fear or favour

Maintain orders and have it restores in cases of organization internal fights.

Do not bring the organization into disrepute or allow any conduct that appears to render the organization detrimentally

Preside over in the all Disciplinary hearings

The Secretary and Deputy Secretary shall:

To ensure that all the meetings are effectively organized, minutes must be taken from all meetings

Maintaining effective records and administration

Communication and correspondence with all the relevant organizations, and shall be the mouth of the organization

Support the Chairperson in ensuring the smooth functioning of the organization

Treasurer shall:

Oversee and present budget accounts and financial statements to the Committee

Fundraising for the organization and funding all the activities of the organization

Present Financial report

Keep all the organization financial records in a safe place.

Organizer shall:

Shall be responsible for organizing selling to the people with a potential to improve their lives under the organization

Assign organization members according to the interest and expertise, to perform the task of the organization as guided by the constitution

Recruit and welcomes new members in the organization

Build new branches of the organization

The Spokesperson shall:

Shall protect the organization aims and objectives in a heart-warming manner

Skilfully sift and all in and out flowing information about the organization

Skilfully erase the blemish and further reclaim the positive image of the organization in the public in causes a damage control.

Shall make a regular announcement as regarded by the organization activities and events

The Coordinator shall:

Shall connect the leadership with all members from spheres of the organization

Shall ensure productivity from all participants to carry out the best interest of the organization

Ensuring the availability of all tools needed for the organization to achieve its ultimate goal.

12 Branch Executive Committee

The Committees shall be formed at the following structure:

The Chairperson

The Deputy Chairperson

The Secretary

The Treasurer

The Organizer

The Spokesperson

The Coordinator

The Branch Executive Committee shall meet at least every two (2) weeks to conduct the operation of the organization.

The quorum at the meetings must be met at all times and shall be chaired by the Branch Executive Committee Chairperson, and that meeting shall be called by the Chairperson in consultation with the Secretary of the Branch Executive Committee.

The Additional Members shall sit and form the quorum of the meeting but not allowed to Chair the meetings.

The Additional Members shall be allowed to report in each and every meeting.

Should both the Chairperson, Deputy Chairperson, Secretary, and Deputy Secretary be absent from any meeting of the Forum, the meeting shall for the purpose of that meeting must appoint someone among themselves to Chair the meeting.

The Branch Executive Committee shall hold meetings with employers for the healthy environment of the members of the organization, the meetings must be hold by all members of the Branch Executive Committee.

The Branch Executive Committee must report all the meetings held with employers to the National Executive Committee by writing.

No money shall be received or collected by any member of the Branch Executive Committee from the employers, as any member found receiving or collecting the money, that member shall face the disciplinary hearing.

The Branch Executive Committee shall open the branch bank account for the operation of the organization, the account shall be monitored by the Chairperson, Secretary, and Treasurer.

13 Finance

The Executive Committee shall regulate, manage and control the finances of the forum by the hand of the Treasurer

Any individual member shall have NO claim on the funds of the organization.

The funds of All Truck Drivers Forum and Allied of South Africa shall be applied to the payments of Lawyers, Expenses of Travel, Airtime, Property Renting, and any purchases directed to the forum in accordance with the constitution of the forum.

No expenditure shall be met from the funds of the forum by a single member, rather than by a resolution taken by a constituted meeting of the National Executive Committee.

The expenditure incurred by any members without a proper authorization shall not be reimbursed by the organization and the legal proceedings will resume against those members.

An audited balance sheet and an income and expenditure statements in respect of each year shall be needed, and the true correct copies must be made available at the National Executive Committee meeting for inspection and an independent Auditor shall be called if needed.

The Auditor shall not be a member of any Committees of All Truck Drivers Forum and Allied of South Africa.

The end of All Truck Drivers Forum and Allied of South Africa financial year shall be the March of every year.

Power of Attorney, Deeds, Contracts, Bills of exchange Cheques, and all other documents that may have to be authorized shall be signed by two (3) signatories from the members of the National Executive Committee which are the Chairperson, Secretary and the Treasurer.

The All Truck Drivers Forum and Allied of South Africa shall not negotiate for, nor go into overdraft and shall not enter into debt of any kind in the name of the Forum.

The Bank of All Truck Drivers Forum and Allied of South Africa shall be any bank that is located within the borders of the Republic of South Africa.

14 Disciplinary Committee

The National Executive Committee and Branch Executive Committee members shall form a Disciplinary Committee. At the first meeting after the General Election Meeting the National Executive Committee must elect the Disciplinary Committee consisting of three (5) members.

The Disciplinary Committee shall be the members of All Truck Drivers Forum and Allied of South Africa until the next General Election meeting.

The Disciplinary Committee members must be part of the decisions and resolutions taken by the Committees.

The Disciplinary Committee shall be always neutral, non-racial, and non-favourable at all time.

Any member appeared in front of the Disciplinary Committee shall be given a written notice of five (5) days for him or her to prepare.

Any member shall appeal the decision taken by the Branch Disciplinary Committee to the National Disciplinary Committee within 14 days from the day of the Branch Disciplinary Committee hearing meeting.

The Disciplinary Committee hearing shall be constituted with a suitable language of both parties.

The Disciplinary Committee shall write a report to the Branch Executive Committee about the findings, and the Branch Executive Committee shall have the option to forward a report to the National Executive Committee depending the merit of the case or a report.

The Disciplinary Committee must sit on judgement of any dispute, if the dispute is unresolved, the National Disciplinary Committee must forward their judgement with a full report to an independent lawyer for further investigation.

If any judgement fails to reach one conclusion, the voting rule over the judgement must be applied, and that voting rule shall reach one collective decision.

All members of the Disciplinary Committee shall respect the members of the organization.

No vulgar language shall be accepted at all times from the members of the organization and any Committee.

The Disciplinary Committee shall not work with any members of the organization and must not share any information and decisions taken by the Disciplinary Committee.

15 AMENDMENTS OF THE CONSTITUTION

The constitution shall be amended at the General Election Meeting

Amendment shall be effected only if two-third or more of the members of the forum who are entitled to be present and vote be in favour of such amendment.

Amendment to the constitution shall only be effected by submission of a written proposal, handed to the Secretary of the National Executive Committee not less than (60) days prior to General Election Meeting.

The National Executive Committee is the only body shall call or conduct the General Election Meeting

The Branch Executive Committee shall write a request to conduct a General Election Meeting to the National Executive Committee if the office duration is expired, and a member of the National Executive Committee shall be present on the meeting as an observer.

16 Authorities, Jurisdiction, Limitations of the Rules

The rules are herein with contained, and termed the standing orders of the organization, are subject to the determinations of the constitution of the forum and shall be applied at all times.

Every member or group of members who should they fail to implement these standing orders, will be guilty of an offence and disciplinary action may be taken against them.

All Truck Drivers Forum and Allied of South Africa stand for all men and woman who are working class in all the employment sectors in the Republic of South Africa.

All Truck Drivers Forum and Allied of South Africa shall operate within the boundaries of South Africa for South Africans both working and not working.

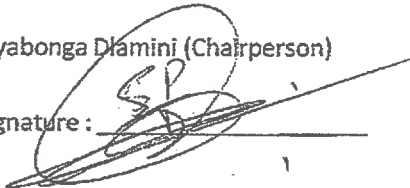
17 Logo and Letter Head

All Truck Drivers Forum and Allied of South Africa shall design and use its own logo and letter head in all correspondence, which is not contrary to its stated aims and objectives and in a manner which is not offensive.

The letter head of All Truck Drivers Forum and Allied of South Africa shall have the stamp of the organization, email address, telephone number of the office of the organization.

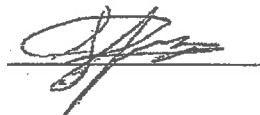
Siyabonga Dlamini (Chairperson)

Signature :



Sifiso Nyathi (Secretary)

Signature :



ANNEXURE

AT3
026-51

COWAN-HARPER
ATTORNEYS

136 Sandton Drive, Sandhurst, Sandton,
Johannesburg, South Africa
PO Box 318, Gallo Manor 2052
Docex 109 Sandton

info@chlegal.co.za

Tel 011 783 8711 / 011 048 3000
Fax 011 784 1641 (Labour Dept)

VAT NO 4640183200

Our Ref:
Mr R Harper / Mr J Horn / A281

Your Ref:
Mr M Ndlovu / Ms S Naidoo / Mr G
Pepenfus / Mr T Lamati

Date:
6 March 2018

AT3

National Secretary

**National Bargaining Council for the
Road Freight & Logistics Industry**

**Attention: Mr Musawenkosi Ndlovu
c/o: Ms Sthembile Shangase
Per email: sthemobile.shangase@nbcrfi.co.za**

**CC: Chief Executive Officer
The Road Freight Employers Association
Attention: Ms Sharmini Naidoo
c/o: Ms Charlene Hadzhiyski
Per email: charlene@rfa.co.za**

**CC: Chief Executive
National Employers Association of South Africa
Attention: Mr Gerhard Papenfus
c/o: Ms Charmaine Sutherland
Per email: charmaine@neasa.co.za**

**CC: Director General
Department of Labour
Attention: Mr Thobile Lamati
Per email: Kgosietsile.Moletsane@labour.gov.za**

Dear Sirs/Madams,

RE: NBCRFI // EMPLOYMENT OF FOREIGN DRIVERS

1. We act on behalf of an association representing South African Road Freight Drivers.
2. For fear of retribution by their respective employers, we are not presently at liberty to disclose the name of our client or the names of the employees that it represents.
3. We are nevertheless instructed by our client that a practice has emerged in the Road Freight and Logistics Industry where foreign nationals are being employed in preference to South African Citizens in circumstances where there are numerous South African Citizens with the requisite skills to perform those tasks.

Experience. Skill. Solutions.

Partners: LP Cowan BA LLB RAL Harper BA LLB K Gantley BA LLB N Coetzer LLB LLM
Senior Associates: JC Kent B.Com LLB T Mulligan LLB LLM PGDLL
Associates: S Bismilla B Proc LLB LLM PGDLL JW Horn BA Hons. LLB NK Naudé BA LLB
Candidate Attorneys: TM York LLB J Fox B.Com LLB MK Rabothata BA LLB T K Matloko LLB

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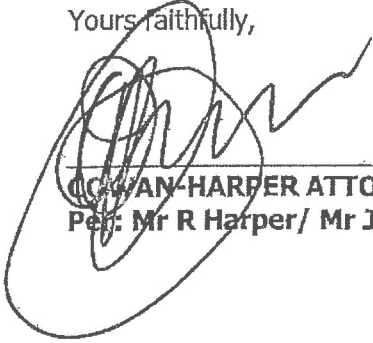
4. At the outset, we wish to point out that that the Employment Equity Act, the Immigration Act, the Broad-Based Black Economic Empowerment Act and the Employment Services Act all collectively favour the employment of South African Citizens ahead of foreign citizens where there are South African Citizens who have the requisite skills to perform those jobs.
5. Consequently, to the extent that there is a practice in the Road Freight and Logistics Industry where South African Citizens are being deliberately excluded from employment, that practice would be unlawful.
6. In this regard, we are further instructed that it is the smaller employers in the industry who, in particular, give preference to foreign drivers and that those employers:-
 - 6.1. dismissively describe South African job applicants as 'lazy';
 - 6.2. employ foreign drivers who often do not have work-permits and/or the requisite truck driving licenses in breach of clause 58 of the Main Agreement concluded at the National Bargaining Council for the Road Freight and Logistics Industry ("the NBCRFLI");
 - 6.3. avoid registering their foreign drivers with NBCRFLI and do not pay the monthly contributions to the NBCRFLI in breach of clause 69 of the Main Agreement;
 - 6.4. avoid paying the mandatory contributions to the funds set up in terms of the Main Agreement including:-
 - 6.4.1. the Sick and Absence Fund;
 - 6.4.2. the Leave Pay Fund;
 - 6.4.3. the Holiday Pay Bonus Fund; and
 - 6.4.4. the Wellness Fund.
 - 6.5. avoid paying their foreign drivers minimum wages in terms of the NBCRFLI minimum wage tables and instead pay wages in cash without properly accounting for those payments on their books;
 - 6.6. avoid registering their foreign drivers with the Unemployment Insurance Fund ("UIF") or the Compensation for Occupational Injuries and Diseases Fund ("COIDA") and thereby absolve themselves from paying UIF and COIDA contributions;
 - 6.7. regularly permit their foreign drivers to exceed the ordinary hours of work prescribed by the Main Agreement;
 - 6.8. avoid paying their foreign drivers overtime, pay for work on Sundays and pay for Night Work in terms of the Main Agreement; and

- 6.9. avoid compliance with the provisions of the Main Agreement related to meal and rest intervals and rest periods in respect of their foreign drivers.
7. It goes without saying that, if our client is correct, it would appear that certain employers within the Road Freight and Logistics Industry are showing disdain for the provisions of the Main Agreement.
8. We are also instructed that this practice is having other adverse effects including that a high number of foreign drivers are involved in accidents *inter alia* due to tiredness (having been required to work in excess of the maximum hours stipulated). In this regard, we understand that on certain well-travelled routes such as the N3 foreign drivers are responsible for in excess of 90% of the truck accidents.
9. Our client has identified the following employers as possible transgressors of the Main Agreement with respect to the employment of foreign nationals:-
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10. Please understand that the information submitted by our client must be subjected to investigation and verification and our letter should not be construed as meaning that the cited employers are necessarily guilty of transgressions.
11. In light of the above, our client humbly requests the NBCRFLI to appoint designated agents to investigate whether the aforementioned employers are employing foreign drivers in breach of the provisions of the Main Agreement and provide us with confirmation in that regard.
12. Our client also requests the NBCRFLI to conduct a broader investigation into the employment of foreign nationals over South African Citizens in general in the Road Freight and Logistics Industry as we have been unable to locate any statistics which deal with the percentage of foreign drivers employed in that industry.
13. Our client wishes this issue to be dealt with in a constructive manner which promotes appropriate governance and the compliance with the relevant legislation.
14. We look forward to your urgent response.

Yours faithfully,



COGAN-HARPER ATTORNEYS
Per: Mr R Harper/ Mr J Horn



labour

Department
Labour
REPUBLIC OF SOUTH AFRICA

REPORT ON ENGAGEMENTS OF THE MINISTERS WITH ROADFREIGHT STAKEHOLDERS IN KZN

AT4

1. MEETING BETWEEN THE MINISTERS AND THE OFFICIALS

The Ministers of Labour, Police, Home Affairs, Transport; Premier of KZN; MECs for Transport; Economic Development, Tourism and Environmental Affairs; and the National Commissioner of Police were briefed on the consolidated report on what has been done as well as the recommendations. Such a report reflected the number of 35 cases reported at SAPS with 63 trucks burnt down, 11 trucks damaged and 91 people having been arrested over and above the 19 trucks that were attacked during the weekend of 1-2 June 2019.

The report also outlined the outcome of the joint inspections conducted at various workplaces as well as the joint roadblocks on the N3. The priority was given to the 47 companies that was on the letter of complaint from ATDF. However the total number of companies on the database of the Bargaining Council is 1870.

- 1.1 Total number of companies inspected: 60
- 1.2 Grand total of employees from inspected companies is 3047
categorized as follows: **RSA = 2244** **Foreign Nationals = 803**
- 1.3 *Out of 47 COMPANIES THAT ARE ON THE LIST FROM ATDF
38 companies could be inspected and indeed were inspected
7 could not be inspected as their offices fall outside of the KZN
(4 based in Cape Town, 2 in GP & 1 in FS) 2 companies could
not be traced.*
- 1.4. The joint operations on the road yielded the following outcomes:

Area	No of trucks stopped	Drivers registered with UIF	Drivers not registered with UIF	Foreign nationals
Mkhondeni	113	38	64	11
Mooi River	73	23	33	17
TOTAL	186	61	97	28

The findings indeed confirm that there is a substantial number of foreign nationals employed as truck drivers with some companies having the majority of their drivers being foreign nationals whilst the others have lessor number or zero foreign nationals. The most common labour related non-compliances relate to non-registration of employees with the UIF; failure to declare workers on a monthly basis to the UIF; failure to pay the overtime, Sunday work; public holiday rate; and implementation of incentive scheme. Appropriate enforcement notices had been issued and followed up.

RECOMMENDATIONS MADE WERE AS FOLLOWS

- The affected employers be directed to undertake a process of retrenching the foreign nationals who have no valid work visas following the due processes in line with the Labour Relations Act .
- Those employers who maintain that their employees have the correct documentation must submit such documentation to Department of Home Affairs for validation on or before 30 June 2019
- RSA truck drivers who are unemployed to register as workseekers on ESSA database
- RTI;SAPS; Bargaining Council Agents and Labour Inspectors be linked to a system/hotline to verify/validate work visas at Department of Home Affairs
- Advocacy on the correct implementation of the special dispensation for Zimbabwe and Lesotho citizens as well as Assylum seekers/Refugees to be intensified
- Joint inspections to continue

The Ministers adopted the report and the recommendations with a special emphasis that :-

- the employers who employed illegal immigrants should not be given timeframes to terminate since such employment is illegal;
- Department of Home Affairs and Department of Labour should provide more inspectors to intensify the inspection and enforcement programme showing the impact within a short space of time e.g. within three weeks;
- there should be an aggressive enforcement on those companies employing 100% foreign nationals and or illegal immigrants;
- Interdepartmental co-ordinating Task Teams led by DDG:Ms A.Moiloa from Department of Labour at national level and DDG: Mr Mnqayi from the Office of the Premier at Provincial level was established to come up with a clear roadmap within two weeks. The Task Team should also include the representatives from the employers and employees associations.

2. Meeting with Truck Operators: Durban Central

The issues raised by the Truck Operators who are members of the Progressive Freight Solutions included the following:-

- They acknowledge that some of their members are not compliant to some extent.
- PSF members seem to predominantly on the list of 47 companies cited by ATDF who has turned to treat it as a hit list
- They have seen the report presented by the Department of Labour on the inspections conducted, but are concerned that the report is not showing the updated status. Some of their members have since moved and changed the profile of the workforce; such updated information is available from PFS.
- PSF members have been instructed to co-operate with the Department of Labour
- There is no deliberate failure to employ SA drivers, some of them is attributed to the level of skills required since some fail the test on basic checks necessary.
- The attacks are affecting even the companies that are not employing foreign drivers. Why are South African drivers are being attacked. There might be a sinister motive behind these incidents.
- Relevant government departments are failing to respond appropriately to these incidents. Senior officials and relevant political leaders have decided to block or not to answer calls for help. SAPS and RTI failed to provide on the road assistance when trucks were attacked on the road.
- The hotspots are known in KZN yet it is disappointing to note that to date there is no deployment of police to prevent this.
- The statement that was made at the Economic Summit on the radical economic transformation might be the root cause for such violence since most of the companies targeted are owned by Indians and ATDF is also threatening

the Indians. A similar situation flared up in the funeral-undertaking business, is this also linked to that?

- There is a network of ATDF members, Officials from the SAPS; Bargaining Council; Department of Transport that are exchanging threatening information on social media e.g. open facebook; WhatsApp. There are voice recordings that can be handed to the Police..
- Foreign nationals have been employed from the year 2000 and are employed across sectors such as construction, hospitality, mining, wholesale and retail; why target only the freight industry? PFS can provide statistics of number of foreign employees per company.
- Insurance companies and SASRIA have stopped paying out as they have run out of funds due to the high number of incidents in KZN. The operators are now left on their own.
- ATDF does not want any Foreign National, not all companies can retrench them as they are protected by Labour Laws: Department of Labour and the Bargaining Council can attest to that.
- Ministers to give directions about the implications. Tell the employers openly if the government does not want the employers to employ foreigners. If that is the directive then it must apply in all sectors and no employer should be charged by the CCMA or Bargaining Council when dismissing such foreign employees.
- SAPS must protect and serve. To date there is no Special Task Team dealing with this crisis. The employers need to hear about the arrests made. The industry is about to collapse. Need visible policing on the road (570km) stretch is not much to be escorted.
- Bring NPA on board to ensure successful prosecution

SUGGESTED WAY FORWARD BY: PFS

- 1) All parties to ensure compliance with the law. PFS had submitted a list of issues needing attention to the former Minister of Labour who never responded. PFS is prepared to resubmit such a list for consideration by the current Minister of Labour.
- 2) Establish a committee with decision makers across Departments to lead and explain / simplify laws e.g. develop template to submit list of foreign labour; verification process for work visas; foreign drivers licences; passport, etc as it is costing employers R85,00 per CV verified through Lexis Nexis
- 3) Establish a Rapid Response Team that will be available 24/7 to deal with the incidents. Confirm the contact people from SAPS where employers or any person can report threats so that squads may be deployed to stop the attacks before they actually take place.
- 4) Communication to the media to be co-ordinated to ensure constructive communication and avoid contradictory statements that may incite violence.
- 5) SAPS to secure the N3 and protect the trucks and drivers within the provincial boundaries. Bring NPA on board to ensure maximum prosecution
- 6) Government to provide funding e.g. from UIF for the skills development for SA drivers.

Premier's Comments

- Members to refrain from finger pointing and shifting blame

- Relations should be strengthened
- The debate on the rapid economic transformation is a reality that should happen within the ambits of the law
- Inspection campaigns have been conducted where businesses in the Retail; Clothing and Textiles Sectors have been subjected to inspection around issues of illegal employees; illicit goods, therefore it is not correct to say only the Freight sector is targeted.
- The government is not encouraging any violence or illegal acts.
- Concur with the need of stepping of policing and setting up a Committee/Task Team.

Summary and way forward by Premier

- SAPS to lead on the issues of stepping up visible policing; rapid response team; and prevention measures .
- Task Team lead by DDGs:DOL and Office of the Premier to include Business representatives and labour representatives is established and must come up with a roadmap within 2 weeks i.e. by 17 June 2019.
- Ensure that all cases are followed up, investigated and arrests are made and convictions.
- Industry must comply: Ensure that there are no illegal immigrants employed.
- Database of truck drivers to be established and skills be developed
- Review and align legislative framework.
- Improve communication therefore joint media statement will have to be issued on what was agreed upon. Rebuild damaged relations and answer or return each other's calls, however refrain from abrasive messages.

3. Ministers meeting with ATDF & NTDF

- The Ministers want to hear the views of the ATDF and NTDF around the crisis where 19 Trucks have been burnt in KZN over this weekend despite progress report on work done on enforcement
- Burning of trucks is not a labour issue but a crime. Can't accept anarchy.
- Arrests will continue as crime is not negotiable. Talks must not be construed to waive any arrests.

Comments from ATDF: Mr. Zungu:

- ATDF condemns and distances itself from the destruction of property. Arrests to continue. However he is concerned that his family has been threatened by the Police who came to serve summons to him as the leader of ATDF
- ATDF only wants to see undocumented foreign drivers to be terminated .Driving is not a scarce skill in SA..
- All they want is that jobs must be given to SA citizens.
- Also need clarity on the ZEP. Which permit is required when a person is under ZEP?

Comments from Mr Mugabe :Cross boarder squad under ATDF:

- Two of the trucks that were burnt belong to the company that he works for. Such company is assisting to avail trucks for training of the drivers belonging to ATDF yet ATDF is being suspected of burning trucks.

- Employer are the ones who were seen blocking the harbour and N3 but were protected by Police yet when ATDF members once tried to conduct roadblocks they were harshly deal with by the Police..
- Namibia and Botswana implemented protective laws but SA is taking too long
- Whilst negotiating the employers keep dismissing SA drivers
- Why are the cameras on the N3 not working to expose culprits.
- He produced proof of fraudulent licences, permits and IDs to show the Police and Ministers that these documents are bought from the street but to date there has been no action from the Police against the business that is producing and selling such fraudulent documents.

Comments from Mr Mongezi Dlamini: ATDF

- Had checked licenses at Clifdale on their own and found 6 Foreigners with No licenses and other with Hazardous Chemicals without any training
- However when the Police came they were harsh on ATDF members yet this weekend the employers blocked the harbor & N3. and nothing was done instead Police assisted them, no arrests.

Comments from NTDF: Mr Biyela:

- Their complaints are the same as ATDF
- NTDF apologizes and distances itself from the acts of burning the trucks
- All they want is the removal of foreign truck drivers. Basic conditions of employment will be discussed later.
- They were told that DOL has never issued any recommendation for a work permit and Home Affairs said there were no work permit issued to truck drivers, yet the report indicates that there are hundreds of foreign drivers. Why can't the government mount roadblocks on all the routes for 3months for 24hours and arrest all those foreign drivers since they have no permits or have fake permits.
- They were part of a campaign at Mkhondeni where one foreigner produced a SA license with a different ID No. than passport number but Police did not act..
- Big question when are foreign drivers stepping down from the SA trucks.
- Drivers voted for this government so that there may be continuity therefore the campaign must continue

Comments from the Ministers

- Minister Nxesi: wanted clarity on the meeting with the Department of Labour as to what resolutions were taken and whether the ATDF was part of the union or Bargaining Council.
- Premier Zikalala indicated that since DoL had presented the report which suggested that illegal immigrants had to be retrenched and the inspection campaign will continue; the burning of trucks should not have continued.
- MEC Dube – Ncube wanted to know whether the presentation from DOL was clear and acceptable to the ATDF and NTDF.

- Minister Cele: urged the ATDF and NTDF to call for the stopping of the attacks and burning of trucks whether they know or do not know who the culprits are. On the issue of ZEP his understanding supported by the DG from Home Affairs was that they do not need work permits as the process was started in 2010 to legalize their stay. There is also a similar dispensation for Lesotho. However there are quotas of 40% that must not be exceeded. The recommendations that were agreed upon with the truck operators were summarized and a joint media briefing was thereafter convened to communicate a common message to the public.
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COMPACT BETWEEN MEMBERS OF VARIOUS ORGANISATIONS, STATE DEPARTMENTS AND STATE-OWNED ENTITIES CONSTITUTING THE TASK TEAM ESTABLISHED BY INTER-MINISTERIAL COMMITTEE ON MIGRATION ESTABLISHED BY THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA, HIS EXCELLENCY MR MATAMELA CYRIL RAMAPHOSA, TO ADDRESS CHALLENGES WITHIN THE ROAD FREIGHT AND LOGISTICS INDUSTRY

In an effort to address the grievances raised by South African Truck drivers and to bring to a stop the blockade of the national and secondary roads within the Republic of South Africa, which all parties condemn as unlawful and harmful to the economy. The parties agree that:

PREAMBLE

The signatories to this compact are cognisant to the fact that the provisions of this Agreement are subject to the Constitution as the supreme law of the country and the rule of law.

PRINCIPLES

The shutdown by long distance truck drivers and violent activities against foreign truck drivers and some South African truck drivers has a history dating as far back as 2018/19. The phenomenon has caused and continues to cause untold hardship, disruption and loss of property and in some instances loss of life in the Republic. This has amongst others been further fuelled by low growth and high unemployment and made worse in 2020 by the COVID-19 pandemic.

In order to achieve some measure of stability within the road freight and trucking industry a Task Team made up State Departments constituting the Inter-Ministerial Committee, the various organisations and associations within the road freight and logistic industry, all the parties hereby agree from the date of signature hereof to the Terms of Reference and the Implementation Plan and its activities attached hereto as annexures "A" and "B" respectively that we will all be working from as a blue print and a guide to all our future engagements henceforth.

Under activity 11 of the Implementation Plan consideration of other means will be explored in strengthening regulating the road freight and logistics industry which amongst others reviewing the operator card and exploring the operating licence for the industry.

As the signatories, we bind ourselves to this compact and shall ensure that all our members will comply with its provisions, respect the rights of all road users, undertake to pursue its objectives and seek to give effect to its provisions through policy and legislative review and amendments.

Signed at Pretoria on this day 20th June 2022

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M.M

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C.M

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PARTIES

Associations/Unions/ Bargaining Chamber

Name	Representative	Signature
Motor Transport Workers Union	Musa Shabab	
National Bargaining Council for Road Freight and Logistics Industry	Wendy N. Hlati	
All Truck Drivers Forum and Allied South Africa	Siyabonga Dlamini	
South African Transport and Allied Workers Union	Willy Lesivana	



Road Freight Operators

Name	Representative	Signature
Road Freight Association	GAVIN A KELLY	
Positive Freight Solutions Association		
Truckers Association of South Africa	MARY PHADI	
Consolidated Employers Organisation		
National Employers Association of South Africa		

Departments and State Entities

Name	Representative	Signature
Department of Employment and Labour	PP Chabab Mantonu Chabab NY	PP Chabab
Department of Transport	N Makaepea	
Department of International Relations and Cooperation		
Department of Home Affairs	ON BEHALF OF DG Y SIMONS ADRIJANS	
South African Revenue Services		
South Africa Police Service	General Moxosa	

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Cross Border Road Transport Agency	CAROL MADIGAGE	
Road Management Corporation	MONARE MUYAPI	

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NAMP


~~MONARE MUYAPI~~

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ROAD TRANSPORT FREIGHT LOGISTICS TASK TEAM

TERMS OF REFERENCE FOR THE ROAD FREIGHT LOGISTICS TASK TEAM

1. Introduction

- 1.1 The ROAD FREIGHT LOGISTICS TASK TEAM is hereby established.
- 1.2 These Terms of Reference (TOR) set out the framework within which the RFL TASK TEAM will operate and outlines the purpose, structure, processes, procedures, responsibilities and other matters necessary to be considered for the proper functioning of the RFL TASK TEAM.
- 1.3 The TOR are to be approved by the Chairperson of the RFL TASK TEAM after adoption by the members constituting the RFL TASK TEAM.

2. Term

This Terms of Reference are effective from date of adoption and appointment of its members by the Minister and shall continue until the resolution of the Task Team on the completion of its work.

3. Functions and Powers.

The functions and powers of the RFL TASK TEAM are as follows:

- 3.1 Serve as a trucking and public transport industry stakeholder consultative forum on matters relating to road freight matters in the Republic.
- 3.2 Advice and input on the employment of drivers within the road freight and passenger transport in the Republic.
- 3.3 Serve as a coordinating forum for an inter Departmental and sector mouth piece and a feeder to the key Departments on matters relating to road freight and public transport and matters connected therewith.
- 3.4 Provide comments and suggestions on policy proposals to key Departments on matters related to the employment of drivers in the Republic.

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4. **Members**

4.1 The RFL TASK TEAM membership will be composed of two representatives nominated by their respective Organisation, companies to serve on the RFL TASK TEAM from the following Departments:

- a. Department of Employment and Labour.
- b. Department of Home Affairs
- c. Department of Transport
- d. Department of International Relations and Cooperation
- e. ATDFASA
- f. RFA
- g. TASA
- h. NBCRFLI Bargaining Council
- i. CBRTA
- j. RTMC
- k. SARS
- l. SAPS
- m. Motor Transport Workers Union
- n. SATAWU
- o. Consolidated Employers Organisation
- p. National Employers Association of South Africa
- q. Positive Freight Solutions Association

4.2 The RFL TASK TEAM may co-opt any person from the relevant national Departments according to the requirements of the RFL TASK TEAM.

5 **Chairperson**

The RFL TASK TEAM is chaired by the Deputy Director General – ROAD TRANSPORT in the Department of Transport. The following modalities will apply to the chairing of the RFL TASK TEAM:

- 5.1 The Chairperson may designate a standing deputy-Chairperson and session-Chairpersons for meetings where the Chairperson is not able to chair the meetings.
- 5.2 The Chairperson will be responsible for the proper functioning of the RFL TASK TEAM and will report, either in person or through a designated rapporteur, to the Director General or the Minister on all matters pertaining to the execution of the function of the Task Team.

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5.3 The Chairperson may with the approval of the Task Team establish relevant Sub-Committees or Working Group to deal with specific matters, as required by the circumstances of urgency and expertise needed to deliver on a mandate.

6. **QUORUM AND DECISION MAKING**

6.1 The quorum of the Task Team is 50% members plus one of the appointed members;

6.2 A member shall appoint a proxy or alternate to attend a meeting in place of a member who is unavailable.

6.3 For the purpose of a quorum the alternate shall be counted as a member and shall have full voting rights on that occasion. Non-members do not have voting rights.

6.4 The Task Team decisions are reached by consensus of the members present as determined by the Chair, unless a vote is requested by any member.

7. **Operation**

The following procedures are applicable to the operation of the RFL TASK TEAM:

7.1 For the duration of the impasse and torching and or burning of trucks the RFL TASK TEAM will meet as and when determined by the resolution of the meeting or otherwise as proposed by the Chairperson and communicated to members through the Secretariat.

7.2 Meetings will be held in accordance with an agenda prepared by the Secretariat upon directions of the Chairperson in consultation with members, and the agenda of every meeting will be approved at the commencement of each meeting.

7.3 Where expedient and desirable due to the risks posed by COVID-19, remote execution of functions via virtual platforms (from home or other locations) of the RFL TASK TEAM may be implemented in accordance with the directions of the Chairperson. Attendance of meeting virtually remains an option available to members and officials alike.

7.4 Decision of the RFL TASK TEAM are taken on a consensus basis that may be preceded by debate, but where no consensus can be reached, dissenting opinions may be recorded in the minutes.

7.5 Reports of the activities of the RFL JOINT TASK TEAM must be compiled under the direction of the Chairperson by the Secretariat or members requested to do so and approved by the Chairperson before distribution and formal communication to higher order structures.

7.6 The operation of the RFL TASK TEAM is subject to all existing legislation.

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regulations and other Government policies applicable to the safeguarding of information.

8. Reporting and Feedback

- 8.1 The task team will report to the Director General and Minister of Transport.
- 8.2 The Task Team will also report to the Sub-Committee of the Inter-Ministerial Task Team.

9. Committees

- 9.1 The RFL TASK TEAM may establish Working Groups to consider, comment on and advise RFL TASK TEAM on matters referred to them from time to time, and as and when the need arises.
- 9.2 The mandate of the Working Group shall be as determined by the Task Team.
- 9.3 The Working Group shall report back to the Task Team on all those issues.

10. Secretariat

- 10.1 The secretariat of the RFL Task Team is provided by the Departmental Secretariat Services Unit.
- 10.2 The secretariat is responsible for keeping an updated member record with names, Departments, mobile telephone numbers, and electronic mail addresses.
- 10.3 The secretariat will distribute information that was received and is required for consideration of members in accordance with directions from the Chairperson.
- 10.4 The secretariat must keep attendance records, agendas, minutes and a rolling action log of every meeting of the RFL TASK TEAM. Minutes must be distributed to members of the RFL TASK TEAM after completion and approval by the Chairperson.
- 10.5 The secretariat will also keep records (electronically as well as in paper format where no electronic records are available) of all the documents produced, commented on, received and dispatched by the RFL TASK TEAM.

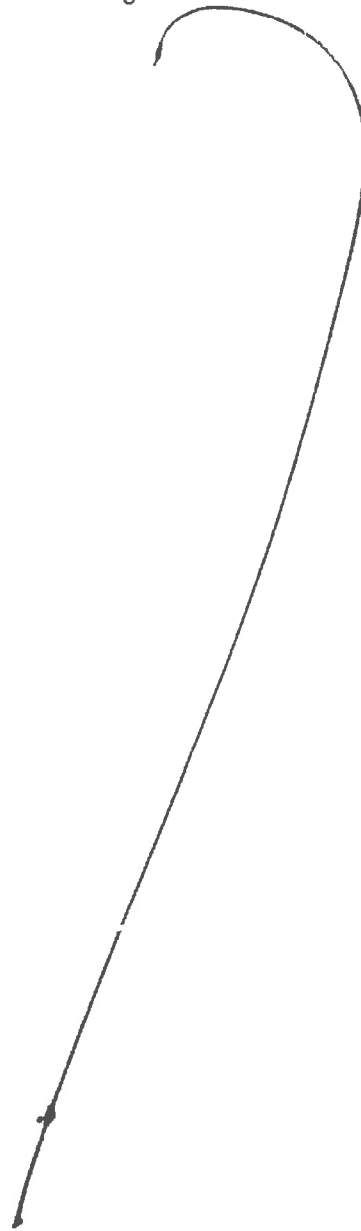
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- N.M.
- M.W.P.
- M.F.
- S.P.
- C.M.
- C.N.

11. AMENDMENT

- 11.1 The Terms of Reference may be amended, varied or modified in writing after consultation, agreement and recommendation of the Task Team.
- 11.2 The TOR may be amended and or changed by the decision and recommendation of the RFL members as highlighted in 6.1 above.
- 11.3 The Notice of the proposed changes to the TOR must be circulated to all the members before the meeting.



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Road Freight Logistics Task Team Implementation Plan

Activity	Expected outcome	Evaluation methodology / assessment tool	Time frames	Responsibility	Implementation	Comments / Inputs
1. Facilitate the appointment of the Task Team	Establishment of a Task Team	Appointment of Task Team members and approved Task Team	0-3 Months	DOT	17 June 2022	Memorandum for nomination of members by their respective organisations already submitted to the Acting Director General for his signature.
Intervention: Enforcement Visa requirements						
Activity	Expected outcome	Evaluation methodology / assessment tool	Time frames	Responsibility	Implementation	Comments / Inputs
2. Enforcement of the VISA Requirement • Issuance of a work permit	Restriction of the use of Temporary Visas for employment as truck drivers. Investigate the issuing of work permits	Checking the authorisations and conditions of VISAS by Traffic Law Enforcement	On-going	DHA And DEL	Immediately	Invite the relevant Department to conduct an information session for the Task Team, on the issuance of work permits
3. Validity of Foreign Driving Licences. • Validity of SA driving licences issued to TRN holders;	Confirmation of Driving licences and PrDP of foreign drivers. Identify foreign driving licences that are invalid	Number of Notices and fines issued. Number of fraudulently issued driving licence. Number of people in possession of driving	30 June 2022	DOT	Immediately	Foreign drivers holding a South African driving licence; DOT to obtain specimen of all foreign driving

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<ul style="list-style-type: none"> Interphase between NATIS, DHA and SARS 		licenses issued with a TRN.			licenses from the SADC region, through DIRCO
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Intervention: Compliance with other legal Framework						
Activity	Expected outcome	Evaluation methodology / assessment tool	Time frames	Responsibility	Implementation	Comments / Inputs
4. Registration with the labour laws ATDF and other organisation to provide details of companies that they are aware of employing foreign nationals.	All trucks transporting goods for gain or on behalf of the third party must register with the Bargaining Council.	Registered companies and employees with the relevant legislative prescripts	30 September 2022	Bargaining Council And DEL DOT	30 September 2022	
5. Registration of operator in terms of section 45 of the NRTA	Deregistration of non-compliant operators / trucking companies to the safety and driver requirements of the NRTA. Proposal to review it to make provisions for an "operator permit/card" to have a "validity period". The rationale for such a provision would be for Government to manage situations where an Operator	Cross checking of information on all the relevant data and systems on the number of employees and compliance. To asses and analyse data on the NATIS system to verify the duration and compliance with the requirements of an operator to the prescripts and to identify gaps in the NRTA.	Medium-Term	RTMC / DOT		
<ul style="list-style-type: none"> Assessment of the requirements for an "Operator Permit/Card" as per the National Road Traffic Act to determine its effectiveness to achieve the objectives to seek 						

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Activity	Expected outcome	Evaluation methodology / assessment tool	Time frames	Responsibility	Implementation	Comments / Inputs
Intervention: Review and align legislative framework						
6. Review of the Traffic Register Number (TRN)	does not follow various other laws in South Africa Restrict the issuance of TRN to the driving of a motor vehicle requiring a Professional Driving Permit (Freight and Public Transport)	Number of applications for TRN's	30 September 2022	DOT	30 September 2022	RTMC to centralise the issuance of TRNs; Amendment of the legislation to restrict the use of the TRN
Intervention: Law Enforcement						
7. Review the Cross-Border Road Transport Legislation	Alignment of the issuance of cross-border permit with domestic legislation	Confirmation by the State Law Advisor on the constitutionally of such an amendment.	Long-Term To be confirmed by CBRTA	CBRTA DOT	On-going	Hold in abeyance for further consideration.
8. Amendment of the National Road Traffic Regulations, 2000	Amendment and incorporation of Regulation 116A into the National Road Traffic Regulations	Approval of the insertion of the enabling legislation in the Bill and subsequent processing of amendment of regulation 116A.	31 March 2023. Develop a proper implementation plan that shall be monitored on a monthly basis	DOT	On-going	Status report on the Bill in August
9. Integrated and Multi-disciplinary joint law enforcement	Compliance with relevant legislations (Labour, Immigration and Transport)	Number of operations conducted	0-3 Months (Short-Term)	DHA DEL DOT SAPS	Immediately through unannounced law enforcement operations.	

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operations conducted	Expected outcome	Evaluation methodology / assessment tool	Time frames	Responsibility	Implementation	Comments / Inputs
10 Driver Capacity and skills (Driving training project)	Enhance the skills of South African employed and unemployed drivers • TETA driver training support program	Driver training concept document developed. TETA to support all the freight operators.	Short / Medium	DoT	Department of Transport-HR	Development of a concept driver training document. Engagement with TETA on the training process. Need to establish a training Academy to provide driver training.
11. Operating Licence/Operator card	Regulation of the freight transport through the issuance of an operating licence; To transform the road freight and logistics industry A comprehensive regulation of road freight transport through the issuance of an operating licence, or the amendment of regulation 267 of the National Road Traffic Regulations, 2000 issued under the National Road Traffic Act, 1996 as to the	Consideration of the proposal to introduce operating licence within the road freight logistics sector, or review of the requirements relevant to be met for an operator to be registered	On-going	Task Team members	Comments by the 30 th July 2022; After a collective decision has been taken by the Task Team. After consensus has been reached by the Task Team	Need to ensure the monitoring and controlling of the Freight logistic sector. To determine if, and to what extent there may be a need to monitor and control the Road Freight and Logistics sector.


S.P. M. *[Signature]* 4 *[Signature]* MF, NM *[Signature]* *[Signature]*

[Signature]

026-74

	requirements relevant to the registration of an operator to be registered					
						

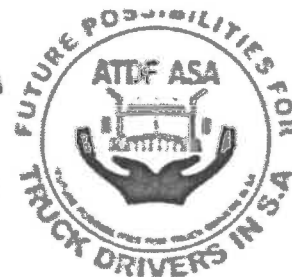
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S.F. m.w. J.S.
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 MUP
 NM.
 MT.com


**ALL TRUCK DRIVERS FORUM AND ALLIED SOUTH AFRICA
BRING BACK OUR JOBS, SOUTH AFRICANS FIRST**



ATDF ASA
FUTURE POSSIBILITIES FOR ALL TRUCK DRIVERS IN S.A.
**WE SAY NO TO THE TRANSFER
OF POVERTY IN OUR COUNTRY**



Dear Mr Musa Ndlovu

We Demand the Following from :

- 1). Truck Driving in the Freight Industry Must be Reserved only for South Africans.
- 2). Zimbabwean permit's grace period must be abolished.
- 3). No Foreigner must be allowed registration at NBCRFLI.
- 4). No work permits must be issued for non Skilled Jobs.
- 5). We Demand 15% increment Living Wage 2022 a Year of Compliance and Action.
- 6). Drivecam (inside camera must be removed).
- 7). No forced vaccinations.
- 8). No company should operate in the Republic without being a member of NBCRFLI.

Kind regards

Sifiso Nyathi (General secretary)

+27 82 488 0462

Received on 28/2/2022

**ALL TRUCK DRIVERS FORUM AND ALLIED SOUTH AFRICA
BRING BACK OUR JOBS, SOUTH AFRICANS FIRST**



ATDF ASA
"FUTURE POSSIBILITIES FOR ALL TRUCK DRIVERS IN S.A."
**WE SAY NO TO THE TRANSFER
OF POVERTY IN OUR COUNTRY**



28-02-2022

Dear Mr Musa Ndlovu

We Demand the Following from :

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- 2). Zimbabwean permit's grace period must be abolished.
- 3). No Foreigner must be allowed registration at NBCRFLI.
- 4). No work permits must be issued for non Skilled Jobs.
- 5). We Demand 15% increment Living Wage 2022 a Year of Compliance and Action.
- 6). Drivecam (inside camera must be removed).
- 7). No forced vaccinations.
- 8). No company should operate in the Republic without being a member of NBCRFLI.
- 9). All sectors to play rull to make sure that the above mentioned we get it done from their work places.

Kind regards

Sifiso Nyathi (General secretary)

+27 82 488 0462

RECEIVED
2022-02-28

2022-02-28
SIGN: [Signature]



ALL TRUCK DRIVERS FORUM & ALLIED SOUTH AFRICA BRING BACK OUR JOBS, SOUTH AFRICANS FIRST

ATDF ASA

FUTURE POSSIBILITIES FOR ALL TRUCK DRIVERS IN S.A.

WE SAY NO TO THE TRANSFER OF POVERTY IN OUR COUNTRY

Dear Employer

The commissioners of Truck drivers in South Africa are very concerned about the high percentage of foreigners in the Truck industries while the citizens of these country are becoming victims of unemployment with all their valid qualifications, these issue is well known by the Truck owners/companies. They sideline the residents of this country due to the big profit they making out of expense of foreigners who are illegally in this country, worse part they being illegally employed by South African companies, corrupting the economy of this country.

According to the Labour Relations Act, there is no percentage of foreigners working in Truck industries, therefore in our several meetings with the Government officials, Home affairs, Department of Labour, Department of Transportation and the Bargaining council. We are seriously sick and tired of Foreigners taking our Jobs in all working fields. We have tolerated this long enough; it is about time we ask this company to get rid of the Foreigners with immediate effect!

We hope the company will comply with the Constitution of this Country and Employ South Africans.

Regards: ATDF.ASA

Contact: Mr Sizwe Gcinisa (chairperson)
073 597 9556

Signature *S. Gcinisa*

Contact: Mr Smally Swadiso (secretary)

+27 71 063 2519

Signature *[Handwritten Signature]*

ALL TRUCK DRIVERS FORUM
ALLIED SOUTH AFRICA

DATE.....

BOLAND BRANCH WESTERN CAPE

CELL 073 575 0579 / 060 612 0270

Email atdfasa.wcboland@gmail.com

Emailaddress:atdfasa.wcboland@gmail.com

ATDF ASA

FUTURE POSSIBILITIES FOR ALL TRUCK DRIVERS IN S.A.

NATIONAL BARGAINING COUNCIL
FOR THE ROAD FREIGHT INDUSTRY
P.O. BOX 21067
TADWOW, 7499
2022-02-20
SIGN: *[Handwritten Signature]*

All Truck Drivers Forum and Allied South Africa
e-mail: sifisonyathi91@gmail.com

Dear Mr Nyathi

MEMORANDUM RECEIVED FROM ALL TRUCK DRIVERS FORUM & ALLIED SOUTH AFRICA (“ATDFASA”)

We refer to the demands as set out in your Memorandum which was handed over on the 28th of February 2022.

Kindly note that the Council’s Executive Committee deliberated extensively on your demands and resolved to respond as follows:

1. Truck driving in the Road Freight must be reserved only for South Africans

The issue related to the employment of foreign nationals is a government matter, hence the Inter-Ministerial Task Team chaired by the Minister of Employment and Labour was established to deal with this matter. Recently, the Minister of Employment and Labour published a draft National Labour Migration Policy (“NLMP”) and amendments to Employment Service Act for public comment. Therefore, this matter falls outside of the jurisdiction of the Council.

2. All foreigners grace period must be revoked

As you know that the issue of whether to grant or revoke grace period for foreign nationals resides with the Department of Home Affairs. Therefore, this matter falls beyond the jurisdiction of the Council.

3. No foreigner must be allowed registration in NBCRFLI

The Council's jurisdiction mainly extends to the regulation and enforcement of minimum wages, terms, and conditions of employment within the Industry as negotiated by parties from time to time. The Council's jurisdiction dictates what it can regulate and, in this regard, and it is therefore not within our powers to determine who can be employed within the Road Freight and Logistics Industry.

4. No work permit must be issued for non-scarce skill job

This is also an issue that resides with the Department of Home Affairs.

5. We demand 15%increase we reject 5%

The Council is a collective bargaining platform, as per the Labour Relations Act 66 of 1995 and has legal processes in place for negotiations regarding industry minimum standards. It is therefore not in a position to consider a demand of any kind from ATDFASA because the latter is neither a registered union, nor a party to the NBCRFLI and therefore ATDFASA does not have *locus standi* to bargain on Industry matters of mutual concern because they are not a registered trade union. Hence, Council and the Minister of Employment and Labour have tried to persuade ATDFASA on several occasions to register as a trade union and apply to be admitted as a party to the NBCRFLI so that it may participate in the Council's official structures.

6. Drive Cam (inside camera must be removed)

As indicated above, ATDFASA does not have *locus standi* to bargain on Industry matters of mutual concern because they are not a registered trade union.

7. No forced vaccinations in the Industry

The Council is empowered only to regulate matters as stipulated in the Main Collective Agreement. The issue related to vaccination is not regulated by the Council. Therefore, the Council cannot dictate to the Industry on how to deal with vaccination related matters.

8. No transport company should operate in the Republic of South Africa without being of NBCRFLI

The Council is only responsible to regulate companies that are transporting goods for gain. Therefore, it is important for ATDFASA to understand that the Council does not regulate the entire transport industry.

9. Clause 12 of Main Collective Agreement to be abolished (Overtime Lieu)

10. Clause 35 of the Main Collective Agreement to be abolished (Load and Kilometres system)

As already indicated above, ATDFASA does not have *locus standi* to bargain on Industry matters of mutual concern because they are not a registered trade union. The Council and the Minister of Employment and Labour have tried to persuade ATDFASA on several occasions to register as a trade union, but they decided not to do so.

11. All sectors to play a role to make that the abovementioned get done from their workplaces

It is important to emphasize that the Council is only responsible for regulating the Road Freight and Logistics Industry where an operator transport goods for gain, in terms of the scope of its jurisdiction. Therefore, Council cannot claim jurisdiction over companies who do not fall within its scope viz those organisations who transport their own goods.

Warm Regards,



Musa Ndlovu

National Secretary: NBCRFLI

Date: 08 March 2022

SA to introduce new quotas limiting hiring of foreign nationals – here's what you need to know

11(a)

21 June 2022 - 08:00

Unathi Nkanjeni Reporter

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Employment and labour minister Thulas Nxesi. File photo.

Image: GCIS

Employment and labour minister Thulas Nxesi says his department is finalising a policy to help regulate the extent to which foreign nationals can be employed in SA.

Nxesi was responding to the blocking of roads by truck drivers on the N3 highway in KwaZulu-Natal after drivers complained about jobs being taken by both legal and illegal foreign workers.

The drivers complained that they were being overlooked by shipment companies in favour of foreign national drivers.

Nxesi said the government was committed to addressing the issues in a way that ensured the long-term viability of interventions, some of which would require a “longer runway”, owing to legislative changes.

He said one of the key ways that government plans to address this is through the proposed National Labour Migration Policy (NLMP).

The policy aims to achieve a balance across several areas, including:

- Addressing South Africans' expectations regarding access to work opportunities, given worsening unemployment and the perception that foreign nationals are distorting labour market access.
- The NLMP, together with proposed legislation, will introduce quotas on the total number of documented foreign nationals with work visas that can be employed in major economic sectors such as agriculture, hospitality and tourism, construction, and so on
- The policy will be complemented by small business intervention and enforcement of a list of sectors where foreign nationals cannot be allocated business visas, and amendments to the Small Business Act to limit foreign nationals establishing SMMEs and trading in some sectors of the economy.
- The department of home affairs is also reviewing legislation and strengthening the Border Management Authority to secure porous borders and to allow for the orderly movement of people and other nationals through ports of entry only.

Nxesi said the department is reviewing major recommendations to determine whether they require regulatory changes.

“The department intends to complete synthesising the recommendations by the end of June this year, and then present a consolidated document at Nedlac for a formal consultation with social partners.”

Employment Services Amendment Bill

Nxesi said the NLMP goes hand-in-hand with a proposed Employment Services Amendment Bill, which provides a policy framework and the legal basis to regulate the extent to which employers can employ foreign nationals in their establishments while protecting the rights of migrants.

He said the proposed amendments to the Employment Services Act aim to limit the extent to which employers can employ foreign nationals in possession of a valid work visa.

The act will codify the obligations of an employer engaging foreign workers, including;

- Only employ foreign nationals entitled to work in terms of the Immigration Act, the Refugees Act, or any other provision;
- Ascertain the foreign national is entitled to work in the Republic in the relevant position;
- Satisfy themselves that there are no South Africans available with the requisite skills to fill the vacancy;

- Prepare a skills transfer plan, where appropriate;
- Employ foreign nationals on the same terms as local workers; and
- Retain copies of relevant documentation.

“We will not tolerate lawlessness in the form of road blocking. We urge law enforcement to unleash the full force of the law on those who use illegal means to express their grievances while undermining the rights of others,” Nxesi said.

ANNEXURE 11 (b)

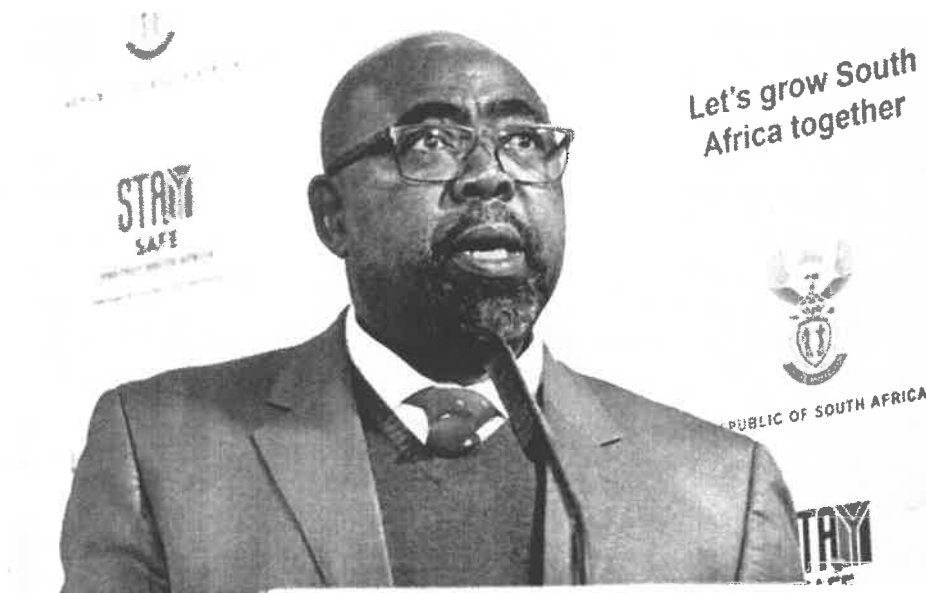
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New quotas to limit hiring of foreigners in South Africa: minister

Staff Writer 17 June 2022



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Employment and Labour minister Thulas Nxesi says his department is in the process of finalising two new documents which will tighten employment laws, including limitations on the hiring of foreigners.

Nxesi was responding to complaints by truck drivers this week which led to a major blockage of the N3 highway. One of the key complaints raised by the drivers is that jobs are being taken by both legal and illegal foreign workers.

One of the key ways that government plans to address this is through the proposed National Labour Migration Policy, Nxesi said. He noted that the policy

Poll

What laptop brand do you currently use?

- Apple
- Dell
- HP

aims to achieve a balance across several areas, including:

- The first is to address South Africans' expectations regarding access to work opportunities, given worsening unemployment and the perception that foreign nationals are distorting labour market access. The NLMP, together with proposed legislation, will introduce **quotas on the total number of documented foreign nationals with work visas** that can be employed in major economic sectors such as Agriculture, Hospitality and Tourism, Construction, etc.
- The NLMP will be complemented by small business interventions and enforcement of a list of sectors where foreign nationals cannot be allocated business visas and amendments to the Small Business Act to limit foreign nationals establishing SMMEs and trading in some sectors of the economy.
- The Department of Home Affairs is reviewing current legislation and strengthening the Border Management Authority to secure porous borders and to allow for the orderly movement of people and other nationals through ports of entry only.
- Government plans to ramp up inspections to enforce existing labour and immigration legislation.

Employment Services Amendment Bill

Nxesi said the National Labour Migration Policy goes hand in hand with the proposed Employment Services Amendment Bill, which provide the legal basis to regulate the extent to which employers can employ foreign nationals in their establishments while protecting the rights of migrants.

The proposed amendments to the Employment Services Act aim to limit the extent to which employers can employ the number of foreign nationals in possession of a valid work visa in their employment," he said.

It will also place several obligations on an employer employing foreign workers, including:

- Only employ foreign nationals entitled to work in terms of the Immigration Act, the Refugees Act, or any other provision;
- Ascertain the foreign national is entitled to work in the Republic in the relevant position;
- Satisfy themselves that there are no South Africans with the requisite skills to fill the vacancy;
- Prepare a skills transfer plan, where appropriate;
- Employ foreign nationals on the same terms as local workers; and
- Retain copies of relevant documentation.

Read: [A message to Ramaphosa from top trucking boss as chaos hits South Africa's most important road](#)

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Ramaphosa calls for patience as South Africans vent anger over load shedding

026-86

ANNEXURE 11 (C)

The Employer Interim Reconciliation Declarations (EMP501) period opens 19 September and closes 31 October 2022.



28 Feb



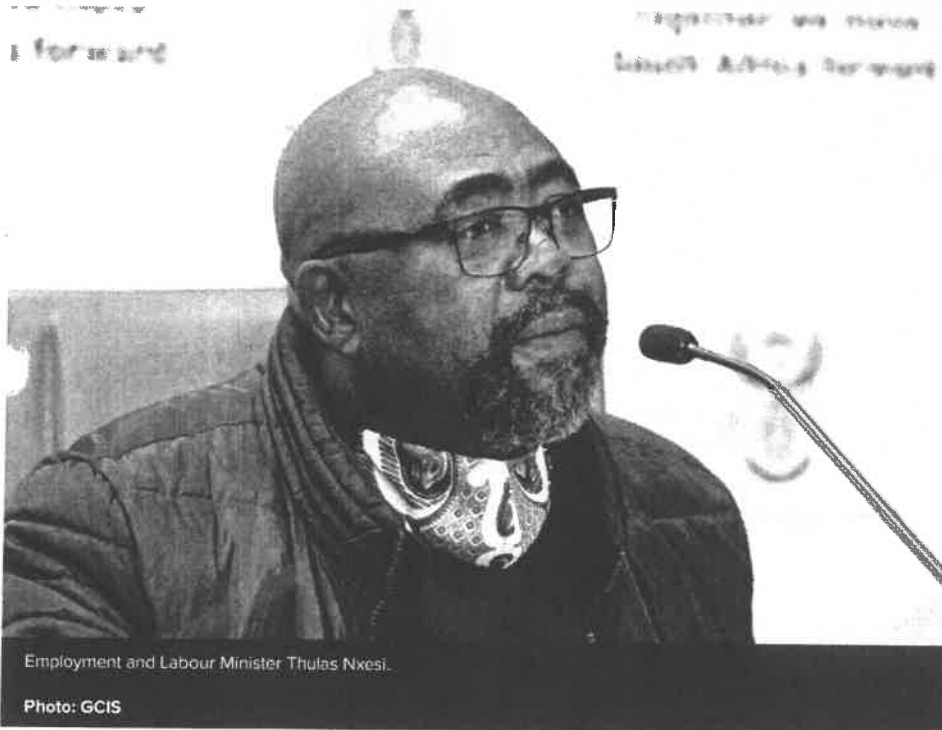
New quotas for foreign workers, who will be banned from starting small businesses in some sectors

fin24 Khulekani Magubane



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- Employment and Labour Minister Thulas Nxesi released the National Labour Migration Policy for public comment on Monday afternoon.
- This will introduce new employment quotas on foreign workers, as well as ban foreigners from starting small businesses in some sectors.
- "Migrants are in particular concentrated in informal sector – a worrying trend," government said in a statement.

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Government will introduce new employment quotas on foreign workers, as well as ban foreigners from starting small businesses in some sectors.

On Monday, Employment and Labour Minister Thulas Nxesi introduced the National Labour Migration Policy (NLMP) and Employment Services Amendment Bill for public comment.

R25
per month

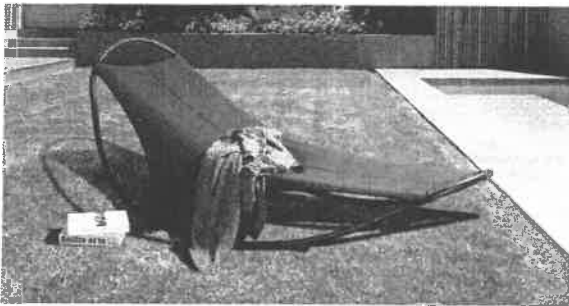


For 12 months, then R75 thereafter.

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The NLMP will introduce quotas on the total number of documented foreign nationals with work visas that can be employed in agriculture, hospitality and tourism, as well as construction, along with other sectors.

The limit on foreign nationals will be set by the minister of labour, and the quotas will differ per occupation, sector or region. Quotas would apply not only to formal employees, but also to anyone paid for any work as well as "platform workers", such as Uber drivers.



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The proposed new legislations will be accompanied by amendments to the Small Business Act, which will limit foreign nationals from establishing small and medium-sized enterprises and trading in some sectors of the economy. This will include a list of sectors where foreign nationals cannot be allocated business visas.

Foreign nationals will include all people who aren't citizens, permanent residents or refugees

There are four million foreign born persons in SA, representing 4% of the population and 7% of the labour force, government said.

"Especially since 2000, the influx largely of undocumented migrant workers has increased dramatically in an ever-expanding range of sectors. Migrants are in particular concentrated in informal sector – a worrying trend," the department of labour said in a presentation.

Nxesi said it was critical for government to act and curb the hiring of foreign nationals in the

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Nxesi released the National Labour Migration Policy for public comment on Monday afternoon,

following an extensive period of consultation with his colleagues in Cabinet.

The policy will now be available for public comment for 90 days, after which it will be referred back to Cabinet with inputs and to Parliament.

The Department of Employment and Labour, Cabinet approved the release of the National Labour Migration Policy for public comment last Wednesday after extensive consultation between government structures, Nxesi and Home Affairs Minister Aaron Motsoaledi.

● **READ | Migrants make up about 7% of SA labour force, Department of Labour tells Parliament**

Nxesi said employers must satisfy themselves that there is no availability of the requisite skills before opting to hire a documented foreign national. He stressed that government would not undermine the rights of foreign nationals in implementing the policy.

"In terms of the law, we can't ban the employment of the foreign nationals. It will not allow us. The Constitution of this country will not allow us to do that. We can limit and control it. That is what we are trying to do," said Nxesi.

Nxesi said along with the migration labour policy, the strengthening of border management policy will be prioritised. He said that his department is stepping up inspections to enforce existing labour and immigration legislation.

Deputy director-general of public employment services Sam Marotoba said it was able to identify "red spots" in migration pressures, including those with special dispensation permits and those who have overstayed in the country.

Marotoba said after conducting research and consultations at government level, the department had to hold cluster and socioeconomic impact consultations with legal advisors.

"This is what took us so long and we are going to embark on public consultation processes. In June we will go to Nedlac and depending on the amount of inputs and comments, we will report to Cabinet and Parliament by July," said Marotoba.

● **READ | OPINION | Researchers studied labour migration in SA. Here's what they found**

He said South Africa would consult with the African Union, the Southern African Development Community and other regional groupings as the policy is implemented. Nxesi said the consultation process on the policy would be concluded within 90 days.

Pressing labour matters

Nxesi said, after a standoff with truck drivers over the inclusion of their profession in the policy, government had been engaging with truck drivers as recently as last week and was told that truck drivers were looking forward to making inputs on the policy document.

In a veiled reference to the conduct of the EFF who have conducted inspections at restaurants looking for expatriate employees, Nxesi warned that illegal inspections of workplaces looking for documented migrants would not be tolerated and that it was "destructive" and "irresponsible" of political parties to do so.

The National Labour Migration Policy and Employment Services Amendment Bill also makes provision for the "reintegration of the South African diaspora into the domestic economy". This includes the developing of "incentives" for South African workers abroad to "impart skills and invest in labour market and other initiatives in South Africa".

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Government sends warning to businesses hiring foreign workers in South Africa

Staff Writer 19 July 2022



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The government is adopting a zero-tolerance stance on the hiring of illegal foreign workers in South Africa, says Ben Makhalemele, deputy director of corporate accounts at the Department of Home Affairs.

Makhalemele, who was speaking at Xpatweb's recent global mobility conference in Johannesburg, said that his department has developed a clear mandate on addressing immigration in South Africa.

Poll

What laptop brand do you currently use?

Apple

Dell

HP

This includes:

- Facilitating and regulating the secure movement of people through the ports of entry into and out of the Republic of South Africa;
- Confirming and providing enabling documents to foreign visitors legally residing within South Africa;
- Enforcing immigration legislation and effect deportations;
- Determining the status of asylum seekers and regulate refugee affairs; and
- Contributing towards realising a positive skills migration trend into South Africa.

Makhalemele said that the department is 'well aware' of the volume of foreigners who are residing in our country illegally, with either fraudulent paperwork or no status whatsoever.

He implored all employers to ensure that all of their expatriate staff are in possession of legally obtained and issued work visas.

He explained that the department is taking a 'no-mercy' stance and cautioned all employers that, should they be found to have illegal expats, they will be fined, and both the owner/chief executive of the company as well as the Head of HR of the company may face criminal charges and imprisonment.

He explained that they are currently working their way through businesses and arresting both the illegal expats, as well as the relevant company representatives; he confirmed that he has personally been part of this operation.

Quota system

Makhalemele's comments come as the Department of Employment and Labour finalises two new documents which will tighten employment laws, including limitations on the hiring of foreigners.

Speaking on the changes in June, labour minister Thulas Nxesi said the National Labour Migration Policy would include limitations on the hiring of foreigners.

He noted that the policy aims to achieve a balance across several areas, including:

- The first is to address South Africans' expectations regarding access to work opportunities, given worsening unemployment and the perception that foreign nationals are distorting labour market access. The NLMP, together with proposed legislation, will introduce **quotas on the total number of documented foreign nationals with work visas** that can be employed in major economic sectors such as Agriculture, Hospitality and Tourism, Construction, etc.
- The NLMP will be complemented by small business interventions and

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enforcement of a list of sectors where foreign nationals cannot be allocated business visas and amendments to the Small Business Act to limit foreign nationals establishing SMMEs and trading in some sectors of the economy.

- The Department of Home Affairs is reviewing current legislation and strengthening the Border Management Authority to secure porous borders and to allow for the orderly movement of people and other nationals through ports of entry only.
- Government plans to ramp up inspections to enforce existing labour and immigration legislation.

Nxesi said the National Labour Migration Policy goes hand in hand with the proposed Employment Services Amendment Bill, which provide the legal basis to regulate the extent to which employers can employ foreign nationals in their establishments while protecting the rights of migrants.

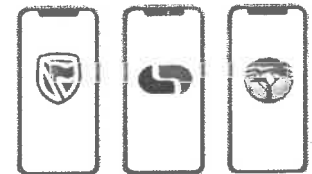
The proposed amendments to the Employment Services Act aim to limit the extent to which employers can employ the number of foreign nationals in possession of a valid work visa in their employment," he said.

It will also place several obligations on an employer employing foreign workers, including:

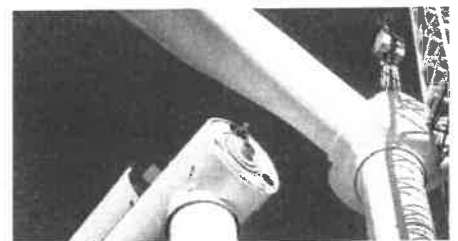
- Only employ foreign nationals entitled to work in terms of the Immigration Act, the Refugees Act, or any other provision;
- Ascertain the foreign national is entitled to work in the Republic in the relevant position;
- Satisfy themselves that there are no South Africans with the requisite skills to fill the vacancy;
- Prepare a skills transfer plan, where appropriate;
- Employ foreign nationals on the same terms as local workers; and
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After Covid-19, we must prioritise locals without discriminating against foreign nationals

City Press

AT 11(e)

Clarence Kwinana
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Finance Minister Tito Mboweni. Picture: Lindile Mbontsi

On April 24, Finance Minister Tito Mboweni outlined how the R500 billion economic support package announced by President Cyril Ramaphosa would be allocated to deal with the Covid-19 coronavirus pandemic.

The package was aptly described by Ramaphosa as an extraordinary budget.

Among other issues, Mboweni declared that businesses and industries had to prioritise the employment of South Africans before they could access financial assistance.

The minister urged companies to allow more South Africans to participate in the economy than foreign nationals, citing businesses such as restaurants, spaza shops, informal trading and so on.

He wanted to see a new economy that put South Africans first.

"The new economy we are getting into after the lifting of the lockdown must answer that question.

"Any establishment wanting to reopen must have a new labour market policy which prioritises South Africans, but does not discriminate against foreign nationals," Mboweni said.

What Mboweni said is standard practice around the world.

His observation comes at a time when it is clear that South Africans have been displaced by foreign nationals in sectors that should otherwise have been protected for the benefit of locals.

We need an adequate and sustainable instrument for poverty alleviation; that is participation in the economy on a massive scale.

This approach was omitted or neglected within the Reconstruction and Development Programme (RDP) at the dawn of democracy in 1994.

The RDP focused on the provision of housing, water, electricity and other amenities, but put less emphasis on the need to locate local communities in township, rural and inner-city economies to create a system of economic redress.

Although social grants have played an important role in alleviating poverty, they were never meant to be a permanent intervention.

We need an adequate and sustainable instrument for poverty alleviation; that is participation in the economy on a massive scale.

This is an opportunity to rectify mistakes made 26 years ago.

These mistakes include:

- Allowing economic migrants into the country, a category not recognised by the UN and other multilateral institutions;
- Allowing jobseekers into the country instead of their applying from their countries of origin, thus coming to South Africa after the job has been awarded;
- Continuous granting of citizenship and placing new citizens ahead of indigenous people in all respects;
- Study permits that automatically metamorphose into work permits, instead of students returning to their countries upon completion;
- The non-protection of the micro economy for the benefit of locals, so that foreign nationals come in at a higher investment level that would create jobs for locals; and
- The absence of processing and refugee centres along the borders that has resulted in undocumented immigrants and economic migrants occupying South Africa's inner cities to live and conduct business.

Failure to address all these issues contributed to rising levels of unemployment, pushing jobless figures to more than 10 million.

This lack of protection of specified levels of the economy, coupled with the lack of enforcement of a rare skills policy, have resulted in local businesses in townships, rural areas and inner cities being dominated by foreign nationals.

This contrasts sharply to other countries, including in Africa, where there are laws that specifically protect the local economy.

Key examples include the Nigerian Enterprise Promotion Decree of 1971, which creates opportunities for Nigerian businesspeople and promotes local retention of profits.

The Ghana National Investment Promotion Centre Act insists on a foreign national investing a minimum of \$1 million (R19 million) as a precondition for participating in the Ghanaian economy.

It also says a foreign businessperson must partner with a local national to be given a licence to participate in the economy.

Ethiopia's Economy Law of 1974 protects small and medium-sized enterprises from being exploited by foreign nationals.

The Pakistan Ordinance 2002 stipulates that only Pakistani citizens may own local newspapers. Sectors such as agriculture, health and power generation are subject to a minimum investment of \$300 000.

While these countries protect some sectors and have stringent entry requirements into their economies, their nationals have a free ride in South Africa.

Foreign nationals should only be considered when there are no more South Africans who can be absorbed

It is time that the provisions of the Immigration Act be adhered to, as they stipulate that a foreign-owned business must be established in the national interest of South Africa, and that a minimum of R5 million must be invested into the book value of the business.

The Labour Relations Act, as amended, also requires that there must be a preponderance of South Africans in every workplace.

The 60:40 ratio of the South African workforce versus the foreign workforce does not help in reducing unemployment.

Foreign nationals should only be considered when there are no more South Africans who can be absorbed.

The Southern African Development Community region should be prioritised in this case.

Figures from Stats SA show that the township economy is dominated by foreign nationals to varying degrees.

In 2018, the ownership of the economy by foreign nationals in various urban and rural areas ranged from 60% to 100%.

Read: South Africans to be prioritised for jobs at China Malls

In other countries, there is a realisation that no one sector can employ all citizens.

Jobs come from the public sector, private sector, artisanal economy and the merchant economy.

Matriculants and graduates who cannot be immediately employed in the public sector and big business should participate in the local economy to eke out a living.

Sitting at home and waiting to be employed one day results in young people getting involved in crime and other social vices.

The problem of more than 10 million unemployed South Africans can be solved through a massive programme of economic participation that goes with laws that protect the economy.

Putting South Africans as anchors of the local economy would broaden the tax base; contribute significantly to GDP; remove young people from the social grant system and redirect those funds to programmes of national development; reduce levels of poverty and crime in many communities; create prosperity in local communities; enable citizens to have cash and food every day; enable them to build their own homes and afford other basic necessities of life; and restore their confidence and dignity as owners of the country.

A prosperous, stable country in the hands of its people would be to the benefit of all.

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