

31 January 2024

TO: THE DEPARTMENT OF HOME AFFAIRS

230 Johannes Ramokhoase Street
Hallmark Building, Pretoria 0001
Attention: Mr. Sihle Mthiyane
Per email: whitepaper@dha.gov.za

Dear Honourable Minister Motsoaledi

“THIS IS HOME” CAMPAIGN-THEMED SUBMISSION ON THE “WHITE PAPER ON CITIZENSHIP, IMMIGRATION AND REFUGEE PROTECTION: TOWARDS A COMPLETE OVERHAUL OF THE MIGRATION SYSTEM IN SOUTH AFRICA”

1. We represent a collective of eight young individuals (in a broader group of 40) who came together at a consultation facilitated by Lawyers for Human Rights (LHR) concerning the White Paper on Citizenship, Immigration, and Refugee Protection published by the Department of Home Affairs (DHA). This submission is our concerted voice, highlighting our concerns and recommendations on the proposed changes to the citizenship, immigration, and refugee framework in South Africa.
2. The White Paper suggests several critical changes in the law including; South Africa’s withdrawal from key international and regional treaties concerning refugees; the “review” of pathways to citizenship - particularly citizenship applications under section 4(3) of the Citizenship Act; and the overhaul of the birth registration laws. These changes threaten our fundamental rights as children and youth, increasing the risk of statelessness and affecting our access to education, health services, and employment. We are concerned about DHA’s lack of consultation and consideration for the impact of these changes on children and youth.
3. The consultation hosted by LHR was based on the “This is Home” campaign initiated in 2021 by LHR, Jesuit Institute South Africa (JI), Jesuit Refugee Service (JRS), Pro-Bono.org, and Terre des Hommes (TdH). The campaign humanises the experience of statelessness and has provided us with a platform to share our stories and struggles for documentation and belonging in South Africa – the only home we know.
4. The stories of Ali, Esther, Hans, Georgiana, and Nephtalie, featured in the campaign, resonate deeply with our own experiences, and represent the struggles faced by children and youth in similar situations.

“When I dropped out of UJ, I immediately started looking for a job to at least help my family. There was a man from a call center who called me after he had received my CV. He said that I should show up for an interview with an ID but after I told him about the document I was using, he said he could only employ me if I have an ID. I wish people could understand that being stateless means that person is not recognised as a citizen in their parents' country of birth or their own country of birth. Statelessness prevents those who are affected by it from participating in society and the reason why I think it is important for this story to be told is so that there's an understanding that stateless people basically struggle pursue their dreams.”

- 4.1. Ali's story:** Ali was born in South Africa to Congolese parents who were refugees. His father later acquired permanent residence. Ali and his sister were eligible to apply for citizenship under **section 4(3) of the Citizenship Act**. Their applications were first submitted via e-mail in May 2022, because the DHA offices refused to take physical copies. Their applications were re-submitted at the DHA offices two weeks later, because the Head Office refused to accept them via-email. In May 2023, they were told that their applications had been rejected. They were not given this decision in writing and presumed it was because their father had acquired permanent residence and LHR had received similar responses. Later in 2023, they visited the DHA office and were surprised to be told that their applications were now approved. They received their IDs in January 2024. While waiting for an ID, Ali had to drop out of university due to not having sufficient funds to pay of his student debt. He was unable to secure any funding through NSFAS because he was not a citizen or permanent residence. While he is now documented, he lost out on many opportunities. There is a need for **clear processes and delays in adjudicating citizenship applications**. (Watch Ali's story here: <https://www.youtube.com/watch?v=9aavjfi41nA>)
- 4.2. Esther's story:** Esther was born in South Africa. Her mother has refugee status and her father has permanent residence. She was joined to her mother's refugee file, but ended up undocumented when she was **de-linked** because she is over 18 years old now. Esther could have applied for permanent residence under her father, but there was an administrative fee of R1 500 and she could only do this if she was under 21. (Watch Esther's story here: https://www.youtube.com/watch?v=0Lg_FRVWsxg&pp=ygUTdGhpcyBpcyBob21lIGVzdGhlcg%3D%3D)
- 4.3. Hans' story:** Hans was born to a Congolese mother and father. His mother passed away when he was young and his father abandoned him In South Africa. Hans does not qualify for citizenship because he was not born in South Africa and he cannot apply for asylum because he arrived in South Africa at a very young age without knowing the reason the family had fled the Democratic Republic of South Africa. His only option to get documented and to get legal status was to apply for an exemption under the Immigration Act. This application was submitted in 2018, but there is no decision to date. This leaves Hans undocumented, unable to fend for himself, and vulnerable to arrest and detention. Hans' life would have been very different if South Africa had a **special dispensation to document unaccompanied or separated migrant children** like him. (Watch Hans' story: <https://www.youtube.com/watch?v=z2QY5hpWwfc&t=1s>)
- 4.4. Georgiana's story:** Georgiana came to South Africa as a child with her mother. She was initially registered as a dependent under her mother's refugee file, but when she turned 18 years old she was de-linked and instructed to make her own asylum application. She followed this process, but the Refugee Status Determination Officer rejected her application. Her application is now stuck with the Standing Committee of Refugee Affairs. **De-linking is contrary to the spirit of family unity as prescribed under international refugee law**. It strips young people of protection because they often cannot motivate independent claims for asylum if they arrive in the country as minor

children. Georgiana has struggled to get funding to pursue her tertiary education because she is classified as an international student. (Watch Georgiana's story here: <https://www.youtube.com/watch?v=Gb3r1nxsj24&pp=ygUWdGhpcyBpcyBob21lIGdlb3JnaWFuYQ%3D%3D>)

- 4.5. Nephtalie's story:** Nephtalie was born in South Africa. She was initially registered as a dependant under her mother's refugee file but was also de-linked after she turned 18 years old. Like Georgiana, she was advised to make her own asylum application which was ultimately rejected and left her undocumented. She later submitted an application for citizenship under **section 4(3) of the Citizenship Act** in November 2019. She only received a decision letter late in 2023 and was instructed to return to the DHA office with a proof of birth form from the hospital she was born in and that both her parents would be required to sign for her ID application. The hospital charged her money for the proof of birth form, and even though she advised the officials that she could only come with her mother they insisted on her father's presence. Eventually, they agreed to assist her. Her ID was issued in January 2024. (Watch Nephtalie's story here: <https://www.youtube.com/watch?v=vH9TI136lCw>)

(LEARN MORE ABOUT THE THIS IS HOME CAMPAIGN BELOW)

5. These stories underscore the urgent need for law and policy reform and reveal various systemic issues. We collectively recommend the following:
- DHA must ensure that children and youth are consulted in law and policy making. This includes making policy documents, such as the White Paper, easily accessible and in comprehensible for children and youth.
 - DHA should discontinue the practice of de-linking youth born to refugees and asylum seekers unless there is a clear process to ensure that they remain documented and with legal status.
 - DHA must draft regulations that provide a clear and transparent process for citizenship applications. These regulations must be in line with the Constitution and the Bill of Rights and provide a more efficient process. While section 28(1)(a) of the Constitution says "every child has the right to a name and a nationality from birth" – we must wait 18 years before applying for citizenship under section 4(3), followed by additional years for awaiting a decision from DHA. This prolonged process leaves us in a state of limbo, without proper documentation or identity, and exposed to various protection risks.
 - DHA must create a special dispensation for documenting unaccompanied and separated migrant children and implement a fee waiver or a means-tested fee for immigration applications (including exemptions) made on behalf of vulnerable children and youth.
 - DHA must ensure access to universal birth registration for all children in South Africa – all children born in South Africa have a right to a birth certificate, regardless of their parents' documentation or legal status. Further to this, DHA must provide digitised birth certificates for non-South African children so that their birth certificates can be replaced if lost or damaged. DHA must waive fees relating to birth registration such as DNA tests.
 - DHA must conduct sensitivity training and capacity building for all DHA officials and adopt child and youth-friendly processes.
 - DHA must improve protection mechanisms for undocumented children and youth and stop arresting and/or detaining young people due to a lack of documentation. There

should be immigration firewalls in schools and health care facilities to protect children and youth from abuse and harassment by immigration and law enforcement officials.

- DHA must retain and strengthen the existing legal safeguards against statelessness (including sections 2(2), 2(3), and 4(3) of the Citizenship Act) and sign onto the two UN Conventions on Statelessness
 - DHA must not withdraw from the UN Refugee Convention or introduce measures to restrict access to education, health care, or employment for young refugees and asylum seekers in South Africa, as such measures would further marginalise an already vulnerable group.
 - DHA must develop a statelessness and nationality determination procedure that enables it to identify stateless children and youth, establish protection mechanisms, and facilitate their access to nationality.
6. We further enclose individual submissions and recommendations from some of our members; GK, ST, LG, BMDS, and HM. Please note that they have opted to remain anonymous for privacy and safety reasons.
 7. We urge the DHA to recall the White Paper and develop a policy that respects the rights and dignity of every child and youth in South Africa. Our experiences are a testament to the urgent need for reform – a need unaddressed in the current version of the White Paper.
 8. We trust that our voices will be heard and our recommendations considered in shaping a more inclusive, child and youth-friendly, and human rights-aligned policy framework.

Yours sincerely,

[For more information or further engagement with this youth collective, please contact Thandeka Chauke at thandekac@lhr.org.za]

" I know no other place "

THIS IS HOME

Stories of belonging and citizenship



LAWYERS FOR
HUMAN RIGHTS



THIS IS HOME

This Is Home is a campaign which documents the lives of inspiring young people in South Africa who are stateless or at risk of becoming stateless.

Imagine having lived in a country for most of your life or having being born here and not being recognised as a citizen. You know no other people, no other city, no other languages, because South Africa is your only home.

What is statelessness?

Statelessness is defined by the UN Convention as **any person who is not recognized as a national under the operation of its laws**. Being stateless essentially means you are not recognised by any state.

How do you become stateless?

A person becomes stateless through no fault of their own. Because of existing conflicts and gaps in citizenship law and practice thereof, many young people in South Africa find themselves stateless or at heightened risk of becoming stateless. An example of this is youth born to refugees and asylum seekers who are not registered in their parents country of origin and if they are not registered in South Africa are at heightened risk of becoming stateless.

How does statelessness affect a person?

People who are stateless or at risk of becoming stateless face compounding barriers in access to social services, including education, health and social protection, they often struggle to open bank accounts, find stable employment and access tertiary education. For many of these young people they know no other place, having either lived in South Africa from a young age or being born here their legal status in the country is uncertain.



“I was born in South Rand Hospital, Johannesburg. My parents were refugees who qualified for permanent residence. I'm a third-year student at the University of Johannesburg (UJ). I have refugee status in South Africa. I'm regarded as an international student at UJ and my refugee status has limited me in terms of obtaining a bursary and finding employment. I was born here and I've never been outside Gauteng. This is home.”

THIS IS HOME



THIS IS HOME

“

I'm Esther, I was born in South Africa. I'm 18 years old and I finished matric in 2020. I'm currently taking a gap year and I can't find a job. I played basketball for my High School and I made it to the district level and my goal was to get to the provincial level but I couldn't because of not having an ID. I want to study Interior Design in order to become a professional interior designer. ”



“

I am 23 years old. I am stateless. What this means is that I do not get the same protection as others. I am not recognised as a citizen in my parent's country of birth nor am I recognised in South Africa. I would like to be a doctor someday. Due to my documentation, this dream seems far-fetched. I have applied for permanent residence but it has been an ongoing journey that seems to bring no result.

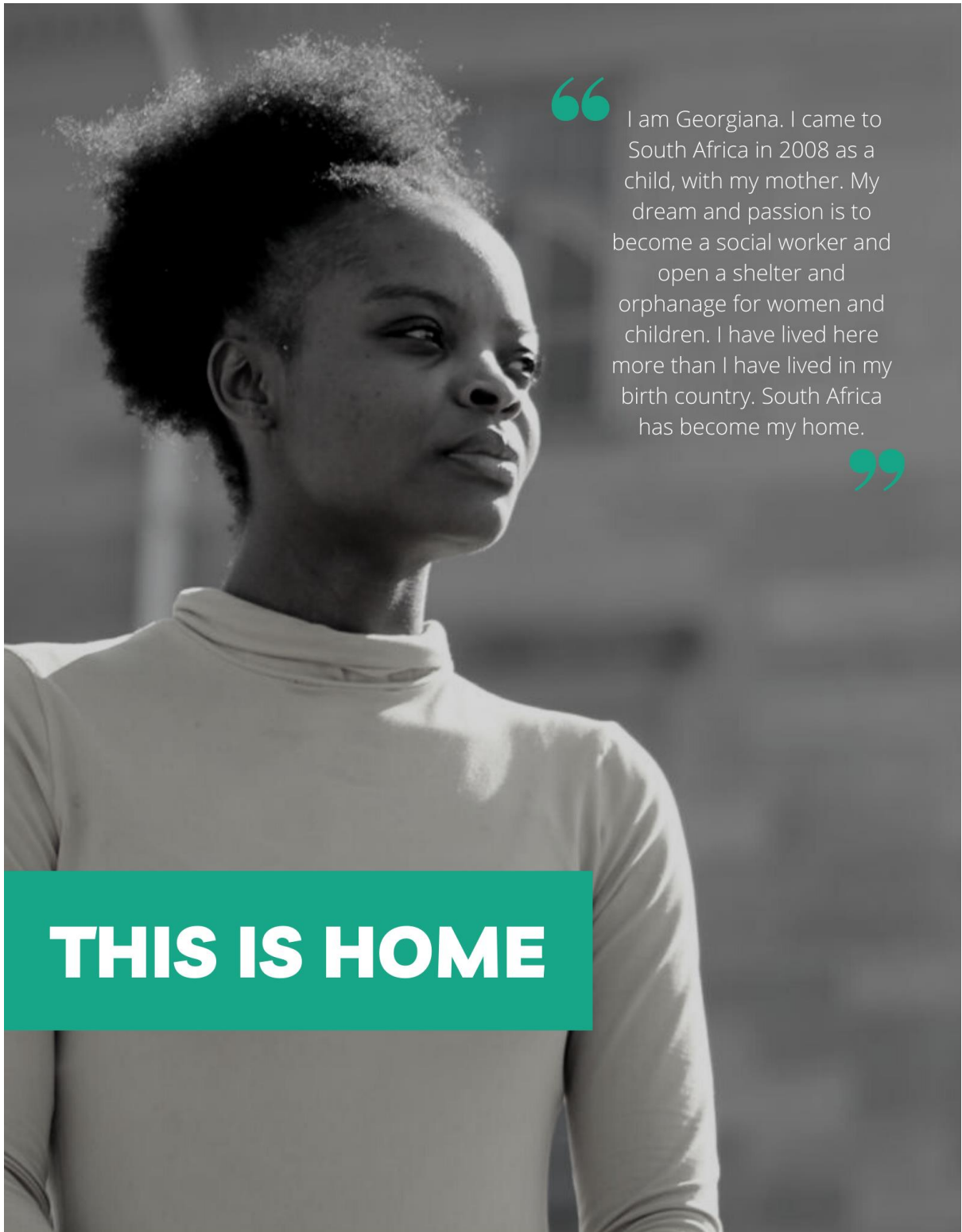
”

THIS IS HOME



LAWYERS FOR
HUMAN RIGHTS





“

I am Georgiana. I came to South Africa in 2008 as a child, with my mother. My dream and passion is to become a social worker and open a shelter and orphanage for women and children. I have lived here more than I have lived in my birth country. South Africa has become my home.

”

THIS IS HOME



LAWYERS FOR
HUMAN RIGHTS



 **terre des hommes**
Help for Children in Need

“ I was born in South Africa. My parents are refugees. I was removed from my parents refugee permit at eighteen and had to make a new asylum application. Without an identity document simple tasks like banking, schooling, having a drivers license and finding employment become impossible. I plead that the only place I have known as home accepts me. ”

THIS IS HOME



LAWYERS FOR
HUMAN RIGHTS



terre des hommes
Help for Children in Need

Ms ST
30 January 2024

To: Department of Home Affairs
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230 Johannes Ramokhoase
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Sihle.mthiyane@dha.gov.za
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Mogabrey.nadassen@dha.gov.za

Dear Madam/Sir

RE: [SUBMISSION] WHITE PAPER ON CITIZENSHIP, IMMIGRATION AND REFUGEE PROTECTION

My name is ST. I am 30 years of age. I was born in South Africa and have lived here my whole life with my family.

Being born in this country and living my entire life here, I comfortably say, this is the only place I call home. When the section 4(3) of the citizenship act was passed it was like an oasis in the desert of life. Living a great portion of our lives without an identity document, at times wondering if it will ever get resolved.

And then one day, finally after 30 years, just like that, it's all over. Holding that green book in your hands for the first time feels so surreal, like a dream. You ask yourself I'm finally normal. Just like everyone else? I can now actually do normal things? I can finally go for my religious pilgrimage. Wow!!! This can't be real!

After getting our approval letter to officially become citizens, we went to the home affairs to fill in the necessary paperwork. The excitement and nervousness that we felt was very long anticipated.

Another family beside us was filling in the same documents, we came to realize that they're in the same boat as us only that they've been struggling for 21 years. The happiness of the father was a sight to see, knowing now that his son will finally be able to study further and perhaps make a difference in the world and provide a better life for them. And then you wonder, how many others are facing the same challenge as us. How many others are going through the same as us, but you take solace and consolation that at least now through the section 4(3) there is hope and many will be seeing the light at the end of the tunnel.

Through the section 4(3), many stranded people have finally found home. Many lost people have finally found the way. Many dejected people have finally found the ray of hope.

On behalf of those who are yet to apply through the section 4(3), on behalf of those who have applied through the section 4(3). And on behalf of those who are unaware that such a solution as section 4(3) exists for them, I implore you, please do not do away with it as countless have benefited. This glimmer of hope section 4(3) is something that some people have been waiting for their entire lives.

Being born in this country and living my entire life here, I comfortably say that this is what I call home, but how great would it be, if others like me could also call South Africa their home.

Sincerely,

ST

Ms LM
30 January 2024

To: Department of Home Affairs
Hallmark Building
230 Johannes Ramokhoase
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0001
Sihle.mthiyane@dha.gov.za
Mamokolo.sethosa@dha.gov.za
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Dear Madam/Sir

**RE: [SUBMISSION] WHITE PAPER ON CITIZENSHIP, IMMIGRATION AND
REFUGEE PROTECTION**

My name is LM. I am 24 years of age. I was born in South Africa and have lived here my whole life with my family.

I approached the Department of Home Affairs for help with obtaining an ID in 2017 after I had turned 18 years of age. I was told that my parents are not South African therefore I could not be considered South African.

I am currently using an Angolan passport, which I was left with no choice but to apply for at the Angolan consulate in South Africa in order for me to be allowed to write my matric exams. I am stateless. I have faced numerous amounts of prejudice including not having any identification number on my matric certificate, being considered an international student in university and therefore having to pay more for my studies as compared to my fellow citizen friends and being unable to qualify for bursaries and this leading to me dropping out of university. I am constantly being sent emails by my current bank to update my information or my bank account will be blocked but unfortunately I have no information to update since Home Affairs has been unable to assist me to date.

At the time of writing, I am still undocumented because Home Affairs has been unable to help and I have constantly been turned away from their offices when I present my A4 hand written birth certificate. As a result of being undocumented I am unable to further my studies. I have been a top achieving student from primary to high school but now I am unable to obtain a simple degree. This has forced me to work piece jobs where I am being paid below minimum wage to make ends meet for myself and my family.

I am in the process of applying for my citizenship by naturalization with the help of the Human Right Lawyers and I intend to make my submission at the Home Affairs located at Harrison by the first week of February. I am requesting and pleading for Home Affairs to accept and process my application with a sense of urgency in mind to allow me to be documented since it is crucial in South Africa. This is Home. South Africa is the only country I have known from birth and I would love to finally be called a citizen and further my studies.

Finally, I give my thanks to the Department for giving me an opportunity to be heard and look forward to further engagements on this matter.

Sincerely,

LM

Mr. BMDS
Mr. NMDS
Mr. KDS
30 January 2024

To: Department of Home Affairs
Hallmark Building
230 Johannes Ramokhoase
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0001
Sihle.mthiyane@dha.gov.za
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Dear Madam/Sir

RE: [SUBMISSION] WHITE PAPER ON CITIZENSHIP, IMMIGRATION AND REFUGEE PROTECTION

My name is BMDS (23 years old), and I, along with my siblings, KDS (27 years old) and NMDS (24 years old), were born and raised in South Africa to foreign parents who entered the country as refugees. Our father, who arrived in 1994, passed away in South Africa in 2019, while our mother, HN, entered in 1995. We all possess unabridged birth certificates that lack identification numbers, and our entire educational journey from Grade R to Grade 12 was completed within South Africa. We have never left the borders of South Africa.

At 23 years old, I find myself unable to pursue further studies, obtain a driver's license, open a bank account, or receive recognition due to the absence of necessary documentation.

Following the stipulated steps for obtaining citizenship by naturalization, as outlined in the Citizenship Act 4(3), we sought assistance with the application from Lawyers for Human Rights. This process included obtaining an approval letter received on August 4, 2023, along with the completion of DHA-9 and DHA-19 forms. Our applications for an ID were officially lodged at the Randburg Home Affairs office on September 11, 2023.

Approaching the five-month mark on February 11, 2024, we are eager to inquire about the status of our ID applications. We acknowledge the complexities involved in processing such applications and sincerely appreciate the efforts put forth by the department.

Best Regards,

BMDS

NMDS

KDS

Mr GK
30 January 2024

To: Department of Home Affairs Hallmark Building
230 Johannes Ramokhoase
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0001
Sihle.mthiyane@dha.gov.za
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Dear Madam/Sir

RE: [SUBMISSION] WHITE PAPER ON CITIZENSHIP, IMMIGRATION AND REFUGEE PROTECTION

I, GK, was born in South Africa in hospital now called Rahima Moosa in 22 July 2002.

This submission wishes to highlight the following points to the committee's attention:

2.1 Impact of being stateless

2.2 Impact of the white paper on education

2.3 Personal impact

Stateless means one is not considered as national by any state under the operation of its law. The impact of being stateless gives one no legal protection, lack of access of health care, education, registration of birth and much more.

The impact of white paper on education: In my opinion hinders the future of tomorrow the young generation are leaders of tomorrow. It feels like going back to apartheid education. That is discrimination as there are no equal education opportunities.

Growing up born to a Malawian mom, I have gone through discrimination mostly based on my documents being given the full birth certificate. Now I am waiting on my ID with the help of Lawyers of Human Rights with whom I was able to compile my application. Before this I could not get a job nor go to school. My mom being a single mother, I was left hopeless.

My recommendations: With regards to being stateless educating the public on governmental systems or laws. Avoids corruption, misinformation and fear.

My biggest plea has to do with education. May white paper reconsider and favour youth as the leaders of tomorrow. Youth is facing a lot of challenges, teenage pregnancy, substance abuse, peer pressure, etc. Education enables a stable society where there is less reliance on government system and each individual is able to support their own families.

And another recommendation, can Home Affairs can team up with other organisations within its department?

Finally, I give thanks to the Department for giving me an opportunity to heard and look forward to further engagements on this matter.

Sincerely,

GK

Mr HM
30 January 2024

To: Department of Home Affairs
Hallmark Building
230 Johannes Ramokhoase
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0001
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Dear Madam/Sir

RE: [SUBMISSION] WHITE PAPER ON CITIZENSHIP, IMMIGRATION AND REFUGEE PROTECTION

My name is HM. I am 19 years of age. I was born in South Africa and have lived here my whole life with my parents which were born in the Democratic Republic of Congo.

I approached the Department of Home Affairs for help with help of getting a South African birth certificate and gain my citizenship in 2022. I was told that documents to be issued to me in cases of my parents being immigrants is likely impossible. It has been a shock to me ever since.

At the time of writing, I am still undocumented because the Home Affairs officials will not help me and say there is nothing, they can help me with regarding my situation. Through my hardship of continuously fighting for documents I should have always attained from a younger age I managed to get help from the Lawyers of Human Rights. They have assisted me with applying for citizenship under Section 4(3) of the Citizenship Act which I did December 2022 at Home Affairs. It is now 2024 and up until now my application had not yet been communicated with me so I could get my documents and be a proud citizen of South Africa I have always been. As a result of being undocumented it has resulted in many negative impacts on my education and normal living circumstances. I live in a country which I was born in as a stranger. A contradiction to my life that up until now I seem not to understand. Being undocumented makes me scared walking even in the streets. Police officers these days arrest people for living in the country illegally. I know that I am not illegal in this country but because I am undocumented there is not much more to say about this heart-breaking moment I must go through.

It is on this basis that I make the following submissions to the White Paper:

It clearly states that in respect of citizenship rights, the White Paper repeals the Citizenship Act which enables pathways to citizenship naturalization, specifically section 4(3) of the Citizenship Act which enables children born in South Africa to refugee, migrant, or stateless parents to access South African citizenship.

My concern here is that the DHA suggests repealing the Birth and Deaths Registration Act. It contends that an interpretation of Section 28 of the Constitution, “every child has a right to a name and a nationality” that encompasses all children born in South Africa, regardless of their

parent's legal status. This stance directly contradicts the constitutional court as well as recommendations made to South Africa by the UN Human Rights Council and the African Committee of Experts on the Rights and Welfare of the Child. It prevents achievement of universal birth registration as children born in South Africa whether South African or non-South African.

Second to the first concern is if the DHA's practices is in contradiction to the law, how are we supposed to live a life of truthfulness with our words and actions? Most DHA officials don't understand the law and are very insolent to us facing these situations and corrections to the way things must be, it's one thing they are not ready to put their ego aside for. I believe proper understanding for citizenship Section 4 (3) and other Acts should be explained to DHA officials thoroughly for everyone in the country to live according to the constitution, everyone having equality.

Third is that DHA has proposed reviewing the pathways to citizenship, specifically Section 4(3) of the citizenship Act. DHA claims that the current citizenship law makes it easy for refugees and migrants to gain citizenship. This claim is false considering that only 0.2% of the total population has obtained citizenship by naturalization, the white paper cites a figure of 150 997 naturalized citizens in a population of 62 million. My worry here is these implications are making not only me but many other people stateless and preventing us from living freely in the country we were born in.

Recommendations

- May you please review my application I submitted in December 2022 to gain my citizenship.
- Please help speed up the process or give a response time regarding how long citizenship application review will be taking place.

Finally, I give my thanks to the Department for giving me an opportunity to be heard and look forward to further engagements on this matter.

Sincerely,

HM