



SOUTH AFRICA YEARBOOK 2022/23



Home Affairs

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Home Affairs

The Department of Home Affairs (DHA) derives its mandate from the Constitution and various acts of Parliament and policy documents. This mandate entails the management of citizenship and civil registration, the management of international migration and the management of refugee protection.

It allows the department to be a key enabler of national security, citizen empowerment, efficient administration and socioeconomic development. These functions must be managed securely and strategically. The department's services are divided into two broad categories: civic services and immigration services.

Over the medium term, the department planned to continue focusing on securing international migration through the establishment of the Border Management Authority (BMA), modernising ICT infrastructure to ensure integrated planning and efficient administration, ensuring access to rights and services, and digitising records. Expenditure is expected to increase nominally at an average annual rate of 0.7%, from R10.8 billion in 2022/23 to R11 billion in 2025/26.

This is mainly due to a one-off allocation of R839.9 million in 2023/24 for the digitisation of records project. The department plans to facilitate the function shift from various national departments towards the establishment of the BMA, which explains an increase of 14.4% in spending on transfers and subsidies.

The department is set to receive additional funding of R900 million over the MTEF period for the establishment of the BMA. Spending on compensation of employees' accounts for an estimated 35.8% (R11.3 billion) of total expenditure over the MTEF period, and spending on goods and services for an estimated 27.5% (R8.4 billion).

Securing international movement

The BMA is expected to facilitate and manage the legitimate movement of people and goods within the border law enforcement area and at ports of entry, and cooperate with and coordinate its border law enforcement functions with other organs of state. Processes were underway to establish the authority as a schedule 3A public entity from 1 April 2023, and the entity is set to be fully operational by 2025/26.

Transitional arrangements for this include transferring the frontline immigration function and personnel at ports of entry to the authority, seconding personnel to the authority from other organs of state, and conducting physical verification and asset inventories. The entity has signed a memorandum of understanding with the department to share corporate services.

An amount of R4.2 billion is transferred to the BMA over the next three years for its establishment and to fulfil its mandate. These transfers are made through the BMA subprogramme in the Institutional Support and Transfers programme.

Modernising ICT infrastructure

The department is committed to screening all passengers and crew travelling to, from or through South Africa by air or sea in advance. For

this purpose, the passenger name record is expected to be rolled out over the MTEF period to enable improved risk assessment by including data from airline reservation systems, such as payment details, travel itineraries and baggage information.

Preparatory work has begun to implement the system. This includes the purchasing of hardware, software design, system and hosting maintenance, and the appointment of service providers. For this purpose, R225.5 million is allocated in 2023/24 in the Immigration Affairs programme.

Other ICT modernisation projects across the department over the medium term include rolling out biometric movement control systems at identified ports of entry; developing a live-capture system for births, marriages and deaths; managing asylum seekers; and developing and rolling out the eVisa system. The online eVisa service provides a convenient and secure option to process an eVisa application with the South African Department of Home Affairs.

The service provides direct interaction with the department that is responsible to lawfully process and grant eVisas to travellers entering South Africa. The four easy steps makes it possible to provide all the information required and effectively track the status and outcome of your application.

By end of 2023, the South African eVisa system was only available for citizens from the following nationalities:

- Albania
- Algeria
- Belarus
- Bulgaria
- Cameroon
- Comoros
- Congo, (Kinshasa)
- Congo (Brazzaville)
- Côte d'Ivoire
- Croatia
- Cuba
- Egypt
- Ethiopia
- Ghana
- India
- Indonesia
- Iran, Islamic Republic of
- Kenya
- Liberia
- Lithuania
- Mali
- Mexico
- Morocco
- Niger
- Nigeria
- Oman
- Pakistan
- People's Republic of China

- Philippines
- Republic of Guinea
- Romania
- Saudi Arabia
- Senegal
- Slovakia
- Uganda.

Ensuring access to rights and services

The department's planned hybrid access model is expected to provide for the optimal number and location of physical offices (321) and mobile units (127) to reach 778 visiting points over the MTEF period. In 2023/24, the department plans to procure 100 mobile units at a cost of R145 million.

These mobile units will be equipped with the necessary hardware, systems and connectivity to function as physical offices. To manage these units, 100 mobile operators and 100 mobile unit clerks are set to be recruited at a cost of R70 million in 2023/24. To fund these activities, R55 million is allocated in 2023/24 in the Transversal Information Technology Management subprogramme in the Administration programme, and R90 million is made available in 2023/24 through self-financing expenditure.

Over the medium term, the department planned to introduce self-service machines that will allow clients to directly apply for smart ID cards and passports, and for re-issuing birth, marriage and death certificates. These machines will be installed in offices to increase the number of clients that can be served, as well as in strategic locations such as shopping centres.

The department is running a pilot programme at Menlyn Mall in Pretoria. These initiatives are expected cost R10 million in 2023/24 in the Transversal Information Technology Management subprogramme in the Administration programme.

Digitising records

Through its digitisation of records project, the department intends to convert more than 340 million paper-based South African civic records into an electronically searchable format by 2025/26. In doing so, it also plans to contribute to public and social employment by recruiting unemployed young graduates to work on the project.

For this purpose, R500 million was allocated towards the project in 2022/23, which saw the recruitment of 6 000 graduates at a cost of R289 million. The remainder was used to procure capital assets such as digital scanners, storage and backup hardware, and barcode printers.

The department plans to recruit a further 4 000 graduates in early 2023/24. To further the project, R839.9 million is allocated in 2023/24 in the Citizen Affairs Management subprogramme in the Citizen Affairs programme. These funds will mainly be used for recruiting more graduates, compensation of employees and payment for capital assets.

Legislation

The mandate of the DHA is derived from a broad legislative framework, including the:

- Constitution of the Republic of South Africa of 1996;
- Births and Deaths Registration Act, 1992 (Act 51 of 1992), as amended (Act 18 of 2010);
- Marriages Act, 1961 (Act 25 of 1961);
- Recognitions of Customary Marriages Act, 1998 (Act 120 of 1998);
- Civil Union Act, 2006 (Act 17 of 2006);
- Alteration of Sex Description and Sex Status Act, 2003 (Act 49 of 2003);
- National Archives and Records Service of South Africa Act, 1996 (Act 43 of 1996), as amended;
- Identification Act, 1997 (Act 68 of 1997);
- Immigration Act, 2002 (Act 13 of 2002)
- Refugee Act, 1998 (Act 130 of 1998)
- South African Citizenship Act, 1995 (Act 88 of 1995), as amended (current Act 17 of 2010); and
- South African Passports and Travel Documents Act, 1994 (Act 4 of 1994).

Entities**Electoral Commission**

The Electoral Commission was established in terms of the Electoral Commission Act, 1996 (Act 51 of 1996) which sets out the commission's composition, powers, functions and duties. It is mandated to manage national, provincial and local government elections, ensure that those elections are free and fair, and declare results within a prescribed period.

Over the medium term, the commission planned to focus on preparing for and conducting the 2024 national and provincial elections, for which R3.5 billion was allocated over the MTEF period for electoral operations.

These include the procurement, printing, distribution and warehousing of registration and election materials; rental and infrastructure payments for about 23 400 voting stations; the procurement of electoral material such as an additional ballot type; the appointment and training of an estimated 350 000 electoral and expansion staff; the maintenance of the voters' roll; technological improvements such as rewriting candidate nomination, ballot generation and election result systems; and the procurement of a building for its national office.

The commission planned to undertake extensive civic and democracy education and communication campaigns ahead of the 2024 national and provincial elections, as well as for rolling out the amended Electoral Act, 1998 (Act 73 of 1998) once it becomes law. Through these campaigns, which will be rolled out on various media platforms, particularly social media, the commission aims to keep the electorate informed and improve voter turnout.

The commission's expenditure on outreach is expected to amount to R654 million over the medium term, with a further R296 million

earmarked for holding an additional national registration event. To ensure compliance with applicable provisions of the Political Party Funding Act, 2018 (Act 6 of 2018) the commission's party funding unit will focus on the management and administration of the Represented Political Parties' Fund and the Multiparty Democracy Fund, for which R75 million has been allocated over the MTEF period.

This work is expected to include oversight, monitoring and enforcement, and the production of quarterly publications containing declarations of direct funding by political parties. Through this unit, the commission aims to undertake research to enhance monitoring and compliance policies for the act, as well as publicity campaigns to raise awareness of the Multiparty Democracy Fund.

Total expenditure is expected to increase at an average annual rate of 5.5%, from R1.7 billion in 2022/23 to R2 billion in 2025/26. As a result of the appointment of contractors ahead of the 2024 national and provincial elections, spending on compensation of employees is set to increase at an average annual rate of 7.3%, from R827.2 million in 2022/23 to R1 billion in 2025/26.

The commission derives an estimated 97.8% (R7 billion) of its revenue over the next three years from the department and the remainder through interest on investments. Revenue is expected to increase at an average annual rate of 2.9%, from R2.3 billion in 2022/23 to R2.5 billion in 2025/26.

Government Printing Works (GPW)

The GPW is mandated to provide secure printing and ancillary services to all organs of state in all spheres of government. The entity operates on sound business principles and fulfils its mandate subject to policies as prescribed by the Minister of Home Affairs.

It produces enabling documents such as smart identity cards and passports, and facilitates communication by various government institutions through coordinating and distributing the *Government Gazette*.

Over the medium term, the GPW planned to focus on revamping its ICT infrastructure by procuring a new enterprise resource planning system at a projected cost of R324 million. It will also focus on completing its master plan to renovate the administration building on Visagie Street, Pretoria, at an estimated cost of R1 billion over the period ahead.

Expenditure is projected to increase at an average annual rate of 12.1%, from R1.3 billion in 2022/23 to R1.8 billion in 2025/26. The entity is set to generate 99.1% (R5.5 billion) of its revenue over the medium term through its business operations. Revenue is expected to increase at an average annual rate of 12.2% from R1.4 billion in 2022/23 to R2 billion in 2025/26.

Programmes**Civic Services**

The Civic Services Branch within the DHA is responsible for ensuring secure, efficient and accessible services and documents for citizens and lawful residents in the country. It does this through execution of

the following core functions:

- management of the National Population Register (NPR);
- management of passports and travel documents;
- determination of the status of citizens;
- management of South African IDs and the Home Affairs National Identification System (HANIS)/Automated Biometric System;
- management of births, marriages and death records; and
- registration of births, marriages, deaths as well as amendments of personal particulars.

In addition, the branch renders a verification of identity service to all government institutions, banks and other private sector institutions.

Citizenship

In South Africa, the right to identity – which includes nationality, name and family relations – is enshrined in Section 28 of the Constitution of the Republic of South Africa of 1996. The Births and Deaths Registration Act of 1992 governs the registration of births in South Africa.

The last amendment on the Births and Deaths Registration Act of 1992 was made in 2010. The registration of births in South Africa falls under the mandate of the DHA. To better enforce the registration of births, the Amendment Act of 2010 mandates the registrations of births within 30 days from date of birth.

The Constitution and the Act reaffirm South Africa's commitment to Articles seven and eight of the United Nations (UN) Convention on the Rights of the Child and the African Charter on the rights and welfare of the child.

The agreements mandate the preservation of children's rights to identity, a nationality, to a name from birth, family ties and birth registration immediately after birth. The realisation of the right to be registered is closely linked to the safeguarding of a whole range of fundamental rights, including healthcare, social security, education, participation and protection.

The primary purpose of the records derived from the civil-registration process is to create a permanent record of the birth occurrence and for the issuing of a birth certificate, which is a personal document to attest birth registration and the most visible evidence of the government's legal recognition of the child.

In essence, without a birth certificate the unregistered babies/children essentially do not legally exist.

South African citizenship may be granted by way of:

- birth or descent;
- an application for naturalisation as a South African citizen;
- an application for resumption of South African citizenship;
- registration of the birth of children born outside South Africa to South African fathers or mothers;
- an application for exemption; and
- the South African Citizenship Amendment Act, 2010 (Act 17 of 2010), which, among others, ensures that a child:
 - born to a South African parent inside or outside the country is a South African by birth, as long as the child is registered according

to South African law;

- born of non-South African parents, but adopted by South African parents is a citizen by descent; and
- born of non-South African parents in South Africa, may, at the age of 18 years, apply for naturalisation. While they are minors, such children will retain the citizenship of their parents with no claim to any citizenship.

Dual citizenship

South Africa allows dual citizenship. It occurs when a person is a citizen of more than one country. A South African who wishes to obtain the citizenship of another country must first apply to retain his/her South African citizenship and obtain the exemption before acquiring the foreign citizenship. This will allow him/her to hold dual citizenship.

All South African dual citizens must enter and leave South Africa on their South African passports. Their foreign passports must only be used outside South Africa. There is a penalty of a fine or imprisonment for failure to enter or leave the country using the South African passport.

National Population Register

Early registration of birth is essential to ensure the integrity and credibility of the NPR, which is used to affirm the identity, status and rights of citizens. Furthermore, the optimisation of early birth registration is aligned to the UN Sustainable Development Goal 16, which is aimed at providing access to justice, ending the scandal of invisibility, trafficking of children and providing legal identity for all, including birth registration by 2030.

Various public service institutions depend on the availability of the official birth registration figures for planning execution of their respective mandates. The DHA continues to make steady progress towards universal birth registration. The department strives to build a credible, accurate and secure the NPR with birth as the single point of entry, by registering birth within the first 30 calendar days of birth.

In 2022/23, the birth target was set and 750 000 births had to be registered within 30 days. The DHA has once again surpassed this target by registering a total number of 981 832 births, of which 778 619 were registered within 30 calendar days, accounting for 79.3%. This percentage is up from 78.5% of the 2021/22 financial year. The DHA aimed to normalise early birth registration at above 90% by 2024.

Part of the strategy on early birth registration is expanding DHA office footprint in health facilities, in order to bring Home Affairs services closer to the people. In this way parents can register their children before leaving the hospital or health facilities – a service which is more convenient than planning a visit to Home Affairs at a later stage.

This service is rendered in partnership with the Department of Health. The number of registration sites where births were registered during the review period was 803, comprising of 412 Home Affairs front offices and 391 health facilities.

By mid-2023, there were 391 Home Affairs Civic Registration Offices in health facilities. South Africa has 1 445 public health facilities

with maternity wards and the DHA's plan is to ensure that the Civic Registration capabilities exist in all of them. Out of this number, 161 were fully optimised and are able to print a birth certificate on the spot.

The 161 optimised Health Facilities contributes to about 62% of births delivered from the 1445 public health facilities with maternity wards across the country.

Furthermore, 85 of the 161 optimised health facilities now have permanent hospital clerks ensuring that births that occur at these health facilities are registered within 30 days and birth certificates issued on the spot. The positive impact of the strategy to have births registered at health facilities is demonstrated by an increase from 42.4% in the 2021/22 financial year to 59.1% in the 2022/23 financial year.

Deploying mobile units

As part of increased access to services and multi-channel strategy, mobile offices are to be deployed to geographical areas with the population threshold of 40 000 and below. Most of these visits are in the rural and far-flung areas, schools and this is to assist clients mainly on smart ID cards applications and other departmental services.

By mid-2023, the department had 127 mobile units deployed across all provinces. One hundred (100) additional mobile units were expected to be procured in the 2023/24 financial year.

Using mobile units, DHA has been able to target learners ensuring that South African learners doing grade 12 sit for their examinations already in possession of a Smart ID Card. In the 2022/23 financial year, the DHA visited 3 254 schools working in partnership with the Department of Basic Education. The additional mobile units purchased and the ones to be procured in the new financial year will extend the department's reach and greatly enhance its school ID campaigns.

In the 2022/23 financial year, 865 sites were visited where there is no DHA footprint as identified by Hybrid Access Model. This fleet has been able to service 204 317 clients of which 107 861 Smart ID first issues were for school learners, 96 465 re-issues applications in the 2022/2023 financial year. During the 2022/23 financial year, the DHA issued a total of 2 613 248 smart ID cards surpassing the targeted 2,2 million.

Of the smart ID cards issued, 914 367 were for first-time applicants, which is indicative of the impact the DHA is making in the lives of young people of the country. There is a plan to increase the issuance of Smart ID cards by 37.5% which is 300 000 more than the previous financial year which means that in the 2023/24 financial year, the DHA will issue 2.5 million Smart ID Cards to citizens attaining the age of 16 years and above.

The DHA continues to issue Smart ID cards to citizens. Since inception of live capture in 2013 until 2022/23 financial year, the department has issued more than 21 million Smart ID Cards to South African citizens.

Immigration Services

The DHA's National Immigration Branch is responsible for control over the admission of foreign nationals for purposes of visitation, work, study, business and residence into South Africa as well as their departure. Management of international migration in South Africa is guided by the 2017 *White Paper on International Migration*.

The White Paper aims to:

- discourage illegal migration into South Africa by ensuring the legal stay of foreign nationals in the country by applying and renewing the relevant permits through law enforcement activities;
- create an enabling environment for foreign direct investment in South Africa;
- attract scarce skills required by the economy, in accordance with the 2014 vision of eradicating poverty and underdevelopment;
- issue temporary and permanent residence permits issue as expeditiously as possible and according to simplified procedures;
- ensure that security considerations are fully satisfied together with stakeholders in the criminal justice cluster and the State regains control over the immigration of foreign nationals to South Africa;
- ensure that economic growth is promoted through the employment of needed foreign labour; foreign investment is facilitated; the entry of exceptionally skilled or qualified people is enabled and academic skills transferred;
- exchange programmes in the SADC are facilitated;
- ensure that tourism is promoted;
- ensure that the contribution of foreigners to the South African labour market does not adversely affect existing labour standards and the rights and expectations of South African workers;
- ensure that a policy connection is maintained between foreigners working in South Africa and the training of South African citizens; and
- ensure that a human-rights-based culture of enforcement is promoted including complying with the international human rights instruments on detention.

Immigration Services is also responsible for the regulation of migration through designated ports of entry and via foreign missions, as supported through its issuance of a range of visa and permits which prescribe conditions of entry into South Africa based on the category of the application made.

The Corporate Accounts Unit assists public and private organisations with applications for the importation of scarce skills and business visas. It is also responsible for the determination of the status of asylum seekers and refugees, and the issuing of related permits, confirm and provide enabling documents in the form of Section 22 and Section 24 permits to qualifying clients.

The Inspectorate section is responsible for enforcing the Immigration Act of 2002, and must ensure that all foreign visitors are legally residing within the country, and in the event of transgressions, enforce immigration legislation through measures which may include detaining them and in the event that their undocumented or illegal status is confirmed, to effect deportations.

The Inspectorate also manages a world-class holding facility, the Lindela Repatriation Centre, for persons who may be detained and are awaiting deportation. This facility has been opened to allow for unannounced oversight inspection by the South African Human Rights Commission and Inspecting Judges.

In terms of international bodies, the oversight also is conducted through unannounced visits by the UN Rapporteurs on detention, International Organisation for Migration (IOM), and International Committee for the Red Cross to confirm that all persons processed through the holding facility are treated with dignity and offered protection in the form of accommodation, meals and medical treatment (where it may be required).

Detention in police stations subsequent to arrest pending their direct deportation or transfer to the Lindela Repatriation Centre, is permitted only to those declared as compliant to the Nelson Mandela Rules for the Minimum Detention Standards.

The management of immigration must be risk-based and intelligence-led – integrated across international borders and domestic environments. The purpose of adhering to a risk methodology is to ensure that persons travelling to the country can be profiled well in advance, testing the credibility of travel documentation, personal identity and running background checks on the possible listings against national or international stop lists. Systems are powerful tools for development and for socio-economic inclusion, which contributes to social stability and cohesion.

Secure identity systems can enable e-commerce and government, drastically reduce fraud and costs; thus attracting investment and giving the country a competitive edge. Knowing who is in the country, and why, is critical for national security and stability in a globalised world characterised by rapid movements of people, goods, and even spreading epidemics and pandemics (such the COVID-19). A risk-based methodology is thus underpinned by a seamless interface of technology, reporting systems and proactive management by Immigration Services.

White Paper on Citizenship, Immigration and Refugee Protection

The DHA had embarked on a painstaking exercise of drafting the White Paper on Citizenship, Immigration and Refugee Protection: Towards A Complete Overhaul of the Migration System in South Africa.

On 10 November 2023, the White Paper was published in the *Government Gazette* for public comments. Conflicts, armed violence, disasters, pandemics, seeking better business and work opportunities and other factors force people to leave their countries of origin to other countries.

There have been consistent loud voices calling for effective policy measures and legislative interventions dealing with migration in South Africa. These voices grew louder as violent clashes between foreign nationals and citizens rear their ugly heads. Many groups for and against migration are gaining momentum.

South Africa has different pieces of legislation dealing with citizenship, immigration and refugee protection, namely the South

African Citizenship Act of 1995, Immigration Act of 2002 and Refugees Act of 1998, as amended.

In fact, the South African Citizenship Act of 1995 is a relic of the colonial era and a replica of the 1949 Citizenship Act under the Union of South Africa. In practice, these pieces of legislation are not in harmony with each other. Piece-meal amendments were made without any policy framework whatsoever.

The UN adopted the 1951 UN Refugees Convention and the 1967 Protocol relating to the Status of Refugees. Meanwhile, the then Organisation of African Unity (OAU), now African Union, endorsed its own 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa 1969 in order to deal with the peculiar circumstances of migration and refugees in Africa. This was done in the spirit of Pan-Africanism.

The 1969 OAU Convention prohibits refusal of entry, expulsion or extradition of asylum seekers and refugees and also provides for certain exclusions on certain grounds. In fact, the refugee laws in most of the AU countries based on the 1969 OAU Convention are much more stringent than the Refugees Act in South Africa. Furthermore, the principle of Pan-Africanism does not promote illegal entry in the countries that are signatory to the 1969 OAU Convention.

Asylum seekers and refugees were not recognized in South Africa until 1993. During the apartheid era, South Africa did not accede to any international and regional conventions relating to the status of refugees and asylum seekers.

South Africa administered its refugee policy on an ad-hoc basis, granting refugee status mostly to white nationals from Zimbabwe, Portugal and Mozambique. The Aliens Control Act governed immigration during the apartheid era. The preference of whites over “non-whites” (blacks) became the focus of the immigration policy.

The Refugees Act was passed in 1998. In line with the 1951 Convention, the 1967 Protocol and the 1969 OAU Convention, the Refugees Act prohibits refusal of entry, expulsion or extradition of asylum seekers and refugees.

In 1996, two years after the first democratic elections, South Africa acceded to various international agreements such as the 1951 Convention, the 1967 Protocol, the 1969 OAU Convention and other international instruments. This was done without the government having developed a clear policy on migration, including refugee protection. The government did not make reservations and exceptions permitted in terms of international law.

Both the 1951 Convention and 1967 Protocol provide for reservations. In terms of article 42 of the 1951 Convention, any State may make reservations to articles of the Convention other than articles 1, 3, 4, 16(1), 33, 36-46 inclusive. Article VII of the 1967 Protocol provides that any State may make reservations in respect of articles IV and 1 other than articles 1, 3, 4, 16(1) and 33.

Many countries made reservations in respect of both the 1951 Convention and 1967 Protocol. South Africa did not make any reservations in respect of the 1951 Convention and 1967 Protocol. This was a serious mistake on the part of government. It is not surprising

that South African courts developed jurisprudence regarding asylum and refugees (in the absence of reservations and exceptions) which is unfavourable to the interests of government.

The White Paper proposes that the Government of the Republic of South Africa must review and/or withdraw from the 1951 Convention and the 1967 Protocol with a view to accede to them with reservations like other countries.

The Refugee Protection and Immigration legislation must provide for reservations and exceptions as contained in the 1951 Convention and the 1969 OAU Convention. Particularly in that South Africa does not have the resources to grant the socio-economic rights envisaged in the 1951 Convention.

The White Paper makes radical proposals regarding citizenship:

- Section 4 (3) of the Citizenship Act requires to be reviewed, together with other sections, including those relating to citizenship by naturalization during the legislative process.
- The United States of America, Canada, Switzerland and Britain are developed countries with resources that far exceed those of South Africa, have developed strict immigration, citizenship and refugee laws in order to protect the rights of their citizens.
- The Citizenship Act and Births and Deaths Registration Acts must be repealed in their entirety and be included in the single legislation dealing with citizenship, immigration and refugee protection. This will remove contradictions and loopholes in the paths towards citizenship as is now the case with the three pieces of legislation
- The criteria for granting any form of citizenship must be strictly in accordance with the law.
- A proper register should be kept for all persons granted citizenship by naturalization by the Minister. The register must be tabled every year in Parliament by the Minister.

South Africa is today a great place to live in and many people in the world aspire to live, work or to be citizens of South Africa. In the result, many foreign nationals come to South Africa and stay in the country illegally. No one can account for all undocumented migrants.

The DHA has no idea as to how many illegal immigrants are in South Africa. However, Immigration Services deports between 15 000 and 20 000 illegal foreigners every year at a huge cost. This number is on the increase. The BMA is expected to significantly reduce the risk of foreigners entering the country illegally.

The Immigration Act introduced fundamental changes (albeit controversial) and a host of visas such as, temporary visa, study visa, business visa, critical skills visa, corporate visa, spousal visa, retired persons visa, relative visa, intra company visa and permanent residence. New policy framework and legislative intervention is required to establish the Immigration Division whose members are duly qualified to deal with granting of various visas. The current system is unworkable as staff members are overworked. Appeals/reviews are dealt with by the Director-General (DG) and Minister. Given the responsibilities that the two have, it is impossible for them to deal with the appeals/reviews.

Given the current challenges, there is merit in establishing an

independent body to deal with appeals/reviews, such as Immigration and Refugee Board: Immigration Division, Refugee Protection Division and Immigration Appeal Division. The closing date for the submission of public comments on the *White Paper on Citizenship, Immigration and Refugee Protection* was 31 January 2024.

International engagements

Policy and cooperative governance: the Immigration Services Branch is involved in numerous international engagements through participation in various bilateral and multilateral forums.

- **Bilateral level:** this includes regular engagements with all the SADC countries and other African countries. It also involves bilateral engagements with other countries outside of Africa in line with South Africa's foreign policy, as directed by the Department of International Relations and Cooperation.
- **Multilateral level:** engagements take place at a number of forums, such as:
 - The AU: AU Summit of Heads of States and Government (presidential invites).
 - The IIOM: Migration Dialogue for Southern Africa.
 - The UN: particularly the UN High Level Dialogue on Migration and Development.
 - The SADC: the Ministerial Committee of the Organ on Politics, Defence and Security Cooperation.

AU and Agenda 2063

South Africa, working through the SADC, continues to support the implementation of the aspirations espoused in Agenda 2063. In this regard, the DHA will continue to support the implementation of the AU Free Trade Area through the rationalization of ports of entry and introduction of one-stop border posts.

The DHA will also support facilitation of secured movement of persons into South Africa. To this end, South Africa will engage in bilateral engagements with other African countries on visa exemptions to support the AU Protocol on Free Movement of Persons.

Management of asylum seekers and refugees

The Administration of Refugees and Asylum Seekers section within the DHA is managed in line with the Constitution, the Refugees Act of 1998, the 1951 UN Convention on the Status of Refugees and its 1967 Protocol and the 1969 Organisation of African Unity Convention on Refugees. Refugees enjoy all the human rights contemplated in the Bill of Rights except the right to vote.

To this end, Asylum Seeker Management is responsible for the determination of the status of asylum seekers and refugees, and the issuing of related permits, confirm and provide enabling documents in the form of Section 22 and Section 24 Refugee Traveling Document and Refugee Identity Document permits to qualifying clients. There are five Refugee Reception Offices (RROs): Musina RRO in Limpopo, Desmond Tutu RRO in Gauteng, Durban RRO in KwaZulu-Natal,

Port Elizabeth RRO in the Eastern Cape and Cape Town RRO in the Western Cape.

Key operations at RROs include:

- receiving and capturing new asylum applicants, including biometrics with photo and full set of fingerprints stored in the HANIS; booking clients that cannot be assisted on the same day;
- adjudicating their asylum claims;
- granting refugee status;
- referring manifestly unfounded, fraudulent and abusive decisions to the SSCRA;
- referring unfounded decisions to the Refugee Appeal Board;
- processing failed asylum seekers through the Immigration Act of 2002;
- extending permits of clients awaiting final decisions;
- preparing and communicating the SCRA and Refugee Appeal Board decisions to asylum seekers;
- joining declared family members;
- processing resettlements and voluntary returns of refugees and asylum seekers;
- receiving applications for and handing over refugee ID and travel documents to persons granted refugee status;
- preparing submissions for the SCRA reviews of refugee status in line with country of origin reports;
- preparing submissions for people applying to be refugees indefinitely; and
- administering transgressions (over-stayers, lost permits).

Refugee Appeal Authority

The Refugee Appeals Authority of South Africa (RAASA) is an independent statutory body established in terms of Section 8(A)(1) of the Refugees Act, 1998 (Act 130 of 1998), as amended. The primary mandate of RAASA is to consider all the appeals made against the decisions of the Refugee Status Determination Officers (RSDO).

Upon receipt of an application by an asylum seeker and conclusion of the hearing by the RSDO, the RSDO must either: grant asylum, reject the application as manifestly unfounded, abusive or fraudulent or unfounded.

Management of the inspectorate

The Administration of the Inspectorate section has two directorates within the Immigration Branch – Deportations and Central Law Enforcement at national level. At provincial level there are inspectorate units for each of the local Home Affairs front line offices.

The branch manages the deportation of undocumented or illegal foreign nationals. Besides the coordination of deportations to the country of origin, scope is provided to manage visa and entry stop lists, receive and adjudicate appeals against deportations, and appeals for the upliftment of prohibitions, and undesirability statuses.

Within the mandate of central law enforcement, officials undertake special investigations and joint operations within the security cluster and participating enforcement arms. The inspection of businesses

with government departments such as Employment and Labour contributes to securing the labour environment for citizens and legally employed foreign nationals, as well as compliance with the Basic Conditions of Work Act, 1997 (Act 75 of 1997).

The coordination and cooperation with law-enforcement agencies include the investigation of syndicates involved in illegal migration and corruption, civics cases involving acquisition of South African documents illegally and the detection of international fugitives from justice, as well as investigating cases involving terror suspects.

The department also cooperates with international bodies and foreign governments to ensure that potential illegal foreigners or terror suspects are detected. Inspectorate officials are also trained to assist with the detection and fraudulent use of fake passports and IDs.

This is specialised, and passports are often made to appear genuine at face value, however a proper investigation can reveal embedded flaws that enable the DHA to timeously react to institute appropriate measures to prevent further distribution and use. Such instances involve criminal cases that require officials to testify in prosecution cases to ensure conviction of the perpetrators.

The DHA also initiated the first ever community border crossing point between South Africa and Botswana at Tshidilamolomo in North West, with the aim to roll these out to other border crossings with selected neighbouring countries. Government is committed to contributing to regional integration in Africa and efforts to ease the movement of Africans on the continent.

Management of Visas and permits

The section is responsible for providing policy direction and setting standards with regards to issuing of temporary residence visas and permanent residence permits. Permitting renders a critical function supporting macro-economic investment and attraction of critical and other relevant skills that are in high demand in South Africa due to the lack of such skills. The effective and efficient issuance of critical skills visas is a priority but with attention also being given to the overall improvement of turnaround times for issuance of other categories of permits and visas.

In this way, the DHA is supporting economic stimulus as well as the simplification of the visa regime to aid in the attraction of sought-after academics, scientific and engineering skills. It is also an area where the department has made substantial investment to define the regulatory environment and enabling conditions under which priority applications can be processed within a targeted and monitored turnaround period.

The function performed by permitting is critical in respect of supporting the development of the economy and adding to the stimulus of trade, investment and tourism. It also facilitates attraction and retention of critical skills according to risk-based approach to enhance economic growth through skilled labour and investment, tourism, cross-border trades, business in consultation with key government departments and stakeholders. In February 2022, the department published a revised list of critical skills needed for national economic growth. Permitting supports intergovernmental policy to

enhance bilateral and multilateral relations with countries that are of interest to South Africa and encourages contacts between business, representatives of cultural, scientific and educational and research institutions. It manages the process of visa exemption agreements that promote intra-regional trade; attract investment for development; promote cross-regional infrastructure projects.

As a key deliverable of the Inter-Ministerial Committee on Investment, the department is also a member of the national one-stop-shop that was opened as part of efforts by government to ease the way of doing business in South Africa, and to attract investors. The DHA contributes to the one-stop-shop centres by offering investors and their families reduced turnaround times for visas by establishing a dedicated centre at its back office to deal with applications received from the centres and offer immigration-related advice.

The service is focused on supporting large corporates, businesses, organisations, and employers who make an important contribution to the economy in infrastructure, manufacturing, energy, retail, professional and financial services, research and development, and knowledge production.

In the 2023/24 financial year, the DHA planned to implement the recommendations of the Operation Vulindlela (OV) Work Visa Review Report. Set up in 2020 to support Cabinet and the President to accelerate the implementation of priority structural reform, the task of OV in the visa and permit environment was to review the regulatory framework and processes that govern the issuing of critical skills, general work, business, and intracompany transfer visas at the DHA.

To achieve this, the efficacy of South African work-visa processing system was benchmarked against countries that are recognised as successful in attracting foreign national skilled workers. The OV Report compared South Africa's performance to that of like countries in the sense that they also have a scarce skills deficit alongside high unemployment – a conundrum that characterises many emerging economies.

The OV Work Visa Review Report made a number of recommendations such as the introduction of start-up visas and remote working visas. The report also recommends the introduction of a Trusted Employer Scheme (TES) which is a scheme that rewards “good” or trusted users of the programme with lower document thresholds and faster processing times. The most important incentive for a business is quick processing or faster mobilisation of staff, allowing the business to start earning revenue from the services of the foreign employee earlier.

The Immigration Act of 2002 requires any foreign national who enters the country and who is not a holder of a visa or a permanent residence permit, to produce a port of entry visa. As such, the DHA processes temporary visa applications in respect of visitor's visa, relative's visa, medical treatment visa and retired person's visas in accordance with published timeframes whilst permanent residence applications are dealt with under sections 26 and 27 of the Act, which makes provision for eleven different categories under which an application for a permanent residence permit can be lodged.

Exemptions and waivers require a client to substantiate his or her

case and show exceptional circumstances in a form of a motivation. The circumstances are investigated, verified and forwarded to the Minister of Home Affairs for a decision. The decision on such cases is solely at the discretion of the Minister.

The DHA has also made provision for a person that may be aggrieved by the decision of the department to decline his or her application for a visa or permanent residence permit, to apply for a review of the decision, or submit an appeal application against that decision. Appeals may be submitted twice – first to the DG, and if they are rejected on the first appeal, clients may appeal to Minister of Home Affairs.

The Appeals Unit was recently established in response to requirements for the department to demonstrate better efficiency in its management of such appeals and the turnaround times in which they are concluded. A performance target has also been set by the department to monitor achievements against this objective and to satisfy sustainable maintenance of the turnaround.

Special dispensations get considered by the DHA when there are exceptional circumstances that must be considered. Special dispensation applications are handled in accordance with Section 31(2) (b) of the Immigration Act of 2002, in terms of which the Minister of Home Affairs may “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.”

The special dispensation does not grant the holder the right to apply for permanent residence. Women, children and persons with disability who are eligible are assisted with applications.

Port Control

The mandate of the Port Control section up to 1 April 2023 is to facilitate the legal entry and departure of all persons into and out of South Africa through designated ports of entry and the management of the extended border through pre-clearance of persons travelling by air and sea. Port Control focuses on facilitating the movement of bona fide visitors and tourists with the highest possible degree of certainty, security and efficiency in support of national security, priorities and interests whilst preventing illegal migration through the ports of entry.

South Africa shares borders with six countries: Lesotho, Eswatini, Mozambique, Zimbabwe, Botswana and Namibia. There are 72 designated ports of entry (eight harbours, 11 airports and 53 land ports) that play a critical role in generating employment within the economy, stimulating international trade, investment and tourism.

The functions performed at a designated port of entry include:

- facilitating travellers' entry and departure through immigration;
- stakeholder management – government and industry stakeholders, including subcommittees of the BMA;
- international relations – cross border liaison with counterparts of the neighbouring countries;
- reporting – including statistics and analysis of trends;
- ensuring the issuance of administrative conveyance fines; and
- participating in the modernisation efforts of the DHA to ensure

transition to best practice international standards in the management and processing of migration.

Movement of persons and goods is managed efficiently and effectively through the border with the participation of other border management stakeholders who have clear responsibilities at the port of entry and borderline. Being faced with an ever-increasing number of travellers, the balance between efficient and effective traveller facilitation and security considerations becomes critical.

By building risk-assessment profiles and conducting analysis against watch lists, it enables governments to make fast, accurate and informed decisions to secure borders whilst protecting legitimate travel, tourism and trade. Whilst facilitating the legitimate movement of travellers and goods, border management staff are also faced with threats posed by transnational crime, terrorism, illegal migration, corruption, pandemics and environmental hazards.

Redevelopment of six priority ports of entry

The existing 72 ports of entry were designed in a different era for a different purpose and are not coping with the current volumes of movement of people and goods. The state of these ports has a negative impact on the economy of the country. In order to address this situation, government designated six priority ports to be targeted for infrastructure improvement. These are Beit Bridge, Lebombo, Maseru Bridge, Kopfontein, Oshoek and Ficksburg ports of entry.

There is a drive to develop one-stop border posts in Africa to address delaying factors in major transit corridors. Combining the border control formalities for exiting and entering two countries has the potential to reduce travel and processing time for passenger and freight vehicles, resulting in the reduction of transport costs for traders and the cost of goods to the consumers in the supply value chain. As such the six identified ports of entry will be developed as one-stop border posts.

This will not only include physical infrastructure but also process and system enhancements to ensure seamless movement of people, goods and conveyances through the ports of entry. Cognisant of the current fiscal constraints and the urgent need to improve efficiency at these strategic ports of entry, the department will pursue this project through a public-private partnership.

This will allow for shared risk between government and the private sector, which is expected to reduce constraint on the national fiscus and allow government to access private sector infrastructure development expertise and financial flexibility. To this end, five bidders were pre-qualified to submit proposals for the redevelopment of these ports. This process will result in the appointment of private parties that will develop and maintain the ports of entry for a period of 20 years.

Consultations on the bilateral agreements between the countries that share the border posts are ongoing. The agreements will cover key aspects, such as the one-stop border post model to be implemented and the governance structures. The construction of the ports of entry will be undertaken in phases and is expected to be completed by 2025.

Visa requirements

Foreigners who wish to enter South Africa must be in possession of valid machine-readable passports or travel documents. They must have valid visas, except in the case of certain countries whose citizens are exempt from visa control for bona fide holiday and business visits of a limited duration. Such exemptions are normally limited to permits, which are issued for 90 days or less at the ports of entry.

The visa system is aimed at facilitating the admission of acceptable foreign nationals at ports of entry. The visa becomes a permit upon entry; therefore, no additional permit will be issued. Children from visa exempt countries only need a passport if they are accompanied by an adult.

If unaccompanied, a child should carry the following documents:

- Copy of a birth certificate.
- Parental consent letters.
- Copy of the passport(s)/ID(s) of the parent(s)/legal guardian(s).
- Contact details of the parent(s)/ legal guardian(s).
- Letter from the person who is to receive the child in South Africa, containing his/her residential address and contact details of where the child will reside.
- Copy of the ID/valid passport and visa or permanent residence permit of the person who is to receive the child in South Africa. Where applicable:
- Copy of an adoption order.
- Copy of a death certificate of the deceased parent/ parents or legal guardian.
- Copy of a court order granting full parental responsibilities and rights or legal guardianship in respect of the child.

The requirements for parental consent and birth certificates remain unchanged in the case of South African children travelling – in view of the requirements of the Children's Act, 2005 (Act 38 of 2005).

Where the DHA has issued a child passport containing the particulars of the parents, a birth certificate is not required. Foreign children who require visas need to submit the above documents during the visa application process. The requirements for children travelling is aimed at the protection of children.

Outsourced permitting partnership for management of frontline services

The DHA has outsourced the frontline client services (receiving permits and visa applications) to VFS Global. The company has 12 offices in nine provinces and 11 cities within South Africa. Visa and permit applications are accepted across these 12 centres and subsequently assessed by the DHA head offices in Pretoria.

Non-South Africans with a legal residency permit can apply for a visa or permit at these centres. These are found at:

- Bloemfontein, Free State
- Bruma (Bedfordview), Gauteng
- Cape Town, Western Cape
- Durban, KwaZulu-Natal
- George, Western Cape

- Johannesburg, Gauteng
- Kimberley, Northern Cape
- Mbombela, Mpumalanga
- Gqeberha, Eastern Cape
- Pretoria, Gauteng
- Polokwane, Limpopo
- Rustenburg, North West.

Regulations state that one cannot change from a visitor's visa to another type of visa. Applications, for change of conditions, must be made at a mission abroad – an embassy or consulate, where the applicant is an ordinary resident or holds citizenship. However, exceptional circumstances include if an applicant needs life-saving medical treatment or is an accompanying spouse or child of a business or work visa holder who wishes to apply for a study or work visa.

Life partners looking to apply for temporary residency in South Africa based on a life partner visa will need to prove that they have been together for two years; those applying for permanent residency will need to prove that they have been together for five years.

Spouses looking to apply for temporary residency in South Africa based on a spousal visa will not need to prove that they have been in a previous relationship for a certain number of years. If a partner or spouse was in a previous marriage, it is necessary to provide official documents that prove the dissolution of such marriage either by divorce or the death of the other spouse.

The DHA has officially eradicated the exceptional skills and quota permit categories. Current exceptional skills and quota permit holders will not be able to renew their permits going forward. Those looking to renew their visa while in the country must do so 60 days before the current one expires.

Applications for a general work visa will have to include a certificate from the Department of Employment and Labour confirming the following:

- Despite a thorough search, the prospective employer could not find a South African employee with the skills and experience equivalent to those of the applicant;
- The applicant has proven skills and experience in line with the job offer;
- The salary and benefits of the applicant are not inferior to those of citizens or permanent residents; and
- The contract signed by both the employer and applicant stipulates conditions that are in line with the labour laws of South Africa.

The applicant will need a document to prove that their qualifications have been approved by the South African Qualifications Authority. This document must be translated into one of the official languages of South Africa by a sworn translator. The work visa will be valid for a maximum of five years. The critical skills work visa is based on a list of occupations that are considered critical (examples include agricultural engineers, land surveyor and forestry technicians) in South Africa.

To apply for a visa in this category, the applicant does not need a job offer, but within one year of being granted a visa, will need to prove that he or she is gainfully employed within their field. This visa replaced the

exceptional skills and quota visas. Holders of visitor's visas who wish to change the terms or status of their visa must submit an application no less than 60 days prior to the current visa's date of expiration. It is a requirement for businesses to get a recommendation letter from the dtic for a business visa. The dtic then conducts a thorough forensic assessment of the feasibility of the business entity as well as the contribution to the national interest of South Africa.

A minimum of R5 million must be invested into South Africa. Any accountant registered with the South African Institute of Professional Accountants or the South African Institute of Chartered Accountants can verify the availability of funds for a business visa. The business owner's workforce must be 60% South Africans or must be permanent residents employed in various positions. Business visas will be granted for no longer than three years at a time. No business visa will be issued to a foreigner who intends to establish or invest in a business that is listed as an undesirable business undertaking.

To obtain an intra-company visa, the employee in question must be employed with the foreign office/business for a minimum of six months before being eligible for transfer to South Africa. This visa is available for four years but is non-renewable. Holders of a study visa may not conduct part-time work exceeding 20 hours of labour a week. Both study and exchange visas are only issued for the duration of the study period or exchange programme, respectively.

An exchange visa (for people under 25 years) will not be granted to conduct work pertaining to what is considered an undesirable work as published by the Minister of Home Affairs in the gazette, after consultation with the Minister of Trade, Industry and Competition. An asylum transit visa issued at a port of entry is valid for a period of five days to enable the holder to report at a nearest refugee reception office. Fines are no longer charged for overstaying.

People who overstay for a prescribed number of times are declared as undesirable. The DHA has implemented biometric capture at OR Tambo, King Shaka, Cape Town and Lanseria international airports, which has enabled it to abolish the transit visa and allow prospective travellers (mainly from China) to apply for visas through accredited tourism operators.

Control of travellers

People arriving or departing from South Africa by air, sea or land are required to report to an immigration officer at a port of entry for examination in terms of the Immigration Act of 2002 and have their entry or departure recorded.

Sojourn

Foreign nationals who are in the country illegally and are, therefore, guilty of an offence may be classified into three categories, namely those who:

- entered the country clandestinely;
- failed to renew the temporary residence permits issued to them at ports of entry; and
- breached the conditions of their temporary residence permits without

permission, such as holiday visitors who took up employment or started their own businesses.

Depending on the circumstances, people who are in South Africa illegally are prosecuted, removed or their sojourn is legalised. Officers at the various regional and district offices of the DHA are in charge of tracing, prosecuting and removing illegal foreigners from the country. Employers of illegal foreigners may also be prosecuted.

Permanent residence

Government allows immigration on a selective basis. The DHA is responsible for:

- processing applications for immigration permits for consideration; and
- admitting people suitable for immigration, such as skilled workers in occupations in which there is a shortage in South Africa.

The department particularly encourages applications by industrialists and other entrepreneurs who wish to relocate their existing concerns, or to establish new concerns in South Africa. The DHA is not directly involved in an active immigration drive. In categories where shortages exist, the normal procedure is for employers to recruit abroad independently and, in most cases, initially apply for temporary work permits.

The DHA considers the applications for immigration permits of prospective immigrants who wish to settle in the relevant provinces. Regions are responsible for issuing permits previously issued by the regional committees, in respect of permanent residence. They will also do so in respect of temporary residence.

Enquiries, in this regard, may be made to the nearest office of the DHA in South Africa, to missions abroad, or to the DG of the DHA for the attention of the Directorate: Permitting, in Pretoria. The department has prioritised temporary residence permits, as this category of foreigners is at risk of being in the country illegally, if their applications are not finalised in time.

The DHA will prioritise applications for permanent residence permits from holders of quota work permits and exceptional skills work permits, in line with the country's objective of attracting critical skills.

Temporary residence

A temporary residence permit allows a foreign national, such as international students, foreign workers and tourists, to legally stay in South Africa for longer than 90 days. If you wish to stay in South Africa for a period of less than 90 days to visit family or as a tourist, you may apply for visitors' visa.

The Immigration Act of 2002 aims at setting in place a system of immigration control which ensures that visas are issued as expeditiously as possible, on the basis of simplified procedures and objective, predictable and reasonable requirements and criteria and without consuming excessive administrative capacity.

The Immigration Act mandates the DHA to promote economic growth through the employment of needed foreign labour, facilitate foreign investment, enable the entry of exceptionally skilled or qualified

people, facilitate academic exchanges within the Southern African Development Community and promote tourism, without compromising the security of the Republic.

The Immigration Act provides for various categories of temporary residence visas, such as:

- Transit visas for the purpose of transiting the Republic enroute to a neighbouring country;
- Visitor's visas for visits not exceeding 90 days;
- Visitor's visas for activities longer than 90 days but not exceeding three years;
- Study visas;
- Treaty visas;
- Business visas;
- Medical treatment visas;
- Relative's visas;
- Work visas;
- Retired person visas; and
- Exchange visas.

With effect from 26 May 2014, applicants are required to submit an application for a temporary residence visa in person at the South African diplomatic representative in his or her country of origin or at a South African diplomatic representative in a neighbouring country if there is no South African diplomatic representation in the applicant's country of origin. The purpose of the in-person application is for biometric data to be captured.

Applicants are advised to ensure that they apply for the correct temporary residence visa commensurate with the intended activities to be undertaken in the Republic, since holders of visitor's visas are no longer allowed to apply for change of status or change of conditions relating to his or her visitor's visa from inside the country.

For example, a person who applies for a visa to visit a family member in South Africa cannot apply for a relative's visa to remain in the country with such family member. Such person is required to return to his or her country of origin or of permanent residence in order to apply for a relative's visa.

The same applies to a person who obtained a visitor's visa for short-term employment activities in terms of Section 11(2) of the Immigration Act who cannot apply for a work visa from inside the country.