



Commission for Gender Equality
A society free from gender oppression and inequality

SUBMISSION ON THE WHITE PAPER ON CITIZENSHIP, IMMIGRATION AND REFUGER PROTECTION

February 2024



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1. Introduction

The Commission for Gender Equality (CGE) wishes to express its gratitude for the opportunity to make written submissions on the publication of the Department of Home Affairs' White Paper titled 'White Paper on Citizenship, Immigration and Refugee Protection: Towards a Complete Overhaul of the Migration System in South Africa'.

The CGE, as an independent statutory body created in terms of Chapter 9 of the Constitution of the Republic of South Africa, 1996 (the Constitution), is mandated to promote and protect gender equality in government, civil society, and the private sector.

The Commission for Gender Equality Act 39 of 1996, gives the Commission the power to:

- monitor and evaluate policies and practices of organs of State at any level;
- monitor and evaluate statutory bodies and functionaries;
- monitor public bodies and authorities and private businesses, enterprises, and institutions to promote gender equality; and
- make any recommendations that it deems necessary.

The CGE welcomes the opportunity to make inputs into the White Paper and sets out its comments below.



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2. Background

Three key pieces of legislation governing citizenship and immigration in South Africa are the South African Citizenship Act 88 of 1995, the Immigration Act 13 of 2002, and the Refugees Act 130 of 1998. Over the last few years, the Department of Home Affairs has faced significant challenges in implementing these pieces of legislation, having to deal with issues of inconsistency and gaps between them, resulting in institutional and structural problems. Despite attempts to amend them over the years, the issues have persisted. Consequently, the Department was directed to create a new policy framework, which is outlined in the White Paper.

The White Paper aims to synchronize these three pieces of legislation into one statute, creating a cohesive legislative landscape regulating citizenship and immigration, and addresses inconsistencies, gaps, and contradictions that exist in the current laws.

3. The CGE's Submission on the White Paper

The White Paper argues for the withdrawal of South Africa from the 1951 United Nations Refugees Convention and 1967 Protocol Relating to the Status of Refugees, with a view to acceding to them with reservations. The CGE does not object to this in principle, but notes the time and cost involved in doing this which may be put to better use.

The White Paper also argues for more stringent requirements regarding granting citizenship by naturalization, especially where naturalization arises from a marriage to a South African citizen. The CGE has noted that the abuse



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that currently exists regarding naturalization affects women, who often find themselves officially married to someone without their knowledge or consent or entered into such marriage due to economic and financial pressures. Such policy, therefore, should also lobby for harsh penalties where such abuse has occurred.

The White paper postulates the creation of an independent body to handle appeals, such as the Immigration and Refugee Board, which the CGE welcomes. There is also the proposal that border control is coordinated with other government departments and agencies.

While the CGE is in support of such collaboration, it expresses concern that these proposals do not include working with institutions and agencies that specialize in working with vulnerable groups who are at risk of being victims of human trafficking. The proposed changes also lack protective measures for refugees who may be detained in South Africa. Furthermore, the White paper does not address incidents of gender-based violence which may be faced by the foreigners.

The Commission also appreciates the consideration of immigration courts, emphasizing the importance of timely justice to prevent human rights violations, stating that 'justice delayed is justice denied'.

The Commission supports the idea of strict rules for obtaining South African citizenship and stresses the importance of practical provisions for registering children born to South African and undocumented foreign national parents. Acknowledging the prevalence of such cases, the Commission calls for realistic measures to safeguard South African minor children who may be



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dependent on undocumented foreign nationals. It underscores the need for the policy to align with a child's Constitutional Rights contained in Section 28 of the Constitution, as well as the Children's Act 38 of 2005. The Commission is concerned that the proposed policy framework does not address the protection of children's rights sufficiently.

The White Paper also does not address the issue of dual citizenship. The current Citizenship Act 88 of 1995 contained a provision in which a South African citizen would automatically lose their citizenship in the event that they acquired the citizenship of another country without first obtaining the Minister's permission. This provision has since been declared unconstitutional by the Supreme Court of Appeal in *Democratic Alliance v Minister of Home Affairs and Another*.¹

The deprivation of South African citizenship has a particularly egregious history, on that many black Africans were denied their citizenship by apartheid legislation such as the Bantu Homeland Citizenship Act 26 of 1970. Given the history of removal of citizenship in South Africa, any South African policy on citizenship should ensure that no person who is a South African citizen by birth can have their citizenship taken away under any circumstances, even when they acquire the citizenship of another country.

4. The Provision of Health Care Services

Paragraph 41 of the White Paper provides that asylum seekers and refugees enjoy rights and privileges such as basic health care services. However, the White paper does not provide details of the said health care services that

¹ *Democratic Alliance v Minister of Home Affairs and Another* [2023] ZASCA 97 (13 June 2023)



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asylum seekers and refugees should receive at the designated locations. There is a need to put forward provisions to address concerns regarding adverse health outcomes associated with neonatal and maternal health, sexually transmitted illnesses, termination of pregnancies and other health complications affecting women.

Furthermore, South Africa carries a large HIV burden in that the prevalence of HIV and AIDS in South Africa is higher among women than among men. New maternal HIV infections among pregnant women contribute significantly to the transmission of HIV from mother to child, and migrant women are not immune to this. In light of this, the White Paper needs to incorporate provisions dealing with the abovementioned health care related issues and services.

5. Conclusion

The laws regulating citizenship, immigration, and refugees in South Africa are convoluted and inconsistent, and create gaps that render them open to abuse. Furthermore, many South Africans feel that these laws are also poorly implemented. It is therefore crucial for the government to address these issues and concerns and ensure that a new policy framework rectifies the deficiencies of the existing laws.

However, such a framework must still take heed of the Constitution, by providing comprehensive protection for all individuals affected by such laws. These include not only all South African citizens themselves, but also vulnerable groups such as refugees and their minor children/guardians who are dependent on them.