

# MIGRATION AND COVID-19

A REVIEW OF SOUTH AFRICA'S POLICY RESPONSE TO  
THE PANDEMIC (JULY 2020)

On behalf of the Migration and Coronavirus in Southern  
Africa Coordination group (MiCoSA)

ISSUE BRIEF #2

This is the second in a series of issue briefs that explores the implications of Covid-19 and the South African response to the pandemic on migration and for migrant and mobile communities in South Africa.

This issue brief was prepared by Robin Arends, Thea de Gruchy and Jo Vearey on behalf of MiCoSA. This brief, a summary of it and others in the series, can be found on the Migration and Health Project (maHp) website – [mahpsa.org](http://mahpsa.org)

maHp is research programme at the African Centre for Migration & Society (ACMS), University of the Witwatersrand - [www.migration.org.za](http://www.migration.org.za)

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### About MiCoSA

The Migration and Coronavirus in Southern Africa Coordination Group (MiCoSA) is hosted by the Migration and Health Project Southern Africa (maHp) at the African Centre for Migration & Society (ACMS), Wits University, Johannesburg. MiCoSA is an informal network of migrant-led organisations, non-governmental organisations, international organisations, civil society, activists, lawyers, researchers, government officials and policy advisors. Through an online platform and weekly virtual meetings under Chatham House rule, MiCoSA brings together national and SADC regional partners who are concerned with the health and well-being of asylum-seekers, refugees and migrants during the current Coronavirus pandemic. To date, MiCoSA has over 150 members; to join this network, please sign up [here](#).



## Summary : Key findings and recommendations

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### Screening and testing for Covid-19

The requirement for an ID or passport number at the point of testing may act as a barrier to non-citizens accessing care. In addition, regulations regarding the use of information gathered during testing are insufficient to protect the privacy of non-citizens.

### Social services and relief programmes

Lockdown has curtailed the provision of some social services. Although a Social Relief of Distress grant has been created, to date only South African residents, refugees and Permanent Residents have been eligible to apply.

### Employment

The pandemic and lockdown have had implications for both the formal and informal economies. Regulations guiding the easing of lockdown and re-opening of the economy have paid insufficient attention to non-citizens. While non-citizens are eligible for the Temporary Employer-Employee Relief Scheme, there have been delays in non-citizen applicants receiving pay-outs.

### Cross-border migration

Movement into South Africa has been limited since 18 March. Although a blanket extension has been applied to all permits until 31 July, there are no mechanisms for new arrivals to regulate their arrival in South Africa.

### Detention and deportation

The detention and deportation of non-citizens has continued, even though concerns have been raised about the conditions in detention centres and a call has been made for a moratorium on deportations.

### Refugees and asylum seekers

Asylum seekers should soon be eligible for the Social Relief of Distress grant. While asylum permits have all been extended until 31 July, no provisions have been made for those wishing to apply for asylum.

### Internal migrants

As lockdown has eased, regulations have allowed for inter-provincial and inter-district movement. However, policy has failed to anticipate the implications of this movement for the spread of Covid-19.

### Housing

Quarantine and isolation facilities have been made available to those who cannot self-isolate or quarantine at home, including those who are homeless. Although evictions were banned during stages 5 and 4 of lockdown, constructive evictions of non-citizens were reported.

## Children

Policies reviewed do not mention or take into account the impact of Covid-19 and the lockdown on children.

## Tourists and visitors

Non-citizen tourists and visitors have, on the whole, been well catered for within the regulations with provisions being made for their isolation and repatriation.

## Way forward

Through an analysis of existing policy responses, clear concerns have emerged with regards to the ways in which migration is being responded to and migrant and mobile communities are affected. As the pandemic develops and new policies are developed in response, we call for the South African government to ensure that:

1. A human-rights approach underpins the policy response to Covid-19 and the ways in which this response engages with migration and non-citizens in South Africa;
2. Responses to Covid-19 are migration-aware and mobility-competent. This will involve considering the specific needs of South African migrants and non-citizens, including children, LGBTIQ+ migrants, and migrants who work in the mining and agricultural sectors;
3. The government engages with and includes migrant-led organisations, civil society, international organizations and researchers working with migrant groups in the development of responses. This includes the involvement of groups that are already left behind including migrants with disabilities, sex workers, LGBTIQ+ migrants, reclaimers, farm and mine workers;
4. All non-citizens are entitled to state relief programmes and are encouraged to access screening, testing and treatment for Covid-19. Non-citizens must be assured that they will not face any penalties should they be without the documents required to be in the country legally, or should their documentation have expired; and
5. A moratorium is placed on the arrest, detention and deportation for immigration offences.

# Migration and Covid-19 : A review of South Africa's policy response (July 2020)

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## Background

The declaration of a National State of Disaster on 15 March restricted the mobility of all persons in South Africa, with ramifications for South Africans who move as well as for non-citizens in the country. In addition, the ensuing lockdown closed down much of the informal economy, a space in which a significant number of South Africans and non-nationals work.<sup>1</sup> The government responded with the creation of a Social Relief from Distress Grant,<sup>2</sup> a Temporary Employer-Employee Relief Scheme (TERFS) through the Unemployment Insurance Fund (UIF)<sup>3</sup> and other measures meant to ease the burden on those most affected. However, these efforts have largely excluded non-citizens, specifically those who are undocumented.

This fits within the broad trajectory of South Africa's policy responses to migration, which have largely focused on securitising migration and excluding non-citizens from social services, including healthcare.<sup>4</sup> As it currently stands, nationals of other Southern African Development Community (SADC) countries are entitled to healthcare in line with South African citizens. However, in practice, access is often limited or denied by healthcare service providers. In addition, structural barriers, including language barriers and physical distances to facilities, often leave migrant and mobile communities behind even as commitments are made to implement Universal Health Coverage (UHC).<sup>5,6</sup> In addition, South Africa has a history of xenophobic violence, which often occurs when politicians seek to deflect attention from poor service delivery or when communities are under pressure.<sup>7</sup>

This brief is part of a series of briefs that examine the implications of the Covid-19 pandemic and resulting lockdowns across the region on migration, as well as on migrant and mobile communities. This particular brief outlines the findings of a policy identification and analysis project in partnership with the policy mapping working group of MiCoSA. The brief presents an analysis of South African government regulations, as well as local civil society statements and recommendations that specifically deal with migration and mobility in South Africa. Findings suggest that, to date, South Africa's response

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<sup>1</sup> Crush, J., Skinner, C. & Chikanda, A., 2015. Informal Migrant Entrepreneurship and Inclusive Growth in South Africa, Zimbabwe and Mozambique. Migration Policy Series No. 68.

<sup>2</sup> Amendment to the directions issued in terms of regulation 4(5) of the regulations made under section 27(2) of the disaster management act, 2002 (act no. 57 of 2002), 9 May 2020.

<sup>3</sup> Directive by the Minister of Employment and Labour in terms of regulation 10 (8) issued by the Minister of Cooperative Governance and Traditional Affairs in terms of section 27 (2) of the Ac, General Notice No. 215, 25 March 2020.

<sup>4</sup> Vearey, J., Modisenyane, M., & Hunter-Adams, J. (2017). Towards a migration-aware health system in South Africa: A strategic opportunity to address health inequity. In A. Padarath & P. Barron (Eds.), *South African Health Review 2017* (pp. 89–98). Health Systems Trust.

<sup>5</sup> Stevenson, S., 2019. Are foreigners really entitled to free healthcare in South Africa? Bhekisisa Centre for Health Journalism.

<sup>6</sup> de Gruchy, T., & Vearey, J. (2020). "Left behind": Why implementing migration-aware responses to HIV for migrant farm workers is a priority for South Africa. *African Journal of AIDS Research*, 1–12.

<sup>7</sup> Misago, J. P. (2019). Political Mobilisation as the Trigger of Xenophobic Violence in Post-Apartheid South Africa. *International Journal of Conflict and Violence*, 13, 1–10.

to Covid-19 has failed to be migration-aware and mobility-competent. Findings which are broadly in line with experiences globally.<sup>8</sup> Through an analysis of 48 documents, we demonstrate key failings in the government response so far, including the exclusion of non-citizens from relief schemes and requirements for documentation at points of Covid-19 testing. While this has obvious implications for non-citizens themselves, the exclusion of migrants from the state's response has broader implications for efficacy of the Covid-19 response for all who live in South Africa.<sup>9</sup>

This brief focuses on an analysis of the content of South African policy documents and the implications thereof. For a broader analysis of the implications of Covid-19 and the South African lockdown for migration and migrant communities, please see issue brief #1.

In addition, as the South African response to Covid-19 develops, this brief will be updated.

## Methods

48 policy documents, including regulations and directions developed by government departments and recommendations by civil society, were collected and analysed using a policy mapping tool. The information collected through the policy mapping tool was thematically analysed to develop a better understanding of the implications of policy responses to Covid-19 for migration, and the governance thereof, in addition to the implications for specific migrant and mobile communities in South Africa. The included policies were published between 11 February and 10 June 2020.

Issuing Authority	Policies included	Migrants explicitly mentioned	Foreseeable impact on migrants
Department of Co-operative Governance and Traditional Affairs	9	4	6
Department of Transport	8	2	5
Department of Home Affairs	5	5	6
Department of Employment and Labour	3		
Department of Social Development	3	1	2
Department of Trade and Industry	3	0	0
Department of Mineral Resources and Energy	2	0	1
Department of Justice and Correctional	2	2	2
Department of Small Business Development	2	2	2
Department of Communications and Digital Technologies	1	0	
Department of Tourism	1	1	1
Department of Health	1	1	1

<sup>8</sup> International Labour Organization. (2020). *Protecting migrant workers during the COVID-19 pandemic* [Publication].

International Labour Organization. [http://www.ilo.org/global/topics/labour-migration/publications/WCMS\\_743268/lang-en/index.htm](http://www.ilo.org/global/topics/labour-migration/publications/WCMS_743268/lang-en/index.htm)

<sup>9</sup> Vearey, J., 2020. Why xenophobia is bad for the health of all in South Africa. Africa is a Country.

South African Department of Higher Education and Training / Department of Science and Innovation	1	0	1
South African National Institute for Communicable Diseases	1	0	1
<b>Total</b>	42	18	28

Table 1: Overview of government regulations analysed

A vast majority (42/48 or 87,5%) of the documents were government regulations developed in response to the declaration of a National State of Disaster on 15 March. Table 1 illustrates how many policies have been included from each department, whether migrants were explicitly mentioned in these policies and whether policies had a possible impact on both South Africans who move and non-citizens. As Table 1 illustrates, less than half (17) of the governmental policies explicitly mentioned migrants, while 27 documents had a foreseeable impact on migrants, which demonstrates a lack of migration-aware policy making. Out of the documents in which migrants were explicitly mentioned, nine documents framed migrants as either illegal, a security risk or a public health danger. No documents framed migrants or migration through a human rights lens.

The remainder of the included policies were issued by civil society organisations, including the National Interagency Working Group on Unaccompanied, Separated and Migrant Children in South Africa, the Scalabrini Centre of Cape Town, The Banking Association South Africa, the Alliance for Child Protection in Humanitarian Action and the Independent Communications Authority of South Africa. These were included as highlight some of the limitations of the current policy response, in addition to making recommendations for future regulations and policies.

Policies were specifically analysed to ascertain whether they explicitly or implicitly referred to migration and/or migrants, and what the implications of these policies may be or have been for migrant and mobile communities. While attempts to categorise migrants are inherently limited, salient differences remain between the experiences of internal migrants, recognised asylum seekers and refugees, documented non-citizens and undocumented non-citizens, specifically with regards to access to relief schemes.<sup>10</sup> Furthermore, categorisation allows an increased understanding of which migrants are spoken about in what way and who has been included or excluded in policies developed to respond to Covid-19.

This brief proceeds with an overview of the implications for migrant and mobile communities in general, followed by more in-depth discussions with regards to each migrant group. It concludes with suggested ways forward.

## Findings and analysis

<sup>10</sup> Crawley, H. & Skleparis, D., 2018. Refugees, migrants, neither, both: categorical fetishism and the politics of bounding in Europe's 'migration crisis', *Journal of Ethnic and Migration Studies*, 44:1, 48-64.

Analysis of the included policies reveals that the South African response to Covid-19 is not migration-aware nor mobility-competent. Some provisions have been made for the repatriation and accommodation of tourists in South Africa<sup>11</sup> and the return of some documented non-citizens, like permanent residents, who were outside of South Africa at the start of the lockdown.<sup>12</sup> However, the policies do not engage with the implications and realities of the pandemic or the lockdown for the many South Africans and non-nationals who move in and out of, as well as around, South Africa.

Social relief schemes, including the Social Relief from Distress Grant, have explicitly excluded most non-nationals;<sup>13</sup> South Africa's contact tracing and testing programme may inadvertently deter non-citizens from accessing screening, testing and care services;<sup>14</sup> and the additional vulnerabilities to which the lockdown will expose non-citizens, particularly those who are undocumented, have not been acknowledged.

## 1. Screening & testing for Covid-19

While non-citizens are not barred from accessing testing or care for Covid-19, the testing process may inadvertently act as a barrier for non-citizens, specifically those who are undocumented. In addition, there are concerns that information collected for the Tracing Database may be used in ways that infringe on the privacy and security of both citizens and non-citizens alike.<sup>15</sup>

The submission form for Covid-19 testing requires a thirteen-digit South African ID number or passport number, with a specific note that this information is required to allow linking of repeat specimens, and that testing will be delayed for specimens without this information. Permanent Residents, South Africans and some refugees have an RSA Identification Number. However, many non-nationals do not and as such may avoid seeking care, be turned away if they do seek care, or experience delays with their results.<sup>16</sup> Non-citizens, specifically those who are undocumented, may avoid getting tested due to this requirement as they may fear arrest and deportation.

The regulations indicate that information gathered for testing and screening may only be shared between the lab doing the testing, the National Institute for Communicable Diseases, the Director General: Health and the Tracing Database. However, the regulations also indicate that 'identifying information will only be de-identified or deleted 6 weeks after the national state of disaster has been terminated or lapsed'. Concerns have been raised about the implications of this for the privacy of

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<sup>11</sup> RSA Department of Tourism Directions, 2 April 2020.

<sup>12</sup> Amendment of directions issued in terms of regulation 10(8) of the regulations made under section 27(2) of the disaster management act, 2002 (act no. 57 of 2002): Measures to prevent and combat the spread of Covid-19, 9 May 2020.

<sup>13</sup> Amendment to the directions issued in terms of regulation 4(5) of the regulations made under section 27(2) of the disaster management act, 2002 (act no. 57 of 2002), 9 May 2020.

<sup>14</sup> Updated and amended Disaster Management Regulations, 2 April 2020.

<sup>15</sup> Klaaren, J., Breckenridge, K., Cachalia, F., Fonn, S., & Veller, M. (2020). South Africa's COVID-19 Tracing Database: Risks and rewards of which doctors should be aware. *South African Medical Journal*, 0(0), Article 0.

<http://www.samj.org.za/index.php/samj/article/view/12983>

<sup>16</sup> Amendment to the directions issued in terms of regulation 4(5) of the regulations made under section 27(2) of the disaster management act, 2002 (act no. 57 of 2002), 9 May 2020.



citizens,<sup>17</sup> but it may also create opportunities for the identifying information of non-citizens to be shared with the Department of Home Affairs and used by immigration control.<sup>18</sup>

In addition, the regulations stipulate that the Director General: Health may ask electronic communications service providers for information about 'the location and movements of any person known or reasonably suspected to have contracted covid-19 (sic)' or come into contact with such a person. This may unduly penalise undocumented migrants and asylum seekers and their communities, as their movements may be irregular.<sup>19</sup>

## 2. Social services & relief programmes

During lockdown, the Department of Social Development, its agencies and NGOs working to provide social relief, were expected to limit their services. New admissions to facilities, including shelters for victims of crimes and violence and Child and Youth Care Centres were, and continue to be, limited, as are releases and visitations to these centres.<sup>20</sup> Furthermore, due to the prioritisation of preparing and delivering food parcels, Community Nutrition Development Centres (CNDs) and drop-in centres were closed. These directions created additional barriers to services for many migrants, as well as for local communities.

A special Covid-19 Social Relief of Distress (SRD) Grant of R350 per month, for the period May-October 2020, has been made available to South Africans, permanent residents and refugees registered on the Home Affairs database.<sup>21</sup> While this scheme has been well-received, initially it was not available to those with asylum-seeking status or on special-permits. On 19 June 2020, the Scalabrini Centre won a court order to ensure that asylum-seekers and some special-permit holders are able to access the SRD. The court agreed with the Centre that it was irrational and unreasonable to exclude such persons from being able to apply for the grant solely on the bases of their nationality or immigration status.<sup>22,23</sup> New regulations in this regard are expected.

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<sup>17</sup> Klaaren, J., Breckenridge, K., Cachalia, F., Fonn, S., & Veller, M. (2020). South Africa's COVID-19 Tracing Database: Risks and rewards of which doctors should be aware. *South African Medical Journal*, 0(0), Article 0.

<http://www.samj.org.za/index.php/samj/article/view/12983>

<sup>18</sup> Updated and amended Disaster Management Regulations, 2 April 2020, sections 11H(7), (8), (16) and (17).

<sup>19</sup> Updated and amended Disaster Management Regulations, 2 April 2020 sections 11H(10)(a) and 11H(10)(b)

<sup>20</sup> Release and visitation is prohibited at (a) Substance Abuse and Treatment Centres and Halfway Houses, (b) Child and Youth Care Centres, (c) Shelters for victims of crimes and violence, including GBV (d) Old age homes and frail care facilities, and (e) Residential facilities for persons with disabilities - respite care facilities (centre and community-based) (5.3-6).

<sup>21</sup> To be eligible for the grant one must be unemployed, not receiving any form of income, not receiving any social grant, not receiving an unemployment insurance benefit, not qualify to receive an unemployment insurance benefit, not receiving any other government COVID-19 response support and not be a resident in a government funded or subsidised institution - Amendment to the directions issued in terms of regulation 4(5) of the regulations made under section 27(2) of the disaster management act, 2002 (act no. 57 of 2002), 9 May 2020.

<sup>22</sup> Press Release: Scalabrini Launches Urgent Litigation On Covid-19 Social Relief Of Distress Grant. Scalabrini.org.za. 27 May 2020.

<sup>23</sup> Press Release: Victory in Covid-19 Social Relief Grant Court Case. Scalabrini.org.za. 19 June 2020.

In addition, the South African Social Security Agency (SASSA) has committed to continue paying grants during lockdown, and indicated that grants will not be terminated even if, for example, a grant has not been collected for three months.<sup>24</sup> Currently 48 062 non-citizens receive grants through SASSA.<sup>25</sup>

Please see Issue Brief #1 for a discussion on the implementation of the SRD and the distribution of food parcels during lockdown.

### 3. Employment

The pandemic and lockdown, in addition to South Africa's poor economic outlook, have rendered the livelihoods of many in South Africa additionally precarious.<sup>26</sup>

South Africa has a sizeable informal economy through which many migrants, both internal and cross-border, support themselves,<sup>27</sup> the lockdown has left many in the informal economy or who were previously on temporary contracts or engaged in piecemeal work unemployed and struggling to support themselves.<sup>28</sup> In addition, as the lockdown has progressed and eased, many of the regulations governing the reopening of the informal economy have failed to acknowledge the important role that non-citizens play in the South African economy. For example, on 6 April the Department of Small Business Development issued directions permitting informal traders and owners of spaza shops to reopen, if subject to specific conditions and able to obtain a permit. In order for spaza shop owners or informal traders who are not South African citizens to obtain such a permit, they must have been lawfully admitted into the Republic and hold a valid passport with a visa issued by the Department of Home Affairs in terms of section 10 of the Immigration Act, 2002 (Act No.13 of 2002), authorising him or her to operate a business. Staff of these business were also required to carry permits and have positive photo identification such as an identity document, passport or permit issued by DHA.<sup>29</sup> Asylum seekers are explicitly eligible to apply for business and trade permits, if they hold an asylum seekers permit issued in terms of section 22 of the Refugees Act, 1998 (Act No. 130 of 1998), which allows them to work. However, if they do not already have one, the directions state that 'permission to operate will be linked to the period covered by the asylum seekers permit'. Although a blanket extension until the 31 July has been granted to all asylum seeker permits, it is unclear whether this has been taken into account in the processing of business permits.<sup>30</sup> On 12 May the Department of Small Business Development allowed

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<sup>24</sup> RSA Department of Social Development Directions – 6 (g), (n), (l.vi)

<sup>25</sup> Parliamentary Monitoring Group. (2020, June 18). *Question to the Minister of Social Development—NW704 | PMG*.

Parliamentary Monitoring Group. <https://pmg.org.za/committee-question/13827/>

<sup>26</sup> Francis, D., & Valodia, I. (2020, June 20). *South Africa needs to focus urgently on how COVID-19 will reshape its labour market*. The Conversation. Retrieved 6 July 2020, from <http://theconversation.com/south-africa-needs-to-focus-urgently-on-how-covid-19-will-reshape-its-labour-market-141137>

<sup>27</sup> Crush, J., Skinner, C. & Chikanda, A., 2015. Informal Migrant Entrepreneurship and Inclusive Growth in South Africa, Zimbabwe and Mozambique. Migration Policy Series No. 68.

<sup>28</sup> Francis, D., & Valodia, I. (2020, June 20). *South Africa needs to focus urgently on how COVID-19 will reshape its labour market*. The Conversation. Retrieved 6 July 2020, from <http://theconversation.com/south-africa-needs-to-focus-urgently-on-how-covid-19-will-reshape-its-labour-market-141137>

<sup>29</sup> Directions issued in terms of Regulations 10(8) of the Regulations made under Section 27(2) of the Disaster Management Act, 2002, (Act No. 57 of 2002).

<sup>30</sup> Directions issued in terms of regulation 4(9) of the regulations made under section 27(2) of the disaster management act, 2002 (act no. 57 of 2002), 12 May 2020, sections (11.2b) – (11.3).



for the reopening of more types of small businesses. Those who had been trading without permits prior to this were required to apply for temporary permits to continue trading.<sup>31</sup>

These requirements ignore the reality that many non-citizens who work in the informal economy do so because they do not have the requisite documentation to access livelihood opportunities in the formal economy and, as such, bar many non-citizens from being able to re-enter the informal economy legally.

Regulations that have governed the re-opening of the formal economy have not done much better with regards to acknowledging non-citizen workers. On 16 April the Department of Co-operative Governance and Traditional Affairs allowed for the reopening of the mining sector – in which many internal and cross-border migrants are employed<sup>32</sup> - operating at reduced capacity of not more than 50%.<sup>33</sup> Although the Department of Mineral Resources and Energy issued directions for the appropriate care for the health and safety of workers on 29 April,<sup>34</sup> these standards were not upheld, leading to litigation by the Association of Mineworkers and Construction Union on 5 May.<sup>35</sup> The Court ordered the Department of Mineral Resources to ensure employers prepare and implement a code of practice to better uphold the Health and Safety regulations for mine workers, for which they must consult the Mine Health and Safety Council and meaningfully engage with relevant trade unions. With the reopening of the mines, transportation back to the mines was arranged for South African workers, but not for their foreign counterparts.<sup>36</sup>

Non-citizens are eligible for the Temporary Employer-Employee Relief Scheme (TERS), through the Unemployment Insurance Fund (UIF), provided that they have the appropriate documentation to work in South Africa and were registered through their employer.<sup>37</sup> However, reports indicated that while South Africans have received TERS pay-outs, their foreign counterparts have not. While this may be a result of additional verification being necessary, UIF pay-outs for non-citizens have historically been problematic. The Department of Labour has indicated that they are aware of this issue, have attributed it to an error, and are working to address the problem.<sup>38</sup> Some pay-outs, have begun to be received by non-citizens, but the delays and additional procedures remain.

#### 4. Cross-border migration

Policies that explicitly refer to cross-border migration are primarily concerned with documentation, framing those who are undocumented as illegal and criminal, with little acknowledgement of the structural barriers to accessing documentation that exist in South Africa. Policies reflect this through referring to undocumented non-citizens explicitly in terms of detention and deportation. Alternatives

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<sup>31</sup> Directions issued in terms of regulation 4(9) of the regulations made under section 27(2) of the disaster management act, 2002 (act no. 57 of 2002) - (11.1).

<sup>32</sup> Spector, J. B., 2014. A story of South Africa: Mining, Migration, Misery. The Daily Maverick.

<sup>33</sup> Disaster management act: Amendment of regulations 16 April 2020 - (11K).

<sup>34</sup> Directions issued by the Minister of Mineral Resources and Energy in terms of regulation 10(8) of the regulations issued in terms of section 27(2) of the disaster management act, 2002 (act no. 57 of 2002).

<sup>35</sup> The labour court of South Africa - CASE NO: J 427/2020.

<sup>36</sup> Directions on the once-off movement of persons and the transportation of goods for purposes of relocation - (3a)

<sup>37</sup> Scalabrini. (2020). Unemployment Insurance Fund: An Explainer. *Resources*. <https://scalabrini.org.za/resources/unemployment-insurance-fund-explainer/>.

<sup>38</sup> Business Insider SA. (2020). UIF coronavirus payouts: 700,000 applications have not been paid due to this error. *Business Insider South Africa*. <https://www.businessinsider.co.za/uif-unpaid-claims-2020-6>.

to detention or ensuring the ability to isolate, quarantine and socially distance within detention centres are being ignored, a clear example of how the state is failing to engage with the realities of migration, undermining an effective response to Covid-19.<sup>39</sup>

All permits and visas which expire during lockdown have been automatically extended until 31 July 2020.<sup>40</sup> However, as the issuing of permits is not considered an essential service, those without documentation or who have recently arrived in South Africa are unable to regularise their movement into or stay in the country.<sup>41</sup> In addition, the extension was not properly communicated until 10 June. As a consequence, several non-citizens have reported having had their bank accounts frozen or have been unable to receive remittances sent through money transfer services due to expired documentation. In correspondence with the Scalabrini Centre, the Banking Association South Africa has offered assurance that they do not automatically freeze bank accounts as a result of expired asylum or refugee documentation and that the matters brought to their members' attention had been resolved.

Since 27 March, non-citizens have not been allowed to enter the country unless they are a permanent resident of South Africa.<sup>42</sup> Although all borders of the Republic are closed, the Minister of Home Affairs may allow a person to enter or exit the Republic for emergency medical attention for a life-threatening condition, or for a South African, or non-citizen, to be repatriated to their country of nationality or permanent residence. If repatriation is desired, one must apply for repatriation at their consulate 72 hours in advance of departure.<sup>43</sup> Although voluntary repatriation and evacuation of non-citizens back to their countries of origin or permanent residence are taking place, undocumented migrants are unlikely to benefit, as a copy of the applicant's temporary residence visa or permanent residence permit is required to apply for repatriation.<sup>44</sup> However, efforts have been made by several consulates, in collaboration with the International Organization for Migration (IOM) to repatriate their citizens who have come forward.

If on a passenger vessel, or a seafarer entering a sea port, only South African citizens and holders of a permanent resident permit can disembark. Screening for Covid-19 takes place at sea ports, but as there is a need for the 13-digit SA ID number, non-citizens may be excluded in this procedure.<sup>45</sup>

## 5. Detention & deportation

The detention and deportation of those deemed 'illegal' has continued during the pandemic. Sentenced non-citizens whose prison sentences expire during lockdown have been released into temporary deportation facilities, as designated by Department of Home Affairs or the Department of Correctional Services, and the 'process of confirmation of detention for purpose of deportation' will continue during

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<sup>39</sup> UN network on migration: COVID-19 & Immigration Detention: What Can Governments and Other Stakeholders Do?

<sup>40</sup> Department of Home Affairs, Second Amendment Directions to the Directions published in Government Gazette No. 43162, Government Notice No. 416 of 26 March 2020, 10 June 2020, sections 19 and 20.

<sup>41</sup> Amendment of directions issued in terms of regulation 10(8) of the regulations made under section 27(2) of the disaster management act, 2002 (act no. 57 of 2002) - (6a) - (17B4) - (17D)

<sup>42</sup> International air services (Covid19 restrictions on the movement of air travel) regulations 2020

<sup>43</sup> RSA Government Gazette - updated and amended Disaster Management Regulations 2 April 2020 - (17B6)

<sup>44</sup> Amendment of directions issued in terms of regulation 10(8) of the regulations made under section 27(2) of the disaster management act, 2002 (act no. 57 of 2002) - (6a) - (17B4) - (17D)

<sup>45</sup> Measures to Address, Prevent and Combat the Spread of COVID -19 in the Sea Ports Directions, 2020, 4 May 2020.



lockdown. Furthermore, non-citizens awaiting deportation will be held in correctional facilities or transferred to Lindela Repatriation Centre.<sup>46</sup> Concerns about the conditions within these facilities have been raised, particularly as few facilities allow for adequate social distancing and hygiene measures to be practiced by those who are detained.<sup>47</sup> Oversight visits from civil society have been limited due to the lockdown. In addition, it is unclear how long people may be kept in these temporary facilities during lockdown.<sup>48</sup>

Mass deportations have continued<sup>49</sup>, with 1376 individuals having been deported since the lockdown began, although calls have been made for a moratorium on deportations to be implemented.<sup>50,51</sup>

The Department of Home Affairs has indicated that any person who is deported or who voluntarily leaves the country during the State of Disaster up to and including 31 July, and whose visa expired after 15 March 2020 (the date upon which the National State of Disaster was declared), will not be declared an undesirable person in terms of the Immigration Act of 2002. Such a declaration is accompanied with a five-year ban on re-entering South Africa.<sup>52,53</sup>

## 6. Refugees and Asylum Seekers

Recognised asylum seekers and refugees are more frequently included in policies than other migrant groups. The Department of Home Affairs has implemented a blanket extension until 31 July for all asylum seeker permits as Refugee Reception Offices remain closed.<sup>54</sup> In addition, refugees are eligible to apply for the Social Relief of Distress Grant, and since 19 June a High Court decision has extended eligibility to asylum seekers.<sup>55</sup> The voluntary repatriation of refugees and asylum seekers has also been made possible. In order to do so an individual must apply for repatriation 72 hours in advance of departure at consulate.<sup>56</sup>

However, although these provisions have been made, concerns remain about the ways in which the extension for permits has been communicated to law enforcement, and new asylum applications cannot

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<sup>46</sup> Determination of Correctional facilities as places of detention of illegal foreigners pending deportation, 7 May 2020.

<sup>47</sup> Detention Justice Forum. (2020). Letter of Recommendations for Addressing COVID-19 in Detention. <http://detentionjusticeforum.org.za/wp-content/uploads/2020/04/Letter-of-Recommendations-for-Addressing-COVID-19-in-Detention.pdf>

<sup>48</sup> Department of Justice and Correctional Services - Correctional services and remand detention facilities direction, 4 April 2020.

<sup>49</sup> South Africa's mass deportations in full pandemic, to Mozambique, Zimbabwe – Watch. (2020, May 13). *Club of Mozambique*. <https://clubofmozambique.com/news/south-africas-mass-deportations-in-full-pandemic-to-mozambique-zimbabwe-watch-160033/>

<sup>50</sup> Lawyers for Human Rights call for deportation moratorium (2020, March 18). *The Daily Maverick*. <https://www.dailymaverick.co.za/article/2020-03-18-lawyers-for-human-rights-call-for-deportation-moratorium/>

<sup>51</sup> Parliamentary Monitoring Group. (2020, June 19). *Question to the Minister of Home Affairs—NW938 | PMG*. Parliamentary Monitoring Group. <https://pmg.org.za/committee-question/13855/>

<sup>52</sup> Du Plessis, C. (2020). Zimbabweans stuck in SA because of pandemic slapped with five-year ban. *Daily Maverick*. <https://www.dailymaverick.co.za/article/2020-05-21-zimbabweans-stuck-in-sa-because-of-pandemic-slapped-with-five-year-ban/#gsc.tab=0>.

<sup>53</sup> Disaster Management Act 57 of 2002, Amendments issued 10 June, Section 4, insertion of section 21.

<sup>54</sup> Government Notice No. 416 of 26 March 2020, 10 June 2020, sections 19 and 20.

<sup>55</sup> Press Release: Victory in Covid-19 Social Relief Grant Court Case. Scalabrini.org.za. 19 June 2020.

<sup>56</sup> Directions issued in terms of Regulations 10(8) of the Regulations made under Section 27(2) of the Disaster Management Act, 2002, (Act No. 57 of 2002).

be launched, rendering those seeking asylum particularly precarious as they cannot regularise their movement into or stay in South Africa.<sup>57</sup>

## 7. Internal migration

Internal migration refers to the movement of both non-citizens and South Africans within South Africa, across provincial and district boundaries.

While the majority of migration in South Africa is internal, rather than cross-border, internal migration is rarely engaged with in policy,<sup>58</sup> In the analysed policies, internal migration and internal migrants are seldom mentioned. When policies address movement, they infrequently engage with internal migration and its consequences for disease transmission or access to services. For example, in moving from Level 5 of the lockdown to Level 4, significant travel across the provincial border between the Western Cape and Eastern Cape is believed to have been a contributing factor to the Eastern Cape's high Covid-19 caseload.<sup>59</sup> Although movement between these two provinces has a long history, and as such this was in many ways predictable, the state failed to implement measures to mitigate the effect of movement between these two provinces.

If internal migrants desired to travel between their place of work/residence and their place of origin, they were able to do so between the announcement of the lockdown and its implementation on 27 March. Movement between provinces, metropolitan and district areas remained prohibited, except in specific instances such as funerals and essential services<sup>60</sup> until the Department of Co-operative Governance and Traditional Affairs issued a direction stating that a once-off travel to a place of residence or work was allowed between 1 and 7 May.<sup>61</sup>

Health and safety of passengers during the once-off long distance inter-provincial passenger transportation by taxi and buses was taken into account through limited passenger capacity, sanitization, the wearing of face masks, physical distancing and limited operating hours (05h00 to 19h00).<sup>62</sup> Once-off travel was also permitted in a privately-owned vehicle. This was amended by the Department of Transport on 4 May to ensure that the completion of journeys even during the declared curfew times (after 19h00) was possible.<sup>63</sup>

Furthermore, another set of directions issued by the Department of Transport on 4 May allowed the utilization of public transport for essential work services (not inter-provincially), increasing mobility of

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<sup>57</sup> Directions issued in terms of Regulations 10(8) of the Regulations made under Section 27(2) of the Disaster Management Act, 2002, (Act No. 57 of 2002).

<sup>58</sup> Vearey, J., Modisenyane, M., & Hunter-Adams, J. (2017). Towards a migration-aware health system in South Africa: A strategic opportunity to address health inequity. In A. Padarath & P. Barron (Eds.), *South African Health Review 2017* (pp. 89–98). Health Systems Trust.

<sup>59</sup> Bank, L., 2020. Covid-19 reveals migration links in South Africa's human economy. *The Daily Maverick*.

<sup>60</sup> RSA Government Gazette - updated and amended Disaster Management Regulations 2 April 2020 - (11B-1iii) - (dd) - (aa)

<sup>61</sup> Directions issued in terms of regulation section 27(2)(f) of the disaster management act, 2002 (act no. 57 of 2002), 30 April 2020, section (16.5).

<sup>62</sup> Directions issued in terms of regulation 4 (7) of the regulations made in under section 27(2) of the disaster management act, 2002 (act no. 57 of 2002), 30 April 2020.

<sup>63</sup> Amendment of the directions for public transport services, 4 May 2020.



migrants working in essential services.<sup>64</sup> Public Transport is permitted to operate from 05h00 to 19h00 and the driver must ensure that the drop off is completed by 19:00.<sup>65</sup> Commuting by Gautrain became permitted 14 May.<sup>66</sup>

As noted earlier, the implications of these directions for the spread of Covid-19 have not been sufficiently prepared for, due to the lack of engagement with internal migration patterns. Not adequately anticipating internal movement has, and will continue to, hamper the containment of Covid-19 in South Africa.

## 8. Housing

If an individual is homeless or unable to isolate/quarantine at home, the state has indicated that it will provide a safe space for the individual to do so. In addition, evictions were prohibited during level 4 of the lockdown.<sup>67</sup> Regardless, constructive evictions of migrants have been reported and concerns have been raised about the conditions in shelters and quarantine facilities.<sup>68</sup>

If a new lease agreement was entered into before or during the lockdown period, a once-off movement to move was permitted between 7 May and 7 June. A permit to travel across provincial, metropolitan or district boundaries had to be obtained from the station commander of a police station.<sup>69</sup> On 14 May the Department of Co-operative Governance and Traditional Affairs issued a direction stating that under level 4 a person who needs to travel (between provincial, metropolitan or district boundaries) to his or her new place of residence or business and to transport goods which are limited to household or office furniture is permitted to do so.<sup>70</sup> This regularised some internal migration.

## 9. Children

Policies reviewed do not mention or take into account the impact of Covid-19 and the lockdown on children. A statement made in March by the Alliance for Child Protection in Humanitarian Action demands awareness of vulnerable children (including migrants), advocacy for their access to free health care, child friendly health care and the prevention and mitigation of separation.<sup>71</sup> The National Interagency Working Group (NIAWG) on Unaccompanied, Separated and Migrant Children in South Africa made a similar statement, recommending that the Government of South Africa includes Unaccompanied, Separated and Migrant Children (UCMS) in their public health response, The National Economic Response Plan and the Department of Education's planning, and implementation of plans to negate the effects of school closures. Furthermore, NIAWG urges the South African Government to

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<sup>64</sup> Public Transport Services Directions, 4 May 2020.

<sup>65</sup> Amendment of directions issued in terms of regulation 4(7), 20(1) and (2) of the regulations made under section 27(2) of the disaster management act, 2002 (act no. 57 of 2002).

<sup>66</sup> Amendment of directions issued in terms of regulations 4(7), 20(1) and 20(2) of the regulations made under section 27(2) of the disaster management act, 2002 (act no. 57 of 2002).

<sup>67</sup> Regulation issued in terms of section 27(2) of the Disaster Management Act, 2002, 24 April 2020, sections (10) and (19)

<sup>68</sup> AfricaNews. (2020, April 3). *COVID-19: SA police evict migrants in Cape Town*. Africanews.

<sup>69</sup> Directions on the once -off movement of persons and the transportation of goods for purposes of relocation and commence, 7 May 2020.

<sup>70</sup> Directions on the once -off movement of persons and the transportation of goods for purposes of relocation - (3a)

<sup>71</sup> The Alliance for Child Protection in Humanitarian Action, Technical Note: Protection of Children during the Coronavirus Pandemic, Version 1, March 2019.

ensure Child and Youth Care Centres will have adequate resources and space for social distancing and adequate services in place for children at risk of abuse, neglect and violence.<sup>72</sup>

## 10. Tourists and Visitors

Tourists and visitors are spoken about little in the analysed policies, but have been well catered for. At the beginning of the lockdown, all tourism was suspended.<sup>73</sup> Tourists have not been able to enter, travel within, or exit South Africa as planned since mid-March.<sup>74</sup> However, accommodation facilities closed to the general public have been allowed to cater to tourists in lockdown in South Africa.<sup>75</sup> In addition, concessions have been in place since 26 March for tourists who's visas expire during the lockdown.<sup>76</sup>

All foreign visitors are required to have been reported to the Department of Health, after which they were placed in quarantine at the accommodation establishment where they are residing, undergoing temperature monitoring on a daily basis for a period of 14 days or any number of days determined by the attending health officials.<sup>77</sup> During level 4 of the lockdown, tourists or visitors were required to remain in their temporary residence, unless a flight was provided by their embassy.<sup>78</sup> For repatriation to their country of origin, an application must be made to the relevant consulate 72 hours in advance of departure.<sup>79</sup>

## Conclusions & way forward

Although the South African government has been praised for its proactive response to the Covid-19 pandemic, this policy brief demonstrates that, to date, the response has been limited in at least one key respect - migration. Of the 42 policies issued by the South African government, only 17 explicitly mentioned migration, and South African citizens and non-citizens who move, while 27 had a possible impact on these individuals and their communities. When non-citizens were mentioned, they were mostly framed as illegal, a security risk or a public health danger; policies speak in a restrictive manner about their movement, employment and documentation.

An ever-growing body of literature speaks to the importance of policies, specifically health policies, and programming that are migration-aware and mobility-competent. South Africa's response to Covid-19 has failed in this regard. Non-citizens have been explicitly excluded from responses designed to alleviate the burden of the lockdown, for example the SRD grant, and disincentivised from seeking testing and treatment for Covid-19 through the requirement for an ID or passport number at the point of testing. In

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<sup>72</sup> NIAWG Advocacy Statement on COVID-19 and vulnerable children, 8 April 2020.

<sup>73</sup> International air services (Covid19 restrictions on the movement of air travel) regulations 2020

<sup>74</sup> RSA Government Gazette - updated and amended Disaster Management Regulations 2 April 2020, section 11B (6d) (1ii-iii); International air services (Covid-19 restrictions on the movement of air travel) regulations 2020, 18 March 2020.

<sup>75</sup> RSA Department of Tourism Directions, 2 April 2020.

<sup>76</sup> Department of Home Affairs Directions, 26 March 2020, section 12.

<sup>77</sup> Department of Health Directions, 8 April 2020, Sections (9.1) – (9.2).

<sup>78</sup> Directions on the once-off movement of persons and the transportation of goods for purposes of relocation - (3a)

<sup>79</sup> Directions issued in terms of Regulations 10(8) of the Regulations made under Section 27(2) of the Disaster Management Act, 2002, (Act No. 57 of 2002).



addition, the mobility of both South Africans and non-citizens as the lockdown eases, and the implications thereof, have not been sufficiently addressed.

Although migration-aware and mobility-competent policies do not necessarily translate in practice. The first step in effectively addressing the socioeconomic and psychosocial impact of the pandemic and lockdown for migrants and reducing inequities between migrant and local communities, involves developing policies that take into account the realities of migration in South Africa. This could include, for example, ensuring the non-citizens are able to access relief schemes.

Failure to engage with the realities of migration will not only affect the health and wellbeing of migrant and mobile communities, but will also undermine the South African response to Covid-19 more broadly. It may contribute to existing xenophobic sentiment and, in due course, violence. As such, as the pandemic develops and new policies are developed in response, we call for the South African government to ensure that:

1. A human-rights approach underpins the response to Covid-19 and the ways in which this response engages with migration and non-citizens in South Africa;
2. Responses to Covid-19 are migration-aware and mobility-competent. This will involve considering the specific needs of South African migrants and non-citizens, including children, LGBTIQ+ migrants, and migrants who work in the mining and agricultural sectors;
3. The government engages with and includes migrant-led organisations, civil society, international organizations and researchers working with migrant groups in the development of responses. This includes the involvement of groups that are already left behind including migrants with disabilities, sex workers, LGBTIQ+ migrants, reclaimers, farm and mine workers;
4. All non-citizens are entitled to state relief programmes and are encouraged to access screening, testing and treatment for Covid-19. Non-citizens must be assured that they will not face any penalties should they be without the documents required to be in the country legally, or should their documentation have expired; and
5. A moratorium is placed on the arrest, detention and deportation for immigration offences.



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