

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

Case No: 32323/22

In the matter between:

**ALL TRUCK DRIVERS FORUM AND ALLIED SOUTH AFRICA** Applicant

*In re:*

**HELEN SUZMAN FOUNDATION** Applicant

**CONSORTIUM FOR REFUGEES AND  
MIGRANTS IN SOUTH AFRICA** Intervening Party

and

**MINISTER OF HOME AFFAIRS** First Respondent

**DIRECTOR-GENERAL OF HOME AFFAIRS** Second Respondent

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**HSF'S ANSWERING AFFIDAVIT IN RESPONSE TO APPLICANT'S  
APPLICATION FOR LEAVE TO INTERVENE AS RESPONDENT**

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I, the undersigned,

**NICOLE FRITZ**

do hereby make oath and state that:

- 1 I am the Executive Director of the Helen Suzman Foundation ("**HSF**"), the first applicant in main application in this matter, under the above case number ("**HSF application**"). I was the deponent to the founding affidavit

in HSF application. The facts in this affidavit are within my personal knowledge, unless where the context indicates otherwise and, are both true and correct.

- 2 Where I make legal submissions, I do so on the advice of the HSF's legal representatives. I will use the same abbreviations and terms as used in the HSF's previous affidavits in the HSF application.

### **INTRODUCTION AND OVERVIEW**

- 3 I have read the founding affidavit deposed to by Mario Khumalo ("**Mr Khumalo**") on behalf of the All Truck Drivers Forum and Allied South Africa ("**Truck Drivers Forum**") in support of its application to intervene as a third respondent in the HSF application, dated 27 September 2022 ("**intervention application**").
- 4 The founding affidavit contains legal argument and irrelevant allegations. I consequently do not address all of the averments in the founding affidavit, and to the extent that any allegations are not addressed, they should be taken as denied.
- 5 The HSF objects to the intervention application on two main grounds -
  - 5.1 First, the Truck Drivers Forum has failed to satisfy the direct and substantial interest test warranting its joinder to the main proceedings; and

5.2 Second, even if it were found that the Truck Drivers Forum has some direct and substantial interest (which is denied), that is not sufficient for joinder in a constitutional matter of this nature. The Truck Drivers Forum is required to show further that their intervention is in the interests of justice.

6 Before addressing these issues, I briefly address the Truck Drivers Forum's dilatory conduct.

### THE TRUCK DRIVERS FORUM'S DILATORY CONDUCT

7 On 5 October 2022, this Court made an order that the Truck Drivers Forum file its supplementary affidavit (if any) by 13 October 2022.<sup>1</sup>

8 On 27 October 2022, HSF's legal representatives wrote to the attorneys representing the Truck Drivers Forum, pointing out that they were late in filing a supplementary affidavit and requesting confirmation whether their client intends filing a supplementary affidavit before HSF files its answering affidavit. This communication was followed by numerous phones calls.

9 In a telephone discussion with the HSF's attorneys, the attorneys for the Truck Drivers Forum undertook to revert to HSF's email of 27 October 2022 by no later than 16h00 on Monday 31 October 2022.

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<sup>1</sup> Court order: p 0-13 para 1.2.

- 10 On 1 November 2022, the HSF's attorneys wrote again to the Truck Drivers Forum's attorneys pointing out that they had failed to reply to the email of 27 October, despite their undertaking. Again, the attorneys were requested to urgently advise if their client intended filing the supplementary affidavit so that HSF can respond.
- 11 The next day, on 2 November 2022, the HSF and the Truck Drivers Forum's attorneys had telephone discussions wherein the attorneys for the Truck Drivers Forum undertook to revert within 30 minutes. This was confirmed in an email dated 2 November 2022 addressed to the attorneys for the Truck Drivers Forum. This email also pointed out the delay caused by the Truck Drivers Forum.
- 12 Copies of the email correspondence from the HSF's attorneys are attached as annexure "AA1". I also attach a confirmatory affidavit from Chigo Mabila, an attorney from DLA Piper South Africa (RF) Incorporated who was responsible for the aforesaid engagements with the attorneys for the Truck Drivers Forum.
- 13 On 2 November 2022, the Truck Drivers Forum wrote to the HSF's attorneys; committing to delivering their client's supplementary affidavit by 8 November 2022, that is nearly a month later than this Court ordered. A copy of an email from The Truck Drivers Forum's attorneys is attached as annexure "AA2".

- 14 The Truck Drivers Forum failed to meet their self-imposed deadline and, to date, have failed to deliver any supplementary papers. Further, no consent has been sought or provided for any late filing of the Truck Drivers Forum's supplementary affidavit.
- 15 While the HSF did not consent to the late filing of any supplementary affidavit, the HSF did not wish to file an answering affidavit in advance of the threatened supplementary affidavit, as doing so would have led to a duplication of answering affidavits and further wasted costs.
- 16 The Truck Drivers Forum has not respected the timelines ordered by the Court and their lack of adherence, in a matter that has already been delayed, further prejudices the adjudication of this matter as well as the livelihoods of ZEP holders.

#### **NO DIRECT AND SUBSTANTIAL INTEREST IN THE SUBJECT MATTER**

- 17 It is well settled that an applicant for intervention must meet the direct and substantial interest test in order to succeed. This means that the Truck Drivers Forum is required to show that it has a right adversely affected or likely to be affected by the order sought by the HSF. The Truck Drivers Forum has failed to meet this test.
- 18 First, the Truck Drivers Forum's stated interest in this matter is its desire to prevent, "*illegal and undocumented truck drivers from being employed in the Republic*". Mr Khumalo records the Truck Drivers Forum's mission and

vision as aiming “to make sure that no undocumented workers are involved in the trucking industry”<sup>2</sup>. But ZEP-holders are neither “illegal” nor are they “undocumented”. They have lived and worked in South Africa lawfully for more than 13 years. The premise of the Truck Drivers Forum’s alleged interest in the matter is flawed.

19 Second, the Truck Drivers Forum seeks to argue that the entire exemption regime, the ZEPs and their predecessors are unlawful from the beginning and should have never been granted at all.<sup>3</sup> This is completely different to the challenge brought by and the relief sought by the HSF and CORMSA and falls beyond the scope of this application.

20 Third, no relief is sought in the Truck Drivers Forum’s notice of motion to review and set aside the decision of the Minister to establish the exemption regime.

20.1 Absent a properly formulated review application, the Truck Drivers Forum is precluded from asserting the invalidity of the ZEP programme and other exemption regimes.

20.2 Until an administrative act is declared invalid and set aside, it exists in fact and it must be treated as valid, and cannot be ignored.

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<sup>2</sup> Founding Affidavit deposed to by Mario Khumalo on behalf of the All Truck Drivers Forum and Allies South Africa on 27 September 2022 (FA intervention application) p 026-7 para 6.

<sup>3</sup> FA (intervention application) p 026-8 para 7.

20.3 In any event, it is still open to the Truck Drivers Forum to bring its own stand-alone review application challenging the existence of the exemption regime, although that application is likely long out of time.

21 Fourth, the review relief sought in the HSF application could hardly be to the prejudice of the Truck Drivers Forum's interests. If the decision is remitted to the Minister for reconsideration, following a fair process, the Truck Drivers Forum would have ample opportunity to air their views on the validity of special exemption regimes during the reconsideration process.

22 In the circumstances, the allegations made in the founding affidavit do not justify admitting the Truck Drivers Forum as a party in the HSF application.

**IT IS, IN ANY EVENT, NOT IN THE INTEREST OF JUSTICE TO ADMIT THE TRUCK DRIVERS FORUM AS A RESPONDENT IN THE HSF APPLICATION**

23 Even if the Truck Drivers Forum had some direct and substantial interest in the main matter (which is denied), I am advised that that is not sufficient for joinder in a constitutional matter of this nature. More is required from the Truck Drivers Forum - it must show further that intervention is in the interest of justice.

24 The Truck Drivers Forum fails to satisfy this interest of justice test.

25 First, no explanation has been offered for the delay in launching this joinder application. In the HSF application, the pleadings have closed and

- heads of arguments have been filed by all parties. The Truck Drivers Forum's intervention application was only brought six days before 5 October 2022, the date which was initially allocated for the hearing of the HSF application.
- 26 Second, the papers offer no explanation (or a prayer for condonation) as to why the Truck Drivers Forum waited until the eleventh hour before filing their intervention application. This is despite the attorneys of record having had access to Caselines papers from as early as 27 June 2022, as reflected in the log of participants on Caselines. An extract of the Caselines access audit is attached as annexure "AA3".
- 27 Third, the Truck Drivers Forum's application raises a completely different issue to the issues that are before the Court. Nothing in the joinder application is useful to assist the Court to determine the merits of the HSF and CoRMSA applications.
- 28 Fourth, the points advanced by the Truck Drivers Forum constitute a separate cause of action which requires a separate review application - that being, *prima facie*, out of the 180-days means this court has no jurisdiction to entertain the contentions advanced by the Truck Drivers Forum without a formal application for condonation.
- 29 Fifth, joining the Truck Drivers Forum as party in the HSF application will require the Truck Drivers Forum to file supplemented papers – this was



confirmed by their counsel in the case management meeting held on 3 October 2022 and a court order was made to accommodate the supplementing of papers by the Truck Drivers Forum. Despite this, they have to date failed to supplement their paper.

## **RESPONSES TO INDIVIDUAL PARAGRAPHS IN THE FOUNDING AFFIDAVIT**

30 I now turn to address individual allegations in the founding affidavit to the extent necessary. I do not intend to address all of the allegations, most of which are legal disputes which will be addressed in argument. Any allegation which is not addressed and which is inconsistent with what is stated above must be taken to be denied.

### ***Ad paragraphs 2 - 3***

31 Save to deny that the affidavit is true and correct, the content of these paragraphs is noted.

### ***Ad paragraph 6***

32 I note that the Truck Drivers Forum "aims to make sure that no undocumented workers are involved in the trucking industry".

33 This application does not concern undocumented foreign nationals. ZEP-holders are documented and fall outside of the purview of the Truck Drivers Forum. The ZEP holders are not individuals with whom the Truck

Drivers Forum should be concerned and accordingly they have no substantial interest in the outcome of litigation based on documented foreign nationals' rights.

***Ad paragraphs 7 – 8***

34 I note that the Truck Drivers Forum's view that the entire exemption regime is unlawful. The HSF denies these legal conclusions, which will be addressed in argument.

35 The Truck Drivers Forum fails to provide any evidence that the exemption programmes somehow contributed to illegal and undocumented truck drivers. This contention is untenable and without any basis.

36 Moreover, the HSF does not contend, as the Truck Drivers Forum argues, that the ZEPs be continued indefinitely. All that is demanded is that the Minister must make a decision in a lawful, rational and fair manner that is compatible with constitutional rights.

37 In any event, it would be prejudicial to join a party who seeks to introduce a new (and unrelated) dispute in a matter which is ripe for hearing

***Ad paragraph 9 (including subparagraphs)***

38 As already stated, the ZEP-holders are documented, accordingly there is no logical and legal basis to assert – as the Truck Drivers Forum has

attempted to argue – that ZEPs “*contribute to the proliferation of illegal, undocumented drivers in the trucking industry in the Republic*”.<sup>4</sup> These submissions add no value to the debate before this Court.

***Ad paragraph 10***

39 The mere fact that the Truck Drivers Forum wishes to oppose the order sought by the HSF does not entail that it has a direct and substantial interest in the relief sought.

40 The Truck Drivers Forum is challenging the issuance of ZEPs whereas the HSF is challenging the termination and non-renewal of ZEPs. These are two separate challenges, and the Truck Drivers Forum should bring its own review application if it wishes to advance its contentions.

***Ad paragraph 13***

41 I note the Truck Drivers Forum's stated aim to “*make only citizens to get jobs, own businesses and properties*”. This aim is antithetical to basic constitutional rights and values and our immigration laws, which confer rights to work, own businesses and properties on categories of foreign nationals lawfully residing within the country.

***Ad paragraphs 14 – 15***

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<sup>4</sup> FA (intervention application) p 026-8 para 9.1

42 The contents of these paragraphs are noted.

## AD ATDFASA STAKEHOLDER INVOLVEMENT

### *Ad paragraph 17 – 37*

43 HSF sympathises with the foreign nationals facing xenophobic attacks in the trucking industry. The Truck Drivers Forum's makes unsubstantiated allegations about foreign nationals stealing jobs - there is neither evidence for this proposition nor any suggestion that ZEP-holders contribute to the employment of undocumented foreign nationals.

44 In paragraph 26, it is alleged that "the fact that no other permit is required for the holders of ZEPs to be employed as truck drivers fortified the submission by the Truck Drivers Form that those ZEPS were unlawfully in the first place as truck driving does not fall under critical or specialised list of skills".<sup>5</sup>

44.1 The ZEP is an exemption permit. By its very nature, it is designed to exempt its holders from complying with the requirements of *inter alia* having a work permits before getting employment in South Africa, as set out in the Immigration Act.

44.2 The fact that ZEP holders do not require work permits or critical skills visas does not make it unlawful – this is why exemptions are available in the first place.

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<sup>5</sup> FA (intervention application) p 026-14 para 26

45 The remainder of these paragraphs are concerned with illegal and undocumented foreign nationals in the trucking industry. These paragraphs are irrelevant in these proceedings, and I will accordingly not respond to them.

#### **AD THE LEGISLATIVE FRAMEWORK**

##### ***Ad paragraph 40– 45***

46 To the extent that these paragraphs accurately record what is stated in the legislation referred to therein, the content of these paragraphs is noted.

#### **AD THE ZIMBABWEANS SPECIAL DISPENSATION**

##### ***Ad paragraph 47 - 51***

47 These paragraphs are an amplification of paragraphs 9.1 and 9.2 of the founding affidavit. As stated above, this is a separate challenge which necessitates a separate review application. I further deny the allegations that the exemption programmes are unlawful.

#### **AD GROUNDS UPON WHICH THE EXEMPTION PERMITS ARE CHALLENGED**

##### ***Ad paragraph 52 – 53 and 54***

48 The allegations made in these paragraphs are without merit.

***Ad paragraph 56 - 72***

49 As stated above, these allegations are distinct from the challenge brought by the HSF and should be adjudicated in a separate application. The relief sought by HSF and the Truck Drivers Forum yields different outcomes which further justifies the HSF's position that the intervention application is a separate application which should not be joined to the HSF application.

50 In any event, I deny the legal conclusions drawn in these paragraphs, which are a matter for argument.

***Ad paragraph 73***

51 It is incorrect to allege that ZEPs have not produced any positive effects for the South Africa economy. The 2017 White Paper on Immigration stated that special dispensations, such as the ZEP, contribute to economic growth.<sup>6</sup>

***Ad paragraph 74 – 76***

52 No evidence is provided for these bald allegations that foreign nationals contribute to unemployment and scarcity of resources. Similar allegations have been addressed in the HSF's founding affidavit and I request that these responses be read as incorporated herein.<sup>7</sup>

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<sup>6</sup> Annexure "FA 6" to the HSF Founding Affidavit p 001-95 para 56.

<sup>7</sup> HSF Founding Affidavit p 001 – 71-72 para 149


**AD CONCLUSION*****Ad paragraph 82***

53 The HSF therefore opposes the application by the Truck Drivers Forum to be admitted as a respondent in the HSF application.

**WHEREFORE THE HSF PRAYS THAT THE APPLICATION BE DISMISSED WITH COSTS**

  
 \_\_\_\_\_  
 NICOLE FRITZ

SIGNED and SWORN to before me at Johannesburg on this the 16<sup>th</sup> day of November .2022, by the deponent who has acknowledged that she knows and understands the contents of this affidavit; that she has no objection to taking to the prescribed oath and that she considers the prescribed oath to be binding on her conscience.

  
 \_\_\_\_\_  
 COMMISSIONER OF OATHS  
 Full Names:  
 Business Address:  
 Area:  
 Designation:

**PHELISA PHELOKAZI JWAJWA**  
 8 Sherborne Road  
 Parktown  
 Johannesburg  
 Commissioner Of Oaths  
 Ex Officio Practising Attorney R.S.A

**Chigo Mabila**

---

**From:** Waseeqah Makadam  
**Sent:** Thursday, October 27, 2022 4:06 PM  
**To:** mattorneys@telkomsa.net  
**Cc:** Manyaku Thulare; Chigo Mabila  
**Subject:** Helen Suzman Foundation / Minister of Home Affairs & Another, Case No. 32323/2022 [DLAP-UKMATTERS.FID5965704]

**Importance:** High

Dear Sirs

We refer to the above matter and your client's application to intervene, dated 27 September 2022.

We also refer to the court order, dated 5 October 2022.

In terms of paragraph 1.2 of the court order, your client was to file their supplementary affidavit by 13 October 2022. Our client is then to file its answering affidavit in response by 31 October 2022. However, to date, we have not received any supplementary papers from your client.

Please can you let us know whether your client intends filing a supplementary affidavit, and if so, by when? Our client intends filing an answering affidavit in response to your client's application, however, we need to know if we should expect a supplementary affidavit first.

We await your response.

Regards

**Waseeqah Makadam**  
Director

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F: +27113020801  
waseeqah.makadam@dlapiper.com

DLA Piper South Africa (RF) Incorporated  
www.dlapiper.com





**Chigo Mabila**

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**From:** Chigo Mabila  
**Sent:** Tuesday, November 1, 2022 12:52 PM  
**To:** [mattorneys@telkomsa.net](mailto:mattorneys@telkomsa.net)  
**Cc:** Waseeqah Makadam; Manyaku Thulare  
**Subject:** RE: Helen Suzman Foundation / Minister of Home Affairs & Another, Case No. 32323/2022 [DLAP-UKMATTERS.FID5965704]

Dear Joshua Mashao

We refer to our email below as well as our numerous phone calls of yesterday, as well as your undertaking to provide us with a written response to our email below by no later than 16h00 yesterday.

As mentioned in our email below, read with the court order dated 5 October 2022, our client intends filing an answering affidavit in response to your client's application but we urgently need to know if and when your client will be filing its supplementary affidavit so that we can respond thereto *in toto*.

We await your urgent reply.

Our client's rights remain strictly reserved.

Kind regards

**Chigo Mabila**  
Associate

M: +27661849187  
[chigo.mabila@dlapiper.com](mailto:chigo.mabila@dlapiper.com)

DLA Piper Advisory Services Proprietary Limited

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**From:** Waseeqah Makadam <[Waseeqah.Makadam@dlapiper.com](mailto:Waseeqah.Makadam@dlapiper.com)>  
**Sent:** Thursday, October 27, 2022 4:06 PM  
**To:** [mattorneys@telkomsa.net](mailto:mattorneys@telkomsa.net)  
**Cc:** Manyaku Thulare <[Manyaku.Thulare@dlapiper.com](mailto:Manyaku.Thulare@dlapiper.com)>; Chigo Mabila <[Chigo.Mabila@dlapiper.com](mailto:Chigo.Mabila@dlapiper.com)>  
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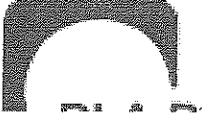
Regards

Waseeqah Makadam  
Director

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F: +27113020801  
[waseeqah.makadam@dlapiper.com](mailto:waseeqah.makadam@dlapiper.com)

DLA Piper South Africa (RF) Incorporated  
[www.dlapiper.com](http://www.dlapiper.com)



*Handwritten initials*  
NLF

**Chigo Mabila**

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**From:** Chigo Mabila  
**Sent:** Wednesday, November 2, 2022 10:15 AM  
**To:** mattorneys@telkomsa.net  
**Cc:** Waseeqah Makadam; Manyaku Thulare  
**Subject:** RE: Helen Suzman Foundation / Minister of Home Affairs & Another, Case No. 32323/2022

Dear Joshua Masha

Further to our telephonic discussion this morning, we look forward to receiving your correspondence regarding your client's supplementary affidavit within the next 30 minutes.

We place on record that our client has not agreed to your client's non-compliance with the court order dated 5 October 2022.

The delivery of our client's answering affidavit is being hampered by your client's dilatory conduct in relation to its supplementary affidavit. We require urgent resolution to this issue.

Kind regards

**Chigo Mabila**  
Associate

M: +27661849187  
chigo.mabila@dlapiper.com

DLA Piper Advisory Services Proprietary Limited

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**From:** Chigo Mabila  
**Sent:** Tuesday, November 1, 2022 12:52 PM  
**To:** mattorneys@telkomsa.net  
**Cc:** Waseeqah Makadam <Waseeqah.Makadam@dlapiper.com>; Manyaku Thulare <Manyaku.Thulare@dlapiper.com>  
**Subject:** RE: Helen Suzman Foundation / Minister of Home Affairs & Another, Case No. 32323/2022 [DLAP-UKMATTERS.FID5965704]

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Associate

M: +27661849187  
chigo.mabila@dlapiper.com

**Chigo Mabila**

---

**From:** mattorneys@telkomsa.net  
**Sent:** Wednesday, November 2, 2022 10:40 AM  
**To:** Chigo Mabila  
**Subject:** FW: Helen Suzman Foundation / Minister of Home Affairs & Another, Case No. 32323/2022

**\*\*EXTERNAL\*\***

Good morning

As telephonically put to you, we will file our supplementary affidavit by Tuesday the 8 November 2022.

Thanks

MJ Mashao

**From:** Chigo Mabila <Chigo.Mabila@dlapiper.com>  
**Sent:** Wednesday, 02 November 2022 10:15  
**To:** mattorneys@telkomsa.net  
**Cc:** Waseeqah Makadam <Waseeqah.Makadam@dlapiper.com>; Manyaku Thulare <Manyaku.Thulare@dlapiper.com>  
**Subject:** RE: Helen Suzman Foundation / Minister of Home Affairs & Another, Case No. 32323/2022

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Associate

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DLA Piper Advisory Services Proprietary Limited

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**Subject:** RE: Helen Suzman Foundation / Minister of Home Affairs & Another, Case No. 32323/2022 [DLAP-UKMATTERS.FID5965704]

Dear Joshua Mashao

"AA3"

Miss Thando Ndita	First Accessed	Candidate Attorney	26 July 2022 10:20 AM	Miss Manyaku Thulare	Master Bundle
Mr Jason Whyte	First Accessed	Attorney	26 July 2022 09:08 AM	Ms Anneline Coetsee	Master Bundle
Mr Jason Whyte	Invited	Attorney	26 July 2022 09:05 AM	Ms Anneline Coetsee	Master Bundle
Ms Anneline Coetsee	First Accessed	Candidate Attorney	26 July 2022 09:04 AM	Miss Manyaku Thulare	Master Bundle
Miss Thando Ndita	Invited	Candidate Attorney	25 July 2022 12:31 PM	Miss Manyaku Thulare	Master Bundle
Ms Anneline Coetsee	Invited	Candidate Attorney	25 July 2022 12:30 PM	Miss Manyaku Thulare	Master Bundle
Mr Steven Budtender	First Accessed	Advocate	24 July 2022 10:00 PM	Miss Manyaku Thulare	Master Bundle
Ms Maitsho Mhuvaduba	Invited	Candidate Attorney	23 July 2022 04:32 PM	Miss Manyaku Thulare	Master Bundle
Adv Mushahida Adhikari	First Accessed	Advocate	19 July 2022 08:39 AM	Miss MUDZULI RAKWAMBO	Master Bundle
Mr Sean Rosenberg	Invited	Advocate	13 July 2022 04:18 PM	Miss MUDZULI RAKWAMBO	Master Bundle
Adv Mushahida Adhikari	Invited	Advocate	13 July 2022 04:17 PM	Miss MUDZULI RAKWAMBO	Master Bundle
Adv Imait Jamie	Invited	Advocate	13 July 2022 04:16 PM	Miss MUDZULI RAKWAMBO	Master Bundle
Mr Chris McConnachie	First Accessed	Advocate	28 June 2022 05:43 PM	Miss Manyaku Thulare	Master Bundle
Mr Ziphozile Raqwa	First Accessed	Advocate	28 June 2022 05:43 PM	Miss Manyaku Thulare	Master Bundle
Mr Neilvan Onselan	First Accessed	Attorney	28 June 2022 12:18 PM	Mr. Tumelo Motlokonne	Master Bundle
Adv Marius Snyman	First Accessed	Advocate	27 June 2022 06:40 PM	Mr Joshua Mpanana Mashao	Master Bundle
Adv Marius Snyman	Invited	Advocate	27 June 2022 03:31 PM	Mr Joshua Mpanana Mashao	Master Bundle
Adv Muvamba Karabo Munene	First Accessed	Attorney	27 June 2022 01:32 PM	Adv Muvamba Karabo Munene	Master Bundle
Adv Muvamba Karabo Munene	Invited	Attorney	27 June 2022 01:00 PM	Adv Muvamba Karabo Munene	Master Bundle
Adv Steven Budtender	First Accessed	Registrar	22 June 2022 12:29 PM	Mr. Tumelo Motlokonne	Master Bundle
Mr Chris McConnachie	Invited	Advocate	22 June 2022 04:22 PM	Miss Manyaku Thulare	Master Bundle
Mr Ziphozile Raqwa	Invited	Advocate	22 June 2022 04:20 PM	Miss Manyaku Thulare	Master Bundle
ncole@hst.org.za	Invited	Applicant	22 June 2022 04:20 PM	Miss Manyaku Thulare	Master Bundle
Mr Jonathan Keus	First Accessed	Attorney	22 June 2022 11:59 AM	Miss Manyaku Thulare	Master Bundle
Miss Manyaku Thulare	First Accessed	Candidate Attorney	21 June 2022 04:23 PM	Mr. Tumelo Motlokonne	Master Bundle
Miss MUDZULI RAKWAMBO	First Accessed	Attorney	20 June 2022 05:44 PM	Mr. Tumelo Motlokonne	Master Bundle
Mr Khethani Swibana	First Accessed	Attorney	20 June 2022 05:35 PM	Mr. Tumelo Motlokonne	Master Bundle
Ms Vaseeqah Hatadani	First Accessed	Attorney	20 June 2022 05:33 PM	Mr. Tumelo Motlokonne	Master Bundle
Miss Manyaku Thulare	Invited	Candidate Attorney	20 June 2022 04:58 PM	Mr. Tumelo Motlokonne	Master Bundle
Mr Neilvan Onselan	Invited	Attorney	20 June 2022 04:58 PM	Mr. Tumelo Motlokonne	Master Bundle

Handwritten signatures and initials at the bottom right of the page.

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

CASE NO: 32323/22

In the matter between:

**OPERATION DUDULA**

**Applicant/Intervening Party**

*In re*

**HELEN SUZMAN FOUNDATION**

**First Applicant**

**CONSORTIUM FOR REFUGEES AND  
MIGRANTS IN SOUTH AFRICA**

**Second Applicant**

and

**MINISTER OF HOME AFFAIRS**

**First Respondent**

**DIRECTOR GENERAL OF HOME AFFAIRS**

**Second Respondent**

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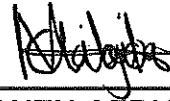
**FILING SHEET**

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**PRESENTED FOR SERVICE AND FILING:**

1. The HSF's answering affidavit (with annexures) in response to Operation Dudula's application to be joined as a respondent in the HSF matter.

DATED at **SANDTON** on this the 17<sup>th</sup> day of **JANUARY 2023**.



---

**DLA PIPER SOUTH AFRICA (RF) INC.**

Attorneys for the First Applicant in the main application

6th floor, 61 Katherine Street

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**BY EMAIL**

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

Case No: 32323/22

In the matter between:

OPERATION DUDULA

Applicant

*In re:*

HELEN SUZMAN FOUNDATION

First Applicant

CONSORTIUM FOR REFUGEES AND  
MIGRANTS IN SOUTH AFRICA

Second Applicant

and

MINISTER OF HOME AFFAIRS

First Respondent

DIRECTOR-GENERAL OF HOME AFFAIRS

Second Respondent

---

HSF'S ANSWERING AFFIDAVIT

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I, the undersigned,

NICOLE FRITZ

State under oath that:

- 1 I am the Executive Director of the Helen Suzman Foundation (“**HSF**”), the first applicant in main application under the above case number (“**HSF application**”). I was the deponent to the founding affidavit in the HSF application as well as all other affidavits filed by the HSF in this matter.
- 2 The facts in this affidavit are within my personal knowledge, unless where the context indicates otherwise and, are both true and correct.
- 3 Where I make legal submissions, I do so on the advice of the HSF’s legal representatives. I will use the same abbreviations and defined terms as used in the HSF’s previous affidavits in the HSF application.

#### **INTRODUCTION AND OVERVIEW**

- 4 I have read the founding affidavit, deposed to by Zandile Dabula on behalf of Operation Dudula (the “**applicant**”), dated 21 November 2022, in support of its application to intervene as a respondent in the HSF application (“**intervention application**”).
- 5 The founding affidavit contains legal argument and irrelevant allegations. I consequently do not address all of the averments contained in the founding affidavit, and to the extent that any allegations are not addressed, they should be taken as denied.
- 6 The HSF objects to the applicant’s joinder as a respondent in the HSF application on the following main grounds:

- 6.1 First, the applicant has no direct and substantial interest in the relief sought by HSF, and
- 6.2 Second, even if it were found that the applicant has some direct and substantial interest, that is not sufficient for joinder in a constitutional matter of this nature. The applicant is required to show further that intervention and joinder is in the interests of justice. It has wholeheartedly failed to do so.

#### **NO DIRECT AND SUBSTANTIAL INTEREST IN THE SUBJECT MATTER**

- 7 The applicant has failed to meet the direct and substantial interest test in order to succeed with its joinder application. The applicant is required to show that it has a right adversely affected or likely to be affected by the order sought.
- 8 First, I strongly deny the applicant's characterisation of itself as a, "*civil rights movement whose main objective is to fight crime and criminality*".
- 8.1 No evidence is provided to support these claims, nor has the applicant disclosed its constitutive documents, despite numerous requests by the HSF's attorneys, as detailed below.
- 8.2 The applicant has been described as a "vigilante organisation" which is accused of violent acts and intimidation against foreign nationals and South African citizens. I attach a selection of reports on the organisation, as annexures "AA1.1 to AA1.4" hereto.

8.3 United Nations experts have further condemned the rise of xenophobic violence and discrimination, perpetrated under the applicant's banner. I attach a statement to this effect as annexure "AA2".

8.4 Civil society organisations have also released statements opposing the xenophobic acts committed in the applicant's name. I attach, for example, statements by the Socio Economic Rights Institute of South Africa (SERI) and the University of Pretoria Centre for Human Rights, as annexures "AA3" and "AA4", respectively.

9 Second, the applicant's stated interest in this matter is to "*fight crime and criminality using legal protests and court applicants* [sic]".<sup>1</sup> It alleges, without any explanation that ZEPs are "*compounding the already dire situation of criminality*".<sup>2</sup>

10 This is an unsubstantiated, xenophobic slur against ZEP-holders which must be rejected in the strongest terms. There is not a shred of evidence from the applicant's founding papers to suggest that ZEP-holders contribute to crime in South Africa. The application must be rejected on this basis alone.

---

<sup>1</sup> Founding Affidavit deposed to by Zandile Dabula on behalf of Operation Dudula 21 November 2022 (FA intervention application) p 035-10 para 12.

<sup>2</sup> Ibid.

- 11 Third, the applicant disregards, entirely, what has been stated in the HSF affidavits in this matter and which is common cause. ZEP-holders are legal and documented, many have lived and worked in the country lawfully for more than 13 years. Furthermore, ZEP-holders are subjected to criminal record checks during the application process.<sup>3</sup> As illustrated by the individuals' supporting affidavits annexed to the founding affidavit in the HSF application, ZEP-holders have made significant contributions as professionals and business owners.
- 12 Fourth, there is no factual basis set out in the founding affidavit showing a direct and substantial interest, let alone an indication of how the relief sought impacts on the rights of the applicant and its members.
- 13 In the circumstances, nothing in the founding affidavit justifies admitting the applicant as a party in the HSF application.

**IT IS, IN ANY EVENT, NOT IN THE INTEREST OF JUSTICE TO ADMIT THE APPLICANT**

- 14 Even if the applicant is able to show a direct and substantial interest (which is strongly denied), this honourable Court has an overriding power to refuse intervention in constitutional matters, in the interests of justice. The applicant has failed to meet the interest of justice test.

---

<sup>3</sup> Minister's AA p 010-47 para 132.

- 15 First, the applicant's unfounded and unfairly discriminatory allegations of criminality against ZEP-holders are entirely disqualifying.
- 16 Second, the applicant does not provide any indication of its intended submissions. In an intervention application in constitutional litigation, I am advised that this Court has to consider whether submissions which an applicant for intervention seeks to advance raise substantially new contentions that may assist the Court – this Court cannot determine this question without an explanation from the applicant.
- 17 Third, no explanation has been offered for the delay in launching this intervention application. In the HSF application, the pleadings closed on 24 October 2022 and heads of arguments have been filed by all parties to the application. The HSF application was provisionally enrolled to be heard on 28 November 2022 (subject to availability of Judges and confirmation from the DJP), this intervention application was only brought six days before 28 November 2022. Further:
- 17.1 The notice of motion contains a prayer to postpone the matter on 28 November 2022. This prayer is moot because the matter was in any event never finally enrolled to be heard on 28 November 2022. It is important to note that the founding affidavit makes no positive case for postponement nor does it offer any explanation for the delay in bringing the intervention application.

17.2 It seems, from the reading of the founding affidavit, that the intervention application is purely a dilatory tactic which was meant to delay the adjudication of the HSF application in the event that it was to be heard on 28 November 2022. This, coupled with the manner in which the intervention application has been formulated, gives credence to the conclusion that the application was a delay tactic. For example, there are placeholders which have not been completed in the founding affidavit; the parties are incorrectly cited; no substantive arguments or defence to the HSF application have been advanced and no evidence has been produced for factual conclusions reached in the affidavit.

18 Fourth, intervention would cause further delays and prejudice, given the applicant's stated intention of filing further affidavits and a counter-application, with no indication of their intended substance. This is confirmed in the founding affidavit where it is stated that the, "*applicant will be raising defences based on all the above in its answering affidavit in the main application ...with or without a counter-application...*"<sup>4</sup>.

19 The main matter must be heard and decided well before 30 June 2023, when all ZEPs will expire. For that reason, it has been enrolled for hearing in April 2023. Joining the applicant could cause further delays to

---

4 FA (Intervention application): p 035-10 para 14.



accommodate filing of further affidavits and heads of arguments. Such delays, when it is not even clear what contribution this applicant seeks to make to the HSF application, cannot be allowed.

20 In the premises, it is not in the interest of justice to join the applicant.

#### **RESPONSES TO INDIVIDUAL PARAGRAPHS IN THE FOUNDING AFFIDAVIT**

21 I now turn to address individual allegations in the founding affidavit to the extent necessary. Any allegation which is not addressed and which is inconsistent with what is stated above is denied.

#### **Ad paragraphs 1 and 2**

22 Save to deny that the affidavit is true and correct; the content of these paragraphs are noted.

#### **Ad paragraph 3**

23 The content of this paragraph is denied:

23.1 There is no Memorandum of Association (annexure "JA1") attached to the founding affidavit as alleged by the applicant and same has not been uploaded onto Caselines.

23.2 On 9 December 2022, the HSF's legal representatives, DLA Piper South Africa (RF) Incorporated ("**DLA Piper**") sent an email to the applicant's attorneys requesting a copy of this annexure "JA1". DLA Piper then sent a follow up emails on 14 December 2022 and on 11 January 2023. As at date of this answering affidavit, no response has been received from the applicant's attorneys. A copy of this email chain is attached hereto as annexure "**AA5**". The HSF reserves its rights to supplement this affidavit upon receipt of annexure "JA1".

#### **Ad THE PARTIES**

#### **Ad paragraph 4**

24 .The applicant has omitted to annex its annexure "**JA1**", its Memorandum of Association.

25 In the absence of the applicant's Memorandum of Association, HSF denies the allegation made in this paragraph.

#### **Ad paragraphs 5**

26 Save to admit that the Helen Suzman Foundation is in the care of DLA Piper, the HSF has not been properly cited.

#### **Ad paragraphs 6 - 8**

27 Save to admit that the parties cited in these paragraphs are represented by the attorneys set out therein, the contents of these paragraphs are denied and the parties are not properly cited.

**Ad paragraph 9**

28 The contents of this paragraph are denied. There is no party in the HSF matter known as the Truck Drivers' Association of South Africa with care of at Moleba Modiga Attorneys in Benoni, Gauteng, South Africa.

**Ad THE PURPOSE OF THIS APPLICATION**

**Ad paragraphs 10 and 11**

29 The applicant has not set out the alleged grounds upon which it relies to establish a direct and substantial interest in the HSF application.

30 Save as aforesaid, the content of these paragraphs are noted.

**Ad THE GROUNDS OF INTERVENTION**

**Ad paragraph 12 and 13**

31 I deny the contents of these paragraphs, for the reasons stated fully above.

**Ad paragraph 14**

32 In an intervention application, it is not sufficient for an applicant to allege that it will raise defences when joined in the main proceedings - an applicant

is required to set out the factual basis on which it has a direct and substantial interest and why the interest of justice require its intervention.

33 This application is deficient in this respect and the applicant concedes that there is no basis set out for its intervention.

34 It is not clear from the founding affidavit:

34.1 what interest it has in the outcome of the HSF application and how it will be affected by such outcome; and

34.2 what contribution or submission, if any, the applicant intends to make in the HSF application.

#### **Ad paragraph 15**

35 This paragraph contains legal argument and will be best addressed in legal submissions.

36 Despite the applicant's recognition that it is required to set out "*all the allegations of fact relied on*", it has failed to meet its own standard.

#### **Ad paragraphs 16 and 17**

37 For reasons already stated, the content of these paragraphs are denied.

37.1 The applicant has not furnished any grounds and/or *prima facie* proof of its direct and substantial interest in the HSF matter.

37.2 There are no rights of the applicant being infringed or at risk of being infringed by the extension of the ZEPs and it is not in the interests of justice to admit it.

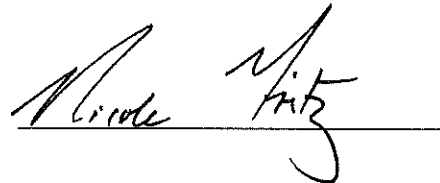
37.3 The applicant has not offered any positive case against the HSF application to show this alleged prospect of success. If the applicant genuinely believed in its prospect of success, it would have set out its defences to the HSF application.

#### Ad RELIEF SOUGHT

#### Ad paragraph 19

38 The HSF therefore opposes the application by the applicant to be admitted as a respondent in the HSF application.

WHEREFORE the HSF prays that the application be dismissed with costs.

A handwritten signature in black ink, appearing to read "Nicole Fritz", is written over a horizontal line.

NICOLE FRITZ

SIGNED and SWORN to before me at JOHANNESBURG on this the 16<sup>th</sup> day of JANUARY 2023, by the deponent who has acknowledged that she knows and understands the contents of this affidavit; that she has no objection to taking to the prescribed oath and that she considers the prescribed oath to be binding on her conscience.

Meidi

**MARWA EIDI**  
8 Sherborne Road  
Parktown  
Johannesburg  
Commissioner of Oaths  
Ex Officio Practising Attorney R.S.A.

COMMISSIONER OF OATHS

Full Names: MARWA EIDI

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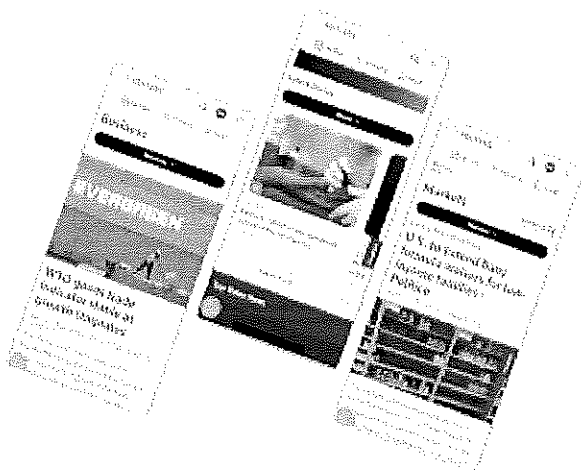
# Anti-migrant vigilante group Dudula stokes tensions in South Africa

"AA1.1"

By Shafiek Tassiem

JOHANNESBURG, March 31 (Reuters) - Shopkeepers pulled down their metal shutters and foreign staff stayed out of sight as hundreds marched through a Johannesburg neighbourhood demanding that migrants leave and that their jobs go to South Africans.

The march through dilapidated Hillbrow, where many African migrants live, was organised by Operation Dudula, a vigilante group whose activities have raised fears of renewed violence against foreigners, a recurring problem.



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Dudula means "push back" in Zulu. The group, based in the Soweto township just outside Johannesburg, blames high crime rates on undocumented migrants, who it also accuses of taking away jobs from South Africans and driving down wages.

"We want to see the people of South Africa reclaiming the control of South Africa ... and playing a meaningful role in terms of economic activities rather than being spectators," said Dan Radebe, one of the leaders of the group.

"You cannot sit at more than 50% unemployment rate and still have room to employ illegal migrants," he said.

South Africa's official unemployment rate is at a record 35.3%, though it is even higher by other measures. [read more](#)

Campaigners for migrant rights say foreigners are being scapegoated for economic woes rooted in profound structural problems and for the failure of successive governments to convert post-apartheid freedoms into widespread prosperity.

The leader of Operation Dudula, Nhlanhla "Lux" Dlamini wears paramilitary-style camouflage gear and speaks of "taking back" South Africa. He was arrested last week and is facing charges of

housebreaking and malicious damage, in connection with an incident at a private home. Dlamini's lawyer has said he is innocent.



[1/4] Members of the South African anti-migrant group, operating under the slogan "Put South Africa First", take part in a peaceful campaign to force undocumented foreigners out of informal trading at Johannesburg's Hillbrow, an inner city suburb with a large population of African migrants, in Johannesburg, South Africa February 19, 2022. REUTERS/Siphiwe Sibeko

The group has been linked to incidents of violence in townships against foreigners, who come from all over Africa, including Nigeria and countries in southern Africa.

President Cyril Ramaphosa said last week that those behind Operation Dudula were contravening the law.

"We cannot allow a situation where we are going to get people who will embark on vigilantism to deal with a problem, a social problem," he said.

Some civil society groups have staged counter-protests, marching through Hillbrow carrying banners with slogans such as "No To Xenophobia" and "We Are One Africa".

Human rights lawyer and activist Sharon Ekambaram said an increasing number of politicians were making statements hostile to migrants. She cited the recent suspension of a special permit for Zimbabwean migrants as a sign of growing official hostility.

"These are all signs that the state is blaming migrants for the problems in our country and in that climate, the emergence of Operation Dudula is of serious concern, their actions of attacking foreign nationals in various townships," she said.

Zimbabwean national Siyayi Chinemhute, who resides legally in South Africa, said members of Operation Dudula, some armed with guns, sticks and whips, had invaded the community centre in Soweto where he works and lives with his family.



"Some of the group actually came in, went in all over the place, searching all the place and banging the doors," he said, adding that they were chanting "mabahambe" or "they must leave".

"For me as a father, not only to my immediate family but to the broader community, it actually traumatised me because I was thinking to myself, 'what is going to happen now?'"



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Reporting by Shafiek Tassiem. Writing by Estelle Shirbon. Editing by Jane Merriman

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## AFRICA

# Vigilantes and violence have migrants in South Africa scared for their lives

By Lesley Wroughton

June 5, 2022 at 2:00 a.m. EDT

CAPE TOWN, South Africa — The street vendors paced nervously, huddling in pairs, wondering whether it was safe to unpack the carvings, baskets and wire sculptures they sell daily to tourists at one of the small crafts markets dotting the coastline.

A police notice the day before had warned of possible protests by a group known for attacks on immigrants, though nothing had yet happened.

“They want to take away our businesses,” said one vendor from a neighboring country, who spoke on the condition of anonymity because he feared for his and his family’s lives.

Anti-immigrant sentiment is a long-standing problem in South Africa, where the end of White minority rule failed to deliver meaningful changes for many Black South Africans. Attacks against migrants have sharply increased since May 2008, when an estimated 62 people were killed and scores injured in Johannesburg in one of the country’s worst xenophobic attacks.

The police notice in Cape Town in late May flagged possible “Operation Dudula action.” The group recently launched a branch in Cape Town, the nation’s main tourist destination, after months of targeting poor neighborhoods around Johannesburg and Pretoria. It has been blamed for intimidating and terrorizing migrants from countries such as Zimbabwe, Malawi, Mozambique and Zambia, who typically live in South Africa’s Black townships.

In early April, a gang in Johannesburg’s Diepsloot township stoned and burned to death Elvis Nyathi, a Zimbabwean father of four, when he failed to produce documents showing he was legally in the country. Seven men have been charged in connection with his killing.

The campaign by Operation Dudula is believed to be a coordinated effort, rather than a general response to chronic poverty and inequality lingering almost three decades after the end of apartheid. 035-40

Sharon Ekambaram, who heads the refugee and migrant rights program at Lawyers for Human Rights, said the latest wave of xenophobia appeared to be backed by well-funded organizations.

“What’s different is that the face of vigilantism is a new phenomenon in the way the violence is being organized,” she said. “It appears to be orchestrated and organized.”

“Dudula” means “to push back” in the Zulu language. Those involved in Operation Dudula blame migrant workers for rampant crime and for contributing to the country’s high unemployment rate by taking jobs away from South Africans. Government statistics for the first quarter of this year show the official unemployment rate at nearly 35 percent, with joblessness for workers between the ages of 25 and 34 at a staggering 42 percent.

About 3.9 million foreign-born people were living in South Africa in mid-2021, according to Stats SA.

Efforts by The Washington Post to contact several Operation Dudula leaders were unsuccessful. But in a May 16 interview on Cape Radio, one of those leaders was clear on their motivation.

“Since 2004 we saw illegal immigrants coming to South Africa and taking the jobs,” said Sebele Tsoloane, who heads the Operation Dudula chapter in the Western Cape province. “We are not a political party. It is a civil movement. We [are] not vigilantes. We just want to force the law to work.”

Ekambaram of Lawyers for Human Rights disagrees with that characterization.

“Operation Dudula is not short of funding, so our experience is that it is not an organic uprising or a movement of people born out of anger about their living conditions,” she said. “This seems to be some hidden hand that has a vested interest in collective violence. ... We’ve lived through the violence of 2008, 2014, 2016, and all of it came out of scapegoating by state officials.”

Repression and unlawful searches of immigrant homes by law enforcement agencies have increased, she noted, in scenes reminiscent of the apartheid years, when police went door to door checking documents of Black South Africans.

“What we have experienced at LHR is increased repression with increased deportations and arrests of migrants, as well as unlawful search and seizure-type operations by law enforcement groups, knocking on doors asking people for papers, which is totally unlawful,” she said.

In Cape Town, the traders anxiously watching for any signs of Operation Dudula protesters blamed a hidden hand. “This is all politics,” said another vendor, who spoke on the condition that his name and nationality be withheld for fear of intimidation.

Political leaders in South Africa have a history of stirring up xenophobia.

035-40  
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NWE

Herman Mashaba, the former mayor of Johannesburg who is now leader of the ActionSA political party, 035-41 repeatedly blamed foreigners for taking jobs away from South Africans.

“I don’t want to live in a country where foreign nationals come and open hairdressing salons and spaza [convenience] shops. No. Those opportunities are for South Africans,” he said in September in an interview with the Daily Maverick. “For foreign nationals to come and work in restaurants and drive taxis and trucks, no ways. ... I’m not going to apologize to anyone.”

In 2015, a Zulu king referred to foreign workers as “head lice” and told them to leave the country. “Let us pop our head lice,” said Goodwill Zwelithini, who died last year. “We must remove ticks and place them outside in the sun. We ask foreign nationals to pack their belongings and be sent back.”

He later claimed his comments were taken out of context.

South African President Cyril Ramaphosa has condemned “vigilante-type” groups acting against foreigners.

“We cannot support a vigilante type of move against a group of people and particularly targeting them as foreign nationals, because what we are doing then is just to divide our people on the African continent,” Ramaphosa told reporters in April. “People who are here illegally have to be dealt with within the framework of the law.”

The United Nations has expressed “growing concern” over South Africa’s treatment of foreigners and pointed to the country’s ratification of international codes on human rights and protection of refugees.

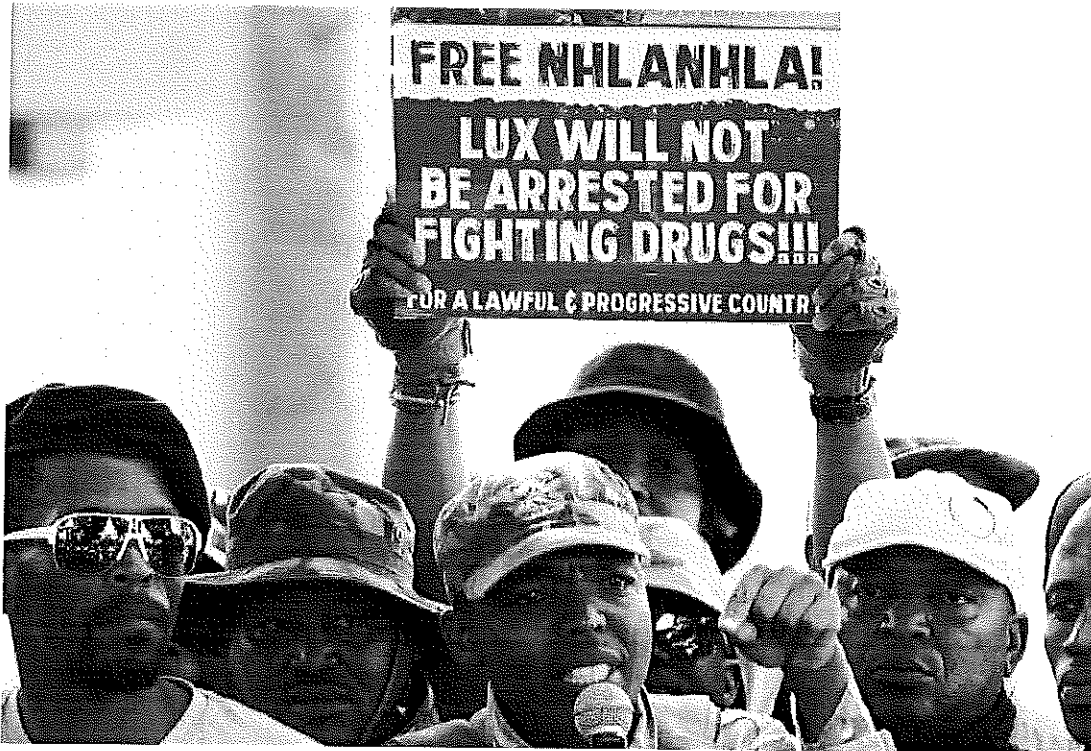
“Over the recent past we have noted with deep concern as movements such as Operation Dudula are illegally forcing people suspected to be undocumented foreign nationals to show their papers,” it said in a statement.

The human rights organization Amnesty International accused the government in April of not doing enough to protect migrants. It said migrants interviewed in townships described living in constant fear and feeling unsafe because of harassment from both the police and anti-migrant gangs.

# What is Operation Dudula, South Africa's anti-migration vigilante?

"AA1.3"

*South Africa is one of the most unequal countries in the world and Operation Dudula is the latest group using that to launch attacks on African immigrants.*



*The leader of Operation Dudula, Nhlanhla "Lux" Dlamini, wearing paramilitary-style camouflage gear gestures as he addresses supporters outside the magistrate's court in Roodepoort, South Africa, March 28, 2022 [File: Siphwe Sibeko/Reuters]*

The rise in anti-immigrant sentiment once again in mostly low-income South African communities, also known as townships, has left immigrants and refugees fearing for their safety.

South African security forces have increased their numbers in some of these areas according to the police minister Bheki Cele, who arrived in Diepsloot, a working-class township in the north of Johannesburg, following violent protests against undocumented foreigners that left one Zimbabwean man dead on Wednesday.

At the root of the tensions is a renewed campaign against "illegal immigrants", spearheaded by an unregistered community organisation called Operation Dudula.

## Who are they?

Operation Dudula is a splinter group from a faction in the Put South Africans First movement, an organisation that first popularised and renewed anti-immigrant campaigns on social media before finding expression on the ground.

The new movement is led by 36-year-old Nhlanhla 'Lux' Dlamini, born Nhlanhla Paballo Mohlauli.

Labelled by some as “xenophobic and dangerous”, it was founded in Soweto a few months after the July 2021 riots that erupted when former president Jacob Zuma was sentenced to jail for contempt of court.

Dlamini’s popularity skyrocketed when he led hundreds of his followers through a march in Soweto on June 16, 2021 – the 45th anniversary of the Soweto Uprising.

They targeted suspected drug traffickers and businesses that allegedly hired illegal foreigners in order to pay them lower wages than legally required.



Members of the South African anti-migrant group, operating under the slogan “Put South Africa First”, take part in a peaceful campaign to force undocumented foreigners out of informal trading at Johannesburg’s Hillbrow suburb. February 19, 2022. [File: Siphive Sibeko/Reuters]

Once a historic Black township at the forefront of anti-apartheid resistance and the home of iconic duo Nelson Mandela and Desmond Tutu, Soweto is now the epicentre of tense clashes between residents and other African nationals.

Following the launch of Operation Dudula, a number of anti-immigrant groups started emerging in working-class communities across the Gauteng and Kwa-Zulu Natal provinces, going by the same name or variations of it such as the Alexandra Dudula Movement.

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Dudula translates to “force out” or “knock down” in the Zulu language, and expresses the common purpose of organisations like it – to force out African immigrants.

According to Operation Dudula, its campaign is driven by the burden placed on public health services, job opportunities and social grants due to an “influx of illegal immigrants”.

## How did we get here?

South Africa is one of the most unequal countries in the world according to a recent World Bank report titled ‘Inequality in Southern Africa’. The report highlighted how inequality is consistent with racial disparities as “10 percent of the population owns more than 80 percent of the wealth.”

An estimated 10 million people in South Africa live below the food poverty line, while the unemployment rate is at a record high of almost 40 percent amongst Black South Africans according to Statistics South Africa.

Poverty, unemployment and crime are apparently the greatest sources of contention as Operation Dudula and its members believe that illegal foreigners – and sometimes “foreigners” in general depending on who you ask – are the reason that South Africa’s public socioeconomic systems do not benefit its native Black majority.

Last month, the home affairs minister Aaron Motsoaledi said an estimated 3.95 million foreigners live in South Africa and admitted that the government did not have records accounting for undocumented immigrants.

On Tuesday, President Cyril Ramaphosa officially condemned the group following weeks of public pressure from civil society organisations amid fears of another escalation of xenophobic violence. He described it as a “vigilante-type” that needs “to be stopped”.

Over the years, South Africa has seen a spate of xenophobic clashes between locals and foreigners. The worst episode took place in 2015 and resulted in a number of foreign nationals closing their businesses and requesting voluntary repatriation to their home countries.

But Operation Dudula, the latest leader of the purge, denies that it is a vigilante group driven by xenophobia or specifically focused on African nationals. Instead, the members claim that they are “cleaning up communities” and “providing opportunities” to South Africans marginalised by the national government.

## South Africa: Authorities must act against "AA1.4" vigilante groups who violate the human rights of migrants



The lack of action taken by the authorities against vigilante groups that go around demanding that foreign shop owners close their doors, has resulted in impunity and a continuation of the violation of human rights, Amnesty International South Africa said.

Several people were reportedly injured on Monday when clashes broke out between street vendors and members of the Alexandra Dudula Movement, who were allegedly trying to remove foreign shop owners and force them to close their businesses.

“It is astounding that these groups have been allowed to take the law into their own hands and that authorities have not stepped in to stop the harassment of migrants. This did not only start this week, but has been an ongoing problem,” Amnesty International South Africa’s Executive Director Shenilla Mohamed said.

“Police need to take action against these vigilante groups who are violating people’s rights to safety, security, dignity and life, and fueling xenophobia, otherwise the message being sent is that it is acceptable for these illegal operations to continue.”

Amnesty International previously highlighted how past acts of violence, including the killing of foreign nationals during xenophobic violence have gone unpunished, leading to an entrenched culture of impunity.

### Background

The Daily Maverick reported that the Alexandra Dudula Movement had stepped up its operations in February when migrant street vendors were driven out of their business stalls. At the time the situation had turned violent when shopkeepers allegedly shot at members of the movement.



Violence erupted again on 7 March, when a large group of members of the Alexandra Dudula Movement protested against the presence of foreign businesses near the Pan Africa Shopping Centre in Alexandra, Johannesburg, and some businesses in the vicinity were forced to shut down.

TimesLive reported that 10 people were injured in the clashes on Monday.

Last week, members of the Operation Dudula group, which consists mainly of residents from Soweto and is separate to the Alexandra Dudula Movement, marched, accusing undocumented foreign nationals of being responsible for the rising levels of crimes in their communities.

**For more information or to request an interview, please contact:**

Genevieve Quintal, Media and Communications Officer, Amnesty International South Africa: +27 (0)64 890 9224; [genevieve.quintal@amnesty.org.za](mailto:genevieve.quintal@amnesty.org.za)

**Public Document**

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## South Africa: UN experts condemn xenophobic violence and racial discrimination against foreign nationals

GENEVA (15 July 2022) – UN experts\* today condemned reports of escalating violence against foreign nationals in South Africa and called for accountability against xenophobia, racism and hate speech that were harming migrants, refugees, asylum seekers and even citizens perceived as foreign throughout the country.

Recent reports indicate that xenophobic violence and discrimination have increased, including under the banner of “Operation Dudula”, originally a social media campaign that has become an umbrella for mobilisation of violent protests, vigilante violence, arson targeting migrant-owned homes and businesses, and even the murder of foreign nationals.

The experts warned that the ongoing xenophobic mobilization was broader and deeper, and has become the central campaign strategy for some political parties in the country. “Anti-migrant discourse from senior government officials has fanned the flames of violence, and government actors have failed to prevent further violence or hold perpetrators accountable,” they said.

“Without urgent action from the government of South Africa to curb the scapegoating of migrants and refugees, and the widespread violence and intimidation against these groups, we are deeply concerned that the country is on the precipice of explosive violence,” the experts said.

The experts noted that xenophobia, especially against low-income, African and South East Asian migrants and refugees, had been a feature of South African politics for many years. In 2008, for example, xenophobic violence resulted in the death of over 60 people and contributed to the displacement of at least 100,000. Xenophobia is often explicitly racialised, targeting low-income Black migrants and refugees and, in some cases, South African citizens accused of being “too Black to be South African.”

In one highly publicised incident in April 2022, a 43-year-old Zimbabwean national and father of four was killed in Diepsloot by a group going door-to-door demanding to see visas. The attackers drove the victim out of a place where he was seeking refuge, beat him and set him on fire. The violence has continued unabated—it is alleged that the burning of the Yeoville Market in Johannesburg on 20 June 2022 was carried out by persons targeting migrant shopkeepers.

The UN experts observed that discrimination against foreign nationals in South Africa has been institutionalised both in government policy and broader South African society. This had led to violations of the right to life and physical integrity and rights to an adequate standard of living and to the highest attainable standard of health, as well as elevated risks of arbitrary detention, torture and refoulement, they said.

The experts also expressed concern over reports that widespread corruption in the South African asylum and migration systems compound these dangerous problems.

“The cost in human dignity and lives, particularly in light of the past 30 years of xenophobic violence, remains widespread and deeply troubling,” the experts said.

“We are gravely concerned that South Africa is not meeting its positive obligations to protect and promote human rights while preventing racial and xenophobic discrimination,” they said.

“At the same time, perpetrators enjoy widespread impunity for xenophobic rhetoric and violence, leading to a lack of accountability for serious human rights violations and the flourishing of racist and xenophobic political platforms.”

The experts urged private and public actors to honour their commitments to human rights and racial justice, and take a firm stand against the racist and xenophobic violence which continues in South Africa.

The UN experts have been in official communication with the South African Government to address these allegations and clarify its obligations under international law.

\*The experts: **Ms E. Tendayi Achiume**, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; **Mr. Morris Tidball-Binz**, Special Rapporteur on extrajudicial, summary or arbitrary executions; **Mr. Felipe González Morales**, Special Rapporteur on the human rights of migrants.

Special Rapporteurs are part of what is known as the Special Procedures of the Human Rights Council. Special Procedures, the largest body of independent experts in the UN Human Rights system, is the general name of the Council’s independent fact-finding and monitoring mechanisms that address either specific country situations or thematic issues in all parts of the world. Special Procedures experts work on a voluntary basis; they are not UN staff and do not receive a salary for their work. They are independent from any government or organization and serve in their individual capacity.

For more information and media requests please contact: Eleanor Robb +41 22 917 9800/  
eleanor.robb@un.org)

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Follow news related to the UN’s independent human rights experts on Twitter @UN\_SPExperts.

**PRESS STATEMENT**  
**15 FEBRUARY 2022**

**"AA3"**

## **SERI CONDEMNS THE VICTIMISATION OF INFORMAL TRADERS THROUGH OPERATION "DUDULA"**

The devastating impact of the pandemic in the past two years has seen people from all walks of life being pushed into poverty. The informal sector continues to face the harsh reality of economic and political woes. In recent weeks the informal sector, which was the hardest hit by the prolonged lockdown compounded by policy neglect, is now being subjected to unlawful, discriminatory, and politically motivated conduct orchestrated by some political parties under the pretext of protecting employment for vulnerable South Africans.

SERI strongly condemns the political point scoring on migration which resulted in the violent breaches of the rights guaranteed by the South African Constitution to everyone within its borders.

SERI recognises and supports the role that the informal sector plays and its contribution to the South African economy, food security and the empowerment of women, who find themselves at the centre of the informal sector. It is for this reason that during the hard lockdown SERI advocated for informal traders to be allowed to continue to trade as they make an essential contribution to food security and the economy.

SERI is concerned that the current attack on informal traders and migrants' right to make a living will result in all vulnerable people being affected. This is a cause for concern as it will push people who are already vulnerable further into poverty.

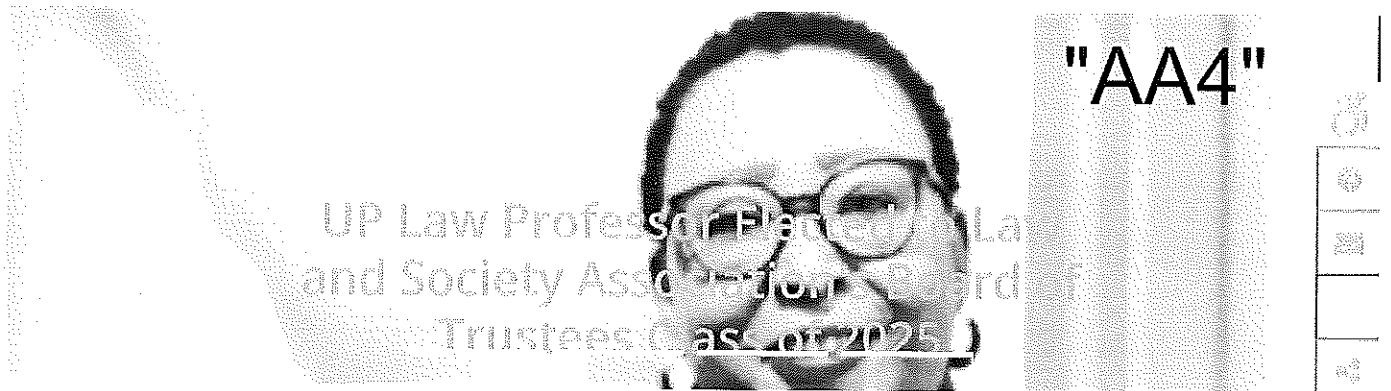
This unlawful conduct undermines our Constitutional values and democracy. Furthermore, it threatens the global commitment to promote safe and orderly migration. The Constitutional Court has long established and confirmed everyone's right to work which cannot be separated from the right to dignity.

The unlawful victimisation of poor people is counterproductive. It does not contribute to addressing the serious socio-economic problems faced by poor people in South Africa, which has always been SERI's priority.

We urge all South African citizens to desist from the unlawful victimisation of the vulnerable members of our society.

### **Contact details:**

- Jason Brickhill, SERI Director of Litigation: [jason@seri-sa.org](mailto:jason@seri-sa.org) / 073 191 4787
- Khululiwe Bhengu, SERI attorney: [khululiwe@seri-sa.org](mailto:khululiwe@seri-sa.org) / 079 816 8076



## Press Statement: Centre for Human Rights calls for widespread condemnation and meaningful action to xenophobic attacks against non-citizens of South Africa and the killing of Elvis Nyathi

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/ Press Statement: Centre for Human Rights calls for widespread condemnation and meaningful action to xenophobic attacks against non-citizens of South Africa and the killing of Elvis Nyathi

Posted on April 11, 2022

The Centre for Human Rights, Faculty of Law, University of Pretoria, condemns the xenophobic attacks against non-citizens in South Africa and in particular the brutal murder of Elvis Nyathi, a Zimbabwean national residing in the Johannesburg township of Diepsloot. Elvis' brutal murder happened after several inflammatory statements targeting non-citizens, by representatives of political parties and vigilante groups. The state cannot allow vigilante groups to take the law into their own hands and in the name of curbing crime, engage in an extra-judicial killing of a person solely based on their nationality. If this behaviour is not curtailed through application of the rule of law and protection of the human rights of all people in South Africa by the government, more people will be killed and more livelihoods and property will be destroyed.

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### Clear condemnation and action by state at all levels

The recent killing of Elvis Nyathi is the culmination of the spewing of persistent hate speech and propaganda against non-citizens in South Africa. Not only the killing of Elvis Nyathi, but all hate speech, stigmatization, vilification, demonization, dehumanization of non-citizens in South Africa by various groups and individuals including Operation Dudula, political actors, opinion formers and social media influencers must be condemned. We need to hear the unequivocal voice of all right-thinking South Africans, including the President, cabinet members, government officials, and officials at local government level such as mayors and councillors. They must also condemn all forms of hateful propaganda and organisations that are based on ideas of the superiority of one race, group of persons or nationality or which attempt to justify or promote hatred and discrimination based on ethnic, linguistic or national differences.

The Centre welcomes the recent unapologetic condemnation of the murder of Elvis Nyathi by the South African opposition parties the Democratic Alliance and the Economic Freedom Fighters. The Centre urges office holders in the ruling party, the African Nation Congress, and in Action South Africa and other political parties to condemn any xenophobic behaviour.

The state must speed up the enactment of the Prevention and Combating of Hate Crimes and the Offence of Hate Speech and once the president has assented, any persons violating its provisions must be appropriately charged and prosecuted by independent courts observing the right to fair trials.

The authorities in South Africa, including the office of the President, Minister of Home Affairs and the Minister of Police, must take steps to address xenophobic attitudes and violent attacks against non-citizens. Any tendency to target, stigmatise or stereotype certain groups on the basis of race, color, ethnic or national origin must be robustly countered by all state institutions, including relevant independent institutions like the South Africa Human Rights Commission. It is the duty of the state at all levels to ensure that human rights are respected and enjoyed by all people within its borders. In particular, the state must protect all non-nationals including children of immigrants and stateless persons from xenophobic attitudes and behaviour of certain prejudiced politicians, community leaders law enforcement officers, teachers, media and society at large. Non-citizens' rights to life, dignity, equality, property and socio-economic rights must be protected, respected and enjoyed without discrimination.

### More effective policing to deal with underlying causes of xenophobia

The murder of 43-year-old Elvis Nyathi in Diepsloot occurred in the context of about seven unsolved cases of murder in the area. In line with the damaging xenophobic attitudes and biases, the killings of people in Diepsloot have been blamed on "foreign nationals". Discontent about effective policing fuels xenophobia. Non-citizens in South Africa are further blamed for stealing jobs and peddling drugs, placing them in the vulnerable situation of being perceived as the cause of all the ills that the nation is facing. The triple burden of high levels of inequality, unemployment and poverty faced by previously disadvantaged groups in South Africans is now being blamed on black Africans from countries such as Zimbabwe, Mozambique, Malawi and Nigeria. These nationalities have

been scapegoated by certain groups and individuals as being the cause of the socio-economic challenges being experienced by South Africa, including levels of crime. In the past six months there have been attempts to exclude, marginalize and expel certain singled out nationalities with minimal protection from the government. **035-51**

The state cannot allow vigilante groups to take the law into their own hands and assume the role of law enforcement officials and decide which persons can legally stay and work in South Africa. The Police Service should be fully resourced to investigate crime in *all* neighbourhoods, including in Diepsloot.

The Centre urges the South African Police Service to investigate the murder of Elvis Nyathi and other outstanding murder cases in South Africa and those responsible for the crimes must be arrested and held accountable before independent and impartial courts.

## Legal basis

These attacks and killings are prohibited by the Durban Declaration against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban Declaration), which was spearheaded by South Africa and adopted in 2001. The Durban Declaration recognized that xenophobia against non-nationals, particularly migrants, refugees, asylum seekers, undocumented non-citizens and stateless persons constitutes one of the main sources of contemporary racism and that human rights violations against members of such vulnerable and marginalized groups occur in the context of discriminatory, xenophobic and racist practices.

Xenophobic violence is also prohibited in the UN Convention on the Elimination of Racial Discrimination (CERD), to which South Africa is a state party. According to General Recommendation 30 on Discrimination against non-citizens drafted by the Committee on the Elimination of Racial Discrimination, states have obligations to prohibit and eliminate racial discrimination in the enjoyment of human rights. The Committee states that although the right to vote and stand for political office are confined to citizens all other rights must be enjoyed by all persons, regardless of race, colour, ethnicity or national origin.

According to the UN Guide on Racism and Xenophobia, the latter is generally understood as attitudes, prejudices and behavior that reject, exclude and often vilify persons based on the perception that they are outsiders or foreigners. The UN Guide on Racism and Xenophobia addresses some of the root causes of this harmful behaviour and urges states to promote equality and non-discrimination, equal access to justice, regularize undocumented migrants, prohibit mass expulsion of non-citizens and remove barriers that prevent the enjoyment of socio-economic rights of migrants, refugees, asylum seekers and stateless persons.

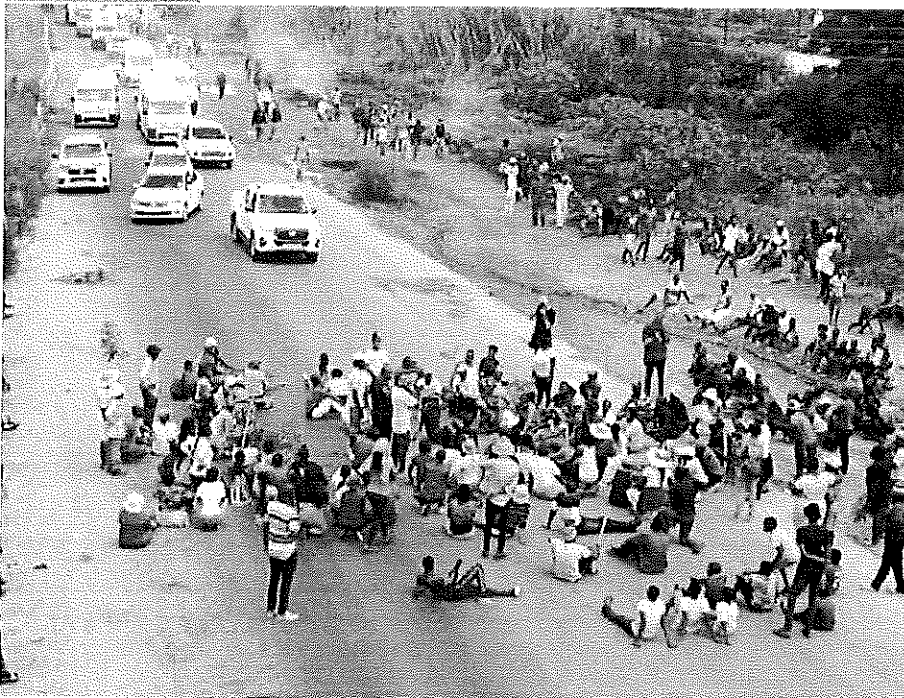
## Concluding call

It is the duty of the government of South Africa to protect non-nationals against hate speech and racial violence perpetrated by several groups and individuals in South Africa. The South African government, and not vigilante groups driven by racial prejudice, bear the responsibility to enforce national and international law governing the stay and status of non-citizens residing within its borders.

- Author Centre for Human Rights

Published by Simphiwe Khumalo

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Diepsloot residents protesting on Wednesday about the high crime rate in the area. Image by Thulani Mbele

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**035-51**  
M.E  
M.F

"AA5"

**Chigo Mabila**

**From:** Chigo Mabila  
**Sent:** Wednesday, January 11, 2023 3:26 PM  
**To:** [mattorneys@telkomsa.net](mailto:mattorneys@telkomsa.net)  
**Cc:** Waseeqah Makadam; Manyaku Thulare  
**Subject:** RE: HSF/ Minister of Home Affairs Case No. 32323/22 - Operation Dudula Intervention Application

Dear Sirs

Compliments of the new season.

We refer to the above matter and our client's notice of intention to oppose that was delivered on 29 November 2022. In order for our client to finalise its answering affidavit, we require a copy of the annexure referred to but not attached to your client's founding affidavit as soon as practically possible.

Kind regards

**Chigo Mabila**

Associate

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M: +27661849187  
[chigo.mabila@dlapiper.com](mailto:chigo.mabila@dlapiper.com)

DLA Piper Advisory Services Proprietary Limited

**From:** Chigo Mabila  
**Sent:** Wednesday, December 14, 2022 11:32 AM  
**To:** 'mattorneys@telkomsa.net' <[mattorneys@telkomsa.net](mailto:mattorneys@telkomsa.net)>  
**Cc:** Waseeqah Makadam <[Waseeqah.Makadam@dlapiper.com](mailto:Waseeqah.Makadam@dlapiper.com)>  
**Subject:** RE: HSF/ Minister of Home Affairs Case No. 32323/22 - Operation Dudula Intervention Application

Dear Sirs

We refer to our email below.

Kindly send us annexure "JA1" as soon as reasonably possible and by no later than close of business on 15 December 2022, failing which we proceed to deliver a notice in terms of Rule 35(12)/(14).

Our client's rights are reserved.

Regards

**Chigo Mabila**

Associate

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M: +27661849187  
[chigo.mabila@dlapiper.com](mailto:chigo.mabila@dlapiper.com)

DLA Piper Advisory Services Proprietary Limited

**From:** Chigo Mabila  
**Sent:** Friday, December 9, 2022 4:20 PM  
**To:** [mattorneys@telkomsa.net](mailto:mattorneys@telkomsa.net)  
**Cc:** Waseeqah Makadam <[Waseeqah.Makadam@dlapiper.com](mailto:Waseeqah.Makadam@dlapiper.com)>  
**Subject:** HSF/ Minister of Home Affairs Case No. 32323/22 - Operation Dudula Intervention Application

Dear Sir

We refer to the above matter and to your client's interlocutory application to be joined as a third respondent in the HSF matter (Application).

As you are aware, our client has delivered a notice of intention to oppose the Application on 29 November 2022. We are in the process of preparing an answering affidavit.

We note that paragraph 3 of your client's founding affidavit refers to annexure "JA1", however, no such annexure has been attached to the founding affidavit or uploaded to Caselines. Please provide us with a copy of this annexure by close of business on Monday, 12 December 2022.

Our client's rights remain reserved.

Kind regards

**Chigo Mabila**

Associate

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