



**Dr Leon Amos Schreiber**  
**Minister of Home Affairs**  
**909 Arcadia Street**  
**Hatfield, Pretoria, 0001**

**30 June 2026**

**Dear Dr Schreiber**

**RE: SUBMISSION BY THE HELEN SUZMAN FOUNDATION ON THE FUTURE OF THE ZIMBABWEAN EXEMPTION PERMIT AND LESOTHO EXEMPTION PERMIT DISPENSATIONS**

**1. Introduction**

- 1.1. The Helen Suzman Foundation (HSF) welcomes the opportunity to make submissions to the Department of Home Affairs (The Department) regarding the future of the Zimbabwean Exemption Permit (ZEP) and Lesotho Exemption Permit (LEP) programmes.
- 1.2. HSF is a non-governmental organisation dedicated to promoting constitutional democracy, the rule of law, accountability, and respect for human rights in South Africa. HSF's interest in the consultation process stems from its positions as applicant in the litigation that culminated in the judgment of *Helen Suzman Foundation and Others v Minister of Home Affairs and Others* [2023] ZAGPPHC 490 (The 2023 Judgement), in which the Court reviewed and set aside the previous decision to terminate the ZEP programme.<sup>1</sup>
- 1.3. These submissions are not intended to advocate for a particular outcome regarding the future of either the ZEP or LEP programmes. Whether the Department ultimately determines that the programmes should continue in

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<sup>1</sup> <https://hsf.org.za/publications/cases/hsf-minister-of-home-affairs-case-no-32323-2022/judgments/zep-judgement.pdf>.

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their current form, be replaced by an alternative dispensation, or be phased out is a matter that falls within the Department's mandate.

- 1.4. Rather, the purpose of these submissions is to identify considerations that, in our view, are relevant to ensuring that any future decision is lawful, rational, procedurally fair, and in line with Constitutional principles. In doing so, we draws upon the principles articulated by the High Court, observations arising from the current consultation process, and concerns that have emerged during HSF's engagement with permit holders and other stakeholders.
- 1.5. HSF therefore will deal with the following:
  - 1.5.1. Public Participation;
  - 1.5.2. Policy Development Process;
  - 1.5.3. Distinction between ZEP/LEP holders and undocumented migrants; and
  - 1.5.4. Additional constitutional and practical concerns.

## **2. Legal Background of the 2023 Judgement**

- 2.1. In *Helen Suzman Foundation and Others v Minister of Home Affairs and Others* [2023] ZAGPPHC 490, the Court recognised that the decision taken by the Minister of Home Affairs (the Minister) to cancel the dispensations would have significant consequences for a large number of individuals who had lawfully resided, worked, studied, established businesses, and raised families in South Africa over an extended period. Given the nature and impact of the decision, the Court found that affected persons had not been afforded a meaningful opportunity to be heard before the decision was taken.
- 2.2. The judgment positions that the future of the ZEP/LEP dispensations cannot be considered solely through the lens of migration policy but is also one of constitutional consideration, including procedural fairness, rationality, and public participation.
- 2.3. The consultation process currently being undertaken by the Department, as mandated by the judgement and which the departmental representatives continually emphasised during the consultation sessions, represents an important attempt to address the procedural shortcomings identified by the Court. However, the broader principles articulated in the judgment remain relevant throughout the decision-making process and should continue to inform the Department's approach as it develops its final policy position.

## **3. Meaningful Public Participation is an Ongoing Process**

- 3.1. Public participation is a principle that was not only emphasised in the 2023 judgement, but is also enshrined in the Promotion of Administrative Justice Act 3 of 2000 (PAJA) under section 4. In the judgement, the court held that the failure to make representations made the decision procedurally unfair and irrational as the Minister did not invite any representatives and failed to consider them. The court held in paragraphs 82 – 84 that:

[82] This view we further find support for in *Esau*, where the Supreme Court of Appeal recognized that where a decision's "effect, potential or real, on the rights, lives and livelihood of every person subject to them is drastic", that decision cannot rationally be taken without affording affected persons an opportunity to make representations.

[83] Our view is also supported by Hoexter who aptly puts it:

*"[T]he opportunity to make representations should ideally be offered before any decision is taken, and thus before there is any question of a 'clear statement of the administrative action'. There are good reasons for this. As Baxter points out, in a subsequent hearing one has to do far more than present a case and refute an opposing case: one actually has to convince the decision-maker that he or she was wrong."*

[84] The author continues:

*"The ideal, of course, is a hearing beforehand - and this ideal seems to be reflected in the structure of s3(2) [of PAJA], which envisages notice of the proposed action and a reasonable opportunity to respond before any administrative action is actually taken and a 'clear statement' of the action becomes necessary. It is ideal because, as Corbett O noted in *Attorney-General, Eastern Cape v Blom*, there is a 'natural human inclination to adhere to a decision once taken'. It is easier to sway a decision-maker who has not yet decided, and harder to persuade a decision-maker to change a decision that has already been made. In practice, a hearing after the decision has been taken will seldom be as advantageous as a hearing beforehand.*

- 3.2. In order to remedy the defect, the current consultation process has provided opportunities for stakeholders to participate through oral engagements, written submissions, questionnaires, and public meetings.
- 3.3. HSF welcomes these efforts and acknowledges the substantial undertaking involved in facilitating consultations across multiple provinces. However there have been numerous issues in regard to consistent dissemination of information and attempts by the Department to remedy were either late or not

undertaken. This is similar to facts presented by the Department in the 2023 matter where the Department only made a first call for representations after the Ministers decision was taken.<sup>2</sup>

- 3.4. HSF notes the following issues, as mentioned in previous letters to the Department as indicated:
  - 3.4.1. HSF only became aware of the undertaking of the consultation process via Youtube videos posted by members of the public after the Free State Consultation;
  - 3.4.2. The Department only posted onto their social media and websites on or about 24 May 2026 after the Free State, Eastern Cape, Northwest and the Western Cape consultations had taken place;
  - 3.4.3. On 20 May 2026, The Department confirmed that they hold the email addresses of all ZEP/LEP holders. Despite this, no direct communication occurred from DHA to notify holders of the consultations;
  - 3.4.4. The Department did not make the link to the questionnaire publically available and only relied on it being disseminated during the consultation session and to be shared within communities; and
  - 3.4.5. The departments email address [ZEPLEP@dha.gov.za](mailto:ZEPLEP@dha.gov.za) resulted in a number of ZEP holders being unable to send their submissions as they 'bounced back' due to an inbox error with the department.
- 3.5. The consequences of these communication shortcomings were significant. Members of the public expressed hesitation about participating because they believed information circulating about the consultations originated from unofficial sources. In addition, the lack of clear communication created opportunities for individuals to falsely claim that permit holders were required

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<sup>2</sup> Paragraph 70 of the judgement states that: [70] From the reply set out in the Answering affidavit it is apparent that the first call for representations was made after-the-fact, after the Minister's decision had already been taken and communicated. There was no attempt made by the Minister to solicit representations from ZEP holders before the Minister took his decision. This attempt so made belatedly after the decision had been taken was also not a genuine consultation, as illustrated in an exchange between a ZEP-holder, Ms Maliwa, and the Minister's attorneys in January 2022. By way of illustration, Ms Maliwa sent an email to the designated address, imploring the Minister to "Please consider giving us another 4 years. We have nowhere to stay in Zim and no work".

to pay fees or use intermediaries in order to participate in the consultation process or receive updated permits.

- 3.6. These consequences flowed directly from deficiencies in communication, which is itself an essential component of procedural fairness. It is therefore important that the Department takes these shortcomings into account when assessing the consultation process and the extent to which the submissions received accurately reflect the views of affected permit holders and the broader public.

#### **4. Policy Development Process**

- 4.1. Public participation is not solely concerned with collecting information from stakeholders. It is equally concerned with ensuring transparency regarding how that information informs the development of policy proposals.
- 4.2. The consultations have revealed a wide range of perspectives regarding the future of the ZEP/LEP programmes. The Department revealed during the Gauteng consultation on 18 June 2026 that it had received 21 539 written submissions and 39 084 survey responses.
- 4.3. A concerning element of the policy development process, as also highlighted in our most recent communication with the Department, is that the Department does not plan to allow for further public consultation on the final policy report before submission to Cabinet. In our view, this is not compliant with PAJA. Section 4(2)(b)(ii) – (iv) requires that administrators must make contents of a report available to the public for general comment.<sup>3</sup> Should the Minister decide not to follow a process to allow the general public to comment on outcomes of the report, the Minister must communicate reasonable and justifiable reasons.<sup>4</sup> During the course of the consultations, there was no reason provided on why the Department will not allow for public comments.
- 4.4. The transparency of this stage is likely to be important in determining whether stakeholders perceive the process as having been meaningful and responsive to the issues raised during consultations.

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<sup>3</sup> Section 4(2)(b)(iv)(aa) 'publish in English and in at least one of the other official languages in the Gazette or relevant provincial Gazette a notice containing a concise summary of any report and the particulars of the places and times at which the report may be inspected and copied', (bb) convey by such other means of communication which the administrator considers effective, the information referred to in item (a) to the public concerned.

<sup>4</sup> Section 4(4)(a) of PAJA.

4.5. HSF therefore calls upon the Department to amend its policy development process to allow for public comment on the final policy report before it is submitted to Cabinet in order to comply with legislation.

## **5. The Importance of Distinguishing Between Documented Permit Holders and Broader Migration Concerns**

5.1. A recurring feature of several consultations attended and monitored by HSF was the tendency for discussions concerning the ZEP/LEP programmes to become intertwined with broader concerns relating to migration management, undocumented migration, crime, unemployment, public services, border management, and national security.

5.2. These concerns are valid as they form part of broader public debates concerning migration policy in South Africa and are matters that government must continue to engage with.

5.3. However, the present consultation process concerns the future of specific exemption dispensations applicable to documented permit holders who are lawfully present in the Republic.

5.4. The consultations have shown the large issue of misinformation in South Africa relating to migration. This spotlights the need for the strategy to be part of a broader government strategy to ensure that there is clear communication between government bodies and the public on the status and existence of permits – a silo approach will not be sufficient to address the concerns of the public.

## **6. Additional Considerations**

The High Court recognised that many permit holders have established lives in South Africa over an extended period. The consultation process similarly revealed recurring concerns regarding family life, employment, education, business ownership, access to services, and the position of children who have grown up in South Africa.

The significance of these concerns does not depend upon which policy option is ultimately adopted. They remain relevant considerations regardless of whether the Department ultimately decides to continue, amend, replace, or terminate the existing programmes.

We therefore make the following submissions in the development of recommendations:

## 6.1. Infringement of Rights

- 6.1.1. The ZEP programme has its origins in the Dispensation of Zimbabweans Project (DZP), introduced in 2009 to regularise the status of Zimbabwean nationals living unlawfully in South Africa or those who had attempted to regularise their stay through the asylum system.<sup>5</sup> Permit holders who transitioned from the DZP to the Zimbabwean Special Permit (ZSP), and subsequently to the ZEP, have therefore been lawfully resident in South Africa for at least seventeen years.
- 6.1.2. Many have purchased property, contributed to the economy, and raised children who know South Africa as their home. The practical effect is that any future decision concerning the ZEP and LEP dispensation will inevitably affect rights and interests that have developed over many years of lawful residence.
- 6.1.3. The Constitutional Court has recognised that dignity lies at the heart of the enjoyment of many other rights. The ability to work, access healthcare and education, obtain banking services, support one's family, and participate meaningfully in society are all closely connected to lawful immigration status. In *Saidi*, the Constitutional Court acknowledged that visas and permits make a life of dignity possible.<sup>6</sup> Consequently, the termination or amendment of the ZEP and LEP dispensations has the potential to affect far more than immigration status alone as it may significantly impair the dignity and socio-economic security of thousands of individuals and families who have lawfully built their lives in South Africa.
- 6.1.4. These constitutional implications were recognised by the 2023 judgement where the Court found that the Director-General had relied upon outdated and factually incorrect information concerning conditions in Zimbabwe and that the Minister's 2021 decision unjustifiably limited constitutional rights.<sup>7</sup> As the Department considers the future of the programmes, it must therefore ensure that its decision is informed by current and reliable evidence and that it carefully evaluates the constitutional implications of any proposed policy. Whatever policy option is ultimately adopted, it should be based upon an assessment that properly weighs the rights and legitimate expectations that have arisen through many years of lawful residence.

## 6.2. Children, Families and Community Stability

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<sup>5</sup> [https://www.gov.za/news/media-statements/remarks-minister-malusi-gigaba-announcement-zimbabwean-special-dispensation?utm\\_source=chatgpt.com](https://www.gov.za/news/media-statements/remarks-minister-malusi-gigaba-announcement-zimbabwean-special-dispensation?utm_source=chatgpt.com)

<sup>6</sup> *Saidi v Minister of Home Affairs* [2018] ZACC 9 at para 18.

<sup>7</sup> Para 99 – 101 ;Paragraphs 118 – 119.

- 6.2.1. The consultation process consistently demonstrated that many permit holders have established family lives and communities within South Africa. Many have children who have been born or raised in South Africa, are enrolled in schools, and have little or no meaningful connection with their countries of origin.
- 6.2.2. The Department should therefore take into account the rights and best interests of children when determining the future of the programmes. The constitutional principle that the best interests of the child are of paramount importance must remain a central consideration throughout the decision-making process.<sup>8</sup>
- 6.2.3. Similarly, should the Department determine that changes to the current dispensation are necessary, it should adopt implementation timelines that are humane, realistic and phased. An immediate termination of the permits would create conditions conducive to uncertainty, panic, corruption and the destabilisation of families, communities and employers who have relied upon the existing framework for many years.

### **6.3. Bilateral Government Engagement**

- 6.3.1. Should the Department determine that the ZEP dispensation is to be amended or terminated, it is important that this process be accompanied by meaningful engagement between the governments of South Africa and Zimbabwe. Such engagement should consider the implications of any significant return of Zimbabwean nationals, particularly against the backdrop of increasing anti-immigration sentiment within South Africa.
- 6.3.2. The governments of South Africa and Zimbabwe entered into a bilateral Memorandum of Understanding during December 2025 concerning social welfare and cross-border management. However, the implementation plan for that agreement has not been made public.<sup>9</sup> Similarly, although reports have referred to meetings between Presidents Ramaphosa and Mnangagwa, there has been little public information regarding whether the future of the ZEP has formed part of those discussions.<sup>10</sup>

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<sup>8</sup> This was reiterated in para 100 of the 2023 judgement.

<sup>9</sup> <https://dsdnews.org/south-africa-and-zimbabwe-to-strengthen-social-development-cooperation-through-new-bilateral-agreement/>; <https://www.gov.za/news/media-statements/social-development-engagement-zimbabwean-counterparts-following-interceptions>.

<sup>10</sup> <https://www.ewn.co.za/zimbabwe-political-activists-in-sa-call-on-their-compatriots-to-go-back-home-and-overthrow-mnangagwa/>.

- 6.3.3. The absence of publicly available information regarding bilateral engagement raises concerns regarding the extent to which both governments are preparing for any future policy changes. This may ultimately have implications not only for diplomatic relations, but also for future migration patterns should former permit holders seek to return to South Africa through irregular channels because lawful alternatives are unavailable.
- 6.3.4. Similarly to the principle of non-refoulement in international refugee law, requiring large numbers of individuals to return to circumstances where their dignity is likely to be significantly impaired runs contrary to the broader humanitarian objectives underpinning international protection frameworks, namely that people should be able to live with dignity rather than exist in prolonged uncertainty.

#### **6.4. Xenophobia and Timing of Consultation**

- 6.4.1. South Africa is currently experiencing an unprecedented rise in xenophobic sentiment, increasingly characterised by vigilantism. This is evident in South African media reporting, community mobilisation, and even during the Department's consultation sessions, where xenophobic sentiments were frequently expressed through online chat functions. The current climate has created fear amongst both documented and undocumented Zimbabwean nationals.<sup>11</sup>
- 6.4.2. HSF submits that the timing of the consultation process presents two significant concerns.
- 6.4.3. Firstly, the current climate of violence, hostility and fear affected the ability of many ZEP and LEP holders to participate openly in the consultation process due to concerns that they may become targets of vigilantism or online abuse.
- 6.4.4. Secondly, the consultation process commenced approximately three years after the High Court delivered its judgment. We submit that this constitutes an unreasonable delay. Section 237 of the Constitution requires that "All constitutional obligations must be performed diligently and without delay.

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<sup>11</sup> <https://www.news24.com/southafrica/news/as-deadline-approaches-displaced-zimbabweans-in-cape-town-wait-for-a-way-home-20260627-1012>.

6.4.5. In *Khumalo*, the Constitutional Court confirmed that organs of state are required to act expeditiously when fulfilling constitutional obligations.<sup>12</sup> The unexplained delay of almost three years before commencing the consultation process undermines both compliance with the Court's judgment and the constitutional obligation to exercise public power diligently and without undue delay.

## **6.5. Designing the Future Policy**

6.5.1. In designing the future policy, the Department's recommendations should provide sufficient clarity and certainty to permit holders regarding the future legal framework.

6.5.2. In particular, HSF submits that:

6.5.2.1. The Department should clearly identify whether it intends to adopt a uniform approach applicable to both the ZEP and LEP programmes or whether separate approaches are warranted;

6.5.2.2. Any future dispensation should clearly indicate whether decisions will apply collectively to permit holders or whether individual assessments will be undertaken; and

6.5.2.3. The Department should recognise that Zimbabwe and Lesotho present fundamentally different social, economic and geographical realities. Lesotho is uniquely situated as a country entirely surrounded by South Africa, while Zimbabwe presents different migration dynamics and socio-economic considerations. The final policy should therefore distinguish between these programmes where appropriate and ensure that recommendations are informed by current, country-specific information rather than adopting a single blanket approach.

6.5.3. The existence of competing policy considerations does not diminish the relevance of these factors. Nor does acknowledging these considerations predetermine the outcome of the consultation process. Rather, they are matters which the Department ought properly to weigh in developing a lawful, rational and constitutionally compliant policy position.

## **7. Conclusion**

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<sup>12</sup> *Khumalo and Another v Member of the Executive Council for Education: KwaZulu Natal* (CCT 10/13) [2013] ZACC 49 at para 41.

- 7.1. The current consultation process presents an important opportunity for the Department to fulfil the obligation arising from the 2023 judgment by developing a position regarding the future of the ZEP and LEP dispensations that is informed by public participation, evidence, and careful consideration of the constitutional interests at stake.
- 7.2. In our view, the consultation process has highlighted a number of important issues that should inform the next stages of policy development. These include the ongoing nature of meaningful public participation, the need for transparency throughout the policy development process, the importance of distinguishing documented permit holders from broader migration concerns, the constitutional implications arising from the long-term residence of permit holders, and the practical consequences that any future decision will have for individuals, families and communities.
- 7.3. The 2023 judgment serves as an important reminder that decisions of this nature are not solely matters of migration policy. They also engage fundamental principles of procedural fairness, transparency, rationality and public participation that underpin South Africa's constitutional framework.
- 7.4. Whatever policy option is ultimately adopted, the Department should ensure that its decision-making process demonstrates genuine consideration of the information placed before it, remains transparent throughout the policy development process, and is grounded in the constitutional principles that informed the High Court's judgment. Doing so will not only promote administrative justice but will also strengthen public confidence in the legitimacy and fairness of the Department's ultimate decision.

Yours Sincerely

A handwritten signature in black ink, appearing to be 'Naseema Fakir', enclosed in a light grey rectangular box.

Naseema Fakir

Executive Director