



ATTACKS ON FOREIGN NATIONALS DRAFT KEY MESSAGES

BRIEF:

South Africa’s transition to democracy was one of the world’s most iconic testimonies of tolerance and peaceful co-existence. Under the stewardship of Nelson Mandela the country had an unwavering dedication to democracy, selflessness, reconciliation, service to humanity and a better life for all.

The recent attacks on foreign nationals are a threat to our historical achievements as a nation. Moreover, the attacks go against the democratic values enshrined in the Constitution.

Attacks against foreign nationals since the start of the year were reported in Soweto, Benoni, Atteridgeville, Khayelitsha, Inanda and KwaDukuza. The situation has been recently worsened following the death of three foreign nationals on 9 April 2015 in Chatsworth and Umlazi in Durban.

These attacks have resulted in foreign nationals being displaced and a public outcry that foreign run businesses are not being allowed to operate in certain areas.

KEY MESSAGES	SUPPORTING STATEMENTS
<i>Attacks on foreign nationals is a criminal offence and will not be tolerated.</i>	<ul style="list-style-type: none"> • Government condemns violent attacks on foreign nationals in the strongest terms. • These attacks appear to be instigated by elements bent on taking advantage of the unease in communities to serve their political or criminal ends. • Attacks on foreign nationals are unacceptable in our society and will not be tolerated. • South Africa is a multicultural society that welcomes and promotes interaction among people of different backgrounds.
<i>We must not forget the hospitality and support we received from fellow Africans.</i>	<ul style="list-style-type: none"> • During apartheid, Africa opened its doors and became home for many South Africans who fled the persecution of the apartheid government. • For many decades Africans fought side by side with South Africans in a war against apartheid contributing to the freedom we have today. • Since the dawn of democracy South Africans and fellow Africans have lived together in harmony across the country. • Government urges South Africans not to allow a few individuals to reverse and undermine our historical achievements.
<i>Government condemns all forms of violence.</i>	<ul style="list-style-type: none"> • The right to protest is enshrined in our Constitution; that right should not result in the rights of other people being violated.

KEY MESSAGES	SUPPORTING STATEMENTS
	<ul style="list-style-type: none"> • Government condemns protests that lead to loss of lives and destruction of property. • Nothing can justify the criminal activity and intolerance that these attacks represent. • Solutions can be reached through constructive engagement and by working together.
<p><i>South Africa is a constitutional democracy governed by laws.</i></p>	<ul style="list-style-type: none"> • Everyone working and living in the country must obey its laws, including those to operate a business. • No one has the right to take the law into their own hands. Any case of wrongdoing whether by a South African or foreign national must be reported to the police. • Government will enforce the laws of the country and will not hesitate to act against criminal activity or those found to incite violence. • Government will do everything within its power to ensure the safety of all citizens and foreign nationals irrespective of their status. • Foreign nationals must meet all the legislative and regulatory requirements as prescribed by our immigration laws.
<p><i>South Africa is signatory to various international obligations that protect foreign nationals and refugees.</i></p>	<ul style="list-style-type: none"> • South Africa is a signatory to the Geneva Protocol on Refugees and is committed to protect all foreign nationals in the country. • As a signatory to this Protocol, and as a country that cherishes human rights, we have to protect the basic rights of every human being within our borders, including foreign nationals. • The Geneva Protocol on Refugees ensures the basic human rights of vulnerable persons and that refugees will not be returned involuntarily to a country where they face persecution. • The county has unique arrangements with certain other countries such as the special dispensations for Zimbabweans.
<p><i>Negative perceptions that foreign nationals are using resources meant for South Africans are invalid.</i></p>	<ul style="list-style-type: none"> • No amount of economic hardship and discontent can ever justify criminal activity associated with these attacks. • Any suggestion that limited economic opportunities and rising cost of living is to blame for these attacks must be rejected. • The suggestion that foreigners alone are responsible for high crime levels is totally misplaced and detracts from the fact that criminal activity can be spread among many in society. • Some criminal elements take advantage of concerns of ordinary citizens for their own selfish motives.
<p><i>We all have a responsibility to ensure peaceful co-existence in communities.</i></p>	<ul style="list-style-type: none"> • Business, labour and civil society is encouraged to educate South Africans on the need for peaceful co-existence with all who live in our communities. • Parents must teach their children to respect all people and their property. • South Africa is a democratic country that accommodates

KEY MESSAGES	SUPPORTING STATEMENTS
	<p>foreign nationals that are in this country legally.</p> <ul style="list-style-type: none"> • Attacks against foreign nationals have potential to tarnish the image of the country.

FACT SHEET ON MIGRATION, SKILLS & EMPLOYMENT OF FOREIGNERS

1. REFUGEES AND ASYLUM SEEKERS

- “Refugees” denote those persons outside their countries, granted asylum in other countries. “Asylum seekers” are those who left their countries to seek refuge in other countries, for reasons including religious/political persecution; they remain asylum seekers until recognized, as refugees, by the state where they had made a claim.

2. FOREIGN NATIONALS WITHOUT PROPER DOCUMENTATION

- Illegal migrants are those who are in the country without documentation; they entered the country illegally. The law places a responsibility on the employer to ascertain the status or citizenship of those whom he or she employs.
- According to Section 38(1) of the Immigration Act, 2002, an employer cannot employ the following:
 - An “illegal foreigner” whose status does not authorise him or her to be employed, or
 - A “foreigner” on terms, conditions or capacity different from those contemplated in such foreigner’s status.
- According to Section 49(3) of the Immigration Act, anyone who knowingly employs an illegal foreigner or a foreigner in violation of this Act shall be guilty of an offence and liable on conviction to a fine or imprisonment not exceeding one year, provided that such person’s second conviction of such an offence shall be punishable by imprisonment not exceeding two years or a fine, and the third or subsequent convictions of such offences by imprisonment not exceeding three years without the option of a fine.
- It is expected of employers in a case where they had employed a foreigner for a period of more than two years, to keep records relating to the employment after termination of employment.
- The employer must report the termination of such foreigner’s employment to the Department and also any breach on the side of the foreigner of his or her status.

3. ILLEGAL FOREIGN NATIONALS CONDUCTING ILLICIT BUSINESS

- Foreigners who are contemplating investing in the South African economy by establishing a business or by investing in an existing business in the country must apply for a business permit. An applicant is required to invest a prescribed financial capital contribution of at least R2.5m.

- It is a criminal offence to conduct a business without proper enabling documents. Those who are found to be conducting illicit business are dealt with in terms of the Immigration and Criminal Procedure Act.

4. DANGERS OF HABOURING ILLEGAL FOREIGN NATIONALS

- Irregular migrants can pose a life threatening (health) risk to citizens.
- They may be dangerous criminals or fugitives.
- They may engage in criminal activities and will be difficult to trace as we may not have their particulars.

5. WHEN ARRESTED

- Illegal foreigners who are detained are dealt with in terms of Section 49 of the Immigration Act and/or ordered to leave the country.

6. OBTAINING SKILLS FROM OTHER COUNTRIES

- On 26 May 2014, we announced the implementation of the amended Immigration Regulations.
- The Regulations were intended to improve our ability to manage immigration effectively, in a way that balances South Africa's openness to legitimate immigrants as well as developmental and security imperatives. This saw changes also in our visa regime as shown below.

7. WORK VISA

- In terms of the Immigration Regulations, 2014 (18), an applicant for a general work visa, critical skills work visa or intra-company transfer work visa should submit:
 - a) A written undertaking by the employer accepting responsibility for the costs related to the deportation of the applicant and his or her dependent family members, should it become necessary; and
 - b) A police clearance certificate.