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20th January 2011

**Re: Submissions to the Honorable Portfolio Committee of Home Affairs
(National Assembly) on the Immigration Amendment Bill 32-2010**

We would like to thank the honorable portfolio committee members for allowing us their time and for accepting our submissions. This is an opportunity, one that allows civil society; NGOs, CBOs, FBOs and all people the right to participate in our country's proud democracy, something that we should always be thankful for. Indeed the struggles that were fought by everyday people of all races, religions and even people of many varying nationalities for us all to obtain these rights should never be forgotten and as we walk through this process of consultation we hope all submissions be equally explored and taken with the great seriousness they deserve.

This process will ensure that the protection of vulnerable members of all affected communities is considered. PASSOP knows from previous engagements with the committee that you have the best intentions and that our voices will be listened to. We believe it is necessary for you, our leaders, to continue protecting our laws from being poisoned by the unfortunate popularity of xenophobic and prejudice sentiments in South Africa.

With that in mind we hope our submission, and the numerous submissions that you have likely received on this bill, will be strongly considered and that necessary changes are made to avoid future human suffering.

Firstly PASSOP fully supports and endorses the submission by the University of Cape Town Law Clinic, who have identified several concerns which need to be addressed, below are our views on the issues they raised:

- 1. The issue of reducing the validity time of the transit asylum permits is unnecessary, unreasonable and simply unacceptable- as many asylum seekers endure much suffering while traveling, some fleeing with illness and injury, with some incurring illness and injury. These people will take several days to recover to a reasonable state. Take for example people who catch cholera during their travels, they will need medical help and they may take several days, if not weeks to recover to a condition that would enable them to endure the refugee status application process. We thus submit to you that an extension of the current 14 days to 28 days would be more suitable and would be in line with South African values (those of human rights).**
- 2. The proposed procedure of “assessing if a person qualifies for asylum” at the border, we are informed, is unlawful. In addition we must remind the committee that the situation at the Beitbridge border is extremely chaotic, with the officials and Home Affairs Department under huge pressure. Images of violent force being used “to control” travelers have become frequent particularly on the www.ewn.co.za website- how then can we honestly add extra work and pressure to the current system. This will only bottleneck asylum seekers at the border and likely create more chaos.**
- 3. The proposed increased penalties for those who have failed to comply with the act are extremely disturbing- they show us that some of the proposed amendments have completely ignored current realities. PASSOP believes that the committee can only approve this at an academic level- it is not practical. It ignores that there remain large numbers of undocumented immigrants who have not yet been provided with a means to legalise themselves, among them citizens of SADC countries who have not yet been given their opportunity to document themselves under the special dispensation that is currently being rolled out to Zimbabweans, it ignores that our jails are severely overcrowded and it ignores that police are already frequently accused of rampant extortion of the fearful undocumented. We need to also bring to your attention that during recent history there have been years where Zimbabweans have reported that they would rather be in prison here, than die from lack of basic health care and basic nutritional needs in Zimbabwe.**

Such a proposal is either there to satisfy the growing hatred of undocumented foreigners or is an attempt to intimidate foreigners into adhering to the act. If it is intended to do the latter then we need to suggest to the committee that immigrants can only be discouraged from migrating to

South Africa by stronger foreign policies and by providing more support to countries suffering famine. On this note, we would like to take this opportunity to welcome the announcement by Dr Ayanda Ntsaluba (the Director-General of the Department of International Relations and Cooperation) that South Africa will be launching The South African Development Partnership Agency- a South African Aid agency aimed to distribute aid around Africa.

Additional points:

- 1. Clause 5 which amends section 9(3)(a) is unnecessary and serves no purpose, but may rather discourage potential tourists. We say this because single parents from certain countries appear to struggle to get passports for their children, particularly for very young children.**
- 2. We believe that the deletion of section 22 (b) of the act (which deals with an exchange visa for persons under the age of 25 years of age who have received an offer to conduct work for a period no longer than one year) is unnecessary and will deny South African youth the cultural experience of engaging and befriending the vast diversity of foreign youth that are attracted under this section. The foreigners who take up cultural exchange are often willing to work in less privileged communities. It poses no threat to the unemployed in South Africa, as the numbers of people who have taken up this opportunity are few.**
- 3. PASSOP is also concerned that subsection 49 of Act 13 of 2002, -(2) “Anyone who knowingly assists a person to enter the Republic in contravention of this Act shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding one year.”**

Has been replaced with- “Anyone who knowingly assists a person to enter or remain in, or depart from the Republic in contravention of this Act, shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding eight years.” -- This we believe could lead to landlords refusing to rent to foreigners or to ordinary South African citizens demanding documentation from immigrants. It could also be miss used to infringe on work that organisations are doing, in particular it does not accommodate provisions for organisations to provide legal advice, paralegal advice and humanitarian aid to undocumented immigrants.

- 4. The repealing of section 46 is welcomed, if it is intended to “do away” with immigration practitioners. We do not believe that immigration practitioners are necessary. They only provide services to high paying clients, which often include owners of strip clubs, accused of human trafficking. Disturbingly they tend to present themselves, to the public and media, as human rights activists and more recently, as a large work force that would seriously affect**

the unemployment levels in South Africa. In reality their presence encourages corruption and they earn large incomes by being the unnecessary middlemen, they are to PASSOP like labour brokers are to COSATU.

- 5. We note that it is claimed that there are no financial implications to the state, but we believe that the large jail terms and the additional staff needed to “assess people’s asylum claims” at the border will easily accumulate to several million rand a year.**

Finally enclosing we want to again thank you for entertaining our views and we hope we will get an opportunity to discuss them with you in during the oral submissions.

PASSOP,

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