



19th December 2016

**Memorandum to CoJ Executive Mayor Herman Mashaba**

Dear Executive Mayor,

We are presenting you with this memorandum because we are greatly disturbed by comments that you have made recently which appear to make an unqualified link between undocumented migrants and criminality.

Although the original comments you made on this matter have been subject to refinement and explanation in the media since you first made them, we are still deeply concerned with their implications, and that is why we have undertaken this expedition to your office to present you with this memorandum.

**Please Do Not Equate Migrants with Crime**

The most glaring, and potentially divisive and damaging assertion that you have been party to reinforcing, consciously or otherwise, is the notion that the presence of migrants in communities is a decisive factor in the worrying escalation of crime in the city.

There has been extensive research on this matter, ironically because the same assumptions were made by national government when it launched its unfortunately-named Operation Fiela last year. Operation Fiela was launched by an Inter-Ministerial Committee (IMC) that was supposed to look into the causes of xenophobia, not involve itself in crime-prevention exercises. The consequence was that, in the public eye, the operation appeared to be saying that xenophobia would be addressed by arresting people, specifically undocumented migrants. However, a study of the statistics of those arrested under Operation Fiela (until the police suddenly stopped including the number of foreign nationals arrested) reveals that most foreign nationals were arrested for not having documents, not for involvement in any other illegal or criminal activity.

Respected research bodies such as the Wits University-based African Centre for Migration & Society (ACMS) have concluded that there is no evidence to support a simplistic causal link between migrants and crime. In fact, they have revealed that, in proportional terms, migrants are as law-abiding, if not more so, as South African nationals.

This is hardly surprising given the levels of insecurity that exist in the migrant community in the wake of the terrible violence that exploded in 2008 and 2015, and which may have slipped from the headlines, but which is now a part of the migrants' experience here in South Africa. It must be noted that, though most people think xenophobia 'happened' only in 2008 and 2015, resulting in a loss of life of less than 100, statistics show that *close to 400* foreign nationals have lost their lives since 2008, killed simply because they are foreign nationals. This figure excludes the significantly higher number that are attacked and injured, but not murdered.

#### **Please Do Not Equate the Absence of Paperwork with Criminality**

In attempting to 'refine' what you first said (thereby confirming the inappropriate nature of your original statement), you have stated that those who are here in South Africa without the correct paperwork and/or permission are in fact breaking the law, and therefore must be treated as criminals. This too is a very narrow and inflammatory statement to make.

There are a range of pertinent, rational explanations for why migrants are not in possession of their paperwork. Many of us forget or are not aware that many migrants have been forced by often acute circumstances (war, political or religious persecution, human rights, famine etc) to migrate from their home countries, often crossing a number of borders without papers to reach South Africa. Imagine, for example, fleeing your home to escape certain death from marauding fighters – will you spend time looking for your passport, or applying for one if you don't have one? A humane immigration policy, nationally and locally, would provide careful and sensitive treatment of those from our continent who have had to leave their homelands unwillingly, not simply castigate all migrants as a problem.

There is also overwhelming evidence that some migrants do not possess appropriate paperwork because of the corruption, maladministration and bureaucratic hurdles they encounter as they attempt to legalise their stay in South Africa. A good example is the number of asylum seekers and refugees who are struggling to get their permits or to renew them at the refugee reception offices at Marabastad in Pretoria. It is also common knowledge that many migrants who submit to stop and search operations have their papers taken from them by the police if they refuse to pay the officers a bribe, some even unfairly dispatched to places like Lindela Repatriation Centre. This has been documented by several credible and respected human rights bodies, such as the South African Human Rights Commission, PASSOP, Medecins Sans Frontieres, Lawyers for Human Rights and others.

### **Please Do Not Undermine the Humanity Inherent in the South African Constitution**

The South African Constitution of 1996 is rightly hailed as a landmark document on our continent and in the world. It contains universally-accepted rights and obligations, but it also provides ground-breaking protections for all those who live in South Africa. The main intent of the Constitution is to ensure that the gross distortions that characterised life in South Africa under apartheid will not be repeated, thereby giving effect to the words of Nelson Mandela during his inauguration as President in 1994 when he said: "Never, never and never again shall it be that this beautiful land will again experience the oppression of one by another."

In saying this, he does not refer to the oppression of South Africans alone, but says 'oppression of one by another'. This clearly includes all people, including migrants into the country.

In the same way, the Bill of Rights in the Constitution does not afford protection only to South Africans – clause 7 (1) says "This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights *of all people in the country* (our emphasis) and affirms the democratic values of human dignity, equality and freedom".

## **Please Show Leadership Not Divisiveness!**

We are all aware that South Africa in general, and this city in particular, is faced with many pressing social challenges at this time. Levels of poverty and deprivation, unemployment, inequality and corruption are major concerns. Some would say they are at epidemic levels, and you yourself have stated that you intend to do all within your power to address them.

However, we know from bitter experience, from the harsh lessons of history, that there are those who are prepared to exploit these conditions for political and personal gain, regardless of the human cost.

Opportunists who choose to do this immediately put at physical risk all those who are falsely deemed to be responsible for all of the maladies in our society. What's more, it should be noted that it is not only foreign nationals that fall victim to the wave of violence that follows a rise in xenophobic sentiment – in 2008, one third of all of those killed during the xenophobic attacks were South African citizens killed by other South Africans).

We would respectfully ask that you consider this point very carefully. Evidence gathered by a range of organisations has indicated that when statements are made, particularly those that equate criminality with migration, levels of violence against the migrant community markedly escalates. In other words, negative sentiment is given license to manifest itself in acts of physical violence. In a society that has survived the worst excesses of institutionalised violence and discrimination, and has provided the world with an example of a relatively peaceful transition to democracy, this must be a major concern for all those who wish to see it continue to be regarded as such.

Though it may not have been your intention, your comments have resulted in exactly that kind of reaction. Though your words have not yet translated into xenophobic action against migrants, they have unleashed a wave of anti-migrant sentiment on social media and other platforms – with some people interpreting your comments as license to call for all foreign nationals to be chased out of the country.

## **A Call To You As Mayor Of Our Great City**

We would therefore, in the interests of maintaining the peace for the entire community, urge you to do the following:

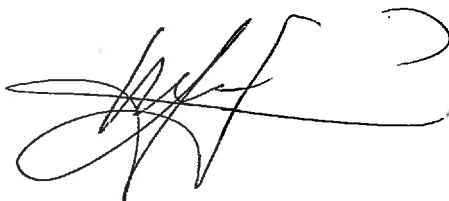
- 1 Retract without delay statements that have emanated from your office that equate criminality with the presence of migrants in the City.
- 2 Accelerate engagements with organisations such as ours to increase mutual understanding and to ensure that 'scapegoating' and divisiveness are not a feature of the city.
- 3 Reject simplistic and divisive explanations in favour of more rounded and fact-based analysis that speaks to the reality of our situation.
- 4 The 'human-rights lawyers' that you have attempted to discredit are not your enemy – they are dedicated people, mostly South African citizens, committed to building a better country, based on the principles and objectives of the human-rights based constitution. Work with them, not against them, in your search for sustainable solutions to the challenges facing the city.
- 5 Not all migrants are criminals. Crime has no nationality. Don't stereotype.
- 6 If a Mayor (or anyone else) catches a criminal, he or she must be taken to the responsible authorities. The media is not the platform for parading criminals.
- 7 Not all migrants are investors. There are refugees and asylum-seekers among them. Don't expect them all to come with dollars to your city.
- 8 It is your duty as the Mayor, together with your administration, to ensure that decaying/dilapidated buildings are fixed, and to remind the private sector of its responsibility. We all need decent, safe and affordable housing in the inner city.
- 9 It is the duty of a government to control porous borders. It is equally the duty of migrants to regularise their stay in the country; as such, it is incumbent upon the South African government to provide them with the necessary permits, visas and documents. It is equally important for the government to make it as easy as possible for people to regularise their status – closing down reception centres (and ignoring court rulings to re-open them) and introducing unnecessary bureaucracy does not help them to do so. Your responsibility as the Mayor is to be aware of these realities, and

- educate your constituencies about this, rather than blaming undocumented migrants unilaterally.
- 10 The provision of permits, visas and documents will, *inter alia*, make it easier for migrants to open bank accounts, register to pay tax, open businesses legally, send their children to school, and generally add value to the community. This could have a direct and positive impact on local economic development and, as such, is something that you as the Mayor could actively promote in your quest for inclusive economic growth for the city.
  - 11 Migrants can contribute positively to the economic growth of the City of Johannesburg as well as South Africa. They want to be part of processes that benefit the city and South Africa as well. It would be foolhardy for the Mayor's office to appear to be dismissing them all out of hand as criminals.
  - 12 Some migrants are asylum seekers and refugees from their countries of origin. As such, it is wholly unwise from the Mayor to expose them to their respective embassies in South Africa.
  - 13 Given the sad past of the country, we don't want division of any kind in our communities, we want unity.
  - 14 There is a lot you can do as Mayor of this urban community to make migrants feel welcome while working with the relevant authorities and enforcement agencies to address general instances of criminality and illegality.
  - 15 The city you are leading today was built by migrants – internal migrants from all corners of South Africa and external migrants from the rest of Africa and the world. The future of the city will also be determined in part by the contribution of migrants. It is essential for you as Mayor to understand this and embrace it.

Honourable, we are expecting you to respond to this memorandum, in writing, by no later than Monday 16th January 2017. We are available for consultations with you and your office, as long as such consultations will lead to an inclusive approach to the resolution of the challenges facing the City of Johannesburg and its people, and to solutions that are in line with the Constitution of South Africa, and more specifically the Bill of Rights contained in that Constitution.



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19th December 2016

Memorandum received by/on behalf of CoJ Mayor Herman Mashaba

MMC N. SIFUMBA [Signature] 19/12/2016  
Name Signature Date

This memorandum is endorsed by, *inter alia*:

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Name Organisation Signature

WAISHIA MUYEMBI CONGOLESE COMMUNITY [Signature]  
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