



SCALABRINI CENTRE OF CAPE TOWN

47 Commercial Street

Cape Town 8001

Tel: + 27 (0) 21 465 6433

advocacy@scalabrini.org.za

www.scalabrini.org.za

and



To: Select Committee on Security and Justice, National Counsel of Provinces,

By email: osbpbillb12b-2024@parliament.gov.za

5 May 2026

Dear Select Committee on Security and Justice, ,

COMMENTS ON THE ONE STOP BORDER POST BILL [B 12 -2024]

I. INTRODUCTION

1. The Catholic Parliamentary Liaison Office (CPLO) is an office of the Southern African Catholic Bishops Conference, tasked with liaising between the Church and Parliament/Government, especially commenting on issues of public policy, and making submissions on legislation. The CPLO welcomes the opportunity to comment on this Bill, which seeks to ensure the smooth reception and processing of migrants, refugees, asylum seekers and other mobile communities at One Stop Border Posts. The CPLO is partnering with the Scalabrini Centre of Cape Town to make these submissions.
2. The Scalabrini Centre of Cape Town (SCCT) is a registered NPO that is committed to fostering integration between migrants, asylum seekers, refugees, and South Africans. Our mission is to welcome, to protect, to promote and integrate mobile populations in local society. In providing

The Centre is registered with the South African Department of Social Development as a non-profit organisation (021-079 NPO), as a Child and Youth Care Centre (C7569) and as a Public Benefit Organisation with the South African Revenue Services (930012808) and governed by a Trust (IT2746/2006). Auditors: PKF Constantia Valley Cape Town Inc. VAT number: 4780251437.

assistance to mobile populations, we advocate respect for human rights and use a holistic approach that considers all basic needs. The SCCT works with asylum seekers, refugees and other migrants on a daily basis, addressing obstacles many face to meaningfully contribute to society. We draw on this experience, along with relevant and contemporary research on migration, to offer our input on the One-Stop Border Post Bill [B12-2024] (hereafter ‘the Bill’).

3. We agree with many of the Bill’s provisions, particularly those ensuring efficient processing, application of relevant laws, and safeguarding the Constitutional rights. The Bill will serve to improve upon efficiency and provide certainty on applicable law and regulation. Additionally, if amended as provided for in these comments, the Bill may also ensure improved combating of corruption and rights protection for vulnerable individuals crossing the border while ensuring safe and orderly migration and movement of goods.
4. Our submission focuses on additional improvements to the provisions, particularly regarding individuals with precarious documentation statuses like children, asylum seekers, trafficked persons and stateless persons. This precarious documentation status is often the case with non-citizens but also impacts many South African citizens.
5. Our submission consists of general comments, and then suggestions and **recommendations**¹ for specific provisions.
6. These Comments on the Bill follow on from our previous series of submissions written and oral on the One-Stop Border Post Bill.

II. GENERAL COMMENTS

7. The Bill aims to establish and regulate One-Stop Border posts in a more efficient process, common control zones and clearer regulation and clarity on applicable law at border posts around the country. It would be prudent to consider **adding in addressing and combating corruption at**

¹ Note that the core recommendations in these submissions are set out in **bold** for ease of reading.

border posts and protection of fundamental human rights as enshrined in Chapter 2 of the Constitution **among the aims in the preamble.**

8. Improved efficiency and processing at border posts allows for increased regional integration and harnesses migration for development as stated in the National Development Plan. This in turn aligns with the key objectives outlined in the Final Revised White Paper on Citizenship, Immigration and Refugee Protection passed in April 2026 which include “aligning... policies with the National Development Plan... with key regional and international commitments... and... reforms to improve efficiency, effectiveness, accountability and alignment with the rule of law and human rights.”² This in turn may further facilitate freedom of movement within the SADC region as envisaged by the SADC Protocol on the Facilitation of Movement of Persons as well as the African Union’s Agenda 2063 which both call for the abolishment of visa requirements across Africa.
9. Our submission covers several issues of concern with the Bill as they relate to asylum seekers, refugees, and other people on the move in the context of proposed ‘One-Stop Border Posts’ (OSBP). These concerns include the lack of reference to human rights and international public law when officials exercise powers; the absence of mechanisms to prevent bribery and corruption; and the potential for unlawful actions within common control zones against people on the move.
10. It is imperative that the shift away from the traditional two-stop border system to One-Stop Border Post be complemented by administrative clarity that ensures no vagueness, especially in the context of “common control zones”. These zones designated by the Minister in terms of Section 3 should clarify any confusion that may arise from the broad application of adjoining countries' domestic laws. One aspect of this may be to expressly **include the supremacy of the Constitution in the Bill** instead of merely including this in the Memorandum on the Objects of the Bill which currently rightly states **“the supremacy of the Constitution, including principles**

² “Aligning South Africa’s citizenship, civil registration, immigration and refugee protection policies with the National Development Plan, Key priorities of government as well as key regional and international commitments...” and “key institutional reforms to improve efficiency, effectiveness, accountability and alignment with the rule of law and human rights.” - Cabinet Approved Final Revised White Paper on Citizenship, Immigration and Refugee Protection section 1.1 pg 10 accessed at <https://www.dha.gov.za/images/White-Paper-on-CIRP-26March2026.pdf>

underpinning the Constitution, will take precedence over all one-stop border post arrangements. This includes safeguarding of the sovereignty of the State and observation of human rights.”³

11. We note with concern that there is inadequate provision for and awareness in relation to vulnerable communities at border posts. For instance, a person seeking asylum at a border post should be issued with an asylum transit visa, and yet there is no signage about this in English, or in any other languages spoken in refugee producing countries. Hence, an individual who wishes to follow the prescribed process has no way of knowing what the process is. The scant issuance of asylum transit visas between 2022 and 2024 evidences this issue.⁴ **We recommend that there is better signage at border posts and that border authorities communicate with and provide for vulnerable individuals crossing the border** including asylum seekers, children, trafficked persons, and stateless people. The border authorities should also engage and collaborate with the Department of Social Development and its equivalent in adjoining states to ensure that social workers are available to assist survivors of trafficking, unaccompanied and separated children, survivors of torture and persecution or war (asylum seekers) and the like. The aforementioned revised White Paper speaks to the introduction of statelessness determination procedure for stateless adults and stateless children in Section 3.1.3 of the White Paper which further affirms the importance of cognizance of border authorities of stateless individuals.

12. The law domestically and internationally is clear that de facto refugees, human trafficking survivors, torture survivors, unaccompanied children and stateless persons are and must be protected and should be provided for when regulating border crossing regardless of possession of a valid passport. To the contrary it appears that border authorities prohibit entry in the absence of a passport despite these protections⁵ and yet denial of entry of an asylum seeker is a violation

³ Section 7 of the Memorandum on the Objects of the Bill.

⁴ [Question to the Minister of Home Affairs - NW453 | PMG](#) – parliamentary question on the number of transit visas issued received the following reply – “a) During the 2022/23 financial year, the Department of Home Affairs issued 30 asylum transit visas in terms of Section 23 of the Immigration Act, Act 13 of 2002. b) In the 2023/24 financial year to date, the Border Management Authority issued 61 asylum transit visas in terms of Section 23 of the Immigration Act, Act 13 of 2002.”

⁵ [Entering and Leaving SA – BMA](#)- “No person, including children, will be allowed through the Ports of Entry without a valid passport which is machine readable (Foreign passports: at least one page of the passport should be unused).

of the principle for non-refoulement and non-penalisation of entry under Articles 33 and 31 of the 1951 Refugee Convention⁶ codified domestically in Sections 2 and Section 21(4) of the Refugees Act.⁷

13. We note that the lack of reference to corruption in the Bill, lack of attention to international public and human rights law, and the lack of clarity regarding responsibility in common control zone were canvassed in our previous [submissions in 2023](#),⁸ and the salient recommendations from these submissions are provided below for ease of reference and consideration:

Recommendation #1: The SCCT recommends that the Department explore the inclusion of legislative mechanisms to more effectively address corruption, in all its guises, within the proposed One-Stop Border Posts.

Recommendation #2: The SCCT recommends that Section 3(1)(c)(ii) be amended to include reference to the fundamental rights of persons under Chapter 2 of the Constitution and the public international law obligations of the Republic, including reference to the rights and interests of vulnerable groups including victims of trafficking, refugees and asylum seekers.

Recommendation #3: The SCCT recommends that the Department consult with UNHCR and other stakeholders when devising bilateral treaties with regards to protection-sensitive entry systems at One Stop Border Posts to ensure non-refoulement obligations are fulfilled.

Foreign nationals entering South Africa should have a passport valid for at least 30 days after the intended visit to South Africa.”

⁶ Convention Relating to the Status of Refugees, adopted at Geneva on 28 July 1951.

⁷ The Refugees Act 130 of 1998.

⁸ [Our Comments on the One Stop Border Post Bill - Scalabrini](#)

III.SPECIFIC COMMENTS AND PROPOSED ADDITIONS

14. We recommend that the **Definitions Section** is amended to **include definitions of unaccompanied children, separated children, asylum seekers, human trafficking and statelessness** and that these terms are referred to expressly in the Bill wherein the definitions will serve to improve understanding when referenced in the Bill.
15. As referenced above, from our previous submissions, Section 3(1)(c) may be improved upon. Hence, Section 3(c) provisions (i) and (ii) should be supplemented with a further provision (iii) authorizing officials beyond (i) border law enforcement... or (ii) any power to arrest, search, seize or detain...
- (iii) to ensure application of fundamental human rights and protection under Chapter 2 of the Constitution including the rights, protection and processing of asylum seekers, refugees, children, survivors of human trafficking or torture, stateless persons and other vulnerable individuals.**
16. We are concerned that the detention that may arise under Section 3(1)(c)(ii) “any power to arrest, search, seize or detain...” could result in One-Stop Border Posts being sites of prolonged administrative immigration detention without sufficient judicial oversight given the prior experience that we have had with Section 34 of Immigration Act detention. Hence, we recommend amendment to section 3(1)(c)(ii) of **the Bill to explicitly provide for compliance with the 48 hour maximum for detention before appearing before court, and provides for release in instances where it would be in the interests of justice to do so** as set out in [Ex parte Minister of Home Affairs and Others; In re Lawyers for Human Rights v Minister of Home Affairs and Others \(CCT 38/16\) \[2023\] ZACC 34; 2024 \(1\) BCLR 70 \(CC\); 2024 \(2\) SA 58 \(CC\) \(30 October 2023\)](#)⁹ which

⁹ [118]: I make the following order: (a) An immigration officer considering the arrest and detention of an illegal foreigner in terms of [section 34\(1\)](#) of the [Immigration Act 13 of 2002](#) (Act) must consider whether the interests of justice permit the release of such person subject to reasonable conditions, and must not cause the person to be detained if the officer concludes that the interests of justice permit the release of such person subject to reasonable conditions. (b) A person detained in terms of section 34(1) of the Act shall be brought before a court within 48 hours from the time of arrest or not later than the first court day after the expiry of the 48 hours, if 48 hours expired outside ordinary court days. (c) The Court before whom a person is brought in terms of paragraph (b) above must consider whether the interests of justice permit the release of such person subject to

is applicable until the legislative amendment of section 34¹⁰ and the regulations thereto are finalised. This will ensure requisite human rights protection and judicial oversight constant with the Constitution.

17. **Section 5(1) of the Bill should be amended to refer to non-political¹¹ criminal offence** and hence should read:

“...where an act or omission that constitutes a [**non-political**] criminal offence in an adjoining state is committed...”

18. Whilst it is commendable that the Section 5(5) explicitly mentions safeguards to noncitizens in not exposing them to death penalty for offences committed in a common control zone which aligns with South Africa’s constitutional stance against capital punishment, it fails to do the same on the principle of non-refoulement in Section 7. **Section 7 should be amended to make provision** for section 21(4)¹² of the Refugees Act, read with Article 31 of the 1951 Refugee Convention **prohibiting the penalization of unlawful entry or presence of anyone seeking asylum**. Additionally, in accordance with the Statelessness Conventions and States’ obligations

reasonable conditions and must, if it so concludes, order the person to be released subject to reasonable conditions. (d) If the Court concludes that the interests of justice do not permit the release of such person, the Court may authorise the further detention of the person for a period not exceeding 30 calendar days. (e) If the Court has ordered the further detention of a person in terms of paragraph (d) above, the said person must again be brought before the Court before the expiry of the period of detention authorised by the Court and the Court must again consider whether the interests of justice permit the release of such person subject to reasonable conditions and must, if it so concludes, order the person to be released subject to reasonable conditions. (f) If the Court contemplated in paragraph (e) above concludes that the interests of justice do not permit the release of such person, the Court may authorise the person’s detention for an adequate period not exceeding a further 90 calendar days. (g) A person brought before a Court in terms of paragraph (b) or (e) must be given an opportunity to make representations to the Court.

¹⁰ Immigration Act 13 of 2002

¹¹ This is in keeping with refugee law which expressly protects individuals who flee political persecution as set out in the statutory definition of refugee in section 3 of the Refugees Act 130 of 1998. If a member of the opposition was charged with political crimes to silence and or detain them and fled from their country where they were subject to political persecution was then returned based on said political crimes, that would be in contradiction with the fundamentals of refugee protection. Section 4(1)(b) of the Refugees Act 130 of 1998 similarly limits the crimes that may lead to exclusion from Refugee Status to crimes which are not political: “(b) has committed a crime outside the Republic, which is not of a political nature and which, if committed in the Republic, would be punishable by imprisonment without the option of a fine” (**emphasis added**).

¹² S21(4) of the Refugees Act 130 of 1998: “Notwithstanding any law to the contrary, no proceedings may be instituted or continued against any person in respect of his or her unlawful entry into or presence within the Republic if- (a) such person has applied for asylum in terms of subsection (1), until a decision has been made on the application and, where applicable, such application has been reviewed in terms of section 24A or where the applicant exercised his or her right to appeal in terms of section 24B; or (b) such person has been granted asylum.”

under customary international law states cannot and must not send stateless people to and from one state to another, without assistance and protection. Hence section 7(1) and (2) would be subjected to a subsection **(3)** which should state: **“The Republic is required to apply refugee law and customary international law to ensure that protection is provided to asylum seekers and stateless people and that these individuals are not returned or readmitted regardless of the legality of entry.”**

19. The Memorandum on the Objects of the Bill notes that the redevelopment of ports of entry will rely on a Public-Private Partnership (PPP) model. We cautiously welcome the initiative, but we strongly recommend measures to ensure that the “redevelopment and maintenance” by private entities do not replace sovereign human rights adherent state control on borders and that it does not compromise the legitimate movement of people by opening further avenues to the endemic problems of corruption at border posts. It is also imperative that the integrity of civic data collected at One-Stop Border Posts is maintained and that implementation of the bill safeguards from misuse of data by private businesses. In essence we **recommend counter corruption measures and data protection safeguards are included in the context of Public-Private Partnership.**

IV. CONCLUSION

20. We appreciate the opportunity to comment on the Bill and hope that these submissions will be taken into consideration, and the recommendations herein will lead to an improved iteration of the Bill. These improvements would serve to reduce corruption and enhance protection and fundamental human rights while realizing the efficiency and effective regulation of One Stop Border Posts.

Yours faithfully,

James Chapman

Head of Advocacy & Legal Advisor

Scalabrini Centre of Cape Town

Fr Peter-John Person

Director

Catholic Parliamentary Liaison Office

and

Makava Chiguvare

Advocacy Officer -Alternatives to Detention

Scalabrini Centre of Cape Town