

Concerns with the proposed amendments

1. Excessive discretion and lack of guidance for Immigration Officers

The amendment grants immigration officers significant discretionary powers to release illegal immigrants based on the "interests of justice" principle. However, there is no guidance on how to apply this legal standard effectively, creating potential for inconsistent application. Immigration officers, often without judicial training, cannot be expected to interpret and apply complex legal concepts typically reserved for courts. This gap increases the likelihood of errors, arbitrary decisions, or corruption.

2. Inadequate safeguards for release decisions

Releasing illegal immigrants without thorough verification of their identities, addresses, criminal records, or employment history undermines national security. The absence of mandatory oversight by senior officials further exacerbates this issue, allowing unilateral decisions that could result in individuals absconding or reoffending. Biometrics and detailed records of released individuals are necessary to ensure accountability and traceability.

3. Risk to state security and increased costs

Allowing immigration officers to release illegal foreigners, even temporarily, contradicts the Immigration Act's stated purpose of safeguarding state security. Those who abscond after release require re-arrest, placing additional strain on enforcement agencies. This loophole could lead to repeat offenses, especially from individuals exploiting weak enforcement mechanisms.

Recommendations

1. Negotiate Bilateral Deportation Agreements

South Africa must urgently pursue agreements with nations contributing most to illegal immigration, including Zimbabwe, Mozambique, Nigeria, Somalia, and Ethiopia. The agreements should include adoption of policies requiring countries of origin or deported individuals to bear or share the costs of repatriation. This practice, common in nations like the U.S., acts as both a deterrent and a means of offsetting financial strain on host countries. Furthermore, establish clear timelines for verifying nationality and repatriating individuals and hold offending nations accountable for delays or failures to cooperate in repatriation efforts.

Examples from other countries highlight the benefits of such agreements:

- EU & Pakistan: Facilitates quick returns with obligations on Pakistan to verify and accept nationals.
- UK & Bangladesh: Streamlined processes eliminate unnecessary bureaucratic delays.
- US & Mexico: Extended detention periods and collaborative repatriation efforts have reduced re-entry rates.

2. Reassess the 90-day detention limit

The current 90-day detention limit must be revised to account for delays caused by uncooperative home countries. International precedents demonstrate that extended detention periods, when combined with judicial oversight, can effectively manage deportation cases.

3. Establish Specialised Immigration Courts

Specialised courts would expedite immigration-related cases, reducing delays and ensuring judicial oversight in detention and deportation matters. This would alleviate pressure on general courts and minimise the risk of illegal immigrants exploiting legal loopholes to extend their stay.

4. Mandatory Biometric Records for Released Individuals

To combat repeat offenses, all illegal immigrants considered for release must undergo thorough biometric recording. This will ensure accurate identification and enable effective tracking and tracing, discouraging re-entry into South Africa.

We urge the Department of Home Affairs to act decisively by implementing these measures to safeguard South Africa's sovereignty and resources.

We thank you for your time and consideration.

Kind regards,