

ASYLUM AT A PRICE

How corruption
impacts those
seeking legal
protection in
South Africa

PROJECT LOKISA



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FOREWORD

*Mavuso Maimang,
Corruption Watch's Chairperson*

South Africa's Constitution is one of the most progressive in the world, providing for a system of government committed to protecting the human rights of both citizens and foreign nationals who live here – one of the few constitutions in the world to do so with such explicit intent. Our various international obligations that protect foreign nationals and refugees reaffirm this.

The Department of Home Affairs has a responsibility to comply with these obligations by offering an immigration process that protects the vulnerable and facilitates their integration into society.

This not happening in practice.

When that duty is corroded by greed and opportunism it's our asylum seekers who suffer most. Corruption in the immigration process not only violates the human rights of foreign nationals genuinely seeking safe-haven from war and persecution in their home countries, it also opens up opportunities for economic migrants to bribe their way into the asylum system. This fuels a dangerous preconception that all foreign nationals – whether they have genuine legal protection needs or not – are taking advantage of our country's resources.

Corruption in the asylum system undermines the rule of law and taints our entire public service, posing a threat to every person living in South Africa.

We at Corruption Watch are committed to finding practical solutions to this problem so government's constitutional obligations become more than paper promises.

But we cannot do it alone.

We need to work with the Department of Home Affairs to develop mechanisms whereby corruption can be reported anonymously and dealt with head-on. It is this commitment to finding a solution that prompted the launch of Project Lokisa.

We are indebted to those refugees who have already bravely reported corruption to us. Some of their accounts are included in this report, as well as our short video documentary* on this project.

Our civil society partners have also played an invaluable role in collecting reports of corruption from the clients they work with on our behalf. Analysing these together with reports from people who blew the whistle directly to us has enabled us to pinpoint weakness in the asylum process that allow corruption to thrive.

Now we're calling on government. We've come this far, but need a working partnership with Home Affairs to help this project reach its full potential. Let's work together to fix corruption in our immigration system and create a South Africa that truly embodies the Constitution the rest of the world looks up to.

* The documentary can be viewed at www.corruptionwatch.org.za and on our Facebook and Twitter channels.

INTRODUCTION

'A nation's greatness' Gandhi reminded us, 'is measured by how it treats its weakest members'. Courageous, resilient and innovative though our immigrant communities are, there are few that are weaker and more vulnerable in relation to those in authority. And if South Africa was to be measured by how it treated these particular communities, it would not receive a glowing report.

If corruption is understood as the abuse of public power for private gain, then it's not surprising that the acute power imbalance between a refugee and the layers of officialdom who determine, literally, his or her place in the world is manifest in rampant corruption. From the minute the refugee or asylum seeker approaches the border he or she confronts officials, and frequently private citizens, who man one or another proverbial gate through which the person must pass.

These gatekeepers vary from the security guard who extracts R100 for allowing the refugee to literally enter the gate of the documentation centre, to the Department of Home Affairs official who is custodian of that vital final stamp and whose fee is often measured in thousands of rands.

Our general approach to combating corruption is to encourage the public to report their experiences of corruption to us. While we act on these reports in a variety of ways, the result is most effective when we meet officials and a government department genuinely



*David Lewis,
Corruption Watch's Executive Director*

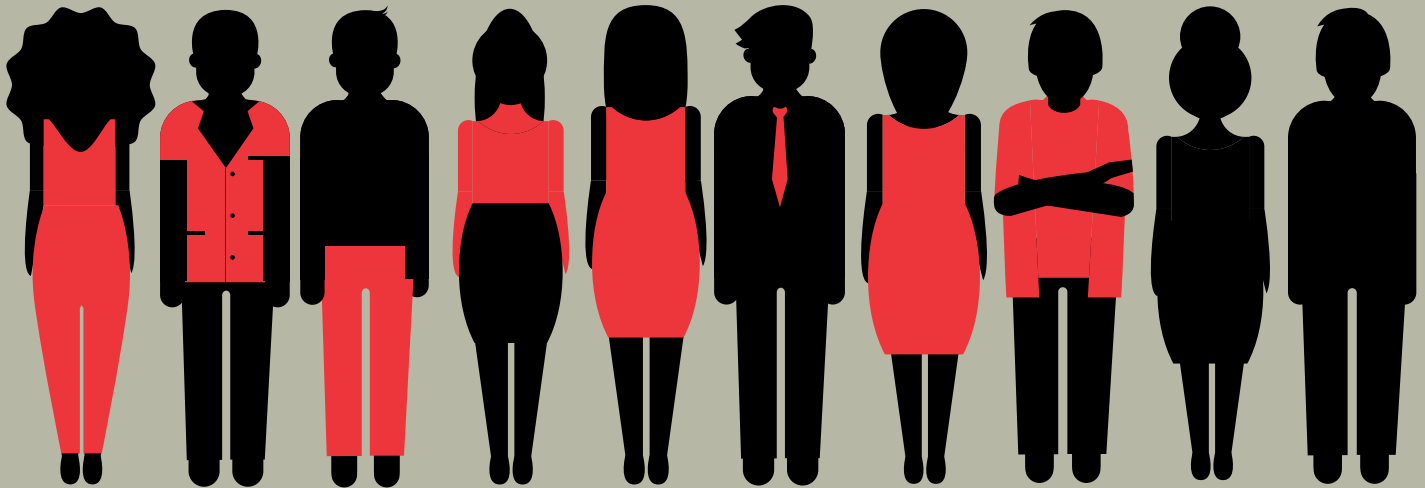
committed to working with us to resolve the individual reported cases and the systemic factors that underpin them. This project simply directs this request to the refugee communities and to the government agencies with which they are obliged to engage. Even though we guarantee the anonymity of those who report to us, refugees and asylum seekers are understandably hesitant. However, with the assistance of our partners, many of whom have established relationships of trust with affected communities, the volume of reports we have received from refugees has spiked.

Our simple request to the Department of Home Affairs is that they work with us to establish a complaints handling mechanism to facilitate the reporting of corruption by refugees and asylum seekers. And then to agree to an internal process for receiving these reports from us.

This doesn't require extra resources from the department. Mutual empathy with the plight of the most vulnerable members of our society is all that is needed.

ANALYSING OUR DATA

Since 2012, Corruption Watch has received 314 reports from foreign nationals about extortion, threats and solicitation from government officials.



80%

involved **Refugee Reception Offices (RROs)**, including Home Affairs officials, security guards, administrators & interpreters

17%

implicate
Metro police
& the SAPS



74%

involved bribes
demanded for issuing
asylum & refugee permits

CORRUPTION POINTS

1

When presenting **documents** to law enforcement officials

+

1

When **applying** for work permits & asylum & refugee status

=

2

Home affairs officials demanding bribes to issue documents

SAPS & security bribe for entry at the Refugee Reception Office



Metro police & SAPS officials have confiscated goods, threatened undocumented migrants with deportation & confiscated documents of foreign nationals unless bribes were paid.

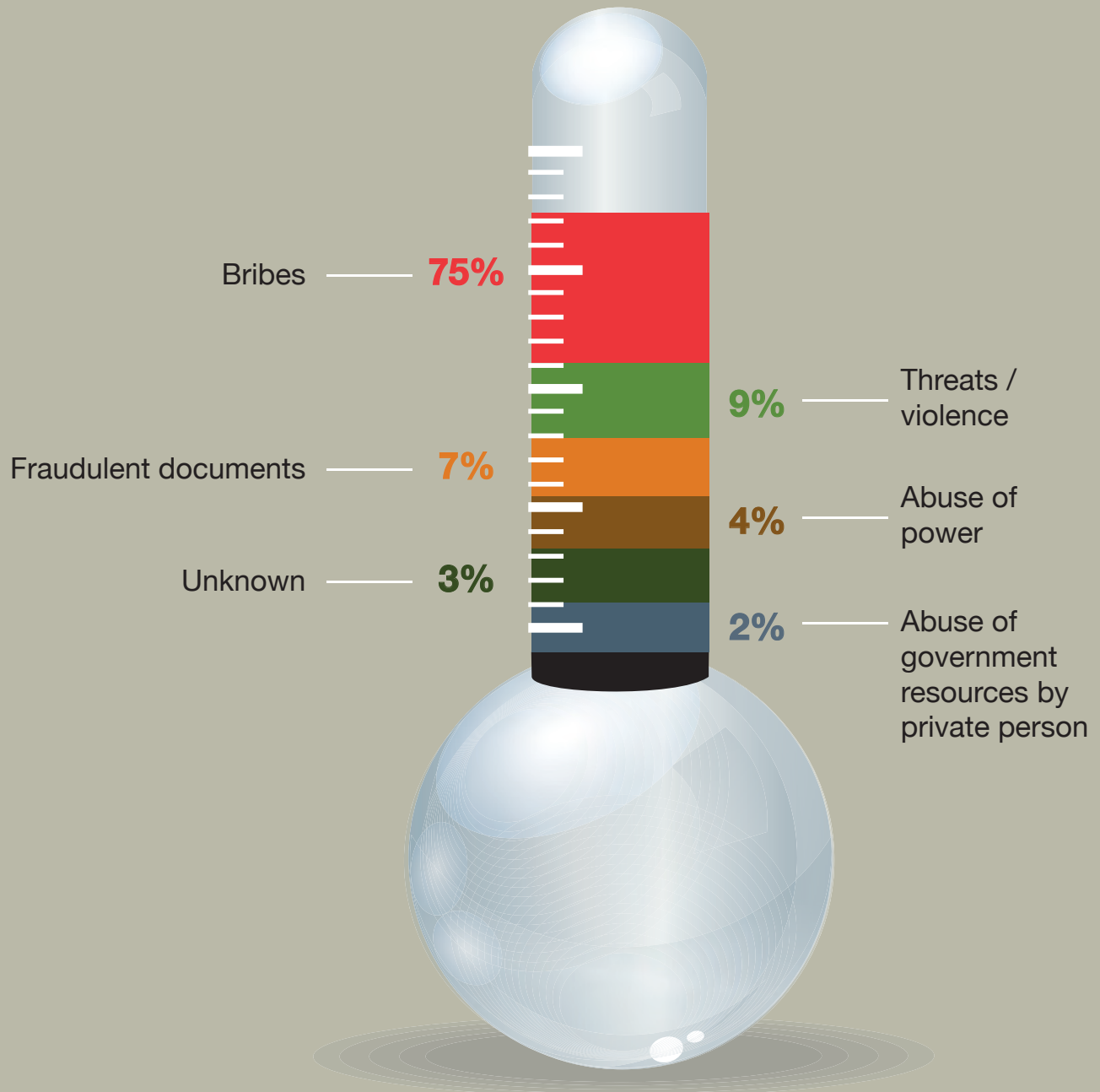


Bribes of R5 000 requested, with reporters often assaulted whether bribe is paid or not

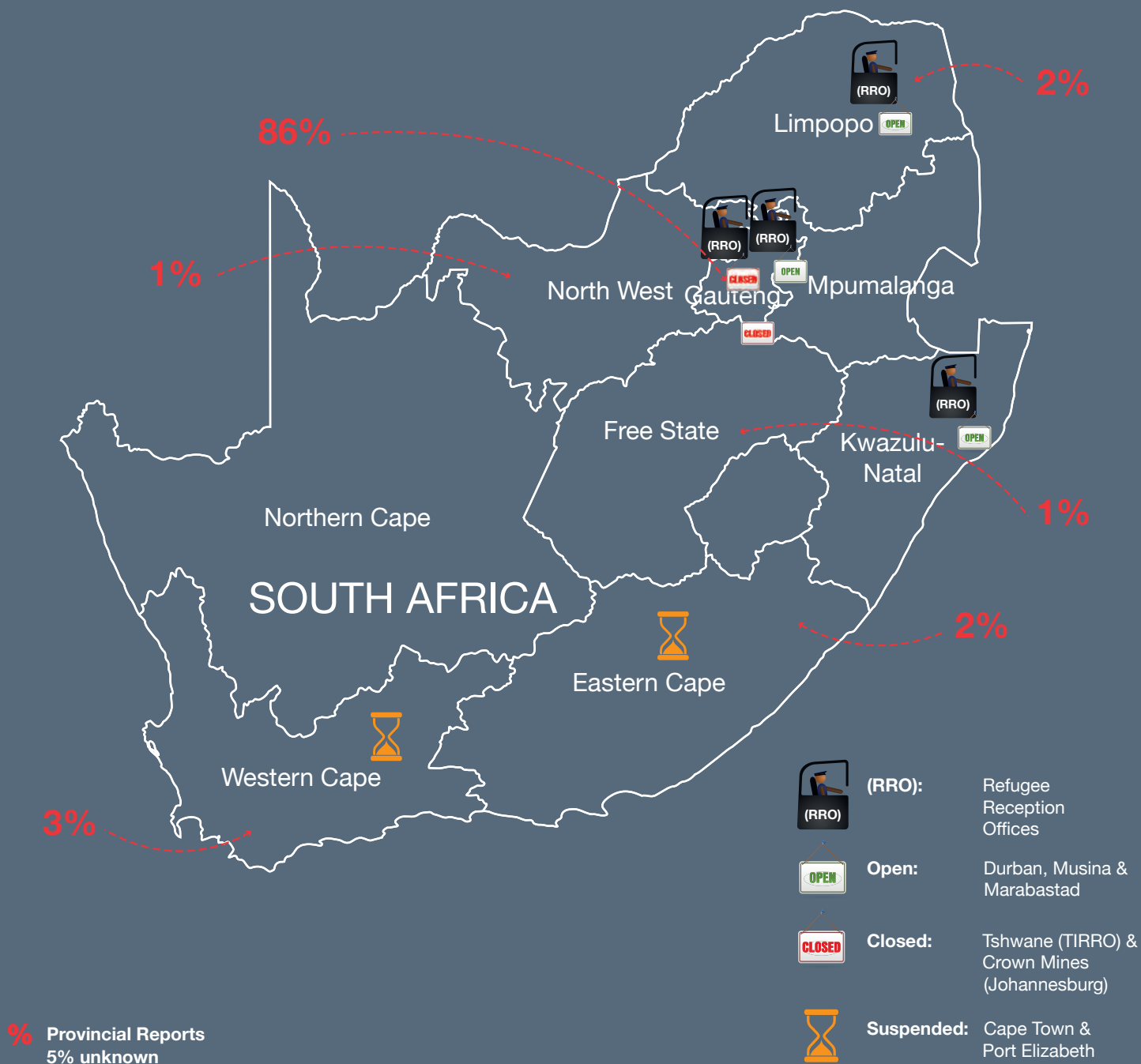


Reporters identify Park Station in Johannesburg & other public transportation centres as hotspots for harassment.

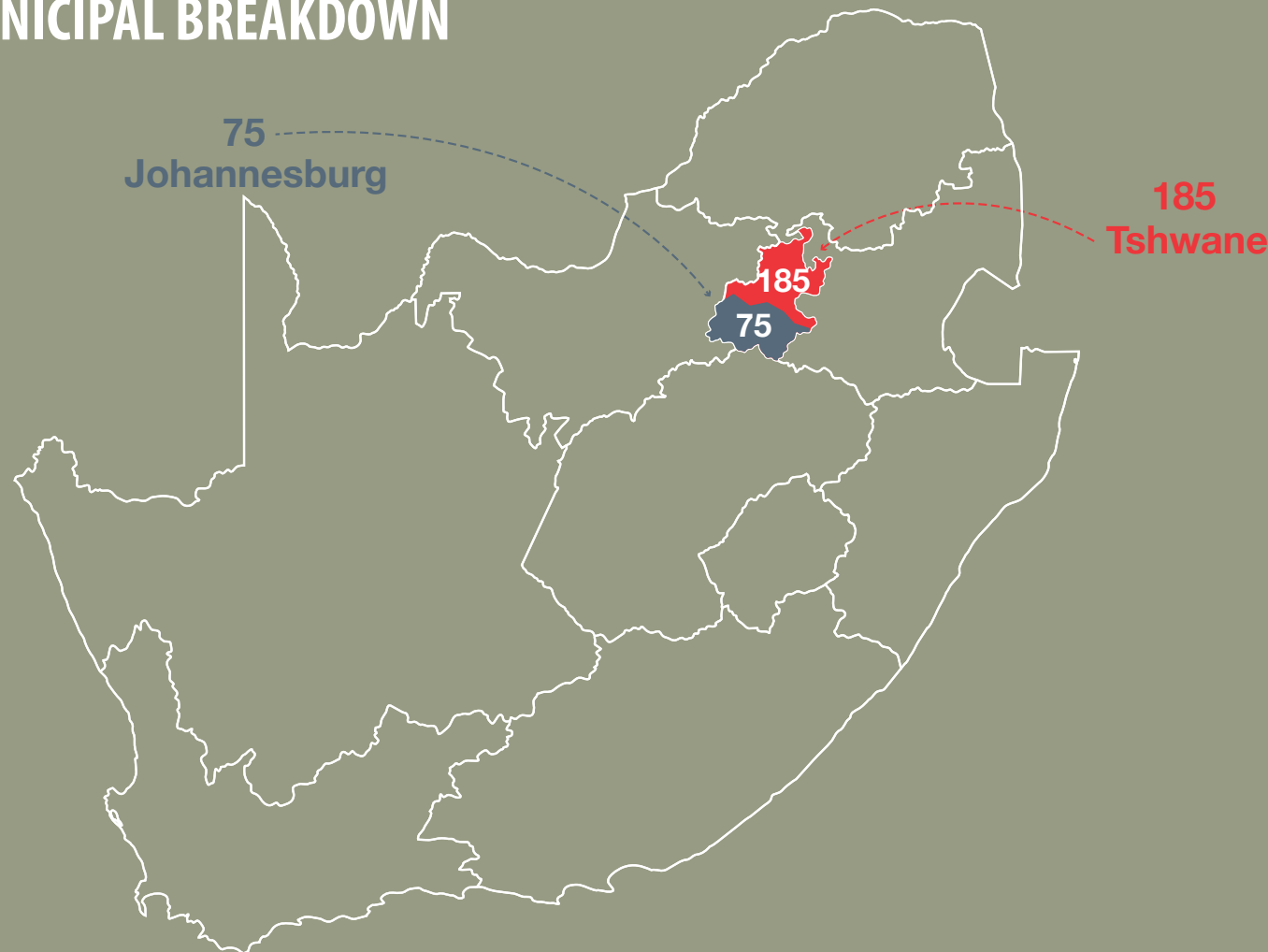
TYPES OF CORRUPTION REPORTED



REFUGEE RECEPTION OFFICES (RRO) VS PROVINCIAL REPORTS



MUNICIPAL BREAKDOWN



Aganang	2	Generic Provincial Capital	1
Bojanala Platinum District Municipality (DC37)	1	Generic Small Town	4
City of Cape Town	9	Lejweleputswa District Municipality (DC18)	1
City of Johannesburg	75	Mafikeng	1
City of Tshwane	185	Makhado	2
Dihlabeng	1	Musina	2
Ekurhuleni	6	Nkangala District Municipality (DC31)	1
Emfuleni	1	Randfontein	2
Emnambithi/Ladysmith	1	Thaba Chweu	1
Generic Metro	2	Unknown	16

TOTAL = 314 Reports

TROUBLE AT MARABASTAD

The Marabastad RRO in Tshwane was the source of most complaints with regards to the solicitation of R100 to R200 bribes by security guards, and in certain instances SAPS officials, in order to gain entry to the facility. Here's what the reporters said:

Everything is about money. We stand outside from 5 to 8:30 in the morning under the control of police officers...some of them wearing full uniform, some not, and all having handguns. Police officers are supposed to make order and protect us but let me tell you that those police officers are the ones who were asking us R100 to enter the Home Affairs office.

I arrived at Marabastad around 4am and queued for renewal of my asylum papers...this guard came and told us those who want to go home early must see her. When I approached her she told me to pay R300 for the renewal which I did not have. I told her I was not going to pay for something which is supposed to be free. She told me to step out of the line.

If you don't pay a bribe you cannot enter the premises.

No person gets access into the gates of Home Affairs if they do not pay R100 bribe money. If anyone has more than R100 they can jump the queue.

I walked to [anonymous'] office for him put my dates on the system. He said I must pay him a sum of R400 before he can attend to me. I pleaded with him that I don't have money to pay. He refused, then I paid him the money and he attended to me. That's how it happened.

Everytime I come here, they ask me to pay R300 to get inside. They have a list of names and they ask for a bribe to get your name on the list. This happens on Mondays and Tuesdays when Zim nationals come to renew their papers. The bribe is being asked for outside the premises of Home Affairs.



If you stand in front of Marabastad, you'll see a single person who goes in and out three, four, five times and you know this person doesn't work at Home Affairs. That's the middleman. His role is to protect the official inside, and to carry the message of the official to the client outside. The middleman collects money and makes sure the official is not seen.

*Marc Gbaffou,
African Diaspora Forum*

SARAH'S STORY



I came to South Africa eight years ago with my children because of war in my country. I was not safe there.

When I reported to the refugee reception office, they gave me a paper and told me to come back in 30 days. When I returned I thought I would be granted full refugee status, but I only got an asylum seeker's permit. Every six months I had to go to with all my four children to Tshwane Interim Refugee Reception Office (TIRRO) to renew our permits. Each trip cost me R800. I don't have a job, I was suffering.

Last year, when I was pregnant with my fifth child, I was told about an official working for Home Affairs at Marabastad called John*. I went to see him and he told me he could help me get full refugee status. Because I have a big family, he asked for R7 000 to do the job. I couldn't afford this, so gave him a deposit of R3 000. He said he would make the necessary arrangements and phone me back. When I didn't hear from him, I called to ask what was happening. He told me there was no way he could get me refugee status. He asked for my bank account number so he could refund me, but it's more than a year later and I am still waiting.

When I can afford to buy airtime, I still call John to ask for my money back. He picks up the phone and promises to pay me back, but nothing happens.

Home Affairs told me I need to appeal their decision not to grant me refugee status. They say I need to make an appointment in order to appeal but whenever I go there, they tell me they can't help me that day and I must come back in a few months. They postpone every time.

Whenever I try and apply for work as a caregiver, I show my asylum seeker permit and people ask me "what is this paper"? They tell me they don't accept people with such a permit, they only employ those with refugee status. They just throw the paper back at me.

** Names have been changed*

"Asylum seekers are desperate for protection and are often willing to do whatever it takes to get documentation to access to basic services. Certain Home Affairs officials and other agents know this and abuse their power to the extent that asylum seekers believe there is no other way to obtain protection and assistance from South Africa."

*Elzemari Temperman,
Lawyers for Human Rights*

EXPOSED: Our operative goes undercover to find what's for sale at Home Affairs

From as little as R1 000 for a passport to R15 000 for asylum status and a work permit, these stories illustrate how easy it is to get fraudulent documents with the help of Home Affairs officials

THE PRICE TO PAY FOR ASYLUM

We were huddled inside a green VW Polo parked just outside the Carlton Centre in downtown Johannesburg when the negotiations began. On offer on that rainy March day was asylum status. The price? R6 000.

The person offering to do the dirty work was Mutombo Odimegwu, also known as Sylvie. She had been reported to Corruption Watch's hotline not long before by a concerned asylum seeker. So, in an attempt to find out more about how she operated, I went undercover, posing as a foreign national.

Odimegwu spoke openly about being able to arrange the paperwork. She said to begin the process all she needed was R3 500 upfront, with the balance to be paid at a later stage. She mentioned that she could create passports for asylum seekers, assuring me it was "easy to make". Such a document could be purchased from her for just R1 000, and Odimegwu handed over her bank account details so I could make the transaction.

Throughout the meeting, Odimegwu used the word “they” when referring to Home Affairs officials. “They work with money,” she said, and they “work as a team”.

I knew before we met, through a search of public databases, that Odimegwu was not a Home Affairs employee, but rather worked for ZRGB Translation and Interpretation Services. The search also revealed that Odimegwu has two different ID numbers registered to her name: 7412130925183 and 7312130918081. The third to last digit “1” in the former number indicates that Odimegwu is a foreign national (permanent resident), while the “0” in the latter number indicates she’s a South African citizen.

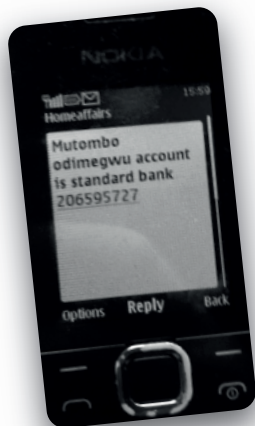
It appears that, if Odimegwu is not technically a South African citizen, she has arranged a separate ID number for herself – with a different year of birth – which lists her as a South African citizen.

A few months later, in August, I met up with Odimegwu again, this time at the Falcon Peak Spur in the Carlton Centre [note

to design on image suggestion]. Like before, she spoke candidly about being able to arrange asylum status for R6 000, but cautioned that Home Affairs wasn’t processing any asylum applications at the moment. If a foreign national managed to get the paperwork now, it would most probably be fake, she said.

Odimegwu suggested that I “meet everyone together” to discuss my “case”. She did not mention the names or designations of these individuals, but seemed to imply that there is an organised scheme operating at Home Affairs. She said it would be a good idea to arrange a passport for me as a precursor to the asylum process. This time around she said all I would need is to give her my name and photo, together with R1 500.

Later in the conversation, Odimegwu said that in future it would be more difficult to supply documentation in the manner being discussed. I then mentioned I had a “friend” who was looking for permanent residency. Odimegwu said she could help this friend get this status for R5 000.



Corruption is letting in the very people the government wants to keep out and undermining its migration management goals.

*Roni Amit.
African Centre for Migration and Society*

GETTING LUCKY AT HOME AFFAIRS



Gladwin Cameron Monareng wanted to know I was serious. Even though he spoke quite freely on the phone – his original price was R4 500 for asylum status, but I talked him down to R3 000 without much trouble – he said he would only meet in person if I deposited R300 in his bank account.

Monareng told me the necessary paperwork needed to be processed at Marabastad Home Affairs office in Pretoria and that after receiving payment, he would refer me to his colleague there called “Lucky” who would finalise everything.

But agreeing on a date and time to meet up proved tricky, prompting Monareng to request an additional R500 be transferred into his bank account to show I was still interested.

On the day we eventually met in downtown Johannesburg, Monareng said he could also arrange a work permit for me.

The cost would be R15 000 and it would take two weeks to finalise, he said. If I was finding it difficult to secure a job offer (one of the documents that needs to be submitted to apply for a work permit), he had “plenty” of companies which could assist. I ended up paying R3 000 to Monareng, but pulled out before any documents were produced on my behalf.

A search through public databases revealed that Monareng was arrested in 1998 and found guilty of fraud. He received a 10-month sentence, which was suspended for five years. He is officially registered as an employee at the DHA and has three active companies registered to his name: Mangedi 16 Trading and Projects, Marzouk Mangedi Trading and Mangedi Trading Enterprise.



Confirm Deposit Details	
Account name	MR GLADWIN C MONARENG
Account number	62436591227
Reference	ASHA RAMAZANI
Deposit Amount	R300

MARTHE BIBONGA BIKUELO'S STORY



I fled my country because of war. As a nurse I had seen people dying in hospitals, but that didn't prepare me for what I saw during the conflict in my country. It was a horrible time. But since the day I left in a truck in December 2012, I have felt unsteady in life.

When I arrived in South Africa, it was very difficult at first. I couldn't understand English well and I had no money. I was staying in a church. I had no idea what I needed to do in order to apply for refugee status.

I eventually found my way to Marabastad and was given an asylum seeker's permit and told to come back in one month. The official who signed my paper told me I wouldn't get any further without paying money. I asked: "How much"? He just said: "Go and look for the money."

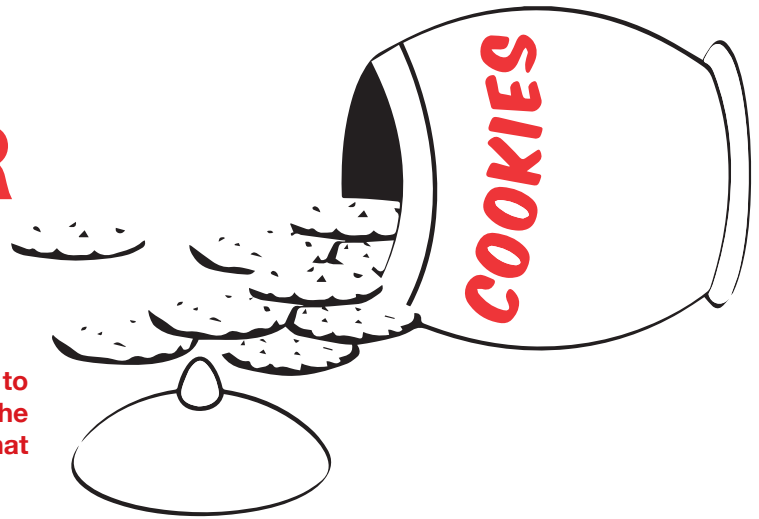
When I went back to Marabastad, I had an interview with an official. He asked me for R2 000 to process my case. He asked me to hand him the cash under the table so the cameras wouldn't pick it up. I told him I couldn't afford it, so he accepted R1 000.

Each time I went back to renew my asylum seekers permit, an official asked me for money. I didn't feel safe. I went to Jesuit Refugee Services to ask them for help. They said it was important for me to tell my story. So many people are affected by this corruption, but they don't know where to go or how to explain themselves.

In April 2015 I went to TIRRO [Tshwane Interim Refugee Reception Office] to apply for a travel document and I met a woman who said she could help me. She said she was working with the officials at Home Affairs. She asked me to give her R2 500, and explained that it was R400 to cover the official travel document fee, R100 to pay the interviewing officer and R2 000 for paperwork. Before the interview, I saw her giving the officer money. After the interview I was told I would have my travel document in two months. It took six months, but I got it.

The woman tried to become my friend and asked to meet up on the weekend. She would always ask me if I knew more people who needed help with their documents. "You must bring them to me," she said.

HANDS IN THE COOKIE JAR



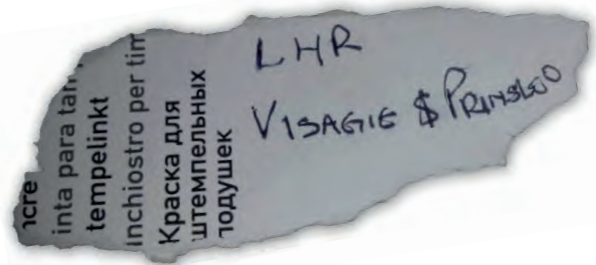
Mtetho Ernest Macanda had been reported to Corruption Watch by one of his colleagues at the Marabastad Home Affairs Offices, who said that Macanda “had his hands in the cookie jar”.

When I first met Macanda it was in his car, which was parked in the shadows of the underground garage at the Quagga Centre in Pretoria West. Again, I was posing as an asylum seeker. The first question he asked me was whether I have an ID book or passport. I said my passport had been stolen.

Macanda said I needed to go to Lawyers for Human Rights to get an affidavit stating that I had lost my passport, including where I originally came from and where I was living now. This document would act as an official confirmation of my identity. He gave me the address where I could find their offices in Pretoria.

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** These investigations were carried out with the help of Horizon Forensics. They are the first-person accounts of the undercover operative as told to Corruption Watch.*

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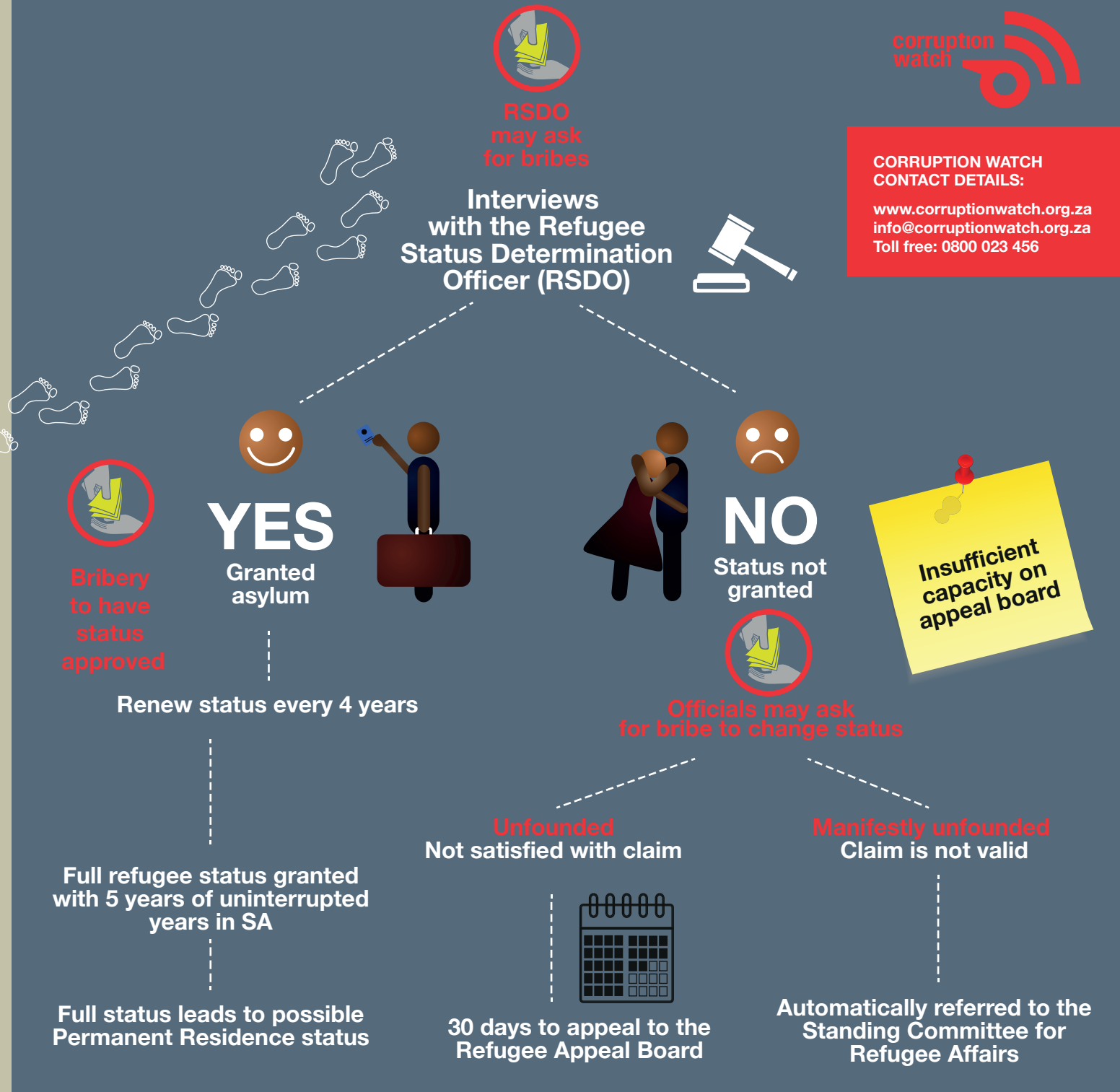
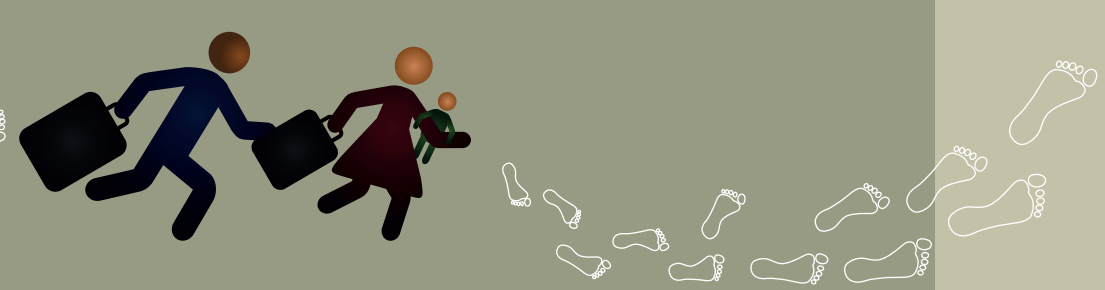
AN ASYLUM SEEKER'S JOURNEY IN SA

Bribery Hot Spots

REFUGEES LEGALLY CROSS BORDER



REFUGEES ILLEGALLY CROSS BORDER



corruption watch

CORRUPTION WATCH CONTACT DETAILS:
www.corruptionwatch.org.za
info@corruptionwatch.org.za
Toll free: 0800 023 456

HOW THE ASYLUM SYSTEM WORKS

South Africa has one of the most progressive and liberal asylum laws and refugee protection frameworks in the world. However, the disjuncture between law and practice has resulted in numerous points of weakness in the asylum system where corruption has been allowed to thrive.

AT THE BORDER

A person seeking asylum may use any port of entry to enter South Africa. If an asylum seeker enters the country through an official port of entry, he or she will often declare to a border official that they intend to seek asylum in South Africa. The asylum seeker must then be issued with an asylum transit visa. This gives the person five days to report to a RRO to formally apply for asylum. However, if an asylum seeker enters the country illegally through an unofficial border post or enters clandestinely, they are protected from prosecution by the Refugees Act of 1998. If they are apprehended by a border or immigration official or a police officer they may not be detained if they indicate that they are here to seek asylum and should report “without delay” to an RRO to apply for asylum.

Weaknesses

- If the five days expire before the asylum seeker who entered South Africa legally (through a port of entry) is able to visit an RRO, the Immigration Act declares that the person becomes an “illegal foreigner” and risks arrest and deportation. This is at odds with the Refugees Act which prohibits the return of a person to a country where he or she could face persecution or threats to physical safety or freedom. It is also contrary to the 1951 UN Refugee Convention and 1969 OAU Convention, to which South Africa is a party, which recognise the right for all people to seek asylum.
- Asylum seekers have reported to the Refugee Rights Unit that they often have to pay bribes to border officials to allow them to enter South Africa, specifically at the Beitbridge Border, which was also corroborated by the 2015 study by Roni Amit, Queue Here for Corruption: Measuring Irregularities in South Africa’s Asylum System, commissioned by the African Centre for Migration and Society and Lawyers for Human Rights. Some asylum seekers also informed the Refugee Rights Unit that if they inform a border official that they are here to seek asylum they are

sometimes turned away. When people are turned away from the border it creates an incentive to cross the border illegally, normally with the assistance of smugglers. Moreover, it represents a serious violation of one of the key principles of international refugee law, namely that of *non-refoulement*.

REPORTING TO THE RRO

Once an asylum seeker gets into an RRO, he or she is interviewed by a refugee reception officer and given a DHA-1590 (application for asylum) form to complete. The asylum seeker’s biodata and photo are captured and they are issued with an asylum seeker permit (Section 22 permit) which is valid for six months. This legalises the asylum seeker’s stay, pending a final decision. The permit can be extended every four to six months during the process of status determination. The permit allows the asylum seeker to work and study in South Africa, and should protect them against deportation.

Weaknesses

- The Department of Home Affairs (DHA) has suspended all new asylum applications at the Cape Town and Port Elizabeth RROs, leaving only the Musina, Pretoria or Durban RROs open for newcomers; at the time of writing this report, Johannesburg and Tshwane interim RROs had been temporarily closed for some time.
- The RROs still accepting new applications are faced with vast queues of asylum seekers lodging new applications or extending current asylum seeker permits. The offices are often understaffed and cannot deal with the large numbers of people seeking asylum each day.
- This leads to considerable delays, backlogs and feeds corruption (when access is limited, asylum seekers will do whatever it takes to gain access to documentation and thus avoid possible detention/arrest). Even though an asylum seeker may reach a reception office within the five-day period (which was a 14-day period before the new Immigration Regulations came into effect in June 2014) this does not guarantee the actual start of the application process. Asylum seekers sometimes have to queue for several days and sleep outside the gates at night before gaining access to the building. This is worsened if an applicant misses the day allocated to his/her particular nationality, as they must then wait until the following week.

By Popo Mfubu,
attorney, Refugee Rights Unit at the University of Cape Town

- The Refugee Rights Unit has noted that asylum seekers are ill-informed about which offices are still open to new applications, making it even more difficult to find the right office and access it before the transit visa expires.
- The BI-1590 form is only printed in English but many asylum seekers do not have a working understanding of the language. While the refugee reception officer is required by law to help the applicant and ensure the application form is completed in full, this does not often happen in practice. The Department of Home Affairs (DHA) does make interpreters available but they are often problematic since they have been known to concoct stories for applicants as well as charge for the services that the state pays them to render. Many asylum seekers ask other asylum seekers, who have a slightly better command of English, to complete the form for them. This results in incorrect or incomplete information being captured. Sometimes refugee reception officers themselves ask other asylum seekers to help them fill in an applicant’s form without checking whether they speak the same language or dialect. For example, the Swahili spoken in Burundi is different to that spoken in some parts of the Democratic Republic of Congo.
- Apart from the language barrier, some asylum seekers are illiterate and have never attended any form of formal school which makes understanding the application process and whatever form they are meant to complete even more difficult.

Opportunities for corruption

- Long queues outside the RROs result in security guards demanding money to allow access. Some officials ask for bribes directly, others send proxies to patrol the queues to solicit and accept bribes on their behalf. Once the bribe is paid, the asylum seeker is allowed inside and is assisted by the official.
- The long queues are also a symptom of a lack of capacity and human resources at the RROs. This situation lends itself to corruption because if you want to be assisted you must pay a security guard or an official.
- Some asylum seekers who have been in the application system for a long time offer new arrivals informal translation or inter-pretation services and sometimes will, after soliciting money from the asylum seeker, help fabricate claims for asylum or will add details to the new arrival’s “story” in order to artificially “strengthen” their claim or “guarantee” that they get asylum.

INTERVIEWS WITH THE REFUGEE STATUS DETERMINATION OFFICER (RSDO)

Before a person’s asylum seeker permit expires and in line with the next step in the status determination process, asylum seekers are expected to report to the RRO for a second interview – this time with a refugee status determination officer (RSDO). After this interview, the RSDO must issue a written decision to grant refugee status or reject the asylum application as unfounded or manifestly unfounded. When rejected as unfounded it means that the applicant has mentioned or referred to leaving their country for reasons which could afford them refugee status in terms of the Refugees Act (such as fleeing war or persecution), but the RSDO is not satisfied with the merits of such reasons or the DHA seeks further motivation for the claim. When rejected as manifestly unfounded it means that the applicant has mentioned or referred to a reason for wanting asylum that is not recognised in the Refugees Act, for example to gain employment or study in South Africa.

If an application for asylum is rejected as unfounded, the asylum seeker has 30 calendar days to lodge an appeal before the Refugee Appeal Board (RAB), a quasi independent tribunal which offers asylum seekers the opportunity to challenge the negative decision of the RSDO. The RAB then sets a date where the asylum seeker presents his or her case and an oral hearing takes place, as prescribed in law, at the office where the person initially applied for asylum.

An application can also be rejected as fraudulent or abusive if there has been misrepresentation or if there is a clear attempt to abuse the system by applying twice for asylum at different offices under different identities. These applications are automatically reviewed by the Standing Committee for Refugee SCRA.

If the RSDO rejects the application on the basis that it is manifestly unfounded, the decision is automatically referred to and reviewed by the (SCRA), which may either confirm the decision of the RSDO, set it aside and grant refugee status or refer the matter back to the RSDO for reassessment. An asylum seeker has 14 days to make written representations to the SCRA after being refused asylum on this basis.

Weaknesses

- Interviews with RSDOs are often too short, with some clients reporting that they take no longer than five or 10 minutes, indicating that RSDOs do not give asylum seekers enough time to fully set out their claim.
- Many asylum seekers do not have access to trained and reliable interpreters and are at the mercy of the wholly inadequate interpretation skills of other asylum seekers.
- There is a tendency of RSDOs to automatically reject applications without applying their minds to the individual case before them. Written reasons produced by RSDOs have been found to be generic and, in many instances, cut and pasted reasons from other applications. The practice of rejecting all or most applications for asylum is documented in Roni Amit’s 2012 study for the African Centre for Migration and Society, All Roads Lead to Rejection: Persistent Bias and Incapacity in South African Refugee Status Determination, as well as in Amit’s 2010 study Protection and Pragmatism: Addressing Administrative Failures in South Africa’s Refugee Status Determination Decisions.
- RSDOs need to conduct a set number of interviews per day (usually 10). When asylum is rejected, there is no need for an RSDO to consult with a supervisor. However, if refugee status is granted an operations manager must sign off. The daily quotas coupled with the duty to motivate and get sign-off when refugee status is granted places greater pressure (or incentive) on RSDOs to reject asylum applications and causes a bottleneck at the review and appeal stage where it has been found that individuals do not apply their minds either and simply rubber stamp the initial decision of the RSDO.
- Furthermore, the country of origin information compiled by the DHA which is used by RSDOs to evaluate the conditions in a particular country and thus influences their decision is often inaccurate and biased.

Opportunities for corruption

- The fate of an asylum seeker essentially lies in the hands of the RSDO. Some asylum seekers have reported that certain RSDOs solicit bribes of between R3 000 and R8 000 in order to grant refugee status. Refugee status documents which are issued to recognised refugees are valid for four years and allow the holder access to social grants. Moreover, once refugee status has been retained for an uninterrupted period of five years, the person is eligible to apply to remain a refugee indefinitely which would then

allow for the application for permanent residence. This makes refugee status a valuable commodity - (ironically, it is for this reason that DHA is trying to take away the link to permanent residence and force refugees to be such forever). The backlogs in the system coupled with the propensity to reject all or most applications creates an environment where corruption thrives. Asylum seekers see bribes as the only way to be granted asylum in an application process that is stacked against them.

ANCILLARY PROCESSES

Expired permits

If an asylum seeker has been unable to renew their permit within the prescribed period stipulated on their permit then they are in violation of the Refugees Act. This offence is punishable by a period of imprisonment or the imposition of a fine of up to R2 500. An asylum seeker may however not pay a fine or be imprisoned if they can show that they have a “just cause” for failing to renew their permit. However, the Refugees Act does not define what amounts to “just cause”. The decision to refer an asylum seeker to court in order for them to be charged with an offence is left to the discretion of the RRO’s immigration officials. Asylum seekers have reported to the Refugee Rights Unit that in order to avoid being referred to court to pay a fine, immigration officers solicit bribes.

VERIFICATION OF ASYLUM PERMITS OR REFUGEE STATUS DOCUMENTS

In order for an asylum seeker or refugee to apply for a bank account they need to have their asylum seeker document or refugee status document verified by Home Affairs. This is a free service. But asylum seekers have reported to the Refugee Rights Unit that officials at RROs often ask for bribes of between R100 and R200 in order to provide verification documents.

While we have noticed considerable positive changes in the department's stakeholder management, some functionalities of the department, like the standing committee, are still unreachable. We need to get to a point where the department consults NGOs, other stakeholders and partners to find solutions to deal with corruption."

Takenola Revelation Masha.
Probono.org

ERIC'S STORY



The only crime I have ever committed is loving people of the same sex which is illegal in Zimbabwe.

In 2014 I met a guy and we started dating. One evening we went for a drive and parked in an isolated spot. We just sat in the car chatting, cuddling like lovers do. We didn't know someone was taking photos.

The police appeared and said we were under arrest. I ran away and fled to another town. I phoned home to ask what happened to my boyfriend. They said he was detained and tortured into admitting to public indecency. I was charged with rape and my boyfriend was coerced into an agreement whereby he would testify against me.

I hid indoors for two weeks and then borrowed money to flee. I arrived in Johannesburg in March 2015 and headed to Marabastad. I got there around 8am and was approached by many people. Some said for a fee they could get me my "papers" without me having to enter the centre, others said they could take me straight into the offices if I paid them R500.

On my second visit I arrived before sunrise. There was already a large crowd outside in different queues – each with its own marshal.

Again I was approached by different men. They would ask: "Are you here for the first time or do you want to renew your papers? Come to my queue I will help you." One man said he would stamp my hand [essential to gain access to the building] for R100. Without a stamp, you could be whipped and pushed out of the queue. Inside it was more organised. We told to sit on benches and fill out some forms. Later we were told to go to a room

for fingerprint-taking, but by then it was closing time. We were told to come back the next day. The thought made me feel sick. The next day prints were taken and I was granted an asylum seeker's permit pending a final decision on my case. After a few more visits to extend my permit, I was told the final decision had been made. Confused, I received a paper stating "Decision - Fraudulent". I had 14 days to appeal, which I did. I am still waiting for an answer.

At first I was worried about the consequences, but I spoke out to Corruption Watch. I have been asked to report my case to Home Affairs' anti-corruption hotline as well, but I won't. For all I know I would be reporting to the same people who violated my rights. I don't know who to trust anymore.

** Names have been changed*

"Clients are concerned that by reporting corruption the focus will shift to their role in the transaction instead of the official's. They also fear reprisal from the corruptors. We would like to see the department dealing with the problem holistically rather than on a case-by-case basis. There needs to be continued reporting of corruption via a dedicated hotline and for this facility to be widely publicised"

*Marilyn Budow,
Lawyers for Human Rights*

HOW THE DEPARTMENT OF HOME AFFAIR'S POLICIES EXACERBATE CORRUPTION

While efforts have been made by the DHA to address corruption, a close look at their current policies, efforts and future plans show the glaring issues that allow graft to thrive.

*By Leanne Govindsamy,
Corruption Watch*

The DHA has addressed corruption through the Strategic Plan 2015-2020, the June 2016 Green Paper on International Migration in South Africa (the Green Paper) and the recent pilot technical improvements at the Marabastad RRO. However there are few departmental initiatives directed solely at corruption affecting refugees and asylum seekers which are making a meaningful impact on corruption in this space.

We will address each of these efforts below. But it is important to state at the outset that the DHA is failing to focus on two vital components of addressing corruption in South Africa.

The first is putting in place measures that enable the safe and easy reporting of corruption. The second is working with non-governmental stakeholders, including civil society organisations and communities, to educate refugees and asylum seekers about their rights, services available to them and ways in which they can address corruption.

We applaud the DHA for taking some steps towards addressing corruption affecting refugees and asylum seekers, but we also highlight significant gaps which need to be addressed.

On a general level, issues around the investigation and sanctioning of corrupt officials and ensuring criminal convictions are also not adequately dealt with. Our view on the Green Paper and its objectives is that it does not deal with corruption in any meaningful way other than making fleeting references to it.

In not doing so, it does not place the rights of refugees and asylum seekers and the concomitant obligations of the DHA at the fore. Instead of focusing squarely on the duties of officials, sanctions, policy and other gaps which create opportunities for corruption, and a more workable corruption reporting mechanism, refugees and asylum seekers are seen as the source of corruption and as risks to be controlled and managed in a militarised way.

The DHA needs to look at the whole system, how it's run and why it creates so much room for corruption. Right now people who confront corruption in the asylum system are stuck. If they want to get services and documents – even those they are entitled to get for free – they are forced to pay. There needs to be a more effective anti-corruption reporting mechanism within the DHA.

*Roni Amit,
African Centre for Migration and Society*

THE DEPARTMENT'S ROLE IN IMMIGRATION



According to the DHA's 2014/15 Annual Report, the Immigration Services Branch is responsible for implementing immigration legislation, managing the immigration system, processing asylum seekers and refugees as well as overseeing functions at ports of entry, immigration inspectorate and deportations and the visa and permitting system.

In the report, the DHA identified the challenges which impact service delivery and performance plan targets which either delay certain achievements or contribute to their non-achievement. These include limited capacity at the appeal and review stages of the asylum application process, which leads to backlogs.

According to the DHA, the asylum determination process serves as a documenting system for a large number of persons who leave their countries for economic reasons and who are unable to qualify for any existing immigration visas. The DHA has indicated that the international migration policy review currently underway is expected to address this shortcoming.

Within Programme 3 of its activities, the unit aims to contribute to the achievement of strategic objectives by ensuring that:

- Refugees and asylum seekers are managed and documented efficiently.
- Movement of persons in and out of the country is regulated according to a risk-based approach.
- Documents are issued to foreigners efficiently and securely.

In its Annual Report, the DHA highlighted the establishment of the Border Management Agency (BMA) and a comprehensive approach to immigration legislation as key focus areas in achieving these objectives. It is important to note that corruption affecting the asylum application process, refugee status determination and the appeal and review processes is not specifically identified as a challenge, even though the Queue Here for Corruption report as well as media reports and CW data all reveal corruption as being a major barrier to the efficient, fair and effective processing of applications.

"Because there are no provisions for low skilled or economic migrants, they are finding alternative ways to legalise themselves in the country. There are high numbers of economic migrants within the asylum process. Migration policy needs to be addressed to allow economic migrants to be able to work or study without having to go through the asylum process."

*David Cote,
Lawyers for Human Rights*

WAREHOUSING ASYLUM SEEKERS



Based on information available in the 2014/15 Annual Report as well as the Strategic Plan 2015-2020 and the June 2016 Green Paper, it appears that the approach of the DHA in addressing immigration challenges is geared towards securitisation.

For example, as part of the Strategic Plan, the Strategic Outcome Oriented Goal 2 is a secured and responsive immigration system geared to “facilitate the movement of persons through ports of entry which is essential for national security and the development of the country. This will include the determining of status of asylum seekers and regulation of refugee affairs.”

The stated objective is to “implement a risk methodology for managing migration that will enhance the integrity of ports of entry and manage immigration in the national interest thereby ensuring maximum benefits to the country and minimising risks.”

The activities identified in order to achieve these objectives include the relocation of the RROs to the border, the management of economic migrants, conducting borderline surveys and the presentation of a draft bill in support of establishing the BMA.

It is clear that despite the positive intentions highlighted in its Annual Report, the DHA regards the administration of immigration and the determination of asylum seeker status and other refugee affairs as being a security concern, first and foremost.

The containment of risk is repeatedly mentioned in this regard, together with the protection of national interests. It appears the DHA would like to move the “problem” of refugees and asylum seekers to the borders, creating pockets of refugee and asylum seeker communities which will be managed by the BMA. While this isn’t the stated objective of the DHA, these pockets of communities clearly invite the establishment of informal refugee camps in South Africa.

The Green Paper suggests these border processing centres will serve as a one stop shop for asylum seekers including housing, healthcare and schooling, and that asylum seekers will be required to remain at these centres until their applications are concluded.

“When you read the Refugee Appeals Board rules within the Green Paper, it seems what the department wants to do is create ‘asylum-seeker warehousing’,”

*says David Cote,
from Lawyers for Human Rights*

“When people arrive at the South African border, they will be taken to a processing centre where they will be detained pending outcome of their asylum application. Only once they’ve been granted refugee status will they be allowed to be released from that area into the rest of the country to make their own way.”

While these centres aim to contract the long periods asylum seekers must wait for their claims to be adjudicated, the relocation of the centres to the border areas will significantly hamper the work of civil society organisations which provide humanitarian and legal aid, as these are mostly based in major urban centres.

It will also hamper the reporting of corruption by refugees and asylum seekers and any consequent action on the part of civil society organisations. In fact, it may well serve to exacerbate corruption as it will not address the propensity for RSDOs to reject applications or the solicitation of bribes for refugee status.

“Being detained and having to apply for refugee status from the officials who are detaining you opens up additional opportunities for corruption,” says Cote, who also notes the Green Paper additionally proposes taking away an asylum seeker’s right to work.

“We are concerned this could lead to informal refugee camps growing around the RROs on the borders – where there are no jobs, where middlemen could infiltrate these informal settlements and open up opportunities for corruption.

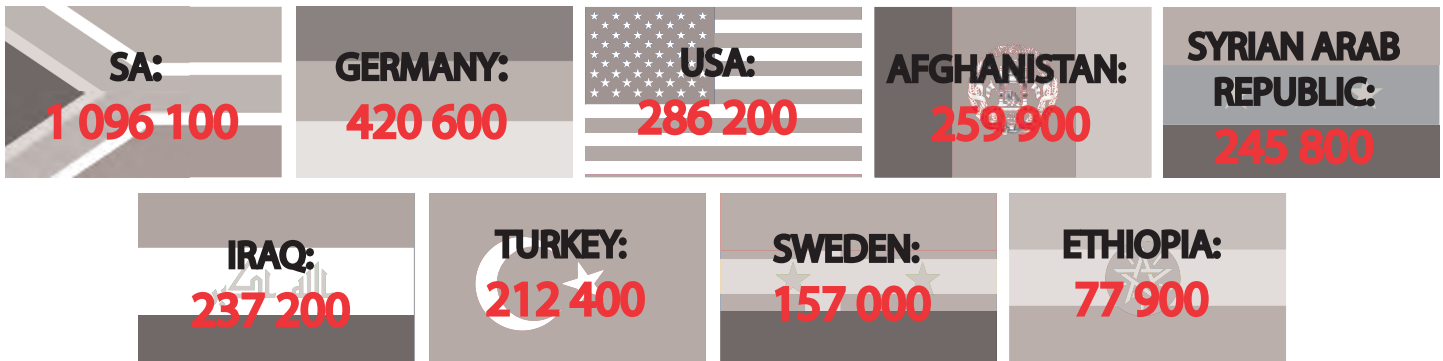
This could mean asylum seekers may have to go through these middlemen to get access to the RROs. We need to know what the DHA is going to do to safeguard against that. It is all hypothetical at the moment because we do not know what the final decision will be regarding legislation changes, but there are areas of potential corruption that must be addressed.”



PENDING CLAIMS

The high number of pending asylum claims contributes to and affects corruption in the asylum system. After significant underreporting or failures to adequately capture asylum claims by the DHA, a 2015 UNHCR *Global Trends: Forced Displacement* report revealed the shocking numbers relating to pending asylum claims.

GLOBALLY: 3.2 million individuals awaiting decisions on asylum claims in 2015



The high number of pending asylum claims reveals the failure of the DHA to efficiently process asylum claims.

Desperate refugees and asylum seekers, whose claims are not being processed, who cannot find stable and long-term work and therefore are unable to sustain themselves or their families, cannot be blamed for resorting to quick fixes in the form of bribes for documentation. The money spent on bribes is often borrowed with exploitative loan conditions or taken from savings

from informal work or money brought into the country, leaving people without any other means of supporting themselves or placing them in a cycle of vicious debt.

The breakdown in the application and adjudication system and the rampant corruption which has replaced a free, fair and efficient system has resulted in the non-processing of any claims, both legitimate and illegitimate.

A FUNDING IMBALANCE

Another issue which has a major effect on the DHA's ability to properly address corruption is the current funding model and approach, as well as reduced funding to immigration services.



HOW THE MONEY IS SPENT

DHA Total expenditure for 2014/15 =

R7.224 billion

R1.949 billion =
administration

R4.553 billion =
citizen affairs

R721 million =
immigration
affairs

R64 million =
management

R326 million =
admission services

R276 million =
immigration services

R56 million =
asylum seekers

Just a small fraction of the total budget is specifically allocated to the handling or processing of asylum seeker claims despite the fact that South Africa has the highest number of pending claims in the world. It may be that the high number of claims is as a result of the seemingly imbalanced allocation of funds; either way, there seems to be a connection between funding and the efficient, fair

and humane handling of asylum claims. And the funding imbalance doesn't end there.

"The recent R2-million budget cut to Home Affairs' immigration department will cause further delays as there is a freeze on all new projects requiring additional budget," says Cotes.

MARABASTAD: where corruption thrives

The DHA has taken some steps to respond to reports of widespread corruption, with the first office to roll-out a series of changes being the troubled Marabastad. It was a good place to start.

As the largest RRO in South Africa, it is also here where the *Queue Here for Corruption* report found that over half of clients had been asked to pay a bribe to receive services.

Based on limited information offered by the DHA, the new technology at Marabastad is envisioned to enable clients to benefit from:

- Biometric technology to prevent third party interference
- Files for each application to prevent files from going missing
- Automated bookings to capture newcomers with just two of their fingerprints
- Information capture for family units
- A system allowing for new bookings and existing clients to change bookings
- Printing of booking slips for client and family units, extending to Section 22 permits

Firstly, these changes appear to apply mainly to new asylum claims. Given that there are over 1-million pending claims, it is unclear as to how the DHA will integrate the pending claims to make the system more efficient and prevent solicitation of bribes and corruption by the DHA's officials.

Secondly, the process of assessing an application for asylum or determining refugee status is discretionary and conducted on a case-by-case basis, involving

interviews with applicants and interpretation and other services, so even with the introduction of technological improvements, there is still significant scope for officials to solicit or accept bribes. Sting operations conducted during Project Lokisa revealed that meetings and the exchange of money between officials and refugees and asylum seekers take place outside of the office, rendering useless any technology to address corruption. During one sting operation, an interpreter who facilitates bribes between officials and applicants said that “they” could get around any system and would find new ways of facilitating bribes.

“In an effort to combat corruption at Marabastad, a box was placed against the fence surrounding the building. An official collected the contents and applicants were required to wait outside until their processed permits were handed back to them. While this box system reduced opportunities for corruption to some extent, it soon took another form: ‘middlemen’ who appeared to have some connection with the officials inside came outside and offered applicants a quicker service in exchange for a fee.”

*Alfani Yoyo,
Refugee and Migrant Communities*

REMOVING THE ROT?



A Tshivenda phrase which means “remove the rot”, Operation Bvisa Masina is a counter-corruption project launched by the DHA in July 2015 with the objective of dealing decisively with corruption and fraud and those found guilty of such offences.

In 2015 the DHA reported that 37 officials were dismissed for fraud and corruption under Operation Bvisa Masina. A statement released by the DHA in September 2016 noted that since the operation launched, 83 people have been arrested, with 42 of those being officials and 41 non-officials. Of those arrests, 61 were related to immigration and the other 22 related to civic services.

The arrests were made for, among other reasons, the fabrication of counterfeit documents and bribery, aiding and abetting – which were the most prevalent – followed by impersonation, revenue theft and fraudulent violations relating to births, marriages and deaths.

CW requested information from the DHA on the officials who were arrested and the 37 who were ultimately subjected to disciplinary processes, including information about the offices where they worked and whether criminal proceedings followed the dismissals. The DHA declined to assist with the gathering of this information.

In addition to Bvisa Masina, the DHA also has a Counter Corruption Unit where reports can be made telephonically to 012 406 2900 or via the National Anti-Corruption Hotline on 0800 701 701, on email to report.corruption@dha.gov.za or by walk-ins at the DHA’s counter corruption offices. Information required when reporting to the DHA must include the place where the incident took place, date and time of the incident, names of people involved, amount of money involved or description of gratification/gift/token of appreciation given and any proof which may exist. A key requirement of filing a report is to provide personal details as anonymous reports are not accepted.

During the reporting period for 2014/15, the Counter Corruption Unit received 362 reports of corruption and finalised 231 of these. From their 657 backlog cases, 368 were finalised.

CW requested a breakdown of statistical information from the DHA, including how many reported cases were from refugees and asylum seekers, how many constituted corruption affecting them, the nature of these cases, whether regular updates could be made to the public on the register of all reported cases and a description of how matters are “finalised”. The DHA declined to assist with the gathering of this information.

KEY FINDINGS:

Problems with corruption reporting



It is important to note that our key finding relates to these various corruption reporting channels and the type of information required in order to make a report. Whistle-blowers we spoke to indicated that the corruption reporting information was either not available or was not prominently displayed, and was certainly not available in languages which they understood.

Most importantly our whistle-blowers confirmed what is widely known: as refugees and asylum seekers they would not report corruption via the DHA's reporting channels for fear of reprisal, fear of the effect on their application or status determination and most of all fear of providing their personal details to the DHA.

The inadequate measures in place to facilitate the receipt of reports of corruption from asylum seekers and refugees in a safe manner, taking into account their vulnerabilities and fears, are a major obstacle to effectively dealing with corruption in this system.

CORRUPTION WATCH'S COMPLAINTS HANDLING MECHANISM

As CW, we have identified a single, practical and meaningful point of intervention which we attempted to collaborate on with the DHA. Sadly, our request for intervention was rejected.

We presented the DHA with a Memorandum of Understanding setting out the way we could facilitate the reporting of corruption by refugees and asylum seekers via our reporting channels which would enable refugees and asylum seekers to report corruption without fear, protecting and assuring the whistle-blower at every step. We highlighted our experience in receiving, handling and investigating reports of corruption from refugees and asylum seekers and our experience collaborating with partners in this sector, and we indicated that we are perfectly positioned to receive and process reports of corruption which we could then share with the DHA in order to ensure meaningful solutions on corruption.

We suggested that Corruption Watch (CW):

- Provide the DHA with **anonymised reports** which contain detailed information on the involvement of corrupt officials as well as trends and statistics relating to the perpetration of corruption in this sector
- Co-operate with the DHA in the **resolution of these complaints**, including maintaining confidentiality in respect of departmental procedures and steps taken to address those complaints
- Publicly **acknowledge the DHA as a partner** in the resolution of complaints and more broadly as a partner in the fight against corrupt activity

"Home Affairs needs to address all forms of corruption within its ranks. The enemy is not Corruption Watch or other NGOs assisting asylum seekers, but corruption itself."

*Tshenolo Revelation Masha,
Probono.org*

The complaints handling mechanism would:

- Facilitate the **distribution of the report forms** for easy capturing of complaints
- **Receive the reports**
- **Ensure posters and flyers detailing how to report** via our channels are made available at all RRO's in several languages

We requested that the DHA:

- Establish an **internal process for the receipt of complaints** from CW
- Allocate individual/s to be **contact persons between itself and CW**
- Take all reasonable steps within its power and mandate to **resolve the complaints**
- Provide **feedback to CW** on a quarterly basis on the resolution of complaints, including disciplinary and other sanctions, and targeted approaches to particular forms of corruption on which feedback can be provided at quarterly meetings or via email
- Commit to **engaging with CW** on particular trends and data which emerge from reports and the outcome of any investigations done by CW
- **Publicly acknowledge CW's role** in the resolution of complaints and more broadly as a partner in the fight against corruption in this sector



While the DHA has rejected this single, purposeful intervention and co-operation offered by CW, we will continue to work with our partners to collect reports of corruption and to spread information about our reporting channels to ensure that there are safe, secure and trusted channels where refugees and asylum seekers can report corruption.

CORRUPTION WATCH'S RECOMMENDATIONS & COMMITMENTS

Corruption Watch recommendations:

- DHA's agreement to CW's proposed reports handling mechanism
- DHA's commitment to maintaining an integrated and urban refugee framework and not relocating all RRO's to the borderlines
- DHA's commitment to meaningful, targeted anti-corruption initiatives which are also sensitive to the experiences and vulnerabilities of asylum seekers and refugees and to the reality of the modes of corruption being employed by its officials
- DHA's commitment to pursuing disciplinary proceedings against officials identified in Project Lokisa sting operations and to provide feedback on such disciplinary action

Corruption Watch commitments:

- To pursue co-operation with the DHA on the implementation of CW's proposed complaints handling mechanism
- To continue to work with Project Lokisa partners to collect reports of corruption from their clients
- To continue to use our reports and the data and trends which emerge to engage with the DHA as well as to hold the DHA accountable

To continue to work with our Project Lokisa partners to mobilise pressure and support for meaningful, targeted anti-corruption initiatives which are sensitive to the experiences and vulnerabilities of asylum seekers and refugees, to advance the realisation of the rights of all those who seek refuge in our country.

RECOMMENDED

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FUNDER & PARTNERS



British
High Commission
Pretoria

Funder:

Corruption Watch thanks the Prosperity Fund of the British High Commission Pretoria for its generous support of this project and report



Partners:

African Diaspora Forum
Coordinating Body of Refugee and Migrant Communities
Horizon Forensics
Jesuit Refugee Services
Lawyers for Human Rights
Legal Resources Centre
Peace Action
ProBono.org
Wits Law Clinic



Acknowledgements:

This report has been written by Nicky Rehbock and Tanya Pampalone

Corruption Watch thanks the reports management team for documenting reports of corruption under Project Lokisa





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