



## **Submissions by Corruption Watch: Draft Refugees Regulations, 2018**

### **Introduction**

1. Corruption Watch is a non-profit civil society organisation. It is independent, and it has no political or business alignment. Corruption Watch intends to ensure that custodians of public resources act responsibly to advance the interests of the public. Its ultimate objectives include fighting the rising tide of corruption, the abuse of public funds in South Africa, and promoting transparency and accountability to protect the beneficiaries of public goods and services.
2. Corruption Watch has a vision of a corruption free South Africa, one in which informed citizens are able to recognise and report corruption without fear, in which incidents of corruption and maladministration are addressed without favour or prejudice and importantly where public and private individuals are held accountable for the abuse of public power and resources.
3. As an accredited Transparency International Chapter in South Africa, core to our mandate is the promotion of transparency and accountability within private sector and state institutions aimed at ensuring that corruption is addressed and reduced through the promotion and protection of democracy, rule of law and good governance.
4. Corruption Watch welcomes the opportunity to make submissions on the Draft Refugees Regulations, 2018 ("the Regulations") in terms of the Refugees Act, 130 of 1998 ("the Act").
5. We note from the Preamble of the Act that it is aimed at giving effect to international legal instruments, principles and standards relating to refugees and to provide for the reception into South Africa of asylum seekers. It aims further to regulate applications

for and recognition of refugee status, and to provide for the rights and obligations flowing from such status.

6. We submit that international and regional obligations, to which South Africa is bound to give effect to, are severely undermined by corrupt practices which continue to plague the asylum seeker and refugee application process.

#### *Project Lokisa*

7. In 2015, following a high number of reports on corruption at the Department of Home Affairs (“DHA”), particularly in relation to applications for asylum and refugee status we established an initiative to address corruption in the Department of Home Affairs, and experienced by foreign nationals who apply for asylum and refugee status. The project, called *Project Lokisa* was launched on 1 June 2015 and continues to date. Together with other NGO partners, we gathered reports of corruption in the Gauteng area, which were used to compile the final project report which can be accessed here: <https://www.corruptionwatch.org.za/wp-content/uploads/2016/11/Project-Lokisa..pdf>.
8. We conducted investigations which enabled us to refer four matters to our investigative firm who conducted sting operations in the matters. Video and photographic evidence were collected and we lodged criminal complaints against the DHA officials and one interpreter who were caught accepting bribes. Our report featured the outcomes of our investigations, data and statistics relating to corruption affecting refugees and asylum seekers, interviews with our whistle-blowers and recommendations on how to address corruption in this space. We also prepared a video which highlighted the arduous journey of refugees and asylum seekers applying for official documentation in South Africa and the manner in which corruption undermines their dignity and human rights.<sup>1</sup>
9. We have to date received over 300 reports from foreign nationals which relate to extortion, threats and solicitation from government officials, with more than half of the reports indicating improper involvement with Refugee Reception Offices (“RRO’s”), including Home Affairs officials, security guards, administrators and interpreters. A

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<sup>1</sup> See infographic here: <https://www.corruptionwatch.org.za/wp-content/uploads/2016/11/How-the-Asylum-System-Works.pdf> ; see video here: <https://www.corruptionwatch.org.za/wp-content/uploads/2016/11/How-the-Asylum-System-Works.pdf>

large majority of the reports details that the bribes were in aid of issuing asylum and refugee permits.

10. It is within this context of corruption and maladministration that we make submissions on the Act. We respectfully submit that issues of good governance and proper procedure within the Act be more carefully considered and taken into account when establishing and providing for the adjudication and oversight powers of office bearers as well as appropriate mechanisms to be put in place for the detention and deportation of foreign nationals. Efforts aimed at proper refugee protection in accordance with international obligations will be redundant and inconsequential, if the issues of corruption and maladministration are not addressed as a matter of urgency, and if the DHA continues to remain unresponsive to the offers by civil society to co-operate and support the implementation of solutions to ensure fair and streamlined processes.
11. In this regard, at the time of launching our report, one the primary solutions offered by Corruption Watch concerned a joint complaints handling mechanism which would assist refugees and asylum seekers to report corruption safely and without fear and ensure transparency in respect of the handling of the reports. However, this and other solutions, together with a proposed Memorandum of Understanding, which is attached hereto, was rejected out of hand.
12. We note that the Act is one of the most progressive and liberal asylum and refugee protection frameworks in the world. However it is important to note that the disjuncture between law and practice has resulted in numerous points of weakness in the asylum system where corruption has been allowed to thrive.
13. Our research shows that this is not a South African phenomenon with the United Nations Refugee Agency Inter-parliamentary Union, '*A Guide to International Refugee Protection and Building State Asylum System Handbook*', 2017, illustrating that the abovementioned corruption trends are prevalent across 70% of country signatories of the 1951 Convention Relating to the Status of Refugees.
14. Below we note the proposed amendments and make submissions which aim to create a platform for accountability and transparency while addressing the issues of corruption and maladministration which have led to human rights violations and South Africa's breach of its international commitments and obligations.

## The Application Process for Asylum Seekers

15. The proposed amendments to section 21 state that the applicant must in person apply and fill in the DHA-1590 form as contained in the annexures and in the application must indicate his/her language of proficiency, which will be presumed to be the language in which the applicant understands. Our concern in this regard is that the DHA-1590 forms are in English with many of the asylum seekers working language not being English.
16. Our reports and research indicate that a key weakness for bribery and corruption emanates from the language barrier and the interpreters. Interpreters are utilized to ease the language barriers between DHA officials and the asylum seekers, however this is not the case. In spite of various technological improvements and the introduction of off-site interpreters, at least at the Marabastad office, interpreters continue to be part of the corruption issue at the DHA. We believe the impact of this and the interference of interpreters could be limited through legislative reform. ***We submit that the mechanism of easing the language barrier between asylum seekers and DHA officials can be mediated through more detailed regulation and must be done in order to enable government to adhere to the framework which advocates for access to state territory without discrimination for persons seeking protection, and for fair and efficient assessment of their asylum claims. In this regard, we submit that the entire application process as well as copies of all relevant forms be readily available in the form of posters and/or flyers and other printed or electronic material in order to ensure that refugees and asylum seekers fully understand their rights and obligations as well the information which is required from them in order to complete a particular step in the application process. This would enable refugees and asylum seekers to object to any undue interference or abuse of process involving the interpreters.***
17. In the application process for asylum seekers the RRO's, Standing Committee for Refugee Affairs ("Standing Committee") and Refugee Appeals Authority ("RAA's") play a significant role in the granting or refusal of the asylum or refugee status of the applicants. We also note the role the office bearers play in facilitating corruption and illicit acts in the application processes. We applaud the DHA for introducing the Integrity Measures provision in s7(1) which requires all members to participate in interviews relating to instilling or establishing integrity and to submit to polygraph test

from “time to time”, in an effort to manage the well-known issue of corruption in the space. Our concern, firstly, is that the measures do not go far enough in terms of addressing the corruption and maladministration plaguing the application process and secondly, is left entirely within the discretion and oversight of the Director-General. We submit that in addition to integrity measures, that:

- 17.1. A joint complaints handling mechanism, as described in the attached memorandum of understanding. This will involve the co-operation and involvement of civil society which would be included in the regulations and/or guidelines;
  - 17.2. Conflicts of interest checks be conducted regularly and be extended to all officials working within and overseeing the system, even senior managers;
  - 17.3. Background checks be conducted on all officials, including senior managers. In this regard, several officials who have been reported to Corruption Watch, either had pending charges or existing criminal convictions, yet remained within the employ of the DHA.
18. We submit further that the integrity measures be made mandatory and placed outside of the control and discretion of the Director-General and perhaps with other law enforcement bodies with the necessary capacity and expertise to ensure the implementation of such integrity measures.

### **Refugee Determinants**

19. The proposed amendments state the processes and procedures for the application of asylum and refugee status. It is clear in the Act that evidence illustrating nationality, date of birth, language, names etc. is a requirement for the furtherance of the application. It however remains unclear what the determinant of refugee status are outside of the status or conditions of the country of origin. If we unpack the Act we understand the determinants of the refugee status to be in the form of a negative, in other words we can only ascertain the determinates in circumstances of a refusal/rejection of a refugee application. The Act states that applications are rejected where it is found to be “manifestly unfounded, abusive or fraudulent”. A key concern we noted in our investigations is the interviews that take place between Refugee Status Determination Officers (“RSDO”) and asylum seekers to determine refugee

status. The interviews are most often entirely prejudicial with RSDO's not giving applicants access to interpreters or sufficient time in the interviews to lay their claim for a successful application. RSDO's have been found to automatically reject applications and a concerning trend of giving very generic written reasons for refusal and in many instances copy and paste reasons from other applications.<sup>2</sup> Where the refusal relates to the country of origin *not* falling into the category of reasons valid to grant refugee status (e.g. if fleeing the country was *not* due to war or persecution but rather to other fears) it was found that the information compiled by the DHA related to status and conditions of other nations to be biased, dated and inaccurate.<sup>3</sup> ***We therefore submit that refugee determinants be clearly included in the Act so as to create certainty and transparency in the granting or refusal of applications, and manage the eventuality of status being granted by virtue of bribery. The current determinants are too broad and as a result the pool of discretion is too wide which allows for an uncertain precedent to follow.***

20. We hope our submissions are useful to the Committee and kindly note our request to participate in the parliamentary hearings and to make oral submissions before the Committee.

**Submitted by Corruption Watch on 17 July 2018  
Prepared by Mashudu Masutha, Zanele Mwale  
and Leanne Govindsamy**

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<sup>2</sup> See Roni Amit's 2012 study for the African Centre for Migrant and Society, All Roads Lead to Rejection; Persistent Bias and Incapacity in South African Refugee Status Determination.

<sup>3</sup> Ibid