



Submissions by Corruption Watch: White Paper on Home Affairs, 2019

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 therefore welcomes the opportunity to make submissions on the White Paper on Home Affairs, 2019 (“the White Paper”).
5. We note the Minister of Home Affairs has committed to mechanisms that focus on the management of three mandates, namely; the identity and status of persons,

international migration and finally asylum seekers and refugees. We further note the commitment to align the implementation of these mandates with international legal instruments, principles and standards relating to technological advancements and the intention to revamp the outdated home affairs policies and ideologies.

6. Our submission is primarily concerned with the mechanisms that focus on the management of asylum seekers and refugees without having regard to the fundamental deficiencies in the refugee application processes and regulations that give rise to a systematic form of grand corruption taking place in the Department of Home Affairs offices.
7. We submit that international and regional obligations, to which South Africa is bound, are severely undermined by corrupt practices which continue to plague the asylum seeker and refugee application process. We therefore request that you take the below submissions into consideration.

Background

8. 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. Our focus was predominantly on the experience of foreign nationals who apply for asylum and refugee status. The project, called *Project Lokisa* or “Let’s fix it” was launched on 1 June 2015. Together with other Non-Governmental Organisation (“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>.
9. 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.¹

10. 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 large majority of the reports details that the bribes were in aid of issuing asylum and refugee permits.
11. It is within this context of corruption and maladministration that we make submissions on the White Paper. We respectfully submit that issues of good governance within this White Paper and the empowering legal framework (specifically the Refugee Act, 130 of 1998 and the Immigration Amendment Bill) be more carefully considered through the lens of these findings and recommendations. This is particularly important when establishing and providing for the adjudication and oversight powers of office bearers and the implementation of appropriate mechanisms for the detention and deportation of foreign nationals.
12. Below we note the proposed policy frameworks 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. We seek to illustrate our findings and recommendations with the hope that it will be streamlined within the departments’ objectives.

Vulnerable Legal Framework

13. We note that the White Paper recognises the Refugee Act, 130 of 1998 (“Refugee Act”) as 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

¹ 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-AsylumSystem-Works.pdf>

law and practice has resulted in numerous points of weakness in the asylum system where corruption has been allowed to thrive.

14. Our research shows that this is not a South African phenomenon. The United Nations Refugee Agency Inter-parliamentary Union, 'A Guide to International Refugee Protection and Building State Asylum System Handbook', 2017, illustrates that the abovementioned corruption trends are prevalent across 70% of country signatories of the 1951 Convention Relating to the Status of Refugees.
15. We have previously made submissions on the Refugee Regulations, a copy of which can be accessed [here](#). Our submissions focused on the provision of remedies relating to the application process for asylum seekers and refugees which included: easing the language barrier between asylum seekers and DHA officials, a more stringent process in the proposed integrity measures and more concise refugee determinants.
16. We made further submissions on the Draft Immigration Bill which can be accessed [here](#). Once again, we focused on transparency in the detention and arrest of refugees and asylum seekers as we found this process to be grossly abused due to corrupt activity.
17. We respectfully submit that the legal framework has been grossly abused and at times deviated from by DHA officials, which has led to a systematic form of human rights violations and has compromised South Africa's obligation to the international human rights standard of non-refoulement.
18. We therefore submit that ***the vulnerabilities identified in the empowering legal framework be bridged by significant change in institutional behaviours and practices by introducing ethical and integrity tests and mechanisms within the department. These ethical and integrity measures will ensure transparency and hold those complicit in the corrupt activities to account.***

Desmond Tutu Refugee Reception Centre ("Marabastad")

19. The level of maladministration, bribery and gross abuse of power taking place at the Marabastad office has continued to reach alarming levels. The Marabastad office has become untenable and we note the concerns raised by the members of the Home Affairs Portfolio Committee ("the Committee") in respect of corrupt activity that is

occurring at the Marabastad office.² Media coverage³ on this issue indicates that the members of the Portfolio Committee want harsher sanctions against officials found to be colluding with syndicates to undermine the refugee system. We note that the Committee has indicated that *“one of the measures that must be implemented includes lifestyle audits on officials within the environment.”*⁴

20. We are therefore very concerned that the White Paper has not included any substantive plans in order to ensure transparency and good governance in their mandate. We are further concerned that the White Paper has not included mechanisms to address the systematic corruption at the Marabstad office.
21. Our concern is that our offer to provide a service and collaborate on an independent complaint handling system with the DHA which will help asylum seekers and refugees report instances of corruption safely and without fear was refused. We communicated with DHA and prepared a Memorandum of Understanding ('MOU'), which set out the narrow terms of proposed co-operation, with a request that the department agree to such terms. A copy of the MOU can be found [here](#). The reason for the refusal was under the authority of the Director General Mkuseli Apleni who had stated that co-operation was not possible as there were already interventions being implemented at Marabastad. A copy of this correspondence can be found [here](#)
22. We note the upgrades and technological changes to the Marabastad office and the further off-site interpreters since our correspondence. We would however like to bring to your attention that the difficulties that refugees and asylum seekers face have continued to take place and the corruption is still rife at the office. Additionally, there is insufficient information on the manner in which refugees and asylum seekers can report corruption to the DHA or other anti-corruption hotlines. In particular even when the refugee or asylum seeker is made aware of a reporting channel, he or she is too afraid to report to the DHA for fear of reprisal, especially since reports cannot be made anonymously and since affidavits are required to be completed, exposing them to significant risk.

² <https://pmg.org.za/committee-meeting/27002/>

³ <https://www.news24.com/SouthAfrica/News/home-affairs-mps-concerned-about-reports-of-criminal-elements-at-pretoria-refugee-office-20180901?isapp=true>

⁴ <https://www.timeslive.co.za/news/south-africa/2018-09-01-corruption-crackdown-looms-at-pretoria-refugee-office/>

23. We note that the White Paper states that the department intends on establishing a Commission on Asylum Seekers and Refugees. We further note that this commission will require policy development and legislation. ***We respectfully submit that the establishment of a Commission be prioritised as a matter of urgency given the dilatory conduct in addressing the corruption at Marabastad and other refugee reception offices. We further submit that the Commission must be an independent body with the power to receive reports directly from the public in order to ensure safe reporting and limited interference from DHA officials.***

Integrity Measures Policy

24. 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 which requires all members to participate in interviews relating to instilling or establishing integrity and to submit to polygraph tests 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.
25. We submit that in addition to aforementioned integrity measures, that:
- 25.1. A joint complaints handling mechanism, as described in the attached memorandum of understanding, be implemented. This will involve the co-operation and involvement of civil society which would be included in the regulations and/or guidelines;
 - 25.2. Conflicts of interest checks be conducted regularly and be extended to all officials working within and overseeing the system, including senior managers;
 - 25.3. 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.

26. 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 proper implementation of such integrity measures.

Refugee Determinants

27. We note the Refugee Act proposes amendments on the processes and procedures for the application of asylum and refugee status. It is clear in the Refugee 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 determinants of refugee status are outside of the status or conditions of the country of origin.
28. In terms of the Refugee Act, we understand the determinants of refugee status to be in the form of a negative; in other words we can only ascertain the determinants 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'.
29. A key concern we noted in our investigations relate to 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 there is a concerning trend of giving very generic written reasons which are often copy and paste reasons from other applications. 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 relating to status and conditions of other nations to be biased, dated and inaccurate. We have previously submitted that refugee determinants be clearly included in the Refugee 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 the wide discretionary powers create an uncertain precedent. ***We respectfully submit that refugee determinants should be introduced as part of the change in the DHA institutional behaviour and frame of reference when engaging with asylum seekers. The refugee determinants must be part of the training of RSDO's and streamlined through all technological advancements of the application processes.***

30. 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 18 February
2019 Prepared by Deborah Mutemwa-Tumbo, Tara
Davis and Mashudu Masutha**