

LAWYERS FOR  
**HUMAN RIGHTS**

**COSTLY  
PROTECTION:  
CORRUPTION IN  
SOUTH AFRICA'S  
ASYLUM SYSTEM**

A Report by Lawyers for Human Rights in  
collaboration with Corruption Watch and  
Scalabrini Centre of Cape Town

2020



# ACKNOWLEDGEMENTS

This report is a product of Lawyers for Human Rights (LHR), made possible by funding from the Social Justice Initiative. In particular, Wayne Ncube, Charne Tracey, Sharon Ekambaram, Tashi Alford-Duguid, Nadia Shivji, and Nadia Jeiroudi contributed to this report.

Sally Gandar of the Scalabrini Centre of Cape Town and Zanele Mwale of Corruption Watch were also instrumental in this process and provided invaluable technical input. The Scalabrini Centre of Cape Town facilitated extensive data-gathering at its offices. Abigail Dawson of the Consortium for Refugees and Migrants in South Africa contributed to the editing of this report.

LHR would like to thank all the refugees, asylum seekers, and stateless people whose experiences form the basis of this report. Their extraordinary courage in pursuit of a better, safer, life brings meaning to our work. LHR remains committed to helping to ensure that their human rights are respected, protected, promoted, and fulfilled, within the borders of South Africa and in so doing, strengthening the rule of law and ending corruption.



---

# TABLE OF CONTENTS

1	EXECUTIVE SUMMARY	6
2	SUMMARY OF KEY FINDINGS & RECOMMENDATIONS	9
2.1	METHODOLOGY	9
2.2	FINDINGS	10
2.2.1	DEMOGRAPHICS OF RESPONDENTS	10
2.2.2	RRO OF FIRST APPLICATION	11
2.2.3	RRO OF MOST RECENT INTERACTION	11
2.2.4	STAGES OF THE ASYLUM PROCESS WHERE CORRUPTION WAS EXPERIENCED	11
2.2.5	REPORTING CORRUPTION	12
2.3	RECOMMENDATIONS	12
3	INTRODUCTION TO SOUTH AFRICA'S ASYLUM SYSTEM: POLICY & PRACTICE	14
3.1	APPLYING FOR ASYLUM IN SOUTH AFRICA: POLICY VS REALITY	14
3.2	HOW MANY PEOPLE ARE SEEKING ASYLUM IN SOUTH AFRICA?	20
3.3	THE PATH TO CORRUPTION	23
3.4	HOW THE DHA SYSTEMS EXACERBATE CORRUPTION	24
4	KEY FINDINGS	25
4.1	ANALYSIS OF PAST REPORTING ON CORRUPTION	25
4.2	METHODOLOGY: 2015 V 2019	26
4.2.1	DEMOGRAPHICS OF SURVEY RESPONDENTS: 2015 AND 2019	26

4.3	RESULTS: CORRUPTION SURVEY 2015 VS 2019	33
4.4	BORDER CROSSING: THE START OF THE JOURNEY	33
4.5	GAINING ENTRANCE TO AN RRO: CORRUPT QUEUES AND BRIBED SERVICES	34
4.6	THE APPLICATION PROCESS	37
4.7	FINES	41
4.8	ARRESTS AND DETENTION: POLICING MIGRATION	44
5	REPORTING CORRUPTION	48
5.1	2015 CORRUPTION REPORTS IN THE ASYLUM SYSTEM	48
5.2	2019 CORRUPTION REPORTS IN THE ASYLUM SYSTEM	49
6	CONSIDERING CORRUPTION IN THE ASYLUM SYSTEM	51
6.1	WHY CORRUPTION MATTERS	51
6.2	CONDITIONS FOSTERING CORRUPTION	52
6.2.1	2015 CONDITIONS	52
6.2.2	2019 CONDITIONS FOSTERING CORRUPTION	53
7	THE DHA'S RESPONSE TO CORRUPTION	54
7.1	BEFORE 2015	54
7.2	2015 TO 2019	56
7.3	2015 VS 2019: THE BIG DIFFERENCES	57
8	CONCLUSION & RECOMMENDATIONS	58
8.1	QUEUING	58
8.2	RSDO DECISION MAKING	58
8.3	ASYLUM APPLICATIONS AND BACKLOG	58
8.4	REPORTING AND RESPONDING TO CORRUPTION AND CONDUCT	59
8.5	FINES	59
8.6	POLICY	59

---

1.

# ACRONYMS

1951 Convention	Convention Relating to the Status of Refugees, 1951
1967 Protocol	Protocol Relating to the Status of Refugees, 1967
1969 OAU Convention	Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, 1974
ACMS	African Centre for Migration & Society
CAT	Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, 1984
CW	Corruption Watch
DG	Director-General of the Department of Home Affairs
DHA	Department of Home Affairs
LHR	Lawyers for Human Rights
ICCPR	International Covenant on Civil and Political Rights, 999 UNTS 171, adopted 16 December 1966 and entered into force 23 March 1976.
ICESCR	International Covenant on Economic, Social and Cultural Rights, adopted 16 December 1966 and into force 3 January 1976
OPCAT	Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 2003
RAA	Refugee Appeals Authority
RRO	Refugee Reception Office
RSDO	Refugee Status Determination Officer
SAPS	South African Police Services
SCCT	Scalabrini Centre of Cape Town
SCA	Supreme Court of Appeal
UDHR	Universal Declaration of Human Rights

# 1. EXECUTIVE SUMMARY

Refugee Reception Offices (RROs) in South Africa are the gateway for asylum seekers and refugees receiving protection and regularising their stays in South Africa. It has been well documented that accessing RROs is an arduous task.<sup>1</sup> Since 2010, there has been a continuous, systematic limitation of the accessibility of these offices, and as a result, a restriction of the rights of asylum seekers and refugees. Over this period, of the six RROs originally fully functioning in urban centres, three have closed their doors or severely limited the services they provide to asylum seekers. One has since re-opened after a court battle.<sup>2</sup> Thus, at the time of writing, RROs offering full services were operating in Durban, Musina, Tshwane, and Port Elizabeth. The Cape Town RRO was not, at the time of publication, accepting new asylum seeker applications, and was only processing renewals, despite a Supreme Court of Appeal order mandating that there be a fully functioning RRO in Cape Town by the end of March 2018.

It seeks in the first instance to build on a similar report published by Lawyers for Human Rights and the African Centre for Migration & Society in 2015. *Queue Here for Corruption* reflected a quantitative assessment of corruption at South Africa's RROs at that time. The revealed corruption at all stages of the asylum process: from an individual's first attempt to lodge an asylum claim, to renewing documentation, through appeal processes, and in renewing refugee documentation. Overall, approximately one-third of those who responded to the 2015 Surveys that underpinned that report experienced corruption in some form or another.

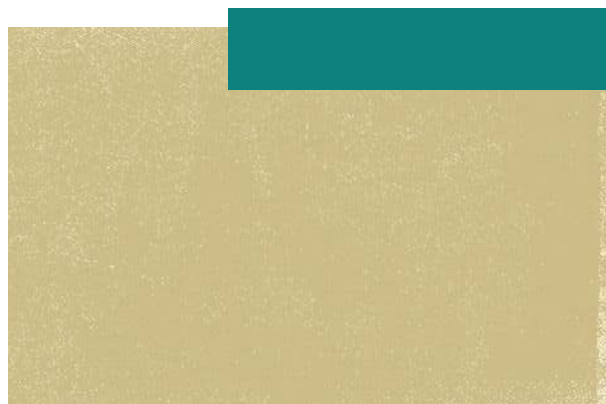
<sup>1</sup> See Nobuntu Mbelle & Erin Patrick *Living on the Margins: Inadequate Protection for Refugees and Asylum Seekers in Johannesburg* Volume 17 (2005). See also Roni Amit *No way in: barriers to access, service and administrative justice at South Africa's refugee reception offices* (2012); see also Parliamentary Monitoring Group 'Issues that affect migrants and citizens: engagement with NGOs & stakeholders' available at <https://pmg.org.za/committee-meeting/29180/>, accessed on 7 April 2020.

<sup>2</sup> Before 2011, there were RROs functioning in Cape Town, Durban, Johannesburg, Musina, Port Elizabeth, and Tshwane/Pretoria. The location of the RRO in these cities did change from time to time, such as in Johannesburg where the RRO has been located in Braamfontein, Rosettenville, and Crown Mines; or in Cape Town where the RRO was located in Maitland, Langa, and most recently at Customs House on the Foreshore, which is in the Central Business District.

This report also takes note of the 2016 report published by Corruption Watch, *Asylum at a Price*.<sup>3</sup> That report highlights how corruption impacts those seeking legal protection in South Africa, and indicated that corruption is rife not only with individual departmental officials but also SAPS, Metro Police, administrators, security guards, and interpreters – all officials that asylum seekers and refugees may encounter at some point in their asylum adjudication processes. Corruption Watch presented the report to the Department of Home Affairs (DHA), along with clear evidence of specific wrongdoing and calls to collaborate in combatting corruption. However, action from the DHA was not forthcoming and no commitment was ever obtained in respect of appropriate feedback or remedial action.

Prompted by clients' continued reports of corruption and barriers to realising refugee status or even accessing the RROs, LHR initiated the assessment underpinning this report in late 2019, using both quantitative and qualitative methods to assess the current state of affairs in respect of corruption at RROs in South Africa. In total, 263 asylum seekers and refugees across the country participated in surveys designed to identify corruption experienced by the participants in engaging RROs. The Surveys were administered at rights education workshops, law clinics, and through the work of civil society organisation that interact with and serve asylum seekers and refugees.

The purpose of this data gathering exercise was therefore to identify changes in the asylum system in the last five years, as well as instances of corruption purported to occur in and around the RROs. This study and the findings are the final study on corruption at DHA prior to the implementation of the Refugees Amendment Act and 2018 Refugee Regulations on 1 January 2020. This Amendment Act and new Regulations purport to include greater 'integrity measures' for the Department and its officials. The efficacy of these remains to be seen.



<sup>3</sup> Corruption Watch *Asylum at a price: How corruption impacts those seeking legal protection in South Africa* (2016).

## LAWYERS FOR HUMAN RIGHTS

LHR is an independent, non-profit, non-governmental human rights organisation founded in 1979. Its core mandate is to promote and advance social justice through pro bono legal services. To accomplish this, LHR employs a holistic approach to social justice and human rights enforcement, which includes strategic litigation, advocacy and law reform, human rights education, and community mobilisation and support. LHR offers legal services in the following programme areas: Refugee and Migrant Rights, Land and Housing Rights, Environmental Justice, Gender Equality, Penal Reform, and Strategic Litigation. Specialist legal practitioners and activists staff each of LHR's programmes.

In sum, LHR's approach to social change is multi-pronged:

*Impact litigation, legal advice, and law reform:* LHR provides direct legal services through its law clinics and advice offices, located in Johannesburg, Tshwane, Musina, Durban, Cape Town, and Upington. These offices aid in identifying trends and systemic problems across the country, as well as vulnerable groups that may benefit from strategic litigation.

*Advocacy and rights education:* Community-based outreach, advocacy, and rights education, informed by the communities themselves, are a core component of LHR's human rights interventions.

*Coalition-building:* LHR seeks out and builds partnerships not only with other civil society actors, but also with communities for which it acts as legal representatives and advisors. This ensures that LHR is responsive to current changing social justice issues.

This report is the product of the work of LHR's Refugee and Migrant Rights Programme. To keep up to date with the work being done at Lawyers for Human Rights, go to the LHR website: [www.lhr.org.za](http://www.lhr.org.za) or social media pages:

 [www.facebook.com/LawyersForHumanRights](https://www.facebook.com/LawyersForHumanRights)

 [twitter.com/LHR\\_SA](https://twitter.com/LHR_SA)



## 2. SUMMARY OF KEY FINDINGS & RECOMMENDATIONS

### 2.1 METHODOLOGY

In sum, this report focuses on the intersection between efficiency and corruption in the front-line processes of the Department of Home Affairs' RROs, with a primary focus on the experiences of applicants at RROs and their interactions with South African Police Service (SAPS) officials. It is based on both desktop research, qualitative and quantitative analysis based on 263 surveys completed by asylum seekers, refugees, and other migrants, and also draws on data from the 2015 *Queue Here* report for comparative analysis.

Additional information was gathered from respondents, including in respect of their experiences at migrant detention centres, reasons for leaving country of origin, and asylum seekers' experiences of accessing essential services in South Africa. To accomplish this, LHR developed two surveys: a '**Corruption Survey**' to gather qualitative data on asylum seekers' experiences at RROs and in South Africa more generally, and a '**Queuing Survey**' to compile applicants' experiences of efficiency (and inefficiency) at RROs over the past five years.<sup>4</sup>

The Corruption Survey asked 116 respondents to answer 66 questions, of which 21 were 'Yes/No' questions. The Queuing Survey was administered to 147 respondents and was designed to supplement the Corruption Surveys' qualitative data with quantitative data about each RRO's efficiency standards in the past year. Most data collected via the Queuing Survey was gathered from people who had visited an RRO in the last six months of 2019. In this report, the data provided from the surveys is analysed together.

LHR's field researchers conducted 275 surveys, of which 258 provided substantive information that could be included in the study. The surveys were conducted at LHR's walk-in law clinics located in Johannesburg, Tshwane, Cape Town, Durban and Musina, or at partner organisation offices. The Queuing Surveys were either administered by an interviewer, as they were in Musina, Durban, and Cape Town, or the respondent was given a form to fill out and return when they next visited the same LHR office. The Corruption Survey data collected by LHR's Johannesburg and Tshwane offices were combined for administrative purposes. Few respondents answered both surveys.

Due to the Corruption Survey's greater length and complexity, fewer of these were conducted overall. No survey was specific to the respondent's experience at the RRO particular to the region in which they took the survey. Some respondents had, for example, first or most recently visited the Cape Town RRO, but completed the Corruption Survey at an LHR office in another location. The Musina, Durban, and Cape Town Queuing Surveys, however, were almost exclusively about respondents' experiences at their regional RRO.

<sup>4</sup> See Annexures A and B to this report.

## 2. SUMMARY OF KEY FINDINGS & RECOMMENDATIONS

Limitations to the survey methodology included language barriers, willingness to participate, and the sensitivity of the subject matter. These limitations may have had an impact on the degree of representivity of the sample. A further limitation is that although participation in the survey was extensive, results also suggest that certain nationalities may be under-represented in the data. Anecdotal evidence indicates that individuals from certain nationality groups may be more likely to be victimised by corrupt systems and officials. Moreover, logistical challenges, such as asylum seekers' access to transportation and the survey venues, may have impacted the survey sample.

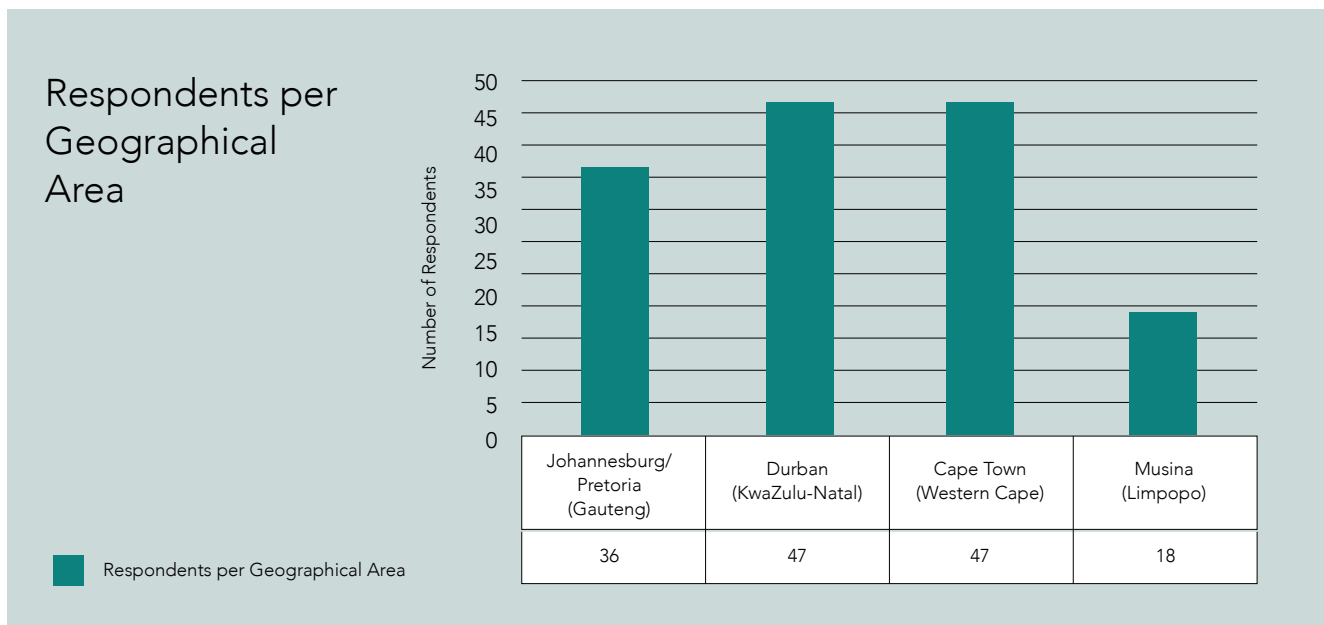
Interviews took place between August and December 2019, and respondents either participated through a response to an advert or by invitation after attending one of LHR's walk-in clinics. The Cape Town Queuing Survey was conducted by researchers at a partner organisation. Field researchers in every location told interviewees about the nature of the study and its various components and specified that participation was voluntary. Researchers reported that a small number of potential respondents declined to complete the survey.

## 2.2 FINDINGS

Section III of this report provides a detailed analysis with a comparison of findings from previous corruption studies. The overall conclusion is that corruption is still rife at all stages of the asylum process in South Africa and that most persons who responded to the Survey had experienced corruption when trying to access services at an RRO. In the brief section below, a summary of the 2019 Survey findings is provided.

### 2.2.1 Demographics of respondents

The 2019 Corruption Survey was conducted by LHR in four provinces. The number of respondents per geographic area was:



## 2. SUMMARY OF KEY FINDINGS & RECOMMENDATIONS

A total of 263 individuals participated in the 2019 Survey. The age of the respondents ranged from 15 to 60, with most of the respondents falling between 26-30 years old. Moreover, the top represented countries were the DRC and Ethiopia, with the respondents respectively representing 51% and 14% of the total respondents.

### **2.2.2 RRO of first application**

Of the 263 respondents, 147 disclosed the RRO where their application for asylum was first lodged. Of these respondents, 24% indicated that the Durban RRO was the RRO where they lodged their asylum claim. Notably, a significant proportion (20%) of the respondents in the survey indicated that their office of first application was the Cape Town RRO. This is an RRO that has since closed to newcomer asylum seekers and remains closed despite a court order mandating the reopening.

There were respondents who reported other offices that have since closed, including the Rosettenville, Johannesburg, and Maitland RROs. This provides some evidence of the prolonged nature of asylum in South Africa, as migrants are limited to fewer avenues for moving swiftly onto the next step of the asylum process. As a result, asylum seekers must resort to the few RROs available, often multiple times over a long period of time due to the shortage. Because remaining RROs and RRO officials are likely to experience a heavy backlog with the increase in applications, this could foreseeably result in greater opportunities for corruption to arise. This in turn provides for a greater exposure of individuals to RROs and RRO officials.

### **2.2.3 RRO of Most Recent Interaction**

The most recent RRO that survey respondents had interacted with follows a similar profile to the RRO of first application, with the majority of respondents reporting that they had most recently interacted with the Durban RRO, and the second highest percentage had been to the Cape Town RRO. This data is important as it illustrates the continued significance of these coastal RROs. The Department has signalled an intention to shift asylum processing to South Africa's northern borders. This move would limit the accessibility of the asylum system even more and would also make it more difficult for civil society oversight of the processes.

### **2.2.4 Stages of the asylum process where corruption was experienced**

Respondents were asked about their experiences with the Department of Home Affairs, from their initial entry into South Africa (whether through irregular means or at a recognised Port of Entry) through to asylum application at an RRO and continued processing of that claim. Ten percent of respondents reported being asked for money by border officials upon entry into the country. Thereafter, at the RROs, respondents reported various incidents of extortion or other corruption to access services that are officially free of charge. These ranged from being required to pay money just to submit an asylum application, through to payment being required for renewal of documents, for the services of an interpreter, for the issuing of documentation, and for the assistance of a Refugee Status Determination Officer. Some respondents also reported being offered refugee status documentation in exchange for payment.

### 2.2.5 Reporting corruption

When asked about the process of reporting corruption, a significant majority of the survey respondents indicated that they had little to no clear knowledge of whether there are formal processes available, and if so, what those processes entail. Only a quarter of respondents affirmed that they had seen any type of notice at an RRO with instructions on how to report corruption. The respondents further indicated very low confidence levels in terms of being assured that the service user and reporter of corruption would not face negative consequences. Of those who have been involved in an investigatory process regarding corruption at DHA, only 5% indicated that the process was sensitive to their situation. These findings are concerning and illustrate that the processes that were in place at the end of 2019 in terms of combatting corruption, or even advertising that one can report corruption, were not conducive to ensuring effective reporting and investigation of corruption. Without effective processes in place, and wide dissemination of information about the combatting of corruption, opportunities for corruption, will remain entrenched in all stages of the asylum process.

## 2.3 RECOMMENDATIONS

The Refugees Amendment Act and 2018 Refugees Regulations provide for certain “integrity measures” to combat fraud and corruption among staff at RROs, the SCRA, and the Refugee Appeals Authority, which may ultimately go some way in addressing corruption entrenched within the asylum process, assuming effective implementation.

Specifically, section 20A of the Refugees Amendment Act, implemented on 1 January 2020, provides that the Director-General *“must as soon as possible after commencement, and from time to time thereafter, direct all members and administrative staff of the Standing Committee, Refugee Appeals Authority and all members of staff at any Refugee Reception Office, including all persons who are not members of staff but who perform any function at such an Office, to be subjected to measures to test the integrity of those persons for the purposes of combating or preventing fraud, corruption or any crime of which dishonesty is an element; and enhancing the integrity of, and confidence in, the asylum seeker and refugee system.”*

To ensure the effectiveness of these “integrity provisions”, LHR makes the following recommendations:

- Ensure clear anti-corruption messaging, as well as notices at all RROs indicating the procedure that can be used to report corruption. This must be advertised in prominent and high foot-traffic locations at all RROs, in multiple languages common to asylum and refugee communities.
- Ensure clear anti-corruption messaging indicating that no negative consequences will be befall a whistle-blower should they report corruption. This should include an assurance of confidentiality. This must be advertised in prominent and high foot-traffic locations at all RROs, in multiple languages common to asylum and refugee communities.

## 2. SUMMARY OF KEY FINDINGS & RECOMMENDATIONS

- Ensure effective and collaborative partnering with civil society organisations that work with asylum seekers and refugees, and that may be more likely to have a trust relationship that allows vulnerable individuals to report their experiences of corruption at RROs.
- Adoption of a clear queuing system must be developed. This should be one that does not open itself to abuse by people who can organise for an individual to skip the queue.
- Reduction of the need for queues in the first place. One mechanism that could be used is the extension of periods of validity of asylum documentation, as this will mean fewer visits to RROs for renewals by individual permit holders, and thus a reduction in long queues and in exposure to the opportunity for corruption.
- Improved status determination decision-making regarding asylum applications implemented. If the quality of status determination decisions is improved, it will ensure that *de facto* refugees receive their refugee status documentation efficiently. This will decrease the burden on the system in terms of asylum permit renewals. In addition, improved quality of decision-making will instil greater faith and trust in the system, and thus decrease the desperation that may lead to corruption.
- Implementation of time limits for the processing of an asylum claim. The 2000 Refugees Regulations provided for a 180-day period for the processing of an asylum claim from lodging of application to conclusion of all administrative appeals and/reviews. This was hardly ever adhered to. Ensuring a time limitation will result in greater accountability of officials and increased efficiency, limiting extended vulnerability of asylum seekers and opportunities for corrupt practices.
- Further amendment of the new provision in the Refugees Amendment Act that currently provides for exclusion from refugee status for any person who is found in possession of fraudulent documentation. Non-penalisation or amnesty for persons with fraudulent documents, combined with improved efficiency of the asylum system as a whole and as set out above, is preferable, to encourage reporting of corruption. The current provision in this respect also raises concerns, as such exclusion may result in a violation of the principle of *non-refoulement*.
- Consistency and transparency in administering of fines and penalties across RROs, with clear messaging regarding the process provided at RROs.
- Name tags clearly displayed by all officials from the Department of Home Affairs. Clear signs and notices informing the public that no immigration official should be on duty without a clearly visible name tag.

---

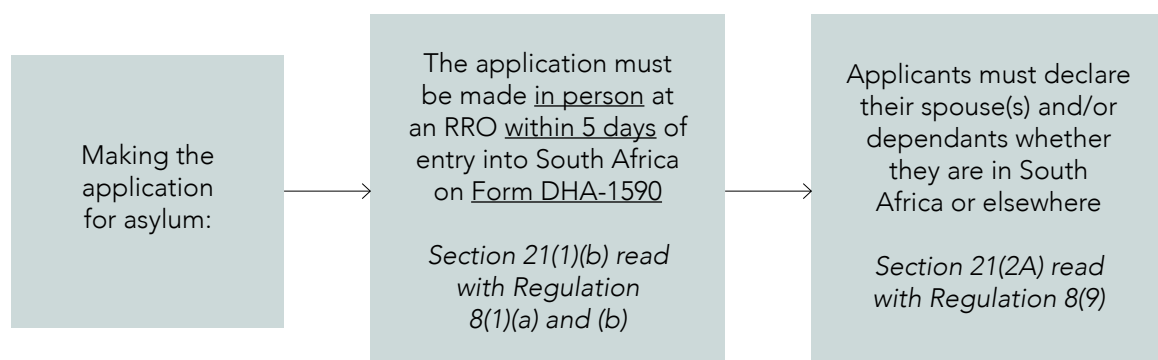
# 3.

## INTRODUCTION TO SOUTH AFRICA'S ASYLUM SYSTEM: POLICY & PRACTICE

### 3.1 APPLYING FOR ASYLUM IN SOUTH AFRICA: POLICY VS REALITY

In 1998, South Africa enacted the Refugees Act, a progressive effort that prioritised non-encampment of refugees through an urban refugee system, and substantial legal protections for refugees and asylum seekers, such as the rights to access healthcare and education. The Refugees Act is also designed to provide a mechanism whereby an individual may claim asylum in South Africa. Below is a flowchart diagram of the stages in this process, from the lodging of an asylum application to final decision, under the terms of the recent Amendments to the Refugees Act<sup>5</sup> and relevant regulations.<sup>6</sup> The requirements pertaining to the overall process of applying for asylum can be divided into two parts: first, making the application and second, submission of the application.

Diagram I: Making an application for asylum

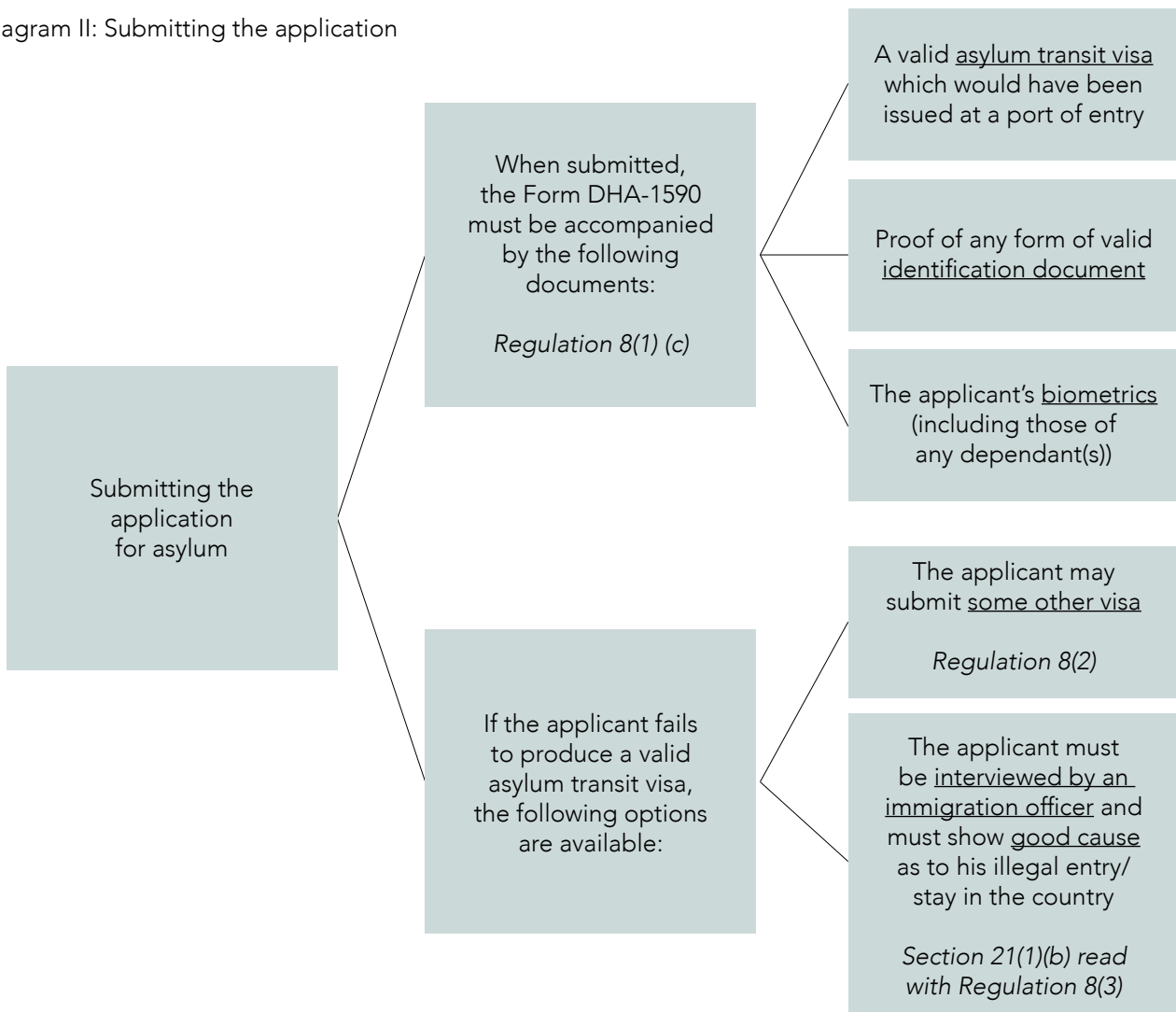


<sup>5</sup> Refugees Amendment Act 11 of 2017.

<sup>6</sup> Refugees Regulations, 2018 published in GN 1707 GG 42932 of 27 December 2019.

### 3. INTRODUCTION TO SOUTH AFRICA'S ASYLUM SYSTEM: POLICY & PRACTICE

Diagram II: Submitting the application



In South Africa's post-1994 democratic dispensation, the country has adopted a progressive constitution and become signatory to several international human rights instruments. Once domesticated, state departments, including the Department of Home Affairs (DHA), are bound to implement these instruments as a part of their mandate. In addition, the Courts are mandated to apply these instruments in interpretation of statutes and in their judgments. Relevant conventions include the Convention Against Torture<sup>7</sup> and its Optional Protocol<sup>8</sup>; the Universal Declaration of Human Rights<sup>9</sup>; the International Covenant on Civil and Political Rights<sup>10</sup>; the International Covenant on Economic, Social and Cultural Rights<sup>11</sup>; the 1951 Refugee Convention<sup>12</sup> and the 1967 Optional Protocol<sup>13</sup>; and the 1969 OAU Convention<sup>14</sup>.

<sup>7</sup> Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, 1984 United Nations General Assembly resolution 39/46 (1984) (CAT).

<sup>8</sup> Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 2003 United Nations General Assembly Resolution A/RES/57/199 (2003) (OPCAT).

<sup>9</sup> Universal Declaration of Human Rights, 1948 United Nations General Assembly Resolution 217 A (III).

<sup>10</sup> International Covenant on Civil and Political Rights, 1966 United Nations General Assembly Resolution 2200A (XXI) (ICCPR).

<sup>11</sup> International Covenant on Economic, Social and Cultural Rights, 1966 United Nations General Assembly Resolution 2200A (XXI) (ICESCR).

<sup>12</sup> Convention Relating to the Status of Refugees, 1951 United Nations General Assembly Resolution 429 (V) (1951).

<sup>13</sup> Protocol Relating to the Status of Refugees, 1967 United Nations General Assembly Resolution 526 A(XVII) (1967).

<sup>14</sup> Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969.

### 3. INTRODUCTION TO SOUTH AFRICA'S ASYLUM SYSTEM: POLICY & PRACTICE

Despite this progressive legal framework, however, corruption poses a persistent threat to the democratic ideals heralded in post-apartheid South Africa today. Recent inquiries by the Zondo Commission,<sup>15</sup> a judicial inquiry into allegations of state capture and corruption, as well as various NGOs, have revealed that corruption is pervasive in South Africa's private and public sectors.<sup>16</sup> What is not often contemplated sufficiently in these investigations, however, is the significant impact that this corruption has on marginalised populations in particular.

Corruption has historically posed a substantial challenge to the implementation of the Refugees Act – and thus to the well-being of refugees and asylum-seekers themselves. The systemic failures in implementation of the Refugees Act and limited capacity within the DHA, have therefore rendered the system vulnerable to abuse – by both desperate asylum seekers as well as by officials seeking to take advantage of this vulnerability. As a result, many people seeking asylum cannot secure proper documentation, resulting in their displacement and increased vulnerability to exploitation.

The White Paper on International Migration (“the White Paper”), the DHA's most recent policy framework, is intended to guide the creation and review of new legislation related to migration.<sup>17</sup> The White Paper states that, in relation to the management of asylum seekers and refugees in South Africa,

*‘the purpose of policy interventions introduced in this area is to enable South Africa to provide refugee protection and basic services to asylum seekers and refugees in a humane and secure manner’<sup>18</sup>*

In practice, the state appears to fall short of enabling these protections and basic services. The reported lived experience of asylum seekers is in fact the opposite of what is outlined in the White Paper: rather than provision of basic services in a humane and secure manner, asylum seekers have experienced a progressive restriction of the services available to enable people to claim asylum in South Africa in the first place.

This progressive contraction in support for the asylum seeker population is best illustrated in the systematic closure of urban RROs throughout the country. The DHA initially established six urban RROs in several of South Africa's large metropolitan areas, where the asylum process could be initiated: Johannesburg and Pretoria in 2002,<sup>19</sup> Cape Town and Port Elizabeth in 2000,<sup>20</sup> and Durban, and Musina in 2008.<sup>21</sup> However, in 2011 a decision was made to close the Johannesburg RRO as well as the Port Elizabeth RRO; and in 2012 a further decision was

<sup>15</sup> Commission of Inquiry into State Capture ‘The Judicial Commission of Inquiry into Allegations of State Capture’ available at <https://sastatecapture.org.za/>

<sup>16</sup> Corruption Watch ‘Zondo Commission – updates, analysis and other material’ Corruption Watch 28 November 2018, available at <https://www.corruptionwatch.org.za/zondo-commission-updates-analysis-community-media-old/>, accessed on 20 April 2020. See also Christi Nortier ‘Civil society submits to Zondo inquiry its ‘Agenda for Action’ to tackle root cause of corruption’ Maverick Citizen 19 February 2020, available at <https://www.dailymaverick.co.za/article/2020-02-19-civil-society-submits-to-zondo-inquiry-its-agenda-for-action-to-tackle-root-cause-of-corruption/>, accessed on 20 April 2020.

<sup>17</sup> The White Paper on International Migration (GN 750 GG 41009 of 28 July 2017).

<sup>18</sup> Ibid.

<sup>19</sup> Scalabrini Centre, Cape Town ‘The Cape Town refugee reception office case, explained’ Scalabrini Centre of Cape Town available at <https://scalabrini.org.za/news/the-cape-town-refugee-reception-office-closure-case-explained>, accessed on 20 April 2020.

<sup>20</sup> Scalabrini Centre, Cape Town and Others v Minister of Home Affairs and Others (1107/2016) [2017] ZASCA 126; [2017] 4 All SA 686 (SCA); 2018 (4) SA 125 (SCA) and Minister of Home Affairs and Others v Somali Association of South Africa Eastern Cape (SASA EC) and Another (831/2013) [2015] ZASCA 35; 2015 (3) SA 545 (SCA); [2015] 2 All SA 294 (SCA).

<sup>21</sup> Scalabrini Centre, Cape Town supra note 19.



### 3. INTRODUCTION TO SOUTH AFRICA'S ASYLUM SYSTEM: POLICY & PRACTICE

made to close the Cape Town RRO.<sup>22</sup> This meant that the only fully functional RROs available to asylum seekers were located in Pretoria, Musina and Durban. After litigation, the courts have ruled the decisions to close the PE and Cape Town RROs as unlawful. The PE RRO was subsequently re-opened, but the Cape Town RRO is not fully functional and does not accept new asylum applicants. The RRO closures, pause in services, and restriction of services at others, has the effect of severely limiting the rights of this population.

Diagram III: Timeline of RRO closures

2000		The Cape Town RRO opens
		The Port Elizabeth RRO opens
2002		The Johannesburg RRO opens
		The Marabastad RRO opens in Pretoria
2008		The Musina RRO opens to provide capacity to the other RROs operating in South Africa
2009	April	The DHA establishes the Tshwane Interim RRO to provide capacity to the Pretoria RRO
2011	March	The Johannesburg RRO was ordered to close
	May	The DG announced the closure of the Port Elizabeth RRO to new applications for asylum
2012	June	The DG announced the closure of the Cape Town RRO to new applications for asylum
2014	January	The DG announced the closure of the Cape Town RRO
2015	July	The date upon which the Port Elizabeth RRO was to have reopened as ordered by the SCA
2016		The DG announced the closure of the Tshwane Interim RRO
2017	February	Marabastad RRO is renamed to the Desmond Tutu RRO
2018	March	The date upon which the Cape Town RRO was to have reopened as ordered by the SCA
	October	The Port Elizabeth RRO is reopened

<sup>22</sup> Scalabrini Centre (case) supra note 20 para 2.

### 3. INTRODUCTION TO SOUTH AFRICA'S ASYLUM SYSTEM: POLICY & PRACTICE

The particular trajectory of the decision to close the Cape Town RRO, and subsequent court challenges, as well as what appears to be recalcitrance of the DHA in ensuring provision of services to asylum seekers is reflective of the general state of affairs regarding services provided to asylum seekers and refugees in South Africa.

After the decision was taken in 2012 to close the Cape Town RRO, the first stage in that closure was to discontinue services to new asylum applicants. The reasoning behind this was that the RRO would process to completion all files that had been opened at that office, and thereafter would close. This meant that no asylum seekers whose applications were first lodged at other RROs would be processed at that office during the staged closure process. The initial decision to close the CT RRO was successfully challenged in Court by the Scalabrini Centre of Cape Town represented by the Legal Resources Centre. Thereafter, the DHA agreed to re-take the decision, and ensure adequate stakeholder consultation in the second decision. The DHA proceeded to re-take the decision but came to the same conclusion that it was necessary to close the CT RRO. The second decision was again challenged in Court by the Scalabrini Centre of Cape Town. Following extensive litigation the Supreme Court of Appeal ruled in 2017 that the decision to close the CTRRO was both unreasonable and irrational, and determined that it must be reopened by the end of March 2018.<sup>23</sup> However, the DHA remains in non-compliance with the Court Order,<sup>24</sup> having missed its court-ordered deadline for reopening: 31 March 2018 and its subsequent commitment to reopen in January 2020.<sup>25</sup>

This matter highlights the DHA's apparent disregard for court orders and raises serious concerns about its regard for the rights of the vulnerable refugee and asylum seeker populations in South Africa today. It further raises grave concerns regarding the South African government's commitment to its international legal obligation to protect refugees.

<sup>23</sup> Ibid.

<sup>24</sup> Scalabrini Centre (case), supra note 20; see also Kaylynn Palm 'Reopening of CT refugee reception office delayed again' Eyewitness News 3 February 2020, available at <https://ewn.co.za/2020/02/03/reopening-of-ct-refugee-reception-office-delayed-again>, accessed on 20 April 2020.

<sup>25</sup> Ibid.

## *Scalabrini Centre, Cape Town & Others v Minister of Home Affairs & Others (2017)*

In 2012, the DHA announced its decision to close the Cape Town RRO to new asylum applicants. This meant that the Cape Town RRO's refugee services were only made available to refugees and asylum seekers with existing files at that RRO. The Director General provided the following justification as the basis for his decision:

- The asylum seeker system was allegedly being abused by economic migrants.<sup>26</sup>
- The Cape Town RRO was not situated close to any South African borders and it would therefore have been safer and more convenient for new asylum seekers to attend at those RROs situated closer to the ports of entry in order to be processed and documented.<sup>27</sup>
- The Cape Town RRO was known to be a source of nuisance to the surrounding businesses and failed to comply with zoning regulations.<sup>28</sup>

Following the DG's decision, Scalabrini Centre, other NGOs, and affected refugees and asylum seekers instituted action in the High Court against the DG for an order setting aside the decision in *Scalabrini Centre & Others v Minister of Home Affairs & Others (2013)*.<sup>29</sup> The High Court granted the order and directed the DHA to have the Cape Town RRO reopened and fully operational by 1 July 2013. The DHA then appealed the order at the Supreme Court of Appeal (SCA).

In *Minister of Home Affairs & Others v Scalabrini Centre, Cape Town & Others (2013)*,<sup>30</sup> the SCA dismissed the DHA's appeal on the basis that the decision to close the Cape Town RRO was fraught with procedural irregularities and was therefore unlawful. However, the High Court's order directing the DHA to reopen the Cape Town RRO by 1 July 2013 was set aside and the DHA was tasked with re-taking the decision, while ensuring stakeholder participation prior to the DHA taking the decision. Thereafter, in early 2014, the DG announced a decision to permanently close the Cape Town RRO.

Finally, in the *Scalabrini (2017)* matter, the SCA declared the DG's 2014 decision to be unlawful and therefore set aside. The SCA further ordered that the Cape Town RRO be reopened and fully functional by 31 March 2018.

<sup>26</sup> *Scalabrini Centre (case)* supra note 20 at para 16.

<sup>27</sup> *Ibid* para 9.

<sup>28</sup> *Ibid* para 9.

<sup>29</sup> *Scalabrini Centre, Cape Town and Others v Minister of Home Affairs and Others (11681/12) [2013] ZAWCHC 49; 2013 (3) SA 531 (WCC); [2013] 2 All SA 589 (WCC); 2013 (7) BCLR 819 (WCC)*

<sup>30</sup> *Minister of Home Affairs and Others v Scalabrini Centre, Cape Town and Others (735/12, 360/13) [2013] ZASCA 134; 2013 (6) SA 421 (SCA); [2013] 4 All SA 571 (SCA)*.

## 3.2 HOW MANY PEOPLE ARE SEEKING ASYLUM IN SOUTH AFRICA?

It is difficult to ascertain the number of migrants and asylum seekers in South Africa. The DHA and political leadership often misstate facts and figures regarding the number of cross-border migrants entering the country. For example, statements and figures quoted by the then-newly appointed Minister Aaron Motsoaledi in 2019 showed a worrying lack of understanding of DHA's mandate as a custodian for the protection of refugees, is purported to have said:

*'questioned why there are so many African asylum seekers when, in his view, there are no conflicts on the continent. He also complained about the negative media reporting on the dismal state of the asylum system, claiming the SABC was harassing department officials about corruption and inefficiencies at the refugee reception office in Pretoria.'*<sup>31</sup>

Similarly, miscited or false figures are often used by the state to attempt to shift responsibility for the DHA's failures to those people who may have legitimate claims to asylum. To this end, in both 2013 and in 2018, incorrect figures relating to asylum seeker numbers were provided by DHA; indeed, these numbers have been described as "flawed, inaccurate, and sharply contradictory" as well as "unproven".<sup>32</sup> Despite the prevalence of administrative incompetencies and ineptitude within the DHA, such deficiencies cannot excuse nor justify the denial of rights.

As of May 2020, DHA indicated that there are 188 296 active asylum files registered on its systems,<sup>33</sup> and 80 758 recognised refugees currently in South Africa according to the Department's records.<sup>34</sup> This puts the number of asylum seekers and refugees in South Africa at 188 296 asylum seekers and 80 758 refugees according to the DHA's records in 2020. Given the systemic barriers experienced by newcomer asylum seekers, as well as the closure of RROs and subsequent expiry of documentation, it is likely that there are more asylum seekers in South Africa is highly likely to be failing to grant necessary protection to people seeking refuge in our country from persecution and fear of their lives.

It is possible that these inaccuracies in public DHA statements are simply the result of systemic maladministration in the department. This has been well documented, not only through academic reports and writing, and investigative journalism, but also through state reports such as those undertaken by the Auditor General of South Africa. To this end, the Auditor General February 2020 report<sup>35</sup> found that:

<sup>31</sup> Abigail Dawson, Sally Gandar, and Sharon Ekambaram 'Xenophobia fuelled by Minister Motsoaledi's scapegoating' *Maverick Citizen* 6 October 2019, available at <https://www.dailymaverick.co.za/article/2019-10-06-xenophobia-fuelled-by-minister-motsoaledis-scapegoating/>, accessed on 20 April 2020.

<sup>32</sup> Richard Stupart, "Is South Africa home to more than a million asylum seekers? The numbers don't add up" available at <https://africacheck.org/reports/south-africa-home-million-refugees-numbers-dont-add> accessed on 7 June 2020.

<sup>33</sup> Parliamentary Monitoring Group 'Question NW202 to the Minister of Home Affairs' available at <https://pmg.org.za/committee-question/13290/>

<sup>34</sup> Parliamentary Monitoring Group 'Question NW811 to the Minister of Home Affairs' available at <https://pmg.org.za/committee-question/13510/>

<sup>35</sup> Portfolio Committee on Home Affairs *Briefing Report of the Auditor-General on a Follow-Up Performance Audit of the Immigration Process for Illegal Immigrants at the Department of Home Affairs* (2020) 6.

### 3. INTRODUCTION TO SOUTH AFRICA'S ASYLUM SYSTEM: POLICY & PRACTICE

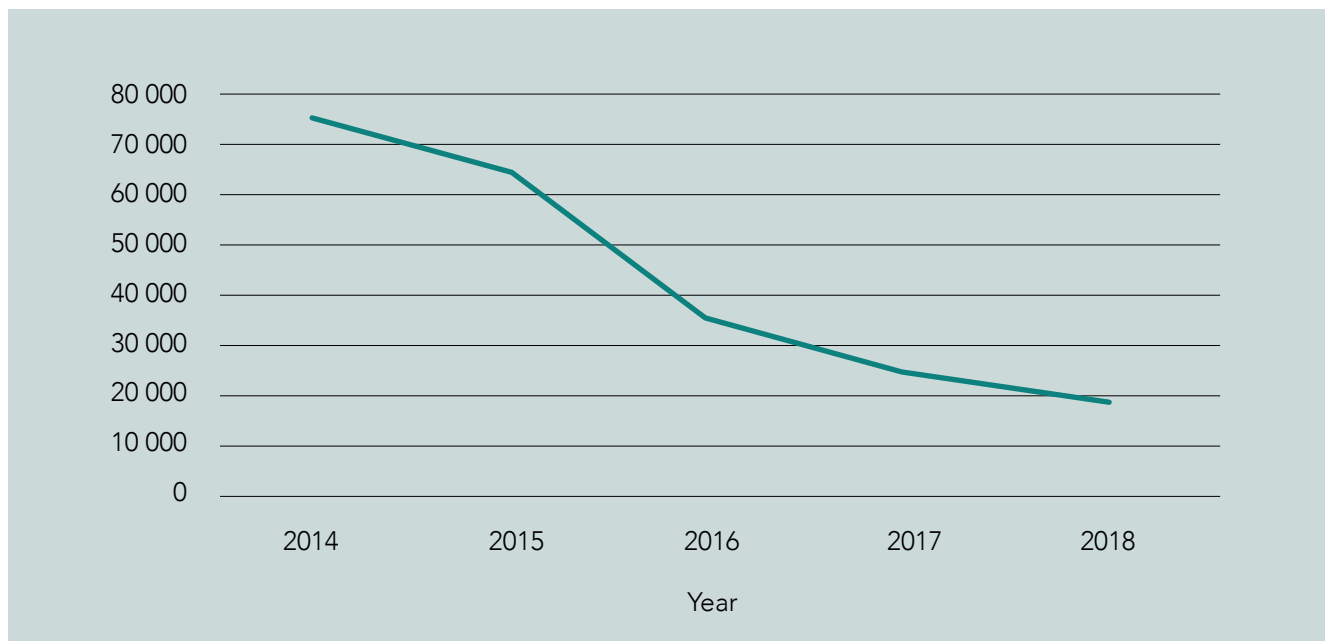
*'The department [of Home Affairs] did not know how many of the 946 314 inactive section 22 applicants (as at 31 December 2017) were still in the country as the various systems were not integrated.'*

Additionally, the report notes that:

*'New asylum seekers must report to a refugee reception office to be registered. The backlog in registering new asylum seekers after their original arrival at the refugee reception office was mainly due to the interpretation services being unavailable. In some cases, the backlog was up to seven months'*

The above is just the first step in a long process for asylum seekers. One fraught with backlogs, delays, and a lack of transparency. This also extends to the lack of easily accessible information relating to asylum seekers, refugees, and migrants in South Africa. It is well-documented that there is a need for disaggregated data on migration in general in South Africa, and more specifically, accurate indications of the number of people seeking asylum in South Africa today.<sup>36</sup> What we do know is that, according to responses to parliamentary questions in 2018, for example, there were 18,354 newly registered asylum claims.<sup>37</sup> There also appears to have been a considerable decrease in the number of asylum applicants since 2014. See the graph below:

Diagram IV: Number of new asylum applicants registered per year



<sup>36</sup> MDSA meeting in 2016 made following recommendations on need for accurate data collection in the SADC region: Migration Data in Southern Africa

6.1.1 Develop standardized templates for data collection

6.1.2 Ensure that migration data is collected in LFS, as well as censuses and household surveys

6.1.3 Enhance intra- and inter-regional collaboration on data collection and analysis

<https://idcoalition.org/wp-content/uploads/2016/10/Final-MDSA-2016-Conclusions-and-Recommendations.docx>

<sup>37</sup> Parliamentary Monitoring Group 'Question NW1587 to the Minister of Home Affairs' available at <https://pmg.org.za/committee-question/12814/>, accessed on 6 April 2020.

### 3. INTRODUCTION TO SOUTH AFRICA'S ASYLUM SYSTEM: POLICY & PRACTICE

Sixty percent of persons with documentation indicating that they are an asylum seeker in South Africa (what is termed a "section 22 permit or visa") have been in the asylum system for more than five years, based on the 2019 mid-year statistics.<sup>38</sup> The most recent statistics provided, not officially from the DHA, but rather through written questions in Parliament, reflect that there is a total of 188 000 'active' asylum seekers registered on South Africa's DHA system.<sup>39</sup> In addition, there are just over 80 000 recognised refugees registered on the DHA system.<sup>40</sup> There is a distinct incongruity between these numbers and those formally reported by DHA.

A further concern is the number of asylum seekers in comparison with the rate of acceptance. It appears that less than one in six people are granted refugee status in South Africa at all.<sup>40</sup> In the last 10 years, DHA has processed 633 395 claims, and of these, 99 624 applicants have been granted refugee status.<sup>41</sup> It is clear that, since 2010, there has been a decrease in the number of applicants and a high number of rejections. This has the potential to create ideal circumstances for maladministration or corruption to thrive in a system not based on legal merit and proper application of refugee status determination procedure.

Long waiting periods and significant backlogs pose an institutional challenge to people seeking asylum or documentation. Often people are left stranded and vulnerable as they wait for a decision on their application for asylum due to the limited rights and protections available to asylum seekers while they are in the midst of the migrant chain. This is greatly exacerbated by the prolonged frequency in which they have to travel to renew their permits, the inability to apply for jobs and obtain income security and housing, as well as enduring socio-political backlash perpetuated by a largely anti-immigrant government.

Further, the high rejection rate means longer waiting periods for asylum seekers as they enter a backlogged and glacial queue to have their applications appealed. These long waiting periods result in people having to return regularly to RROs. In 2019, the Auditor General's report noted that:

*'The Standing Committee for Refugee Affairs experienced backlogs of 40 326 (compared to 475 during the 2007 audit) and the Refugee Appeals Board 147 794 (compared to 893 during the 2007 audit) cases, respectively. With their current capacity, the Standing Committee for Refugee Affairs would take just over one year and the Refugee Appeals Board 68 years to clear the backlog without taking new cases'.<sup>42</sup>*

As can be seen from the numbers presented above, as well as the backlogs now inherent in the asylum system, the context of the RROs in South Africa is one of barriers. These barriers, as well as a lack of sufficient procedural safeguards and accountability measures, provides an ideal space for corruption to flourish.

<sup>38</sup> Parliamentary Monitoring Group 'Question NW1586 to the Minister of Home Affairs' available at <https://pmg.org.za/committee-question/12936/>, accessed on 6 April 2020.

<sup>39</sup> Parliamentary Monitoring Group supra note 33.

<sup>40</sup> Parliamentary Monitoring Group supra note 34.

<sup>41</sup> Scalabrini Centre of Cape Town 'Migration statistics: South Africa' available at <https://scalabrini.org.za/resources/migration-statistics-south-africa>

<sup>42</sup> Auditor-General South Africa *Report of the auditor-general on a follow-up performance audit of the immigration process for illegal immigrants at the Department of Home Affairs* (2019).

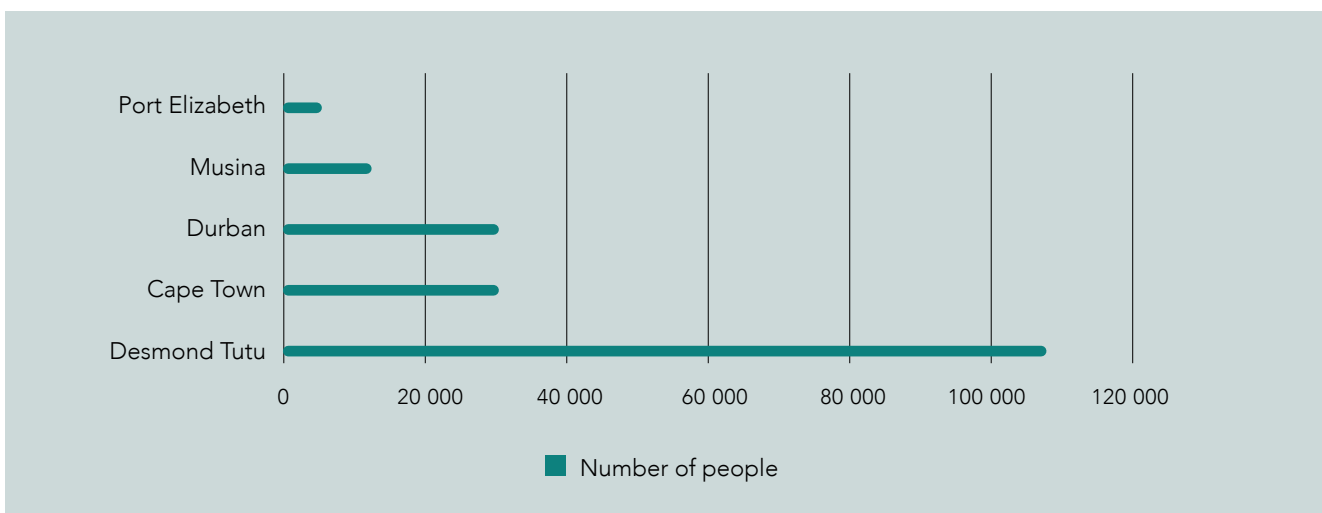
### 3.3 THE PATH TO CORRUPTION

Several factors have contributed to the prevalence of corruption in the country's refugee reception offices. Foremost among these is the DHA's failure to respond to the high levels of demand that quickly exceeded the capacity of a system designed around individualised decision-making. One mechanism that should be used to address any high level of demand placed on the asylum system, is to ensure alternative pathways to regularise one's stay in South Africa for persons who are not in need of protection, while at the same time increasing capacity in the asylum management system. DHA has instead focused primarily on keeping people out, rather than focussing on understanding and responding to patterns of migration in the region or enhancing capacity. This approach has only aggravated the crisis. In addition, there are few safeguards against corruption or accountability measures to keep a check within the asylum system.

RROs continue to be characterised by unwieldy queue management, poor quality status determination procedures, and arbitrary discretion in issuing documents and renewals, as well as significant backlogs. These conditions perpetuate vulnerability which is exploited by corrupt officials and other opportunistic elements. Individuals in the asylum system must typically make multiple visits to an RRO, often to offices far from their home, to address a single issue; they remain in the system for several years before receiving a final decision; they often face language barriers—despite translation services being a legislated service; and poor decision-making<sup>43</sup> by RSDOs necessitates additional visits. The refugee system forces asylum seekers to live in a precarious legal limbo.

Both LHR's 2015 and 2019 surveys of the asylum process reveal high levels of corruption, defunct systems, and opportunities for abuse. In sum, RROs lack capacity to deal with issues challenging the system. As of June 2019, the graph below shows the number of people extending their permits per provincial RRO:<sup>44</sup>

Diagram V: Number of new people per provincial RRO for permit extension as at 30 June 2019



<sup>43</sup> Roni Amit, ACMS, 'All Roads Lead to Rejection: Persistent Bias and Incapacity in South African Refugee Status Determination' (June 2012). Available at: [http://www.migration.org.za/wpcontent/uploads/2017/08/AllRoadsLeadToRejection\\_31October2012-2-2.pdf](http://www.migration.org.za/wpcontent/uploads/2017/08/AllRoadsLeadToRejection_31October2012-2-2.pdf)

<sup>44</sup> Parliamentary Monitoring Group supra note 37

### 3. INTRODUCTION TO SOUTH AFRICA'S ASYLUM SYSTEM: POLICY & PRACTICE

In a similar study focussing on corruption at the Desmond Tutu RRO (previously Marabastad RRO), conducted in 2016 by Corruption Watch,<sup>45</sup> findings revealed that the Desmond Tutu RRO which receives the highest number of applications in the country—was the source of the highest percentage of complaints. This echoes LHR's 2015 assessment of the Desmond Tutu RRO, which indicated that more than half of the respondents had to pay a bribe to receive services.<sup>46</sup> In comparison, the 2019 Queueing Survey reveals a slight decrease in this regard, where only 32% of the total number of respondents reported paying a bribe in order to gain access to the RRO. Additionally, the Desmond Tutu RRO remains the office at which the highest number of applications for asylum are received.<sup>47</sup> Further to this, the 2019 Corruption Survey shows that of the 116 respondents who reported on matters of corruption, 30% reported with reference to the Desmond Tutu RRO.

#### 3.4 HOW THE DHA SYSTEMS EXACERBATE CORRUPTION

DHA has made efforts to address and inhibit corruption primarily through decreasing the number of individuals entering the asylum system due to the backlog and inability for migrants to obtain services at RROs. In 2015, DHA launched Operation Bvisa Masina to target DHA officials that have been involved in corrupt practices at the Desmond Tutu RRO, where 62% of respondents reported experiencing corruption. 26 arrests were made; however, at the time of writing this report, DHA had not released any details regarding the matter. Ultimately, while efforts have been made by DHA to address corruption, it is also important to state that DHA has failed to focus on two vital components of addressing corruption in South Africa. The first component is to put in place measures that enable safe and easy reporting of corruption. The second is to work with civil society organisations and other non-governmental stakeholders that receives complaints of corruption from refugees and asylum seekers. Issues around the investigation and sanctioning of corrupt officials has not been adequately dealt with by the DHA.

As one example, in 2016, Corruption Watch presented completed cases of corruption with attached evidence to DHA for further investigation and no action was taken against the corrupt official mentioned in the investigation. After publishing the report, CW engaged with DHA regarding further for collaboration and information sharing, unfortunately DHA refused this offer of cooperation.

The endemic corruption found within DHA is not a symptom of the high number of asylum seekers anxiously waiting to garner access and services in RROs; conversely, it is the preliminary attitudes the DHA has equipped itself with toward migrants. DHA has adopted a reactive response to the pileup of applications, long lines, and closed offices—all of which breed grounds for fraudulent behaviour by officials and an atmosphere of misconduct found within multiple RROs. Likewise, the Surveys indicate that corruption is largely a structural issue than a few cases reported by individuals. DHA has perpetuated corrupt practices not only by failing to create sustainable change internally and externally, but also by placing the burden of pursuing allegations of corruption onto asylum seekers themselves. As a result, the asylum system has largely been led by corrupt, financially driven incentives as opposed to ameliorating barriers for individuals in hope of a better quality of life.

<sup>45</sup> Corruption Watch supra note 3.

<sup>46</sup> Lawyers for Human Rights and the African Centre for Migration & Society *Queue Here for Corruption: Measuring Irregularities in South Africa's Asylum System* (2015).

<sup>47</sup> Parliamentary Monitoring Group supra note 34.



---

# 4.

## KEY FINDINGS

As described above, in 2015, LHR together with the ACMS conducted a survey aimed at understanding experiences of corruption at South Africa's RROs. The 2019 Survey which forms the basis of this report, was undertaken by LHR to assess whether conditions in respect of corruption at the RROs have improved or deteriorated since that analysis, and whether the recommendations made in the 2015 report appeared to have been implemented or considered by the DHA.

### 4.1 ANALYSIS OF PAST REPORTING ON CORRUPTION

The 2015 report found that asylum seekers and refugees experienced corruption at multiple stages of the asylum application process. Corruption continued even after individuals obtained refugee status. The Desmond Tutu RRO (previously Marabastad RRO) showed the highest levels of corruption. The Durban office had the lowest levels. Overall, 30% of respondents reported experiencing corruption at some stage in the asylum process. The pervasiveness of corruption in all aspects of the asylum process revealed a process that was no longer bounded by legal guarantees, predictability, or administrative fairness. The recommendations from the 2015 Report were aimed at the DHA, the Parliamentary Committee for Home Affairs, the Public Prosecutor, the South African Human Rights Commission, the South African Police Service, and the National Prosecuting Authority. The recommendations collectively dealt with key proposals around queueing, the asylum application process, the renewal process, status determination, fines, corruption reporting and oversight.

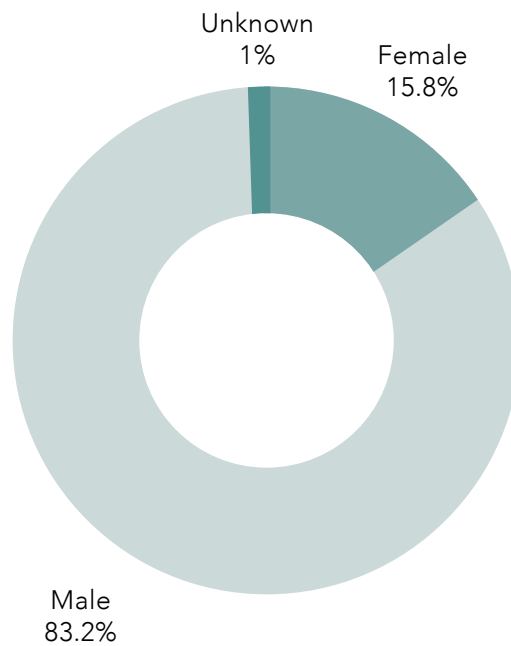
Similarly, the Corruption Watch 2016 Report<sup>48</sup> demonstrated problems with corruption reporting including reports from whistle-blowers who confirmed that they would not report corruption through the DHA reporting channels for fear of effect this may have on their application and the fear of providing their personal details to DHA. CW presented the DHA with a Memorandum of Understanding setting up the way in which CW could facilitate the reporting of corruption, protecting and assuring the whistle-blower at every step. All the efforts presented to DHA were rejected and ignored.

<sup>48</sup> Corruption Watch supra note 3.

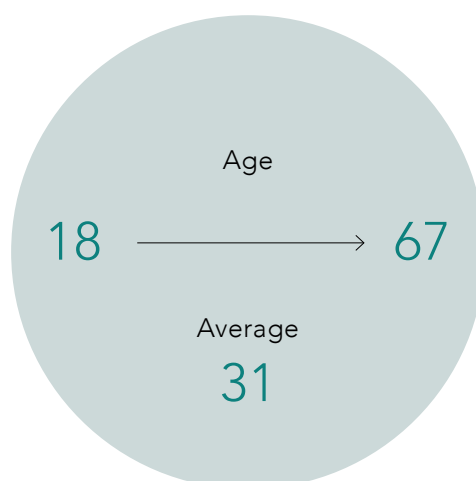
## 4.2 METHODOLOGY: 2015 V 2019

A comparison of the age, sex, language, and nationality data of survey respondents from both the 2015 study as well as the 2019 study is provided below.

Survey respondents were predominantly male, with 772 males and only 147 females. The field researchers failed to record the gender of 9 recipients.



### 4.2.1 Demographics of Survey Respondents: 2015 and 2019



The age of respondents ranged between 18-67, with an average age of 31. Field researchers administered the surveys in English and French. The most common primary languages spoken by respondents included Shona, Swahili, Lingala, Amharic, French and Somali. Twenty-four (24) respondents stated that they did not understand and speak English fluently. These respondents spoke Amharic (7), French (5), Somali (5), Swahili (5), Lingala (1), and Afrikaans (1).

Most respondents to the two surveys were male. This is in line with the 2015 report's findings. Sixty-six percent of respondents to the Corruption Survey were male, compared to 59% for the Queuing Survey.

Respondents across both surveys were also of similar ages, with the Queuing Survey averaging slightly younger respondents:

Age of Respondents	Total Proportion (%) of Respondents in 2019 (Corruption and Queuing Survey combined)
15-20 years old	7%
21-25 years old	14%
26-30 years old	21%
31-35 years old	18%
36-40 years old	16%
41-45 years old	10%
46-50 years old	8%
51-55 years old	2%
56-60 years old	1%
Not specified	3%

Respondents to both surveys also had a similar number of dependents. Their ages ranged from 15 to 60, with an average age of 31-35 years. Although the data provided in the 2015 Survey does not contain information pertaining to respondents' dependents, the 2019 Survey (both the corruption survey as well as the queuing survey) requested such information:

Number of Dependents	Total Proportion (%) of Respondents in 2019
0	32%
1-3	41%
4-6	16%
7-9	1%
10+	1%
Not specified	9%

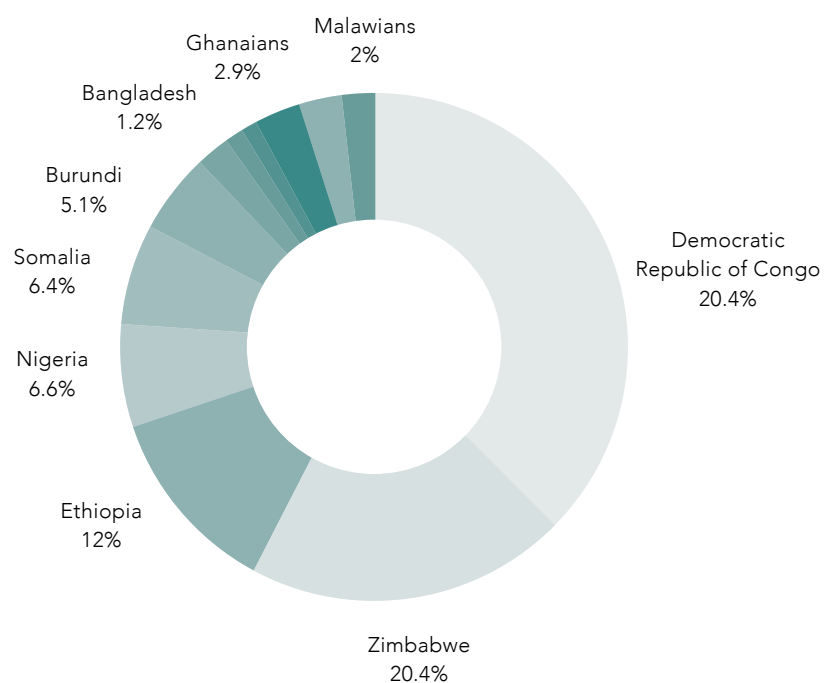
All respondents were from within the African continent. The table below describes respondents' nationalities as a proportion of all respondents. The table below shows the number of respondents from the most highly represented nationalities (this data is extracted from both the Corruption Survey and the Queuing Survey).

Nationality of Respondents	Total Proportion (%) of Respondents in 2019
DRC	51%
Ethiopia	14%
Burundi	9%
Somalia	9%

In comparison, the following table shows the number of respondents from the most highly represented nationalities in 2015:

Nationality of Respondents	Total Proportion (%) of Respondents in 2015
DRC	34%
Zimbabwe	19%
Ethiopia	6%
Nigeria	6%

Respondents represented 34 countries, almost all of them on the African continent, countries outside of Africa included Pakistan (18 respondents), Bangladesh (10 respondents), India (8 respondents), and Nepal (1 respondent). The table below shows the number of respondents from the most highly represented nationalities and their proportion of overall respondents.



It should be noted that some respondents identified their nationality as South African. There could be several reasons why some respondents identified their nationality as South African when applying for status in South Africa. The respondents may simply have not understood what question the survey was asking. Alternatively, these individuals may have been born in South Africa to refugee/asylum seeker parents who are now applying for their own permits after turning 18, persons in this situation would be entitled to make application for citizenship in South Africa. Alternatively, they could have had their South African citizenship revoked by legislation, such as the Citizenship Act, which was previously interpreted as revoking citizenship of individuals born to South African parents outside of South Africa. The 2020 Constitutional Court judgment *Chisuse and Others v Director-General, Department of Home Affairs and Another*, in which LHR represented five applicants born outside of South Africa to South African citizen parent, requires an interpretation of this act in line with the spirit of the Constitution, and therefore held that the applicants and those similarly placed (persons who are born to South African citizens abroad at any point before or after 2013) fall under section 2(1)(b) of the Citizenship Act and are therefore citizens by birth.<sup>49</sup> Given the very recent nature of the judgement, implementation remains to be seen and is an area ripe for close scrutiny.

In 2015, most of the survey respondents were asylum seekers, but there were several refugees seeking services at RROs, indicating that the potential for corruption continues even after an individual has attained status. The distribution included 795 asylum seekers (86%), 103 refugees (11%), and 28 undocumented migrants (3%). Two respondents did not report their status. Of those who claimed to be asylum seekers, 80% had valid permits at the time of the interview. Among reported refugees, 2 individuals stated that they did not have a valid refugee document or ID at the time of the interview. In contrast, the 2019 Corruption Survey asked 116 respondents to disclose their documentation status of which 105 did:

Documentation Status	Total Number of Respondents in 2019	Total Proportion (%) of Respondents in 2019
Asylum seeker	82	71%
Refugee	8	7%
Undocumented	10	9%
Citizen	1	1%
Permanent	1	1%
Expired	3	3%

<sup>49</sup> *Chisuse and Others v Director-General, Department of Home Affairs and Another [2020] ZACC 20*. The Constitutional Court, at para 78, found that the proper interpretation of the impugned provisions is:

*“the words ‘any person who is born in or outside the Republic, one of his or her parents, at the time of his or her birth, being a South African citizen’ mean a person who is a child of a South African citizen, regardless of when that person is born or whether that person is born inside or outside the Republic.”*

The 2019 Queuing Survey gathered data about when respondents first arrived in the country, which RRO they first visited, when they last visited an RRO, and which RRO they last visited. In total, 37% of Queuing Survey respondents arrived in South Africa between 2005-2012, while 51% had arrived since 2013. There was considerable diversity in the RROs which respondents first reported to:

RRO First Reported to	Total Proportion (%) of Respondents in 2019
Desmond Tutu (Marabastad)	3%
Musina	15%
Durban	24%
Port Elizabeth	-
Cape Town	20%
RROs that have closed <sup>50</sup>	18%
Not specified	8%

The vast majority of respondents last attended an RRO within the past three years. 4% attended in July-December 2017, 8% attended in 2018, and 80% attended in 2019. Of those respondents who attended in 2019, 82% attended in the last six months of the year.

Respondents almost uniformly last attended the RRO nearest the office where they completed the Queuing Survey. One hundred percent of respondents from LHR's Musina office last visited the Musina RRO, 98% of respondents from the Durban office last visited the Durban RRO, and 83% of respondents from the Cape Town office last visited the Cape Town RRO. The cumulative proportions from each RRO were:

<sup>50</sup> The Johannesburg RRO, to which 3% of respondents first reported was ordered to close in March 2011; The Tshwane Interim RRO, to which 14% of respondents first reported closed in 2016.

RRO Last Reported to	Total Proportion (%) of Respondents in 2019
Desmond Tutu (Marabastad)	4%
Musina	13%
Durban	33%
Port Elizabeth	1%
Cape Town	28%
RROs that have closed	17%
Not specified	4%

In contrast to the 2019 Queuing Survey, the 2019 Corruption Survey gathered detailed information about respondents' immigration status in South Africa. 91% of all Corruption Survey respondents indicated their immigration status. Of those respondents, 78% identified as asylum seekers, 8% as refugees, 10% as "undocumented", and 3% indicated their status as "expired". One respondent identified as "permanent resident" and one identified as a citizen.

Responses to the Corruption Survey also showed a distinction between self-identified asylum seekers and first-time asylum seekers. Of those who responded to the questions that asked whether the respondent was a first-time asylum seeker, half of those who identified as an "asylum seeker" identified as a "first-time asylum seeker". However, responses gathered from Musina indicated that 86% of respondents there were asylum seekers, whereas only 66% from Joburg-Pretoria identified as asylum seekers



### 4.3 RESULTS: CORRUPTION SURVEY 2015 VS 2019

In summary, the 2015 Survey revealed that corruption occurs at every point of the asylum process and continues even after asylum seekers obtain refugee status. The 2019 Surveys revealed that corruption still occurs at every point in the asylum system. While the surveys also highlight a slight improvement in the frequency of corruption at certain RROs, in comparison to the findings of the 2015 Survey, as well as the implementation of measures to address corruption, other findings suggest that there has in fact been an increase in the vulnerability of asylum seekers to corruption.

In the latter half of 2019, LHR conducted a survey of asylum seekers and refugees – persons who had used services at RROs in South Africa (the “2019 Corruption Survey”). The Survey was done through voluntary participation. Participants were not informed that the research was aimed at assessing corruption at RROs, but were simply asked if they would be available to participate in a survey to understand their experiences at RROs. This was done to ensure that selection bias was avoided. A cursory status determination was done with all survey participants to understand their reasons for being in South Africa. Results from this cursory status determination indicate that over 70% of the respondents had been victims of some form of persecution in their country of origin based on religion, political affiliation, sex, age or sexual orientation or gender identity. This indicates that the majority of this random sample have strong grounds for *de facto* refugee status. Such information contradicts the assertion often made by DHA that many persons seeking asylum in South Africa are not *de facto* refugees.

A detailed analysis of the 2019 Survey data is included below and organised into five subject matter categories: border crossings; accessing RROs; the application process; fines; and arrests and detention.

### 4.4 BORDER CROSSING: THE START OF THE JOURNEY

If a person entering South Africa wishes to seek asylum, and they enter through an official port of entry, then they may declare their intention to an immigration officer. In such cases, the law requires that they must be given a 5-day asylum transit permit.<sup>51</sup> This permit is intended to protect the individual until she can get to an RRO to make application for asylum. In cases where an asylum seeker enters the country through unofficial or irregular means, they are protected from arrest and detention if they declare that they have come to seek asylum, and should go to an RRO ‘without delay’.<sup>52</sup>

<sup>51</sup> Refugees Amendment Act supra note 5 at section 21(1)(a).

<sup>52</sup> Refugees Regulations supra note 6 at reg 8(4).

Corruption, however, starts at the border. The 2015 Survey found that many people seeking asylum were asked to pay bribes to enter South Africa.<sup>53</sup> Approximately 13% of those surveyed reported being asked for money by the border officials.<sup>54</sup> Of those, almost 1 in 4 paid more than R700. The highest amount reported was R2500. Asylum seekers who were unable to pay bribes faced the risk that border officials would turn them away. According to the Project Lokisa Report by CW, complainants reported that they had been turned away at border posts by immigration officials. Corruption at the border often took the form of asylum seekers having to pay additional bribes to border officials to facilitate entry. These practices cause people to enter South Africa irregularly and increases their risk of arrest and detention. These practices are also contrary to the principle of *non-refoulement*.

In line with the 2015 Survey, the research done in 2019 found that 10% of the 116 respondents who had completed the Corruption Survey reported being asked for money by an official to cross the border, through a regular border post, into South Africa. Eleven percent also reported that they had been arrested in South Africa for not having the correct documents before making it to an RRO, indicating that these people were either not supplied with proper documents at the border, could not make it from the border to the RRO within fourteen days, or they were arrested for reasons unrelated to their immigration status.

Asylum seekers and refugees' experiences travelling to RROs varied significantly depending on the location of people surveyed. The surveys gathered from Musina contrast starkly with the Corruption Survey dataset. Whereas only 25% of respondents from Musina reported difficulty getting to an RRO, 66% of respondents from Johannesburg and Pretoria reported having difficulties getting to an RRO. This is not surprising given Musina's proximity to Beitbridge, where 64% of Musina respondents reported crossing into South Africa.

## 4.5 GAINING ENTRANCE TO AN RRO: CORRUPT QUEUES AND BRIBED SERVICES

Upon first applying for asylum at an RRO, applicants are interviewed by an RSDO and provided with a form to complete. The form records the applicant's biographical information. Asylum seekers are then issued with a document in terms of section 22 of the Refugees Amendment Act, known as an asylum seeker permit/visa. This document is valid for varying amounts of time ranging from one month to six months. This allows the holder to legally stay in South Africa to work, study, and protects the holder from deportation, until a final decision is made on their asylum application.<sup>55</sup> Asylum seekers usually must return every three to six months to renew their permit. RROs provide many services that are vital to asylum seekers and refugees' everyday life in South Africa.

<sup>53</sup> LHR & ACMS supra note 46 at 11.

<sup>54</sup> LHR & ACMS supra note 39 at 24.

<sup>55</sup> This position has been altered by Regulation 12(5) of the Refugees Regulations supra note 6 which removes the previously automatic right to work and/or study. The Regulation states that "*Prior to issuing any right to seek employment to any asylum seeker, an assessment contemplated in section 22(6) of the Act must be completed*".

As demonstrated below, opportunities for corruption exist at many stages of the asylum application process.

Specific Instances of Corruption Reported while Queuing	Total Proportion (%) of Respondents in 2019
The respondent was required to pay to gain access to the RRO	32%
The respondent was denied access to the RRO	34%

Individuals must often make multiple visits to the office to address a single issue. These inefficiencies increase both the opportunities for and susceptibility to corruption as asylum seekers grow more desperate. Half of all 2019 Survey respondents reported that it was not the first time they had come to the RRO to address the issue they were there for on the day of the interview.

In the 2015 Survey, respondents reported similar rates of corruption during the queuing process. In particular,

*'Corruption proved to be a barrier to access, as 13% of the respondents indicated that they had at some point been unable to get inside the office because they did not pay. Here too, Marabastad had the worst record with 30% of respondents having not gained access as they had refused to pay a bribe.'*<sup>56</sup>

The 2015 Survey goes on further to note that once inside the RRO, respondents reported having to pay officials to have their issue resolved:

*'Inside the office it was primarily DHA officials who were linked to the corruption (62%), in comparison to security guards (17%). DHA interpreters were implicated by 10% of respondents and civilians by 7%. In general, 30% of respondents reported experiencing corruption at least once, 24% at least twice, 18% at least three times, 12% at least four times, and 10% at least five times.'*<sup>57</sup>

<sup>56</sup> LHR & ACMS supra note 46 at 29.

<sup>57</sup> Ibid at 30.

Overall, respondents experienced corruption on an average of 1 to 2 occasions. Gaining entry to RROs was found to be a major locus of exploitation. The struggle to obtain services further pressures those seeking assistance, incentivising them to pay to access assistance. The 2019 results reflected similarities to the 2015 Survey.

Thirty-five percent of respondents in the 2019 Survey had to make multiple attempts to get inside an RRO. One respondent reported that he attempted entry *“almost every day for 3 years”*. Reports indicated that joining queues from the early hours in the morning and remaining in queues for extended periods of time left respondents vulnerable to theft, exploitation, and opportunities for corruption.

The Respondent was asked to pay:	Total Proportion (%) of Respondents in 2019	Total Proportion (%) of Respondents in 2015
To make an application for asylum	6%	29%
For the assistance of an interpreter	11%	10%
For the assistance of an RSDO	9%	3%
A fine for a lost/expired permit	26%	14%
For the issuance of refugee documents	16%	16%
For the renewal of refugee documents	12%	6%
To avoid arrest	26%	11%
To be released from Lindela	2%	0,4%
To be released from jail	4%	1%

Different RROs posed different challenges to people seeking asylum. Eighty-four percent of people arriving in Musina knew that applying for asylum is free, either from signs at the RRO, by word of mouth amongst other asylum seekers, or by some other means. By comparison, only 46% of respondents surveyed in Johannesburg and Pretoria reported knowing that applying for asylum is free.

These information disparities are at least partially explained by reports about the offices' respective signage. While 70% of respondents from Musina reported seeing signs, only 30% of respondents from Johannesburg and Pretoria reported seeing informational signs. Such signage is important because it provides applicants with a basic understanding of the processes thereby ensuring they are less susceptible to exploitation.

Visible cameras in RROs are an important tool for investigators to deter, track, and prevent corruption in the asylum system. Only 18% of respondents from Musina noticed cameras at the RRO compared to 46% in Johannesburg and Pretoria. Additionally, only 25% of respondents from Musina reported having their permit renewals being electronically recorded by RRO staff compared to 72% in Gauteng offices.

## 4.6 THE APPLICATION PROCESS

As with the 2015 Survey, the 2019 results illustrate that the longer an individual is in the asylum system the greater the risk that they will experience corruption:

*'Inefficiencies in the asylum system increase the interactions that individuals have with the refugee reception offices, escalating both the opportunities and incentives for corruption. Just gaining entry into the office has become a major outlet for exploitation. The struggle to obtain services provides further pressures on those seeking assistance, incentivising them to pay in order to gain needed documents or other assistance.'*<sup>51</sup>

Asylum seekers and refugees require regular renewals of their documentation, which must be done at an RRO. Additional, documentation-related services, must also be done at an RRO, such as the registering of children in an asylum file, or an application for a refugee ID. The temporary nature of asylum documentation specifically makes the holder vulnerable to it expiring and thus to arrest, detention, and precarious access to social services. Under the 1998 Refugees Act,<sup>52</sup> a decision on one's asylum claim should be resolved within 180 days—as either rejection or confirmation refugee status. This time period, and accountability associated with it, has been discontinued in the Refugees Amendment Act, which came into effect in 2020. In addition, as the DHA notes, 117 991 active applications of 812 472 unprocessed applications have been in the system for five years or more (1825 days), and some have gone unresolved for more than a decade.<sup>53</sup>

<sup>58</sup> LHR & ACMS supra note 46 at 31.

<sup>59</sup> Refugees Act 130 of 1998.

<sup>60</sup> Parliamentary Monitoring Group 'Question NW1588 to the Minister of Home Affairs' available at <https://pmg.org.za/committee-question/13069/>

Once an application for asylum has been lodged, and the RSDO has duly conducted a hearing with the applicant, a decision must be made on such application. In this regard, the RSDO may either grant the application, in which case the applicant is awarded refugee status, or the RSDO may reject the application based on such application being manifestly unfounded or unfounded. An asylum seeker must report to the RRO at which their application was submitted in order to receive the outcome of the application in writing.<sup>61</sup> In the past, in the case of a manifestly unfounded application, the Refugees Amendment Act entitled the applicant to written reasons for such rejection. Later, the First Refugees Amendment Act entitled such applicant to within 14 days lodge written representations for consideration by SCRA against the decision.<sup>62</sup> However, with the introduction of the recent amendments, the right to appeal has seemingly dissolved. Once an application is rejected by the RSDO as manifestly unfounded, it is subject to automatic review by SCRA. SCRA is mandated to confirm, set aside, or substitute the RSDO's decision.<sup>63</sup> Once an RSDO's decision has been reviewed and confirmed by SCRA in this way, and the applicant has been duly notified in writing, such applicant must subsequently be dealt with as an "illegal foreigner".<sup>64</sup>

The RAB, previously established by the Refugees Act as the appeals authority for unfounded applications, has now been replaced by the RAA.<sup>65</sup> Once the RSDO decides to reject an application as unfounded, it may be reviewed similarly as above by SCRA. Upon receipt of the written rejection from the RSDO, the applicant is entitled to lodge an appeal to the RAA within 10 days of receipt thereof.<sup>66</sup> In this regard, the applicant must comprehensively detail the grounds of his appeal on Form 9 (RAA-01).

Regulation 16 further makes provision for the late submission of appeals in exceptional circumstances or where compelling reasons exist.<sup>67</sup> The exceptional circumstances listed in the Regulations as being compelling are:

- Institutionalization;
- Entry into a Witness Protection Programme;
- Quarantine;
- Arrest without bail; or
- Any other similar compelling reasons.

Moreover, applications for condonation must be accompanied by documentary evidence to prove the existence of such compelling grounds.

<sup>61</sup> Refugees Regulations supra note 6 at reg 14(8).

<sup>62</sup> Refugees Amendment Act supra note 5 at s 24A(1).

<sup>63</sup> Ibid s 24A(3).

<sup>64</sup> Immigration Act 13 of 2002 at s 32.

<sup>65</sup> Refugees Amendment Act supra note 5 at ch 2.

<sup>66</sup> Refugees Regulations supra note 6 at reg 16(1).

<sup>67</sup> Ibid reg 16(3).

After lodging an appeal, the failed asylum seeker is called by the RAA to appear at an appeal determination.<sup>68</sup> Should the asylum seeker fail to appear before the RAA, his appeal will be determined on the basis of documents already before the RAA at the discretion of the presiding member of the RAA.

If an asylum seeker fails to lodge an application, is not granted condonation, or if their appeal has been rejected, they must be dealt with as an “illegal foreigner” in terms of the provisions of the Immigration Act.<sup>69</sup>

With limited transparency and accountability, a backlog of cases, as well people desperate for refugee status, there are many opportunities for corruption. Between 2015 and 2019, it has been reported that 812 472 asylum applications remain unprocessed, 15% of which remain active.<sup>70</sup> Moreover, with the enactment of the Refugees Amendment Act, each RRO is required to have at least 1 ‘Status Determination Committee’ which must consist of at least 2 members<sup>71</sup> and it is this committee that is tasked with processing asylum applications – both new applications as well as the aforementioned outstanding applications. Both the 2015 and 2019 Surveys showed that corruption arises in many services for asylum seekers, such as payment for translation services, documentation, and RSDO services.

In the 2015 Survey, only 6% of respondents reported that an RSDO had asked them for money. At the Desmond Tutu RRO (previously Marabastad RRO) and Tshwane Interim RRO,<sup>72</sup> these numbers were 12% and 8%, respectively. Of the 32 respondents who reported being asked for money by an RSDO, 21 reported paying, but only six said that this resulted in their application being approved. In comparison, the 2019 Survey shows that 9% of respondents reported that they were required to pay an RSDO for assistance.

The 2015 Survey further indicated that 56% of respondents had been in the asylum system for over 180 days, 47% had been in the system for at least one year, 37% had been in the system for at least 2 years, and 14% had been in the system for at least 5 years. As noted above, the 2015 Survey further outlined the many respondents who had to visit the office repeatedly for a single issue. Consistent with this, 38% of respondents reported that they did not receive their asylum permit the first time they came to a refugee reception office. Overall, 12% of respondents indicated that they had at some point been asked for money in exchange for receiving an asylum seeker permit, with the highest proportion of these requests coming from DHA officials (43%) and security guards (19%). Moreover, among respondents who needed to replace a lost or stolen permit, 14% indicated that they were asked to pay to get it replaced. These payments were not in the form of a fine. The high number of renewals also creates opportunity for corruption. Respondents had renewed their permits an average of 5.4 times. When first time applicants are excluded from the sample, this average rose to 6.54. Twelve percent (12%) of respondents had paid at least once to renew their permits, 8% at least twice, 6% at least three times, 4% at least four times, and 3% at least five times. Respondents reported paying DHA officials (27%), security guards (22%), or both (16%). They also paid agents/civilians both inside and outside of the office (15%), including former DHA interpreters. A few indicated paying existing DHA interpreters as well. Corruption affected the ability of some asylum seekers to get documents: 7% of respondents said that they were unable to renew permits because they could not pay. At Pretoria, the proportion was 11%.

<sup>68</sup> Ibid reg 16(5).

<sup>69</sup> Ibid reg 16(4).

<sup>70</sup> Refugees Amendment Act supra note 5 at s 8(2).

<sup>71</sup> Refugees Amendment Act supra note 5 at s 8(2).

<sup>72</sup> The Tshwane Interim RRO was opened to provide capacity to the Pretoria RRO

Although relatively few respondents reported being asked for money by a RSDO in the 2019 Surveys, several respondents referred to “buying” refugee status from people who approached asylum seekers waiting outside of the offices and had links to officials working inside. This suggests that corruption around refugee status is not limited to the status determination interview but is instead taking place at other stages of the process. It also highlights the multiple actors that are involved in corruption. Corruption around refugee documents is just one of the mechanisms through which refugee status has become detached from protection needs, distorting the integrity of the system.

The process for applying for asylum in South Africa puts both financial and physical strain on asylum seekers. Compounding these challenges, asylum seekers often do not live near an RRO.

The 2019 Corruption Survey results show that 41% of applicants had to return for renewal of their permit, 29% of these had to return more than five times, and 21% had to return between one and three times. Limited extension periods given for Section 22 permits—of anywhere between one and six months—make this an often tiresome and expensive task. In comparison, although the 2015 Survey results do not document the number of times respondents returned to RROs to renew their permits, it *does* document the number of times respondents were required to pay for such renewal:

Number of Times that Respondents were made to Pay for Renewal	Total Proportion (%) of Respondents in 2015
At least 5 times	3%
At least 4 times	4%
At least 3 times	6%
At least 2 times	8%
At least 1 time	12%



An Amnesty International South Africa report: *Living in Limbo* (2019) indicated that asylum seekers in Cape Town and Port Elizabeth who had to travel to an RRO that could service them took a trip

*'which ranges between 900km and 1,900km depending on the destination, takes a day or more and the cost of travel, accommodation, and food ranges anywhere from R900 (\$62) to over R5,000 (\$342) per trip'.<sup>73</sup>*

This raises serious questions about the social, economic and cultural means of refugees and asylum seekers with respect to their livelihoods. For people who largely form part of the informal economy, due to the nature of their documentation, this is a costly process that places a strain on women and families.

Surveys indicate a sharp difference in the rate of corruption when non-nationals apply for asylum at different RROs. Whereas only 1 respondent in Musina reported being solicited to pay for refugee documents, 25% of respondents surveyed in Johannesburg and Pretoria reported being solicited to pay. Twenty-one percent of respondents from Johannesburg and Pretoria paid to get their permits renewed.

The Corruption Surveys indicate that only 9% of respondents were aware that official interpreters were available in RROs at no cost, while 12% reported being forced to pay for interpreter assistance. 10% of respondents were solicited to pay for a refugee determination officer to assist them. These numbers suggest that many asylum seekers are not given the resources they need to make proper asylum claims. They also indicate that RROs likely do not have sufficient resources to comply with the law.

People applying for asylum also face challenges posed directly by RRO staff. Forty-six percent of respondents to the Corruption Survey reported feeling an "unwelcoming or hostile" attitude on the part of a RSDO, while 35% reported feeling discriminated against by RRO staff.

These numbers are concerning. Only 6% of respondents were made aware of procedures for complaining about officers' conduct at RROs. The same number reported using the complaint procedures available to them. These numbers suggest that anyone made aware of a system for making complaints attempts to use it.

## 4.7 FINES

Prior to the Refugees Amendment Act coming into force in 2020, asylum seekers who are unable to renew their permit within the time period stipulated on their document had to pay a fine of up to R2500.00.<sup>74</sup> An asylum seeker was not required to pay a fine or be imprisoned if they can show that they have a "just cause" for failing to renew their permit. The Refugees Amendment Act, however, does not define "just cause"—leaving room for ambiguity and disparate applications of the law.

<sup>73</sup> Amnesty International *Living in limbo: rights of asylum seekers denied* (2019).

<sup>74</sup> This was the position prior to the Refugees Amendment Act supra note 5.

For several years before 2015, the DHA issued fines for lost or expired permits. Individuals could either pay the fine (by admitting guilt) or go to court to challenge the fine. Under the Criminal Procedures Act,<sup>75</sup> a properly administered fine can only be paid at a police station or a court and must be accompanied with a receipt. The decision to send an asylum seeker to court is up to the immigration officials at RROs. This creates an opportunity for bribery, for the asylum seeker to avoid going to court. While fining under certain circumstances is legal, the 2015 and 2019 Survey responses suggest that fines are likely not always implemented properly and may in some instances be veiled forms of corruption.

Eleven percent of respondents indicated that they had been fined for either a lost (32 respondents) or expired (71 respondents) permit. Ten respondents reported that they had been fined more than once. For those with expired permits, the table below shows how long their permits had been expired.

Length of permit expiration	Number of respondents
1-5 days	11
5 days-3 months	32
3-6 months	10
6-9 months	6
9 months-1 years	2
More than 1 year	10

Seventy-nine percent of respondents answered negatively when asked if anyone had explained their rights regarding the actions they could take in relation to the fine; roughly the same proportion indicated that they did not understand these rights, including that they had the option to challenge the fine in court.

The cost of the fines imposed varied widely, suggesting either irregularities or an unregulated individual discretion in the fining process. Similarly, although fines are required by law to be paid at the police station or court, the vast majority of respondents indicated that they were told to pay these elsewhere, further indicating concerning irregularities in this process.

<sup>75</sup> Criminal Procedures Act 51 of 1977.

The table below outlines the percentage of the 111 participants in the Corruption Survey who paid fines:

Fine	Proportion of Respondents
For lost or expired permit	26%
Fine for lost or expired permit 1-3 times	20%
Was issued with a receipt after paying the fine	16%

Among the 36 respondents who did not pay the demanded fine, 27 said that it was because they could not afford it. Three individuals were still in the process of paying or challenging the fine. One person said that he had given up. Another feared being arrested if he returned to the RRO. Three people successfully challenged the fine in court. Asked if they had ever remained undocumented because they could not pay a fine, 34 respondents replied affirmatively and seven stated that they were arrested during this period.

The fining process links documentation to an individual's ability to pay. This poses the risk that people with valid asylum claims who cannot safely return to their countries of origin may be denied documentation and ultimately risk deportation without any assessment of their protection needs. These risks are increased when corruption prevents individuals from obtaining or renewing documents.

The Queuing Survey also asked questions regarding actions taken after fines had been paid. Of 113 responses to the question, "Were you informed that you were allowed to renew/replace your status documents even if you incurred a fine?" only 22% were affirmative, while 65% were "no" and the rest responded "unsure". In addition, 22 respondents said that the question was not applicable to them. Of these "not applicable" responses, 78% were from the Durban office. The individual who administered the Queuing Surveys in Durban reported that all of the "not applicable" responses were due to respondents being literally unable to enter the Durban office via the queue. Some respondents reported waiting for days without being granted access to the RRO.

The Queuing Survey highlighted a troubling trend in RROs regarding the administration of fines: 68% of respondents indicated that they did not notice any signs at the RRO stating that no payment is necessary to renew or replace asylum documents. This trend was especially pronounced among responses from the Cape Town survey, where only 10% of respondents said that they had seen that sort of sign. By contrast, 25% of respondents from Johannesburg and Pretoria said the same.

### 4.8 ARRESTS AND DETENTION: POLICING MIGRATION

As DHA has become increasingly ineffective in implementing its mandate to manage immigration and implement an effective asylum regime, it has resorted to increasing the use of arbitrary arrest and deportation of people. A report by The African Centre for Migration & Society (2018) titled *Free and Safe Movement in South Africa*, noted that "migrants in South Africa, both documented and undocumented, generally have some restrictions on movement due to fear of prejudice or being victims of police brutality".<sup>76</sup> Thirty-six percent of respondents to the 2019 Corruption Survey had been stopped by police to ask for documentation fewer than five times a month.

<sup>76</sup> ACMS *Free and Safe Movement in Southern Africa, Research to promote people's safe and unencumbered movement across international borders* (2018).

According to figures given by the DHA: “[d]eportation figures compiled by the DHA show a steady increase in the number of annual deportations to 209 988 in 2005 from 180 713 in 1996. Deportations reached a peak of 312 733 in 2007...” The latest deportation figures available from the DHA show that 24 266 people were deported from 2018-2019.<sup>77</sup>

This has been aided by a strong move towards a securitised approach to migration, ‘protecting’ the sovereignty of South Africa by using a ‘risk-based approach to migration’ as opposed to a protection-based approach which is more applicable in the asylum context. This is reflected in several ways. First, in 2017, the DHA was repositioned into the government’s Justice and Security Cluster. Further, the DHA 2020-2025 strategic planning report states that the DHA is “positioned within the security system of the state so that it contributes to national security and is able to protect its people, systems and data. This will better enable DHA to deliver against its full mandate as a critical enabler of inclusive economic development, and national security.”<sup>78</sup> Second, the Border Management Agency Bill was passed in March 2020 and has been recently signed into law by the President<sup>79</sup> – a controversial policy, which, inter alia, implements a more securitised and militarised presence on South African borders. This bill and the repositioning of DHA allows DHA to work alongside SAPS, the South African National Defence Force (SANDF) and other departments to curtail the “crisis” DHA attributes to undocumented migrants. DHA, however, has largely failed to document people. As a result, these new policies and repositioning will likely lead to an increase in the number of unlawful arrests and deportations.

The 2015 Survey showed that 56% of respondents had been stopped by government officials and asked to show their papers. While the average number of stops was three, those who answered affirmatively to this question were stopped an average of five times. 13% reported being arrested because of their documentation, while 11% reported paying an immigration or police officer to avoid arrest.

In terms of the 2019 Survey, in Musina, 5% of respondents paid a police officer to avoid arrest, while in Johannesburg and Pretoria, 42% paid a police officer to avoid arrest. One respondent surveyed in LHR’s Johannesburg office was kept in detention and asked to pay R20,000 for his release.

<sup>77</sup> Jan Bornman ‘How Lindela became Bosasa’s meal ticket’ New Frame 9 December 2019, available at <https://www.newframe.com/how-lindela-became-bosasa-meal-ticket/>, accessed on 7 April 2020

<sup>78</sup> Department of Home Affairs ‘Strategic plan’ available at [http://www.dha.gov.za/images/FILES2/DHA\\_Strategic\\_Plan2020\\_25\\_WEB.pdf](http://www.dha.gov.za/images/FILES2/DHA_Strategic_Plan2020_25_WEB.pdf), accessed on 7 April 2020.

<sup>79</sup> The Presidency of the Republic of South Africa ‘President Ramaphosa signs Border Management Authority Bill into law’ available at <http://www.thepresidency.gov.za/press-statements/president-ramaphosa-signs-border-management-authority-bill-law>

Johannesburg and Pretoria:

Reason for payment	Number of respondents	Proportion of total respondents
Pay a police officer to avoid arrest	28	42%
Pay an official to avoid deportation	7	11%
Paid to get out of jail	5	8%

Musina:

Situation	Number of respondents	Proportion of total respondents
Arrested prior to reaching an RRO	3	7%
Was informed of rights upon arrest	1	2%
Was physically, emotionally, verbally, or mentally abused while in police custody	2	5%
Went to court upon arrest	1	2%

These results are not surprising given the Musina's RRO's proximity to the border. Asylum seekers who must travel further into South Africa are—all other things being equal—may be at greater risk of encountering corrupt practices than those who travel shorter distances because those who travel further likely encounter more government officials than those who do not. Consistent with this analysis, surveys gathered in Johannesburg and Pretoria differed starkly from those gathered in Musina:

Situation	Number of respondents	Proportion of total respondents
Arrested prior to reaching an RRO	10	15%
Was informed of rights upon arrest	0	0
Was physically, emotionally, verbally, or mentally abused while in police custody	8	12%
Went to court upon arrest	3	5%

One respondent to the Johannesburg office's Corruption Survey reported being held in detention for two days because he did not have any money. Eight of the 10 who were arrested before they reached an RRO were physically, emotionally, verbally, or mentally abused while in police custody. One stated, *"I had been raped but when I reported [to SAPS], I was told to go back where I came from"*. Five of the 10 had to pay to get out of jail.

Arbitrary arrest, detention, and deportation of migrants in South Africa is well documented and research supports the results uncovered by the 2015 and 2019 Surveys. Indeed, it has been noted that the government's main response to increased migration to South Africa has been arrest and deportation.<sup>80</sup> Many of these arrests, happen outside of the appropriate legal frameworks and procedures. As a result, hallmarks of the government's response include the use of force, discrimination, and corruption. The crisis in the asylum system provides an opportunity for arbitrary arrest and detention of people who are—because of the system—unable to document themselves.

<sup>80</sup> Alexandra Hiropoulos *Migration and Detention in South Africa: A review of the applicability and impact of the legislative framework on foreign nationals* (2017).

# 5.

## REPORTING CORRUPTION

There is limited recourse for asylum seekers and refugees seeking to report corruption. Moreover, reporting corruption may put complainants at risk of detention, deportation, or mistreatment by public officials.

### 5.1 2015 CORRUPTION REPORTS IN THE ASYLUM SYSTEM

In 2015, only 3% of respondents attempted to report corruption to the police, the DHA, or an NGO. None reported any results from these efforts. A few who reported corruption described being told to go back to their country. The study further indicated that the anti-corruption unit has proven largely ineffective in responding to allegations of corruption made by asylum seekers or the NGOs representing them. Recent collaborations between NGOs and DHA have led to investigations and disciplinary proceedings, but they remain limited in scope. For instance, on 6 September 2018 Corruption Watch reported its numerous attempts to engage the DHA on issues of corruption:

*'Corruption Watch (CW) has today written to Parliament's Portfolio Committee on Home Affairs in respect of the rampant corruption and maladministration that continues unabated at the Desmond Tutu Refugee Reception Centre in Marabastad, Pretoria – a dire state of affairs which has recently caused committee members to discuss the need for urgent steps to be taken. However, CW has highlighted in its letter how it has tried for many years to work with the Department of Home Affairs (DHA) to resolve this issue and to pressure the DHA into taking more urgent and meaningful steps to address corruption at Marabastad.'*<sup>81</sup>

<sup>81</sup> Corruption Watch 'CW raises concerns over unchecked corruption at refugee centre' 6 September 2018 available at <https://www.corruptionwatch.org.za/cw-raises-concerns-unchecked-corruption-desmond-tutu-refugee-centre/>



## 5.2 2019 CORRUPTION REPORTS IN THE ASYLUM SYSTEM

The 2019 Surveys cumulative data from across all responses indicate that most respondents are unaware of the formal processes for reporting corruption:

Question	Yes	No	Unsure
Have you or someone you know ever anonymously reported corruption?	18%	79%	4%
Do you know if there is any formal process in place for investigating corruption?	13%	81%	6%
Have you seen a post or notice with instructions about how to report corruption?	25%	67%	8%
Were you assured that you would not be punished if you reported corruption?	16%	55%	29%
If you were involved in an investigatory process, did you find that the process was sensitive to your situation?	5%	26%	69%

One respondent to the Johannesburg office’s Corruption Survey reported being held in detention for two days because he did not have any money. Eight of the 10 who were arrested before they reached an RRO were physically, emotionally, verbally, or mentally abused while in police custody. One stated, *“I had been raped but when I reported [to SAPS], I was told to go back where I came from”*. Five of the 10 had to pay to get out of jail.

Arbitrary arrest, detention, and deportation of migrants in South Africa is well documented and research supports the results uncovered by the 2015 and 2019 Surveys. Indeed, it has been noted that the government’s main response to increased migration to South Africa has been arrest and deportation.<sup>73</sup> Many of these arrests, happen outside of the appropriate legal frameworks and procedures. As a result, hallmarks of the government’s response include the use of force, discrimination, and corruption. The crisis in the asylum system provides an opportunity for arbitrary arrest and detention of people who are—because of the system—unable to document themselves.

Most respondents were unaware that they could report corruption, that there were formal processes in place for investigating corruption, and that they should be free from reprisal for reporting corruption.

However, it is worth noting that the DHA has, since the 2015 Survey, attempted to put in place various anti-corruption mechanisms.<sup>82</sup> This includes the introduction of the integrity measures in the Refugees Amendment Act, intended for

*'all members and administrative staff of the Standing Committee, Refugee Appeals Authority and all members of staff at any Refugee Reception Office, including persons who are not members of staff but who perform any function at such an Office'*<sup>83</sup>

And which were legislated for the purposes of

*'combating or preventing fraud, corruption or any crime of which dishonesty is an element; and enhancing the integrity of, and confidence in, the asylum seeker and refugee system.'*<sup>84</sup>

Moreover, on the basis of the data obtained in respect of the 2019 Survey, it appears that either these formal anti-corruption processes are not being effectively implemented or that no clear communications strategy has been developed to educate asylum seekers and refugees about these anti-corruption processes.

<sup>82</sup> Department of Home Affairs 'Counter Corruption and Security' available at <http://www.dha.gov.za/index.php/ministry/29-counter-corruption-security/79-counter-corruption-security>

<sup>83</sup> Refugees Amendment Act supra note 5 at s 20A(1).

<sup>84</sup> Ibid at s 20A(1)(a) – (b).

# 6. CONSIDERING CORRUPTION IN THE ASYLUM SYSTEM

## 6.1 WHY CORRUPTION MATTERS

South African citizens have benefitted from the DHA's efforts to improve its services. This includes the issuing of birth and death registration, identification documents, and passports. In April 2018, under the leadership of Malusi Gigaba, the DHA launched a 'war on queues' campaign 'to ensure that clients who visit Home Affairs offices are served in a dignified manner'.<sup>85</sup> As a result, South African citizens have received their documents in a more timely and efficient manner. This has, however been to the detriment of immigration services, in line with an unprecedented move towards a securitised approach to migration. The securitised approach reflects a deeply xenophobic attitude towards Black African people coming into South Africa.

Ever-increasing demand on the asylum system has provided new space for corruption. South Africa remains one of the top global recipients of asylum seekers, but the effect on the asylum system is not the only reason to be concerned about corruption. Corruption in the asylum system contravenes the rule of law and taints public service institutions, thereby threatening every person who lives in South Africa. In the words of former UN Secretary General Kofi Annan:

*'It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life, and allows organized crime, terrorism and other treats to human security to flourish...Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a government's ability to provide basic services, feeding inequality and injustice, and discouraging foreign investment and aid. Corruption is a key element in economic under-performance, and a major obstacle to poverty alleviation and development.'*<sup>86</sup>

In other words, the effects of corruption are not limited to those who are forced to pay but are pervasive.

<sup>85</sup> Department of Home Affairs 'Minister Gigaba to launch "war on queues" campaign' available at <http://www.dha.gov.za/index.php/statements-speeches/1114-minister-gigaba-to-launch-war-on-queues-campaign>

<sup>86</sup> UNODC 'Corruption' available at <https://www.unodc.org/ropan/en/AntiCorruptionARAC/unodc-and-corruption.html>

## 6. CONSIDERING CORRUPTION IN THE ASYLUM SYSTEM

In South Africa, a member of the Gauteng Provincial Legislature spoke about the economic implications of corruption in the tender process: "Rational incentives and a corruption-free tender processes are the best way to broaden opportunities for those who were previously excluded", while corruption impedes economic growth and job creation. The effects of a skewed incentive structure are not limited to the tender process but affect all areas in which corruption prevails.

In addition to the economic repercussions of corruption, the fundamental elements of a well-functioning democracy – accountability, the rule of law, and administrative fairness – depend on a corruption-free system. As demonstrated by the most corrupt states today, democracy and governance become severely weakened and are at dire risk of breaking down the fundamental institutions that are responsible for the well-being of every segment of the population. Corrupt practices not only incapacitate government and breed grounds for opportunism, but they make it exceedingly difficult to overcome such corruption and enforce the rule of law, which would set back a newly democratic country such as South Africa and diminish its progress. Critically, a state riddled with corruption indicates the diminishing of social, political, and civil rights for individuals.

For these reasons, it is important to understand the contributing factors and levels of corruption that exist in the asylum system.

### 6.2 CONDITIONS FOSTERING CORRUPTION

#### 6.2.1 2015 conditions

The DHA's reaction to the challenges facing the asylum system has fostered opportunities for corruption. Having little experience with immigration under the closed system of apartheid, the government did not anticipate the large numbers of asylum seekers who would arrive in the country. As demand grew and individuals faced long queues and delays in service, conditions became ripe for corruption. Once these issues became clear, the DHA could have taken remedial action by enacting better immigration policy or devoting greater resources to the asylum system. Instead, until 2015, the DHA maintained the status quo and shifted focus onto the migrants themselves, allowing its inaction to exacerbate the crisis.

In 2015, the DHA had also taken actions that have intensified the problems around service. The highly contested decisions to close the Johannesburg, Cape Town, and Port Elizabeth RRO offices in 2011 and 2012 have ensured that demand continued to outstrip capacity, increasing the incentives for corruption. The consequences of these decisions are still being felt in the long queue times at the few remaining RROs. A further measure by DHA has resulted in increased demand at the RROs is the short timeframes required for permit renewals. This means more staff hours are spent on renewals, and more visits to the RROs are required of permit holders. This decreased DHA capacity, but has also increased the amount of interactions that the individual asylum seeker has to have at an RRO.

## 6. CONSIDERING CORRUPTION IN THE ASYLUM SYSTEM

At the micro level, the government focused little attention on the quality of the status determination process or on the management of RROs.<sup>87</sup> As demonstrated by the DHA in 2015, efforts have been more geared toward demand, which has involved blocking access to services with the objective of decreasing the number of individuals entering the asylum system—often disparaging them as “economic migrants” and thereby undeserving. This has given rise to a situation in which there is often no link between an individual’s asylum claim and the decision the individual receives.

As opportunities for obtaining documentation have narrowed, incentives for illicit payments have increased; when an individual is desperate to avoid a jurisdiction where she is persecuted but that is not recognised in the status determination she receives, it may drive her next steps in attempting to remain in the relative safety of South Africa. Individuals thus typically remain in the system for several years, increasing opportunities for corruption to occur. Although the DHA had stated its commitment to rooting out corruption, it has failed to recognise the link between the quality of management and service provided and the flourishing of corruption.

### 6.2.2 2019 Conditions fostering Corruption

Limited number of RROs, and limited geographic spread, despite Court Orders mandating the re-establishment of a fully functional RRO in Cape Town, for example;

- Limited capacity at RROs;
- Decreased staff compliment at RROs -since 2015 there has been a steady decrease in the number of RSDOs at the various offices;
- Short-term renewal periods for documentation, which increase staff hours needed for renewals as well as number of times an individual must attend an RRO.

<sup>87</sup> Amit supra note 43.

# 7.

## THE DHA'S RESPONSE TO CORRUPTION

### 7.1 BEFORE 2015

In the past, the DHA had repeatedly acknowledged the problem of corruption, without crafting an effective response. In May 2010, DHA acknowledged in a presentation to Parliament that placing decision-making responsibility in the hands of one individual increased the susceptibility to corruption.<sup>88</sup> In September 2011, the Minister of Home Affairs said that allegations of physical abuse and corruption at the Desmond Tutu RRO were being investigated together with other corruption allegations, while noting that the counter-corruption unit had not received any formal complaints. In November 2014, DHA implemented several changes at the Desmond Tutu RRO, including new management and a new security company.

In its 2012/2013 Annual Report, the DHA stated that it would 'spare no effort to remove' corrupt officials "from the public service". The report referenced 68 disciplinary actions for fraud and corruption, but it provided no details on these actions or on the broader efforts to combat corruption. Nor is it clear whether any of these actions targeted the country's refugee reception offices. In a March 2014 response to a parliamentary question, DHA stated that it had identified 387 cases of corruption in the 2012/13 financial year. The breakdown of these cases for that and the previous two years involved only one case from the asylum system.

The DHA's counter-corruption unit is mandated to prevent, combat, and investigate corruption. But interactions with the unit suggest that it is largely reactive rather than proactive. One individual's experience with this unit highlights its limitations. In July 2014, an asylum seeker told LHR that an RSDO at the Desmond Tutu RRO asked her for R2500 in exchange for refugee status. LHR contacted the counter-corruption unit, which agreed to set up a sting operation. As part of the operation, the police would provide R2500 in marked notes and obtain a court order authorising the arrest of the RSDO.

<sup>88</sup> Department of Home Affairs 'Annual Report 2010/11' (2010).

A week later, the counter-corruption unit asked whether LHR or its client could provide a portion of the R2500. After LHR rejected this possibility, officers from the unit began pressuring the client to contribute money for the operation. When LHR expressed its concerns over the way the operation was being managed, officers from the counter-corruption unit criticised the organisation for forcing its client to withdraw from the operation.

The officers again contacted the client directly and threatened to arrest her for non-cooperation, in addition, they suggested completing the operation with counterfeit notes, promising to get her released if she was arrested on counterfeiting charges. LHR then spoke to the unit's manager, who agreed to investigate but did not follow up with LHR. In October 2014, the manager of the Desmond Tutu RRO (previously Marabastad RRO) requested contact details for the client to discuss the corruption allegations. Fearing that this would subject the client to intimidation at the RRO, LHR declined to provide this information. Subsequently, the new centre manager at Pretoria arranged for the client to undergo another status determination interview and she was granted refugee status.

LHR continued to work with the DHA on behalf of its clients who have experienced corruption, but these arrangements rest on LHR providing client complaints in affidavit form before the DHA will investigate. While the DHA began implementing disciplinary proceedings in response to these affidavits, the evidentiary burden remained on the asylum seeker to provide names and specifics. Asylum seekers would have to be willing to come forward, despite fear of reprisals. The DHA would not target the wider processes outside of these individual complaints.

In Cape Town, the Scalabrini Centre's attempts to follow up on behalf of clients who experienced corruption were also met with limited response in the period prior to 2015. DHA officials sought to investigate those officials responsible, but their responses have been narrowly focused and, as in the LHR cases, place most of the investigatory burden on the clients or representatives from Scalabrini. In one such case, the DHA officials also indicated that they intended to charge Scalabrini Centre's clients who had unwittingly participated in the corruption and then reported it. The clients continued to assist in the investigation only after Scalabrini Centre received assurances from the NPA that they would not prosecute.

These examples show that pre-2015, although the DHA has at times responded to individual allegations of corruption, it had avoided conducting broader investigations, leaving its efforts largely reactive. The focus on specific individuals in the absence of broader efforts to target corruption had done little to alleviate the structural problem, allowing corruption to flourish even as certain corrupt individuals were rooted out.

## 7.2 2015 TO 2019

In the period post 2015, the DHA has put its steps to respond to reports of corruption to paper. In its Strategic Plan 2015 – 2020 (the Plan),<sup>89</sup> the DHA identified “effective and efficient management of the asylum seeker and refugee environment...”; the “fight against unlawful activities”; and “[e]nsuring staff are appropriately trained, professional and caring with the required leadership and management capabilities” as among the specific challenges facing the DHA.<sup>90</sup> Each of these challenges bore especially on the DHA’s system for administering to asylum seekers. The Plan identified some strategic initiatives to address these challenges. The proposed remedies for these challenges include “front office improvement”, professionalising the DHA “through developing officials that are ethical, patriotic and professional”, and “[v]isible and firm action in the fight against corruption and criminal syndicates”.<sup>91</sup>

While LHR’s surveys show some evidence of improved front offices, such as additional informational signs posted at the RRO in Musina, electronically recorded permit renewals, and efforts to eliminate long queues, significant problems remain. Survey respondents who attempted to visit the Durban RRO, for example, often found it impossible to even access the building due to overflowing and mismanaged queues. As a result, 90% of respondents who attempted to visit the Durban RRO did not know that there was a formal process in place for investigating corruption, and a further 90% did not see signs indicating that no payment was necessary to renew or replace asylum documents.

These problems are partly attributable to a lack of resources at DHA. The 2019 Auditor-General’s report on the asylum system concluded that “[t]he asylum regime is not managed to conclude the [status determination] process within a reasonable period and asylum seekers remain in the country for extended periods of time.”<sup>92</sup> The Auditor-General identified a lack of leadership and oversight; poor project management and a lack of operational efficiencies; a lack of integrated, efficient and effective processes and systems; and poor intergovernmental coordination on strategic and operational levels as root causes of the DHA’s deficiencies”. Nevertheless, they are significant gaps that must be filled if corruption at DHA is to be sustainably addressed.

<sup>89</sup> Department of Home Affairs ‘Strategic Plan 2015-2020’ (2015).

<sup>90</sup> Ibid 19.

<sup>91</sup> Ibid.

<sup>92</sup> Auditor-General South Africa supra note 42.



### 7.3 2015 VS 2019: THE BIG DIFFERENCES

Responses to the 2015 and 2019 Surveys indicate continued troubling patterns in RRO management as well as abusive practices by some RRO staff. Responses also indicate, however, that some RROs are actively working to resolve some of these major crises undermining the integrity of South Africa's asylum system.

Recent evidence from Musina, for example, indicates that while the Musina RRO still shows a troubling pattern of dismissing virtually every application for asylum as "unfounded" or "manifestly unfounded", it has taken steps to address systemic inefficiency. Common problems in the queue systems at RROs include applicants' being asked for bribes while they wait to be served by a refugee reception officer (or, sometimes, while they wait to even enter the RRO) and prohibitively long waiting times. Some applicants report having to visit RROs multiple times to be served even once. In response, the Musina RRO has instituted an appointment-based system. Applicants report visiting the RRO, booking an appointment to meet with a Refugee Status Determination Officer, and then meeting with a status determination officer at the appointed time.

The principal upside to this approach is that it effectively eliminates the need for RRO waiting areas, as well as opportunities for corrupt officials to solicit or demand bribes from waiting applicants. Moreover, it eliminates a need to *wait at the RRO*, a sometimes-lengthy period which many applicants cannot afford to take off from work or childcare.

The downside to this approach is that it violates the letter of the law. People waiting to apply for status at the RRO should not be turned away without being provided with documentation to which they are validly entitled. The appointment-based system could be improved upon by providing applicants a means to book appointments online or by phone, so that they can book an appointment for as soon as they expect to arrive at the RRO.

This is obviously one intervention amongst many that are likely required across RROs throughout the country if South Africa is to fully address systemic corruption within its asylum process. The experiences of participants in the migrant system, including asylum-seekers and refugees, set out in this report suggest that, as in 2015, access, documentation, status, and renewals continue to be frequently linked to payment, in contravention of the law. Inefficiencies in the system result in asylum seekers remaining within this system for extended periods of time, resulting in further opportunities for corruption and increasing desperation on the part of asylum-seekers to obtain a more permanent status. As set out below, revision to a range of practices is necessary to shift the experience of asylum seekers from despair and acquiescence, to expedient, respectful handling of their claims as they seek better, safer lives.

# 8.

# CONCLUSION & RECOMMENDATIONS

While some progress has been made since the 2015 Survey was published, it has simply not been enough. Recommendations for improvement follow below:

## 8.1 QUEUING

- Reopen a fully functional RRO in Cape Town (notably, since this recommendation in 2015, the Courts have also ruled that the decision to close the CTRRO was unlawful. The DHA has, to date, not complied with the Court Order to open and maintain a fully functional RRO in Cape Town).
- Capacitate the Port Elizabeth with staff and resources to be fully functional.
- Forward refugee status to asylum seekers with active section 22 permits for more than five years.
- Provide waiting areas in all RROs or develop an appointment-based system that does not expose waiting asylum applicants to legal jeopardy.

## 8.2 RSDO DECISION MAKING

- Ensure that all RSDO staff are trained in Refugee Law and International Refugee Law.
- Provide sensitivity training to all RSDO staff.
- Ensure that country of origin information files are kept up-to-date and that RSDOs are familiar with the country contexts from which different asylum seekers may be fleeing.
- Ensure that decisions of asylum applications are not generic and reflect the individual's application.

## 8.3 ASYLUM APPLICATIONS AND BACKLOG

- Prioritise and facilitate long-term asylum seekers caught in the backlog to renew their documents at any RRO throughout South Africa.

### 8.4 REPORTING AND RESPONDING TO CORRUPTION AND CONDUCT

- Ensure that there are safe and easy ways for people to report corruption.
- Create anonymous forms for reporting corruption which are easily accessible and returnable.
- Work alongside civil-society organisations to educate and inform refugee and asylum-seeking populations on their rights and responsibilities.
- Make processes for reporting corruption safer and institute new mechanisms to hold state agents accountable for corrupt behaviour.
- Codify new corruption policy in legislation.
- Create an independent body where corruption can be reported and investigated.

### 8.5 FINES

- If any administrative fine is incurred in any process, the DHA must ensure that there are posters and signage which clearly explain the fining process, a person's rights, and applicable costs in all RRO offices. The long-term consequences of such fine must also be explained, including whether the fine is an admission of guilt fine that will attract a criminal record.

### 8.6 POLICY

- Adopt policy measures which will bolster the integrity of South Africa's urban refugee system. This includes making RROs easily accessible and efficient.
- Ensure effective alternative low-skilled visa regimes are available for persons from SADC countries allowing for an alternative avenue for people to legalise their stay coupled with efforts to increase capacity in the asylum management system.

TO REPORT CORRUPTION, PLEASE  
CONTACT THE ORGANISATIONS BELOW:

## LAWYERS FOR HUMAN RIGHTS

### PRETORIA OFFICE

**Address:** 357 Visagie Street, Pretoria Central

**Tel:** +27 12 320 2943

 [www.facebook.com/LawyersForHumanRights](https://www.facebook.com/LawyersForHumanRights)

 [twitter.com/LHR\\_SA](https://twitter.com/LHR_SA)

[www.lhr.org.za](http://www.lhr.org.za)



### SCALABRINI CENTRE

**Address:** 47 Commercial Street, Cape Town

**Tel:** +27 21 465 6433 | **Email:** [info@scalabrini.org.za](mailto:info@scalabrini.org.za)

[www.scalabrini.org.za](http://www.scalabrini.org.za)



**Address:** 8th Floor, South Point Corner, 87 De Korte Street,  
Braamfontein 2001 Johannesburg

**Tel:** +27 11 242 3900 | **Email:** [info@corruptionwatch.org.za](mailto:info@corruptionwatch.org.za)

**Whatsapp:** +27 72 013 5569

[www.corruptionwatch.org.za](http://www.corruptionwatch.org.za)