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THE FORCED MIGRATION
STUDIES PROGRAMME
AT WITS UNIVERSITY

**Barriers to asylum: the
Marabastad refugee reception
office**

MRMP Report August 2008



Migrant Rights Monitoring Programme Occasional Reports

As South Africa has become a primary destination and transit point for migrants from Africa and Asia, there has been a growing awareness of the gap between the rights which foreigners theoretically enjoy and their practical access to these rights. But those working to counter these problems are faced with a shortage of information about who these affected people are, how they interact with South Africans and South African institutions, the specific rights violations they face, and the reasons behind these violations. Without such insights, neither government nor advocacy groups can effectively promote the rights and welfare of non-citizens and those amongst whom they live.

The Forced Migration Studies Programme's (FMSP) Migrant Rights Monitoring Project builds upon the programme's record of research and advocacy on migrant rights with sustained, rigorous research into migrants' access to basic human rights, the way immigration policy is being implemented, and the nature of human rights abuses against foreigners.

To address some of these limitations, the FMSP has expanded its monitoring activities across a number of areas. Through our Migrant Rights Monitoring Project, the FMSP will:

- Evaluate the performance of government on refugee and migrant issues;
- Assess officials' adherence to relevant international and domestic laws and instruments;
- Assess progress towards the realisation of refugee and migrant rights in South Africa;

The Occasional Reports provide regular updates from this monitoring work.

Acknowledgments

This report has been compiled and edited by Darshan Vigneswaran. Roni Amit, Tesfalem Araia, Veronique Gindrey, Tobias Hlalambelo, Peter Kankonde, Monica Kiwanuka, Loren Landau, and Tamlyn Monson have each contributed to the survey design, implementation, data analysis and report writing.

The Forced Migration Studies Programme received considerable assistance in the research design and implementation phases from its partners and colleagues at the Consortium of Refugees and Migrants in South Africa, the Mennonite Central Committee, Lawyers for Human Rights, Legal Resources Centre, Mennonites, Wits Law Clinic and UCT Law Clinic.

The report was made possible by the generous support of Atlantic Philanthropies.

Executive Summary

Despite the fact that there has been overall decline in the applications for asylum received (2006=53376, 2007=45673), the Department of Home Affairs (DHA) continues to struggle to process applications for asylum.

The DHA is currently transforming its refugee reception system in an attempt to capacitate the reception offices and streamline the reception process through improvements in infrastructure, human resources and case-flow management.

Recent proposals from within the DHA have focused on the 'business side' of the refugee reception process. They have sought to capacitate the poorly equipped Refugee Reception Offices (RROs) to address the backlog of unprocessed applications and what is perceived to be a growing influx of new asylum seekers to South Africa.

By focusing on service delivery and rights protection on the 'customer side' of the reception process, this report complements existing initiatives and outlines ways to further refine a reform agenda. The report presents preliminary findings of a nationwide survey of conditions at the reception offices, focusing on the first set of data collected on access issues at the Marabastad RRO. Given the fact that most asylum seekers enter South Africa through the Zimbabwean border, the focus on the Pretoria office allows us to examine conditions of reception where they matter the most, at the most likely first 'port-of-call'.

The survey sought to answer the following questions:

- What sorts of difficulties do asylum seekers experience in accessing RROs?
- What sorts of difficulties do asylum seekers experience in making their applications for asylum?
- In what ways does the processing of applications impact upon other aspects of South Africa's protection system?
- What is the cause of the problems applicants experience in accessing the asylum application system?

Among our findings were the following positive indications:

- Reception officers no longer appear to discriminate between applicants on the basis of gender or nationality; and
- Corruption at the office, while still a problem, does not appear to be as rife as suggested in previous research.

The following findings should be addressed by current transformation efforts:

- Increased demand for asylum is a secondary rather than primary cause of access problems at the RROs;
- Applicants wait for extended periods in queues, increasing their vulnerability to exploitation, job-loss and deportation;
- Applicants for asylum do not understand South Africa's reception process and laws;
- While refugee reception officers do provide asylum seekers with explanations about forms, and the opportunity to tell their own stories, they fail to provide a) information about the application process; b) information about the status determination and appeal process; and c) translation services;
- The current application procedures do not guarantee the confidentiality of asylum seekers' claims; and
- Despite the fact that many applicants at the RROs may not acquire refugee status in the end, it is misleading and unhelpful to characterise the majority of asylum seekers as 'economic migrants' seeking to exploit asylum-seeker status.

These findings support several components of the current transformation policy:

- The re-opening of a Johannesburg office and overall increase in the number of offices;
- The improvement of waiting facilities at the Marabastad office;
- The development of a queue-management strategy;
- The rapid and substantial increase in the number of reception officers; and
- The improvement of translation services.

However, the report proposes that the following recommendations be included in the DHA's transformation agenda, in the interests of improved service delivery and rights protection:

- Initiation of a two-pronged publicity campaign to inform prospective applicants of the meaning of asylum and the various stages of the asylum process using a) posters at the Refugee Reception Offices (RROs), all border crossings and refugee service providers who may be working with potential asylum seekers; and b) the media;
- Extension of the period of validity of s. 23 transit permits which legitimate applicants' residence in the country while they attempt to lodge their claim at a RRO;
- Provision of explicit advice to all applicants regarding their right to confidentiality and the fact that their application information will not be shared with anyone outside the RRO;

- Consideration of the need for confidentiality of applications in redesigning spatial layout, movement controls, process and case-flow management. When filling in forms, making use of interpreters or telling their stories to reception officers, applicants' confidentiality must be assured to enable them to provide the fullest possible details to support their asylum claim; and
- Standardisation and/or extension of the validity period of s. 22 asylum seeker permits which legitimate applicants' residence in the country while they await a decision on their status (we note that the Durban RRO has already moved a policy of 6 month permits).

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1. Introduction

Over the past 15 years, men and women from across the continent have sought refuge in South Africa. After the transition to democratic rule in 1994, the ANC government quickly affirmed its commitment to the 1951 United Nations Refugee Convention and its 1967 Protocol. This was followed by the passage of the Refugees Act (no. 130 of 1998) and its implementing Regulations (2000). Together, these laws created a legal and institutional framework for the reception, status determination and protection of asylum seekers, as well as setting out the rights of those who are granted refugee status through this process.

As the primary implementing agency of the Refugees Act, the DHA has struggled to meet its legislative obligations to asylum seekers and refugees. One of the most visible – and most troubling – examples has been the department's inability to adequately receive and process asylum claims.

Sections 8 and 39 of the Refugees Act, and Section 3 of the Regulations, require that the DHA establish and adequately staff reception offices and adjudicate asylum claims within 180 days. Section 21 of the Act requires that refugee reception officers help asylum seekers to properly complete their forms. Section 22 of the Act, together with Section 4 of the Regulations, further require that refugee reception officers issue asylum seekers with permits, promptly schedule interviews with status determination officers and renew permits when required. The DHA's difficulties in fulfilling these obligations have momentous follow-on effects for the refugee protection regime as a whole.

Asylum seekers are granted freedom from arrest and deportation/refoulement, and are allowed to work and study in line with the integration approach South Africa takes toward refugees. But without the s. 22 asylum seeker permit, a refugee cannot claim these rights. This explains why, for several years, civil society groups, the media and other monitoring agencies have drawn attention to the variety of problems migrants experience in accessing the asylum-seeker system. These efforts have led to several legal challenges focusing on the rights-based problems involved in obtaining access to the reception offices, resulting in several binding orders to ensure that better terms of access are provided.

The DHA has been slow in responding to these challenges. In early 2007, the DHA responded to a 2005 court order, hiring a process engineer to prepare a report aimed at overhauling the reception system. This report has yet to be implemented. Now, under the leadership of new Director General, Mavuso Msimang, the DHA is undergoing large-scale reforms – including a proposed transformation of the refugee reception system. Consulting company Fever Tree (a local division of AT Kearney) has been contracted to build on the process engineer's report. In September 2007, Fever Tree finalised a 'Reception Offices Network Integrated Plan'. Its plan focuses on the increasing backlog of

undetermined claims in the reception system, and the quality of the permanent offices. The proposed changes to DHA's human resources, IT, case-flow management and budget are primarily designed to reduce the backlog and improve the physical infrastructure of the offices.

These reforms are welcomed as a tool to improve the accessibility of DHA offices. However, government officials have limited capacity to measure the impact of these reforms. What will be the scale of the impact? Will the effect be sustained? And how, if at all, will the impact vary by location? In addition, for the most part, the research on which the current reforms are based provides only a limited understanding of the causes of access problems, which suggests that the current reforms offer only a partial solution to the problem.

The increase in asylum applications since 2002 and the ever-mounting backlog of adjudications has led to a focus on number-reduction: increasing staff and amending processes to speed up the processing of applications. This is applauded as an essential step towards improved service provision. However, significant service delivery and rights protection factors have thus far been overlooked. These factors must be addressed in order to ensure a sustained improvement in the *status quo*.

Our research strongly suggests that increased demand is a secondary rather than primary cause of access problems at the RROs. The Forced Migration Studies Programme (FMSP) believes that viewing accelerating influx as a main driver of these challenges feeds into xenophobia and, by focusing on a seemingly insoluble external 'problem', complicates efforts to relieve backlogs and inefficiencies in the system. Contrary to this prevailing view, our data suggest that procedural problems at the offices, along with poor communication between the DHA and applicants, are the major barriers to access at the Marabastad office in Pretoria. The report uses these findings to suggest a range of refinements in the reform process within South Africa's refugee reception system.

This report is the product of a collective effort of the FMSP, Lawyers for Human Rights, WITS Law Clinic, UCT Law Clinic and UCT Legal Resources Centre to increase their research capacity and efficacy. Civil society has always played a central role in assisting the DHA to fulfil its commitments to refugees.¹ It is our hope that this report capacitate government to achieve our shared goal of care, compassion and responsiveness in refugee-related matters.

¹ Forced Migration Studies Programme, WITS Law Clinic, Lawyers for Human Rights (2005) *Crossing Borders, Accessing Rights, and Detention: Asylum and Refugee Protection in South Africa*, Consortium for Refugees and Migrants in South Africa (2007), *Protecting Refugees and Asylum Seekers in South Africa*.

2. Aims

In recognition of the need for more useful, solution-oriented findings, FMSP, in partnership with LHR and other organisations, initiated a research project to:

- Measure the performance of the RROs across a range of key service-delivery and rights-protection criteria;
- Identify and isolate the most important, persistent and rectifiable problems requiring immediate and concerted attention;
- Compare the performance of offices against one another in order to differentiate local and national policy recommendations; and
- Track changes in levels of performance over time in order to gauge the relative effectiveness of policy interventions.

3. Methodology

3.1. Survey Design

Our assessment of conditions of access to the RROs is based primarily upon a survey of applicants for asylum. We designed this research instrument by conducting an initial exhaustive review of governmental and non-governmental monitoring of the RROs, which helped us identify a series of performance benchmarks for the DHA in relation to border crossing, queue management, information dissemination and application reception. We then used these benchmarks to design a draft research instrument that would test whether the recollected experiences of asylum applicants met the minimum standards set out in the relevant legislation.

The majority of the questions were closed-ended, though in order to develop a clearer idea about a) illegal and conflict-related activities, and b) applicants' perceptions and personal understanding of the asylum-seeker process, we also asked a small number of open-ended questions. The draft instrument was refined through:

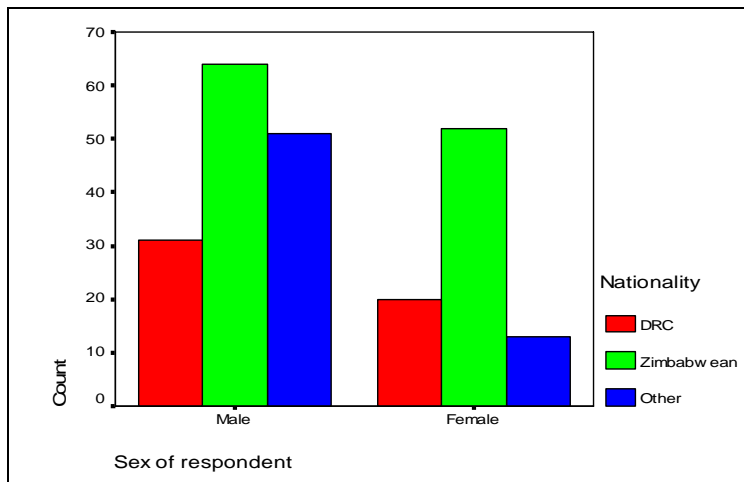
- A series of workshops with lawyers and other civil society partners in Johannesburg, Durban and Cape Town to ensure national relevance and comparability; and
- Piloting at the Pretoria and Cape Town offices.

The instrument was then translated into French, Shona and Kiswahili and back-translated to English to check translation accuracy. We also designed a separate survey, dealing with status determination procedures, which will not be discussed in this report. The findings of this survey will be released in a separate report in the coming months this year.

3.2. Sampling

The target population for this survey was all applicants who had submitted an application for asylum but had yet to sit a formal interview with a refugee status determination officer as prescribed by s. 24 of the Act. Given the difficulties in generating household and telephonic surveys of asylum seekers, and in securing interviews with applicants leaving the RRO, it was decided to sample applicants waiting to renew their s. 22 asylum-seeker permits. A sample size of 200 applicants per office was chosen. These respondents were systematically selected over a one-month period from November to December 2007. Due to language difficulties and respondents' security concerns, Somalis, Ethiopians, Bangladeshis and Pakistanis were under-represented. Given current trends in the flows of asylum seekers into the country, it is relatively unsurprising that most respondents were male and either of Zimbabwean and Congolese nationality. Figure 1 depicts the sample profile.

Figure 1: Sample Profile



4. Findings

This report presents findings from the survey administered at the Marabastad RRO in Pretoria. That the survey reveals a refugee-reception system that is not functioning as stipulated by the Refugees Act will come as no surprise to readers – the Refugee Affairs Directorate itself acknowledges the RROs' failings in its annual report, reflecting the consensus position of all stakeholders, including the DHA Minister, senior-level DHA officials, the Parliamentary Portfolio Committee, Judges adjudicating on refugee and asylum matters, and refugee advocates.

More revealing, however, is what this research suggests about the origin, nature and depth of the problems in access to the refugee reception system. By asking respondents to provide dates for each step of their progress through the system, we are able to reveal the main bottlenecks and also to track changes in government performance from 2005 to 2007. By comparing the experiences of different nationalities and genders, we can also determine what role discrimination plays in the provision of access.

One of the problems revealed in this report is one of poor information dissemination. Hundreds of thousands of asylum seekers in South Africa have enrolled in a complex and regularly changing administrative system that they have little or no opportunity to learn about. Pressured by the dual threats of deportation and unemployment, asylum seekers make huge personal sacrifices to remain enrolled in this system. Yet our findings reveal that Home Affairs officials rarely attempt to clarify the procedure or to assist asylum seekers in negotiating their way through this administrative process. While large-scale reforms of DHA's internal processes are necessary before the system is turned around, it is likely that much of the disarray experienced at RROs could be eased or prevented through basic educational communications – such as posters and leaflets at border posts and inland RROs – publicising the conditions of refugee status and the steps required to apply.

This diagnosis departs significantly from previous accounts which have laid the blame for problems in the refugee-reception process on corruption/xenophobia among Home Affairs officials, duplicity of applicants, or the sheer scale of a supposed mass exodus from Zimbabwe. This report on the Marabastad RRO cannot discount these alternative explanations prior to comparison with conditions at other offices around the country, where the data may tell a different story. Nevertheless, the research suggests that extremely pressing problems evolve from the way the DHA communicates the administration process to potential asylum applicants. This shift to a focus on communication strategy has the positive effect of rendering the problem amenable to practical solutions.

We present our findings, below, as new or refined answers to four questions that South African refugee policy makers have posed over the last five years:

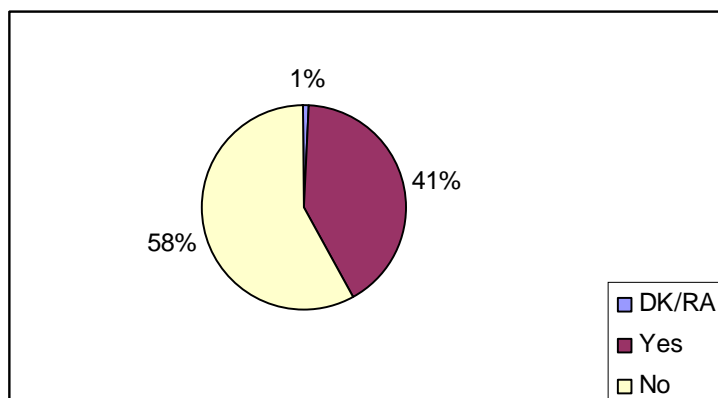
1. What sorts of difficulties do asylum seekers experience in accessing RROs?
2. What sorts of difficulties do asylum seekers experience in making their applications for asylum?
3. In what ways does the processing of applications impact upon other aspects of South Africa's protection system?
4. What is the cause of the problems applicants experience in accessing the asylum application system?

4.1. What sorts of difficulties do asylum seekers experience in accessing RROs?

4.1.1. Admission to South Africa

South African refugee legislation requires asylum seekers to report their presence to officials upon entry into the country, and obliges government representatives to assist them in obtaining a transit permit that legalises their stay for a period of two weeks. Our research reveals that asylum seekers experience severe difficulties entering South Africa and legalising their stay. The first problem relates to the conditions under which asylum seekers enter the country. The prototypical applicant at the Pretoria office enters the country without any identifying documentation (53% n= 226), informally (58% n= 223), across a Zimbabwean border (78% n= 227). These findings help to explain why it is difficult to quantify refugee flows.

Figure 2: Entered RSA through an official border post



The findings also suggest that most applicants for asylum-seeker status are never afforded the provisional protection of a transit permit. Even though informal border crossings are explicitly allowed under South African refugee law, and do not limit an entrant's right to apply for asylum, asylum seekers become immediately vulnerable to unlawful deportation and denial of refugee protection the moment they cross the border. This is clear from the following facts:

- There has been a rapid increase in borderline deportations over the last two years resulting in decreased opportunities to claim asylum.²
- Most security officials (SAPS and SANDF) in the Limpopo border region have a limited working knowledge of South African asylum laws and their responsibility to offer protection to asylum seekers.
- DHA officials are not always involved in status determinations prior to deportation from the Musina detention centre.

Asylum seekers who enter South Africa formally are better off than informal entrants because they can register a claim for asylum as soon as they meet a DHA official. However, this does not mean they are safe from unlawful deportation because many still do not access transit permits. Only a minority of this informal-entrant group told border officials that they wanted to claim asylum (41% n= 79). Given their legitimate fear of Zimbabwean security presence at the border, Zimbabwean asylum seekers were particularly unlikely to register an asylum claim when entering through a border post (19% n= 79).

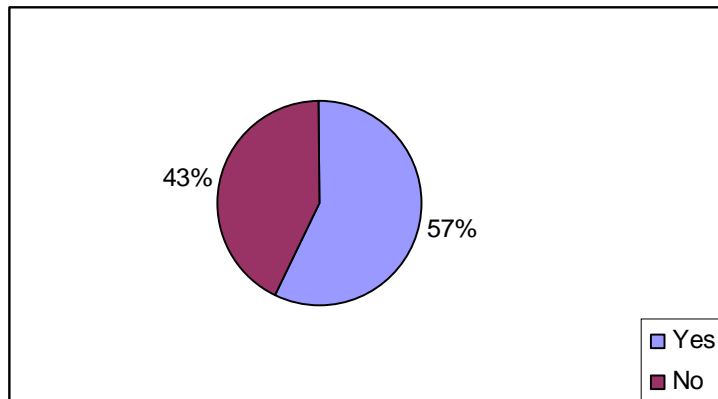
DHA officials issued the majority of applicants who applied at the border with transit permits (80% n= 30). Since less than half of prospective asylum seekers entering through official border posts (41% n= 223) leave with a transit permit, it would appear that many prospective asylum seekers are unaware of the need to make their claim on crossing the border. If the decision not to apply for asylum on entry is due to ignorance about the actual reception conditions and procedures, publicising this information at and in the vicinity of the border posts could shift the balance between formal and informal entries, and ensure that asylum seekers enter the refugee reception system prior to arrival at the RRO. This could have substantial positive flow-on effects for the receipt and processing of asylum claims, ensuring that a higher proportion of applicants are informed about the relevant procedures.

4.1.2. Entry to the RROs

Obtaining a transit permit secures only short-lived protection in South Africa. By law, an asylum seeker admitted to South Africa must report to a refugee reception office to lodge their asylum claim. At this point a refugee reception officer must issue the applicant with a s. 22 asylum seeker permit which legalises their stay for an additional and renewable period. Just over half (57% n= 23) of the asylum seekers who obtained a transit permit at the border post were able to lodge a claim prior to the expiry of the permit. While applicants' personal obligations, resources and planning may explain this outcome, a more likely cause is the difficulties involved in entering the reception offices themselves.

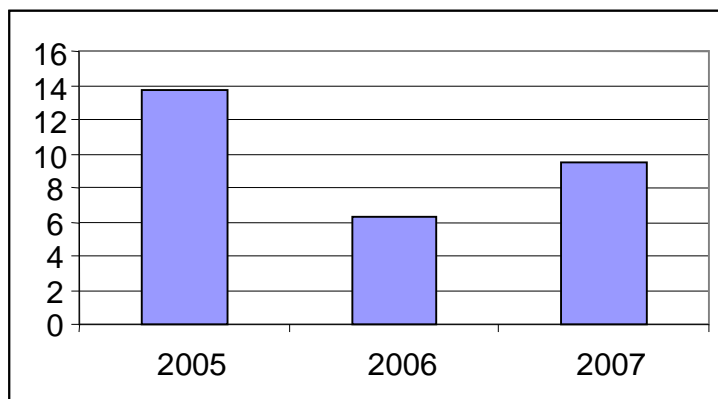
² Statistics obtained from Department of Home Affairs Annual Reports

Figure 3: Was able to lodge a claim for asylum before the transit permit expired



As has been widely reported by media and civil society groups in South Africa, asylum seekers experience extraordinary difficulties in gaining entry to RROs. Our findings show that an average applicant will have to return to the RRO approximately 3 times, and wait approximately 22 days between first arriving at the office and first entering the office. This means that, on average, asylum seekers spend more than their allotted three-week transit period *simply trying to enter* an RRO. If an applicant's first arrival at such an office is only in the third week of that legitimate transit period, it follows that the permit will most likely expire before he/she accesses the RRO, leaving him/her undocumented and thus vulnerable to deportation for up to three weeks subsequently.

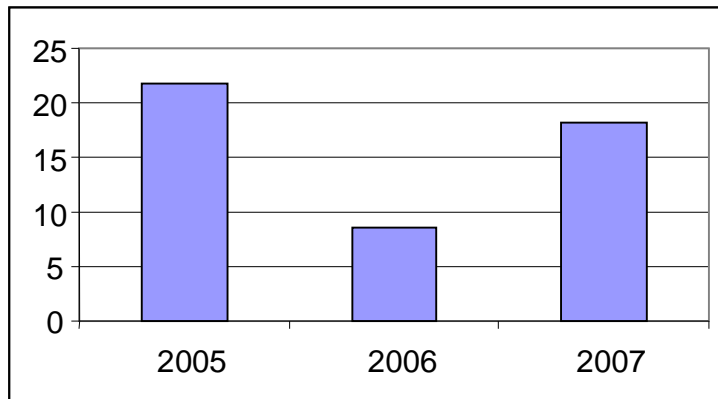
Figure 4: Mean number of times came to reception office before entering



Since applicants are vulnerable to arrest and deportation until they acquire their documents, most (60% n= 231) spend at least one night outside the RRO to maintain their position in the queue. On average, those who spent at least one night could expect to spend 10 nights outside – about one of every six (18% n= 141) doing so with children in their care. Importantly, if we compare the waiting times for first entry of applicants by the year first arrived at the office, we find that

that after a significant improvement in 2006, conditions at Marabastad worsened again in 2007.

Figure 5: Mean number of nights spent outside DHA office



The line itself is a site where asylum seekers, many of them already victimised and brutalised in their countries of origin, become victims once again. About a third of respondents (35% n=226) reported being hurt, threatened or robbed whilst waiting in the queue.

Question: Did anyone hurt you, threaten you, or steal your belongings while you were waiting in line? Can you explain what happened?

"I was sleeping and I woke up in the morning and I did not find my money or my phone"

"It was these two guys who threatened me; they threw me out of line and took my phone and money – two hundred rand"

"People crush on you in the line and I was hurt because I was defending my child"

"Someone wanted to fight with me; those who control the queue; wanted me to pay. I didn't have any money."

"The time I was at the surrounding area of the reception my clothes and belongings were taken by the Metro Police."

"We were hit by stones by passers-by during the night."

"You get stepped on. You are tired, you are bored and thirsty. You feel like you are dead and not human anymore."

While some of these incidents involve security guards (12% n=75), government officials (5% n=75) and members of the public (10% n=75), a large number (40% n=75) pit asylum seekers against one another as they fight desperately for position in a poorly managed queue. It is understandable that frustrations build

and tensions rise under conditions where the majority of applicants have endured weeks of vulnerability and hours of exposure to the elements with no certainty about what awaits them inside the doors of the RRO. This is an area in which reform of processes could dramatically improve the humanity and compassion that asylum seekers experience in their engagement with the DHA. It is also a sign that the failure to communicate adequately with applicants regarding the line management and entry procedures at the office could have a considerably positive effect on conditions of access.

Successful entry into the office does not guarantee access to an asylum seeker permit. Having endured the queue, many respondents were given forms to fill out and told to return on a later date (34% n=230), or were given an appointment for another date (15% n=230).

Figure 6: What happened when you first entered the refugee reception office?

		Frequency	Percent
	Waited there and went home without being given any paper at all at	8	3%
	Given appointment slip	34	15%
	Met with/interviewed by a DHA official	40	17%
	Told verbally to come back at some later date (no appointment)	6	3%
	Given a form to fill out and return at later date	78	34%
	Filled out form, but not fingerprinted or given s. 22 permit	15	7%
	Given a form to fill out and issued with a s. 22 permit	45	19%
	Other	3	1%
	Total	230	99%
Missing	Question not asked	2	1%
Total		232	100

Most (59% n= 230) do not receive the permit on the same day they enter the office. On average, asylum seekers wait a further five days after first entering the office before they finally receive a permit. Thus it appears that 'the queuing masses', often simplistically framed as evidence of mass influx, may be less a symptom of increasing numbers of asylum seekers than of delayed access and service provision.

4.2. What difficulties do asylum seekers experience in lodging their claims?

In addition to these problems gaining entry into the reception office in Pretoria, asylum seekers experience a variety of problems in lodging their applications. According to South African legislation, refugee reception officers must:

- Verbally *notify* the applicant of their rights and obligations (Refugees Act Regulations s. 5);

- Assist applicants to properly complete their forms (Refugees Act s. 21(5));
- Where practicable and necessary, provide competent *interpretation* (Refugees Act Regulations s. 5); and
- Ensure the *confidentiality* of asylum applications and the information contained therein (Refugees Act s. 21(5)).

Our findings suggest that reception officers at Marabastad have, at best, a mixed record in performing these essential duties.

4.2.1. Notification of Rights and Obligations

While Marabastad officials appear to clearly explain to applicants what their obligations are, the same is not true of applicants' rights. Most (92% n= 228) applicants reported that they were aware of their obligation to renew their permit before it expired. In contrast, very few (8% n= 228) reported being told they were allowed to bring a lawyer to their next interview. Clearly, the violation of legislated rights can only strengthen appeal cases and increase their likelihood. In addition, failure to communicate the right to legal representation and the need for witnesses, documentation, photographs or affidavits in order to support the claim can only lead to duplicated work and longer queues – as applicants return with the relevant support on a separate occasion – or inadequate applications, which have consequences both for asylum seekers' rights and for DHA workload. On the one hand, this failure by omission violates asylum seekers' rights and raises the chance of unfair refusal of claims. On the other, while at the coalface the absence of legal representation and witnesses may appear to speed up the application process, the apparent decrease in initial workload will inevitably be counterbalanced by a later increase when work is duplicated through the appeals process.

4.2.2. Assisting in the Accurate Completion of Forms

Several legal service providers have received reports that clients have not been given an opportunity to complete their application or 'eligibility' forms, but have their forms filled in by DHA officials – clearly a problem in terms of transparency and administrative justice. These concerns are partially allayed by the fact that a significant majority of applicants at Marabastad (86% n= 230) report having received their application forms. Furthermore, the tendency to provide applicants with their own forms to complete appears to have increased steadily between 2005 (78% n= 45) and 2007 (91% n= 86).

More worrying is the lack of assistance officials provide applicants in filling out these forms. Almost two-thirds (68% n= 219) of respondents report that officials provided no assistance in completing the form. A similar proportion (67% n= 218) report that officials did not go over the form with them once it was complete. This suggests that – perhaps in an effort to speedily accept as many applications as possible due to an apparent rising tide of applications – officials are failing to serve administrative justice by explaining to applicants the procedures followed, their

rights, and the implications of the evidence presented (as required by s. 24 of the Refugees Act). Importantly, the respondents who most needed assistance (respondents who needed interpreters and respondents who had difficulties understanding the questions on the form) were not significantly more likely to receive this type of assistance. Once again, though on the surface application of the law may appear unnecessarily time-consuming to officials who perceive themselves to be swamped by a swelling tide of asylum seekers, any apparent saving in time and effort is merely passed down the line to the appeals process. Hence, one fewer applicant in today's queue often means nothing but one more in tomorrow's.

4.2.3. Interpreter Services

One third (33% n= 212) of the respondents reported that they needed an interpreter to help them answer the questions on the form. Congolese nationals (Brazzaville and Kinshasa) as a group were particularly in need (90% n=53). However, officials only provided assistance to a small number (17% n= 70) of all those in need of translators. Fortunately, the majority (73% n=54) of respondents who did not receive an interpreter from the DHA were eventually able to obtain assistance. However, most found interpreters waiting outside (68% n=41) or sought assistance from friends or acquaintances (15% n=41). Since this assistance did not come from the DHA, it came at a cost to many applicants (47% n=43), suggesting that the process inadvertently discriminates against poorer applicants. In addition, because it was not officially provided, the quality of the interpretation assistance and its impact on the confidentiality of applicants' claims give cause for concern. It becomes apparent once again that the application and appeal workloads must be distinguished in analysing the backlog facing DHA: such obstacles to the completeness and accuracy of applicants' claims would increase the likelihood of appeals, as would failure to provide services required by law.

It should also be noted that, where it is not practicable for DHA to provide an interpreter, the Refugee Act Regulations specify that applicants must be notified 7 days in advance of the need to provide an interpreter of their own. This requirement applies throughout the application process, but it seems unlikely that such notification could be provided prior to the applicant's first appearance at the RRO. Even if such notification were possible, it would a) cause a foreseeable delay to the applicant's first reporting to the RRO, and hence increase the likelihood that any transit permit would lapse prior to access, and b) would constitute an unreasonable demand on the prospective asylum seeker, considering that the interpreter's services would need to be contracted for an extended period to accommodate the long access timeline. It is highly unlikely that asylum seekers could afford the cost of such a service.

4.2.4. Confidentiality

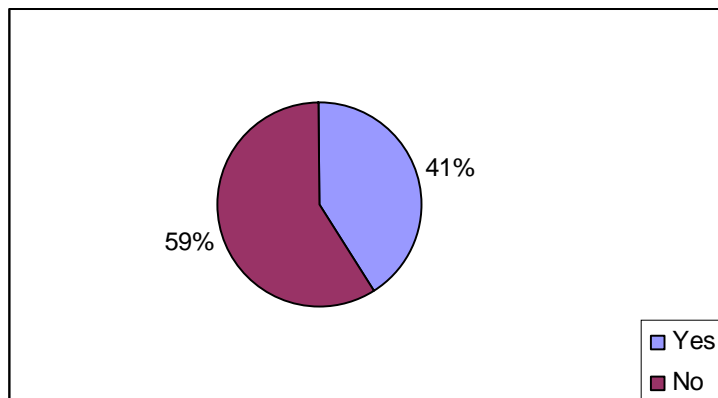
The intervention of interpreters leads us into the question of applicants' right to privacy. The research findings indicated that the confidentiality of applications is

not being respected at Marabastad. Most respondents (63% n=228) were not aware that their answers would not be shared with anyone outside the office, and fear of exposure may thus be impacting upon the amount of detail provided by applicants, possibly leading to inadequate justification of asylum claims. Further, applicants are often questioned in a public area – more than a quarter (28%) of the 129 applicants who were asked questions about their asylum claim said that other people were able to overhear their answers. It follows that applicants whose concerns about confidentiality inhibited their answers were less able to fully justify their asylum claims. In turn, regardless of the effort expended in accurately processing the initial claims, these applications obtain, from the outset, grounds for an appeal.

4.3. In what ways does the processing of applications impact upon other aspects of South Africa's protection system?

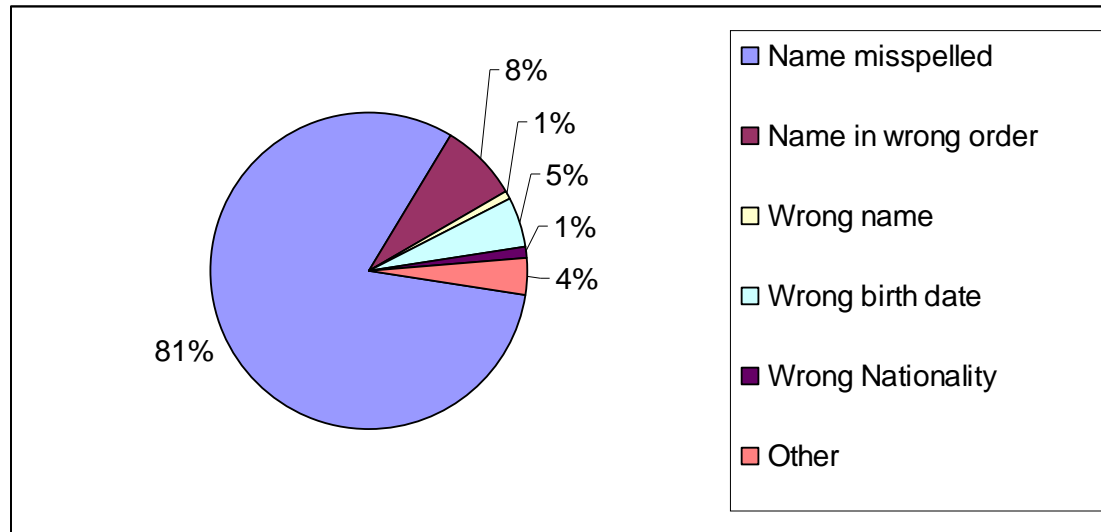
Once they have received a completed application, refugee reception officers are obliged to issue applicants with a copy of a temporary asylum seeker's permit and to renew this permit until the applicant is either awarded or refused refugee status. As noted above, a minority of applicants (41% n= 230) receive this permit on the first day they enter the office, leading to delays that render the applicant undocumented and vulnerable to unjust deportation.

Figure 7: Got permit the first time entered the Refugee Reception office



A further problem is that errors abound on the permits issued at Marabastad. Almost a quarter of respondents (24% n= 229) reported mistakes on their original permits, among them misspelled or incorrectly ordered names and incorrect birthdates. The inattention to detail depicted by these errors casts questions on the accuracy with which officers complete asylum applications when they do so on applicants' behalf. The appearance of inaccuracies in the documentation issued to asylum seekers suggests indifference and disregard on the part of DHA officials, which can only reinforce appeal claims. Careless mistakes can come at a great cost to asylum seekers if, in the context of increasing document fraud, police should view the inaccuracies with suspicion.

Figure 8: Type of errors on permit



Asylum seekers experience various problems in maintaining a valid permit. Many of those whose permit has been lost or stolen (42% n= 177) have experienced problems having it reissued. An average asylum seeker has to renew his/her permit five times a year and will come to the RRO more than once each time they have to renew. Legislation does not prescribe the validity period for asylum permits, so it is uncertain why officials, given the freedom to use their discretion, continue to specify, on average, two-and-a-half month validity periods on permits. This practice obviously increases queues and workloads on the 'business' side of the process, while promoting the social exclusion of already vulnerable migrants who must regularly sacrifice precious work hours and transport funds in order to remain legal. Standardising or promoting lengthier validity periods of four to six months could lessen the DHA's considerable administrative burden while better protecting the human rights of asylum seekers.

Some asylum seekers (13% n= 217) fail to renew their permits in time due to work or personal commitments that prevent them from coming to the office, and a small percentage (5% n= 205) report having been arrested or fined for having an expired permit. Extending validity periods would to some extent relieve the burden of this understandable conflict between livelihood and legality, while also protecting asylum seekers from deportation prior to adjudication of their claims.

Most asylum seekers (62% n=229) have been stopped and asked for their papers at least once since being in South Africa and the average asylum seeker has been stopped on more than one occasion (1.4 times). Being without documents, or in possession of outdated or inaccurate documents, has clear implications for both the DHA and its asylum-seeker clients, particularly when it leads to arrest and deportation. Quite apart from their contribution to human

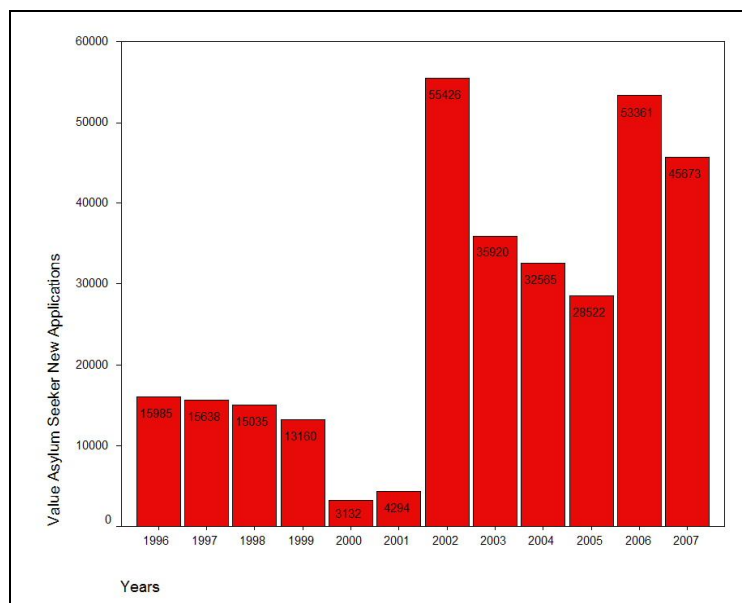
suffering, such deportations render useless whatever work DHA has completed on the application in question, increasing the number of wasteful, 'dead' applications.

4.4. What is the cause of the problems applicants experience in accessing the asylum application system?

The above material on access problems in South Africa's refugee reception system demands policy responses to ensure better implementation of the country's asylum laws. In turn, appropriate policy responses can only be built upon a sound assessment of the various causes or origins of these access problems. Ultimately, no single factor can be isolated as the defining cause of the variety of administrative overloads, breakdowns and failures that we have identified. However, when we combine our survey data with a range of other available materials we can begin to more accurately determine the merits of popular explanations and suggest appropriate lines of action.

Recent official analyses have argued that access problems at the RROs can be primarily attributed to the 'mass influx' of asylum seekers. For example, the Turnaround Strategy Report refers to the large number of applications made between 2002-2006 as compared with previous years. A recent report by the Refugee Directorate has envisaged these large numbers increasing radically in coming years: "Certain people foresee the number registered in 2007 escalating to a possible double in 2008, treble in 2009 and even quadruple in 2010."

Figure 9: Number of applications for refugee status in South Africa (source: Department of Home Affairs)



The claim that there is a mass influx is often accompanied by an assertion that a large proportion of this influx consists of applicants without legitimate claims (that is, work seekers and other economic migrants, often seen to be applying opportunistically). The Refugee Directorate has argued that:

The influx observed throughout 2006 suggested that a massive population of people seeking asylum might increase in years to come although the majority are economic migrants as most of their claims are not aligned with the basic principles for asylum.³

This explanation of the problems at RROs has resurfaced as a legitimating idea in various government forums over the years.

While we are not in a position, using the data collected in this study, to make a final judgement on this claim, we can suggest that the formulations of the argument quoted above represent sensationalist and unhelpful readings of the access problems at the RROs. The application figures cited in Figure 9 do not support the types of conclusions being made by DHA officials. Total application figures are not likely to provide an accurate reflection of demand for asylum over time. Since all reception offices tend to receive a fixed number of applications per day, the bars in the graph above tell us more about changing access quotas at the RROs than any increased influx.

This report validates certain aspects of the 'mass influx' argument. It is clear from our findings that the RROs are not adequately equipped to deal with the number of applications they receive, but the data locates the primary cause of this problem in DHA policy and procedures. For instance, our poll of applicants suggests that significant numbers of applicants do not understand who the refugee system is for.

Question: Based on your understanding of the process, who qualifies as a refugee in South Africa?

"People who don't have freedom in their countries, those people who are running away from the war or political issues"

"I don't know"

"If your home is destroyed or your life is endangered"

"Someone who is working and has nowhere to stay"

"Any person who does not have parents"

"Anyone who has an asylum seeker permit"

³ UNHCR (2008) *South Africa gets 45,673 asylum seekers in 2007, warns of rising numbers*

These individuals may not, after adequate screening, qualify as refugees as defined by South African law. However, this does not mean that they did not apply with a *bona fide expectation* of qualifying. The commonly held view of asylum seekers as a growing multitude of economic migrants is not supported by these findings. Indeed, asylum seekers simply do not match the profile of individuals who have consciously set about acquiring asylum documents to allow them to work.

Larger proportions than are awarded refugee status (29% n=5879) claim that they left their country of origin because of some sort of conflict or persecution (41% n= 232). While this does not mean that these additional groups deserve refugee status, it is more likely that they are applying in good faith, based on simple ignorance of the specific criteria that must be fulfilled in order to qualify for refugee status. Very few are informed of the rights that go along with an asylum seeker permit and so are less likely to know that this status ensures the right to work. Very few of those we interviewed had engaged in 'forum shopping' (attempting to apply at sites where one is most likely to receive a permit) in South Africa (5% n= 223) or abroad (4% n= 232). Very few (10% n= 230) reported having paid someone to obtain their documents. Hence, while it is entirely appropriate to bolster DHA resources to meet increasing demand, it may be counterproductive to design these reforms on the assumption that the majority of applications are opportunistic.

Importantly, it is highly likely that this negative perception of the legitimacy of many asylum-seeker claims contributes to the poor service delivery revealed above. Through continual exposure to a departmental rhetoric focused on mass influx and asylum-seeker opportunism, Home Affairs officials' have been encouraged to develop a now-ingrained assumption that most applicants for asylum are illegitimate. The 'pre-screening' procedure utilised at the RROs is a case in point. In 2005-6, officials at RROs began using an illegal form, containing a series of formulaic questions to distinguish between legitimate and illegitimate applicants. On the basis of this illegal procedure, officials would advise certain individuals that they could not apply for refugee status and should instead apply for a work permit.

This pre-screening practice has been ruled illegitimate. However, our findings suggest that the assumption held by reception office officials – that most asylum seekers are economic migrants wilfully exploiting the protection system – may have led to alternative and possibly more harmful means of blocking asylum-seeker claims. The fact that DHA officials a) have failed to communicate how the asylum process works to the public; b) are more concerned about revealing refugee obligations than refugee rights; c) don't tend to afford help on the basis of need; and d) do not take basic care in ensuring provision of accurate documents, all point towards an institutional culture that does not afford due respect to the client base it is seeking to protect. Given these findings, we suggest that a more appropriate way to conceptualise the problems in the refugee system would be to

place emphasis on transforming practices within the RROs, and to identify and reform any unspoken impulse among RRO officials to obstruct applications in a misguided attempt to curb demand.

5. Summary, Conclusions & Recommendations

This report provides preliminary results from the first comprehensive and independent overview of the state of South Africa's refugee reception system. The report generates the first reliable performance benchmarks for terms of access to the RROs. Drawing only on data collected at the Pretoria office, we can already identify key problems and begin to critically evaluate proposed solutions.

The most critical finding of this study is that official diagnoses of the problems of access at the Pretoria office require attention. The assessment that South Africa's access problems have been caused by an influx of largely non-*bona fide* applicants is not supported by the available data. Hence, it would be short-sighted to capacitate the DHA only to address this perceived influx. Indeed, we need to challenge the idea that this supposed influx and not the officials themselves are responsible for the problems in the system. Rather, the findings suggest a need for greater attention to how the reception process is publicised and how asylum applicants are received.

Potential asylum seekers avoid border posts because they are (often inaccurately) sceptical of the reception they will receive. They rarely access a transit permit, and find out about the asylum system through informal channels. They rarely ever learn what the asylum process is intended for, many seeing it as more flexible and less condition-bound than it is fact is, or simply as a potential way to legitimate their stay in South Africa. Regardless of whether or not they satisfy the conditions of refugee status, they confront a bewildered and panicked queue on arrival at the RRO. They are often confused about how they are supposed to register their claim for asylum.

In all this, they receive little assistance from reception officers or the DHA more generally. Instead, the procedures at the RRO often prevent migrants from being able to tell their story accurately, in many cases placing the confidentiality of applications at risk. In summary, this report concludes that speeding up the processing of claims may not necessarily improve the terms of access. However, many of the problems identified could be significantly alleviated by efforts to better communicate with potential applicants about their rights and the necessary procedures to access and navigate the system.

These findings support several components of the current transformation policy:

- The re-opening of a Johannesburg office and overall increase in the number of offices;
- The improvement of waiting facilities at the Marabastad office;
- The development of a queue-management strategy;

- The rapid and substantial increase in the number of reception officers; and
- The improvement of translation services.

However, given the Department of Home Affairs' (DHA's) identity as a caring, compassionate and responsive organ of state, the report recommends that, in the interests of improved service delivery and rights protection, the DHA broaden its transformation agenda to include:

- Initiation of a two-pronged publicity campaign to inform prospective applicants of the meaning of asylum and the various stages of the asylum process using a) posters at the Refugee Reception Offices (RROs), all border crossings and refugee service providers who may be working with potential asylum seekers; and b) the media;
- Extension of the period of validity of s. 23 transit permits which legitimate applicants' residence in the country while they attempt to lodge their claim at a RRO;
- Provision of explicit advice to all applicants regarding their right to confidentiality and the fact that their application information will not be shared with anyone outside the RRO;
- Consideration of the need for confidentiality of applications in redesigning spatial layout, movement controls, process and case-flow management. When filling in forms, making use of interpreters or telling their stories to reception officers, applicants' confidentiality must be assured to enable them to provide the fullest possible details to support their asylum claim; and
- Standardisation and/or extension of the validity period of s. 22 asylum seeker permits which legitimate applicants' residence in the country while they await a decision on their status (we note that the Durban RRO has already moved a policy of 6 month permits).

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After the transition to democratic rule in 1994, the Republic of South Africa signed international agreements on refugees and passed its own Refugees Act. Since then, the Department of Home Affairs has consistently struggled to process applications for asylum. The Department is currently transforming its refugee reception system in an attempt to capacitate the reception offices through improvements in infrastructure, human resources and case-flow management.

This report feeds into these reforms by presenting preliminary findings of a nationwide survey of conditions at the Pretoria refugee reception office. The report counters the argument that an accelerating influx of refugees is the main driver of the poor service delivery at this office. Our data suggests that procedural problems at the offices, including a lack of communication between the Department of Home Affairs and applicants, are the major barriers to access. The report uses these findings to suggest a range of refinements in South Africa's refugee reception system.

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