CoRMSA
Consortium for Refugees and Migrants in South Africa

SUBMISSION TO AMENDED REFUGEE APPEALS AUTHORITY OF SOUTH AFRICA RULES

Submitted by

Consortium for Refugees and Migrants in South Africa (CoRMSA)

To

Refugee Appeals Authority of South Africa

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24 April 2020.

A. Introduction:

The Consortium for Refugees and Migrants in South Africa (CoRMSA) is pleased to make this submission on the REFUGEE APPEALS AUTHORITY OF SOUTH AFRICA RULES, 2013. Department of Home Affairs: Notice 133 of 2020. government gazette, 4th March 2020. No. 43067

The Consortium for Refugees and Migrants in South Africa (CoRMSA) is a national network of organisations working with asylum seekers, refugees and other international migrants. CoRMSA currently has 26 member organisations across the country. It was established in 1996 as a loose network of organisations working with refugees as the National Consortium for Refugee Affairs (NCRA) and was later registered as an NPO. In 2007 NCRA's mandate was extended to include the protection of international migrants. Our members are made up of direct legal and social service providers; research institutions and refugee and migrant community groups. The CoRMSA model is such that through our members and partners, collectively we cover work at local, provincial, national, sub-regional, regional and global levels to ensure that the daily challenges faced by non-nationals are addressed through policy and practices**.** CoRMSA has over fifteen years of experience working on migration engaging in advocacy and lobbying; coordination and network building; capacity building; rights awareness and information sharing. CoRMSA's overall objective is the protection and promotion of asylum seekers, refugees and migrant's rights in South Africa, regionally and internationally.

CoRMSA welcomes this opportunity and below make recommendations (submissions) on specific sections of the Amended Refugee Appeals Authority Rules.

CoRMSA is available to make an oral presentation regarding this submission should such an opportunity arise.

It is well documented that the Refugee Appeals Authority (RAA) has, for many years, been overburdened and limited in capacity to attend to the number of refugee appeal cases. Most recently the 2018 Auditor General's follow up performance audit of the immigration process for illegal immigrants at the Department of Home Affairs report. The report indicates that the Refugee Appeals Authority has a backlog of 147 794 cases it was noted in the report would take 68 years for the RAA to clear this backlog if no new appeals where lodged. These figures are unscrupulous and indicate the need for immediate changes to be made to ensure that the RAA can perform its duties effectively and efficiently. The more the delay by RAA to attend to appeal cases the higher the risks it poses to the applicants in getting their stay regularised in South Africa.

In light of the above, it was well attested in the matter brought before the South African Human Rights Commission between MT v Refugee Appeals Board, File Re No: GP/1415/0433. The complainant approached the Commission seeking

assistance in securing a date for his appeal hearing from the Refugee Appeals Board. On this case, it was stated that the complainant was under enormous stress due uncertainty of waiting in excess of a decade to have his application finalised. Furthermore, it was stated and submitted that this waiting had a negative impact on applicant's life, work, family and psychological wellbeing due to the lack of finality of his application. On this case, quiet a number pieces of legislations and policies were cited relating to the protection of refugees in addressing this matter.

Furthermore, it was also found through this that the RAB internal review process that the RAB backlog has been found to be intractable. On its findings, the Commission found that the delay in communicating the hearing date to the complainant, thereby resulting in failure to take a decision on his appeal, amount to administrative action in terms of PAJA. It was also found that RAB failed to set a date for hearing for approximately 6 years. This has affected the applicant human right in many ways. This case is classic example on the current incompetent and incapacity of the RAB.

Having raised the above points, CoRMSA takes considerable concern with large sections of the recently adopted Regulations to the Refugee Amendment Act in December 2019 that came into force 1st January 2020, CoRMSA is of the belief that the Refugee Amendment Act is an extreme blanket shift away from the progressive 1998 Refugee Act. No 38, that offered progressive and generous human rights protection to refugees and asylum seekers in South Africa. However, we support the amendments made in the Refugee Act with regards to section an appeal being heard by one member of the RAA, where previously a quorum had to be present. We welcome this amended change as it will ensure that appeals can be heard and resolved more speedily with no delays that leads to violation of human rights.

We also welcome the inclusion of Crime Prevention and Integrity Measures have been introduced in the regulations.

Impact/Concern: These have been included to combat corruption and related issues within the Department of Home Affairs. Employees of the DHA can be subject to interviews polymer tests. Its positive that these have been introduced. The difficulty is that accountability measures have been removed for people who are meant to make decisions on asylum applications. Previously, there was a 180 day period where decisions on asylum applications had to made in that time frame, this practically did not and never happen, but there was a time frame to hold people accountable, that has been completely removed. To date, there is no timeframe on when a decision on an application has to be completed.

Resulting in asylum seekers waiting extended periods of time for a final adjudication on their status.

CoRMSA makes the following submissions relating to the operation and the RAA and its ability to finalise and make timeous decisions to prevent a further backlog and ensure the protection and documentation of asylum seekers and refugees.

1. **Regarding the amendment of rule 3 of the principal Rules Section (2) sub-section (e).**

   CoRMSA submits that the insertion of the word 'determination' and the withdrawal of the word 'hearing' or 'hear' as a definition poses threat to purpose of adjudication process and provides no opportunity for the appellant to present his proof in an appeal hearing.

   We submit that the definition of 'hear' and 'hearing' remain in the amended rules. It must be accepted that all appeals are 'heard' before they are determined. **Regarding the amendment of rule 3 of the principal Rules Section (2) sub-section (f)**

   We submit the inclusion of the following in Section 2 sub-section (f) appointed by the Minister **with consideration of the person's experience, qualifications expertise and ability to perform the functions of the RAA**.

2. **Amendment of rule 4 of the principal Rules: Lodging an Appeal 3(a).**

   We submit that the time period for the lodging of an appeal remain at 30 working days and the 10 day limitation is revoked.

   Currently in South Africa we have only three fully operational Refugee Reception Offices (Messina, Pretoria and Durban). Many asylum seekers do not reside near the Refugee Reception Offices of first application and would have to travel at cost to the relevant or nearest Refugee Reception Office (RRO). Communication regarding the rejection of an applications by letter or email may not be received within the 10-day period. In order to circumvent further administrative duties as stipulated in 3 (5)(b) we encourage the period to lodge an appeal is kept at 30 days from receiving a rejection notification letter. Following our suggestion to maintain the 30-day allowance in which to lodge an appeal, in failing to do so the appellant would be subject to the rules of 3(b)

3. **Amendment of Rule 7 of the principal Rules:**

   CoRMSA submits that the proposed number of 7 days on rule 7 section 6 (b) be indicated as or should reads *"within 7 working days*" Not just 7 days. If not the case, it can be indicated that 7 Calendar days.

4. **Amendment of Rule 11 of the principal Rules:**

CoRMSA submits that even on the regulation 11 section 10 (b) (5) the number of 5 days should be clarified as either working days or calendar days. This will help address confusion that may arise in days' calculations for both the Refugee Appeals Authority of South Africa and appellant.

5. **Amendment of Rule 12 of the principal Rules:**

We propose that rule 12 (b) (2) on section 11 should reads "Where an appellant fails to attend a hearing as set out in Rule 12(1), the Appellant may within 30 working days of the scheduled hearing request the Refugee Appeals Authority of South Africa in writing for condonation or **new hearing date**." CoRMSA believes that 10 days is not adequate for this process hence we propose 30 working days.

6. **Amendment of rule 13 of the Principal Rules:**

We submit that in terms of section 13(a)(1) of the amendments regarding the appointment of one or more members by the chairperson where previously a quorum had to be present. We welcome this change as it will ensure that appeals can be heard and resolved more speedily. However, we submit that it is crucial that more funding and resources are provided to the RAA through the Department of Home Affairs. In order for an adjudication to be fair and procedurally correct we submit that adjudications must be heard by at least more than one person. It is imperative that in appointing members of the RAA the Minister consider the work load an

7. **Amendment of Rule 14 of the principal Rules:**

Section 13 (b) (3) is proposed to read "Where an application is made to attend confidential proceedings, such an application must be heard **in consultation with appellant** prior to the hearing of the appeal. A decision in this regard must be rendered within 10 **working** days of the application. This will prepare the appellant in terms of who will be attending the hearing proceeding.

8. **Amendment of Rule 16 of the principal Rules:**

Section 15 (a) (3) the word "efficient" be replaced by the word "reasonable" for the sub-section to read "for some reason it is practical and [appropriate] **reasonable** to proceed with two or more appeals under this rule. The word efficient does not carry the weight as the word reasonable for hearing proceedings.

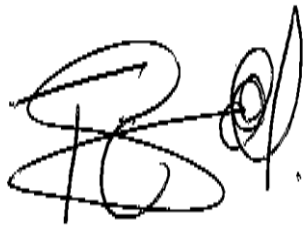
9. **Amendment of Rule 18 of the principal Rules:**

CoRMSA disagree with section 17 (b) that a travel producing a travel document or passport is made a must. Not all asylum seeker permit holders are in possession of their passport or travel permit due to reasons known by the department hence this cannot be made a "must" document to be produced or submitted.

CoRMSA proposes that this section should read as "Such notification must be accompanied by the Appellant's affidavit, together with the Appellant's asylum permit **or** travel ticket **or** travel document (passport) **if available**."

End of submission.

Regards.



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