

# NO WAY IN

Barriers to Access, Service and  
Administrative Justice at South  
Africa's Refugee Reception Offices

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## Executive Summary

### Introduction

Despite the recent attention given to improvements within the Department of Home Affairs (DHA) under outgoing Minister Nkosazana Dlamini-Zuma, the Department's record with respect to refugees and immigrants remains disturbingly ineffectual. Among the most troubled of the Department's services for migrants is its asylum system, a set of institutional bodies and practices established to carry out the country's obligations under refugee and asylum law. This system has consistently failed to carry out its legal mandate and regularly acts outside of the law, with dire consequences for those asylum seekers who face a threat to life or liberty if returned to their home country. The failure to provide protection violates the fundamental tenet of refugee law, suggesting an asylum system that exists in name only.

South Africa has experienced a steady increase in asylum seekers since the mid-1990s, and has been the world's largest recipient of registered asylum seekers since 2007.<sup>1</sup> Initially, the Department opened additional refugee reception offices (RROs)—responsible for handling asylum applications and implementing the government's obligations under refugee law—to meet the growing demand. During recent months, however, the DHA has reversed this process with a series of office closures. It has shuttered its refugee reception offices in Johannesburg, Port Elizabeth, and Cape Town, forcing asylum seekers in these areas to travel extended distances to apply for asylum or to renew their asylum permits while awaiting final determination of their claims. Recognised refugees needing to renew their refugee permits must now also travel long distances, effectively limiting where they can live, what jobs they can take, and their ability to fully integrate into South African society.

As the Department continues to restrict service provision, it has given no indication of how it will preserve and protect the rights of asylum seekers. Even before the recent office closures, problems in the asylum system threatened these rights. This report aims to identify the scope of these shortcomings by examining the situation at the country's refugee reception offices. The findings reflect research undertaken between November 2011 and March 2012 by ACMS field researchers who administered two surveys outside of four refugee reception offices: Cape Town, Musina, and the two offices in Pretoria—the Tshwane Interim Refugee Reception Office (TIRRO) and Marabastad. The survey took place after the closure of the Johannesburg office but before the closure of the Cape Town Office. The Port Elizabeth office closed during the course of the research. Many of the problems highlighted below are likely to have grown worse as the effects of these closures are felt and are likely to resurface in any reopened or relocated facility.

A total of 1417 respondents participated in the survey—721 in Survey 1 (targeting newer applicants) and 696 in Survey 2 (targeting individuals who had already undergone status

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<sup>1</sup> UNHCR Statistical Yearbook 2010, p. 42, available at <http://www.unhcr.org/4ef9c8d10.html>.

determination interviews). The surveys included a range of questions: migration history and experiences crossing the border; efforts to access the RROs; attempts to get and maintain documents; exposure to corruption; interactions during the status determination process; and incidents of arrest and detention. The surveys also included a limited number of questions targeting the experiences of Zimbabweans during the three-month Zimbabwe Documentation Process (ZDP) to explore the extent to which this parallel process provided a viable alternative to the asylum system. Based largely on quantitative findings, the report complements a June 2012 qualitative report highlighting problems with the quality of status determination decisions.<sup>2</sup> It builds on a baseline study conducted over eight months in 2007/08 that presented a comprehensive picture of conditions at the five then existing refugee reception offices.<sup>3</sup>

## The Future of Asylum in South Africa

The recent office closures are part of DHA's plan to move all refugee reception offices to the border. But questions remain about how the Department will ensure that these border offices fulfil their legal obligations and operate effectively. While the DHA has released few details regarding the planned operation of the new offices, policy discussions suggest that the DHA plans to remove the right of asylum seekers to work and study. The Department has also referred to asylum seeker 'centres' where asylum seekers will be held pending final determination of their asylum claims. This raises the prospect that asylum seekers will be deprived of their liberty, and will be more likely to face immediate deportation if their claims are rejected, with limited access to legal assistance and appeals. As such, there is an even greater need to ensure that the asylum process is both efficient and administratively fair.

The findings detailed in this report highlight existing problems in the asylum system that must be addressed as the move to the borders is implemented, particularly if the new asylum regime involves both detentions and immediate deportation. Unless DHA proactively addresses these problems, they will be replicated at the new border offices—posing dire consequences for those facing detention and deportation under conditions of limited access to legal assistance. In addition to affecting the rights of asylum seekers, the problems identified also violate the legal provisions of South Africa's Refugees Act (No. 130, 1998), as well as its international obligations under the 1951 United Nations Refugee Convention and the 1967 Protocol, and the 1969 Organisation of African Unity (OAU) Refugee Convention, calling into question the Department's commitment to the rule of law. In particular, an asylum system that does not meet the standards of administrative fairness raises the risk of *refoulement*—returning an individual to a country where he or she may

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<sup>2</sup> Roni Amit, 'All Roads Lead to Rejection: Persistent Bias and Incapacity in South African Refugee Status Determination,' ACMS Research Report, June 2012.

<sup>3</sup> Roni Amit with Tamlyn Monson, 'National Survey of the refugee reception and status determination system in South Africa,' FMSP Research Report, February 2009.



face persecution. The *non-refoulement* principle is a defining element of refugee law. Without it, the very purpose of the refugee framework is nullified.

## Summarising the Report's Findings

The report highlights key issues and challenges facing asylum seekers at the refugee reception offices. It shows that many of the problems identified in the 2009 baseline study persist, and that earlier improvements in efficiency have declined with the office closures, without any comparable improvement in the quality that was initially sacrificed for these efficiency gains. While DHA had shown some improvement in the provision of information and interpreters, respondents still reported acute problems in these areas.

The main findings are summarised below.

### *Demographics*

The report begins with a demographic overview of individuals applying for asylum. It finds that the demographic composition of asylum seekers coming to South Africa has remained largely unchanged over the last five years.

The principal characteristics of respondents include:

- Respondents were predominantly male.
- The most highly represented country was Zimbabwe, followed by the DRC.
- The average age of respondents was 29.
- Roughly a quarter of respondents indicated that they did not speak or understand English comfortably.

### *The Path to South Africa's Asylum System*

The next section explores the path to the asylum system, investigating the following elements:

- \* The reasons for flight;
- \* The migration journey;
- \* The migration route; and
- \* The border crossing experience.

The research reveals that:

- Less than half of respondents listed economic factors as their sole motivation for flight, casting doubt on the Department's claim that over 90 percent of those in the asylum system are economic migrants.
- The availability of asylum was not a major pull factor to South Africa, as most respondents were unaware of the possibility of seeking asylum before arriving in the country.
- Approximately half of respondents transited other countries en route to South Africa, and only 53 percent of those entering through the Zimbabwe border were Zimbabwean nationals.
- Just over half of respondents crossed the border informally. Many experienced robberies, rapes, beatings, and exploitation during the informal border crossing.
- Some individuals were turned away at the border post despite indicating an intention to apply for asylum.
- Just over one-third of stated asylum seekers did not receive an asylum transit permit at the border, leaving them undocumented and at risk of *refoulement*.

### *Access and Service Provision at the Refugee Reception Offices*

The next section turns to access and service provision at the refugee reception offices. The main features of this chapter include the following:

- \* The types of services sought;
- \* Issues around access and obtaining services;
- \* Queuing at the RROS.

The most significant findings include:

- Individuals are remaining undocumented as RROs fail to issue and renew permits on the same day that the individual applies or submits a permit for renewal.
- Almost two-thirds of respondents did not receive an asylum permit the first time they came to the office to apply.
- Respondents came to the RRO multiple times before gaining access, and reported an average of three visits to get a single issue resolved.
- The proportion of respondents having to spend the night outside to gain access has increased to 53 percent since the baseline study.
- The long queues have created opportunities for crime and corruption.
- Some RROs have begun refusing access to individuals who are not in possession of a transit permit, despite there being no such requirement in the law.

### *Inside the RRO: The Application Process and Documentation*

This section investigates service provision issues once inside the refugee reception office, focusing on the initial application process. The main areas covered include:

- \* Information provision and other administrative justice issues during the initial application period;
- \* Interpreter services;
- \* Permit renewals and requirements;
- \* Corruption; and
- \* Barriers in obtaining and renewing permits.

The key findings include:

- The proportion of individuals who reported receiving explanations of the process and assistance with forms increased, but many respondents still registered confusion over the requirements of the application process, calling its administrative fairness into question.
- Roughly half of respondents did not understand that the information they provided on their application form would be used to make a determination on their asylum claim.
- While the provision of interpreters has improved, the quality of the interpreter services sheds doubt on the administrative fairness of the application process.
- Difficulties in renewing permits, and replacing lost or stolen permits, have increased.
- The practice of fining for expired or lost permits has left many individuals undocumented and at risk of *refoulement* because of their inability to pay.
- Corruption remains a significant problem. Many respondents reported having to pay in order to gain access or obtain services. These issues are most acute at the Marabastad office in Pretoria.

### *Administrative Justice Issues in the Status Determination Process*

This section explores the second stage of the application process, focusing on issues relating to the administrative fairness of the status determination process and the interview experience. The central aspects of the status determination process include:

- \* The implications of same day adjudications;
- \* Applicants' knowledge of rights and requirements of the interview;
- \* Confidentiality during the interview;
- \* Interpretation services during the interview;

- \* The content of the interviews;
- \* The length of the interview;
- \* Bias during the interview;
- \* The timing and content of decisions; and
- \* Information around the appeal process.

The most significant findings include:

- Roughly half of respondents reported that the RSDO explained nothing about the interview process before beginning the interview.
- Many respondents remained confused or had no knowledge of the conditions that qualified an individual for refugee protection, even after undergoing their status determination interviews.
- Two-thirds of respondents were unaware that information given during status determination interviews was confidential, a fact that inhibited the responses they gave during the interview.
- Respondents reported feeling inhibited from sharing information because others were within earshot during the interviews;
- The provision of interpreters during the interview has improved, but one-fifth of respondents felt that interpreters had inaccurately represented their story during the interview; many also reported that the interpreter got important details wrong.
- Respondents described cursory status determination interviews in which RSDOs relied primarily on the information on the initial application form. Close to one-fifth did not feel that they were fully able to explain their reasons for asylum.
- RSDOs spent an average of 17 minutes with an applicant to assess whether an individual faced a threat to life or liberty if returned to his or her country of origin; 51 percent of status determination interviews lasted less than 15 minutes.
- Three-quarters of respondents reported that what was written in their status determination decisions did not adequately reflect the information they provided during the interview.
- Over half of respondents said that they did not understand how to appeal their claims.

### *Arrest and Detention*

Individuals were asked about their history of arrest and detention, and how problems at the refugee reception offices may have contributed to this history. Key findings include:

- \* Approximately one quarter of respondents reported being arrested because of problems with their documentation.

- \* The rate of corruption in the detention process reported by respondents has more than tripled since the baseline survey. In the current findings, 37 percent of Survey 1 respondents and 24 percent of Survey 2 respondents reported that they had paid an official to avoid arrest or to get out of detention.

### *The Zimbabwe Documentation Process*

The survey also included a few questions specifically for Zimbabweans about the Zimbabwe Documentation Process (ZDP) to determine how the ZDP may have affected their reliance on the asylum system.

Among the important findings:

- Some of those individuals who applied for work, study, or business permits under the ZDP have found their way back to the asylum system.
- The ZDP excluded otherwise eligible individuals on financial grounds, as the inability to afford a passport was the most commonly cited reason for not applying.

## **Recommendations**

This report largely reiterates the findings from our 2007-08 baseline study. While technical issues, capacity, and training remain relevant, these issues are part of a broader context centring on the fundamental element of political will. As long as the Department continues to seek ways to circumvent its obligations under domestic and international refugee law, the system will continue to fail to fulfil its fundamental purpose—providing protection to individuals who have fled persecution or general conditions of instability. Specific recommendations cannot contribute to the dialogue under these circumstances. For this reason, ACMS has not included recommendations in this report.



## Introduction

*All I can say is that this process of asylum permits and refugee status is very corrupt. There have been so many people like you here: students, researchers, NGOs. But there is nothing you can do to change the situation. Nothing changes here.*<sup>4</sup>

The Department of Home Affairs (DHA) has made significant service delivery improvements in the last few years, a change that has been lauded by the government, the media, and the South African public. Such positive assessments, however, only partially reflect the Department's activities—ignoring the Department's sweeping failure in fulfilling its mandate to protect and promote the rights of refugees, asylum seekers and other non-nationals in the country. While those heaping praise on the Department have paid little attention to issues affecting foreigners, DHA's performance in this area has been highly dysfunctional, resulting in large-scale violations of its legal obligations and duties. Those affected by these violations may face grave risks to life and liberty.

Among the most troubled of the Department's services for international migrants is its asylum system, a system that has consistently failed to carry out its functions in accordance with law. This report examines the current situation at the country's refugee reception offices, responsible for implementing the government's obligations under refugee law. The research assesses the extent to which South Africa is meeting its obligations under both international and domestic law, and maintaining a well-functioning asylum system.

South Africa's obligations to international refugees and asylum seekers are delineated in both international and domestic law. South Africa is a signatory to the 1951 United Nations Refugee Convention and its 1967 Protocol, as well as the 1969 Organisation of African Unity (OAU) Refugee Convention. The obligations laid out in these international treaties are given effect through the country's domestic legislation—The Refugees Act (No. 130, 1998) and its accompanying regulations (2000). While this legislation instituted a progressive legal framework governing the reception, status determination, and treatment of asylum seekers, current practice has been aimed at limiting these obligations and curtailing the guarantees found in the Act, as described below. The research findings highlight the effects that these changes have had in terms of service provision at the refugee reception offices.

## History of Asylum in South Africa

Although South Africa has long hosted people fleeing war, the country first began receiving significant numbers of asylum seekers in the mid-1990s following the transition to democracy. Since then, the country has experienced a steady increase in asylum seekers,

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<sup>4</sup> 2012 Survey respondent.

and in 2007 became the world's largest recipient of individuals applying for asylum.<sup>5</sup> In an effort to deal with the growing demand, the Department of Home Affairs (DHA) initially took steps to expand service provision by opening additional refugee reception offices (RROs). These offices manage the asylum process by receiving applications, documenting asylum seekers, and assessing their claims.

Following the passage of the 1998 Refugees Act and its 2000 enactment, the country opened five refugee reception offices in the main urban centres: Johannesburg, Pretoria, Cape Town, Durban, and Port Elizabeth. As demand grew, the Department established a series of backlog offices in September 2007,<sup>6</sup> and supplemented its normal operations through a series of domestically and internationally sponsored 'backlog projects.' Eventually, the Department opened two additional offices—a second office in Pretoria (April 2009), and an office in the Northern border town of Musina (August 2008).

In 2011, the Department began reversing the trend of expanding administrative capacity for asylum seekers and refugees by initiating a series of office closures. The first office to close was the Crown Mines office in Johannesburg, which shut its doors on 31 May, 2011—forcing Johannesburg applicants to travel to Pretoria for asylum applications and renewals. This was followed by the Port Elizabeth office, which closed to new applicants on 21 October 2011 and to all applicants on 30 November, 2011. Most recently, the Cape Town office ceased operations on 28 June, 2012. While existing asylum seekers in Cape Town can for the time being renew their permits at a newly established DHA office in Foreshore, new applicants must now go to Durban, Pretoria or Musina to apply.<sup>7</sup> The survey was carried out after the Johannesburg office had closed, but before the closure of the Cape Town office. The Port Elizabeth office closed during the course of the research.

## The Future of Asylum in South Africa

These closures are part of a DHA plan to move service provision to the border. But as DHA begins to shut down its urban refugee reception offices, questions remain about how it will ensure that these border offices operate effectively. The ability of these offices to carry out their functions is of heightened importance given the policy discussion around removing the right to work and study and keeping asylum seekers in 'centres' pending final determination of their asylum claims. The deprivation of liberty engendered by a detention policy, as well as the increased risk of deportation, creates an even greater need to ensure that the asylum process is both efficient and administratively fair.

As it plans a move to the border, it is important that DHA identify existing problems in the system. Following a June 2012 qualitative report highlighting problems with the quality of

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5 UNHCR Statistical Yearbook 2010, p. 42, available at <http://www.unhcr.org/4ef9c8d10.html>.

6 Backlog offices were opened in Port Elizabeth, Cape Town, Johannesburg, and Durban.

7 At the time of writing, court orders had been issued demanding either the re-opening, or consultation around the closures, of all three offices. In each case, the court found that the manner in which the decision was taken was unlawful. The Department has not yet adhered to any of the court orders.



status determination decisions,<sup>8</sup> this report provides a more quantitative analysis of key indicators of service delivery and administrative justice criteria at the refugee reception offices.

The report builds on a baseline study conducted over eight months in 2007/08 that presented a comprehensive picture of conditions at the five then existing refugee reception offices.<sup>9</sup> The current findings show that while there have been improvements in some areas, significant problems remain. Without a plan for addressing these problems, they will simply be replicated at the new border offices. The rights implications of these problems will be even greater under the new policy, as individuals face long periods of detention or immediate deportation following a rejection of their asylum claims, with limited ability to seek legal assistance or appeal final decisions before deportation. Moreover, such procedures may conflict with South Africa's legal obligations.

## The Legal Framework

The asylum system is primarily governed by the Refugees Act and its accompanying regulations. The provisions of this act are based largely on international and regional refugee law, specifically the 1951 United Nations Refugee Convention and its 1967 Protocol and the 1969 OAU Refugee Convention. The Constitutional guarantee of just administrative action (Section 33) further regulates the implementation of the Refugees Act, requiring that all administrative action be procedurally fair. The requirements necessary to meet this standard are set out in the Promotion of Administrative Justice Act (PAJA) (No. 3, 2000).

### *The Refugees Act*

The Refugees Act (No. 130, 1998) and accompanying regulations map out the application process and its procedural guarantees. Importantly, it incorporates the *non-refoulement* principle found in international law, which holds that individuals may not be returned to countries where they may face risks to life or liberty. This principle is the fundamental tenet of refugee protection, and is non-derogable. Procedurally, the legislation requires the Director General to set up as many refugee reception offices as deemed necessary for the purposes of the law.<sup>10</sup> It also requires that the constitutional right to administrative justice be observed.<sup>11</sup>

The Act defines a refugee as an individual who has fled a well-founded fear of persecution for reasons of race, tribe, religion, nationality, political opinion, or membership in a

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<sup>8</sup> Roni Amit, 'All Roads Lead to Rejection: Persistent Bias and Incapacity in South African Refugee Status Determination,' ACMS Research Report, June 2012.

<sup>9</sup> Roni Amit with Tamlyn Monson, 'National Survey of the refugee reception and status determination system in South Africa,' FMSP Research Report, February 2009.

<sup>10</sup> Refugees Act, Section 8.

<sup>11</sup> Refugees Act, Section 24.

particular social group; or, alternatively, an individual who has been forced to flee his habitual place of residence because of disruptions to the public order in a whole or a part of the country.<sup>12</sup> An asylum seeker must credibly demonstrate that he or she meets these criteria as part of the application process—both through a written application known as the eligibility form, and by undergoing a status determination interview with a refugee status determination office (RSDO).

### *The Application Process*

All asylum seekers must apply for asylum at a refugee reception office. Once there, they fill out an eligibility form containing questions on their personal characteristics (e.g. nationality, gender, etc.) and reasons for seeking asylum. A reception officer issues all applicants with a Section 22 or asylum seeker permit—a document that legalises their stay while awaiting a final determination on refugee status. All applicants must undergo an interview with a refugee status determination officer (RSDO), who assesses their asylum claim and eligibility for refugee protection under the law. As a result of institutional reforms, this interview generally takes place on the day that an individual first applies, and the RSDO issues a decision on the same day or within a few days.

A rejected asylum seeker has thirty days to request an appeal of the decision, and is then assigned a date for an appeal hearing with the Refugee Appeal Board (RAB). Because of a backlog at the RAB, some individuals may have to return numerous times to extend their permits before being assigned a date.<sup>13</sup> Individuals who seek asylum for reasons other than those identified in the Refugees Act—generally economic reasons—follow a different appeal process. In those cases, their decisions are automatically sent to the Standing Committee for Refugee Affairs (SCRA) for review, and individuals have 14 days to make written submissions, but have no right of appearance.<sup>14</sup>

### *The Obligations of the Refugee Reception Officer*

The Act and regulations lay out the duties of the refugee reception officer.<sup>15</sup> The primary obligations include:

- Accepting the application form, ensuring that it is properly completed, and assisting the applicant to complete it when necessary;
- Ensuring the provision of adequate interpreter services;
- Issuing an asylum seeker permit that includes written notice to appear before a refugee status determination officer on a specified date, if the interview does not occur on the same day as the application;

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<sup>12</sup> Refugees Act, Section 3.

<sup>13</sup> The RAB currently has a backlog of 74,000 cases. Briefing by the Department of Home Affairs on full report on the state of ports of entry and refugee reception offices, 22 May 2012, available at [http://www.pmg.org.za/report/20120522-briefing-department-home-affairs-full-report-state-ports-entry-and-re?utm\\_source=Drupal&utm\\_medium=email&utm\\_campaign=Free%20Alerts](http://www.pmg.org.za/report/20120522-briefing-department-home-affairs-full-report-state-ports-entry-and-re?utm_source=Drupal&utm_medium=email&utm_campaign=Free%20Alerts)

<sup>14</sup> The Standing Committee currently has a backlog of 66,000 cases. Ibid.

<sup>15</sup> These obligations are laid out in Section 3 of the Refugees Act and Section 4 of the Regulations.

- Renewing the permit every time the applicant appears as scheduled during the adjudication process; and
- Notifying the applicant of the conditions of the permit, the grounds for withdrawal, and the consequences that may result from withdrawal.

### *The Promotion of Administrative Justice Act (PAJA)*

The Promotion of Administrative Justice Act was passed to give effect to the Bill of Rights guarantee of administrative justice found in Section 33 of the Constitution. PAJA lays out the requirements for just administrative action. Some of these key requirements include:<sup>16</sup>

- Adequate notice of the nature and purpose of the proposed administrative action;
- A reasonable opportunity to make representations;
- A clear statement of the administrative action;
- Adequate notice of any right of review or internal appeal;
- Adequate notice of the right to request reasons;
- Additional measures to give effect to the right to procedurally fair administrative action, including an opportunity to:
  - » Obtain assistance, including legal representation where necessary;
  - » Present and dispute information and arguments; and
  - » Appear in person.

The actions of the refugee reception office in implementing the asylum application process fall under the rubric of administrative action. Accordingly, these actions must meet the above standards in order to fulfil the Constitutional guarantee of administrative justice.

Both the Refugees Act and PAJA set out the obligations that DHA must follow in administering the country's asylum system. The discussion that follows assesses the Department's performance within this legal framework, relying on the survey findings to provide a picture of the situation at the refugee reception offices.

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<sup>16</sup> These requirements are found in Section 3 of PAJA.



## Methodology

Between November 2011 and March 2012, ACMS field researchers administered two surveys outside of four refugee reception offices: Cape Town, Musina and the two Pretoria offices—the Tshwane Interim Refugee Reception Office (TIRRO) and Marabastad.

During the piloting phase, field researchers reported that they were unable to administer a single survey containing all of the relevant questions, as respondents felt it was too long. The questions were then divided into two surveys. To avoid losing much of the background information necessary to contextualise the results, a number of questions were included in both surveys. In general, Survey 1 was geared more toward newer applicants, and contained additional questions about the migration process and the border crossing. Survey 2 targeted individuals who had undergone status determination interviews and were awaiting appeals. Accordingly, it contained additional questions about the status determination interview process.

## DHA interference

ACMS took a deliberate decision not to conduct the research on DHA property to avoid interfering with DHA activities at the reception offices and to ensure the independence of the research. Field researchers approached individuals on public property outside of the refugee reception offices to obtain a representative sample of individuals interacting with the asylum system. Participation was voluntary and confidential. All participants gave informed consent before being interviewed.

Although the research was not conducted on DHA property, officials at the Marabastad and Cape Town offices nonetheless sought to bar the research. They approached the field researchers and informed them that even though the research was being conducted on public property, DHA approval was required because the research could portray the Department in a negative light. ACMS then contacted the Director for Asylum Seeker Management—and included the Director General, the Minister, and the Deputy Minister in the correspondence—asking that she inform staff at these offices that they had no legal basis on which to interfere with the research, or, alternatively, to inform ACMS of any such legal requirement of which we were unaware. In her response, the Director indicated that she would not act to halt this interference and that any research needed to be conducted in cooperation with DHA. ACMS explained that to maintain the independence of the research it could not accede to the Department's demands to manage the results and control the sharing of information held by private individuals. Moreover, given that the research was being conducted in public spaces, direct permission was not required. No further response was received. To protect its right to conduct research, ACMS filed a complaint with the Public Protector. The complaint is currently being investigated.

Because of continued harassment after this correspondence, including the threat of arrest, ACMS was forced to withdraw the field researchers for a period of time and to curtail subsequent research activities. As a result, the sample size was smaller than what was initially envisioned—200 individuals per survey at each office.

## Sampling

As described, individuals were approached in the public area outside of the reception office both before and after they entered the office. A total of 1417 respondents were surveyed—721 in survey 1 and 696 in survey 2. The breakdown by office and survey is summarised in the table below:

	SURVEY 1	SURVEY 2
Marabastad	241	86
TIRRO	79	210
Cape Town	201	199
Musina	200	201

Following the closure of the Crown Mines office, claimants from that office were redirected to the TIRRO office, while new applicants were directed to Marabastad. As a result, Survey 1 respondents (who were more likely to be newcomers) were under-represented at the TIRRO office, while Survey 2 respondents (who were more likely to be existing asylum seekers) were under-represented at the Marabastad office. In addition, because of the DHA interference described above, as well as efforts to manage the crowds waiting outside of the offices by dispersing them, some surveys were not fully completed, limiting the sample size.

Despite these obstacles, there are factors that support the validity of the results. A significant indicator is that where questions were included on both surveys, percentages were within the same range. Additionally, the findings support the results of more limited studies and monitoring efforts by NGOs, including those used in legal submissions stemming from the closure of the Crown Mines office.<sup>17</sup>

The following sections summarise the survey findings. Where questions were included on both surveys, results are given for each survey individually. The only exception is the first section describing demographics. For this section, the results—which were within 2-3 percentage points of each other – were aggregated. The report also indicates questions that were only included in one of the surveys. Both surveys also contained a small number of qualitative questions where respondents could elaborate on their experiences. Certain

<sup>17</sup> See, e.g., CoRMSA Monitoring Report: Monitoring in Marabastad, available at <http://www.cormsa.org.za/wp-content/uploads/2009/11/Monitoring-in-Marabastad.pdf> (August 2011); CoRMSA Monitoring Report: Scalabrini Centre of Cape Town, available at [http://www.scalabrini.org.za/images/stories/reports/dhamonitoringreport\\_feb2012.pdf](http://www.scalabrini.org.za/images/stories/reports/dhamonitoringreport_feb2012.pdf); Consortium for Refugees and Migrants in South Africa and Others v Minister of Home Affairs and Others (NGHC), Case No. 53756/11, Founding Affidavit.

issues that came up repeatedly in the qualitative responses are discussed in the report, but proportional representation could not be measured through these responses. All of the quotes included in the report, both in the text and in the text boxes, are taken from these qualitative responses.

## Looking Ahead

The findings show that many aspects of migration and performance at the refugee reception offices have remained unchanged. While DHA did show some improvement in the provision of interpreters and in providing explanations of the application process, these changes were largely superficial. Respondents believed that the quality of interpretation impacted negatively on their claim, and also continued to express confusion over how the various stages of the application process work and who qualifies for refugee status. In addition, the findings show that prior gains in meeting demand at the reception offices have been reversed, most likely as a result of the office closures. Access to the reception offices has declined, and waiting periods for permit issuance and permit renewals have returned, as have overnight queues.

The following sections highlight key issues and challenges facing asylum seekers at the refugee reception offices. It begins with a demographic overview of those individuals who are applying for asylum. It then explores the path to the asylum system, investigating the following elements:

- The reasons for flight;
- The migration journey;
- The migration route; and
- The border crossing experience.

The next section turns to access and service provision at the refugee reception offices. The main features of this chapter include the following:

- The types of services sought;
- Access issues; and
- Queuing at the RROS.

The discussion then explores service provision issues once inside the refugee reception office, focusing on the initial application process. Primary issues around the initial application process include:

- Information provision and other administrative justice issues during the initial application period;

- Interpreter services;
- Permit renewals and requirements;
- Corruption; and
- Barriers in obtaining and renewing permits.

The following section explores the second stage of the application process, focusing on issues relating to the administrative fairness of the status determination process and the main features of the interview. Key aspects of the status determination process include:

- The implications of same day adjudications;
- Applicants' knowledge of rights and requirements of the interview;
- Confidentiality during the interview;
- Interpretation services during the interview;
- The content of the interviews;
- The length of the interview;
- Bias during the interview;
- The timing and content of decisions; and
- Information around the appeal process.

The next section briefly examines how problems at the refugee reception offices may heighten the risk of arrest and detention. Finally, a few questions about the Zimbabwe Documentation Process (ZDP) were targeted at Zimbabwean applicants to determine how the ZDP may have affected their reliance on the asylum system.

While the report points to specific problems, it does not provide recommendations. This decision stems from the determination that the more technical problems of training and capacity do not stand alone, but are embedded in a broader context in which there is no political will to adhere to the legal obligations under refugee law.



## Demographics

According to the survey findings, the demographic composition of asylum seekers coming to South Africa has remained relatively unchanged over the last five years. The findings show the same general gender, age, nationality, and language breakdown as in the baseline survey.

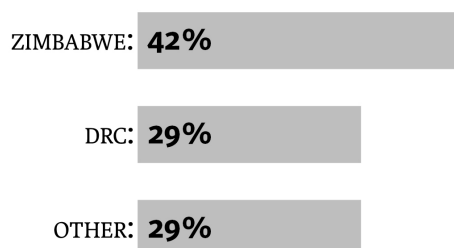
The gender distribution was the same for both surveys. As in the baseline survey, respondents were predominantly male:

### Gender Distribution of Respondents



Most were nationals of Zimbabwe or the Democratic Republic of Congo (DRC) as shown below. This representation also remains similar to that identified in the baseline survey.

### Main Respondent Nationalities

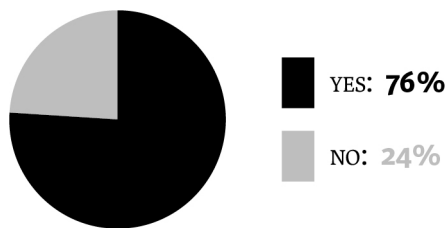


Other countries represented in the survey included Nigeria, Malawi, Somalia, Uganda, Ethiopia, and Cameroon.

The average age of the respondents was 29, as compared to 28 in the baseline survey. Three respondents were 16 years old. The oldest respondent was 76.

The most commonly spoken languages also remained virtually unchanged. They were Shona, French, Swahili, Lingala, and Ndebele. Twenty-four percent of respondents indicated that they did not speak or understand English comfortably.

**Do you understand and speak English comfortably and fluently?**



## Summary of key findings

The principal characteristics of survey respondents are summarised below:

- Respondents were predominantly male.
- The most highly represented country was Zimbabwe, followed by the DRC.
- The average age of respondents was 29.
- Roughly a quarter of respondents indicated that they did not speak or understand English comfortably.

## The Path to South Africa's Asylum System

This section discusses the journey of asylum seekers from their home country to the refugee reception office, including their reasons for flight, their experiences at the border, and their entry into South Africa.

### Challenging Assumptions about Asylum Seekers

The findings of the 2007/08 survey challenged commonly-held assumptions about asylum seekers, especially the idea that they are all economic migrants seeking to exploit the availability of asylum in South Africa in order to legalise their stay. The current findings reinforce these initial findings. As in the baseline survey, the research belies the picture that is generally presented—that of widespread abuse of the asylum system by individuals with economic motivations. Two key factors remain significant:

- The availability of asylum is not a major pull factor to South Africa.
- A majority of respondents did not come to South Africa solely for economic reasons.

### The Asylum Journey

The survey investigated multiple stages of the migration path, beginning with the reasons that asylum seekers left their countries of origin. In addition to exploring these 'push' factors, it also examined the presence of the 'pull' factors that DHA has pointed to as leading to migration to South Africa specifically. These pull factors included economic opportunity, and the availability of the asylum system as a mechanism to regularise one's status even without a valid asylum claim. The section also explores the route travelled by asylum seekers, and their experiences during the border crossing and entry into South Africa.

#### *Factors leading to flight*

The baseline study showed that the causal factors leading to flight are not easily categorised, a situation that is confirmed by the current findings. While the Department of Home Affairs has been quick to label any sort of economic consideration as tantamount to being an economic migrant, the results show a more complex picture of the reasons for flight.

Slightly more than half of respondents (Survey 1: 58%, Survey 2: 54%) indicated that they left their home countries in search of economic opportunities. However, when individuals were provided an opportunity to list multiple reasons for flight, 16 percent (Survey 1) and 14

percent (Survey 2) of those who indicated economic reasons also indicated that they fled to escape war, persecution, or insecurity.

Just under half—49 percent (Survey 1) and 46 percent (Survey 2)—indicated economic reasons alone as their reason for flight. At the same time, slightly less than half of respondents (Survey 1: 42%, Survey 2: 46%) did not cite economic reasons at all as a reason for flight.

These results counter the Department's oft-stated view that over 90 percent of those in the asylum system are economic migrants coming to South Africa specifically for employment opportunities.<sup>18</sup> Individuals fleeing for multiple reasons may nonetheless seek economic opportunities once they arrive in South Africa, as they establish themselves in a new country. Such mixed motives do not automatically negate the need for protection as a refugee where other reasons for flight are present. But the Department has characterised the presence of any economic factor as automatically establishing an individual as an economic migrant. It has even gone so far as to characterize nineteen Ethiopians who fled persecution as economic migrants because when they arrived in Johannesburg after walking for eight months, they encountered a Somali migrant in Mayfair and asked him for food.<sup>19</sup>

Among those who did not mention economic motivations at all, war and general feelings of insecurity were the most common reasons for flight, followed by ethnic persecution and religious persecution. The results are summarised below.

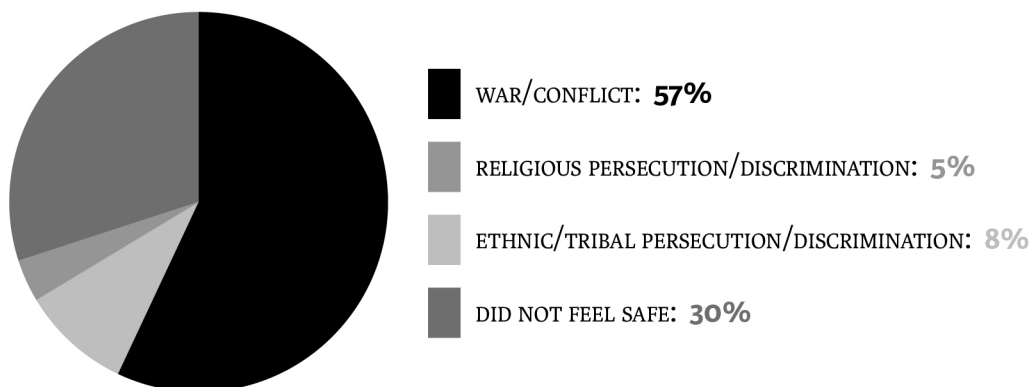
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<sup>18</sup> See, e.g. Department of Home Affairs Annual Performance Plan 2012/13 to 2014/15, March 2012, p. 5, available at <http://www.home-affairs.gov.za/PDF/Annual%20Reports/Strat%20Plan%202012-13-2014-15.pdf>. See also statement by DHA Director General Mkuseli Apleni expressing the view that 'the majority [of asylum seekers] are economic migrants using a back door,' cited in IRIN, 'South Africa: "Harsher regime" for asylum Seekers,' 29 November 2011, available at <http://www.irinnews.org/Report/94337/SOUTH-AFRICA-Harsher-regime-for-asylum-seekers>

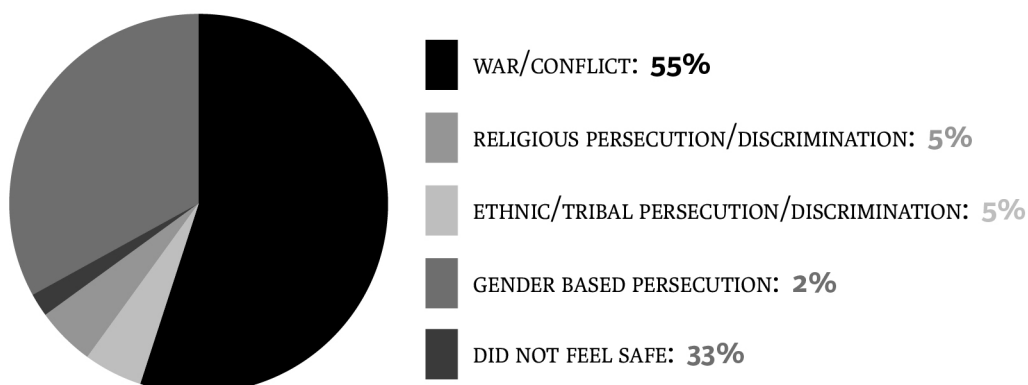
<sup>19</sup> Bula and 18 others v The Minister of Home Affairs and 2 Others, Case No. 589/11, SCA (29 November 2011), Oral Arguments before SCA (9 November 2011).

## Reasons for Flight

### Survey 1



### Survey 2



Very few respondents cited gender-based persecution as a reason for flight. While this may be a function of the low representation of women in the survey, it also may be attributable to the general invisibility of gender-based claims in the asylum process, as highlighted in the qualitative study.<sup>20</sup> Given that RSDOs overwhelmingly fail to recognise gender-based persecution as a ground for refugee status,<sup>21</sup> it is unlikely that they are making applicants aware of it as a basis for persecution. This lack of a full explanation of the grounds for asylum, coupled with fact that gender-based claims are largely unsuccessful, may serve to reinforce its invisibility.

<sup>20</sup> See R Amit, 'All Roads Lead to Rejection,' supra note 8, pp. 74-94.

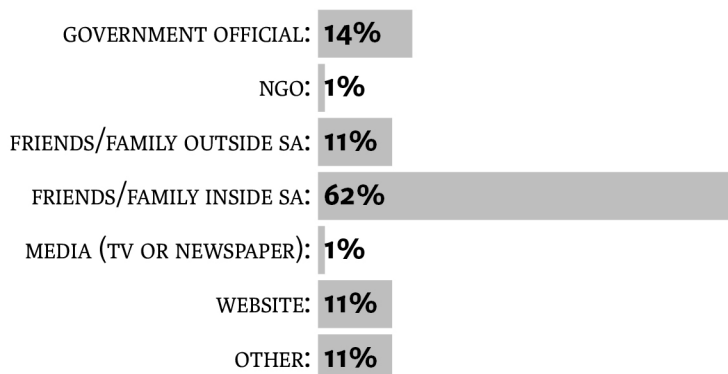
<sup>21</sup> Ibid.

### *Asylum as a pull factor*

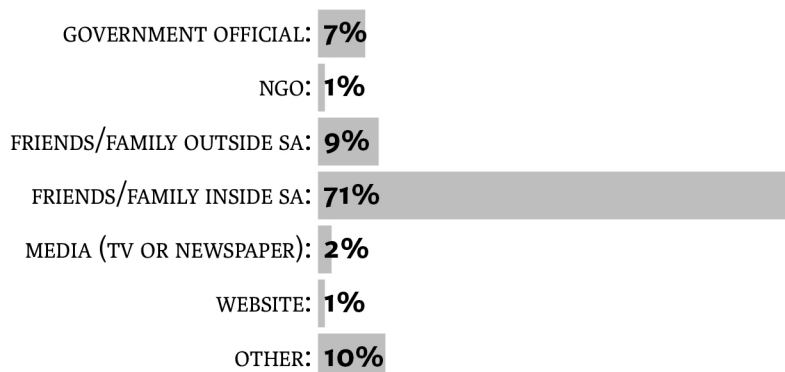
The research findings also negate the Department's view that the availability of asylum is a major pull factor to South Africa leading to exploitation of the system.<sup>22</sup> The baseline survey revealed that few people were aware of the possibility of formally seeking asylum in South Africa before they arrived in the country. That general lack of awareness has not changed in the intervening years. In fact, only one-third of applicants (33%) in the current survey knew about the option of seeking asylum when they left their country of origin. Most of them found out that they needed to report to an RRO from friends and family once inside South Africa. A few also reported hearing about the process from their employer, or from other migrants.

#### **How did you find out you needed to come to an RRO?**

##### *Survey 1*



##### *Survey 2*




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<sup>22</sup> In its 2011–2014 Strategic Plan, DHA's Deputy Minister categorised abuse of the asylum system as a 'weak link' in migration that posed a threat to national security. Department of Home Affairs Strategic Plan: 2011/12–2013/14, p. 4. Available at <http://www.dha.gov.za/PDF/Annual%20Reports/Strat%20plan.pdf>.

The finding that most asylum seekers do not become familiar with the asylum process until after they enter the country is supported by the fact that only a small proportion of asylum seekers (Survey 1: 11%, Survey 2: 9%) reported hearing about the asylum process from friends or family outside of South Africa.

### *The Path to South Africa: Survey 1*

Changes in Departmental practice at the border have affected the experiences of asylum seekers trying to enter the country. The Department of Home Affairs began applying the first safe country principle—which has no basis in international law—to asylum seekers at the border in the first half of 2011.<sup>23</sup> Under this principle, an individual who transits another ‘safe country’ en route to South Africa must seek the protection of that country and will be denied entry into South Africa. The application of this principle has serious implications for the rights of asylum seekers, particularly because the manner in which DHA has applied it—without considering the feasibility of alternate protection—does not accord with international standards, or its obligations under international law.<sup>24</sup>

Questions about the migration route included in Survey 1 show that this principle applies to a significant proportion of those seeking asylum. About half of Survey 1 respondents (51%) transited other countries before coming to SA. In addition to the bordering countries of Zimbabwe, Mozambique, and Botswana, other commonly listed countries included Kenya, Tanzania, and Zambia.

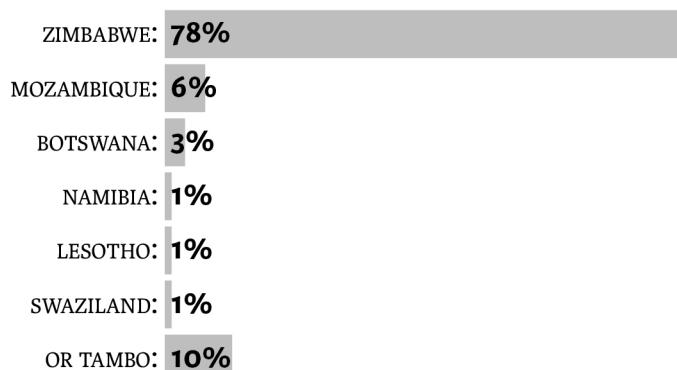
Most respondents (78%) entered South Africa by land through the border with Zimbabwe. Only 53 percent of those entering through that border, however, were Zimbabwean (down slightly from 58 percent in the baseline study).

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<sup>23</sup> DHA began implementing the practice without following any official process or. As a result, it is difficult to pinpoint the exact date that this change took effect. Nor is it clear whether individuals are still being turned away on this basis, as the Department has announcement made no official statement.

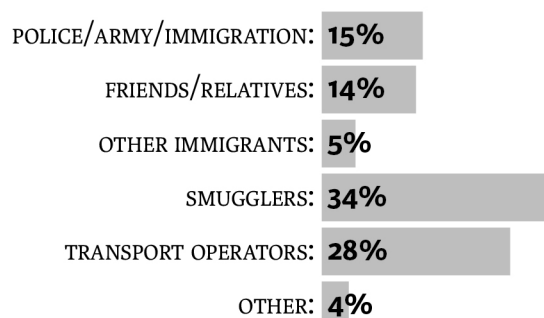
<sup>24</sup> See Roni Amit, ‘The First Safe Country Principle in Law and Practice,’ African Centre for Migration & Society Issue Brief 7, June 2011.

### What border did you cross into South Africa?



Almost half (47%) of respondents reported getting assistance to cross the border—mostly from smugglers (34%) and transport operators (28%).

### Who helped you get across the border?



A large proportion (72%) reported paying for this assistance. Payments ranged from as low as R100 to as high as R7000, with 29 percent reporting that they paid over R700. The highest proportion of payments fell in the R1000-2000 range.

### *Abuse during the border crossing*

Among all Survey 1 respondents, 15 percent reported being a victim of crime or deception during the border crossing (compared to 17 percent in the baseline survey). Of those, 81 percent were informal border crossers (compared to 97% in the baseline survey), including seven individuals who had been turned away at the border post.



The heightened risk of crime during informal border crossings points to the dangers of the Department's superficial application of the first safe country principle, which forces individuals to cross informally. This danger is heightened by the fact that, in contravention of its legal obligation, DHA is not conducting any assessment of whether those individuals denied entry are able to avail themselves of the protection of another safe country.

**As we were crossing the Limpopo River they told us to sit down and held machetes, knives and stones. They started threatening us and raped a woman and hurt her, and took the shoes and wallets and phones and watches.**

The lack of visibility during informal border crossings creates opportunities for individuals and criminal gangs (often referred to as *amagumaguma*) who prey on border crossers to commit a range of abuses:

- *Robbery*: many respondents reported that all of their belongings, including their clothing, were stolen. In some instances, the robberies were carried out by smugglers.
- *Physical violence*: respondents described witnessing or experiencing physical violence, including rapes and beatings; and
- *Exploitation by smugglers*: respondents reported paying money in exchange for guarantees that were not fulfilled, or being asked for additional money from smugglers after the journey was underway.

## Entry into SA

As in the baseline survey, just over half (56%) of respondents crossed the border informally. Although there is no specific data on the reasons for informal entry, the lack of documentation may be a contributing factor. Most individuals (61%) fled without any sort of documentation, while 28 percent fled with a passport. It is unclear whether knowledge of the restrictions at the border also encouraged informal entry, as respondents were not asked whether they were aware of these restrictions.

For those who did enter through an official border post, Beitbridge was the overwhelming border post of choice (96%). A handful of respondents reported attempting to enter via Koomatiport, Maseru, Ponto D'Ouro, and Zeerust (Kopfontein). Most (87%) of those who tried to enter through an official border post were able to gain entry, while 13 percent were denied entry.

Section 2 of the Refugees Act holds that 'no person may be refused entry' if such refusal would result in the individual being returned to a country where he or she faced persecution

or a threat to his or her life stemming from general conditions of instability. In other words, no individual seeking refugee protection may be refused entry. Yet, of the 38 individuals who were denied entry at the border, 17 were turned away despite telling the border official that they wished to claim asylum.

### *Asylum transit permit*

Of those who gained entry through an official border post, 41 percent received an asylum transit (Section 23) permit. This proportion increased to 63 percent among those who indicated to border officials that they wished to apply for asylum. Slightly more than one-third (37%) of stated asylum seekers did not receive a transit permit, in contrast to 20 percent in the baseline survey. Roughly one-third (34%) of those who did receive a transit permit reported not being able to lodge an asylum claim before the permit expired.

Among those who did not tell border officials that they wished to apply for asylum, 66 percent were unaware of the asylum possibility.

## **Key Features of the Migration Journey**

The lack of awareness of the asylum option, coupled with more restrictive measures at the border, have affected the migration experiences of asylum seekers en route to South Africa. Whether by choice or because they were turned away at the border, a majority of asylum seekers choose to enter the country informally. These informal border crossings increase their exposure to crime, violence, and extortion during the border crossing. For both formal and informal border crossers, the lack of documentation when they enter the country leaves them susceptible to arrest, detention, and deportation before a proper consideration of their asylum claims—a situation that raises the risk of *refoulement*, in violation of both international and domestic law. This risk is exacerbated by the Department's tendency to incorrectly classify many of these individuals as economic migrants without considering that they also may have legitimate protection needs under refugee law.

Some of the main findings from this section are summarised below:

- Less than half of respondents listed economic factors as their sole motivation for flight, casting doubt on the Department's claim that over 90 percent of those in the asylum system are economic migrants.
- The availability of asylum was not a major pull factor to South Africa, as most respondents were unaware of the possibility of seeking asylum before arriving in the country.
- Approximately half of respondents transited other countries en route to South Africa, and only 53 percent of those entering through the Zimbabwe border were Zimbabwean nationals.

- Just over half of respondents crossed the border informally. Many experienced robberies, rapes, beatings, and exploitation during the informal border crossing.
- Some individuals were turned away at the border post despite indicating an intention to apply for asylum.
- Just over one-third of stated asylum seekers did not receive an asylum transit permit at the border, leaving them undocumented and at risk of *refoulement*.



## Access and Service Provision at the Refugee Reception Offices

The baseline survey identified access to the refugee reception offices as a serious problem affecting asylum seeker rights. The lack of access not only leaves individuals undocumented and vulnerable to arrest and deportation, but also creates opportunities for officials and others to exploit the difficulties with access by demanding money.

Despite some improvements, the current findings show that asylum seekers continue to have problems getting into refugee reception offices, a problem attributed both to corruption and to a lack of capacity. The closure of reception offices has exacerbated this problem.

The experiences of clients seeking assistance at refugee clinics following the adoption of same day adjudication procedures suggests that these procedures reduced the waiting periods for Section 22 permits, status determination interviews, and initial decisions. But these gains came at a high price with respect to the quality of status determination decisions, as highlighted in the June 2012 report. The poor decision-making quality also increased demand on the Appeal Board, resulting in a huge backlog and long waiting periods for appeal hearings.

The survey results uncovered a more recent and troubling development: some of the initial efficiency gains made at the expense of quality are now declining without any corresponding increase in quality. The findings show that some of the previous advances in service provision have been lost, as waiting periods for both receiving and renewing asylum permits have returned. These delays leave both would-be and existing asylum seekers without documentation, placing them at risk of deportation without a proper determination of whether their deportations constitute *refoulement*. Although the survey did not measure the timing of this change, increased demand as a result of the office closures is likely a contributing factor.

### Demand for Services at the RROs

Individuals may come to an RRO for a variety of reasons during the duration of their status as both asylum seekers and refugees. The overwhelming majority of respondents, however, are there to either apply for asylum or to extend their permits. The most common reasons respondents were at the office are listed below.

**I came today to get an extension. They took it to extend it. They came and told us that they cannot extend it. We should come back tomorrow.**

WHY HAVE YOU COME TO THE OFFICE TODAY?	SURVEY 1	SURVEY 2
Apply for asylum	39%	31%
Extend asylum permit	47%	58%
Request an appeal hearing	1%	2%
Have an appeal hearing	2%	2%
Replace a lost/stolen permit	6%	4%
Join family files	4%	3%

A number of respondents reported that they had come to collect their asylum permits, pointing to the fact that individuals are no longer receiving their permits on the same day that they come to apply or renew.

As detailed above, much of the demand on the system is created by individuals coming to the RROs to renew their permits. DHA can take steps to alleviate this demand by increasing the validity period of asylum permits, particularly for individuals waiting for appeal hearings or appeal results. Additionally, DHA can reduce the period of time that individuals remain in the asylum system by addressing the serious flaws in the status determination system, which in turn will eliminate some of the backlog at the appeals stage and reduce the wait for a final decision.

**I have been coming to the office for three weeks. Every time I come I am told to come back the next day or the next Wednesday. Then if we do not leave, we get whipped by the security guards.**

## Access to Refugee Reception Offices

*I came here to replace my permit because I lost the first one they gave me. But they told me they are busy helping new applicants. I must come back on Monday.*

*This is my third time to be here and I can't afford the transport every time, only to be told to come next Monday. The police don't understand this and they'll just arrest me. I am afraid. You can't explain to them how difficult it is to get inside this office. People are pushing too much in the queue. I'm afraid of being knocked into the street and getting hit by a car.*

*I am frustrated because I didn't get in. I wasted transport money.*

These quotes from three different survey respondents highlight the difficulties in accessing the reception offices. As in the baseline survey, many individuals were forced to make

multiple attempts to gain entry to the RRO. A majority of respondents reported coming to the office more than once to seek assistance with the same issue, indicating problems with access and service delivery.

**Is this the first time you have come to this office to address this issue?**

*Survey 1*



*Survey 2*



Among those who indicated that it was not their first visit, 43 percent of Survey 1 respondents and 55 percent of Survey 2 respondents had come more than two times to resolve the issue they were there for on the day they were surveyed.

Respondents came to the office an average of three times to get a single issue resolved.

ACMS also asked respondents how many times they had come to a refugee reception office in the last six months without getting inside. Close to half reported not being able to get inside an office at least once, as detailed in the table below.

COULD NOT GET INSIDE	SURVEY 1	SURVEY 2
At least once	48%	47%
At least twice	34%	32%
At least 3 times	21%	18%
At least 4 times	14%	10%
5 or more times	9%	6%

For many applicants, the difficulties in even getting inside the offices have left them undocumented. This problem has worsened since the baseline survey, in which 46 percent of respondents reported not receiving a permit the first time they came to the office. This number increased to 64 percent in the current surveys. This number may also include individuals who make it inside, but are instructed to return on another day to receive their permits as described below.

**I came here early. I was allowed to fill in a form to apply but then they told me that I have to come back next week Friday. I don't understand.**

### *Permit Delays*

Several respondents indicated that they were not getting their permits on the day that they applied, and were instead forced to return to pick up their permits. This, combined with access problems, leaves them undocumented, sometimes with dire consequences:

*I came to apply for my asylum permit the first time yesterday and we were told together with my mother-in-law to come back today. We had to sleep outside the office. Police came and arrested us. We tried to explain that we already applied for asylum permits but had been told to collect them the next day. They refused to listen, arrested us, and we slept in the cells. In the morning we were supposed to be deported but when the bus passed through Home Affairs my permit was ready. That is how I know I was not deported. My mother in law's was not ready and she has been deported.*

The knowing targeting for deportation of individuals who are unable to access the refugee reception offices violates the right to asylum, as well as the non-refoulement principle. It also suggests that the Department's solution to the problems at the reception offices is to limit access to the asylum system at the expense of individual rights, and in violation of its legal obligations.

### *Transit Permits required for Access*

The findings highlighted an additional barrier to accessing the reception offices: the requirement that asylum seekers produce a transit or section 23 permit in order to apply. This requirement is not legally mandated, nor has DHA made any official pronouncements to this effect. Because it was not a stated requirement, the survey did not include questions asking respondents if they were required to produce a transit permit to access the reception office. But the qualitative responses contained many descriptions of individuals being turned away because they did not have such permits. Field researchers similarly observed officials at the Marabastad office denying entry to asylum seekers without transit permits.



Asylum seekers crossing the border informally—more than half of respondents—are typically unable to secure a transit permit. Without such documents, they may be forced to return to the border in order to obtain these permits, a demand requiring both considerable time and money. Moreover, there is no guarantee that border officials will issue them with transit permits, given that even some of those individuals who did enter through an official border post did not receive them. Service providers working near the border in Musina have reported that border officials often refuse to issue these permits to people already in the country.

## Queuing at the RRO

As access grows more difficult, large queues of desperate asylum seekers have again become a feature outside the reception offices. These queues, and the desperation they engender, create opportunities for crime, violence, and extortion as well as abuse from security guards. The large numbers of people waiting outside the offices for entire days, and in some instances nights, also raise issues of public health and sanitation. A number of respondents noted the absence of working toilet facilities, and the unhygienic situation this had created.

Abuse in the queues has remained prevalent since the baseline survey, with the same proportion of respondents reporting suffering some form of abuse. Similar types of abuses were reported:

**We don't know what's happening inside. We wait a lot of time here outside.**

**I have been pushed and hit by security guards. Sometimes they just tell us to go home for no reason. Then if we don't or we get angry, they begin to hit us.**

### *Physical Harassment and Violence*

- Being harassed, pushed, beaten, or verbally abused by security guards.
- Being harassed, threatened, and beaten by police.
- Being beaten and robbed outside the RRO at night.
- Being pushed in the queue.

### *Verbal Harassment*

- Being called 'makwerekwere' or other abusive terms and/or told to go 'home'.
- Being harassed by others in the queue.

### *Theft and Extortion*

- Having phones, money or bags stolen while sleeping outside.
- Being pickpocketed while in the queue.

- Being denied access to the office without paying a bribe.
- Being cheated of money in exchange for documentation or a place in the queue.

Sixteen percent of respondents in Survey 1, and a similar number in Survey 2 (17%) reported suffering violence and other threats to their personal security while in the queue. The most common of these was robbery—both while queuing and when spending the night outside the office. Respondents also reported being beaten and harassed by security guards, as well as police officers.

**I've been outside with my baby boy, in the rain and they've pushed. He's hungry now.**

Many asylum seekers resorted to spending the night outside the RRO to secure a spot in the queue. While 38 percent of respondents in the baseline survey reported spending one or more nights outside a reception office, the current findings show that the proportion of applicants resorting to this measure has increased significantly—jumping to 53 percent (with the same proportion reported in both surveys 1 and 2). This increase points to heightened problems with access.

As in the baseline survey, respondents spent an average of three nights outside the office, although a number reported many more nights outside, as detailed in the table below.

NIGHTS SPENT OUTSIDE RROS	SURVEY 1	SURVEY 2
2 or more nights	72%	74%
3 or more nights	45%	47%
4 or more nights	25%	25%
5 or more nights	17%	14%
10 or more times	7%	7%

Many respondents had children in their care while they slept outside, a situation that is particularly concerning given the increased exposure to crime and violence in this setting.

**We are coming from far away and tonight I have to sleep outside with my baby.**

## Were there children in your care when you spent the night outside?

### Survey 1



### Survey 2



## Transparency and corruption in the queuing process

The lack of a clearly identifiable queuing process outside of the reception offices has heightened the potential for extortion and bribery as individuals turn to any available measures to gain access. It also leaves individuals unsure of when and how they will gain access to these offices, raising their level of insecurity.

While more than half of individuals in Survey 1 (57%) and Survey 2 (60%) reported a clear queuing process, the provision of information via signs or official instructions was lacking, as indicated in the tables below.

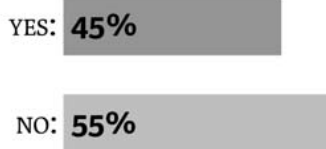
**At this office you don't get given proper information. I will come one day then the security guards will chase me away and say I must come the next day. When I come the next day they just chase me away again. We need the right information here.**

**It's unfair because they are letting people who were at the back go in first just because they gave the security money. Now I have to come back tomorrow and I was in front.**

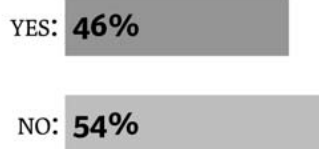
Has an official provided you

**with information about the procedure for queuing and accessing the office?**

*Survey 1*



*Survey 2*



**Have you seen any signs informing you about the process for queuing and accessing the office?**

*Survey 1*



*Survey 2*



The lack of a clearly identified process for queuing and accessing the refugee reception offices creates opportunities for corruption and irregularities, as discussed in more detail in the subsequent section on corruption.

## Increasing Barriers to Asylum

The findings present a picture of declining access to the asylum system, with a number of individuals struggling to both obtain and maintain documentation. In part as a result of office closures, asylum seekers are again facing long queues at the refugee reception offices, and are resorting to spending the night outside these offices to gain access. Service delivery has also suffered, with individuals being told to return on another day for their asylum permits when they arrive at the office to either apply for asylum or renew their permits. In the interim, they are left undocumented, placing them at risk for arrest and possible deportation without a determination on their asylum claim. Additional barriers to access include corruption and the linking of access to possession of a transit permit, available only at an official border post.

The most significant findings include:

- Individuals are remaining undocumented as RROs fail to issue and renew permits on the same day that the individual applies or submits a permit for renewal.

- Almost two-thirds of respondents did not receive an asylum permit the first time they came to the office to apply.
- Respondents came to the RRO multiple times before gaining access, and reported an average of three visits to get a single issue resolved.
- The proportion of respondents having to spend the night outside to gain access has increased to 53 percent since the baseline study.
- The long queues have created opportunities for crime and corruption.
- Some RROs have begun refusing access to individuals who are not in possession of a transit permit, despite there being no such requirement in the law.



## Inside the RRO: The Application Process and Documentation

Many of those applying for asylum continue to express confusion over how the application process works. This confusion stems from a combination of factors, including corruption and inefficiencies at the refugee reception offices, as well as a general failure to fully explain the various stages of the application process to the applicant, raising questions about its administrative fairness.

Respondents were asked a series of questions about their experiences inside the RROs. The questions investigated both the initial application process (Survey 1) and the status determination interview process (Survey 2). The responses reveal a range of problems with service provision, pointing to an application process that does not accord with the requirements of administrative justice.

### The application process: Survey 1

This section outlines the general experiences of asylum seekers during the first phase of the application process, which involves filling out the eligibility form.

#### *Administrative Justice and Procedural Fairness*

Section 24 of the Refugees Act requires that the constitutional guarantee of administrative justice be observed in the asylum application process. To meet the standards of administrative justice, individuals must be informed of the nature and purpose of the administrative action.<sup>25</sup> Specifically, DHA officials must ensure that applicants fully understand the asylum procedures, the accompanying rights and obligations, and the evidence presented in relation to a claim. Failures to observe these guarantees may compromise the fairness of the asylum claim and may adversely affect the final outcome.

<sup>25</sup> PAJA, Section 3.

**I was happy to know that I could get some documentation to reside legally here, but then the challenge I faced applying was that there were questions such as would you like to go back home someday and many of us were not sure on how to answer those questions and what and how they would affect the outcome of our applications. Further, all I knew was that there would be an interview process but I was not sure what the officials were looking for in that process. I also did not know that everything that was in my application documents should be in line with what I said in the interview.**

The baseline survey highlighted failures in upholding the procedural guarantees outlined above and questioned the fairness of the asylum system based on the lack of a clear explanation of the application process in 68 percent of cases. The current findings register some improvements in this area, as the proportion of those who reported not receiving any explanation of the application process decreased to 43 percent. In another improvement, 38 percent of respondents did not receive an explanation or any assistance with the application form, as compared to 70 percent in the baseline survey.

Despite these improvements, the procedural fairness of the process remains problematic. The results show that many asylum seekers still do not adequately understand their rights and the requirements of the asylum system. Roughly half (49%) did not know that what they filled out on their asylum eligibility form would be used to make a determination on their asylum claim, and 41 percent indicated that they did not understand all of the questions on the eligibility form, calling into question the nature of the assistance that the reception offices are providing.

**Did you know the answers in your application form would be used to decide your asylum claim?**

YES: **51%**

NO: **49%**

**Were there any question you did not understand?**

YES: **41%**

NO: **59%**

The failure to adequately explain the process may prevent asylum seekers from fully realising the protections guaranteed by the asylum system, particularly if they do not understand what information is essential for a successful asylum claim. As a result, individuals genuinely in need of protection may fail to avail themselves of this protection.

*Interpreter services*

Lack of adequate interpreter services has also compromised the administrative fairness of the asylum application system. The regulations obligate DHA to provide interpretation services

**It is very complicated to fill out a form here because I don't know anything about English and there is no interpreter here to help us.**



during the application process, where practical and necessary.<sup>26</sup> The survey results suggest that, although the reception offices do provide interpreter services, the poor quality of these services is compromising the fairness of the asylum process and negatively affecting individual asylum seekers.

Almost half (48%) of respondents indicated that they needed an interpreter—up from 37 percent in the baseline survey. DHA’s provision of interpreters rose from 20 percent to 60 percent of cases, but additional responses suggest severe problems with the quality of the services provided. Where the office did not provide an interpreter, 65 percent of respondents indicated that they managed to secure one on their own, most often by finding a stranger outside the office or relying on a friend or acquaintance. They paid these individuals in 16 percent of cases.

**Did you need an interpreter?**

YES: **48%**

NO: **59%**

**Did the reception office provide an interpreter for you?**

YES: **60%**

NO: **40%**

**Were you able to obtain the assistance of an interpreter?**

YES: **65%**

NO: **35%**

**Did you pay this person for their services?**

YES: **16%**

NO: **84%**

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<sup>26</sup> Regulations, Section 5.

A number of respondents complained about the inadequacy of the interpreter services at DHA generally and the use of one interpreter to assist Ethiopian, Somali, and Congolese applicants in particular. Respondents from the DRC noted that there was no French interpreter and that DHA only provided an Ethiopian interpreter who spoke a version of Swahili that was markedly different from what was spoken in the DRC. They also noted that not all Congolese spoke Swahili. In addition, respondents described not receiving adequate assistance from interpreters in filling out their eligibility forms.

**There is no one to interpret French or Swahili properly in the RRO and the available interpreter is not from the Congo but from Ethiopia and he doesn't translate accurately what we from DRC say.... What they have also been doing is to group together all the people who do not speak English. The interpreter would then ask everyone for their names and write it on a separate piece of paper and afterwards he would proceed to fill them in without asking the people some of the important questions such as why they left their home countries. Everyone is then given the same reasons for leaving and yet it is not everyone who came for economic reasons.**

## Permit Renewals and Requirements: Survey 1 and 2

The permit renewal requirement continues to place a significant burden on applicants for a combination of reasons. The long waiting period for appeal hearings increases the number of renewals an applicant must obtain. The duration of permits, ranging from one to three months, further adds to the number of renewals. And for each renewal, applicants must take off time from work, find childcare where necessary, and pay for transport, a cost that has increased significantly for those applicants whose closest RRO has closed. These costs are further exacerbated by problems with access, which may necessitate multiple visits to an RRO for one renewal.

**I came to extend my permit and they told me to go back and come tomorrow.**

A small proportion of Survey 1 respondents (4%) were unaware of the fact that they were required to return on the stamped date to renew their permits. Similarly, 3 percent of respondents in Survey 2 were not aware of this requirement, increasing their risk of arrest and deportation.

A small proportion (6%) also reported that their permits contained conditions stating that they were not allowed to work or study, despite a court decision declaring this unlawful.<sup>27</sup> In Survey 2, double this proportion (12%) reported having these conditions stamped on their permit.

<sup>27</sup> In *Watchenuka*, the Court declared unlawful the general use of such restrictions. *Minister of Home Affairs and Others v Watchenuka and Another*, SCA, No. 10/2003 (28 November 2003).

**I have been here more than 36 times to replace my lost permit but still no help.**

**I am here to replace my lost asylum but since yesterday I am being told to wait outside and I don't know what that means or if I will be assisted.**

The most significant obstacles, however, involved the need to repeatedly renew permits over an extended period of time, and the difficulties around replacing lost or stolen permits.

A quarter of Survey 1 respondents (25%) reported having lost a permit at some point, or having it stolen. A significant majority (70%) had difficulties getting it reissued. In Survey 2, 22 percent reported lost or stolen permits, and 62 percent reported difficulties getting them reissued. These difficulties have grown worse, as 40 percent of respondents in the baseline survey reported the same problems in getting their permits reissued.

**I came to renew my asylum... and I was told that I cannot renew it because the officials attending to such matters were not there and would only be available one week from now.**

#### Have you ever lost your permit or had it stolen?

##### Survey 1

YES: 25%

NO: 75%

##### Survey 2

YES: 22%

NO: 78%

#### Did you experience any difficulties in getting it reissued?

##### Survey 1

YES: 70%

NO: 30%

##### Survey 2

YES: 62%

NO: 38%

As mentioned previously, demand on the system is exacerbated by the onerous permit renewal requirements. Most respondents had renewed their permits so many times—several times a year, for some respondents for up to ten years—that they found it difficult

to quantify just how many times they had renewed. Each renewal required transport costs, time lost from work or childcare, and on some occasions, multiple trips to the reception office before getting inside. Many respondents reported having to come to the office more than once to renew, as indicated in the table below.

THE LAST TIME YOU RENEWED YOUR PERMIT, HOW MANY TIMES DID YOU COME TO THE RRO?	SURVEY 1	SURVEY 2
Two or more times	32%	28%
Three or more times	10%	12%
Four or more times	4%	6%
Five or more times	2%	5%

Almost a quarter (24%) of Survey 1 respondents reported that their permits expired because they could not get into an RRO to renew, while 18 percent of Survey 2 respondents reported the same.

Given these difficulties, it is not surprising that some respondents—9 percent (Survey 1) and 8 percent (Survey 2)—reported that they had paid someone to get or extend a permit.

A number of respondents also reported that work, personal commitments, or illness prevented them from coming to the office before their permits expired (Survey 1: 16%, Survey 2: 13%).

**In order to get your extension you must pay. That's why I'm in trouble—cannot pay. Once I looked on the internet—that they should give your permit for no charge but that's not the truth when you come here.**

#### Has your permit ever expired because you were unable to get into the refugee reception office?

##### Survey 1

YES: **24%**

NO: **76%**

##### Survey 2

YES: **18%**

NO: **82%**

**Has your permit ever expired because you were unable to come to the office due to work, personal commitments, or illness?**

*Survey 1*



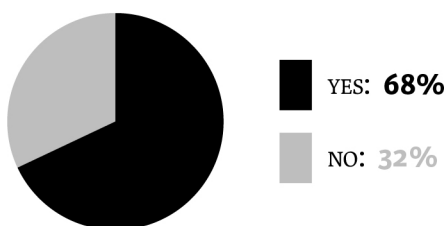
*Survey 2*



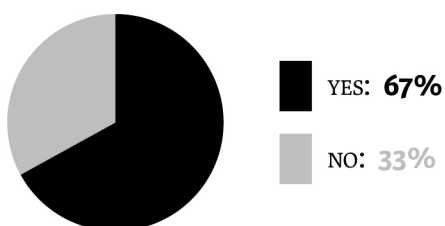
Roughly one-third of respondents—32 percent of Survey 1 respondents and 33 percent of Survey 2 respondents—said that they had been unable to renew their permits after they expired.

**Were you able to renew your permit after the expiration date?**

*Survey 1*



*Survey 2*



In survey 1, 15 percent of respondents had an expired permit at the time of the interview, while 10 percent of those in Survey 2 did.

## Is your permit expired right now?

### Survey 1



### Survey 2



## File Transfers and Renewals at Other Offices

Asylum seekers may relocate within South Africa after they have applied for asylum. This is particularly true for individuals who applied for asylum in Musina when they first crossed the border. Given the long periods of time that asylum seekers remain in the system while they wait for final decisions on their claims, many move to urban areas where they can support themselves. The need to regularly return to the office where they initially applied in order to renew their permits every one to three months poses a significant financial and time burden.

The Department has for several years declared that an asylum seeker may renew his or her permit at any refugee reception office, and is not required to renew at the office where he or she initially applied. In practice, asylum seekers have been unable to renew their permits anywhere but at the office where they initially applied. Respondents have continued to report problems renewing at other offices, or transferring their files to new offices. Even respondents whose original office had closed reported problems:

**I am staying in Johannesburg and am struggling to come to Musina refugee reception for renewing my permit because I cannot afford the transport to pay the taxi.**

*I came here from PE to renew. Now here at TIRRO, they are refusing me to renew.*

### *Fines for Lost and Expired Permits*

The problems with renewals and replacing lost permits have been made worse by the institution of what for some constitute insurmountable financial barriers to documentation. In recent years, DHA has been fining individuals with expired permits. Although legal organisations have questioned the legality of this practice, DHA has not only continued the practice, but has expanded it to apply to lost permits as well.

**I've not been able to extend my permit because they wont let me inside. Now they want me to pay 3000 rands now that it is expired. The officials are always moving up and down, serving people with money.**

In each of the surveys, 8 percent of respondents reported being fined or arrested for having an expired permit.

#### **Have you ever been fined or arrested for having an expired permit?**



Several individuals reported being unable to renew their permits because they could not pay the fines, including those individuals whose permits had expired because they could not get into the office.

Several respondents also reported having to pay R2500 for replacing lost permits. Those who could not afford this amount were forced to remain undocumented, leaving them vulnerable to deportation even if they had a genuine fear of persecution in their home country.

**I lost my permit... and they wont give me another one and they suggest to me to sign a consent form to agree a fine of R2500 which I should pay after one month then they can replace a new one.**

Some individuals with expired permits were denied the option of paying a fine and were instead directly threatened with deportation:

*I came to renew my asylum permit four days after it had expired. They said that they were not going to do it and that I would in fact be deported. I then tried to explain to them that I had business that I had registered using my asylum permit as well as my bank accounts where I used the same documents and they said that it is not their problem.... I asked them why I cannot pay a fine and they told me that there is a reason but they cannot disclose it to me.*

The failure to consider whether these individuals faced a threat to their safety or freedom in their country of origin contravenes the *non-refoulement* principle.

## Corruption

The most common complaint found in the qualitative responses involved corruption. Several respondents pointed to the need to pay in order to receive both access and service at the refugee reception office. A statement from a former interpreter at Marabastad highlighted the problem of corruption:

*I know just how corrupt the Department of Home Affairs is. Early in the morning is when it mostly happens. Newcomers are targets for corrupt officials. With money, you can buy forms from the managers...those refugees from poorer places like DRC cannot get the status.... Corruption goes from the door right to the top.*

Other respondents echoed this description:

*If you have money, you can get refugee status easily.*

*It's totally corrupted. All in all, it involves what money you have. They don't take us as human beings. The guards beat us with sticks.*

*Every time you come it's difficult. They always ask for money.*

*If you don't have money, they reject you.*

*Refugees are anyone who can pay the officer.*

According to the quantitative findings, approximately a quarter of respondents (Survey 1: 26%, Survey 2; 19%) reported being asked for money in exchange for moving to the front of the queue. These offers of access in exchange for money were most commonly made by security guards.

Once inside the office, corruption decreased—with 8 percent of Survey 1 respondents and 7 percent of Survey 2 respondents reporting requests for money, mostly by DHA officials.

The level of corruption varied greatly by office, with Marabastad having the highest levels during the queuing process: 46 percent (survey 1) and 35 percent (survey 2). The Musina office had the lowest levels of corruption of all the offices. The proportion of respondents by office who reported being asked for money to advance in the queue is summarised below.

**The security guys today asked me to give 100 rands to get inside. I don't have that—that's why I'm still outside. If you want to go inside, you've got to pay.**



ASKED FOR MONEY OUTSIDE THE RRO	SURVEY 1	SURVEY 2
Marabastad	46%	35%
TIRRO	19%	14%
Cape Town	27%	35%
Musina	4%	2%

Corruption declined once inside the offices, with TIRRO registering more overall corruption in this category than Marabastad. At TIRRO, 18 percent (survey 1) and 9 percent (survey 2) reported that they had been asked for money in exchange for assistance with documents. The difference between the Marabastad and TIRRO offices may be linked to the fact that new applicants are directed to Marabastad, and respondents at this office may not have entered the office or received documents, while existing applicants are directed to TIRRO.

The proportion of respondents by office who reported being asked for money in exchange for assistance with documentation inside the RRO is summarised below.

ASKED FOR MONEY INSIDE THE RRO	SURVEY 1	SURVEY 2
Marabastad	10%	12%
TIRRO	18%	9%
Cape Town	7%	5%
Musina	3%	4%

## Barriers to Documentation

The findings outlined above illustrate that rather than improving access to asylum documents, the Department has created additional barriers. Such obstacles prevent individuals from entering or remaining in the asylum system, thereby reducing what the Department views as the high numbers of individuals wrongly being afforded asylum protections. This denial of access, however, is taking place without any assessment of individual asylum claims or the danger that deportation may pose to an individual, in direct violation of both international and domestic refugee law. The problems identified also raise continuing concerns over the administrative fairness of the process.

The key findings from this section include:

- The proportion of individuals who reported receiving explanations of the process and assistance with forms increased, but many respondents still registered confusion over the requirements of the application process, calling its administrative fairness into question.

- Roughly half of respondents did not understand that the information they provided on their application form would be used to make a determination on their asylum claim.
- While the provision of interpreters has improved, the quality of the interpreter services sheds doubt on the administrative fairness of the application process.
- Difficulties in renewing permits, and replacing lost or stolen permits, have increased.
- The practice of fining for expired or lost permits has left many individuals undocumented and at risk of *refoulement* because of their inability to pay.
- Corruption remains a significant problem. Many respondents reported having to pay in order to gain access or obtain services. These issues are most acute at the Marabastad office in Pretoria.

## Administrative Fairness in the Status Determination Process: Survey 2

*I came yesterday to make a permit. I filled out the form. They could not give me a permit and told me to come back today. [Today] they gave me a letter saying that my application is based on grounds other than those on which an application for asylum may be made in terms of the Refugees Act. They then rejected the application... After submitting it to the Standing Committee they will inform me of the decision...My concern is how can they reject my claim the first day [before] I made the claim?*

*They did not interview me but on the paper they wrote 'collect decision' and even the date was not mentioned, and I don't understand why they did write for. For which reason will I come collect decision because what I know is I only filled out the form: my surname, first name, country of origin, father's name, mother's name.*

The survey results highlight a range of concerns with respect to the status determination process. While the efficiency of the process has improved, the procedural fairness has suffered accordingly since the baseline study.

The June 2012 report on the quality of status determination decisions pointed to serious flaws in the decision-making process, resulting in administratively unfair decisions that violate both refugee law and the constitutional guarantee of just administrative action. The survey reveals additional areas of concern. These include:

- Lack of notice before the interview;
- No explanation of the interview process;
- Short duration of interviews, coupled with insufficient opportunities to fully explain the asylum claim;
- Inadequate interpreter services; and
- Discriminatory and biased attitudes toward applicants.

**[M]y wife is applying for her permit, but she can't read or write. Yet the security officials do not allow me to help her complete her application or help her in her interview. They just say somebody else can help her.**

### *Same day adjudication*

At the time that the baseline survey was underway, DHA was rolling out the same day adjudication process at the refugee reception offices. Under this process, individuals have their status determination interviews on the same day that they first apply for asylum, and

generally receive their decisions on that day as well, or within a few days. Although it was not universally applied, many asylum seekers in the current survey reported experiencing same day adjudication. The fact that some asylum seekers no longer receive their permits on the day that they apply, as described above, may account for the inconsistent application of same day adjudication procedures.

Among Survey 2 respondents, 63 percent, or 433 individuals, had been interviewed by a refugee status determination officer (RSDO). Almost half (48%) reported that this interview took place on the same day that they applied for asylum and received their asylum permit.

#### Have you been interviewed by a refugee status determination officer?



#### Did your interview take place on the same day that you received your permit?



Conducting status determination interviews on the day that asylum seekers apply may compromise their procedural fairness rights, particularly their right to adequate notice. Applicants are unlikely to be familiar with the asylum process on the day that they first arrive at a refugee reception office, and thus may not be prepared for or understand the interview requirements.

**I do not know [who qualifies for refugee status] and I do not even understand what the refugee status is all about. I just went for the interview because I was told it was part of the process for my asylum permit.**

#### *Knowledge of rights and requirements during the interview*

These concerns with administrative fairness are heightened by the fact that in 49 percent of cases—the same proportion as in the initial findings—respondents indicated that the interviewer did not explain anything about the interview process before he or she began the

interview. Accordingly, a high proportion (68%) of respondents did not know that their answers would not be shared with any person or government official outside of the refugee reception office—the same proportion as in the initial survey. For an asylum seeker, particularly one who has fled from government persecution, the fear that his or her answers may be reported to government officials may have a chilling effect on the responses given. The applicant's failure to disclose the full details may, in turn, negatively affect the outcome of the asylum claim. Moreover, many individuals seemed unfamiliar with the basic requirements necessary to make out an asylum claim.

While 62 percent of respondents said that they understood what type of information they were expected to provide to make an asylum claim, this result was not supported by their responses when they were asked to explain, in their own words, who qualifies for asylum.

**I am not sure because I thought if one gave economic reasons they could be granted refugee status but since my application was unsuccessful after I gave these reasons I am not sure. The other thing is it seems that everyone who's unsuccessful is given a similar response or same reasons. It's as if we all say the same things.**

**Did the RSDO explain anything about the asylum interview process before he or she started asking you questions?**

YES: **51%**

NO: **49%**

**Did you know that your answers would not be shared with any person or government official outside of the Refugee Reception Office?**

YES: **32%**

NO: **68%**

### Did you understand what type of information you were expected to provide to support your asylum claim?

YES: 62%

NO: 38%

Several individuals, including those who had undergone their status determination interviews, defined an asylum seeker as anyone in search of a job, someone in search of ‘greener pastures,’ or anyone without documentation. Many said they simply did not know. A status determination interview during which the asylum seeker is either unaware of or misinformed about the information that is required to make out an asylum claim cannot be characterised as procedurally fair. Individuals who qualify for asylum may fail to share the relevant information if they lack adequate knowledge of the type of information that is required, placing them at risk of *refoulement*.

Those individuals who did have a more accurate understanding of the qualifications for asylum expressed confusion following their status determination interviews, raising further fairness issues:

*It’s complicated. Normally it should be people from the DRC because we have many problems of war and conflict, but that’s not the case.*

*I do not know who qualifies. I thought it was somebody who feared for their life in their own country because of war or politics or religion. But now, even I am that person and I cannot get asylum.*

*I don’t know. Myself, I am from DRC where conflict is obvious, but they say not for any claim. I am confused and I don’t know.*

In some instances, the Department seemed to deliberately contribute to the confusion:

*During the interview they explained to us that they did not want anyone to give political reasons for leaving Zimbabwe to warrant anyone to flee. They were willing to entertain people who gave economic reasons for leaving Zimbabwe.*

### Confidentiality

*[T]here were other people looking at me and I didn’t want them to hear my story.*

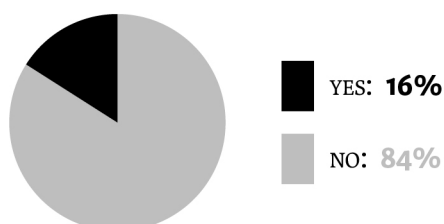
*[T]he interview wasn’t private. I felt limited.*

*[I was not able to fully explain my story because] there were people who could hear what I was saying.*

Confidentiality is an essential component of an administratively fair status determination process, given the sensitive nature of many asylum claims. Individuals who have been persecuted because of political beliefs or for other reasons may be reluctant to disclose sensitive information in the presence of strangers who could potentially act on it, or report it to others. In addition, asylum seekers who already find it difficult to discuss a traumatic experience may find it still more difficult if there are strangers around who can overhear them.

Although slightly improved, confidentiality has remained an issue since the baseline survey period, with 16 percent of respondents reporting that their answers could be heard by others during their interviews (down from 27 percent). The lack of confidentiality may have a silencing effect on the disclosure of information. In fact, several individuals cited privacy concerns when asked why they felt they were not able to adequately explain their reasons for asylum.

**During your interview, were there other people around you who could hear your answers?**



### *Interpretation*

As in the first stage of the application process, the quality of interpretation services remained problematic during the interview phase, where it had a more direct effect on the outcome of the status determination process. Many respondents complained that their

**I don't speak English and the interpreter from Somalia has put me in trouble now because what I was claiming is not what is written on my appeal decision today.**

stories were not adequately represented by their interpreters.

While DHA again showed some improvement in the provision of interpreters, the quality of this interpretation proved inadequate, negating the potential benefits of the increased provision.

Among Survey 2 respondents, 42 percent needed an interpreter during the interview. The reception office provided an interpreter in 70 percent of these cases, an increase from 15 percent in the baseline survey period. In the remaining cases, 73 percent of respondents were able to obtain the assistance of an interpreter. As in the first stage of the application process, most relied on a friend or acquaintance or found a stranger outside the office. Respondents paid this person in 10 percent of cases.

In one-fifth of cases (20%), respondents reported that they did not feel that the interpreter accurately represented their

**During the interview I did not understand some of the questions... because he spoke Tanzania Swahili, which is very different from Congolese Swahili.**

story during the interview. Several respondents complained that their claims were adversely affected because the

interpreter got important details of their claims wrong, such as what area of the DRC they were from.

**I have noticed that there is only one interpreter for languages spoken in Ethiopian, Somalian, and DRC and he was not very fluent in my language... I finished my interview yesterday and I was told by my interpreter that I will need to pay some money for my appeal but I don't fully understand what money I must pay and to whom.**

#### Did you need an interpreter to help you during the interview?

YES: 42%

NO: 58%

#### Did the reception office provide an interpreter for you?

YES: 70%

NO: 30%



**Were you able to obtain the assistance of an interpreter?**

YES: **76%**

NO: **24%**

**Do you feel that the interpreter accurately represented your story during the interview, and explained things properly?**

YES: **80%**

NO: **20%**

*Interview Content*

Respondents revealed several breaches of administrative fairness during the interview. While a handful of respondents reported receiving a decision without having an interview at all, many more described cursory interviews in which the RSDO concentrated almost exclusively on the eligibility form and did not ask the respondent any questions or allow the individual to explain his or her reasons for claiming asylum. As UNHCR has pointed out in its 'Handbook on Procedures and Criteria for Determining Refugee Status,' the information provided on a standard questionnaire is generally very basic and 'will normally not be sufficient to enable the examiner to reach a decision.'<sup>28</sup>

**I was not even asked to explain my situation properly. The interviewer just looked at the form I had already filled in.**

In 17 percent of cases, respondents reported that the RSDO did not ask them why they wished to claim asylum. One-fourth of respondents (25%) said that they were not asked to explain their story of why they fled their country of origin.

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<sup>28</sup> UNHCR, 'Handbook on Procedures and Criteria for Determining Refugee Status,' UN doc. HCR/IP/4/Eng/Rev.3, December 2011, para. 200.

### Did the interviewer ask you why you wanted to claim asylum?



### Did the interviewer ask you to tell your own story of why you left?



The importance that the information on the eligibility form plays in the status determination interview also raises concerns around administrative fairness. RSDOs often rely on differences between the information recorded on the eligibility form and the information recounted during the interview to counter the validity or credibility of the individual's asylum claim.<sup>29</sup> Some of these differences may be attributable to language difficulties, to the difficulties in fully expressing the claim in written form, or to a failure to fully understand the process. In these cases, the claimant may be able to account for the differences in a way that does not call the asylum claim into question. Yet, in 34 percent of cases, respondents reported that the RSDO did not go over the eligibility form with them.

Even when RSDOs pointed to problems with the eligibility form during the interview, they did not always give the applicant a chance to address these problems. Accordingly, in 15 percent of cases, respondents indicated that the RSDO had identified such problems, but less than half (39%) were given a chance to explain the problems or issues with their claims. More than half

**I do not feel that I was able to explain my situation because when I first filled in my application there is some information such as the nature of the injuries I suffered while I was running away from Zanu-PF supporters who had attacked us and other information pertaining to the kind of fear I lived in that I did not include in the application form because then I did not know that it was necessary for me to mention it. As a result, I could not then mention the information during the interview as it was not there in my form.**

<sup>29</sup> See R Amit, 'All Roads Lead to Rejection,' supra note 8, pp. 40-43.

(59%) of respondents indicated that these problems stemmed from language difficulties, or from the fact that they did not fully understand the asylum process, underscoring the administrative justice issues highlighted earlier.

**Did the interviewer go over your eligibility form with you?**

YES: 66%

NO: 34%

**Did the interviewer identify any problems or issues in your eligibility form?**

YES: 15%

NO: 85%

**Did the interviewer give you a chance to explain any of these problems or issues with your claim?**

YES: 39%

NO: 61%

**Did you feel that any of these problems were because you did not fully understand the process, or had language difficulties?**

YES: 59%

NO: 41%

In general, 17 percent of respondents did not feel that they were fully able to explain why they wanted asylum. When asked to elaborate on why this was the case, the most common answers included language and interpretation issues and the short duration of the interviews. Some individuals stated that their status determination interview focused only on the information provided on their eligibility forms, and they did not get a chance to elaborate. A number of respondents said that they were not asked specific questions.

**I was trying to explain my story when the officer stopped me and told me that he doesn't have the whole day to listen to me.**

### Were you able to fully explain your story of why you needed asylum?



### Interview Length

*I did not get time to tell any story. The interviewer just asked me if I came here for jobs.*

*The interviewer just looked at the form I had filled out and did not really ask me any questions.*

*The interviewer did not give me time to talk.*

The status determination interview is the primary mechanism for determining an individual's eligibility for refugee status. During this interview, a status determination officer must assess the individual's credibility, the nature of the danger he or she faces, and the likelihood of persecution in the country of origin. The complexity of the assessment, and the life or death issues that are at stake, necessitate a careful, thorough, and well-researched status determination process, and not a cursory procedure. A failure to adequately assess the situation may result in *refoulement*—the return of an individual to an area where he or she faces grave danger.

Despite the critical importance of the status determination interview, the findings show that the average interview time has decreased since the baseline survey—from 30 to 17 minutes. A significant portion of interviews were even shorter than the average, as illustrated below.

REPORTED INTERVIEW TIMES	
5 minutes or less	16%
10 minutes or less	36%

15 minutes or less	51%
20 minutes or less	69%
30 minutes	17%
Over 30 minutes	9%

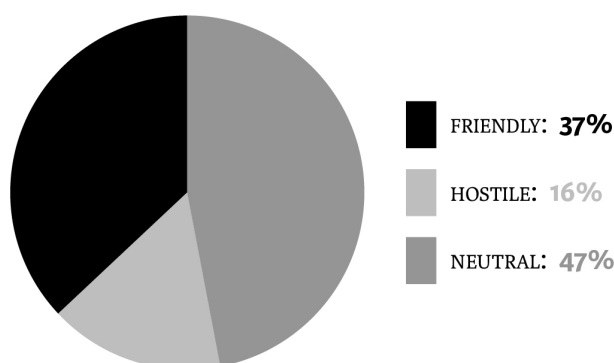
Several respondents cited the short duration of the interview as hindering their ability to explain their reasons for needing refugee protection. They indicated that the interviewer only focused on their eligibility form, and did not investigate further or give them an opportunity to explain their situation. cursory interviews also limit the ability of the RSDO to fully investigate the asylum claim—a result supported by the June 2012 report’s finding that the RSDO decision often fails to adequately reflect the individual’s asylum claim. As a result, these interviews do not fulfil the requirements of procedural fairness and administrative justice.

### *Interviewer Attitudes*

The content of status determination interviews also calls into question its procedural fairness. Not only do RSDOs not devote significant time to obtaining the relevant information, qualitative responses suggest that, in some cases, they also use the short interview time to ask questions that reveal bias or a lack of proper training.

When asked to describe the attitude of the RSDO during the interview, 37 percent described it as friendly, 47 percent as neutral, and 16 percent as hostile—a decrease from the 22 percent who reported the attitude as hostile in the baseline survey.

#### **Which of these words best describes the attitude of the interviewer?**



Despite the declining reports of hostility, some respondents still described being asked questions that did not seem related to their claim (15%), or questions that seemed inappropriate (10%). These questions displayed anti-immigrant prejudice, reliance on

xenophobic stereotypes, and a general lack of professionalism. Some examples are provided in the box below:

**“Why do all Somalians or Ethiopians who are coming to apply for permits tell us always similar stories”**

**“I told him that I came for security reasons... He replied ‘I don’t believe that,’ and threw away his pen. He told me, ‘we know you Congolese, there is no more war in your country.’”**

**“The interviewer started asking why I did not go to a country like Botswana, Mozambique, or Malawi. He told me that I was lying about the reasons that I gave him and he said that ‘we will make sure that by the time that you will come for extension, you will be deported.’”**

**“Why do you choose South Africa and not another country? Why does everybody like to come to South Africa?”**

**“‘Why can’t you stay in your country?’ The interviewer also made it clear that he was fed up with the presence of foreigners.”**

**“He said I would not be able to stay here in South Africa because they do not like kwerekweres to stay in South Africa.”**

**“Why do you Nigerians want to come to South Africa and do bad things?”**

**“He said I would not be able to stay here in South Africa because they do not like kwerekweres to stay in South Africa.”**

**“Why do you Nigerians want to come to South Africa and do bad things?”**

These results support the findings of the qualitative study, in which the poor quality of decisions and the disparity between the asylum claim and the reasoning reflected in the decision-making process revealed a deliberate bias against asylum seekers, and a preference for rejecting individuals without adequate consideration of their claims.

The qualitative report also included a finding that RSDOs were often uninformed about country conditions. In the survey, 39 percent of respondents reported that the interviewer did not seem to understand conditions in the applicant’s country of origin.

**Did the interviewer seem to have an understanding or awareness of the conditions in your country?**

YES: **61%**

NO: **39%**

**Did the interviewer ask you any questions that did not seem related to your claim?**

YES: **15%**

NO: **85%**

**Did the interviewer ask you any questions that made you feel uncomfortable?**

YES: **10%**

NO: **90%**

*Status determination decisions*

The 2009 report summarising the baseline survey expressed concern that the focus on faster processing times—a change that was being implemented during the reporting period—would have a negative effect on the quality of decisions. This prediction has proved to be true.

Among respondents who had undergone a status determination interview, most (85%) had received a decision. In 95 percent of cases, decisions were issued on the same day as the interview (70%), or within a few days of the interview (25%).

**Have you received a decision on your asylum claim?**

YES: **85%**

NO: **15%**

**Did you receive a decision on the same day that you had your interview or within a few days of your interview?**

SAME DAY: **70%**

WITHIN A  
FEW DAYS: **25%**

While this marks a significant improvement over the previous findings, in which individuals waited for up to a year or even longer for a decision, this improvement has come at the cost

of quality, as detailed in both the qualitative study and in the quantitative results detailed below.

Among those respondents who had received a written decision, three-quarters (74%) reported that what was written in the decision did not accurately reflect the information they provided during the interview, confirming the findings of the qualitative status determination study.

**Did what was written in the decision accurately reflect the information you provided in the interview?**

YES: 26%

NO: 74%

***Appeal process***

*I do not understand the processes. I do not know what appeals means.*

*Now they give me a rejection and they asked me if I am willing to appeal. I don't know how to write an appeal because no one officer tried to explain me about the appeal lodge procedure.*

The standards of administrative fairness require that an individual be informed of his or her rights of review and appeal. Under the Refugees Act and regulations, an individual has 30 days in which to lodge an appeal against a negative status determination decision. A significant proportion of respondents (28%) reported that they were not told of their right to appeal the decision. Over half of respondents (53%) stated that they did not understand how to appeal their claim.

**Were you told of your right to appeal the decision?**

YES: 72%

NO: 28%

**Did you understand how to appeal the decision?**

YES: 47%

NO: 53%



## Administrative fairness and the Status Determination Process

The picture revealed above points to a status determination process characterised by serious violations of the requirements of just administrative action.

The most significant findings include:

- Roughly half of respondents reported that the RSDO explained nothing about the interview process before beginning the interview.
- Many respondents remained confused or had no knowledge of the conditions that qualified an individual for refugee protection, even after undergoing their status determination interviews.
- Two-thirds of respondents were unaware that information given during status determination interviews was confidential, a fact that inhibited the responses they gave during the interview.
- Respondents reported feeling inhibited from sharing information because others were within earshot during the interviews.
- The provision of interpreters during the interview has improved, but one-fifth of respondents felt that interpreters had inaccurately represented their story during the interview; many also reported that the interpreter got important details wrong.
- Respondents described cursory status determination interviews in which RSDOs relied primarily on the information on the initial application form. Close to one-fifth did not feel that they were fully able to explain their reasons for asylum.
- RSDOs spent an average of 17 minutes with an applicant to assess whether an individual faced a threat to life or liberty if returned to his or her country of origin; 51 percent of status determination interviews lasted less than 15 minutes.
- Three-quarters of respondents reported that what was written in their status determination decisions did not adequately reflect the information they provided during the interview.
- Over half of respondents said that they did not understand how to appeal their claims.



## Arrest and Detention

The problems with the asylum system highlighted above increase the risks of arrest, detention, and ultimately, deportation in violation of the *non-refoulement* principle. Barriers to access, to obtaining permits, to renewing permits, and to replacing lost permits all place asylum seekers at risk of being arrested as illegal foreigners. The problems with the status determination decision-making process also raise the prospect that an individual with a genuine fear of persecution will be rejected and deported in violation of the *non-refoulement* principle.

More than half of respondents—56 percent in Survey 1 and 61 percent in Survey 2—reported having been stopped multiple times and asked to show papers. Around a quarter of them reported being arrested because of their documentation—24 percent in Survey 1 and 28 percent in Survey 2.

### Have you been stopped by a government official and asked to show your papers?

Survey 1

YES: 56%

NO: 44%

Survey 2

YES: 61%

NO: 39%

### Have you ever been arrested because of your documentation?

Survey 1

YES: 24%

NO: 76%

Survey 2

YES: 28%

NO: 72%

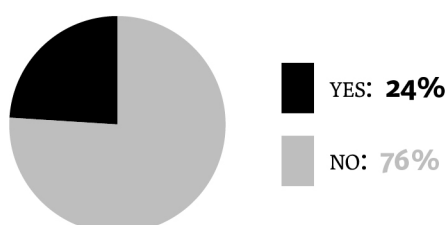
As noted in the 2009 report, greater vulnerability to arrest also provides increased opportunities for corruption among state officials. In fact, the problem of corruption appears to have gotten worse, with a large increase from the initial 8 percent who reported paying a government official to avoid arrest or to get out of detention. The current findings reveal that 37 percent of Survey 1 respondents and 24 percent of Survey 2 respondents reported paying someone, either to avoid arrest or to get out of detention.

### Have you ever paid anyone to avoid arrest or detention?

#### Survey 1



#### Survey 2



### Summary of key findings

- Approximately one quarter of respondents reported being arrested because of problems with their documentation.
- The rate of corruption in the detention process reported by respondents has more than tripled since the baseline survey. In the current findings, 37 percent of Survey 1 respondents and 24 percent of Survey 2 respondents reported that they had paid an official to avoid arrest or to get out of detention.

## Zimbabwe Documentation Process

While office closures are a significant factor contributing to increased demand at the remaining reception offices, demand may also be affected by the return of Zimbabweans to the asylum system following the Zimbabwean Documentation Process (ZDP).

During the last three months of 2010, the Department carried out the Zimbabwe Documentation Process as an alternative to the asylum system. Under the ZDP, DHA relaxed the normal requirements for work, study, and business permits for Zimbabweans in possession of a passport. While the Department claimed that all eligible Zimbabweans were able to apply for these permits, ACMS published a report highlighting significant problems with the process that may have prevented eligible individuals from applying.<sup>30</sup> The report, based on survey data, identified problems with access (at both DHA offices and the Zimbabwean consulate), with service delivery, and with the effective communication of requirements. The current survey confirms some of the initial findings of the ZDP research, highlighting the limited reach of the process.

**The only reason why I have to apply for the asylum application is because I haven't received a response from the 2010 Zimbabwean documentation process.**

The findings show that the move away from the asylum system among ZDP applicants proved temporary. Some of those individuals who applied for work, study or business permits under the ZDP have since found their way back to the asylum system. The proportion was higher for Survey 2 respondents (21%) than for Survey 1 respondents (13%) because Survey 1 applicants contained more newcomers to the asylum system who were unlikely to have been in the country during the ZDP.

Among those who were in the country at the time and did not apply, the most common reasons were inability to afford a passport, or inability to obtain all of the required documents. The table below lists the main reasons individuals did not apply.

WHY DIDN'T YOU APPLY FOR A PERMIT AS PART OF THE ZDP?	SURVEY 1	SURVEY 2
Couldn't get into the DHA office	3%	2%
Couldn't afford the passport	23%	34%
Couldn't get a passport	16%	14%
Didn't know about the ZDP	14%	10%
Didn't understand the process	5%	6%
Couldn't get all the required documents	22%	22%
Didn't qualify	17%	14%

<sup>30</sup> ZDP report.

## Summary of key findings

- Some of those individuals who applied for work, study, or business permits under the ZDP have found their way back to the asylum system.
- The ZDP excluded otherwise eligible individuals on financial grounds, as the inability to afford a passport was the most commonly cited reason for not applying.

## Conclusion

The discussion above details a range of problems with the asylum application process that adversely affects the rights of asylum seekers. These issues call into question the ability of DHA to administer an asylum system in accordance with its Constitutional obligation to ensure just administrative action. The problems also make a mockery of the rights guaranteed in both international and domestic refugee law, casting doubt on the Department's commitment to these legal guarantees.

In recent years, the Department made significant efforts to deal with the growing demand at the refugee reception offices. These efforts saw positive gains in the efficiency of the asylum process, but these gains came with a corresponding decline in the quality of service, particularly with respect to the status determination process. The current findings show that some of these efficiency gains have been lost—most likely as a result of office closures—with no corresponding increase in quality.

The Department has provided no indication of how it plans to address these problems as it shuts down the remaining urban refugee reception offices and moves service provision to the border. Nor has it explicitly acknowledged that these problems exist. If the border offices replicate existing problems, the result will be a further weakening of asylum seeker rights, particularly if asylum seekers remain in detention at the border 'centres' pending final determination of their claims. Not only will they be deprived of the fundamental right to liberty, they will also be at far greater risk of *refoulement* if deportations are carried out from these border 'centres,' with limited access to legal assistance. The result will be an asylum system characterised by serious infringements of the standards of fair administrative action. And an asylum system made hollow without the core principle of asylum— *non-refoulement*.

## Summary of Key Findings

The report's key findings are summarised below.

### *Demographics*

- Respondents were predominantly male.
- The most highly represented country was Zimbabwe, followed by the DRC.
- The average age of respondents was 29.
- Roughly a quarter of respondents indicated that they did not speak or understand English comfortably.

### *The Path to South Africa's Asylum System*

- Less than half of respondents listed economic factors as their sole motivation for flight, casting doubt on the Department's claim that over 90 percent of those in the asylum system are economic migrants.
- The availability of asylum was not a major pull factor to South Africa, as most respondents were unaware of the possibility of seeking asylum before arriving in the country.
- Approximately half of respondents transited other countries en route to South Africa, and only 53 percent of those entering through the Zimbabwe border were Zimbabwean nationals.
- Just over half of respondents crossed the border informally. Many experienced robberies, rapes, beatings, and exploitation during the informal border crossing.
- Some individuals were turned away at the border post despite indicating an intention to apply for asylum.
- Just over one-third of stated asylum seekers did not receive an asylum transit permit at the border, leaving them undocumented and at risk of *refoulement*.

### *Access and Service Provision at the Refugee Reception Offices*

- Individuals are remaining undocumented as RROs fail to issue and renew permits on the same day that the individual applies or submits a permit for renewal.
- Almost two-thirds of respondents did not receive an asylum permit the first time they came to the office to apply.
- Respondents came to the RRO multiple times before gaining access, and reported an average of three visits to get a single issue resolved.
- The proportion of respondents having to spend the night outside to gain access has increased to 53 percent since the baseline study.
- The long queues have created opportunities for crime and corruption.
- Some RROs have begun refusing access to individuals who are not in possession of a transit permit, despite there being no such requirement in the law.

### *Inside the RRO: The Application Process and Documentation*

- The proportion of individuals who reported receiving explanations of the process and assistance with forms increased, but many respondents still registered confusion over the requirements of the application process, calling its administrative fairness into question.



- Roughly half of respondents did not understand that the information they provided on their application form would be used to make a determination on their asylum claim.
- While the provision of interpreters has improved, the quality of the interpreter services sheds doubt on the administrative fairness of the application process.
- Difficulties in renewing permits, and replacing lost or stolen permits, have increased.
- The practice of fining for expired or lost permits has left many individuals undocumented and at risk of *refoulement* because of their inability to pay.
- Corruption remains a significant problem. Many respondents reported having to pay in order to gain access or obtain services. These issues are most acute at the Marabastad office in Pretoria.

#### *Administrative Justice Issues in the Status Determination Process*

- Roughly half of respondents reported that the RSDO explained nothing about the interview process before beginning the interview.
- Many respondents remained confused or had no knowledge of the conditions that qualified an individual for refugee protection, even after undergoing their status determination interviews.
- Two-thirds of respondents were unaware that information given during status determination interviews was confidential, a fact that inhibited the responses they gave during the interview.
- Respondents reported feeling inhibited from sharing information because others were within earshot during the interviews.
- The provision of interpreters during the interview has improved, but one-fifth of respondents felt that interpreters had inaccurately represented their story during the interview; many also reported that the interpreter got important details wrong.
- Respondents described cursory status determination interviews in which RSDOs relied primarily on the information on the initial application form. Close to one-fifth did not feel that they were fully able to explain their reasons for asylum.
- RSDOs spent an average of 17 minutes with an applicant to assess whether an individual faced a threat to life or liberty if returned to his or her country of origin; 51 percent of status determination interviews lasted less than 15 minutes.
- Three-quarters of respondents reported that what was written in their status determination decisions did not adequately reflect the information they provided during the interview.
- Over half of respondents said that they did not understand how to appeal their claims.

### *Arrest and Detention*

- Approximately one quarter of respondents reported being arrested because of problems with their documentation.
- The rate of corruption in the detention process reported by respondents has more than tripled since the baseline survey. In the current findings, 37 percent of Survey 1 respondents and 24 percent of Survey 2 respondents reported that they had paid an official to avoid arrest or to get out of detention.

### *The Zimbabwe Documentation Process*

- Some of those individuals who applied for work, study, or business permits under the ZDP have found their way back to the asylum system.
- The ZDP excluded otherwise eligible individuals on financial grounds, as the inability to afford a passport was the most commonly cited reason for not applying.

## **Recommendations**

The problems described above are not new, and previous reports have included recommendations tailored toward these issues.<sup>31</sup> ACMS has not included recommendations in this report because of its position that specific recommendations are not useful in the current political context. While technical issues, capacity, and training remain relevant, the fundamental problem is one of political will. Until the Department's actions are motivated by upholding its obligations under refugee and administrative law, rather than seeking ways to circumvent them, ACMS does not believe that specific recommendations can contribute to the dialogue. Instead, it calls on the Department, and other government actors, to provide details on its plans to implement the move to the border, together with an explanation on how the move and accompanying policy changes will affect existing legal obligations.

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<sup>31</sup> Roni Amit with Tamlyn Monson, 'National Survey of the refugee reception and status determination system in South Africa,' supra note 9; R. Amit, 'All Roads Lead to Rejection,' supra note 8.





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