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FORCED MIGRATION STUDIES PROGRAMME
WITS UNIVERSITY

National survey of the refugee reception and status determination system in South Africa

MRMP Research Report
February 2009



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Migrant Rights Monitoring Project (MRMP)

The MRMP builds upon the FMSP's extensive research and advocacy initiatives. Launched in 2007 the Project intends to achieve the following objectives:

- Identify gaps in South African immigration and asylum policies.
- Assess implementation of those policies by government authorities.
- Document abuses and violations of migrant rights, particularly in accessing social services, healthcare, education and the asylum system.
- Provide objective recommendations to concerned government authorities.
- Provide assistance to civic organisations that defend the rights of migrants.
- Contribute to the migration debate in the academic arena and beyond.

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Scope

This report summarises data that was gathered over a period of eight months at five of South Africa's permanent refugee reception offices (Cape Town, Durban, Johannesburg, Pretoria, and Port Elizabeth), as well as the satellite offices in Johannesburg and Durban that were set up as part of the Backlog Project.¹ The data focuses on 1) asylum seeker experiences in accessing the reception offices and lodging their asylum claims, 2) their interactions inside the reception offices, and 3) the difficulties they experience as a result of the problems with access and service delivery. Applicants were asked a series of questions in the following areas:

- Experiences prior to lodging their claims.
- Interactions with refugee reception and status determination officers.
- Experiences obtaining documentation.
- Experience of the refugee status determination interview.
- Encounters with the police.

Findings

The survey reveals the key obstacles that asylum seekers experience in accessing refugee reception offices (RROs) and in lodging their claims. While the findings reflect on issues of efficiency, the report also explores the qualitative aspects of the reception process, as well as the broader implications of South Africa's failure to receive all of the asylum seekers who arrive at its reception offices. The data both highlights the scope of these problems and pinpoints several failures to adhere to the law and respect asylum seeker rights. The survey results strongly suggest that a focus on efficiency alone can compromise the very purpose of the asylum system, which is to protect refugees.

¹ See Appendix B for a more detailed discussion.

Revealing a New Picture of Asylum Seekers

The findings of the research challenge many of the common beliefs regarding asylum seekers. Among other things, they reveal the following picture of asylum seekers:

- Although economic conditions may be a contributing factor to flight, the majority of applicants who approach the reception offices cannot be characterised primarily as economic migrants.
- The majority of asylum seekers cited reasons for their flight that corresponded to the bases for seeking asylum under the Refugees Act.
- Most asylum seekers did not know about the possibility of seeking asylum before they entered South Africa.
- Even after asylum seekers make their way to a reception office, many do not understand how the asylum system works.

The implementation of the asylum system has failed to adequately reflect this picture of the individuals who arrive in South Africa in need of protection. Instead, the survey reveals that the attitudes and behaviour of reception and status determination staff are focused on controlling migration rather than protecting refugees. The protection officers tend to view applicants with suspicion, resulting in an obstructive attitude that directly or indirectly denies many legitimate asylum seekers the protection to which they are entitled. This inhibits the realisation of the protection framework envisioned by refugee law.

Violations of Rights and the Law

This general approach is likely a contributing factor to the general failure to adhere to the law and respect the rights of asylum seekers, as uncovered by the survey. Key findings include:

- The refugee reception system often fails to fulfill its mandate to asylum seekers. Examples are under-provision of interpreters and failure to provide notice of applicants' interviews.
- Reception offices continued to engage in practices that had been previously challenged and ruled unconstitutional in court. These include

- the issuing of appointment slips and the application of work and study restrictions to asylum seekers' permits.
- Reception officers did not adequately communicate the details of the asylum application process or inform applicants of their rights, effectively denying administrative justice to asylum applicants.
 - Interviews were often short and cursory, denying applicants an opportunity to fully explain their asylum claim.
 - Respondents recounted a number of inappropriate questions asked and statements made during their status determination interviews, demonstrating anti-immigrant prejudice and a lack of professionalism among status determination officers.

Meeting Demand and Managing Queues

Reception offices continued to have problems meeting demand and managing queues. Some key observations in this regard were that:

- Many asylum seekers make numerous trips to the reception offices before gaining entry: only 35 percent of respondents were able to get into the refugee reception office on their first visit.
- The average asylum seeker who has not yet had a status determination interview has been in the system for at least a year and three months.
- The average asylum seeker who has had a status determination interview has been in the system for at least two and a half years.
- Slightly more than half of asylum seekers received their Section 22 permits the first time they entered the reception office.

Many of the problems in the asylum system leave applicants at risk of arrest, detention, and refoulement. This state of affairs works against the rights protection that is the heart of South Africa's refugee framework.

Considerations for the Turnaround Strategy

Although FMSP welcomes the reforms recently undertaken as part of the Turnaround Strategy, there is a risk that an increased focus on efficiency may

have a detrimental effect on qualitative aspects of the asylum seeker's experience, and will fail to address the more fundamental issue of rights protection.

Additional protection violations that might result if efficiency mechanisms are not paired with an equal concern for rights protection include:

- The increased focus on processing new applicants will make access more difficult for those seeking to renew their permits.
- The emphasis on speed in processing applicant claims will deny asylum seekers the opportunity to have a full and fair hearing and to receive a well-reasoned decision.
- Inadequate decision-making will lead to greater backlogs at the appeals stage, increasing the burden on the Refugee Appeal Board.
- A focus on processing large numbers of asylum seekers in the absence of significant oversight will create an assembly-line mentality that does not serve the protective goals of the asylum system.

Recommendations

In light of the DHA's current commitment to reforming the asylum-seeker system under its Turnaround Strategy, we offer the following recommendations to restore a balance between efficiency measures and the protection goals of the Refugees Act:

At the Border Post

- Publicise the asylum procedure at and around border posts to bring a greater proportion of undocumented migrants with claims for refugee status into the view and protection of the state.
- Investigate the reasons for the withholding of transit permits from would-be asylum seekers and ensure that the DHA staff at border posts provide transit permits to all those who declare their intention to seek asylum.

- Extend the validity period of transit permits for asylum seekers, possibly to six weeks (14 days plus the average time it takes to gain access after first arrival at the RRO – 29 days).

Outside the RROs

- Improve monitoring of security guards working outside refugee reception offices.
- Develop queue management procedures that do not compromise the rights of asylum seekers.

Inside the RROs

- To minimise the impact of administrative delays on asylum seekers and to alleviate demand at the reception offices while applications are being processed, extend the validity period of asylum seeker permits from three months to six months. Considering that the average waiting time for an RSDO interview is 18 months, this would halve the renewal workload as well as the burden renewals present for asylum seekers.
- Institute transparency regarding the asylum application procedures, ensuring clear communication of:
 - 1) the application process as a whole;
 - 2) the conditions for eligibility; and
 - 3) the individual procedures as they are carried out.
- Increase the provision of trained DHA interpreters.
- Ensure applicants are given sufficient notice of their RSDO interview date to enable adequate preparation (including sourcing of an interpreter, witness or lawyer).
- Provide a mechanism for applicants to review their eligibility forms before their interviews, such as providing a copy of completed eligibility forms for applicants' records.
- Provide explicit communication to all applicants regarding their right to confidentiality and the fact that their application information will not be shared with anyone outside the reception office.

- Provide explicit communication to all applicants of their rights, including the right to representation and the right of female applicants to request a female interviewer.
- Ensure that any processing system that is implemented allows sufficient time for conducting interviews and for the deliberative process before issuing decisions, to ensure thorough, reasoned decision-making.
- Establish oversight procedures to monitor adherence to the law and realisation of the rights-protection goals of the asylum system.

Refugee Reception and Status Determination in South Africa

With its transformation to democracy 15 years ago, South Africa began to serve as a destination point for asylum seekers from Africa and Asia. As part of its commitment to democracy and human rights, the ANC government adopted domestic legislation to give effect to its international obligations. These obligations are based on the 1951 United Nations Refugee Convention and the 1967 Protocol, as well as the OAU Refugee Convention. The Refugees Act (no. 130 of 1998) and accompanying Regulations (2000) instituted a progressive legal framework governing the reception, status determination, and treatment of asylum seekers. They outlined procedures that accord both with international standards and with domestic administrative justice guarantees.

What the Law Says

The Application Process

The Refugees Act and accompanying regulations map out the application process and its procedural guarantees. Asylum seekers must approach one of the country's five refugee reception offices to lodge their application. At the reception office, applicants have fingerprints taken, fill out their eligibility forms, and receive a Section 22 asylum seeker permit. They then have an interview with a refugee status determination officer (RSDO), who makes a decision regarding their status. If the decision is negative, asylum seekers are entitled to launch an appeal that is heard by the Refugee Appeal Board.

The Refugees Act requires the Director-General (DG) to set up as many refugee reception offices as deemed necessary for the purposes of the law.² In line with these purposes, the laws and regulations require that the status determination

² Section 8 of the Refugees Act.

interview generally take place within 30 days (1 month) and a decision generally be issued within 180 days (6 months) of launching the application.³

The Refugee Reception Officer

The Act and Regulations also lay out the duties of the refugee reception officer, which include:⁴

- ensuring the provision of adequate interpretation;
- issuing an asylum seeker permit that includes written notice to appear before a refugee status determination officer on a specified date;
- renewing the permit every time the asylum seeker appears as scheduled (generally every three months); and
- assisting the applicant in completing the application form.

Section 3 of the Act requires that confidentiality be maintained at all times, while Section 24 demands that the constitutional right to administrative justice be observed.

Implementation Problems and Initiatives

The Problems and their Consequences

Unfortunately, the Department of Home Affairs (DHA), as the implementing agency, has struggled to give effect to the guarantees outlined above. These problems have been well-documented,⁵ but never fully explored. This report represents the first empirical measurement of the scope and repercussions of the

³ Section 3 of the Regulations.

⁴ See, specifically, Section 3 of the Refugees Act and Section 4 of the Regulations.

⁵ See, for example, CoRMSA. 2008. 'Protecting Refugees, Asylum Seekers and Immigrants in South Africa.' [online] Available from : <http://www.cormsa.org.za/wp-content/uploads/2008/06/cormsa08-final.pdf> ; De la Hunt, L. & Kerfoot, W. 2008. 'Due Process in Asylum Determination in South Africa from a Practitioners's Perspective: Difficulties Encountered in the Interpretation, Application and Administration of the Refugees Act.' In Handmaker, J. ; De la Hunt, L. & Klaaren, J. (eds.) *Advancing Refugee Protection in South Africa*. New York: Berghahn Books.

implementation deficiencies in the refugee reception and status determination system.

The DHA's failure to implement its legal obligations has a significant effect on the lives of asylum seekers, who must be in possession of a valid Section 22 asylum seeker permit in order to be free from arrest and deportation/refoulement, and to access work, study and other opportunities. This report identifies more concretely the extent to which problems in the refugee protection system leave many asylum seekers vulnerable as they struggle to get legal status in an overburdened and underperforming system.

The Turnaround Strategy and the Asylum System

In 2008, the DHA initiated an R800-million Turnaround Strategy to reform departmental practices in all areas, including the asylum application system. It is likely that these reforms will improve some elements of service delivery in the asylum system, particularly with respect to the processing of new applicants. However, it is essential to ensure that attempts to transform service delivery in the reception system do not have unexpected negative consequences.

The survey results discussed in this report highlight problem areas that the Turnaround Strategy was not designed to address. These require special attention to ensure that efficiency measures do not reduce quality and protection, and that resources remain fairly distributed between newcomers and those already enrolled in the system. The report also highlights communication failures, omissions in provision and illegal practices that predated the Turnaround Strategy and must be urgently addressed and continually monitored.

Aims of the Research

In an effort to move beyond merely identifying deficiencies and toward advancing concrete solutions, the Forced Migration Studies Programme at the University of the Witwatersrand, in partnership with Lawyers for Human Rights

and other organisations, initiated a research project to achieve the following goals:

- Measure the performance of the refugee reception offices across a range of key service delivery and rights-protection criteria;
- Identify and isolate the most important, persistent and rectifiable problems requiring immediate and concerted attention;
- Compare the performance of offices against one another in order to differentiate local and national policy recommendations;
- Track changes in levels of performance over time in order to measure the relative effectiveness of policy interventions; and
- Establish a baseline by which to assess the current changes being implemented.

Results of the Research

Using survey-based statistical data, this report discusses the key results from the baseline study (eight months distributed across 2007/08) to present a comprehensive picture of conditions at all five of South Africa's permanent refugee reception offices.

The findings of this report are based on a series of snapshots of the status quo at each of the permanent offices at the time the research was conducted. Summarising the state of service delivery within the DHA's refugee reception and status determination systems during the research period, it points to key areas of incapacity. It also identifies several failures to adhere to the law and respect asylum seekers' rights.

Because of the time-bound nature of the survey, the data set does not reflect upon the Turnaround Strategy currently being implemented within the DHA. However, attempts are made, wherever possible, to discuss the way in which this strategy may be transforming the system, and whether these transformations represent an appropriate response to the problems identified. A clearer picture of the impact of the Turnaround Strategy may be expected after the next research period, when new statistical findings will be measured against the baseline provided by this first period of research.

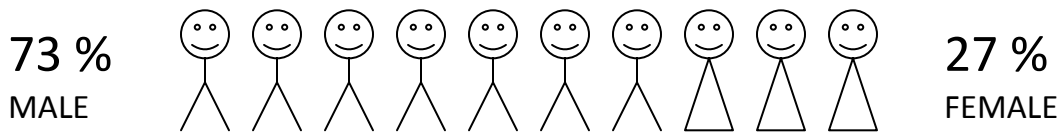
Looking Ahead

The rights violations discussed below highlight the fact that an effective transformation strategy must look beyond simply processing greater numbers of applicants and must address the protection of asylum seeker rights. Otherwise, the challenges facing the reception and status determination system may simply take on new forms.

The statistical data summarised below illustrates the scope of the deficiencies in the asylum seeker system not only in terms of capacity, but also with regard to adherence to the law and respect for asylum seekers' rights. It suggests that a more fundamental shift in approach is required: one that recognises that rights protection is the underlying purpose of South Africa's asylum application system. If rights protection is not envisioned as the main goal, administration of the system will continue to result in violations of asylum seekers' rights, undermining the aims of the Refugees Act as well as the Constitutional order put in place to protect the rights of every individual.

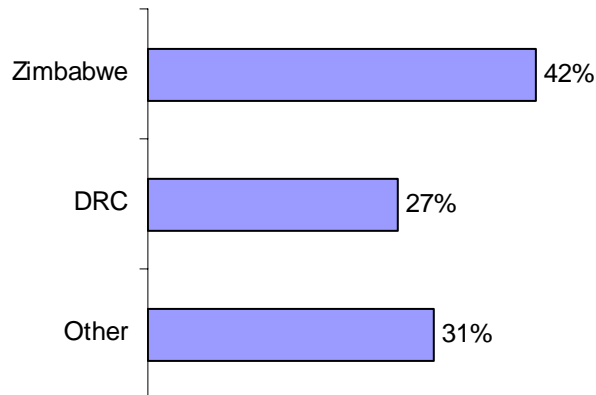
Demographics of the RRO Stage Respondents

The respondents surveyed at refugee reception offices (RROs) were predominantly male.



Gender Distribution of RRO-Stage Respondents

In line with current trends, most were nationals of Zimbabwe or the Democratic Republic of Congo (DRC), as shown below.



Main Nationalities of RRO-Stage Respondents

The average⁶ age of respondents was 28. Most respondents were between the ages of 21 and 35, with the largest proportions falling into the following age groups:

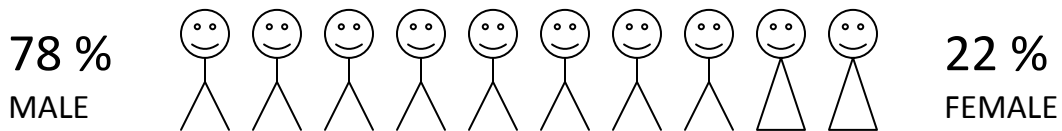
⁶ Median.

Age Group	% of Respondents
21-25 years old	26%
26-30 years old	33%
31-35 years old	20%

Respondents were asked to list up to three languages spoken. Those listed most frequently included English, Shona, French, Swahili, Ndebele and Lingala. Twenty-two percent of respondents did not list English as one of their languages.

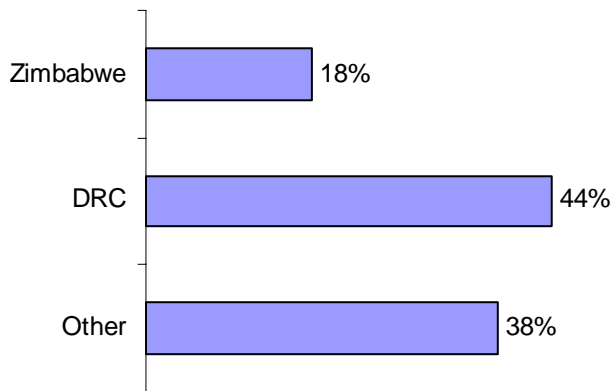
Demographics of the RSDO-Stage Respondents

In the survey of the RSDO phase, the gap between female and male respondents was five percent greater, with males representing 78 percent of the sample.



Gender Distribution of RSDO-Stage Respondents

The same nationalities were represented in the RSDO-stage survey, but the proportion of DRC nationals increased to 44 percent while Zimbabweans decreased to 18 percent.



Main Nationalities of RSDO-Stage Respondents

One possible explanation for this change is that there is variation in treatment among nationalities. Further research is necessary in order to investigate whether those migrant populations viewed with alarm by South Africans, or perceived (often incorrectly) to be economic rather than humanitarian migrants, confront greater obstacles in the application process.

The average⁷ age of respondents was 30 years old. The largest age groups were the same as those seen among RRO-stage respondents:

Age Group	% of Respondents
21-25 years old	17%
26-30 years old	33%
31-35 years old	27%

The range of languages spoken resembled that of RRO-stage applicants, although Kirundi/Kinyarwanda also featured here. Nineteen percent of respondents did not list English among the three languages spoken, a decrease of three percent from the RRO stage. Considering the research findings (reported later in the report) on the limited availability of translation services within the asylum system, one possible explanation for this decrease is that applicants who do not speak English are unable to negotiate the system and simply drop out.

⁷ Median.

The Route to Refugee Reception

The data presented in the following sections examines multiple stages of the asylum seeker process, beginning with the route to refugee reception: respondents' reasons for flight and their entry into South Africa. Following this, the report tracks asylum seekers' experiences of accessing the reception offices and service delivery inside the offices. Finally, it looks at some of the effects of the problems with access and services, including inability to renew documentation and vulnerability to arrest.

Challenging assumptions about asylum seekers

The findings of the survey challenge some of the common assumptions about asylum seekers, particularly the notion that the overwhelming majority of the individuals applying for asylum are in fact economic migrants seeking to legalise their stay in South Africa. The research revealed an alternative picture, in particular:

- The availability of asylum was not a major pull factor to South Africa.
- The majority of respondents did not cite economic circumstances among the reasons for their migration.

The Asylum Journey

Reasons for Migration

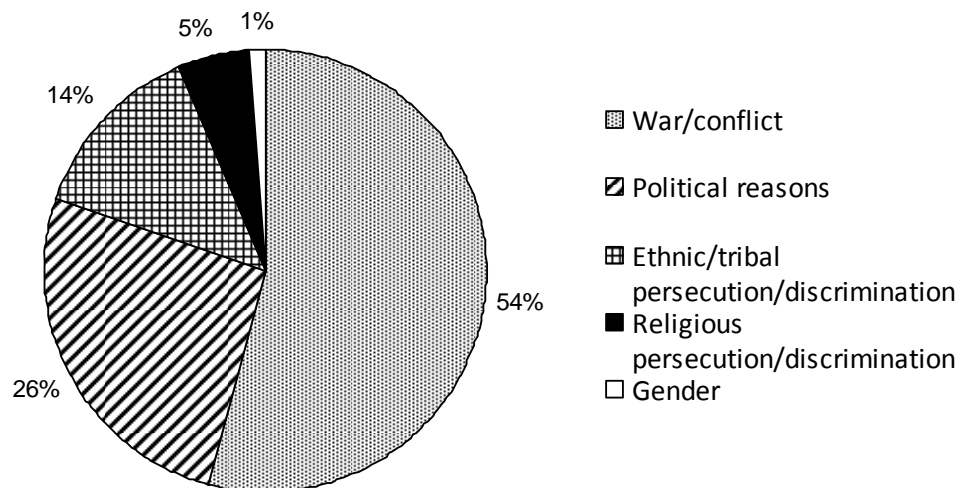
The survey revealed that people fleeing their home countries seldom know that they can formally seek asylum in South Africa. Only 32 percent of respondents in the RRO-stage survey knew about the possibility of seeking asylum before leaving their home country, while 68 percent were unaware of this option.

The majority of respondents indicated that they fled their countries for reasons that corresponded with the proper grounds for seeking asylum. Only 29 percent

cited economic circumstances as the sole reason for migration, and 58 percent of respondents did not refer to economic circumstances at all.

Only 32 percent of respondents knew about the possibility of seeking asylum before leaving their home country.

Of those asylum seekers who did not refer to economic motivations, war and political conflict were the most common reasons for migration to South Africa, followed by political circumstances and then ethnic persecution, discrimination or intolerance. These results are summarised below:⁸



A large proportion of asylum seekers (42 percent) listed economic circumstances in combination with the above reasons for flight. This shows a more complex causal picture of the factors leading people to leave their home countries, and the mere mention of economic factors, if cited together with other reasons, should not be a criterion for exclusion from refugee status. To say that these migrants are coming to South Africa for economic opportunities misrepresents

⁸ Percentages do not total 100% because respondents were allowed to provide up to two reasons.

their reasons for flight. Indeed, based on the above results, the majority of asylum seekers cannot be characterised primarily as economic migrants.

Based on the above results, the majority of asylum seekers cannot be characterised primarily as economic migrants.

Border Crossings

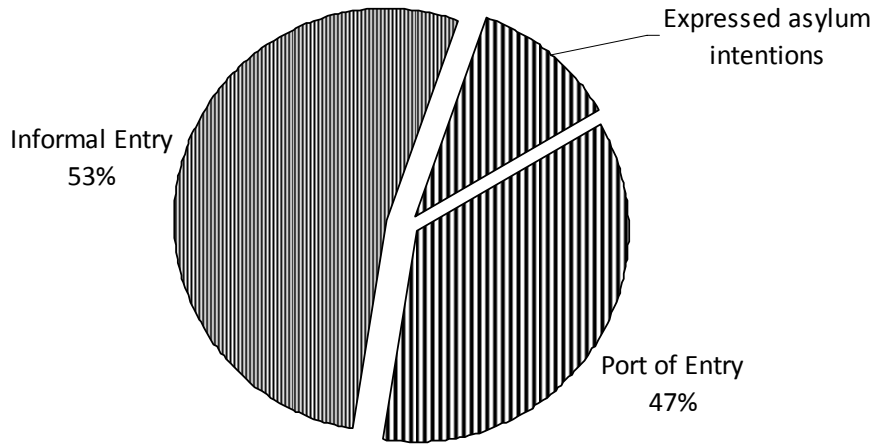
Most respondents (76 percent) entered South Africa by land through the border with Zimbabwe. Only 58 percent of those entering through that border, however, were Zimbabwean. The Mozambican border was the second most common entry point, but it accounted for only 12 percent of entries. Half of respondents were not carrying any documents when they crossed the border, while 36 percent were carrying a passport. Entry was primarily by bus or truck, with smaller numbers entering by car, air or on foot.⁹

Mode of Transport	Percentage of Respondents
Bus	47%
Truck	20%
Car	12%
Air	10%
On foot	8%

Most respondents failed to take advantage of asylum protection when they first entered South Africa, suggesting a lack of understanding of the system. Slightly more than half of respondents did not enter South Africa through a formal port of entry. Of those asylum seekers who did enter the country through a recognised border post or airport, only a quarter (24 percent) informed the

⁹ These results assume a single form of transport and do not account for those who used more than one mode of transport.

border officials that they wished to claim asylum. The remainder presumably sought entry via alternative legal means.



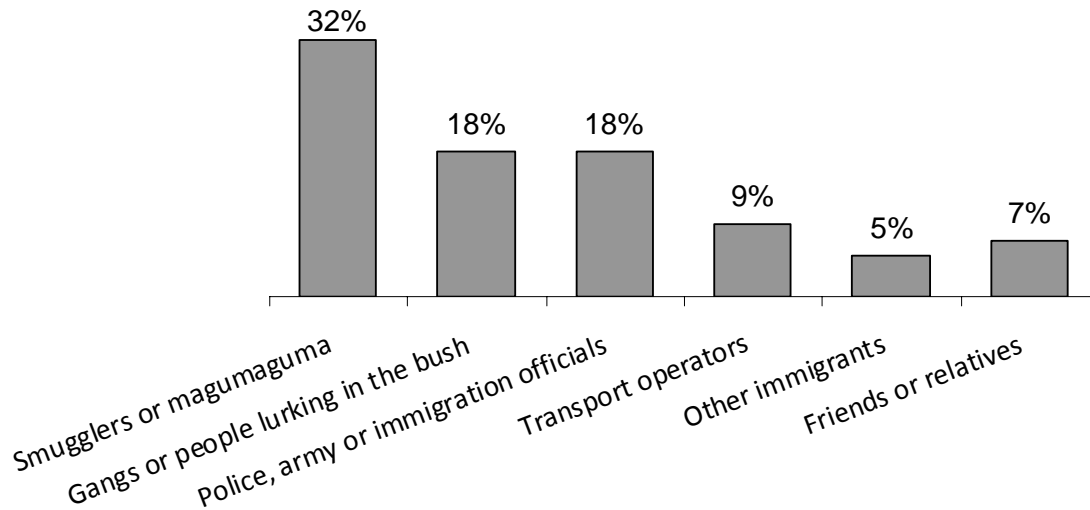
Formal and Informal Entries by Percentage

The law requires that individuals who indicate an intention to seek asylum at the border be given a 14-day transit permit. However, 20 percent of respondents who declared this intention did not receive such a permit.

Other Rights Abuses at the Border

Seventeen percent of respondents reported that they had been hurt, robbed, or deceived while crossing the border. Of these, 97 percent were informal crossers. Only two asylum seekers in the survey reported being harmed during a formal border crossing, but it is a matter of concern that both incidents involved state employees.

The chart below illustrates the main perpetrators of abuses experienced during border crossing. A substantial number of these abuses were committed by state actors, including police, army and immigration officers.



Main Perpetrators of Abuses Experienced during Border Crossing

Their lack of visibility to the state renders informal border crossers vulnerable to a variety of abuses, including:

- exploitation by smugglers;
- extortion by corrupt officials;
- assault by criminal elements who specifically target border crossers (widely known as *amagumaguma*); and
- deportation before being able to lodge an asylum application.

Although not all the rights abuses that occur during border crossings relate directly to the refugee reception and status determination system, they all relate to refugee protection, which is the central aim of the asylum system. The dangers faced by informal border crossers in particular expose as a myth the idea that undocumented migrants enjoy easy access to South Africa. Instead, these findings reveal that many of these immigrants face a variety of rights abuses and struggle considerably to reach South Africa.

Many undocumented immigrants struggle considerably to reach South Africa.

Ignorance of the Asylum System: the Risks

Lack of knowledge about the asylum process increases the risk to both formal and informal border crossers. Individuals desperate to flee persecution become vulnerable to abuse by smugglers as they seek informal entry to escape the dangers they face in their home countries. At the same time, those individuals with asylum claims who enter by alternative legal mechanisms are exposed to continuing dangers in their home countries as they attempt to satisfy the more demanding requirements necessary to obtain visas and travel documents.

These obstacles frustrate the main purpose of South Africa's refugee framework – to protect those fleeing persecution. Improved efforts by border officials to identify asylum seekers, as well as public notices at the borders, would help give effect to the goals of the refugee system.

For those asylum seekers who do manage to enter the country and make their way to a refugee reception office, access remains a problem. Asylum seekers must report to one of the country's five refugee reception offices in order to launch their applications for asylum and to receive a Section 22 permit. This permit legalises an individual's stay until a decision has been made on his or her asylum claim.

Serious backlogs and long queues at the refugee reception offices (RROs), however, prevent many asylum seekers from acquiring or renewing their permits, leaving them without any legal status or protection and making them vulnerable to arrest and deportation. The backlogs have also created opportunities for DHA and security officials, as well as gangs, to exploit those waiting in the unregulated queues outside the offices.

Entering the RRO

Many asylum seekers make numerous attempts before gaining entry to lodge their applications. A large majority were unable to get into the refugee reception office on their first visit, as the table below illustrates. On average¹⁰, people first entered the refugee reception office 29 days after arriving at the office.

Visits before Entry	Percentage of Respondents
1 visit	35%
2 to 5 visits	42%
6 or more visits	23%

For those who entered through an official border post, receipt of a transit permit was no guarantee that they would remain free from the threat of arrest and deportation. This is because 42 percent of those who received a transit permit

¹⁰ Mean.

were unable to gain access to an RRO in order to lodge a claim before the permit expired, leaving them undocumented.

42 percent of those who received a transit permit were unable to gain access to an RRO before the permit expired.

Obtaining a Permit

The average¹¹ number of days between arriving at the office and receiving a permit was four days, but 31 percent of respondents waited for over a year to receive their permits. Future surveys may register an improvement with these numbers as the Turnaround Strategy takes effect. As more new applicants are processed, however, the reception offices may have less capacity to service those applicants coming for renewals.

Renewing a Permit

As laid out in the introduction, the Regulations state that asylum seekers should undergo a status determination interview within 30 days of submitting their application. The data on permit renewals reveals that the DHA is unable to adhere to this standard.

As a result of the delays in service provision, respondents must renew their permits numerous times while awaiting a decision – respondents at the RRO stage have renewed their permits an average⁹ of five times. The validity period is discretionary, but DHA staff tend to favour a three-month period. This means that the average asylum seeker who has not yet had an RSDO interview has been in the system for at least 15 months (a year and three months). However, many RRO-stage respondents have been in the system longer than the average, as the table below illustrates.

¹¹ All averages under this footnote refer to the median.

FMSP is concerned that the obstacles faced by asylum seekers seeking to renew their permits may worsen as more resources are devoted to processing new applications under the Turnaround Strategy. Extending the permit validity period beyond three months could help prevent a deterioration in service to renewing applicants, while also lessening the demand at refugee reception offices, helping refugee reception officers process claims faster.

Queueing at the RRO

As asylum seekers struggle to gain access to the reception offices, large, unregulated queues have become the norm. Seventeen percent of respondents reported suffering violence, theft, or threats in the queue. Common examples are listed below.

Physical Harassment and Violence

- Being harassed, pushed, beaten, or verbally abused by security guards.
- Being pulled out of the queue.
- Being trampled or crushed in the queue.

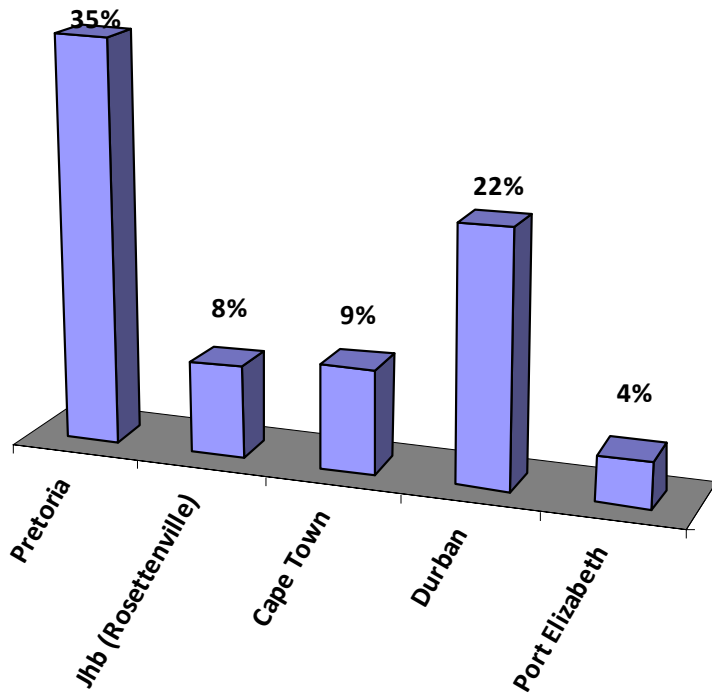
Verbal Harassment

- Being called 'makwerekwere' 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.
- Having people attempt to extort money in exchange for a position in the queue.
- Losing their place in line as so-called agents push their clients into the queue ahead of others.

The prevalence of rights abuses of all kinds in the queues suggests that security guards are failing to provide security. The situation is worse at some offices than others, as the graph below shows.



Percentage of Respondents who were Hurt, Threatened or Robbed in the Queue

In addition, security guards were responsible for almost one fifth (19 percent) of the abuses reported by respondents. Accordingly, better monitoring and oversight of security staff at the refugee reception offices is needed.

Security guards were responsible for almost a fifth of the abuses reported by respondents.

Long waiting periods resulted in 38 percent of respondents spending one or more nights outside a reception office – an average¹⁴ of three nights, although a great number reported spending many more nights outside. Of those who spent multiple nights outside the reception office, 15 percent did so with children in their care.

¹⁴ Median.

Previous efforts to manage the queues have compromised the rights of asylum seekers and have been challenged in the courts. In the *Tafira* case, the High Court ruled that the use of pre-screening procedures and appointment slips to control queues was unconstitutional.¹⁵ Thus, any reforms intended to address this issue must also ensure that the rights of asylum seekers are respected and that procedural guarantees continue to be followed.

Long waiting periods resulted in 38 percent of respondents spending one or more nights outside an RRO – an average of three nights.

Lengthening the period for which permits are valid could help address queue volumes while also promoting administrative justice for asylum seekers. At the same time, better monitoring and oversight of security practices outside of the refugee reception offices is needed to ensure that asylum seeker's rights are respected.

¹⁵ *Tafira v Minister of Home Affairs and others*, High Court of South Africa, Transvaal Provincial Division Case No: 12960/2006. [online] available from : <http://www.unhcr.org/cgi-bin/txis/vtx/refworld/rwmain?page=search&docid=45b4c8242&skip=0&query=tafira>

Service Provision inside the Refugee Reception Offices

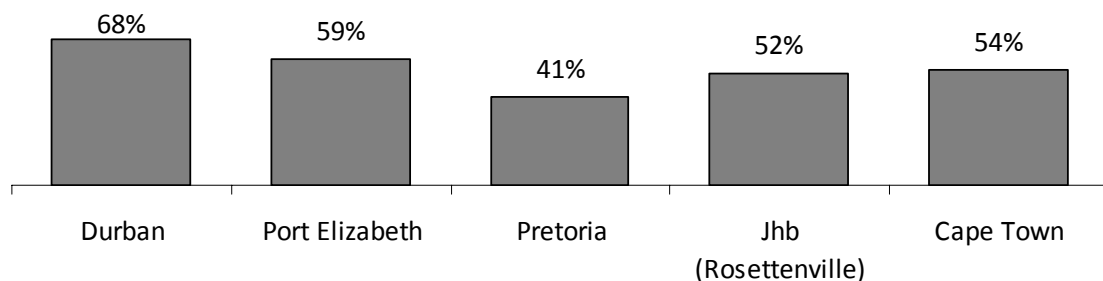
Once they enter the refugee reception offices, asylum seekers encounter a range of problems in lodging their applications, including delays and poor service provision. Respondents' experiences reveal a general lack of consistency and regular practice at the reception offices.

Reception offices failed to adhere to the law on several occasions. The data also revealed consistent failures to meet the following obligations:

- Make procedures and practices clear to applicants.
- Issue error-free asylum seeker permits.
- Provide the assistance with applications that the law specifies.
- Communicate to asylum seekers their rights and obligations.
- Provide adequate interpretation services.
- Observe confidentiality requirements.
- Avoid procedural irregularities in the interview process, which compromise the fairness of the hearing.

Initial Processing of Claims

Slightly more than half of asylum seekers (54 percent) received an asylum seeker permit the first time they entered the reception office, although numbers varied by office, as illustrated below.



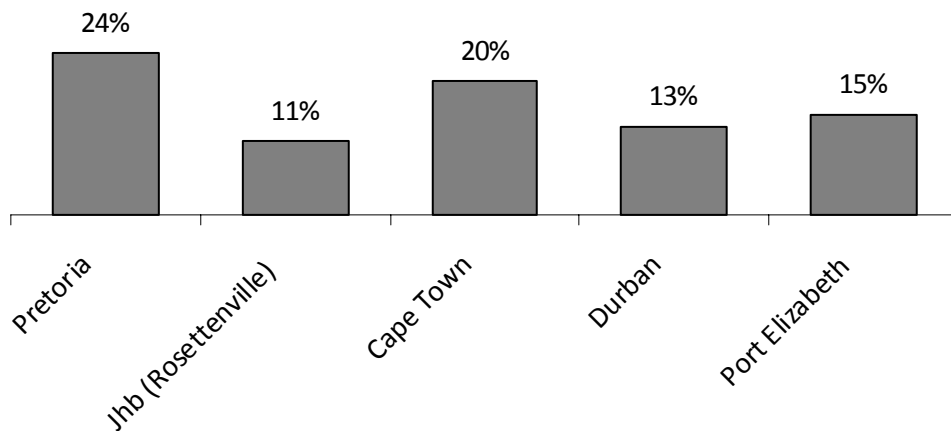
Percentage of Respondents who Received Permits on First Entry

Approximately one fifth (19 percent) of respondents were given a form to fill out and told to return at a later date. It is difficult to determine how the remaining respondents were processed. This is because of the general confusion and lack of clarity researchers encountered among respondents, which is itself indicative of problems with the application process.

Although the RRO-stage survey included detailed questions about initial experiences in the refugee reception office, many asylum seekers could not differentiate between the different stages of the asylum process and were not sure where they were in the process. Many did not know whether they had actually met with a refugee reception officer or filled out their eligibility forms. This is indicative of a general lack of procedural clarity and regularity with respect to the asylum seeker process.

Many asylum seekers could not differentiate between the different stages of the asylum process... indicative of a general lack of procedural clarity.

Seventeen percent of applicants reported errors on their permits, the most common of which was a misspelled name. The error rates were highest in Pretoria and Cape Town, as the bar graph illustrates.



Percentage of Permits with Errors Across Offices

Illegal Practices in Claim Processing

While service provision was inconsistent, the most troubling phenomenon was the continuation of two practices that were specifically challenged in court and ruled illegal:

- 1) Continued use of appointment slips; and
- 2) Continued application of work and study restrictions to permits.

At the Port Elizabeth and Durban offices, a fifth of respondents (19 percent and 20 percent respectively) reported receiving appointment slips to return at a later date. Across all five offices, 16 percent of respondents had experienced this illegal practice.

Across offices, 14 percent of respondents reported that their permits contained restrictions on work and study. The percentages were higher in Durban and Cape Town, where restrictions had been applied to 33 percent and 21 percent of respondents respectively. Most of the restricted permits were issued after the November 2003 *Watchenuka* decision, which outlawed their general application to asylum seeker permits.¹⁶ FMSP is particularly concerned about the fact that restrictions issued by the Durban office actually spiked in 2006 and 2007, when the illegality of this practice had been well established for several years.

These trends suggest that, rather than adhering to standardised procedures that ensure administrative justice, reception offices are adopting their own practices in contravention of the law.

The new, computerised procedures will make some practices, such as individualised permit restrictions, more difficult. However, the prevalence of illegal practices nevertheless raises several important concerns:

- RRO staff may not be fully aware of the legal framework that governs their work.

¹⁶ Minister of Home Affairs and Others v. Watchenuka and Another. No. 10/2003. South Africa: Supreme Court of Appeal. 28 November 2003. [online] Available from: <http://www.unhcr.org/refworld/type,CASELAW,SASCA,47fdb093a7,0.html>

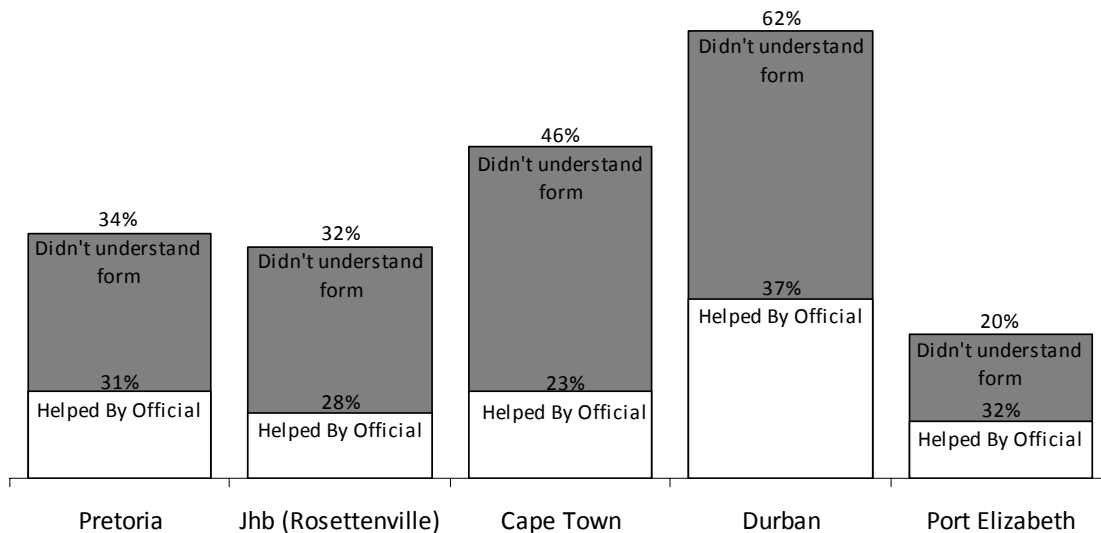
- RRO staff may be aware of the law but indifferent to its application, revealing a troubling lack of professionalism and disrespect for the rule of law.

Whatever the cause of illegal practices within the RROs, improved oversight is necessary, both to identify irregular practices to staff and to hold individuals accountable for failure to adhere to the requirements of the law.

Assisting in the Accurate Completion of Forms

The survey data reveals that refugee reception officers are not fulfilling their legal obligation to assist applicants in filling out their eligibility forms.¹⁷

Overall, under a third (30 percent) of applicants reported receiving help from an official in filling out their forms. This should be seen against the high proportions of asylum seekers who struggle to understand the questions asked on the forms, as illustrated in the graph below. Levels of understanding of the eligibility form were particularly low in Durban and Cape Town, and provision of assistance was low across the board, but worst in Cape Town, where only 23 percent received assistance.



Provision of Help with Filling in Forms to Respondents who needed Assistance

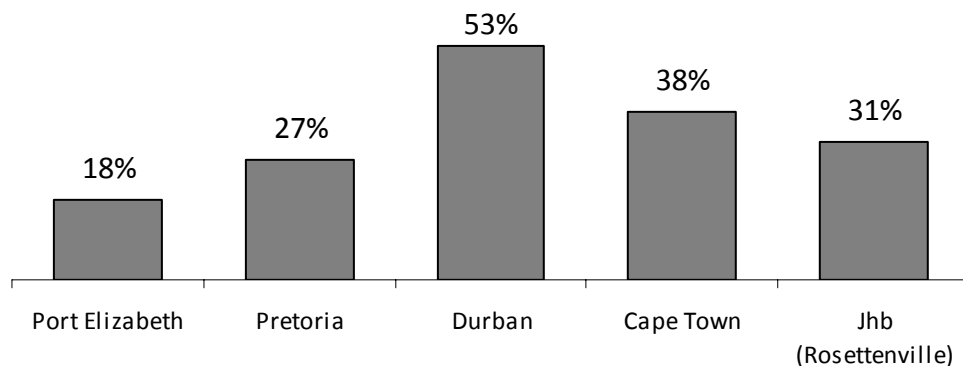
¹⁷ Refugees Act, Section 21(1)

Given the levels of incomprehension and lack of assistance, it is a matter of great concern that, in over two thirds of cases (69 percent), officials did not go over the contents of the forms with applicants after they were completed. In all likelihood, these omissions on the part of DHA staff lead to anomalies that prejudice the status determination interview and eventual determination of an individual's status. This, in turn, is likely to create a heavier burden on the appeal process.

Notification of Rights and Obligations

Section 24 of the Refugees Act requires that the constitutional guarantee of administrative justice be observed in the asylum application process. Specifically, DHA officials must ensure that an applicant fully understands the asylum procedures, the accompanying rights and obligations, and the evidence presented. The failure to observe these guarantees may have a serious effect on the fairness and subsequent outcome of an asylum seeker's claim.

DHA practices suggest that the procedural rights of applicants are being sacrificed in exchange for the speed afforded by minimal service requirements. Accordingly, 68 percent of RRO-stage respondents report not having had the application process explained to them. Provision of information about the application process differed substantially across offices, as illustrated in the chart below. Although only half of respondents received an explanation at the Durban RRO, this performance outstripped that of the other offices.



Percentage of Respondents who Received an Explanation of the Application Process

Apart from contributing to the general confusion of applicants, failure to explain the asylum process leads to important omissions that can prejudice the outcome of status determination and lead to an increased burden at the appeal stage. For instance, 95 percent of applicants in the RRO-stage survey were not told that they were allowed to have a lawyer present at their RSDO interview.

Moreover, failure to understand the process may prevent asylum seekers from fully disclosing their reasons for flight. The overwhelming majority of respondents (69 percent) were not aware that the answers they gave during the application process would not be shared with any person or government official outside of the reception office. For asylum seekers fleeing government persecution, fear that their answers will be reported back to their government may have a chilling effect, inhibiting them from sharing their real reasons for seeking asylum and resulting in a denial of their claims.

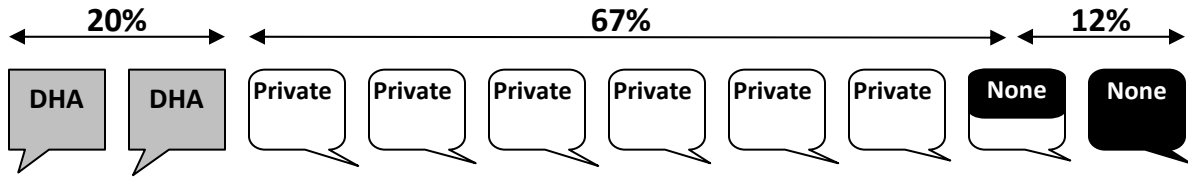
The lack of proper notification of rights and obligations thwarts the goals of the asylum system by preventing accurate identification of those genuinely in need of protection. Better communication of rights and procedures is needed in order to realise the protections envisioned in the asylum seeker system.

Interpreter Services

Language barriers also affect the fairness of the status determination process. The DHA is required to provide interpretation services throughout the application process, where practical and necessary.¹⁸

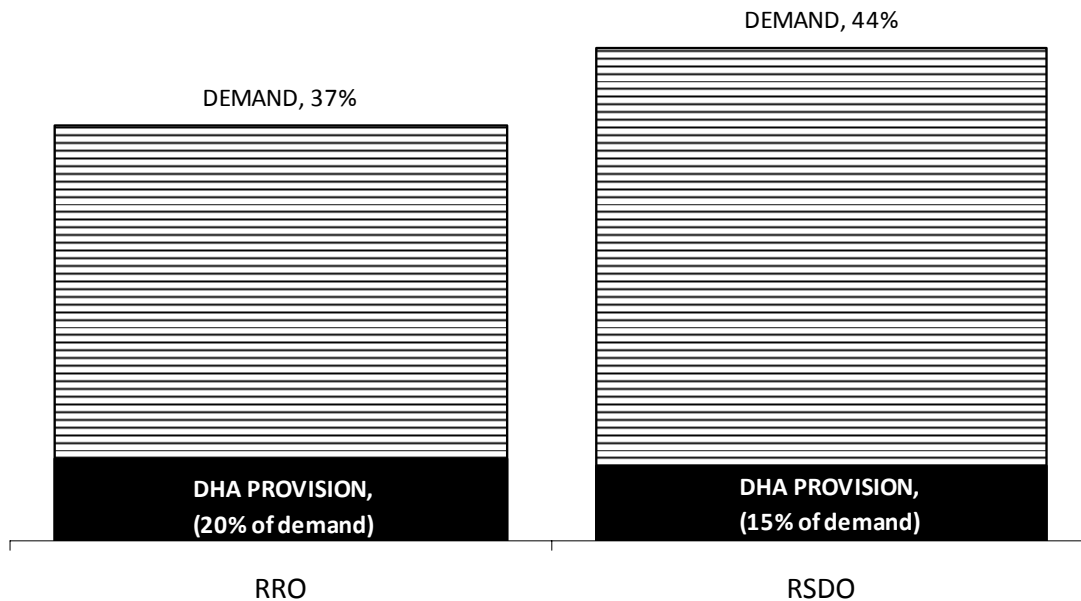
The DHA's provision of interpreters is essential, as a substantial number of respondents at the RRO stage of the survey indicated that they needed interpretation services. Across offices, the proportion in need of interpretation services was 37 percent, rising to 42 percent in Cape Town and 60 percent in Durban. French speakers from Congo were the most highly represented group requiring interpreters.

¹⁸ Regulations, Section 5.



Provision to Respondents Requiring Interpreters¹⁹

As shown in the diagram above, the DHA provided interpreters in only a fifth of cases. The remainder relied on social networks or private interpreters (of unknown credentials) who solicit clients outside of the reception offices. Sixteen percent (12 percent of all cases), however, were unable to secure an interpreter, which means they were unlikely to have understood what was happening in the application process.



Demand for Interpretation Versus Provision at the RRO and RSDO Stages

At the RSDO stage, the proportion of respondents requiring interpretation rose, while DHA provision declined, as illustrated in the chart above. A substantial

¹⁹ The data that was combined to generate this graphic produced decimals too low to allow rounding. Therefore, the percentages presented do not total 100.

number (85 percent) of those in need had to find assistance on their own, but a quarter of these were unable to do so. This means that a large proportion of asylum seekers were forced to make their case for refugee status without the necessary language skills to communicate effectively.

Recourse to private interpreters raises issues of cost, confidentiality and quality. Where the DHA did not provide interpretation services, applicants often had to pay for them. As a result, the lack of DHA provision may create a cost barrier that puts applicants with the least financial resources at a disadvantage. For those applicants who were forced to find unofficial translators elsewhere, there is no way to determine the quality of the translation.

The inadequate provision of interpreters affects an applicant's chances for success and denies her or him an administratively fair decision-making process.

Confidentiality

Concerns over the confidentiality of their responses may affect the willingness of applicants to provide information that will be helpful to their claims. The inhibiting effect of fears that the information disclosed may be shared with foreign governments has already been discussed. In addition, over a quarter (27 percent) of respondents indicated that their responses could be overheard by others. In some offices, the environment is less conducive to confidentiality than in others. In the Durban office, for example, 43 percent reported that their interactions with DHA staff could be overheard.

Interview Procedures

Survey questions about the interview stage of the asylum process revealed various irregularities that threaten to compromise the guarantee of a fair hearing. These include:

- Failure to provide notice of the interview date.
- Multiple interviews with a single applicant, conducted by different status determination officers.
- No explanation of the process.
- Long waiting times between lodging of application and RSDO interview.
- Short duration of interviews.
- Problematic attitudes toward applicants.

Provision of Notice

Section 5 of the Regulations requires that an applicant be given written notice to appear before an RSDO on a specified date. Yet more than half of respondents (54 percent) received no notice of their interview date. Instead, they were simply told, upon arriving to renew their permits, that their interview was going to take place on the same day. The situation appears to be far better in Durban than in Johannesburg and Cape Town, as the table below illustrates.

Office	Percentage of respondents not given notice
Johannesburg	67%
Cape Town	63%
Durban	36%

Without notice of the interview, applicants were unable to prepare, provide supporting documentation, or bring witnesses and/or a lawyer to their interview. It is not surprising, then, that very few respondents brought supporting evidence to their interviews. Overall, only 18 percent were equipped with evidence. These numbers were predictably lower in Johannesburg and Cape Town (13 percent

and 12 percent respectively), where fewer applicants received notice of their interview dates.

According to the findings, applicants who knew their interview date in advance were twice as likely to be successful in their asylum claims as those who did not. This suggests that lack of notice may seriously undermine an asylum seeker's ability to effectively state his or her claim. As a result, success rates may be linked more to administrative procedures than to the strength of an applicant's asylum claim.

Interview Waiting Time

As outlined in the introduction, the Regulations state that the time between an asylum seeker's application and his or her interview should be 30 days (one month). However, the research findings showed that only 29 percent of RSDO-stage respondents received an interview within 30 days of receiving their asylum seeker permit. On the other hand, a quarter of respondents had their RSDO interviews on the same day that they received their asylum permits.

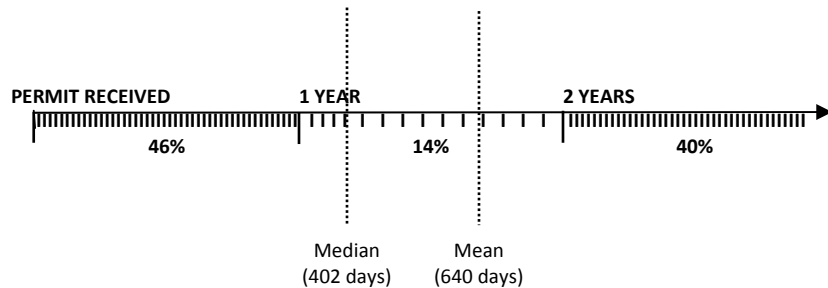
Because the practice of same-day interviews was not consistent, those respondents who did have their interviews on the same day that they received their asylum permits would not have known in advance that they were going to be interviewed. As a result, it is unlikely that they were prepared for these interviews.

A substantial number of respondents who were not processed within the timeframe envisioned by the Refugees Act and Regulations experienced waiting times that fell well outside the bounds of a reasonable time period. The survey found that, from the date they received their asylum seeker permits, applicants waited on average²⁰ well over a year and a half (640 days) for their RSDO interviews.

The diagram below shows that 50 percent of waiting times fell below 13 months (402 days) and 50 percent above. The reason for the far higher mean average is

²⁰ Mean.

the substantial number of respondents who waited over two years for their RSDO interviews.



Waiting Periods between Receipt of Permit and RSDO Interview²¹

As the diagram shows, only 46 percent of respondents had their RSDO interviews within a year, while 54 percent waited over a year and 40 percent waited over two years.

Applicants waited on average well over a year and a half for their RSDO interviews.

The long waiting times may be alleviated under the Turnaround Strategy, as the DHA implements a procedure in which individuals are interviewed and receive decisions on the same day that they receive their asylum seeker permits. But, while newcomers will be processed faster under this system, the accelerated process may exacerbate the existing problem of short, peremptory interviews that do not adequately assess the asylum seeker's claim. Moreover, by conducting the interviews on the same day that applicants first enter the office, the DHA may be denying applicants an opportunity to fully understand the asylum procedure and to prepare for the interview before undergoing their status determination interview.

²¹ Note that the diagram groups cases within the larger categories of under one year, over one year, and over two years. The diagram does not represent the actual position of cases on the scale presented.

In addition, it is unclear how those already waiting for interviews will be accommodated under this system. The DHA should ensure that faster turnaround times for newcomers do not result in even longer waiting times for those already in the system.

Interview Length

RSDO interviews are the primary mechanism for determining an individual's eligibility for refugee status. Refugee status determination officers must assess the individual's credibility, the nature of the threat he or she faces, and the likelihood of persecution in the country of origin. A failure to adequately assess the situation may result in refoulement – that is, the return of an individual to an area where he or she faces grave danger.

Among those respondents who indicated that they were not able to fully explain their story and make their asylum claim, time and language difficulties were the primary barriers. Many applicants indicated time as a significant problem during their interviews, as illustrated in the remarks about refugee status determination officers below.

“He seemed to be in a hurry and unconcerned about my situation.”

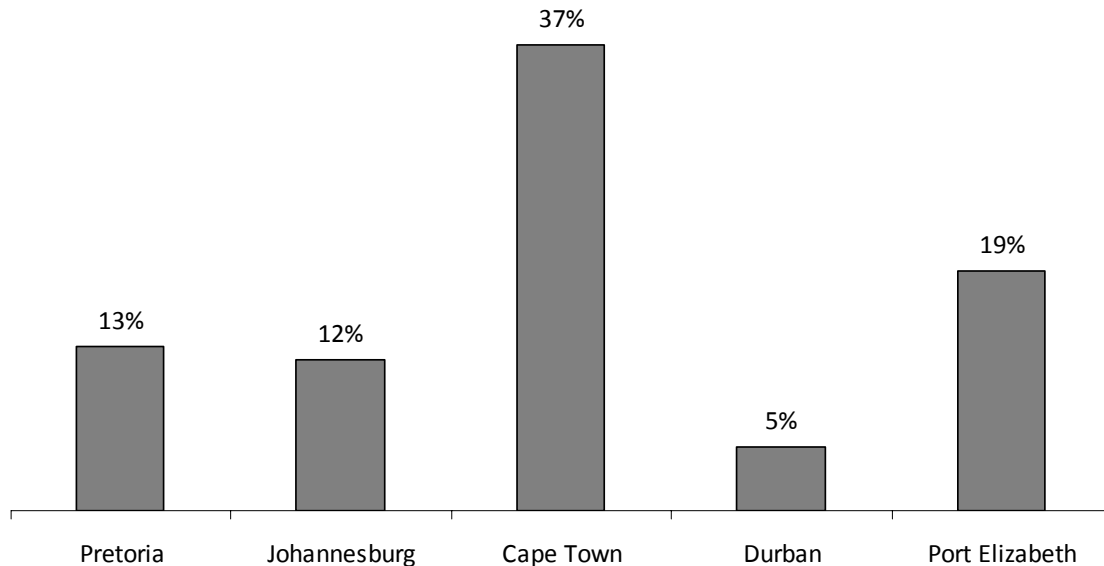
“It seemed like the officer was in a hurry and just bored to hear stories from people from Zimbabwe.”

“My story was very big but I had to limit it.”

Eligibility interviews among respondents in the survey lasted for an average²² of 30 minutes, but this figure conceals wide variations across offices. An illustration is provided in the bar graph below, which shows that, at some offices, a large proportion of interviews lasted 10 minutes or less. The Durban office had a slightly better record, with a lower proportion of interviews that lasted 10

²² Median.

minutes or less, and an average²³ interview time of 40 minutes. At Crown Mines, on the other hand, 77 percent of interviews lasted less than 30 minutes, and at the Cape Town office 69 percent of interviews were under 20 minutes. Across all offices, only three percent of interviews exceeded an hour.



Percentage of Interviews Lasting less than 10 Minutes²⁴

The problem of cursory interviews is likely to worsen under the Turnaround Strategy. At Crown Mines, RSDOs are expected to issue nine decisions a day. Given that interviews and decisions now occur on the same day, this leaves very little time for interviews. Moreover, decisions written under such time constraints are unlikely to be individualised or to demonstrate a careful consideration of the asylum seeker's claim.

²³ Median.

²⁴ The results for all five offices are presented here to show a fuller picture of the prevalence of cursory interviews. However, due to small sample sizes for the Port Elizabeth and Pretoria offices, no meaningful comparison can be made between these and the other offices for the RSDO phase of the research.

Multiple Interviews

In another indication of administrative difficulties, an overwhelming number of respondents (63 percent overall and 86 percent in Johannesburg) had been interviewed more than once since receiving their asylum seeker permits. On average,²⁵ respondents had been interviewed three times, and only a tiny proportion (12 percent) by the same officer on each occasion. Many of the asylum seekers that were interviewed in the survey did not understand why they were interviewed multiple times.

Most respondents had been interviewed more than once since receiving their asylum seeker permits – on average, three times..

The use of multiple interviews in the absence of any explanation of the process violates the procedural guarantees found in the Refugees Act and the Constitution. Multiple interviews are not provided for in either the Act or the Regulations, and their use creates confusion over the process, particularly when the reasons for the interview are not explained. It is not clear whether these interviews are conducted as first interviews, or whether the subsequent interviewers are relying on the notes and information from the previous interviews. Nor is it clear what the reasons are for the repeat interviews, which may be the result of lost records, time limitations on the first interview, or a need to clarify issues raised in the initial interview. This lack of procedural clarity jeopardises the fairness of the process, and deserves careful attention as the process of transforming the asylum system unfolds.

Interviewer Attitudes

On a positive note, the majority of respondents described the attitude of their interviewer as friendly or neutral. However, over a fifth (22 percent) confronted

²⁵ Mean.

hostility. Some respondents encountered anti-immigrant prejudice on the part of interviewers:

“He just told me that Zimbabweans have to go back to their country.”

*“The officer told me to go back to my country because there is peace.
She shouted that we are liars and should go back.”*

“What’s wrong with you people? Why don’t you go somewhere else?”

Some interactions revealed the use of xenophobic stereotypes that cast doubt on the impartiality of the officer concerned. Considering that the aim of the asylum system is to protect bona fide refugees, the examples below suggest that the behaviour of refugee status determination officers is not always consistent with their mandate.

*“Why are you guys leaving your country and bringing trouble here
in South Africa?”*

*“Why is it that most foreigners come to RSA when we do not have enough
resources for them?”*

*“They told me I am running away from Congo because of hunger,
a dirty country and for marrying the South African women.”*

Respondents also confronted a range of inappropriate interview questions that indicated a general lack of professionalism:

“Did you come here because you heard our women are cheap?”

“He was asking questions about my girlfriend and her address.”

*“Interviewer asked why I didn’t become a soldier. He said I was not a patriot
and we come in numbers instead of fighting for our country.”*

These comments reveal a troubling attitude among RSDOs, one in which the inclination is to keep foreigners out rather than to identify those who are in need of protection. The goals of the Refugees Act – to provide a safe haven for those fleeing persecution – cannot be realised when refugee status determination officers adopt negative attitudes towards the people they are meant to protect, treating them as unwanted outsiders with bad motives who are a burden to the country.

In combination with the general lack of information asylum seekers have about the process, negative attitudes can intimidate applicants and increase their fears, preventing full disclosure. As one respondent explained, “I had to put myself on the safe side. I wasn’t sure of the person interviewing me.”

Turnaround Time for Interview Results

Half (51 percent) of those surveyed (in the RSDO-stage survey) had already received a decision on their status. But 15 percent of these respondents waited over a year for the decision. While this situation may improve under the Turnaround Strategy’s focus on faster processing times, the quality of decisions will remain in question as long as the status determination system places speed at the centre of its transformation efforts.

Other Administrative Justice Issues

Concerns over interpreter services, confidentiality, and notification of rights all point to a process that is plagued by procedural irregularities and may prevent applicants from fully justifying their claims. Additional factors also may affect the fairness of the status determination process.

Enabling Applicants to Review Eligibility Forms

Most applicants (92 percent) did not receive a copy of their eligibility form after filling it out. Given the average length of the period between filling in the form and obtaining an interview, this may disadvantage applicants during their interviews. By the time they have their status determination interviews, several months or even years later, applicants may no longer recall all of the information they gave on the eligibility form, and this may affect their credibility and hence the decision regarding their status.

Refugee status determination officers may determine an applicant's credibility based on the information provided in the interview and its consistency with the information provided on the eligibility form. Many applicants, however, complete their eligibility forms shortly after their arrival in the country, when they do not fully understand the process and may be afraid to speak openly for the reasons mentioned earlier. In addition, applicants' command of the English language is likely to be poorer when they first arrive and are completing eligibility forms. For all of these reasons, the information given by the applicant during the RSDO interview may differ from the information initially shared. Allowing the applicants to review their eligibility forms could minimise potential inconsistencies by enabling the applicant to explain omissions.

Explanation of Interview Process

Asylum seekers' ability to make a convincing case is further prejudiced by a failure to explain the process at the RSDO stage. Almost half of the respondents

(49 percent) reported that the refugee status determination officer did not explain the reasons for the interview. If applicants are not aware of what the interviewer is looking for, it is doubtful that they can provide satisfactory information. Applicants need to know that the interview is their opportunity to explain their case in full and ensure that they convey all the facts that may have a bearing on the decision about their status.

Given that 63 percent of respondents were interviewed more than once, and very few by the same person, the absence of an explanation means that an applicant may abridge the facts on the second interview if he or she provided all the relevant facts during the first interview. If in the final analysis it is only the second interview that informs the status decision, this is a major disadvantage to the applicant.

Almost half of the respondents reported that the refugee status determination officer did not explain the reasons for the interview.

In addition, the majority of women (78 percent) did not know that they could request a female interviewer. Finally, over two-thirds of respondents did not know that they were allowed to bring someone into the hearing to assist them. Once again, these omissions have a substantial bearing on an applicant's ability to provide a full and credible account of their case, especially in the light of language barriers and concerns about confidentiality.

Impact of Processing on Refugee Vulnerability

The problems in processing asylum seekers have a significant effect on the fundamental goals of refugee protection. As such, they cannot be characterized simply as technical difficulties of the DHA bureaucracy. The amount of time that applicants remain in the system waiting for their claims to be processed both increases their vulnerability and poses significant hardships.

The high number of renewals necessary during the long waiting periods, particularly in light of the fact that almost a fifth of respondents had to visit the RRO multiple times to renew, places a continual burden on respondents. For each of (possibly) several visits per renewal, applicants must take time off from work, find childcare, and arrange and pay for transport.

Many asylum seekers are unable to accommodate this burden on a regular basis. A fifth reported that their permit had expired at least once because they were unable to come to the office as a result of work or personal commitments. Permit expiry makes an asylum seeker vulnerable to police harassment, arrest and deportation, which could result in refoulement.

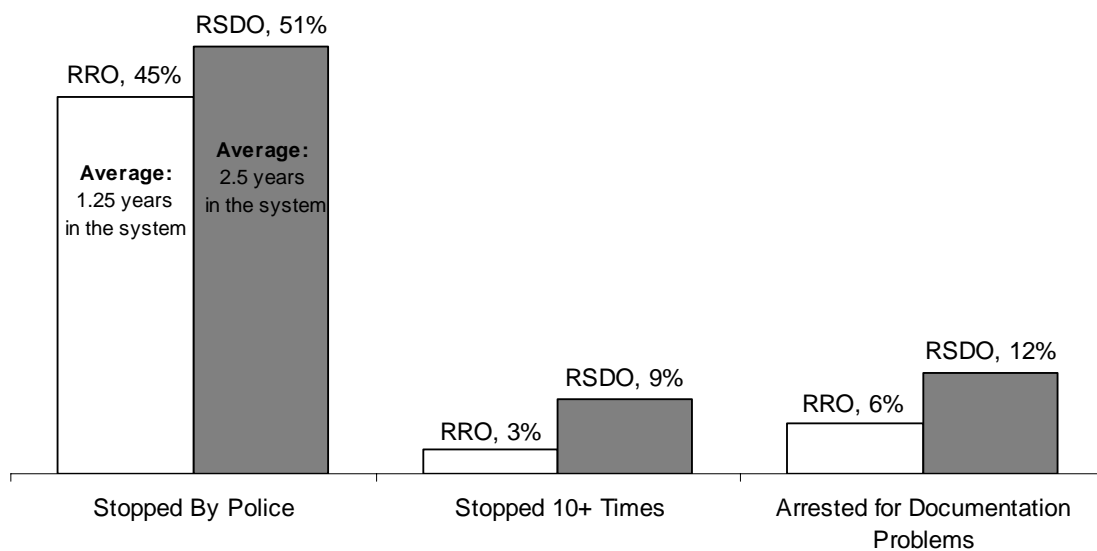
In addition to keeping their permits valid, applicants also report problems getting them reissued when they are lost or stolen, eventualities that increase in likelihood the longer an individual stays in the system. Among the set of respondents who had undergone their RSDO interviews and had been in the system for an average²⁶ of 3.5 years, 37 percent reported that they had at some time lost their permit or had it stolen. Of these, 40 percent had problems in getting it reissued, increasing the risk of arrest and detention.

Of those who had at some time lost their permit or had it stolen, 40 percent had problems in getting it reissued, increasing the risk of arrest and detention.

²⁶ Mean.

Vulnerability to Police

The chart below, representing the proportions of RRO-stage and RSDO-stage respondents stopped and/or arrested by police, shows that the rates increase as applicants remain in the system longer. In both cases, the majority of respondents had been stopped more than once, although again the rate was higher for respondents who had been in the system for a longer period. On average,²⁷ respondents in the RRO stage had been stopped three times, while those in the RSDO stage had been stopped five times.

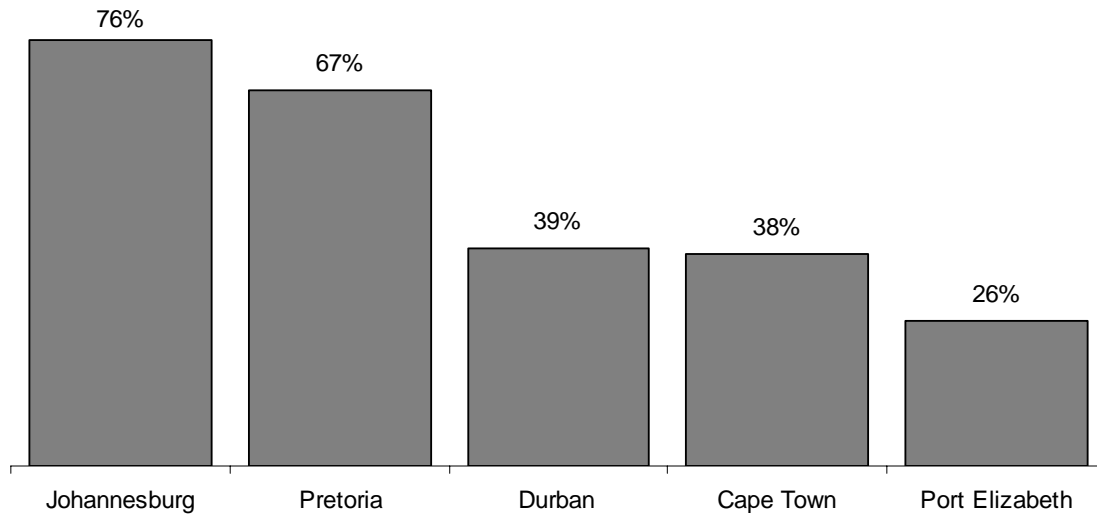


Rising Rates of Vulnerability to Police as Time in the Asylum System Increases²⁸

Vulnerability to police harassment and the risk of arrest differed across locations. For instance, the highest arrest rates among respondents at the RRO were for applicants in Marabastad (Pretoria) and Johannesburg. In fact, these two locations accounted for 60 percent of all arrests of RRO-stage respondents (39 percent and 21 percent respectively).

²⁷ Mean.

²⁸ The average length of time in the system is an estimate based on the median number of months in the system multiplied by the typical validity period of a Section 22 permit. Within the group of respondents who had been stopped, 8 percent of RRO and 19 percent of RSDO respondents had been stopped more than 10 times, while 15 percent of RRO and 19 percent of RSDO respondents had been arrested.



Percentage of Respondents Stopped by Police at Least Once

Among RSDO-stage respondents, the rate of police stops was substantially higher. Considering the proportions illustrated by the chart above, it is not surprising that almost half of all reported stops took place in Johannesburg (45 percent). Johannesburg also had the highest number of arrests based on inadequate documentation, and the highest rate of detentions.²⁹ Overall, 14 percent of RSDO-stage respondents and 16 percent of RRO-stage respondents across the country reported having been held in detention.

Eight percent of respondents reported paying a government official to avoid being arrested or to get out of jail.

Greater vulnerability to arrest also provides increased opportunities for corruption among state officials. Eight percent of respondents reported paying a government official to avoid being arrested or to get out of jail. Over half of these cases (54 percent) involved individuals processed in Pretoria, and over a quarter (26 percent) in Johannesburg.

²⁹ Among Johannesburg respondents, 23 percent had been arrested, compared to 19 percent across all locations, and 17 percent had been detained, compared and to 14 percent overall.

Summary, Conclusions and Recommendations

This report presents a comprehensive view of conditions at all five of South Africa's refugee reception offices. It provides a set of performance benchmarks to assess access and service delivery issues at the reception offices as the DHA implements changes designed to reform the system. Future surveys will measure the impact of these changes.

Need for a Fundamental Shift toward a Protection Orientation

The proposed reforms will do little, however, if not accompanied by a more fundamental shift in approach to the asylum seeker system. What is clear from the findings of the survey is that many of those staffing the reception offices do not view their role as one of providing a progressive system of protection for people fleeing persecution – the purpose of the Refugees Act. Rather, many officers operate as gatekeepers aiming to keep out what is perceived as an influx of migrants seeking to exploit the opportunities in South Africa. It seems that, as a result, many staff members within the asylum-seeker system do not feel an obligation to abide by the legal protections put forward in South Africa's refugee protection system. At various stages of the asylum process, staff impede protection through both action and omission. This may largely be due to lack of training, but it is also possible that some staff are deliberately obstructive towards asylum seekers due to anti-immigrant attitudes.

The Asylum Seeker's Experience

The research data shows that a large number of those approaching the reception offices do in fact have bona fide asylum claims. Many of them are unaware of the possibility of seeking asylum before fleeing persecution in their countries. As a result, they do not enter through an official border post. Although they eventually make their way to a reception office, they still do not understand how the asylum system works. The chaos at the reception offices, as well as the lack of uniformity in the asylum seeker process, only adds to their confusion.

Reception officers do not go through the application process with applicants, inform them of their rights and obligations, provide assistance, or ensure that the procedures are understood. Concerns over confidentiality, the failure to understand the process, and the irregularities and short duration of interviews, as well as language barriers in some instances, all serve to deny the applicant a full and fair hearing and jeopardise the outcome of the status determination process.

Danger of a Focus on Efficiency Alone

The survey findings support many of the changes being implemented under the Turnaround Strategy, but others provide cause for concern. The more efficient processing of new applicants is a welcome change. However, FMSP is concerned that the speed with which asylum seekers are interviewed and assessed, and the time constraints under which refugee status determination officers are operating, result in a sacrifice of fairness for increased efficiency.

While increased speed may alleviate the initial backlog of applicants, it is also likely to result in poorly reasoned decisions. Applicants who receive a poorly reasoned negative decision are more likely to appeal. The effect will be to relocate the backlog to the appeal stage, placing considerable demand on an already over-burdened Refugee Appeal Board. In addition, the Turnaround Strategy's focus on efficiency has made no provision for the processing of those applicants who were already in the system and who may experience greater delays as resources are dedicated to processing newcomers.

This research report reveals that, in seeking to transform the refugee reception and status determination, the DHA needs to pay special attention to the following problems:

- Interviews being conducting without adequate interpretation.
- Insufficient time for interviews and for the deliberative process preceding decisions.
- Lack of confidentiality at the reception offices.
- Failure to adhere to both the spirit and the letter of the law.

Recommendations

At the Border Post

- Publicise the asylum procedure at and around border posts to bring a greater proportion of undocumented refugees into the view and protection of the state.
- Investigate the reasons for the withholding of transit permits from would-be asylum seekers and ensure that the DHA staff at border posts provide transit permits to all who declare their intention to seek asylum.
- Extend the validity period of transit permits for asylum seekers, possibly to six weeks (14 days plus the mean average time it takes to gain access after first arrival at the RRO – 29 days).

Outside the RROs

- Improve monitoring of security guards working outside refugee reception offices.
- Develop queue management procedures that do not compromise the rights of asylum seekers.

Inside the RROs

- To minimise the impact of administrative delays on asylum seekers and to alleviate demand at the reception offices while applications are being processed, extend the validity period of asylum seeker permits from three months to six months. Considering that the average³⁰ waiting time for an RSDO interview is 18 months, this would halve the renewal workload as well as the burden renewals present for asylum seekers.
- Institute transparency regarding the asylum application procedures, ensuring clear communication of
 - 1) the application process as a whole,

³⁰ Median.

- 2) the conditions for eligibility, and
- 3) individual procedures as they are carried out.
- Increase provision of professional interpreters suitably trained to interact with asylum seekers.
- Ensure applicants are given sufficient notice of their RSDO interview date to enable adequate preparation (including sourcing of an interpreter, witness or lawyer).
- Provide explicit communication to all applicants regarding their right to confidentiality and the fact that their application information will not be shared with anyone outside the reception office.
- Provide explicit communication to all applicants of their rights, including the right to representation and the right of female applicants to request a female interviewer.
- Provide a mechanism for applicants to review their eligibility forms before their interviews, such as providing a copy of completed eligibility forms for applicants' records.
- Ensure that any processing system that is implemented allows sufficient time for conducting interviews and for the deliberative process before issuing decisions, to ensure thorough, reasoned decision-making.
- Establish oversight procedures to monitor adherence to the law and realisation of the rights-protection goals of the asylum system.

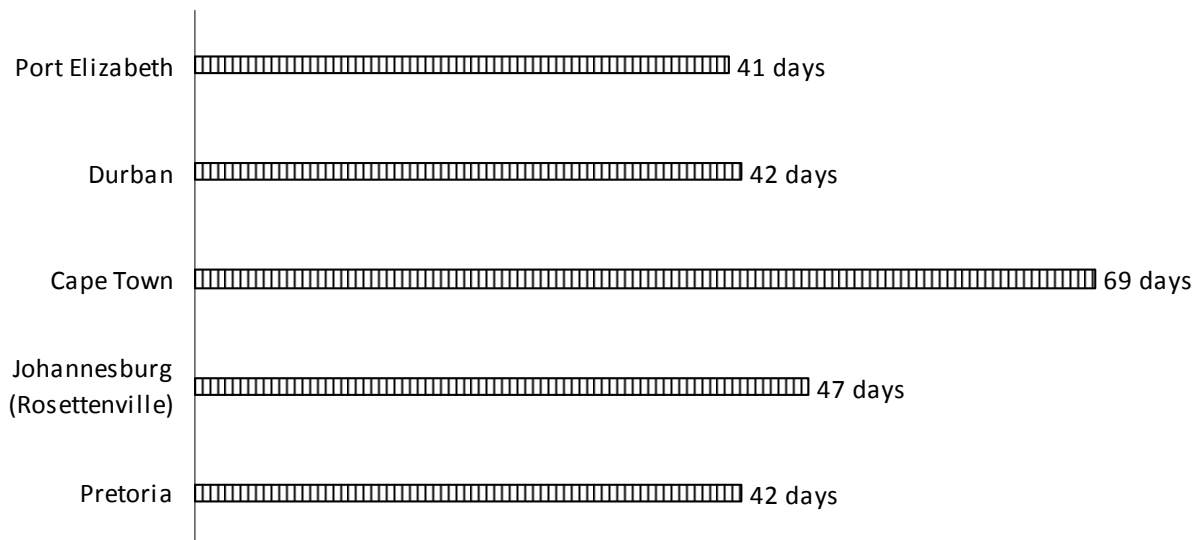
APPENDIX A: COMPARISON OF KEY INDICATORS ACROSS LOCATIONS

The survey data can be used to generate comparisons across locations of almost all the issues discussed in this report. Below is a visual comparison of five important indicators by office location:

- 1) Time taken to get into the refugee reception office.
- 2) Average number of Section 22 permit renewals.
- 3) Average interview waiting time.
- 4) Percentage of respondents given notice of interview dates.
- 5) Average length of interviews.

Time Taken to Gain Entry into Office

The average time between first arrival at the office and first successful entry is far longer than the time provided for by the two-week transit permit. While four of the offices fall into a similar range, the Cape Town office appears substantially more difficult to access.



Average Time Taken to Gain Entry into Office (By Location)

Average Number of Renewals

The table below shows the average³¹ number of renewals reported by respondents in different locations.

Office	Average Renewals (Median)
Pretoria	4
Johannesburg ³²	3
Durban	6
Cape Town	4
Port Elizabeth	6

Average Number of Asylum Seeker's Permit Renewals By Location (RRO)

Office	Average Renewals (Median)
Johannesburg	25
Durban	4
Cape Town	12

Average Number of Asylum Seeker's Permit Renewals By Location (RSDO)³³

³¹ Median. Note that the median average is the central value (below which 50 percent of cases fall). Note that the calculations exclude those respondents who had not yet renewed their permits.

³² Where Johannesburg is referred to without qualification, the figures provided represent findings obtained from both Johannesburg offices (Rosettenville and Crown Mines).

³³ Because of small sample sizes for the Port Elizabeth and Pretoria offices, no meaningful breakdown of the results from these locations can be provided for the RSDO phase.

Average Time Between Permit Receipt and Interview

Represented below is a comparison of relative waiting times between receipt of an asylum seeker permit and the holding of a status determination interview. Delays appear greatest in Cape Town, followed by Johannesburg. Durban's performance appears substantially better.³⁴

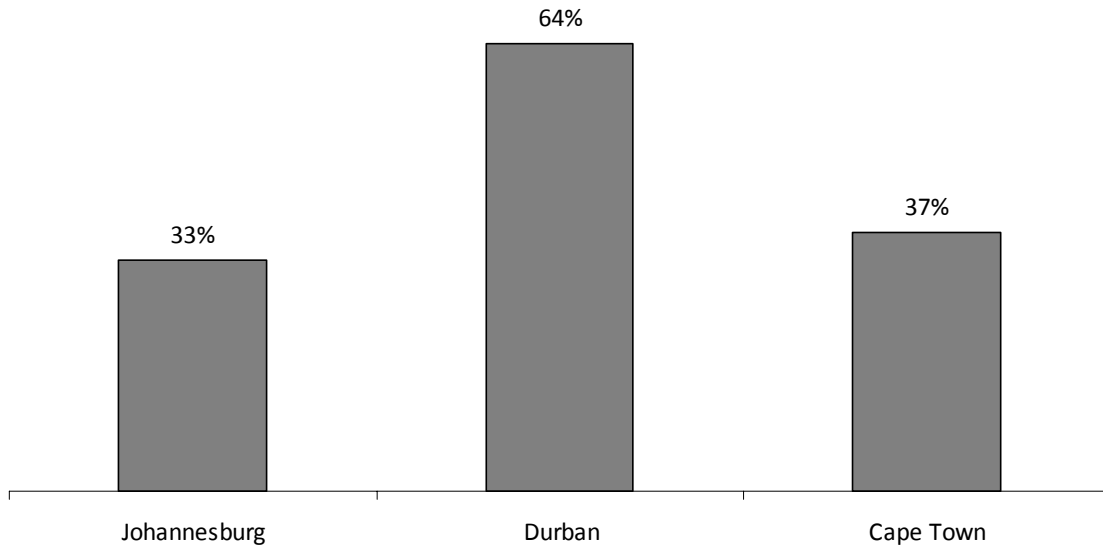


Time Between Receipt of Permit and Date of Interview (By Location)

³⁴ Because of small sample sizes for the Port Elizabeth and Pretoria offices, no meaningful breakdown of the results from these locations can be provided for the RSDO phase.

Percentage who Received Notice of Interview Date

The results shown below suggest that Durban has the best rate of notice provision. For the other offices, substantially less than 50 percent of respondents received notice of their interviews.



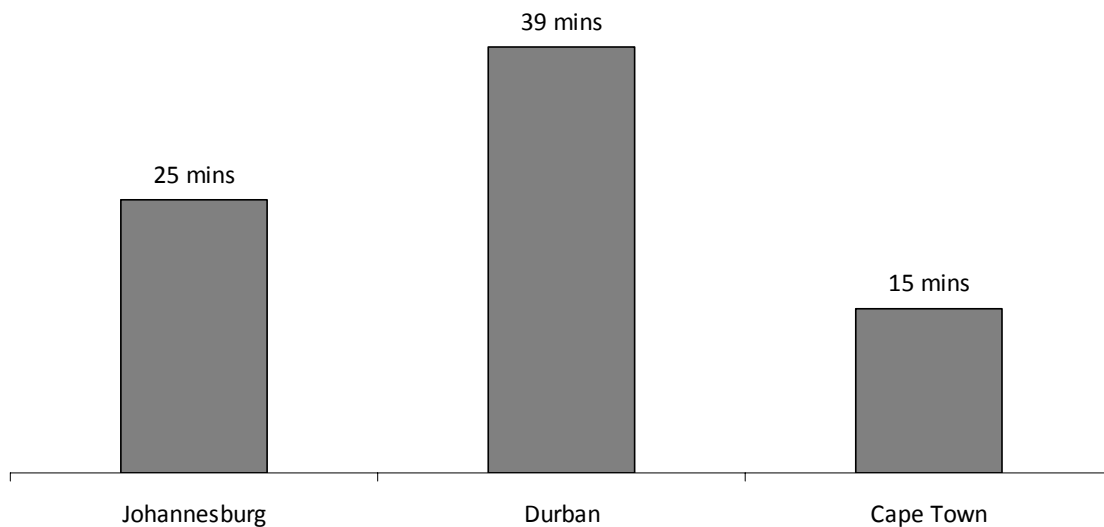
Percentage of Respondents who Received Notice of their Interview (By Location)³⁵

³⁵ Because of small sample sizes for the Port Elizabeth and Pretoria offices, no meaningful breakdown of the results from these locations can be provided for the RSDO phase.

Average Length of Interviews

The average length of interview is an important qualitative indicator. It is here that the trade-off for greater processing numbers may be located, as refugee status determination officers attempt to maximise the number of decisions made per day. The length of an interview can also reflect the seriousness with which an officer views his or her duty to the asylum seeker. Only closer analysis of the situation can reveal the reasons why interviews appear to be short and cursory in some locations.

From the chart, it appears that officers at the Durban office devote the most time to interviews, while those in Cape Town devote the least time.



Average Interview Time (By Location)³⁶

³⁶ Because of small sample sizes for the Port Elizabeth and Pretoria offices, no meaningful breakdown of the results from these locations can be provided for the RSDO phase.

APPENDIX B: RESEARCH DESIGN AND METHODOLOGY

Survey Design

The evaluation of the conditions at the country's refugee reception offices is based on two research instruments designed to investigate the experiences of asylum seekers at different stages of the asylum application process. The first survey (RRO stage) targeted applicants who had received their asylum seeker permits but had not yet had their status determination interviews. The second survey (RSDO stage) targeted those who had completed their status determination interviews.

After conducting a detailed review of the standards set out in the relevant legislation, regulations, and policies, the research team designed a research instrument that would identify whether the experience of asylum seekers accorded with these requirements. A review of monitoring reports by both governmental and non-governmental organisations was also done to identify performance criteria in the areas of border crossing, queue management, information dissemination and reception and processing of claims.

Although most of the questions were closed-ended and included a list of possible responses, the response choices were generally not read aloud to the participants, in order to avoid influencing their responses. The questionnaire included a small number of open-ended questions in order to get a more comprehensive view of two broader issues: 1) applicant perceptions and personal understanding of the asylum seeker process, and 2) corruption and illegal activities.

The content of the draft instruments was discussed in a series of workshops conducted with service providers, lawyers, and other civil society partners in Johannesburg, Durban, and Cape Town, to ensure relevance. The instruments were then refined after piloting them at the Pretoria and Cape Town refugee reception offices.

The research instruments were translated into French, Shona and Kiswahili, and then back-translated to English to ensure accuracy. These languages were selected to capture the main populations of migrants, specifically those coming from the DRC and Zimbabwe.

Sampling

The RRO-stage survey targeted all applicants who had submitted an application for asylum and received their section 22 permits, but had not yet had their interviews with a refugee status determination officer. Because a representative sample could not be obtained using household and telephone surveys, the researchers surveyed applicants waiting to renew their asylum seeker permits at each of five permanent refugee reception offices:

Permanent Offices	
Cape Town – Foreshore (later closed and replaced by Nyanga RRO) Pretoria (Marabastad) Johannesburg – Rosettenville (later closed and replaced by Crown Mines RRO)	October to December 2007
Durban – Umgeni Road (later closed and replaced by Moore Street RRO)	January to February 2008
Port Elizabeth	July to August 2008

Respondents at the offices were selected at random³⁷ over a period of eight months, with an approximate sample size of 200 from each office. Research access varied between offices. Respondents at some offices were surveyed while queuing outside the refugee reception offices, while at other offices they were interviewed inside as they waited to be served.

³⁷ No system was used to select respondents; researchers simply approached a number of asylum seekers who were present at the office on a given day. The word 'random' is used to convey this approach in the vocabulary of a lay reader, and does not imply random sampling strategy.

The RSDO-stage survey targeted those asylum seekers who had undergone their status determination interviews. Some of these applicants had already received their status decisions but were continuing to renew their permits pending appeal.

Since the majority of individuals queuing at the reception offices are new applicants or applicants renewing their permits while waiting for their status interviews, sampling for the RSDO-stage survey focused on the backlog offices to ensure that the survey would reach a sufficient number of asylum seekers who had completed their status determination interviews. The backlog project was established in 2006 to process the over 100,000 applicants who had applied for asylum between 1994 and July 2005 and had not yet undergone their RSDO interviews.

At the time that the surveys were conducted, backlog offices were operating in Nyanga (Cape Town), Moore Street (Durban), and Crown Mines (Johannesburg), and these were surveyed during the periods listed below.

Backlog Offices	
Durban – Moore Street (later replaced Umgeni Road RRO as permanent office)	January to February 2008
Johannesburg – Crown Mines (later replaced Rosettenville RRO as permanent office)	February to March 2008
Cape Town – Nyanga (later replaced Foreshore RRO as permanent office)	October to December 2007

Crown Mines was serving individuals who had lodged their applications in either the Rosettenville or Marabastad offices. In Durban, status determination interviews for asylum seekers who had applied before 2005 were being processed at the permanent office during the research period, limiting the number of interviews taking place at the backlog office. This resulted in the majority of RSDO-phase respondents being sourced at the Umgeni road office.

Finally, although there was no backlog project at the Port Elizabeth and Marabastad offices, a small number of asylum seekers from these offices were represented in the RSDO-stage surveys. Their responses are included in the

general results, but no meaningful breakdown of RSDO-stage surveys from these offices could be done because of the small sample size. The sample numbers for each office are represented in the table below.

Pretoria (Marabastad)	16
Johannesburg (Rosettenville)	19
Johannesburg (Crown Mines)	202
Cape Town (Nyanga)	205
Durban (Umgeni road)	188
Durban (Moore Street)	20
Port Elizabeth	30

Means and Medians

The analysis employs both mean and median figures. Where it was considered appropriate, outliers were removed in the calculations of both the medians and the means. The mean is the arithmetic average where the sum of all values is divided by the total number of non-missing values. The median figure represents the central value (where 50 percent of cases lie above and 50 percent below). A large difference between median and mean indicates that there were a significant number of responses above the median number driving the mean up. Both mean and median are referred to as ‘averages’ because the lay audience of this report is likely to understand the concept of a measure of central tendency by reference to the idea of an ‘average’. However, wherever an ‘average’ is referred to, it is clearly stated in the text or in a footnote whether this figure represents the mean or the median.

Methodological Limitations

This report is intended to give a more accurate picture of the key issues in the asylum application process and to provide a baseline for future research regarding service provision at the refugee reception offices. The findings will be instructive for assessing the impact of particular changes in the reception process.

Certain methodological barriers, however, limit the validity of the results for statistical application. Specifically, the confusion surrounding the various stages of the application process, which is itself indicative of the problems with the system, may have led to inconsistent responses by the applicants. In addition, not every respondent answered every question on the survey. Accordingly, the reported percentages reflect the percentage among those who responded to that particular question, not the percentage of all respondents.

Limited resources for translation and the hiring of native speakers also meant that only certain groups were interviewed. Somalis, Ethiopians, Bangladeshis and Pakistanis in particular are under-represented in the survey. Further, many conditions have changed since the period when the surveys were conducted. Some of the main changes include the closure of the Rosettenville and Foreshore (Cape Town) refugee reception offices, the termination of the Backlog Project, and the implementation of the Turnaround Strategy.

Finally, the data collected at the Port Elizabeth office contained a number of inconsistencies. This places limitations on the reliability of the findings with regard to the Port Elizabeth office.

In light of these developments, the results described here provide a useful benchmark by which to measure the impact of the changes being implemented in the Turnaround Strategy. The report draws preliminary conclusions and identifies the major problems confronting asylum seekers. Repeat surveys will continue to measure the evolving capacity of the refugee reception and status determination systems in South Africa against this benchmark.