

**2016**

**THE ABUSE OF ASYLUM SEEKERS  
MANAGEMENT SYSTEM BY ECONOMIC  
MIGRANTS UNDERMINES THE  
EFFICIENCY AND EFFECTIVENESS OF  
THE SYSTEM**

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## 2. MAIN FINDINGS OF THE EXPENDITURE PERFORMANCE REVIEW

TABLE 1: ONLY 10 PER CENT OF NEW ASYLUM SEEKERS APPLICATIONS ARE APPROVED AND 90 PER CENT ARE REJECTED

<b>Asylum seekers new arrivals</b>			
2012	2013	2014	2015
61 517	70 010	71 914	73 704
<b>Approved asylum seekers applications</b>			
6 226	7 286	3 084	4 620
10.1%	10.4%	4.3%	6.3%

The majority of applications for asylum seekers or about 90 per cent are rejected as manifestly unfounded and only 10 per cent is approved i.e. there are no valid grounds for seeking asylum in terms of the international conventions. Many of these individuals are merely seeking work or business opportunities (commonly referred to as economic migrants) and because there is no policy on the management of unskilled labour force the applicants abuse the asylum seeker process. This results in the system being over burdened by people who will not qualify for any permit through the normal immigration laws. Furthermore, the majority of applications for asylum or approximately 40 per cent come from the Southern African Development Community (SADC) and with Zimbabwean nationals leading.

SUMMARY TABLE 2: EXPENDITURE PER FUNCTIONAL AREA

Summary Expenditure	2012/13	2013/14	2014/15	2015/16	Total
Business operation support	13 193 517	12 732 515	13 749 000	13 012 452	52 687 484
CD: Asylum seekers management	2 037 536	1 481 597	1 631 000	1 206 678	6 356 811
Information and cooperation management	3 690 680	3 504 653	3 810 000	4 015 109	15 020 442
National Immigration Information System	26 657 968	23 054 292	19 860 000	18 257 435	87 829 695
RA: Stakeholder Management	2 352 131	2 753 070	4 272 000	3 170 826	12 548 027
Refugee Appeal Board	5 529 971	6 647 329	15 535 000	7 642 745	35 355 045
Refugee Standing Committee	3 377 169	5 107 056	0	5 181 892	13 666 117
Repatriation and Integration Management	3 556 972	3 722 182	6 247 000	4 205 788	17 731 942
Immigration Advisory Board	296 635	15 136	0	0	311 771
<b>Total</b>	<b>60 692 579</b>	<b>59 017 830</b>	<b>65 104 000</b>	<b>56 692 925</b>	<b>241 507 334</b>

Based on the expenditure analysis performed for the period between 2012/13 and 2015/16, the expenditure for the asylum seekers and refugee management is mainly incurred in the following functional areas; (1) Business operation support; (2) CD: Asylum seekers management; (3) Information and cooperation management; (4) National Immigration Information System [NIIS]; (5) RA: Stakeholder management; (6) Refugee Appeal Board; (7) Refugee Standing Committee; (8) Repatriation and Integration Management; and (9) Immigration Advisory Board.

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**SUMMARY TABLE 3: EXPENDITURE PER MAIN ECONOMIC CLASSIFICATION**

Summary Expenditure	2012/13	2013/14	2014/15	2015/16	Total
Compensation of employees	19 209 636	22 649 079	22 934 000	24 677 344	89 470 059
Goods and services	41 293 052	36 238 933	42 169 000	18 564 408	138 265 393
Machinery and equipment	189 891	95 937	0	279 796	565 624
Departmental agencies and accounts	0	33 881	1 000	142 964	177 845
Non-infrastructure maintenance and repairs	0	0	0	12 699 653	12 699 653
Non-infrastructure operating leases	0	0	0	328 760	328 760
<b>Total</b>	<b>60 692 579</b>	<b>59 017 830</b>	<b>65 104 000</b>	<b>56 692 925</b>	<b>241 507 334</b>

The NIIS account for 32 per cent of the total expenditure, followed by Business operation support with 23 per cent, Refugee Appeal Board accounts for 13 per cent and Refugee Standing Committee accounts for 9 per cent. However, in terms of economic classification, goods and services accounts for approximately 60 per cent of the total expenditure.

South Africa is considered among the top 5 countries in the world that receive most individual asylum seekers, the table below indicate new arrivals and approved applications for asylum between 2012 and 2015. However, about 90 per cent of applicants are not genuine refugees but are seeking work or business opportunities. This is due to a combination of push and pulls factors and as result economic migrants and criminal syndicates take advantage of weak immigration systems, gaps in policy and legislation and corrupt officials make matters worse.

**TABLE 4: TOP 10 ASYLUM SEEKERS APPLICATIONS PER NATIONALITY**

Nationality	2012	Nationality	2013	Nationality	2014	Nationality	2015
Zimbabwe	17 189	Zimbabwe	16 420	Zimbabwe	14 442	Zimbabwe	14 325
Ethopia	6 986	Nigeria	7 165	Ethopia	7 429	Nigeria	6 452
Nigeria	6 050	Democratic Republic of Congo	7 363	Democratic Republic of Congo	5 661	Democratic Republic of Congo	7 363
Democratic Republic of Congo	5 100	Ethopia	7 175	Nigeria	4 859	Ethopia	7 175
Malawi	3 534	Bangladesh	3 858	Bangladesh	3 786	Bangladesh	3 858
Bangladesh	2 997	Mozambique	3 751	Somalia	1 918	Mozambique	3 751
Pakistan	2 985	Pakistan	3 540	Malawi	1 113	Pakistan	3 540
Somalia	2 718	Lesotho	3 424	Pakistan	1 685	Lesotho	3 424
India	2 191	Malawi	2 493	Ghana	1 515	Malawi	2 493
Ghana	2 167	India	2 470	India	927	India	2 470
<b>Total</b>	<b>53 929</b>	<b>Total</b>	<b>59 672</b>	<b>Total</b>	<b>45 349</b>	<b>Total</b>	<b>56 866</b>

Source: DHA (NIIS 2015)

There is an important regional and international dimension to the large numbers of asylum seekers choosing South Africa as their destination. Most importantly, there is a lack of observance of the “safe third country” principle that those persons who claim asylum should do so in the first safe country they enter. This does not relate to asylum seekers originating from neighbouring countries but to those asylum seekers who transit through one or more safe countries en route to South Africa, most of which are also signatories to the 1951 United Nations Convention.

**TABLE 6: TOP 5 NATIONALITIES GRANTED REFUGEES STATUS IN SOUTH AFRICA 2012 - 2014**

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Nationality	2012	Nationality	2013	Nationality	2014	Nationality	2014
Somalia	3 046	Somalia	3 579	Somalia	2 463	Somalia	643
Ethiopia	2 163	Ethiopia	2 055	Ethiopia	1 997	Ethiopia	820
Democratic Republic of Congo (DRC)	489	Democratic Republic of Congo (DRC)	1 104	Democratic Republic of Congo (DRC)	1 844	Democratic Republic of Congo (DRC)	644
Congo Republic	164	Congo Republic	317	Congo Republic	527	Congo Republic	327
Eritrea	253	Eritrea	168	Eritrea	118	Eritrea	65
<b>Total</b>	<b>6 115</b>		<b>7 223</b>		<b>6 949</b>		<b>2 499</b>
Total granted (including other nationalities)	6 226		7 286		7 097		3 951
Percentage as a total granted	98.2%		99.1%		97.9%		63.2%

### 3. EXECUTIVE SUMMARY

The purpose of the Expenditure and Performance Review (EPR) on “The abuse of asylum seekers management system by economic migrants undermines the efficiency and effectiveness of the system” is to provide an analysis of the challenges the Department of Home Affairs is facing with regard to the management of asylum seekers, refugees and economic migrants.

The EPR focuses on the management of asylum seekers and refugees in South Africa and the influx of economic migrants from the SADC region and other parts of the world. The policy choices that South Africa must make with regard to the challenges posed by managing large numbers of migrants and the security, economic and social risks and opportunities these issues presents are carefully considered in the review.

The EPR was conducted over a four year period i.e. 2012/13 – 2015/16, during this period expenditure decreased from R60.9 million to 56.7 million. The decreased in expenditure was mainly as a result in the goods and services. The expenditure for the asylum seekers and refugee management is mainly incurred in the following functional areas; (1) Business operation support; (2) CD: Asylum seekers management; (3) Information and cooperation management; (4) National Immigration Information System [NIIS]; (5) RA: Stakeholder management; (6) Refugee Appeal Board; (7) Refugee Standing Committee; (8) Repatriation and Integration Management; and (9) Immigration Advisory Board.

Asylum seeker management system is greatly abused and overwhelmed by economic migrants (particularly from neighbouring SADC countries) wanting to legitimise their stay in South Africa and ultimately avoid deportation. Below are some challenges faced;

- Abuse of migrants and by extension South African workers by some unscrupulous South African employers who flout labour laws, labour rights and minimum wage legislation, secure in the knowledge that they would not be reported or taken to court;
- Increased trade in false documentation and petty corruption by police and immigration enforcement officials profiting through bribery and extortion from migrants desperate to enter/remain in the country.
- Citizens assume that all migrants from the rest of the continent are undesirable, undermining social cohesion and laying the foundation for xenophobic violence which besmirches South Africa’s reputation.

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- Deportation to the SADC countries increased significantly and the costs of policing soared. Over 90 per cent of deportations are to the SADC countries. There is growing evidence that deportations are a “revolving door” and also encourage considerable opportunistic corruption.

South Africa has adopted a policy of non-encampment of asylum seekers and refugees, opting instead for a policy of integrating refugees into communities. The policy of integration should not apply to asylum seekers as they have a temporary status while awaiting the outcome of the adjudication. However, a serious challenge has arisen because, in the face of significant numbers of rejected claims, the appeals process has become protracted and taking several years to finalise. This prolonging of the finalisation of asylum claims has proven to be a major pull factor because asylum seekers are allowed to earn a living and study while awaiting adjudication and if the process is lengthy then this amounts to a *de facto* work, business and study visa.

#### **4. DEFINITION OF ASYLUM**

##### **An Asylum Seeker**

An asylum seeker is a person who has fled his or her country of origin and is seeking recognition and protection as a refugee in the Republic of South Africa, and whose application is still under consideration.

In case of a negative decision on his or her application, he or she has to leave the country voluntarily or will be deported.

##### **A Refugee**

A refugee is a person who has been granted asylum status and protection in terms of section 24 of the Refugee Act, (Act No. 130 of 1998).

Under the 1951 United Nations Convention, a refugee can be a “convention refugee” who has left his or her home country and has a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or a membership in a particular social group.

Under the same convention, a refugee can also be a person “in need of protection” whose removal to his home country would subject him personally to a danger of torture or to a risk to his life or a risk of cruel and unusual treatment or punishment.

##### **Role of the South African government**

The government of the Republic of South Africa has an obligation to grant protection to refugees and other persons in need of protection under a number of UN Conventions such as the 1951 Convention Relating to the Status of Refugees. However, Convention of Refugees and persons in need of protection based on risk to life, or a cruel and unusual treatment must have faced personally the risk all the way through in the country in question.

##### **General procedure for application for asylum**

- A person enters the Republic of South Africa through a port of entry ( a land border post, airport or harbour), claims to be an asylum and is, therefore issued with a section 23 permit which is a non-renewable “asylum transit permit” of the Immigrant Act.
- The permit is valid for a period of 14 days only and authorises the person to report to the nearest Refugee Reception Office in order to apply for asylum in terms of section 21 of the Refugee Act.
- The asylum seeker is required to furnish the following documents:
  - A section 23 permit;

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- Any proof of identification from the country of origin;
- A travel document if in possession of one ( the asylum seeker lodges application in person his application at a designated Refugee Reception Office where admissibility hearing takes place)
- Applicant's fingerprints taken in prescribed manner;
- Interpreter secured (if necessary);
- First interview conducted by a Refugee Reception Officer (RRO) and a BI-1590 form duly completed;
- Applicant's data and image captured in the refugee system;
- An Asylum Seeker's permit (a section 22 permit) is printed, signed, stamped and issued to the asylum.[ the section 22 permit which is valid for a period of six months legalises the asylum seeker stay in the Republic of South Africa temporarily pending a final decision on his or her application. The permit can be extended by an RRO for a further six months while the process of status determination is in progress. The holder of the section 22 permit has the right to work and study in South Africa and is protected against deportation to his country of origin].

### **Refugee Status Determination**

Prior to the permit expires, the asylum seeker reports to the Refugee Reception Office for:

- A second interview is conducted by a Refugee Status Determination Officer (RSDO);
- The RSDO proceed with a fair adjudication of the application, makes a decision on claims for asylum application and provides reasons for the decisions. The RSDO must on conclusion of the status determination hearing grant asylum; or reject the application as manifestly unfounded, abusive or fraudulent; or refer any question of law to the Standing Committee for Refugee Affairs (SCRA);
- When granted asylum (written recognition of refugee status), a refugee is generally issued with a section 24 permit, which allows such a person to remain for a specified period of 2 years in South Africa, and it is renewable upon expiration of its validity after the review process by an RSDO. In this case, the refugee must write a letter requesting the extension of his or her refugee status;
- He or she is also allowed to work and study in South Africa whilst the permit is valid.

### **Refugee enabling documents**

- A refugee must apply for a refugee identity document (ID) at any Refugee Reception Office within 15 days in the prescribed manner and it is free;
- After being issued with an ID, a refugee can apply for a United Nations Convention Travel Document (UNCTD) at any Refugee Reception Office in the prescribed manner.

### **Appeal and review process**

- In case of rejection, an asylum seeker or refugee who believes that he has a well-founded fear of persecution but whose claim has been rejected, may decide to appeal against the rejection decision of the RSDO to the Refugee Appeal Board (RAB) in the prescribed manner within 30 days after the decision has been handed over to them.
- The Appeal Board conducts an appeal hearing during which the appellant who is entitled to a fair hearing and have the rights to be heard and to present his case fully. The Refugee Appeal Board is responsible for considering and deciding appeals on decisions made by RSDOs.
- The RAB may after hearing an appeal confirm or set aside or substitute the decision of the RSDO.

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- In respect of manifestly unfounded applications, the Standing Committee for Refugee Affairs (SCRA) reviews or confirms or sets aside decisions taken by the RSDO and refer cases back to RSDO for determination within 14 days as well as monitors in general the decisions of the RSDO.

### **Certification**

- The applicant must have 5 full years continuous residence in the Republic of South Africa as a formally recognized refugee not as an asylum seeker
- Write an application letter explaining the reasons for applying for the certification
- Go to the initial refugee reception office where application for asylum was first lodged and complete the form. The Refugee Reception Office will ensure that the applicant complies with all the requirements
- The application will be referred to the Standing Committee for Refugee Affairs which is the body established to certify or not if the applicant will remain a refugee indefinitely
- If successful, the applicant will then be issued with a “Certification” or Section 27© which will enable the applicant to apply at any Home Affairs office for an “Immigration Permit” or “Permanent Residence”

## **5. ASYLUM SEEKER MANAGEMENT**

Asylum seekers considers and processes applications for asylum, issues enabling documents to refugees and facilitates to find durable solutions to refugee problems in line with the Refugees Act (1998). The head office is responsible for providing strategic leadership, while refugee reception offices are responsible for operations.

### **Statistical Report on asylum seekers and refugees – 2012**

The department’s reporting on asylum seekers and refugees is aligned with the United Nations Human Rights Commission on Refugees (UNHCR) reporting cycle and represents the government’s contribution to the UNHCR Annual Global Trends Report. In this regard 61 517 new asylum seekers were received from January to December 2012 and only 6 226 were recognised as refugees, averaging 10.1 per cent of total applications received.

A total of 55 291 applications for asylum, or 88.9 per cent of the total applications received were rejected at the level of first instance adjudication. Of these rejected applications, 46 per cent of them were rejected on the basis that the claims were manifestly unfounded, whilst 37 per cent were rejected on the basis of the claims being unfounded. Manifestly unfounded claims are claims that are not related to the criteria for the granting of refugees laid down in the 1951 United Nations Convention relating to the status of refugees no to any other criteria justifying the granting of asylum. Unfounded claims are those that have no basis on foundation or fact.

### **Statistical Report on asylum seekers and refugees – 2013**

The department’s reporting on asylum seekers and refugees is aligned with the United Nations Human Rights Commission on Refugees (UNHCR) reporting cycle and represents the government’s contribution to the UNHCR Annual Global Trends Report. In this regard 70 010 new asylum seekers were received from January to December 2013 and only 7 286 were recognised as refugees, averaging 10.4 per cent of total applications received.

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A total of 62 724 applications for asylum, or 89.6 per cent of the total applications received were rejected at the level of first instance adjudication. Of these rejected applications, 46 per cent of them were rejected on the basis that the claims were manifestly unfounded, whilst 34 per cent were rejected on the basis of the claims being unfounded. Manifestly unfounded claims are claims that are not related to the criteria for the granting of refugees laid down in the 1951

United Nations Convention relating to the status of refugees no to any other criteria justifying the granting of asylum. Unfounded claims are those that have no basis on foundation or fact.

### **Statistical Report on asylum seekers and refugees – 2014**

The department’s reporting on asylum seekers and refugees is aligned with the United Nations Human Rights Commission on Refugees (UNHCR) reporting cycle and represents the government’s contribution to the UNHCR Annual Global Trends Report. In this regard 71 914 new asylum seekers were received from January to December 2014 and only 8 629 were recognised as refugees, averaging 12 per cent of total applications received.

A total of 63 285 applications for asylum, or 88 per cent of the total applications received were rejected at the level of first instance adjudication. Of these rejected applications, 47 per cent of them were rejected on the basis that the claims were manifestly unfounded, whilst 35 per cent were rejected on the basis of the claims being unfounded. Manifestly unfounded claims are claims that are not related to the criteria for the granting of refugees laid down in the 1951 United Nations Convention relating to the status of refugees no to any other criteria justifying the granting of asylum. Unfounded claims are those that have no basis on foundation or fact.

### **Statistical Report on asylum seekers and refugees – 2015**

The department’s reporting on asylum seekers and refugees is aligned with the United Nations Human Rights Commission on Refugees (UNHCR) reporting cycle and represents the government’s contribution to the UNHCR Annual Global Trends Report. In this regard 73 704 new asylum seekers were received from January to December 2015 and only 8 329 were recognised as refugees, averaging 11.3 per cent of total applications received.

A total of 65 375 applications for asylum, or 88.7 per cent of the total applications received were rejected at the level of first instance adjudication. Of these rejected applications, 48 per cent of them were rejected on the basis that the claims were manifestly unfounded, whilst 37 per cent were rejected on the basis of the claims being unfounded. Manifestly unfounded claims are claims that are not related to the criteria for the granting of refugees laid down in the 1951 United Nations Convention relating to the status of refugees no to any other criteria justifying the granting of asylum. Unfounded claims are those that have no basis on foundation or fact.

## **6. ASYLUM SEEKER MANAGEMENT AND PERFORMANCE INDICATORS**

**TABLE 7. PERFORMANCE INDICATORS**

<b>Performance indicator</b>	<b>2012/13</b>	<b>2013/14</b>	<b>2014/15</b>	<b>2015/16</b>
	<b>ACTUAL PERFORMANCE</b>			
Number of asylum seekers applications per year	61 517	70 010	71 914	73 704
Number of asylum seekers applications approved per year	6 226	7 286	8 629	8 329
Number of asylum seekers applications rejected per year	55 291	62 724	63 285	65 375
Number of cases referred to the Refugee Appeals Board per year	11 688	13 302	13 663	14 093

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The performance indicator table is based on asylum records from the National Immigration Information System (NIIS). The main performance areas covered are: registered asylum seekers per annum, applications approved and rejected, and cases referred to the Refugee Appeals Board (RAB).

In cases of rejection, an asylum seeker or refugee who believes that he has a well-founded fear of persecution but whose claim has been rejected, may decide to appeal against the rejection decision of the RSDO to the RAB in the prescribed manner within 30 days after the decision has been handed over to them. The RAB conducts an appeal hearing during which the appellant who is entitled to a fair hearing has the right to be heard and to present his case fully. The RAB is responsible for considering and deciding appeals on decisions made by RSDO's.

## **ANALYSIS OF EXPENDITURE PER MAIN FUNCTIONAL AREA**

<b>Summary Expenditure</b>	<b>2012/13</b>	<b>2013/14</b>	<b>2014/15</b>	<b>2015/16</b>	<b>Total</b>
Business operation support	13 193 517	12 732 515	13 749 000	13 012 452	52 687 484
CD: Asylum seekers management	2 037 536	1 481 597	1 631 000	1 206 678	6 356 811
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The bulk of the expenditure as indicated in the table above is on the National Immigration Information System (NIIS) i.e. approximately 40 per cent, followed by Business Operation Support and lastly Refugee Appeal Board. The main reason for spending the bulk of the expenditure on the NIIS is because capturing the biometric data of applicant is central to the management of the asylum seeker process. However, the statistical data shows that only 10 per cent of the applications are approved and the rest are rejected.

The majority of applicants whose applications have been rejected appeal against the decision of the RSDO and cases end up to the RAB. The RAB is not fully capacitated and as a result the system is overwhelmed and genuine refugees suffer as they have to wait for long periods of the final outcome or decision.

Expenditure on the RAB has seen a significant increase from R5.2 million in 2012/13 to R15.5 million in 2014/15. This was mainly to deal with the backlog of cases in appeals and although significant progress has been made in reducing the appeals in backlogs, the system remains clogged by the high numbers of new applicants.

## **7. RECOMMENDED STRATEGIES TO DEAL WITH THE ABUSE OF THE ASYLUM SEEKERS BY ECONOMIC MIGRANTS**

*(in line with the Draft Green Paper on International Migration in South Africa)*

### **Admission of asylum seekers**

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- The current principle of an inclusive and progressive approach that allows any foreign migrant to claim asylum should continue to apply with exceptions as stipulated in the existing Refugees Act that excludes war criminals and other prohibited categories. However, the principle should not be applied in a way that compromises the rights of citizens to national security and public safety.
- The Immigration Act governs the right of entry and should be used to ensure an adequate assessment of risk of all those presenting at Ports of Entry (POE's) or apprehended after entering the country illegally and belatedly declaring an intention to for asylum.
- The person being screened can apply for asylum at any stage and the claim will have to be adjudicated unless they are excluded because of the provisions in the relevant Acts. This must not prevent immigration officers from taking necessary steps to assess risks under the Immigration Act; for example establishing the nationality and identity of claimants.
- Article 31.1 of the 1951 UN Convention on Refugees determines that state parties to the Convention "shall not impose penalties on account of their illegal entry or presence on refugees who coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorisation, provided that they present themselves without delay to the authorities and show good cause for their illegal entry or presence.
- As a result of not defining and prescribing the meaning of "without delay", opportunistic applications for asylum from illegal foreigners (i.e. over stayers, rejected applicants under Immigration Act, deportable and apprehended persons) are processed without any sanction for having entered and/or resided illegally in the country. Thus by merely pronouncing the intention to claim asylum, detention or deportation of foreign nationals that have contravened the law is virtually impossible.

#### **Adjudication of the asylum claim**

- Once properly cleared under the Immigration Act, efficient processing of asylum seekers under the Refugees Act should take place near the borders where most of them enter. This will enable risks to be managed for both South Africa and the asylum seekers. This is international practice in countries such as Canada, Australia, Switzerland, Brazil etc.
- Secure processing and administrative detention centres could be established to accommodate certain categories of asylum seekers while their claims are being adjudicated. This is common practice in countries that do not have encampment policies. These centres for mitigating security posed by irregular migrants.
- Most asylum seekers who fall into low risk categories could be released into the care of national or international organisations and family or community members. One
- condition for releasing an asylum seeker into the care of an individual or an organisation would be to receive assurances on the welfare and the location of the asylum seeker. The state would establish an appropriate structure to coordinate and manage this process.

#### **Condition of stay for asylum seekers in the country**

- Following court judgements (notably the M Watchenuka case (2004) the Standing Committee for Refugee Affairs (SCRA) set conditions under section 22 of the Refugees Act that allows asylum seekers to work and study while awaiting adjudication. Many also conduct business such as "spaza" shops. Many asylum applicants awaiting adjudication or having their claim rejected endeavour to regularize their stay through other means such as fraudulent marriages, using false identities and the acquisition of fraudulent documents.

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- Asylum seekers would not have the automatic right to work or study unless granted such rights under the Immigration Act in clearly defined or exceptional circumstances.

### **Change of residence status by asylum seekers**

- The Dabone judgement which allows asylum seekers to have permits simultaneously under the Immigration Act and Refugees Act has enabled the abuse of the asylum seeker process. An order of court on the Dabone case was issued by the High Court in 2003 ordering Minister of Home Affairs to allow asylum seekers and refugees to apply for temporary and/or permanent residence in terms of the Immigration Act.
- Consequent to the Dabone case asylum seekers and refugees are able to eventually acquire citizenship through marriage or other means that allow them to eventually apply for permanent residence, which can lead to obtaining citizenship through naturalisation. Legal opinion on the possibility of reversing this judgement must be sought. Ideally, such changes of status should not be allowed in any circumstances while the person concerned has asylum seeker status in the country.

### **Non-encampment policy**

- The existing policy of non-encampment should continue as permanent camps in our context would create serious logistical, security and humanitarian challenges. It is far better to integrate those given refugee status into communities, provided adequate mechanisms are put in place.

### **Regional refugee approach**

- South Africa should take robust steps to be able to refuse asylum to asylum seekers who have transited through one or more safe countries. Building appropriate relationships and signing agreements with neighbouring countries is central to resolving this problem as it is done in Europe through the Dublin agreement. In the medium to long term there should be bi-lateral agreements with neighbouring countries and other transit countries that deal with this matter in the context of facilitating and securing mitigation for development and security.
- The SADC initiative for Refugee Commissioners, of which South Africa is part, it aims to create regional solutions to asylum-related challenges.

### **Multi-stakeholder approach**

A serious policy gap in relation to the management of asylum seekers and refugees is the lack of policy and regulatory framework that will ensure effective coordination across sectors and spheres of government. This is particularly serious in terms of the lack of coordination of the integration of refugees into communities. In this regard, the following is proposed:

In respect of both asylum seekers and refugees, the respective responsibilities and roles of the relevant departments in all three spheres of government must be made clear and reflected in procedures, regulations and formal agreements as appropriate. Due attention must be paid to linking with provisions in existing legislation, such as the Children's Act and amendments in relevant Acts may be necessary in the longer term to ensure a coherent legal framework.

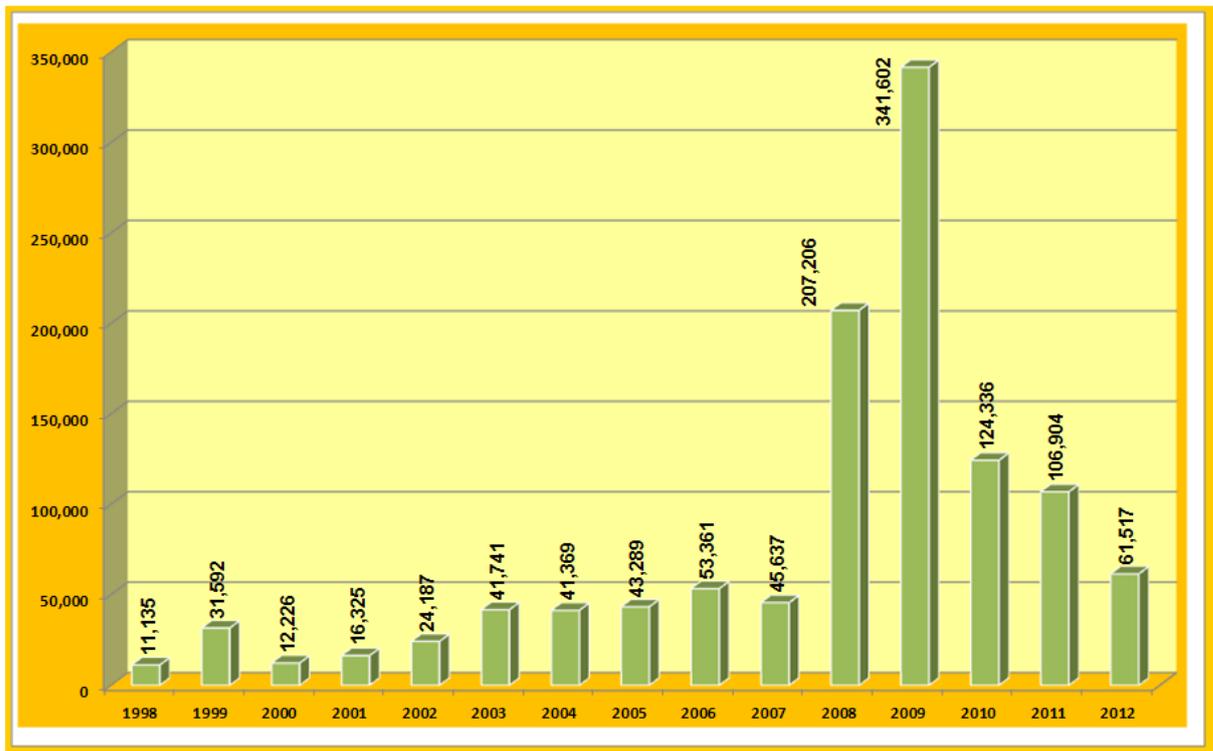
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- To secure processing centres for asylum seekers as described above would have a referral system; with those accorded refugees status processed by relevant departments and assisted by accredited organisations. Those with skills and qualifications could be referred to appropriate bodies for assistance and to ensure the effective utilisation of their skills.
- The same government structure that is proposed in relation to coordinating and monitoring the referral of asylum seekers to international or local organisation could play a similar role in relation to the integration of refugees into communities. Agreements would be reached with national departments and provincial and local government in terms of the legal framework. There would also be engagement with national organisations and institutions such as banks to ensure those granted refugee status have access to services.

## **Annexure A**

### **GRAPH 1: CUMULATIVE ASYLUM STATISTICS ON NEW ARRIVALS: 1998 – 2012**

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