

**PORTFOLIO COMMITTEE ON HOME AFFAIRS:
PUBLIC HEARINGS ON THE REFUGEES
AMENDMENT BILL [B12-2016]
DATE: 24 JANUARY 2017**

Lawyers for Human Rights presentation to the Committee



Lawyers for Human Rights

- Lawyers for Human Rights (“LHR”) is an independent human rights organisation with a 37-year track record of human rights activism and public interest litigation in South Africa.
- LHR was founded in response to the increasingly repressive apartheid regime, LHR lawyers provided legal support to political prisoners, communities faced with forced removals and actively campaigned against the death penalty.
- *LHR uses the law as a positive instrument for change and to deepen the democratisation of South African society. Making the Constitution a living document!*
- **LHR’s Refugee and Migrant Rights Programme in partnership with UNHCR sees between 10 000 to 15 000 asylum seeker and refugee clients per year in its four law clinics (in Pretoria, Johannesburg, Durban and Musina).**
- LHR welcomes this opportunity to make presentation to this hearing organised by the Portfolio Committee for Home Affairs on the Refugees Amendment Bill, 2016.
- This presentation is based on the written submissions to the Portfolio Committee for Home Affairs on the Refugees Amendment Bill, 2016 made in October 2016.



GREEN PAPER ON INTERNATIONAL MIGRATION

- Released in June 2016 and submissions were due on 30 September 2016
- Will make sweeping changes to the refugee system, including detention centres at border “processing centres”
- Will remove any ability of refugees to apply for permanent residence
- Will remove the right to work for asylum seekers
- No discussion about transitional provisions for existing asylum seekers and refugees
- Why introduce new legislation before the White Paper?



Developmental approach to Migration

- Asylum management is one of the areas which is dealt with in the Green Paper and is the subject of the White Paper process which will be presented to Cabinet.
- Normally, it is on the basis of such a policy document that legislation would be introduced in line with a fully developed policy, based on dialogue and public participation.
- In this case, however, it seems that the opposite has happened and that legislation is being introduced before Cabinet has made a final decision regarding migration policy



THE ASYLUM SYSTEM IN S.A IS IN CRISIS-BUT THE SOLUTION IS NOT POLICY CHANGE

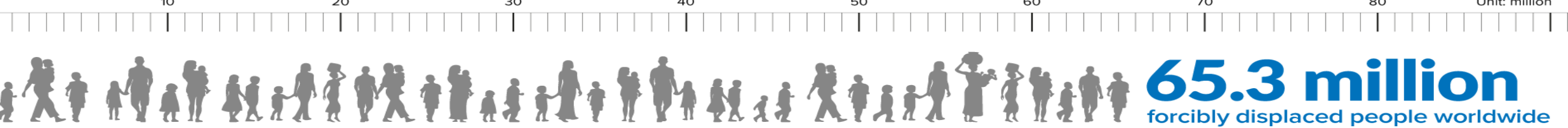
- At present, the Refugee Appeal Board is non-functional, the Standing Committee for Refugee Affairs is desperately under-staffed and under-resourced, Refugee Reception Offices have been closed (even in violation of court orders) and corruption remains a principal barrier to South Africa fulfilling its obligations under international law.
- Has there been a costing of the Bill especially against backdrop of drastic cuts in budget for 2016/2017 year? There is a serious issue of costs to take into account.
- **We submit that the provisions of the Bill which deal with immediate capacity problems, particularly the massive backlog of approximately 200 000 appeals before the Refugee Appeal Board, do not need a policy change to be addressed.**
This number was given by the Deputy Minister of Home Affairs, the Hon. Deputy Minister Fatima Chohan, during a presentation at the Conference of the African Chapter of the International Association of Refugee Law Judges co-hosted by LHR- which took place at the University of Pretoria on 27 October 2016.
- This would include the changes contemplated in section 8C(2) of the principal Act permitting appeals to be heard by one member as determined by the Chairperson of the Board, and continued efforts to address corruption.



Accuracy of 96% rejection rate

- This figure is used to demonstrate that migrants are abusing the asylum process.
- This has been called into question by leading research institutions in South Africa, including research done by the African Centre for Migration and Society (ACMS) at the University of the Witwatersrand.
- In a 2012 Report, ACMS found that the poor quality of refugee status determination (“RSD”) proceedings was a violation of the constitutional right to just administrative action. In another report from ACMS in the same year, hundreds of RSD decisions were analysed and specific problems relating to the determination procedure were found to violate both domestic constitutional law regarding just administrative action and good decision-making as well as international standards relating to RSD.
- Amit, Roni. “No Way In: Barriers to Access, Service and Administrative Justice at South Africa’s Refugee Reception Offices.” *African Centre for Migration & Society*. September 2012. p.9
- Amit, Roni. “All Roads Lead to Rejection: Persistent Bias and Incapacity in South African Refugee Status Determination.” *African Centre for Migration & Society*. June 2012:
http://www.lhr.org.za/sites/lhr.org.za/files/all_roads_lead_to_rejection_research_report.pdf.





65.3 million
forcibly displaced people worldwide

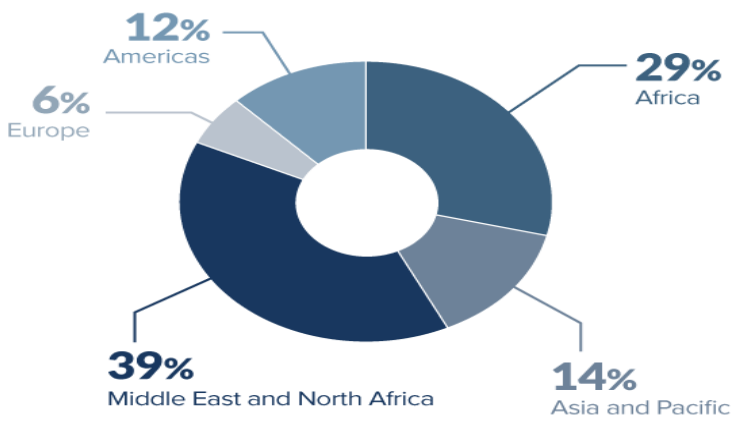


Refugees
21.3 million
16.1 million under UNHCR mandate
5.2 million Palestinian refugees registered by UNRWA



Stateless people
10 million

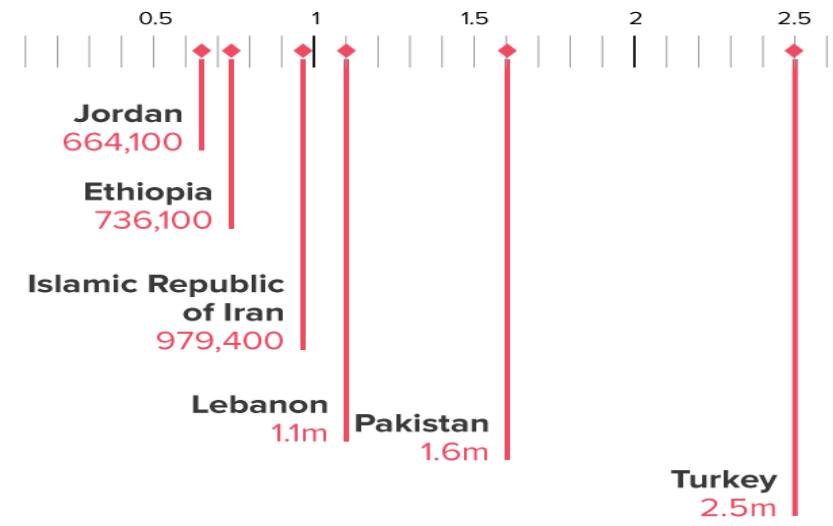
Where the world's displaced people are being hosted



53% of refugees worldwide came from three countries



Top hosting countries



33,972 people
a day forced to flee their homes because of conflict and persecution

10,700 staff
UNHCR employs 10,700 staff (as of 31 October 2016)

128 countries
We work in 128 countries (as of 31 October 2016)

We are funded almost entirely by voluntary contributions, with 86 per cent from governments and the European Union.

STATISTICS TO INFORM POLICY- DOING MORE HARD THAN GOOD

- The Gauteng City-Region Observatory [GCRO] is a partnership with the University of Johannesburg [UJ], University of the Witwatersrand, Johannesburg [Wits], the Gauteng Provincial Government [GPG] and organised local government.
- GCRO Quality of Life Survey 2013, representative sample of over 27,000 residents in Gauteng (2013)
- GCRO survey of 1,567 cross border and South African migrant informal sector entrepreneurs in Gauteng (2014) (the same survey with cross border migrant entrepreneurs only was undertaken in Cape Town).
- GCRO survey of 1,270 informal sector cross border traders in Gauteng (people from other countries who travel to South Africa to buy goods for their businesses in their home countries – some also bring goods to sell in South Africa).
- There is more relevant data available from each of the surveys –just ask and visit the GCRO website: www.gcro.ac.za and www.gcro.ac.za/qolviewer/



PLACE OF ORIGIN OF BUSINESS OWNERS [2013] (%)

	All business owners (%) (N=1,045)	Formal Sector business owners (%) (N=1,045)	Informal sector business owners (%) (N=1,045)
Born in Gauteng	56	60	54
Moved to Gauteng from elsewhere in SA	28	27	28
Moved to Gauteng from another country	16	13	18



FINANCIAL SPEND OF INFORMAL SECTOR CROSS-BORDER TRADERS

	GCRO 2014 survey of informal cross border traders	Collective spend of 665 traders in GCRO 2014 survey in one trip to Johannesburg to shop for business	Annual collective spend of 213,000 trips to shop for business in Johannesburg (2014)
Direct spend on goods	R10,568 (SA Tourism R17,000)	R7,027,720	R2.3-R3.6 billion
Average spend on transport on last trip to Johannesburg	R1,091	R725,515	R232,383,000
Average spend on accommodation on last trip to Johannesburg (56% paying for accommodation)	R453	R168,516 (372 traders only)	R54,033,840 (56% of visits)



Right to work

- Effectively excludes:
 - Jobs in the informal economy
 - Piecemeal jobs
 - Trading
- Onus put on employers and learning institutions to report to DHA within 14 days of employment or enrolment, failing which they are subject to a R20 000 maximum fine. This may deter employers from even considering asylum seekers for employment.



Right to work continued

- The relationship between asylum seekers' right to work and dignity has already been highlighted in several seminal cases,
 1. *Minister of Home Affairs and Others v Watchenuka and Others* (“Watchenuka”),
 2. *Union of Refugee Women and Others v Director, Private Security Industry Regulatory Authority and Others* (“Union of Refugee Women”) and
 3. *Somali Association of South Africa and Others v Limpopo Department of Economic Development Environment and Tourism and Others* (“Somali Association”).
 4. In *Watchenuka* the Supreme Court of Appeal had to decide whether a prohibition imposed by the SCRA on the right of asylum seekers to work constituted an unjustifiable infringement to asylum seekers' human dignity.
 - [2004] 1 All SA 21 (SCA) (28 November 2003).
 - 2007 (4) BCLR 339 (CC).
 - [2014] 4 All SA 600 (SCA) (26 September 2014).



Human Dignity

- The right to human dignity is not an ill-defined and abstract concept but has been given substance by our courts, such as *Dawood and other v Minister of Home Affairs and others 2000 (3) SA 936 (CC)*.
- The court made two important findings in *Watchenuka*. First, it found that “*where employment is the only reasonable means for the person’s support other considerations arise. What is then in issue is not merely a restriction upon the person’s capacity for self-fulfilment, but a restriction upon his or her ability to live without positive humiliation and degradation*”.
- Second, it found that because the prohibition was a blanket prohibition (I.e. excluding all asylum seekers from working) that it “[*would*] inevitably include amongst those that it affects applicants for asylum who have no reasonable means of support other than through employment. A prohibition against employment in those circumstances is a material invasion of human dignity that is not justifiable in terms of [s 36](#) [of the Constitution].”



PROVIDING NECESSITIES

- The Bill would place the responsibility of providing the necessities of life to asylum seekers on the UNHCR and its partners for at least 4 months, if not longer due to further restrictions even if the right to work is eventually granted.
- This approach has not been negotiated or discussed with civil society, but appears to be an attempt to impose financial (and largely unfunded) burdens on civil society organisations through legislation
- We are concerned that this will lead to further violations of human dignity and suffering
- We are further concerned that efforts to create “shelters” at border refugee reception offices will become *de facto* detention camps, in violation of South Africa’s stated policy of non-encampment.



CASUALTY WILL BE HUMAN BEINGS AND HUMAN SUFFERING

- **WE MUST STOP THE RETRAUMATISATION OF ASYLUM SEEKERS THROUGH POOR SERVICE AND ABUSIVE TREATMENT AT THE RRO**
- **WE MUST REMEMBER THE RIGHT TO DIGNITY AND THE ROLE OF THE STATE IN PROTECTING THE MOST VULNERABLE IN SOCIETY**
- **WE WERE REFUGEES IN EXILE AND HELPED BY OTHERS IN OUR STRUGGLE, NOW IT IS OUR TIME TO HELP - VALID OR NOT, EVERYONE HAS A RIGHT TO DIGNITY**



THANK YOU

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