

NATIONAL ASSEMBLY

**QUESTION FOR WRITTEN REPLY**

# QUESTION NO. 1769

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## INTERNAL QUESTION PAPER 19 OF 2018

**1769. Mr A M Figlan (DA) to ask the Minister of Home Affairs:**

(a)What number of legal cases were initiated against (i) him and (ii) his department in each year since 1 April 2013 by applicants for (aa) asylum and (bb) refugee status, (b) what number of the specified cases did his department (i) win, (ii) lose and/or (iii) receive a cost order against them in each case and (c) what total amount did his department incur in legal expenses (i) to defend the specified cases and (ii) in respect of cost orders granted against them? NW1926E

**REPLY:**

(a) The information is as follows:

|  |  |  |
| --- | --- | --- |
| **Year**  | **(aa) Asylum Seeker**  | **(bb) Refugee Status**  |
| 2013 | 630 | 712 |
| 2014 | 399 | 523 |
| 2015 | 1089 | 1021 |
| 2016 | 435 | 792 |
| 2017 | 238 | 1115 |
| 2018 | 14 | 758 |
| Total  | 2805 | 4921 |

Total litigation instituted by asylum seekers and refugees to date is 7726.

(b) The Department does not have a litigation case management system in terms of which matters that were won or lost in court are recorded. The only system that is currently in use is a basic system that merely records new court matters. However, litigation brought against the Department by asylum seekers is essentially contextualised as follows:-

 **New Asylum Seekers**

1. These are illegal foreigners detained at Lindela Repatriation Centre (“Lindela”) or Police Stations, seeking urgent court orders to be released from detention on the basis that they are new asylum seekers who wish to be afforded the opportunity to apply for asylum.
2. The Department does not seek to oppose such applications and simply consent to court orders releasing these applicants. These court orders invariably carry cost orders. However, in most such cases, courts do not award costs to the applicants and simply order their release in order to allow them to apply for asylum. This is in line with the Supreme Court of Appeal judgment of ***BULA and Others / Minister of Home Affairs and Others*** in which the court held that once the intention to apply for asylum is indicated, an asylum seeker is entitled to protective provision by the Republic of South Africa under International Law.
3. These court applications are more often than not settled in both parties favour in that asylum seekers (the applicants) are released from detention and afforded the opportunity to apply for asylum and no costs orders are made against the Department.

 **Asylum Seeker Appeals to the Refugee Appeals Board** (“RAB”).

1. These are asylum seekers whose applications have been rejected by the Refugee Status Determination Officer (“RSDO”) on the grounds that their applications are unfounded. Such asylum seekers may appeal the RSDO’s decision to the RAB.
2. During the period 2013 – 2016, the RAB experienced capacity challenges which led to a huge backlog in finalising the appeals. This resulted in huge amounts of litigation in terms of which asylum seekers whose applications were pending before the RAB would launch court applications compelling the RAB to either furnish them with interview dates and/or finalise their decisions.
3. Because of the nature of this litigation, the Department and/or RAB had no legal grounds to oppose them and as a consequence, there were costs orders occasioned by these applications.
4. However, since having addressed the capacity constraints at the RAB, this nature of litigation has ceased.

 **Failed Asylum Seekers**

1. These are those asylum seekers/applicants whose applications have either been rejected by the Standing Committee on Refugee Affairs (“SCRA”) or the RAB.
2. The rejection by the SCRA or the RAB renders such asylum seekers illegal foreigners in the Republic and therefore liable for arrest and detention for the purposes of deportation.
3. Upon arrest, failed asylum seekers approach the courts to seek orders to review and set aside the rejections. Such applications are normally brought in two parts, namely Part A and Part B. In Part A, the applicants seek orders to be released from detention pending finalisation of Part B. In Part B, the applicants seek orders to review and set aside the decision of the SCRA or the RAB.
4. Ordinarily, in Part A of the application, there are no orders as to costs. However, in Part B, parties incur costs. Part B is seldom set down for hearing as the intention of the failed asylum seeker is never to prosecute the review, but rather to secure an indefinite stay in the Republic. Costs in these review applications are also reserved pending the finalisation of these review applications.

**The nature of litigation instituted by refugees against the Department is mainly two-fold:-**

1. **Certification in terms of Section 27*(c)* of the Refugees Act**

These applications are meant to compel the SCRA to recognise the applicants as indefinite refugees.

1. **Refugees Identity and Travel Documents**

These applications are meant to compel the Department to issue refugees with South African Refugee Identity Documents (“refugee IDs”) and/or Travel Documents.

 Ordinarily, the Department does not oppose these applications, as there are no legal grounds to oppose them. The applicants merely seek orders to compel the Department to finalise their applications for refugee IDs and/or Travel Documents. In such matters, costs are confined to the issuing of High Court applications only.

**(c)** The Department is not in a position to furnish information on legal costs, as such information is not readily available to the Department. Settlement of legal costs against the State remains the responsibility of the State Attorneys who, in normal circumstances, are attorneys of record for the State.

 As can be noted, legal costs occasioned by litigation arising out of asylum seekers and refugees is largely as a result of applications brought to compel the Department to issue refugee IDs and/or travel documents, or to make decisions on applications submitted in terms of section 27*(c)* of the Refugees Act.