

**NATIONAL ASSEMBLY**

**QUESTION FOR WRITTEN REPLY**

**QUESTION NO. 2246**

**DATE OF PUBLICATION: FRIDAY, 17 AUGUST 2018**

**INTERNAL QUESTION PAPER 23 OF 2018**

**2246. Mr M H Hoosen (DA) to ask the Minister of Home Affairs:**

(1) Whether, with reference to his reply to question 1768 on 8 June 2018, the figures in Table 1 include the total number of decisions taken by Refugee Status Determination Officers (RSDOs) and referred to the Standing Committee for Refugee Affairs (SCRA), or simply those decisions finalised by the SCRA;

(2) what number of (a) decisions were taken by RSDOs in each calendar year since 1 January 2008 and (b) the specified decisions were (i) referred to and (ii) decided by the (aa) SCRA and (bb) Refugee Appeals Board (RAB) in each case;

(3) what number of the specified decisions referred to the SCRA and RAB were (a) taken on review and (b) set aside following the judicial reviews in each case in each calendar year;

(4) whether the (a) RSDOs, (b) SCRA and/or (c) RAB are experiencing any backlogs with the processing of decisions and appeals; if so, what are the full details of the backlogs in each case? NW2420E

**Reply:**

(1) Those are decisions finalised by SCRA.

(2)(a)&(b) The information is tabulated in the tables hereunder:

**(aa) FOR SCRA**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Year** | **Decisions taken by RSDO (a)** | **Unfounded (In cases of appeal referred to RAB) (i)** | **Manifestly Unfounded automatic refer to SCRA (ii)** | |
| **2008** | 69114 | Not Available | | |
| **2009** | 50622 | 18856 | 27199 | |
|  |  |  | Upheld 18239 | Set Aside 472 |
| **2010** | 77071 | 24827 | 42161 | |
|  |  |  | Upheld 30995 | Set Aside 196 |
| **2011** | 43953 | 16875 | 20275 | |
|  |  |  | Upheld 6680 | Set Aside 13 |
| **2012** | 63228 | 25037 | 31965 | |
|  |  |  | Upheld 38628 | Set Aside 263 |
| **2013** | 68241 | 35402 | 25553 | |
|  |  |  | Upheld 9404 | Set Aside 94 |
| **2014** | 75733 | 29545 | 36958 | |
|  |  |  | Upheld 22972 | Set Aside 247 |
| **2015** | 60640 | 14093 | 44048 | |
|  |  |  | Upheld 16884 | Set Aside  1777 |
| **2016** | 41241 | 21693 | 16391 | |
|  |  |  | Upheld 24516 | Set Aside 1894 |
| **2017** | 27980 | 6819 | 18894 | |
|  |  |  | Upheld 15534 | Set Aside 1843 |

Please note: In 2008 the statistics for rejections were not divided into unfounded and manifestly unfounded.

**(bb) FOR RAB:**

|  |  |  |  |
| --- | --- | --- | --- |
| **CASES RECEIVED BY RAB AS UNFOUNDED AND FINALISED** | | | |
| **YEAR** | **UNFOUNDED REFERRED TO RAB (i)** | **RECEIVED** | **FINALISED (ii)** |
| **2008** | Not Available | 3877 | 1550 |
| **2009** | 18856 | 4601 | 4139 |
| **2010** | 24827 | 4879 | 3420 |
| **2011** | 16875 | 4362 | 5434 |
| **2012** | 25037 | 4958 | 4886 |
| **2013** | 35402 | 9413 | 2743 |
| **2014** | 29545 | 15452 | 4466 |
| **2015** | 14093 | 14475 | 4993 |
| **2016** | 21693 | 4455 | 2670 |
| **2017** | 6819 | 10117 | 5261 |

3(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 |

Grand total of litigation instituted by asylum seekers and refugees to date is **7,726 (2805 + 4921)**

**3(b)** Litigation brought against the Department by asylum seekers is essentially contextualised as follows:-

**New Asylum Seekers:**  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 want to be afforded opportunity to apply for asylum. In most such cases, courts do not award costs to the applicants and simply order their release, so as 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 intention to apply for asylum is indicated, asylum seeker is entitled to protective provision by the Republic under International Law. These court applications are mostly not settled in both parties favour in that asylum seekers (applicants) are released from detention and afforded the opportunity to apply for asylum and no costs order is made against the Department.

**Asylum Seekers Appeals to the Refugee Appeal Board** (“RAB”): 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. During the period 2013 – 2016, the RAB experienced capacity challenges which led to a huge backlog in finalising the appeals. This resulted in litigation in which asylum seekers whose applications are pending before the RAB would launch court applications compelling the RAB to either furnish them with interview dates and/or finalise decisions. 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. However, since the capacity constraints have been addressed at the RAB, this nature of litigation has ceased.

**Failed Asylum Seekers:** These are those asylum seekers/applicants whose applications have either been rejected by the Standing Committee on Refugee Affairs (“SCRA”) or RAB. The rejection by SCRA or RAB renders such asylum seekers illegal foreigners in the Republic and therefore liable for arrest and detention for the purposes of deportation. 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, they seek orders to review and set aside the decision of the RAB or SCRA. 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 seekers is never to prosecute the review, but rather to secure the 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 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.

4(a-c) The information is as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| **Area of responsibility** | **2017** | **Legacy** | **Total** |
| **RSDO** | **623** | **997** | **1620** |
| **SCRA** | **9836** | **30490** | **40326** |
| **RAB** | **5246** | **142548** | **147794** |