

NATIONAL ASSEMBLY

**QUESTION FOR WRITTEN REPLY**

# QUESTION NO. 2649

**DATE OF PUBLICATION: Friday, 25 November 2016**

## INTERNAL QUESTION PAPER 40 OF 2016

**2649. Mr M H Hoosen (DA) to ask the Minister of Home Affairs:**

(a) How many (i) appeals were received by the Refugee Appeals Board (aa) in each of the past five financial years and (bb) since 1 April 2016 and (ii) of the specified appeals were finalised, (b) what are the causes of the delays in adjudicating the appeals and (c) by what date will the backlog in the appeals be cleared? NW3133E

**REPLY:**

1. Appeals received and finalised by the Refugee Appeal Board (RAB) in the past five financial years and from 01 April 2016 to date is tabulated hereunder:

|  |  |  |
| --- | --- | --- |
|  (aa - bb) FINANCIAL YEAR  | 1. RECEIVED
 | 1. FINALISED
 |
| April 2011 - March 2012 | 5452 | 4248 |
| April 2012 - March 2013 | 5655 | 922 |
| April 2013 - March 2014 | 11098 | 4978 |
| April 2014 - March 2015 | 16830 | 1705 |
| April 2015 - March 2016 | 9321 | 1331 |
| April 2016 – Nov 2016 | 3251 | 555 |

1. The causes for the delay in the adjudication of appeal cases is as follows:
* Most asylum applications received by the Refugee Reception Offices in South Africa are rejected as unfounded and they end up at the Refugee Appeal Board (RAB). Presently the RAB has one member based in Cape Town and an Acting Chairperson based in Pretoria as three RAB Members resigned early this year. The process to identify and appoint the Chairperson and the three members is continuing.
* In the past members of the Refugee Appeal Board (RAB) used to sit as single members for each appeal hearing. However, in the Western Cape Court judgement of November 2011( Harerimana v Chairperson of the RAB and others) the RAB was ordered to sit as a quorum of 50 percent plus one of the members for each appeal hearing or at least two members.
* The high number of appeals lodged on daily basis makes it difficult for the few RAB members to hear and determine cases without delay. Some cases are simple and straight forward and can be determined without delay, however, a lot of cases are complex and take some time to determine. The decision making process requires extensive research on latest possible country of origin information, International Refugee Law and Case Law because of the complexity of most cases that have to be adjudicated and it is not always easy to get access to these sources of information
* The RAB normally hears between five and ten appeal cases per day, depending on the profile and complexity of each case, from Monday to Thursday. On Fridays determinations on appeals heard are normally written. The RAB visits the regional Refugee Reception Offices for hearings, sometimes for up to three weeks. As much as the Board makes efforts to adjudicate appeals already heard, there is also a high number of appeals scheduled to be heard by the Board. The RAB tries to balance the number of cases it hears with those that are adjudicated.
* The RAB decisions need to be carefully constructed because sensitive human rights issues are being dealt with; some of which in their nature are matters of life and death. The RAB has to apply its mind to the facts of each case in compliance with Public Administrative Justice Act, The Constitution, The Refugee Act, International Refugee Law and other Human Rights Instruments before coming to a particular decision.
1. At this stage the RAB is not in a position to provide the date on which the appeals backlog will be cleared. It is presently estimated that the RAB has around 145 414 appeal cases nationally defined as a backlog and around 80 315 of these cases appear to be active in the National Immigration Information system.

During the Republic of South Africa – UNHCR High Level Bilateral Meeting in Geneva, July 2015 the two parties agreed to the development of a backlog project to address the outstanding RAB appeal cases, However the project has not taken off in earnest due to financial constraints. The project was planned to continue for three years, until 2019. Provided enough human capacity and financial resources are made available, the backlog could be cleared within three years.