

NATIONAL ASSEMBLY

**QUESTION FOR WRITTEN REPLY**

# QUESTION NO. 4190

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## INTERNAL QUESTION PAPER 51 OF 2015

**4190. Mr M H Hoosen (DA) to ask the Minister of Home Affairs:**

(a) What (i) is the total number of appeal applications pending a decision at the Refugee Appeals Board and (ii) are the causes of the delay in the adjudication of these appeals and (b) by when does he envisage that the backlog will be cleared? NW5066E

**REPLY:**

(a)(i) According to the National Immigration Information System (NIIS) system there are around 144 200 appeal cases defined as backlog, and around 80 315 of these cases appear to be active on the system.

(a)(ii) The causes of the delay in the adjudication of appeal cases is as follows:

* Presently there are five Refugee Appeal Board Members, including the Chairperson, serving five Refugee Reception Offices (Pretoria, Musina, Durban, Port Elizabeth and Cape Town) in the whole of South Africa. Most of the applications from these offices are rejected as unfounded and they end up at the Refugee Appeal Board.

* In the past members of the Refugee Appeal Board (RAB) used to seat as single members for each appeal hearing. However, following a number of judicial review applications challenging composition of the Board members in the appeal hearing, the RAB is now compelled to seat as a quorum for hearings. Being five members of the Board, three members must be seated to constitute a quorum for each appeal hearing.
* It is also not helping that previous RAB decisions, back-dating before the Western Cape High Court case of Harerimana in December 2013, are challenged on the quorum issue and end up being settled out of court on condition that they are reheard before a properly constituted quorum, and there are many such cases.

- Present legislation (the Refugee Act 130,1998) does not make provision for appointment of part time Board Members, so it is not legally possible to appoint part-time Board Members for backlog projects.

- 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 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 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.

(b) It is presently not possible to provide a time-frame because the appeal cases dealt with differ in terms of their profiles and complexity. Some appeal cases are simple and straightforward and some are high profile and complicated cases that require in-depth research and legal consultation.

However, during the RSA-UNHCR High Level Bilateral Meeting in Geneva, in July 2015, the two parties agreed to development of a backlog project to address the outstanding appeal cases pending with the RAB. Provided enough human capacity and financial resources are made available, the backlog could be cleared by financial year end in March 2019.