



CoRMSA

**Consortium for
Refugees and Migrants
in South Africa**

The Implications of Moving Refugee Reception Offices to the Border Areas

23 Jorissen Street, 5th floor
Braamfontein Centre, Braamfontein
Johannesburg 2001, South Africa
Tel: +27 11 403 7560, Fax: +27 11 403 7559
Emails: info@cormsa.org.za / communications@cormsa.org.za
Website: www.cormsa.org.za

Introduction:

This article is written in reaction to the Department of Home Affairs (DHA) asylum roadmap as presented to the civil society organisations (CSOs) in December last year. The roadmap sets guidelines for a possible move of Refugee Reception Offices (RROs) to the border areas. The roadmap is sparse on details, neglecting discussion of the many implications of a move: the cost of new facilities, staffing, services, file management, effects on local communities, and many others. This article is written to inform Civil Society of these challenges. The findings will also benefit the DHA in questioning the validity and practicality of the implementation of its roadmap. It is the authors' sincere hope that this article will forge a common understanding between the DHA and CSOs and lead to more effective asylum seeker management.

Recent developments in the South African asylum system threaten the protection of refugee rights as enshrined in international conventions and domestic legislation. The year 2011 saw the closure of two main RROs in Johannesburg and Port Elizabeth. The move evinces a concerted effort to move all RROs to the border areas. This policy shift has not been officially articulated or presented in consultations with civil society.

The article offers a brief history of the refugee protection in South Africa, highlights the DHA's stated rationale for new policies and underlines the implications of moving RROs to the border areas.

A brief history of refugee protection in South Africa:

Prior to 1994, South Africa was a refugee producing country. Many South Africans fled the apartheid regime, seeking asylum in other countries. This time was marked by racial and discriminatory immigration policies that denied asylum to black Africans. The post-apartheid government, taking into account established conventions and international laws, successfully reversed this policy. South Africa signed a basic agreement with UNHCR in 1993. The agreement stipulated that refugees (including refugees from other African countries) would be allowed to enter South Africa. In 1995 South Africa signed the 1969 OAU Convention and the 1951 UN Convention.

Complying with various international instruments relating to refugee protection, South Africa ratified the UN and OAU refugee conventions and other human rights instruments. This formed the basis for the development of South African national refugee law and standards. The Department of Home Affairs (DHA) undertook a consultative process marked by two papers which resulted in the 1998 Refugees Act. The Act came into force in 2000. The Refugees Act sets out the procedure for applying and granting of refugee status in South Africa. 2011 statistics show that South Africa has the largest number of asylum applicants in the world. Unfortunately, many asylum applications are rejected for reasons unrelated to the strength of the asylum claims.

The South African asylum system is based on the integration approach. The principle of local integration allows refugees to settle and integrate into South African society and extends the constitutional rights and freedoms, such as freedom of movement and access to health and social services, to refugees and asylum seekers. The logic of the local integration approach is to enable refugees to live meaningful lives while in exile and make contributions to the host country. The local integration approach opted by South Africa differs from the traditional African approach of accommodating refugees in large rural-based camps. Nevertheless, the local integration approach

has always had its own challenges within the South African context. Some of these challenges have been effectively addressed through regular stakeholders' engagements with the Department of Home Affairs. CSOs-DHA engagement, while never flawless, deteriorated in 2011 when the DHA started implementing key decisions without consulting CSOs. The decision to close the Johannesburg and Port Elizabeth RROs was made without any consultation with the civil society. Arguably, better alternatives would have been found for the Crown Mines and Port Elizabeth centres if the DHA considered consultations with CSOs. All attempts by the CSOs to engage the DHA were ignored. Stakeholders' meetings with Refugee Reception Centre officials were cancelled without an official notification to the CSOs. The cessation of CSOs-DHA collaboration has contributed to the refugee system's deterioration.

On the 21st of December last year the DHA presented an asylum roadmap to the CSOs for input. This document is not detailed and therefore hard to comprehend. Nonetheless, it outlines the DHA's decision to move RROs to the border areas by progressively closing the existing RROs in the cities. The DHA does not define the term 'border area'. It is also unclear which borders or how close to the border. Despite mention by the DHA of bilateral "consultation" with the civil society, no details or consultation dates were given. Indeed, some of the plans on the roadmap are already being implemented.

The protection of refugees is in danger:

The decision to process applications for asylum from the border areas could, if not well managed, contravene the national and international law on refugees. It may also impinge on the principle of non-refoulement and it could affect people's freedom of movement.

DHA's Stated Rationale

The DHA claims that moving the RROs to the border areas will speed up asylum application processing times while separating economic migrants from genuine refugees. Nothing guarantees the success of this approach. Many failures in the processing of asylum applications are caused by the Department's management of the asylum system itself. Moving RROs to the border areas would not eventually alleviate these challenges. Improved service within the Department is the key to an effective asylum management system.

The argument that a move to the border will reduce crime by asylum seekers is equally fallacious. If asylum seekers are not given the opportunity to document themselves the number of undocumented migrants is likely to increase. Undocumented asylum seekers would be hard to track. The fight against crime is won through a proper asylum management system and an appropriate immigration control strategy. Many countries have successfully managed to control people's movements by simply improving their asylum and immigration services.

The DHA's decision to move RROs to the border areas could also have been motivated by the need to address unemployment in the country. The government's inability to create new jobs cannot be blamed on the presence of foreign nationals in the country. There are better ways to address unemployment than opting for a policy that seeks to exclude foreigners to help South Africans get jobs. Studies reveal that many refugees take on jobs that local South Africans would not take. This shows that the exclusion of refugees and asylum seekers from the labour market cannot be an

alternative for job creation. Restricting documentation to refugees likely has the opposite effect. When migrants are denied documentation and the accompanying protection of labour laws they are vulnerable to exploitation by employers. Unscrupulous employers would prefer to hire such undocumented workers knowing they can pay them less and treat them poorly. The solution to this problem is to make documentation easier, not harder to obtain. Moving the RROs to the border areas, by making documentation harder to come by, will increase the exploitation of refugees to the detriment of South Africans and migrants alike.

Direct implications:

1. Too costly for the government to move RROs to the border areas:

Moving RROs to the border areas necessitates the construction of new offices and other facilities to process applications and accommodate DHA employees. Such massive investment will not be cheap. It will certainly outstrip the cost of maintaining current RROs, further burdening the national treasury for dubious gains.

Many other issues, from accommodation, food, and health care to the increasing population at the border areas and office staffing remain unaddressed. It would be an appalling waste of resources if the plan had to be halted at a later stage due to completely foreseeable reasons.

Communication is crucial. The decision to move RROs to the border areas will not involve the Department of Home Affairs alone. It will surely require the cooperation of other key departments in order to deliver basic services, like health and police, to the border areas.

The government would be under an obligation to increase the scale of public service delivery. As an example, many nurses in South Africa quit the public health system for reasons such as lack of resources, overwork, meagre salaries and a lack of equipment. Few nurses would be willing to work from the borders and far from their homes. The government is unclear on how it will increase the number of nurses in the border areas to serve the large numbers of potential asylum seekers and refugees. Failure to adequately address these issues could lead to unnecessary deaths, riots, and an overall diminishing of South Africa's international image and reputation.

2. Shortcomings in the South African asylum management system:

Many RRO officials have confidentially expressed misgivings about moving the RRO, noting their unwillingness to follow their jobs to the border areas, leaving doubts about how the offices will be staffed. The DHA would need to hire and train hundreds of new officials. The shortage of staff in the meantime and their lack of experience would cause further delays in the processing of asylum applications, forcing applicants to remain in the barren border areas for days, if not weeks. Denied public services or personal support networks of family and friends, asylum seekers would be at risk and a humanitarian disaster.

The existing RROs are already failing to cope with large numbers of asylum applications and face significant backlogs. It would be unrealistic to expect a move to the borders to resolve this. Additionally, rushed decisions, in an effort to limit encampment at the border, could result in poor quality decisions. Previous experiences show that the DHA rarely meets deadlines. At the existing

RROs, applicants must often return to the office several times before they can be issued with a Section 22 refugee permit. Sadly, it is the applicants who pay, with their money and time, for the DHA's administrative failures.

The DHA has not clarified the period within which an initial asylum claim should be lodged at these new RROs or if the Section 23 permit would still be available to any person who intends to apply for asylum in the country. Should the Section 23 permit remain valid the question then becomes 'what would become of any person who does not meet the deadline due to backlogs or any other factors on the side of the DHA?' It is also unclear whether the applicants will be allowed to proceed to the interior of the country once they lodge their initial asylum claims. It is likely they would be forced to return to the border area to renew every three or six months; putting an immense cost on every asylum seeker and further straining the unprepared infrastructure of these sparsely populated border areas.

3. Humanitarian risks:

The relocation of RROs to the border areas means that applicants would have to sleep for several days or weeks at the border while their applications are processed. During this time, they are likely to be deprived of adequate food and sanitation. It is hard to determine the number of days applicants would spend at an office before their applications are processed so to receive a permit that would allow them to proceed to the interior of the country.

The DHA should also provide details on the infrastructure in place to accommodate refugees. At a meeting with the civil society organisations on the 21st of December last year, Ms Lindile Kgasi, the DHA's Asylum Management Director, said that her Department does not have any "survival strategy" in place for refugees who are likely to spend many days at the borders waiting for their applications to be processed. Essentially, asylum seekers will have to find their own means for survival. They will struggle to locate sufficient supplies of shelter, food and health care in small border towns. Until they get a job refugees rarely have sufficient means to sustain themselves. The absence of jobs at the borders explains why living conditions would be tough. The likely result will be sprawling slums and the creation of informal refugee camps as seen in Kenya's border areas. We submit that this will constitute an undue hardship on the asylum seekers.

It is also likely that the additional demand for everything from food to healthcare would increase prices to the detriment of poor local South Africans living in the border areas.

4. Sanitation:

Lack of contingency plans on the side of the government is likely to cause serious sanitation problems. In 2009 the SMG in Musina was closed because of poor sanitary conditions at the facility. Detainees had no access to toilets, medical care or adequate food. These conditions were in stark violation of the minimum standards under international law as well as DHA's own Immigration Regulations. Existing RROs have deplorable hygienic standards. In some offices applicants have no access to water. Other offices have filthy mobile toilets. There is no reason to believe that office hygiene will be improved by a move to the border areas. Indeed, considering the limited existing infrastructure at the borders, it could become worse.

Deplorable hygienic standards would make the border areas a cesspool of contagious diseases. This questions the DHA claim that moving RROs to the borders would help the country to control diseases. Rank slums with poor sewage infrastructure will contribute to an increase of contagious diseases, necessitating a wide scale and expensive health measures to contain increasingly regular outbreaks.

5. Loss of files:

Previous experiences show that whenever RROs relocate it becomes hard to trace files and many files are lost. Similar reports have been received countrywide whenever RROs move offices to a new location. Relocation of RROs also causes delays in the application process and it forces applicants to return to the new office several times before their files are located, classified and made readily available for extension. In the meantime applicants live in fear of being arrested for carrying expired permits. This occurred at the Tshwane Interim Refugee Reception Office with the closure of the Crown Mines office in Johannesburg.

6. A possible change from integration to encampment or a mixture of both:

Though the South African government has never conceded that it is moving from integration to an encampment system, the move of RROs to the border areas implies a move in that direction. The question is how far. Moving from a European-like integration system to an African encampment approach with its sprawling refugee camps would tarnish the image of South Africa on the international level. Experiences from other countries with refugee camps show that concentrating refugees in camps creates conditions ripe for contagious diseases, poor education, organized crime, sexual abuse and domestic violence.

7. Relations with the local communities in the border areas:

The Johannesburg and Port Elizabeth Offices were closed following complaints from neighbouring businesses. Moving RROs to the border areas would not reduce this problem. Businesses in the border areas could also complain. They would likely be motivated by the successful lawsuits put by other businesses in urban areas against the DHA and frustrate the whole project. There is also a high potential for xenophobic violence against foreign nationals.

Long stays in the border areas would increase the vulnerability of refugees. While waiting to lodge their initial asylum in the border areas, they could be more easily tracked down by malicious governments.

There is a high risk for increased crime as currently experienced with the “magumagama” or “malaitsha” gangs in the Beit Bridge area. The need to earn money to access basic services is likely to increase criminal activities and force many desperate refugees to resort to crime as a means to survive.

Conclusion:

The asylum management system in South Africa is currently at a crossroads. Two Refugee Reception Offices were closed last year and others are due to close and be relocated to the border areas. Given these developments, one can conclude that the DHA seeks to discourage potential applicants from

pursuing asylum in South Africa. The DHA's means for discouraging asylum applicants are not stricter laws or more speedy denials of illegitimate applications, but rather a complete abdication of its central mission to ensure the documentation of all migrants.

There are many implications of moving the RROs to the border areas. Delays at the RROs will force applicants to spend several days at the border, at high personal expense in the most deplorable conditions. RROs in the urban areas have always been chaotic but relocation will not guarantee improvement. Indeed, it will likely exacerbate these problems. The effect on the border area populations must also be considered. Shortage of resources, price hikes, organized crime, and the stretching of public services to the breaking point would affect South African citizens and asylum seekers alike.

It is also unclear how these new RROs will be staffed. Informal surveys of DHA staff show many are reluctant to move to the border areas. The resultant shortage of staff would further snarl the application process and cause unnecessary delays, negating the DHA's reasoning for the move (that it will speed up applications). In the endeavour to speed up the process to deal with backlogs, the quality of decisions would decrease and many legitimate refugees would be rejected.

The DHA should carefully assess their asylum roadmap before it is implemented. Increased cooperation with civil society and other government departments would allow them to address many of these issues and flesh out a viable plan. The financial and human costs of a failed implementation are too great.