

QUEUE HERE FOR CORRUPTION

MEASURING IRREGULARITIES IN SOUTH AFRICA'S ASYLUM SYSTEM

Roni Amit, PhD

A REPORT BY **LAWYERS FOR HUMAN RIGHTS AND
THE AFRICAN CENTRE FOR MIGRATION & SOCIETY**



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JULY 2015

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The assessment reveals significant levels of corruption at all stages of the asylum process

EXECUTIVE SUMMARY

South Africa's refugee reception offices (RROs) are the gateway through which would-be asylum seekers and refugees access legal protection. Following years of anecdotal evidence regarding corruption at the RROs, Lawyers for Human Rights (LHR) and the African Centre for Migration & Society (ACMS) conducted a quantitative assessment of the scope of corruption at these offices. **The assessment revealed significant levels of corruption involving multiple actors, occurring at all stages of the asylum process, and continuing even after an individual had obtained refugee status.** Results varied by office, but **overall almost one-third of respondents experienced corruption at an RRO.** The Marabastad RRO in Pretoria showed the highest levels of corruption.

The presence of corruption is significant for its effects on the ability of individuals to access protection; on the integrity of a system that is an integral part of South Africa's constitutional and international obligations; and on the incentive structures within and rational functioning of the public service. Continued corruption risks producing a system where the behaviour of public officials is removed from legal guarantees and the principles of equality, fairness, and accountability. Moreover, the delinking of refugee status from protection needs undermines the government's migration management goals and provides a mechanism for economic migrants to enter the country and regularise their status, even as government devotes greater resources to border control and deportation. It is precisely those migrants whose entry the government is seeking to control who can undermine these controls by engaging with corrupt officials. At the same time, individuals with valid protection needs may be denied protection because they are either unwilling or unable to engage with these same officials.

The corruption detailed in this report is based on a survey administered to 928 asylum seekers and refugees while they were exiting or waiting to enter one of the country's five refugee reception offices. The numbers interviewed at each office are listed below.

REFUGEE RECEPTION OFFICE	NUMBER OF RESPONDENTS
Marabastad (Pretoria)	208
Tshwane Interim Refugee Reception Office (TIRRO – Pretoria)	204
Cape Town	175
Musina	205
Durban	136

The survey included a series of quantitative questions about the border crossing, the various stages of the asylum application process, and respondents' efforts to obtain and maintain documentation, as well as experiences with arrest and detention. The inclusion of a small number of open-ended questions also elicited detailed accounts of migrants' experiences. The proportions of asylum seekers and refugees represented are detailed below.

STATUS OF RESPONDENTS	PERCENTAGE	PERCENTAGE WITH VALID DOCUMENTATION
Asylum seeker	86%	80%
Refugee	11%	98%
Undocumented	3%	

THE PATH TO CORRUPTION

Several factors have contributed to the prevalence of corruption in the country's refugee reception offices. Foremost among these is the Department of Home Affairs' (DHA's) failure to respond to high levels of demand that quickly exceeded the capacity of a

system designed around individualised decision-making. Rather than addressing the situation by reforming immigration policy or increasing resources in the asylum system, the Department's single-minded focus on decreasing demand without any concomitant attention to service provision exacerbated the situation. Its decision to close three refugee reception offices further contributed to these problems.

Refugee reception offices are consequently characterised by unwieldy queue management, poor quality status determination procedures, and arbitrary discretion in issuing documents and renewals. These conditions create multiple opportunities for corruption. Additional factors provide further incentives: individuals must generally make multiple visits to a refugee reception office to address a single issue; they remain in the system for several years, necessitating even more visits; and they receive legally problematic status determination decisions that require appeals. Rather than address the factors contributing to corruption, the DHA has adopted a reactive approach in which it responds to individual allegations of corruption; it has, thus far, failed to initiate more far-reaching investigations or reforms of the asylum system.

KEY FINDINGS

Asylum seekers and refugees experienced corruption at multiple stages of the asylum application process. Corruption continued even after individuals obtained refugee status. The Marabastad refugee reception office showed the highest levels of corruption. The Durban office had the lowest levels. Overall, 30% of respondents reported experiencing corruption at some stage in the asylum process, pointing to an asylum system in which many official actions are guided by the objective of revenue collection. The pervasiveness of corruption in all aspects of the asylum process reveals a process that is no longer bounded by legal guarantees, predictability, or administrative fairness.

Some of the report's main findings are summarised below.

BORDER CROSSING

- 13% of respondents reported being asked for money by a border official.
- Many respondents reported paying an extra amount to the driver transporting them across the border for the purposes of paying off border officials.

ACCESS TO THE RRO

- 20% of respondents reported experiencing corruption in the queue. At Marabastad, 51% reported experiencing corruption in the queue.
- 13% of respondents reported being unable to access an office because they did not pay. At Marabastad, 30% reported being denied access because they did not pay.

Access to the RRO

20%

Corruption in the queue
MARABASTAD: 51%



13%

Denied access because
respondent did not pay
MARABASTAD: 30%

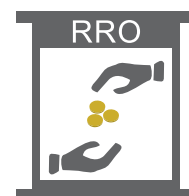
INSIDE THE RRO

- 13% of respondents experienced corruption inside the refugee reception office. Inside Marabastad, this number was 31%.
- 12% of respondents had paid at least once to renew their asylum permit. At Marabastad, 24% had paid at least once.

Inside the RRO

13%

Corruption inside the RRO
MARABASTAD: 31%

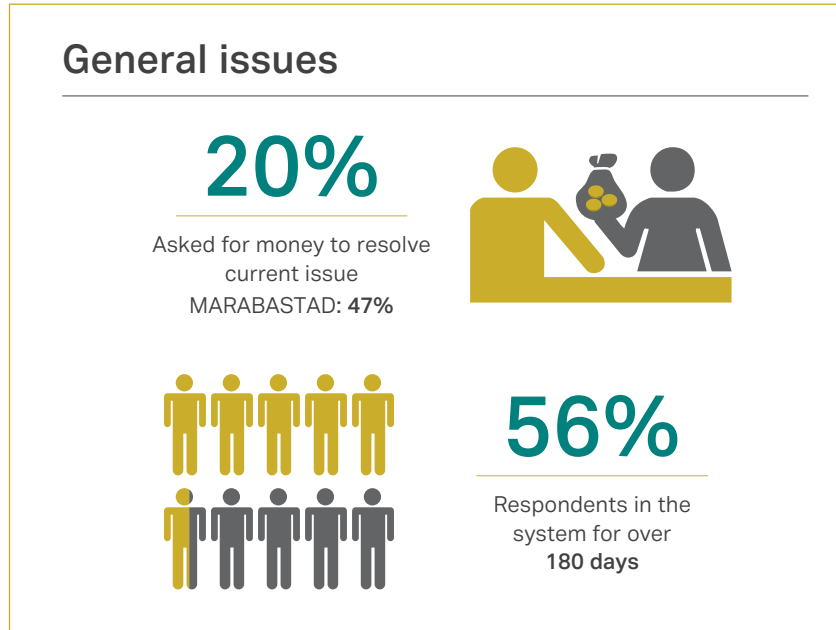


12%

Paid at least once to
renew asylum permit
MARABASTAD: 24%

GENERAL ISSUES

- 20% of respondents had been asked for money to resolve the issue they were at the office on that day to resolve. At Marabastad, this number was 47%.
- 56% of respondents had been in the system for over 180 days, which is the time period stipulated in the Regulations to the Refugee Act (No. 130, 1998) for the asylum process to be completed.



CONCLUSION

An effective response to corruption must address the conditions that allow corruption to continue largely unchecked. This includes the links between migration policy and demand on the asylum system, the adequacy of resources dedicated to asylum, the continued operation of urban refugee reception offices, and the adoption of practices that fulfil the country's constitutional and international obligations, as well as the Batho Pele principles.

RECOMMENDATIONS

TO THE DHA:

Queuing

- Create a waiting area inside the office that is based on an electronic numbering system.
- Establish a more effective queue management system that may, for example, include separate numbering queues based on the type/level of service requested, with a reception desk that directs individuals to the appropriate number queue.
- Post instructions in numerous locations inside and outside the office.

Application Process

- Provide individuals with asylum application forms that they can fill out away from the office to minimise the reliance on officials or private individuals for assistance and to eliminate related opportunities for corruption.
- Include information about the application process, with a clear explanation of the rights and duties of asylum seekers and refugees, on the application form.
- Inform individuals that payment is not required for any stage of the application process.
- Provide information on how to report corruption with the application form.

Renewals

- Establish a set period of validity for renewals that eliminates a refugee reception officer's discretion.
- Ensure that renewals are recorded electronically by the officer.
- Post information so that individuals know that only such electronically recorded renewals are valid and that no payment is required.
- Create a computerised check-in system for individuals who are at the office for renewals. Having a record of individuals who arrived at a refugee reception office for their renewals will flag any potential irregularities in the event that such individuals do not subsequently obtain these renewals.
- Keep an electronic record of which individuals were served by which refugee reception officer so that any irregularities can be traced back to the officer.

Status Determination

- Professionalise the status determination process so that decisions reflect the details of an individual's claim and are not simply generic summaries of country conditions.
- Require refugee status determination officers to provide specific reasons in the case of both rejections and approvals of

asylum claims, which will eliminate the possibility of payment for refugee status.

- Allow asylum seekers to have legal representation during the status determination interview.
- Create a computerised system that does not allow for the issuance of refugee documents without an accompanying written decision containing reasons.
- Post informational signs informing asylum seekers of the process for obtaining refugee documents.

Fines

- Allow individuals to renew/replace status documents even if they have incurred a fine.
- Separate the process for renewing/replacing documents from the process laid out in the Criminal Procedures Act for paying or challenging fines.
- Post informational signs stating that no payment is necessary at the time of renewing or replacing lost documents.
- Eliminate refugee reception officer discretion to determine when documents should be renewed or replaced.
- Renew/replace documents automatically and create a separate process for determining when individuals are no longer eligible for documentation.
- Train police officers on the fines process in accordance with the procedures laid out in the Refugees and Criminal Procedures Acts.

Investigating Corruption

- Establish an anonymous mechanism for reporting corruption.
- Establish a protocol for investigating corruption.
- Explore potential monitoring methods such as installing cameras outside and inside the offices.
- Initiate independent investigations of each stage of the asylum process: queuing, initial application, renewals, status determination, and refugee documents.
- Guarantee to asylum seekers and refugees who have been forced to pay for access or documentation that they will not be punished for reporting corruption.
- Post information about reporting corruption.
- Ensure that investigatory processes are sensitive to the situation of asylum seeker and refugee witnesses, who may be undocumented, may distrust authority, may suffer from post-traumatic stress disorder, or may face additional challenges that require particular sensitivity.

TO PARLIAMENT AND THE PORTFOLIO COMMITTEE FOR HOME AFFAIRS:

- Exercise greater oversight of the DHA in its management of the asylum process.

- Consider how reforming the immigration system might affect the operation of the asylum system.
- Demand greater accountability from the DHA in its efforts to combat corruption.
- Increase the resources directed at operating the asylum system to ensure adequate service delivery.

TO THE PUBLIC PROTECTOR AND THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION:

- Investigate and monitor corruption at the refugee reception offices.
- Engage with the DHA about its efforts to combat corruption.

TO THE SOUTH AFRICAN POLICE SERVICE AND THE NATIONAL PROSECUTING AUTHORITY:

- Develop a protocol for responding to corruption allegations, including guidelines for responding to asylum seekers who may be undocumented as a result of corruption.
- Investigate allegations of corruption and prosecute corrupt officials.
- Do not prosecute or otherwise punish asylum seekers and refugees who report corruption, regardless of their documentation status or complicity in the corrupt practices.
- Ensure that investigatory processes are sensitive to the situation of asylum seeker and refugee witnesses, who may be undocumented, may distrust authority, may suffer from post-traumatic stress disorder, or may face additional challenges that require particular sensitivity.



The current state of affairs is the product of a deliberate government choice to avoid addressing the fundamental issues in the asylum system

INTRODUCTION

Established in 1998, South Africa's asylum system was designed to identify those individuals in need of protection in accordance with the country's international obligations and democratic character. Implementation of this system, however, has strayed far from this initial intention. Plagued with problems of inefficiency, poor quality decision-making, and corruption, administrators of the asylum system reject almost all applicants – regardless of their protection needs.¹ Researchers and non-governmental organisations (NGOs) have extensively documented the efficiency and quality problems.² But there is little research documenting the extent of corruption in the asylum system.

The evidence presented in this report reveals high levels of corruption throughout the asylum application process and continuing after an individual has acquired refugee status. Rates vary by refugee reception office (RRO), with respondents at the Marabastad office in Pretoria reporting the highest rates of corruption, but overall almost one-third of individuals experienced corruption at some point. **In order to address the prevalence of corruption, the Department of Home Affairs (DHA) and other stakeholders must recognise that it pervades all stages of the asylum process, that it occurs at multiple sites, and that it is a continuing phenomenon that is not confined to isolated individuals or incidents.**

In light of its harmful effects, the government must move beyond hollow statements and adopt proactive measures to combat corruption. Three key issues are at stake. First, corruption affects an individual's ability to access protection. Second, it implicates the integrity of a system that is critical for South Africa to meet its constitutional and international obligations. Third, corruption in one department runs the risk of spreading like a cancer to other departments and, more generally, distorting the incentive structures within the public service. If not checked, the result will be a system of governance lacking in predictability, accountability, equality, and fairness – a system where legal guarantees do not dictate government behaviour.

1 According to the DHA's 2013 Annual Asylum Statistics for UNHCR (unpublished), 7,286 out of 68, 241 adjudicated asylum claims were approved. This is a rejection rate of approximately 90%.

2 R. Amit, 'No Way in: Barriers to Access, Service and Administrative Justice at South Africa's Refugee Reception Offices,' ACMS Research Report, 2012. Available at <http://www.migration.org.za/uploads/docs/report-40.pdf>; R. Amit, 'All Roads Lead to Rejection: Persistent Bias and Incapacity in South African Refugee Status Determination,' ACMS Research Report, 2012. Available at <http://www.migration.org.za/uploads/docs/report-35.pdf>.

Although corruption has not previously been measured, it is no secret that individuals purchase asylum and refugee documents, or pay just to gain access to the refugee reception offices. Corruption has permeated every step of the asylum process, from access to documentation to renewals. While many of those who pay are genuine asylum seekers who will face grave danger if deported and have no other way to obtain protection, others are economic migrants without an alternative path to remain in the country legally. **Even as the government continues to point to the scourge of economic migrants abusing the asylum system, it does little to combat the corruption that enables individuals without protection needs to claim asylum while denying protection to the system's intended beneficiaries.**

Journalists and NGOs working with affected populations have periodically reported on the corruption in the asylum system.³ In 2004, the Public Protector published a report on unlawful conduct at the Braamfontein RRO in Johannesburg.⁴ International reports have also noted corruption problems at the RROs.⁵ The US State Department has flagged corruption annually in its country reports between 2009 and 2013:

Although the DHA had anticorruption programs in place and punished officials or contracted security officers found to be accepting bribes, NGOs and asylum applicants continued to report that immigration authorities sought bribes from those seeking permits to remain in the country, particularly in cases where applicants allowed their documents to expire.⁶

Yet, with the exception of a few high profile corruption cases,⁷ the DHA's response has been limited. It has generally responded only

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- 3 See, e.g., <http://www.irinnews.org/report/97944/south-africa-s-flawed-asylum-system>; <http://www.irinnews.org/report/94692/south-africa-red-tape-ensnares-asylum-seekers>; <http://www.corruptionwatch.org.za/content/corrupt-officials-make-life-tough-refugees>; <http://www.hrw.org/reports/2005/southafrica1105/5.htm>; <http://bit.ly/MG-Refugeesface-corruption>; The Consortium for Refugees and Migrants in South Africa (CoRMSA), 'Protecting Refugees, Asylum Seekers, and Immigrants in South Africa,' Johannesburg, June 2009, available at <http://bit.ly/CORMSAProtectingRefugees>.
 - 4 'Report on an Investigation into allegations of undue delay, unlawful and improper conduct and prejudice in the rendering of services at Braamfontein refugee reception centre,' cited in Human Rights Watch, 'Living on the Margins: Inadequate Protection for refugees and asylum seekers in Johannesburg,' November 2005, available at <http://www.refworld.org/docid/43ba84a54.html>.
 - 5 United Nations High Commissioner for Refugees (UNHCR), 'Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report- Universal Periodic Review: South Africa,' November 2011, available at <http://www.refworld.org/docid/4ed724952.html>; Human Rights Watch, 'Human Rights Watch World Report, 2007- South Africa, January 2007, available at <http://www.refworld.org/docid/45aca2a51a.html>; Human Rights Watch, 'Living on the Margins: Inadequate Protection for Refugees and Asylum Seekers in Johannesburg,' November 2005.
 - 6 Country Reports on Human Rights Practices, South Africa, 2013, available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>.
 - 7 In June 2013, for example, the DHA removed a security official from the Cape Town office for allegedly taking bribes. News24, 'Home Affairs official fired over bribe,' 7 June 2013, available at <http://www.news24.com/SouthAfrica/News/Home-affairs-official-fired-over-bribe-20130607>.

to particular allegations of corruption – asking for specific details and evidence and placing the burden on the victims of corruption to substantiate their stories – without conducting more comprehensive or independent investigations.

The tepid DHA response has been facilitated by the lack of systemic evidence highlighting the scope of the corruption problem. A few research efforts, however, have pointed to the prevalence of corruption in the asylum system. In 2003, the Community Agency for Social Enquiry (CASE) published a baseline study of asylum seekers and refugees that included questions about corruption at four refugee reception offices (Johannesburg, Cape Town, Pretoria, and Durban).⁸ The survey of 1500 asylum seekers and refugees found that applicants were asked to pay at various stages of the asylum application process, as detailed in the table below.⁹

Asked to pay to submit application	29%
Asked to pay to renew asylum documents	11%
Asked to pay for refugee documents	16%
Asked to pay to renew refugee documents	6%

Eight years later, the African Centre for Migration & Society (ACMS) surveyed 1417 asylum seekers and refugees about their experiences at the RROs.¹⁰ The ACMS administered two surveys – one targeting new applicants and one targeting applicants who had undergone status determination interviews. It found that approximately a quarter of respondents were asked for money while queuing, and 7%-8% experienced corruption inside the office. The survey also noted that levels of corruption varied greatly by office and that the highest levels of corruption (40%) occurred in the queues at the Marabastad refugee reception office.

Aside from these limited studies, there is no comprehensive data measuring levels of corruption at the country's refugee reception offices. This study seeks to address that gap by asking individuals at the RROs specifically about their experiences with corruption. This information is vital in order for Home Affairs to craft an effective response to the problem of corruption in its offices along the path to establishing a well-functioning asylum system.

8 Community Agency for Social Inquiry, 'National Refugee Baseline Survey: Final Report,' Researched for Japan International Cooperation Agency & United Nations High Commissioner for Refugees, November 2003.

9 Ibid., at pp. 115-120.

10 R. Amit, 'No Way in: Barriers to Access, Service and Administrative Justice at South Africa's Refugee Reception Offices,' ACMS Research Report, 2012. Available at <http://www.migration.org.za/uploads/docs/report-40.pdf>.

METHODOLOGY

The research defined corruption narrowly as a request for money. While corruption may take other forms, the narrow definition provided the lowest risk of individuals applying their own interpretations of when they experienced corruption, even if it risked under-reporting. Seeking to move from anecdotal reports to a more systemic picture of the prevalence of corruption in the asylum system, the research design involved a survey that could be broadly administered to a representative sample of individuals seeking services at the refugee reception offices. The questions targeted the frequency and circumstances under which individuals were asked for money as they interacted with the asylum system.

The field researchers interviewed a total of 928 respondents queuing outside or exiting one of the country's five refugee reception offices that remain open to either newcomers or existing asylum seekers: Cape Town, Musina, Durban, and the two offices in Pretoria.¹¹ The table below shows the numbers interviewed at each office.

OFFICE	NUMBER OF RESPONDENTS
Marabastad (Pretoria)	208
Tshwane Interim Refugee Reception Office (TIRRO – Pretoria)	204
Cape Town	175
Musina	205
Durban	136

The research design set a goal of 200 respondents from each office. Although this target was not met at the Durban office, this did not have a significant effect on the results, as the office did not register substantial levels of corruption as detailed below. The Cape Town

¹¹ No interviews were conducted in Port Elizabeth, where the refugee reception office has been closed since October 2011. Existing asylum seekers and refugees are able to access a limited set of services at a satellite DHA office in PE.

office also fell slightly short of the target. Preliminary results there indicate some levels of corruption, but additional research is needed to determine with greater certainty how widespread the problem is.

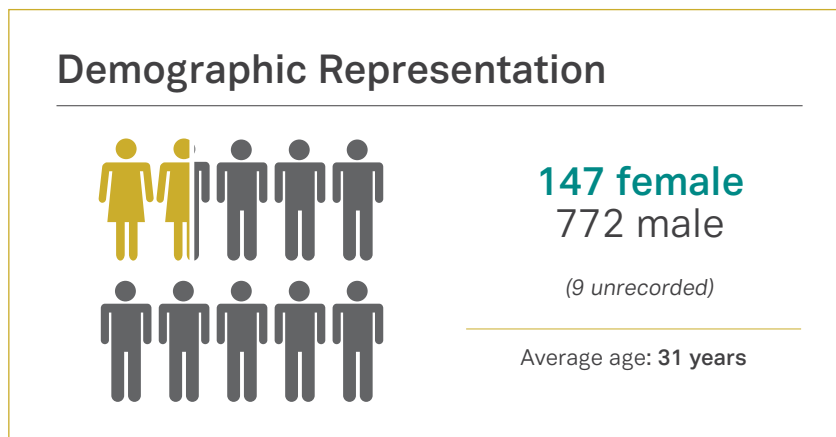
Language barriers, the sensitivity of the questions, and the willingness of respondents to talk to the researchers all affected the representativeness of the sample, leaving some nationalities under-represented relative to their overall population in the asylum system. Moreover, anecdotal evidence suggests that certain nationalities may be specifically targeted for corruption, raising the need for more in-depth investigation of their particular experiences. Finally, the sample contains more men than women, both because men were more numerous outside the refugee reception offices, and because women were generally less willing to participate.

The interviews took place between June 2013 and June 2014. Respondents were randomly selected among individuals standing outside of the refugee reception offices as they either exited or waited to enter the office. The field researchers explained the purpose of the research and participants gave their informed consent to participate. They were also given an information sheet with referral information for legal and counselling services. Despite these protections, there is a possibility that respondents under-reported their experiences with corruption to avoid implicating themselves.

Respondents were asked a series of quantitative questions about the border crossing, the various stages of the asylum application process and their efforts to obtain and maintain documentation, as well as their experiences with arrest and detention. A small number of qualitative questions also provided respondents with the opportunity to provide a more detailed account of their experiences. Some of these comments are included below. Although there were 928 respondents in total, not every respondent answered every question. Percentages recorded below are based on the total number of respondents per individual question. In most instances, percentages have been rounded to whole numbers. In some instances, decimals have been included to increase accuracy.

DEMOGRAPHIC REPRESENTATION

Survey respondents were predominantly male, with 772 males and 147 females. The field researchers failed to record the gender of 9 respondents. The age of the respondents ranged from 18 to 67, with an average age of 31.



Respondents represented 34 countries, almost all of them in Africa. Countries outside of Africa included Pakistan (18 respondents), Bangladesh (10 respondents), India (8 respondents), and Nepal (1 respondent). The table below shows the number of respondents from the most highly represented nationalities and their proportion of overall respondents. The first five were among the 10 most represented asylum applicant countries in the 2011 Annual Report on Asylum Statistics. The sixth country, Burundi, was listed in that report as the top sending country on the rise. Preliminary figures released by the DHA for the 2013 calendar year indicate that

NATIONALITY OF RESPONDENTS	NUMBER OF RESPONDENTS	PROPORTION OF OVERALL RESPONDENTS
Democratic Republic of Congo	319	34.3%
Zimbabwe	173	18.6%
Ethiopia	102	10.9%
Nigeria	56	6%
Somalia	54	5.8%
Burundi	43	4.6%

applicants from Burundi and Somalia have decreased significantly. The highest numbers of asylum applicants in 2013 came from Zimbabwe, Nigeria, the DRC, and Ethiopia.

Other nationalities encountered with some regularity included Ghanaians (25 respondents), Ugandans (23 respondents) and Malawians (17 respondents).

Field researchers administered the surveys in English and French. The most common primary languages spoken by respondents included Shona, Swahili, Lingala, Amharic, French and Somali. Twenty-four (24) respondents stated that they did not understand and speak English fluently. These respondents spoke Amharic (7), French (5), Somali (5), Swahili (5), Lingala (1), and Afrikaans (1).

STATUS OF RESPONDENTS

Most of the survey respondents were asylum seekers, but there were also a number of refugees seeking services at the refugee reception offices, indicating that the potential for corruption continues even after an individual has attained refugee status.

The distribution included 795 asylum seekers (86%), 103 refugees (11%) and 28 undocumented migrants (3%). Two respondents did not report their status. Of those who claimed to be asylum seekers, 80% had valid permits at the time of the interview. Among reported refugees, 2 individuals stated that they did not have a valid refugee permit or ID at the time of the interview.

STATUS OF RESPONDENTS	PERCENTAGE	PERCENT WITH VALID DOCUMENTATION
Asylum seeker	86%	80%
Refugee	11%	98%
Undocumented	3%	

CONSIDERING CORRUPTION IN THE ASYLUM SYSTEM

WHY CORRUPTION MATTERS

[T]o protect our hard earned democracy, we remain determined to root out corrupt practices within the public service. We are of the opinion that our best defence against corruption is transparency, accountability and the knowledge that any person involved in corrupt activities will be prosecuted. We therefore call on all public servants to prioritize serving our people responsibly and with honour.

Collins Chabane, Late Minister of Public Service and Administration¹²

In recent years, South African citizens have benefitted from improvements in the civic services section of the Department of Home Affairs. This has decreased the focus on the problems inside the Department. Most citizens are not invested in the level of service provided to foreigners, nor are elected officials who are responsive to their domestic constituencies. To the extent that they are interested in migrants, it is largely in the areas of border control and irregular migration. What this disinterest overlooks, however, is that these issues do not exist in isolation. Corruption in one area undermines institutional integrity and will eventually affect broader governance issues that are not confined to foreigners.

The large demand on the asylum system has provided a space for corruption to emerge. Although no longer ranked number one, South Africa remains one of the top global recipients of asylum seekers. In the 2012/13 financial year, the country received 85,058 asylum applications. In the 2013 calendar year, there were 70,010 asylum applicants. While down significantly from the 2009 peak of 223,324 applicants, this number still exceeds the capacity of the existing three offices that the Department has allocated for new applicants. A situation in which demand exceeds capacity creates opportunities for corruption. It also risks creating an asylum system that offers protection only to those with the financial means to purchase it.

The effect on the asylum system is not the only reason to be concerned about corruption. Corrupt practices may easily spread to other areas of government, particularly if little is done to deter such

¹² Budget Vote Speech, 17 July 2014, available <https://pmg.org.za/briefing/19082/>.

behaviour. Allowing corruption to continue unchecked threatens the institution, and the institutions, of democracy. In the words of former UN Secretary General Kofi Annan:

It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life, and allows organized crime, terrorism and other threats to human security to flourish.... Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a government's ability to provide basic services, feeding inequality and injustice, and discouraging foreign investment and aid. Corruption is a key element in economic under-performance, and a major obstacle to poverty alleviation and development.¹³

In other words, the effects of corruption are not limited to those who are forced to pay but are pervasive.

In South Africa, a member of the Gauteng Provincial Legislature spoke about the economic implications of corruption in the tender process: 'Rational incentives and a corruption-free tender process are the best way to broaden opportunities for those who were previously excluded', while corruption impedes economic growth and job creation.¹⁴ The effects of a skewed incentive structure are not limited to the tender process but affect all areas in which corruption prevails. In addition to the economic repercussions of corruption, the fundamental elements of a well-functioning democracy – government accountability, the rule of law, and administrative fairness – depend on a corruption-free system. For these reasons, it is important to understand the contributing factors and levels of corruption that exist in the asylum system.

CONDITIONS FOSTERING CORRUPTION

The DHA's reaction to the difficulties in the asylum system has fostered opportunities for corruption. Following the active involvement of civil society,¹⁵ the government adopted a progressive refugee law framework based on international and regional standards and operating through a system of individualised assessments of asylum claims. This system was quickly overwhelmed as asylum numbers began to increase. Having little

13 Statement on the adoption by the General Assembly of the United Nations Convention Against Corruption, 31 October 2003, available at <http://bit.ly/UNConventionAgainstCorruption>.

14 Jack Bloom, 'Empowerment vs Tenderpreneurship,' *Politicsweb*, 10 May 2010. Available at <http://www.politicsweb.co.za/politicsweb/view/politicsweb/en/page71619?oid=175220&sn=Detail>.

15 J. Handmaker, *Advocating for Accountability: Civic-State Interactions to Protect Refugees in South Africa*, Antwerp: Intersentia, 2009.

experience with immigration under the closed system of apartheid, the government did not anticipate the large numbers of asylum seekers who would arrive in the country, particularly as the political and economic situation in Zimbabwe deteriorated. As demand grew and individuals faced long queues and delays in service, conditions became ripe for corruption. Once these issues became clear, the DHA could have taken remedial action by enacting better immigration policy or devoting greater resources to the asylum system to improve its functioning. Instead, it chose to maintain the status quo and shifted the focus onto the migrants themselves, allowing its inaction to exacerbate the situation. **The current state of affairs is the product of a deliberate government choice to avoid addressing fundamental issues in the asylum system.**

The DHA has also taken purposeful actions that have intensified the problems around service. The highly contested decisions to close the Johannesburg, Cape Town, and Port Elizabeth offices in 2011 and 2012 have ensured that demand continues to outstrip capacity, increasing the incentives for corruption. At the micro level, government has focused little attention on the quality of the status determination process or the management of refugee reception offices. This has given rise to a situation in which there is no link between an individual's asylum claim and the decision that the individual receives. **Individuals who cannot obtain a status determination decision that reflects their protection needs are more susceptible to corruption. Access problems further incentivise individuals to pay, which may be the only way to obtain service.** Individuals remain in the system for several years, adding to the opportunities for corruption.

Rather than address these service issues, the Department has concentrated its efforts on the demand side of the equation. In practice, this has meant an unwavering focus on decreasing the number of individuals entering the asylum system – characterising virtually all of these individuals as economic migrants – while failing to address any of the problems at the offices themselves. At the same time, the office closures have increased demand pressures. As the space for obtaining documentation has narrowed, the incentives and need for payment have increased.¹⁶ **Although the DHA has stated its commitment to root out corruption, it has failed to recognise the link between the quality and management issues described above and the flourishing of corruption.** This failure has left past interventions lacking.

¹⁶ In November 2014, the DHA proposed changes to the asylum application form that narrowed this space still further by requiring detailed information about employment history and financial conditions. The status of these changes was still uncertain at the time of publication.

THE DHA'S RESPONSE TO CORRUPTION

The DHA has repeatedly noted the problem of corruption, but it has yet to craft an effective response. **In May 2010, the Department acknowledged in a presentation to Parliament that placing decision-making responsibility in the hands of one individual increased the susceptibility to corruption.**¹⁷ The 2010 amendments to the Refugees Act proposed replacing the individual decision maker with a status determination committee, but the latest round of amendments (2015) retains the individual decision maker. In September 2011, the Minister of Home Affairs said that allegations of physical abuse and corruption at the Marabastad refugee reception office in Pretoria were being investigated together with other corruption allegations, while noting that the counter-corruption unit had not received any formal complaints.¹⁸ In November 2014, the Department implemented several changes at the Marabastad office, including new management and a new security company. Although positive, it is as yet unclear how effective and permanent these changes will be.

In its 2012/13 Annual Report, the DHA stated that it would 'spare no effort to remove' corrupt officials 'from the public service'.¹⁹ The report referenced 68 disciplinary actions for fraud and corruption, but it provided no details on these actions or on the broader efforts to combat corruption. Nor is it clear whether any of these actions targeted the country's refugee reception offices. In a March 2014 response to a parliamentary question, the Department stated that it had identified 387 cases of corruption in the 2012/13 financial year. The breakdown of these cases for that and the previous two years involved only one case from the asylum system.²⁰

The DHA's counter-corruption unit is mandated to prevent, combat and investigate corruption. But interactions with the unit suggest that it is largely reactive rather than proactive. One individual's experience with this unit highlights its limitations. In July 2014, an asylum seeker told Lawyers for Human Rights that a refugee status determination officer (RSDO) at the Marabastad refugee reception office had asked her for R2500 in exchange for refugee status. LHR contacted the counter-corruption unit, which agreed to set up a sting operation. As part of the operation, the police would provide R2500 in marked notes and obtain a court order authorising the arrest of the RSDO.

17 Department of Home Affairs, Briefing to the Portfolio Committee on Home Affairs, 'Challenges in the Processing of Asylum Applications and Issuance of Permits,' 31 May 2010, available at <https://pmg.org.za/committee-meeting/11802/>.

18 Question 2940, 23 September 2011, available at https://pmg.org.za/question_reply/286/.

19 Department of Home Affairs Annual Report, 2012/13, 27 September 2013.

20 Question 207, 28 February 2014, available at https://pmg.org.za/question_reply/491/.

A week later, the counter-corruption unit asked whether LHR or its client could provide a portion of the R2500. After LHR rejected this possibility, officers from the unit began pressuring the client to contribute money for the operation. When LHR expressed its concerns over the way the operation was being managed, officers from the counter-corruption unit criticised the organisation for forcing its client to withdraw from the operation. The officers again contacted the client directly and threatened to arrest her for not cooperating. In addition, they suggested completing the operation with counterfeit notes, promising to get her released if she was arrested on counterfeiting charges. LHR then spoke to the unit's manager, who agreed to investigate but did not follow up with LHR. In October 2014, the manager of the Marabastad RRO requested contact details for the client in order to discuss the corruption allegations. Fearing that this would subject the client to intimidation at the RRO, LHR declined to provide this information. Subsequently, the new centre manager at Marabastad arranged for the client to undergo another status determination interview and she was granted refugee status.

LHR has continued to work with the DHA on behalf of its clients who have experienced corruption, but these arrangements rest on LHR providing client complaints in affidavit form before the DHA will investigate. While the DHA has begun implementing disciplinary proceedings in response to these affidavits, the evidentiary burden remains on the asylum seeker to provide names and specifics.

Asylum seekers must be willing to come forward, despite fear of reprisals, and must be able to provide these details. The DHA does not target the wider processes outside of these individual complaints.

In Cape Town, the Scalabrini Centre's attempts to follow up on behalf of clients who experienced corruption have also met with a limited response. Home Affairs' officials have sought to investigate the officials responsible, but their responses have been narrowly focused and, as in the LHR cases, place most of the investigatory burden on the clients or representatives from Scalabrini. In one such case, the Home Affairs officials also indicated that they intended to charge Scalabrini's clients who had unwittingly participated in the corruption and then reported it. The clients continued to assist in the investigation only after Scalabrini received assurances from the NPA that it would not prosecute.

These examples show that although the DHA has at times responded to individual allegations of corruption, it has avoided conducting broader investigations, leaving its efforts largely reactive. **The focus on specific individuals in the absence of broader efforts to target corruption has done little to alleviate the structural problem, allowing corruption to flourish even as certain corrupt individuals are rooted out.** This situation is revealed in the results described below.

RESULTS

The survey results show corruption at every stage of the asylum process, beginning with entry into the country. Nor did corruption stop once individuals acquired refugee status. **In short, corruption permeates every aspect of the asylum system and every category of actor in this system – security guards, interpreters, refugee reception officers, refugee status determination officers, police officers, and private brokers with links to DHA officials.** Close to one-third of respondents experienced corruption at some point. The fact that individuals often had to make repeat visits for a single issue and remained in the system for periods exceeding the 180 days established in the regulations to the Refugees Act²¹ served to exacerbate this state of affairs. Corruption rates also varied by office, indicating that differences in management and oversight practices may play a key role.

BORDER CROSSING

The first point of contact with an immigration official for individuals seeking asylum is often at the South African border. If an individual states an intention to apply for asylum to a border official, the law requires that he or she receive a five day transit permit to enable the individual to reach a refugee reception office to apply for asylum.²² Because this is the first stage on the path to asylum, the survey included a series of questions about the border crossing, the first point at which individuals may experience corruption. The results show corruption on a smaller scale than that recorded at the refugee reception offices. **Thus, while corruption at the border may be a barrier to entry for some, subsequent encounters at RROs are a more potent obstacle.** Respondents' descriptions, however, suggest that more informal corruption not captured by the survey may be taking place. Several respondents reported paying an additional sum to the truck driver transporting them into South Africa so that the driver could pay border officials to facilitate the border crossing.

Most respondents had crossed through the Zimbabwe border, which accounted for almost 71% of border crossings. Mozambique, the second most common point of entry, accounted for 15% of entrants. Respondents at the Durban refugee reception office were

²¹ Regulation 3.

²² Immigration Act, Section 23.

almost evenly split between the Zimbabwe (59 respondents) and Mozambique (63 respondents) border. Roughly 11% of respondents arrived at an airport – almost all of them via OR Tambo in Johannesburg. A very small number entered at the Durban and Cape Town airports.

BORDER CROSSING	PERCENTAGE OF RESPONDENTS
Zimbabwe	70.5%
Mozambique	15.4%
Botswana	0.9%
Namibia	0.9%
Swaziland	0.6%
Lesotho	0.3%
Sea port	0.2%
Airport	10.7%

These numbers include official and unofficial border crossings: 44% of respondents attempted to enter South Africa through an official border post, and 40% of them told border officials that they wanted to claim asylum. Seven (7) individuals reported being denied entry at an official border post, with a few reporting that they fled to avoid arrest.

Thirteen percent (13%) of respondents stated that border officials asked them for money, and 12% of respondents said that they paid to pass through the border. The amounts paid are detailed in the table below.

AMOUNT PAID	NUMBER OF RESPONDENTS
R1-R100	6
R101-R200	7
R201-R300	4
R301-R400	2
R401-R500	2
R501-R600	5
R601-R700	3
More than R700	12

One individual reported paying US \$220, the equivalent of almost R2500.

While the government devotes significant resources to border security, corruption provides an alternative space for entry that undermines border control efforts. **Additionally, the linking of protection with payment starts at the border and poses the risk that those entitled to protection under domestic and international law will be illegally turned away because of their inability to pay.** Because the survey only encountered individuals who had entered the country, it is not possible to determine how many would-be asylum seekers were turned away on this basis.

RRO VISITS

Opportunities for corruption exist at various stages of the asylum application process and close to a third (30%) of respondents reported experiencing corruption at some point, often on multiple occasions. Asylum seekers and refugees come to the RRO for a variety of issues involving their asylum status. The majority of survey respondents were there to renew their asylum permits, but the refugee reception offices perform many services that are vital to asylum seekers and refugees. The reasons for respondent visits are outlined in the table below.

REASON FOR VISIT	PERCENTAGE OF RESPONDENTS
Extend asylum permit	63%
Apply for asylum for the first time	9%
Extend refugee permit	5%
Replace lost/stolen permit	2%
Collect an asylum permit	1.5%
Request an appeal hearing	1%
Have an appeal hearing	1%
Obtain a refugee ID	1%
Get a passport	.9%
Obtain travel documents	.6%
Join family member files	.5%
Give written submissions to the Standing Committee	.3%
Extend permit and request an appeal	.3%
Get appeal results	.3%
Register children	.3%
Get info on fines	.2%
Other	13%

A number of individuals indicated that they were at the office to get a passport, which can only be provided by the country of origin and is not available at the RRO. These individuals were most likely referring to either a South African or a United Nations Convention Travel Document, which can be obtained through a refugee reception office. In the above table, these results have been reported separately from those individuals who stated that they were at the office to obtain travel documents, although they may be two characterisations of the same issue.

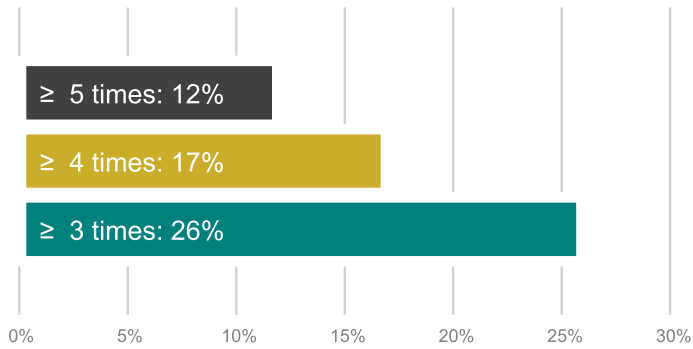
Individuals often must make numerous visits to the office to address a single issue. Such inefficiencies increase both the opportunities for and the susceptibility to corruption as respondents grow increasingly desperate. Half of respondents reported that it was not the first time they had come to the RRO to address the issue they were there for on the day of the interview. Twenty-six percent (26%) of respondents reported coming three times or more; 17% four times or more; and 12% five times or more. On average, respondents had come to the office 1.75 times for a single issue, with the highest proportion of repeat visits occurring at Marabastad, where 66% of respondents reported coming more than once. This was followed by Cape Town (60%) and TIRRO (53%). Durban had the lowest rate of repeat visits (19%), followed by Musina (40%). Among those respondents who reported coming more than once for a single issue, they averaged 3.7 visits. At TIRRO, this average was 5.1 visits, followed by 4.3 at Cape Town, 3.3 at Marabastad, 2.3 at Musina, and 1.9 at Durban.

Thus, although a higher proportion of respondents had to come more than once for a single issue at Marabastad, they generally were able to resolve this issue in fewer visits than respondents from the Cape Town or TIRRO refugee reception offices. **As the results in the next infographic indicate, however, there was also a higher likelihood that respondents at Marabastad paid to get the issue resolved.**

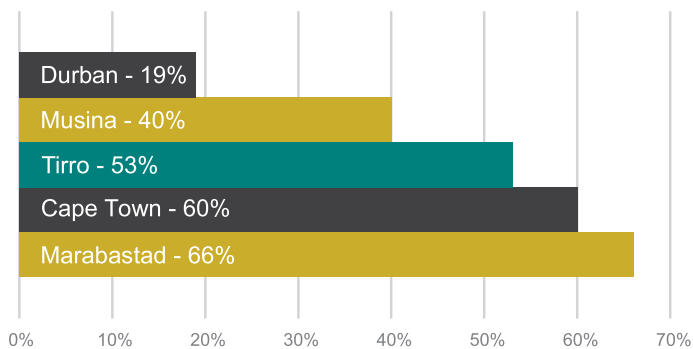
Visits to RRO

% of repeat visits
for a single issue

Average: 1.75

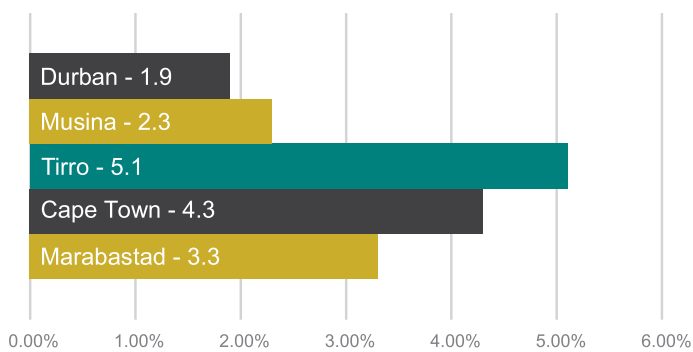


% respondents on repeat
visits for a single issue



% of repeat visits for a single
issue among those who reported
coming more than once

Average: 3.7



One in five respondents reported that they had been asked for money in exchange for getting their issue resolved. The percentages by office are detailed in the table below.

OFFICE	% WHO REPORTED BEING ASKED FOR MONEY TO GET AN ISSUE RESOLVED
Marabastad (Pretoria)	47%
TIRRO (Pretoria)	21%
Cape Town	12%
Musina	11%
Durban	2% (2 respondents)

The highest proportion of requests for money came from security guards (39%), followed by civilians or brokers who had connections with DHA staff (32%), and DHA officials (13%). A few respondents also implicated DHA interpreters and police officers.

Respondents reported similar rates of corruption around the queuing process, with 22% stating that they had been asked for money to get to the front of the queue or to get inside. **Again, Marabastad had the highest rate of respondents who experienced corruption in the queue, while respondents at the Durban office did not report any corruption.**

OFFICE	% WHO EXPERIENCED CORRUPTION IN THE QUEUE
Marabastad (Pretoria)	51%
TIRRO (Pretoria)	28%
Cape Town	20%
Musina	4%
Durban	0%

'I complained because some people came later but because they paid they got in. When I informed the official, they handcuffed me.'
Respondent, TIRRO

Security guards were most frequently implicated, accounting for 61% of the corruption in the queue. Twenty-eight percent (28%) also pointed to civilians with links to officials inside.

Corruption proved to be a barrier to access, as 13% of respondents indicated that they had at some point been unable to get inside the office because they did not pay. **Here too, Marabastad had the worst record.**

OFFICE	% DID NOT GET ACCESS TO OFFICE FOR FAILURE TO PAY
Marabastad (Pretoria)	30%
TIRRO (Pretoria)	12%
Cape Town	15%
Musina	3%
Durban	.7% (1 respondent) ²³

Respondents also experienced corruption once inside the office, with 13% reporting that they were asked for money in exchange for assistance.

OFFICE	% ASKED FOR MONEY IN EXCHANGE FOR ASSISTANCE INSIDE THE OFFICE
Marabastad (Pretoria)	31%
TIRRO (Pretoria)	18%
Cape Town	2%
Musina	5%
Durban	2%

'I had to pay the security guards R100 to get inside the DHA office to apply for asylum. As I can't pay, I remain undocumented.'
Respondent, Musina

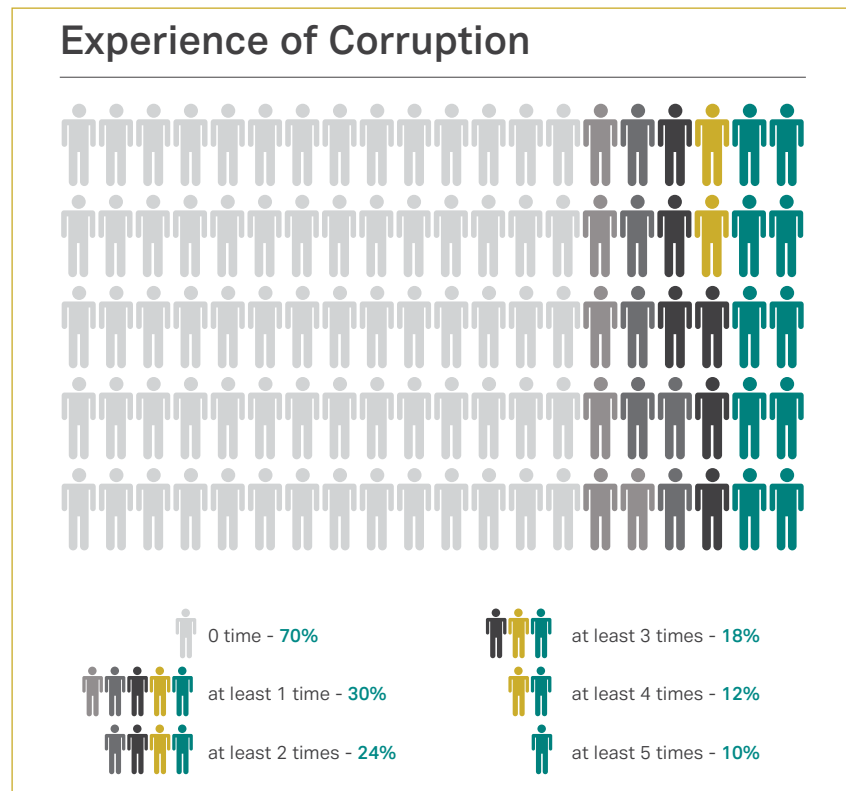
²³ This result is inconsistent with the results from the previous table, in which none of the respondents reported being asked for money to get to the front of the queue or to get inside the office.

'I applied in 1999. They gave me a Sudanese permit and picture I told them this was wrong. I paid R1500 to apply as Ethiopian. I gave the DHA interpreter R500. They gave me one month and then three months.... They asked R3000 from me and I did not pay. I am undocumented.'

Respondent, Marabastad

Inside the office it was primarily DHA officials who were linked to the corruption (62%), in comparison to security guards (17%). DHA interpreters were implicated by 10% of respondents and civilians by 7%.

In general, 30% of respondents reported experiencing corruption at least once, 24% at least twice, 18% at least three times, 12% at least four times, and 10% at least five times. Overall, respondents experienced corruption an average of 1.3 times.



Among those respondents who reported experiencing corruption, the average was 4.44 times, with the highest average reported at Marabastad (4.7). The percentage of individuals who experienced corruption at each individual office and the average number of times they experienced corruption is recorded below.

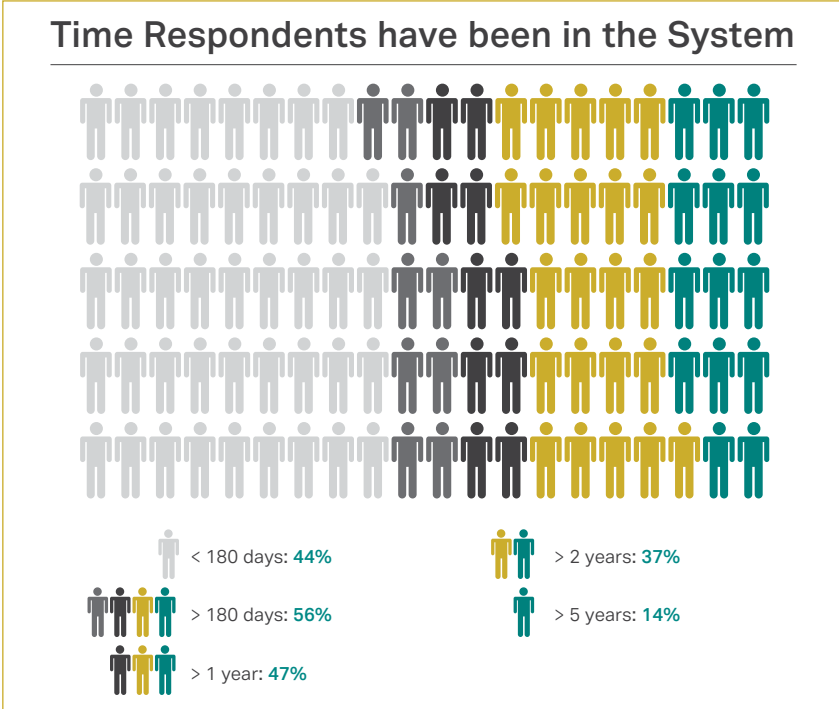
OFFICE	% WHO EXPERIENCED CORRUPTION	AVERAGE INCIDENTS OF CORRUPTION FOR THOSE RESPONDENTS WHO EXPERIENCED CORRUPTION
Marabastad	62%	4.7
TIRRO	37%	4.56
Cape Town	22%	4.28
Musina	15%	3.58
Durban	3% (4 respondents)	2

Inefficiencies in the asylum system increase the interactions that individuals have with the refugee reception offices, escalating both the opportunities and incentives for corruption. Just gaining entry into the office has become a major outlet for exploitation. The struggle to obtain services provides further pressures on those seeking assistance, incentivising them to pay in order to gain needed documents or other assistance.

THE APPLICATION PROCESS

The longer an individual is in the asylum system as either an asylum seeker or refugee, the greater the opportunity for corruption as demand for renewals and other services increases.

Under the Refugees Act and accompanying regulations, the application process should generally be completed within 180 days.²⁴ Among survey respondents, 56% had been in the asylum system for over 180 days, 47% had been in the system for at least one year, 37% had been in the system for at least two years, and 14% had been in the system for at least 5 years.



Respondents had spent an average of 1037.5 days in the system, or 2.8 years. The longest reported time in the system was 18.65 years and five respondents reported entering the system before 2000.

²⁴ Regulations to the Refugees Act, Regulation 3.

'The people don't care who you are, where you come from, what your story is. They just care about money. If you have got money, everything is good for you. Like myself, after I got my refugee status. I bought it. Otherwise, I would still be an asylum seeker. There is a business out there.'

Respondent, Cape Town

As noted above, respondents had to visit the office repeatedly for a single issue. Consistent with this, 38% of respondents reported that they did not receive their asylum permit the first time they came to a refugee reception office. Overall, 12% of respondents indicated that they had at some point been asked for money in exchange for receiving an asylum seeker permit, with the highest proportion of these requests coming from DHA officials (43%) and security guards (19%). Below are the amounts that respondents reported paying in exchange for asylum permits.

AMOUNT PAID	NUMBER OF RESPONDENTS
R0-R100	7
R101-R200	13
R201-R300	10
R301-R400	2
R401-R500	6
R501-R600	9
R601-R700	1
R800-R1000	10
R1001-R2000	11
Over R2000	2

Among respondents who needed to replace a lost or stolen permit, 14% indicated that they were asked to pay to get it replaced. These payments were not in the form of a fine.

The high numbers of renewals also create opportunities for corruption. Respondents had renewed their permits an average of 5.4 times. When first time applicants were removed, this average rose to 6.54. Twelve percent (12%) of respondents had paid at least once to renew their permits, 8% at least twice, 6% at least three times, 4% at least four times, and 3% at least five times.

Renewal of Permits



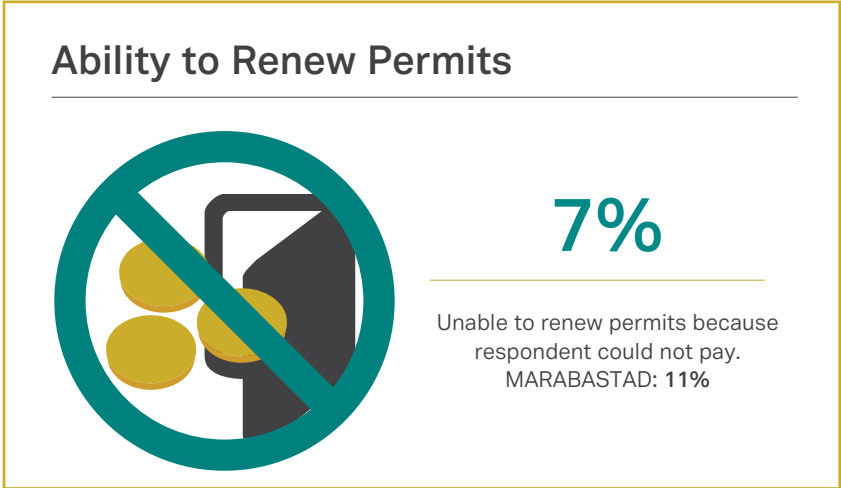
3% paid at least **5 times**
 4% paid at least **4 times**
 6% paid at least **3 times**
 8% paid at least **2 times**
 12% paid at least **1 time**

Average renewals excluding first time applicants: **6.54 times**

Marabastad again registered the highest rates of corruption, while Durban registered none.

OFFICE	% OF RESPONDENTS WHO PAID TO RENEW PERMITS
Marabastad (Pretoria)	24%
TIRRO (Pretoria)	15%
Cape Town	7%
Musina	9%
Durban	0%

Respondents reported paying DHA officials (27%), security guards (22%), or both (16%). They also paid agents/civilians both inside and outside of the office (15%), including former DHA interpreters. A few indicated paying existing DHA interpreters as well. Corruption affected the ability of some asylum seekers to get documents: 7% of respondents said that they were unable to renew permits because they could not pay. At Marabastad, the proportion was 11%.



'The lady inside the DHA asked me for R2500 for the status. I gave them R1500 and then R1000, but she did not give me the status.' *Respondent, Durban*

As part of the asylum application process, asylum seekers must undergo an interview with a refugee status determination (RSD) officer who decides on the validity and credibility of their asylum claim. Among respondents, 60% had had an RSD interview. Only 6% reported that an RSDO had asked them for money. At Marabastad and TIRRO, these numbers were 12% and 8%, respectively. Of the 32 respondents who reported being asked for money by an RSDO, 21 reported paying, but only 6 said that this resulted in their application being approved. Below are the amounts they paid.

AMOUNT PAID	NUMBER OF RESPONDENTS
R0-R100	5
R101-R200	2
R201-R300	1
R401-R500	3
R1000	2
R1500	1
R2000	3
R3000	2
R3500	1
R4000	1

Although relatively few respondents reported being asked for money by a refugee status determination officer, several respondents referenced the ability to buy refugee status from brokers or interpreters who approach asylum seekers waiting outside of the offices and have links to officials working inside. This suggests that corruption around refugee status is not limited to the status determination interview, but is taking place at other stages of the process. It also highlights the multiple actors that are involved in corruption. Corruption around refugee documents is just one of the mechanisms through which refugee status has become detached from protection needs, distorting the rationality of the system.

FINES

'Fines are the biggest problem. If you don't pay on the spot they arrest you. Some documents expire on the weekend and that is a problem.' *Respondent, Cape Town*

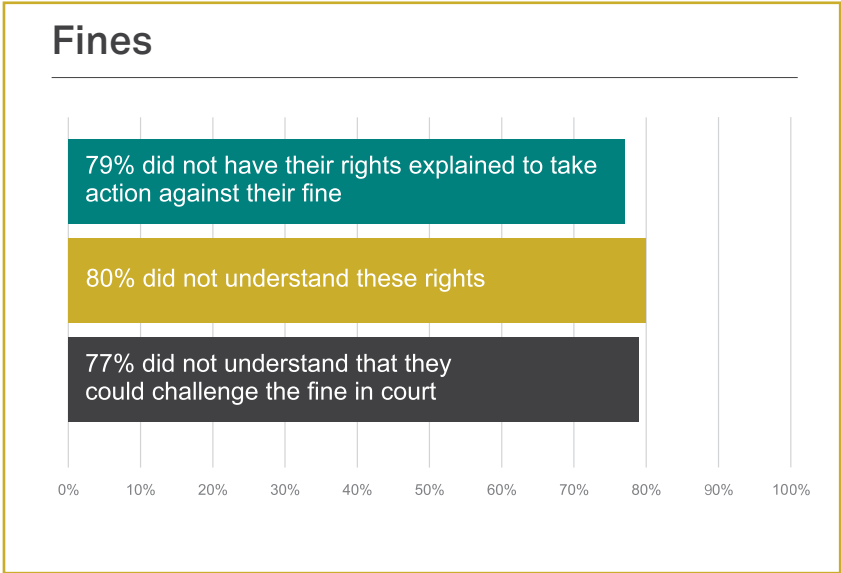
For the last several years, the DHA has issued fines for lost or expired permits. Individuals can either pay the fine (via an admission of guilt), or go to court to challenge the fine. Under the authorisation in the Criminal Procedures Act (No. 51 of 1977), a properly administered fine can only be paid at a police station or a

court and must be accompanied by a receipt. **While fining under certain circumstances is legal, the survey responses revealed a variety of irregularities that suggest that the fines are not always implemented properly and may in some instances be veiled forms of corruption.**

Eleven percent (11%) of respondents indicated that they had been fined for either a lost (32 respondents) or expired (71 respondents) permit. Ten respondents reported that they had been fined more than once. For those with expired permits, the table below shows how long their permits had been expired.

LENGTH OF PERMIT EXPIRATION	NUMBER OF RESPONDENTS
1 - 5 days	11
5 days - 3 months	32
3 - 6 months	10
6 - 9 months	6
9 months - 1 year	2
More than 1 year	10

Seventy-nine percent (79%) of respondents answered negatively when asked if anyone had explained their rights regarding the actions they could take in relation to the fine; roughly the same proportion (80%) indicated that they did not understand these rights. Specifically, 77% did not understand that they had the option to challenge the fine in court.



'This is a business in DHA. For affidavit we pay. For taxi to go to police station we pay. R3000 for fine but it is not a fine.' Respondent, Marabastad

The most common fine amounts were R1000, R1500, R2500, and R3000. A number of individuals received fines in differing amounts, suggesting either irregularities or a great deal of discretion in the fining process. The fine amounts are listed in the table below.

FINE AMOUNT	NUMBER OF RESPONDENTS
R200-R800	10
R1000	21
R1200	1
R1500	14
R2000	1
R2500	19
R2700	1
R3000	16

Although the process requires that fines be paid at the police station or court, 31 out of 59 were paid elsewhere. Thirteen (13) respondents indicated that they paid at a court of law, although only three respondents reported going to court to contest their fine. Twenty-five (25) respondents paid at the RRO, suggesting that the fine may in fact have been a form of corruption. Other respondents made payments in a van, or paid a civilian who allegedly had connections with RRO staff. Of these same 59 respondents, 32 reported receiving a receipt, while 27 did not.

Among the 36 respondents who did not pay the fine, 27 said that it was because they could not afford it. Three individuals were still in the process of paying or challenging the fine. One individual simply stated that he had given up. Another feared being arrested if he returned to the RRO. Three individuals reported successfully challenging the fine in court. Asked if they had ever remained undocumented because they could not pay a fine, 34 respondents replied affirmatively and 7 stated that they were arrested during this period.

The fining process links documentation to an individual’s ability to pay. This poses the risk that individuals with valid asylum claims who cannot safely return to their countries of origin may be denied documentation and ultimately deported without any assessment of their protection needs. These risks are increased when corruption prevents individuals from obtaining or renewing documents.

‘I was on a bus from Johannesburg to Musina and my asylum seeker permit, wallet, belt and watch were stolen. I went to the DHA to get a replacement but they told me I had to pay a fine of R1000. I do not have the money to pay the fine.’ *Respondent, Musina*

Finally, the fining process itself creates additional opportunities for corruption, as individuals who are unable to pay the official fine are in a more vulnerable position where their lack of documentation can be exploited for unofficial payment.

ARREST AND DETENTION

The multiple entry points of corruption increase the risk that asylum seekers will remain undocumented and at risk of arrest and detention. Highlighting the fact that corruption may spread beyond one department, migrants have reported that police officers sometimes solicit payment to avoid arrests over documentation. Accordingly, access and documentation problems have resulted in a number of legal challenges from detainees in Lindela – the detention centre where illegal foreigners are held pending deportation.²⁵

The arrest and detention processes themselves create multiple opportunities for corruption. In a 2009/10 survey of Lindela detainees, 21% of those interviewed described being asked for money to avoid being detained, deported, or physically harmed.²⁶ In Musina, police checkpoints outside of town target asylum seekers coming from urban areas such as Johannesburg to renew expired permits. Respondents from Marabastad also reported that police roamed the area near the office in search of asylum seekers who had been unable to renew their permits.

Among the respondent population, 56% reported that they had been stopped by government officials and asked to show their papers.

'If you don't pay you don't get in like me. You are waiting. They did not ask me for money but they did ask others every day inside and outside. They make us wait for weeks in order to fine us later.'
Respondent, Marabastad

Frequency of Stops Requesting Documentation



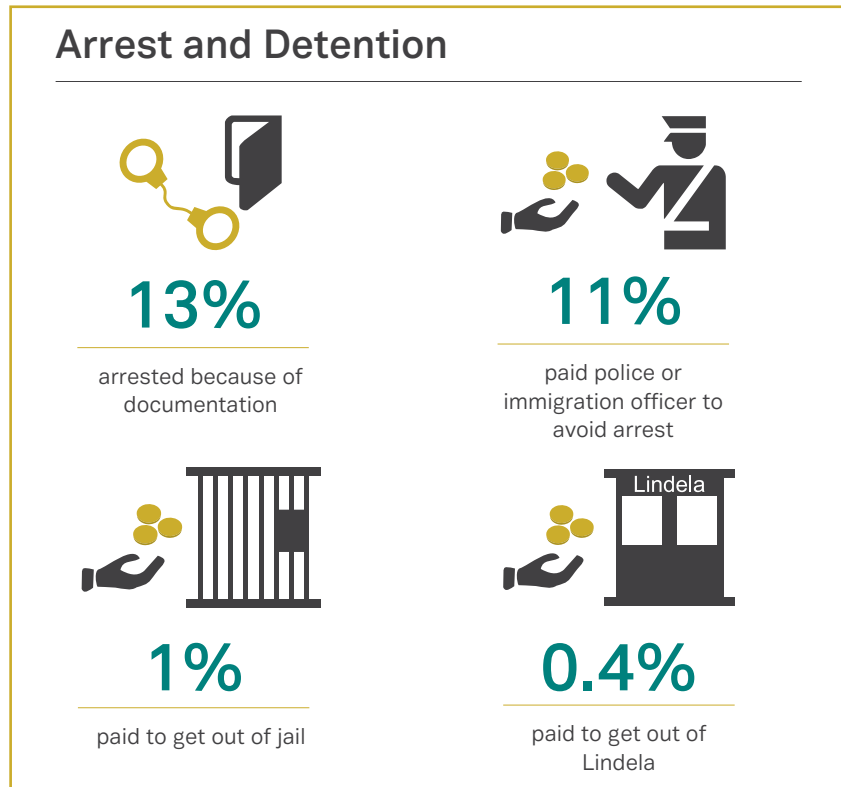
56%

Respondents stopped by officials and asked to show their papers

²⁵ These cases are described in R. Amit, 'Breaking the Law, Breaking the Bank: The Cost of Home Affairs' Illegal Detention Practices,' ACMS Research Report, 2012. Available at <http://www.migration.org.za/uploads/docs/report-37.pdf>.

²⁶ R. Amit, 'Lost in the Vortex: Irregularities in the Detention and Deportation of Non-Nationals in South Africa,' FMSP Research Report, 2010. Available at <http://www.migration.org.za/uploads/docs/report-21.pdf>.

While the overall average number of stops was 2.89, those who answered affirmatively to this question were stopped an average of 5 times. Thirteen percent (13%) reported being arrested because of their documentation, while 11% reported paying an immigration or police officer to avoid arrest, 1% reported paying to get out of jail, and 4 respondents (.4%) reported paying to get out of Lindela.



These numbers reflect those individuals who managed to escape detention, either legally or through payment. An unknown number of individuals may ultimately be deported as a result of corruption despite having a legal basis to remain in the country.

The proliferation of corruption in the asylum, arrest, and detention processes points to the emergence of perverse incentive structures.

In some cases, public officials are no longer guided by legal requirements; instead, their behaviour is driven by a new opportunity structure involving alternative sources of revenue.

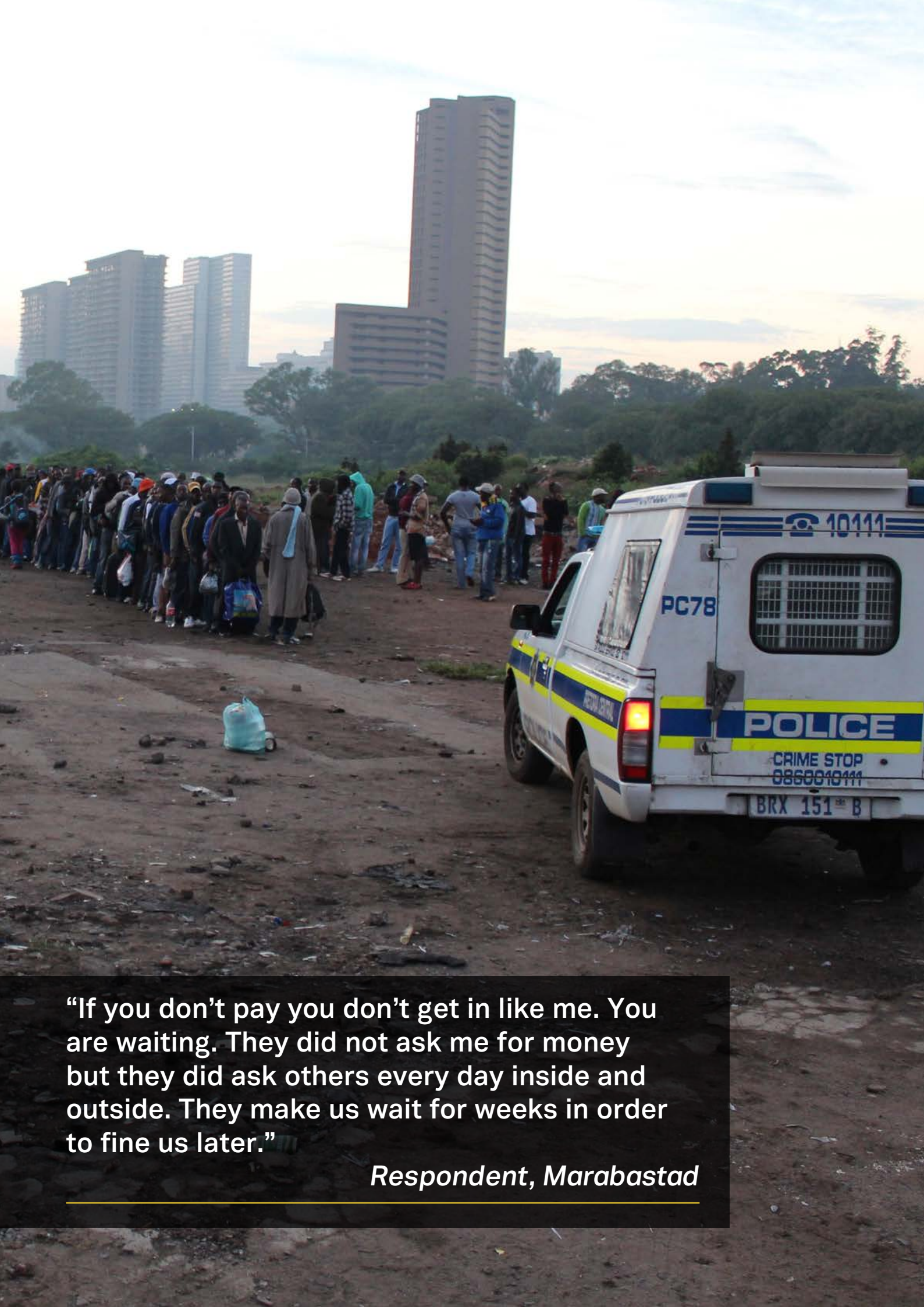
The more their behaviour is driven by extracting payments, the more removed it becomes from the law. This increases the risk that South African citizens will also begin to face unaccountable public officials whose actions are neither predictable nor administratively fair.

REPORTING CORRUPTION

Individuals confronting corruption at the refugee reception offices have little recourse. They are often faced with the choice of paying for documentation or remaining undocumented and at risk of arrest, detention, and deportation. Only 3% of respondents attempted to report corruption to the police, the DHA, or an NGO. None saw any results from these efforts. A few described being told to go back to their country when they attempted to report the corruption. As described earlier, the anti-corruption unit has proven largely ineffective in responding to corruption allegations from asylum seekers or NGOs representing them. Recent collaborations between NGOs and DHA have led to investigations and disciplinary proceedings, but they remain limited in scope.

'I am afraid to report corruption because I feel ashamed to report the police while I contributed to paying the bribe to avoid arrest.' *Respondent, Musina*

'Today when I was paying people giving money to the officials I thought of reporting or calling someone to come and see but it was useless.' *Respondent, TIRRO*



“If you don’t pay you don’t get in like me. You are waiting. They did not ask me for money but they did ask others every day inside and outside. They make us wait for weeks in order to fine us later.”

Respondent, Marabastad

ADDITIONAL OBSERVATIONS

Respondent comments in the qualitative section of the survey provided more detail about the ways in which corruption takes place. **A number of respondents referenced 'special queues' reserved for those who paid.** Many also referred to networks of civilians, including former DHA interpreters, who had connections with security guards and RRO staff inside. Additionally, respondents mentioned that existing DHA interpreters often asked for money in exchange for assisting with forms or interviews. While private interpreters may charge for these services, DHA interpreters are contracted by the Department and must provide their services free of charge.

Respondents' comments also provided a more detailed accounting of events at the refugee reception offices:

They ask for money outside and they share with the security guard. Inside we are called to a room. They call one of us who must ask for R200 from the others and then when you collect the permit the official has already gotten the money. (Marabastad)

You pay for a renewal at Musina on the street. People of the community come to us and tell us to pay. They take your name and permit number and send an SMS to the DHA. It is R500 to R1000. You are served before the others and you don't queue. They call us inside. It is Ethiopians, Somalis, and Pakistanis. They think we have money. They don't propose paying for status. That would be too obvious if Ethiopians got that. (Musina)

People ask for money. Officials don't help you or tell you what is happening. They play on their phones. Security guards ask for money but not openly. It is a previously made deal. Then they grab the people and take them to the front of the queue. Never women. People from Zim only get a one month extension and other people from other countries get 3 to 6 months. (Cape Town)

It is corruption everywhere. They are camped from outside to inside. They ask for money. You pay, but they don't help you. If you can give R2000 to R5000 you can get status. (Marabastad)

The people who ask you for money are the ones who sell the plastic folder for permits. They ask R200 for the plastic and to go in the gate. They share with the guard at the gate. There is [sic] 3 cops who share with them outside. Inside it is R300 if you do not pay you do not get helped. (Marabastad)

A number of respondents commented on the fact that particular nationalities were targeted for payment because these nationalities were known to own shops and have money.

Respondents from these nationalities felt that they were being unfairly targeted, while respondents from other nationalities felt that these individuals had an advantage: 'they accept them before they accept us because they have money.' As one of the respondents above acknowledged, granting refugee status to particular nationalities would be likely to raise suspicion.

Respondents also expressed great frustration about the amount of time they were forced to take off from work, school, and child care. One respondent had just lost his job: 'I was fired yesterday as my boss is fed up with me to being able to work because I am always here. They tell us to go back to our country at DHA.' Another complained that her children had been unable to attend school for two years because they did not have documentation. These respondents generally attributed their difficulties to their inability to pay. By the same token, other respondents attributed their documentation, specifically refugee status, to their ability to pay.

The survey did not include any explicit questions about renewal of refugee status, but it did query whether respondents had ever been asked for money to resolve the issue they were at the office to address on that particular day. Seven (7) respondents who answered yes were there to renew refugee permits. Additionally, both the qualitative responses and anecdotal reports from service providers linked these renewals to payment, pointing to the need for further investigation. The discretion regarding renewal periods, which range from 6 months to 4 years, increases the opportunities to extract payments in exchange for lengthier renewal periods.

CONCLUSION

The experiences of asylum seekers and refugees recorded above indicate that corruption is a very real problem at the country's refugee reception offices. Access, documentation, status, and renewals all are linked to payment, as are many other services tied to the asylum process. Moreover, as inefficiencies in the system increase, both the opportunities for and the need to acquiesce to corruption, increase. In many cases, individuals are left with the choice of paying or remaining undocumented.

The survey results show that corruption in the asylum system is not limited to a few isolated cases. The failure to prioritise corruption at the RROs contributes to a situation in which even those who are in the system legitimately are forced to turn to illegitimate means to obtain protection. **An effective response to corruption requires the DHA to take a more proactive role in investigating corruption, one that does not place the burden solely on individuals experiencing corruption to substantiate their claims.** At the same time, the Department must address the broader management challenges at the RROs that create an environment where corruption can flourish. **This means better operational systems that eliminate the space for corruption, as well as expanding services to meet demand while creating alternative mechanisms for economic migrants.** The Department must also address the quality problems in the status determination system so that decisions are truly individualised and reflect the content of the claims, further reducing the potential for status to be linked to payment.

The delinking of refugee status from protection needs undermines the Department's migration management goals. The process, however, is the result of a deliberate government choice to avoid instituting measures aimed at improving services at the RROs or to address broader migration issues. **The government has chosen to focus almost exclusively on the restrictive measures of border control, detentions, and deportations.** **Allowing corruption to flourish undermines the utility of these efforts while contributing to the emergence of a system of public service guided by monetary incentives rather than legal obligations.** While this may prevent significant numbers of individuals from obtaining refugee status – an outcome that ostensibly serves the government's immediate goals – it does little to address broader migration management issues, to deter irregular migration (the monetisation of refugee status may in fact provide an incentive for irregular migration), or to contribute to economic growth and good governance.

RECOMMENDATIONS

An effective response to corruption is one that moves from a reactive, case by case response to one that addresses the systemic issues that allow corruption to flourish. The government and other stakeholders should consider the limits of current migration policy, the inadequacy of resources dedicated to the asylum system, the need for more urban refugee reception offices, and the implications for the country's constitutional and international obligations, as well as the Batho Pele principles.

TO THE DHA:

Queuing

- Create a waiting area inside the office that is based on an electronic numbering system.
- Establish a more effective queue management system that may, for example, include separate numbering queues based on the type/level of service requested, with a reception desk that directs individuals to the appropriate number queue.
- Post instructions in numerous locations inside and outside the office.

Application Process

- Provide individuals with asylum application forms that they can fill out away from the office to minimise the reliance on officials or private individuals for assistance and to eliminate related opportunities for corruption.
- Include information about the application process, with a clear explanation of the rights and duties of asylum seekers and refugees, on the application form.
- Inform individuals that payment is not required for any stage of the application process.
- Provide information on how to report corruption with the application form.

Renewals

- Establish a set period of validity for renewals that eliminates a refugee reception officer's discretion.
- Ensure that renewals are recorded electronically by the officer.
- Post information so that individuals know that only such electronically recorded renewals are valid and that no payment is required.
- Create a computerised check-in system for individuals who are at the office for renewals. Having a record of individuals who arrived at a refugee reception office for their renewals will flag

any potential irregularities in the event that such individuals do not subsequently obtain these renewals.

- Keep an electronic record of which individuals were served by which refugee reception officer so that any irregularities can be traced back to the officer.

Status Determination

- Professionalise the status determination process so that decisions reflect the details of an individual's claim and are not simply generic summaries of country conditions.
- Require refugee status determination officers to provide specific reasons in the case of both rejections and approvals of asylum claims, which will eliminate the possibility of payment for refugee status.
- Allow asylum seekers to have legal representation during the status determination interview.
- Create a computerised system that does not allow for the issuance of refugee documents without an accompanying written decision containing reasons.
- Post informational signs informing asylum seekers of the process for obtaining refugee documents.

Fines

- Allow individuals to renew/replace status documents even if they have incurred a fine.
- Separate the process for renewing/replacing documents from the process laid out in the Criminal Procedures Act for paying or challenging fines.
- Post informational signs stating that no payment is necessary at the time of renewing or replacing lost documents.
- Eliminate refugee reception officer discretion to determine when documents should be renewed or replaced.
- Renew/replace documents automatically and create a separate process for determining when individuals are no longer eligible for documentation.
- Train police officers on the fines process in accordance with the procedures laid out in the Refugees and Criminal Procedures Acts.

Investigating Corruption

- Establish an anonymous mechanism for reporting corruption.
- Establish a protocol for investigating corruption.
- Explore potential monitoring methods such as installing cameras outside and inside the offices.
- Initiate independent investigations of each stage of the asylum process: queuing, initial application, renewals, status determination, and refugee documents.
- Guarantee to asylum seekers and refugees who have been forced to pay for access or documentation that they will not be punished for reporting corruption.

- Post information about reporting corruption.
- Ensure that investigatory processes are sensitive to the situation of asylum seeker and refugee witnesses, who may be undocumented, may distrust authority, may suffer from post-traumatic stress disorder, or may face additional challenges that require particular sensitivity.

TO PARLIAMENT AND THE PORTFOLIO COMMITTEE FOR HOME AFFAIRS:

- Exercise greater oversight of the DHA in its management of the asylum process.
- Consider how reforming the immigration system might affect the operation of the asylum system.
- Demand greater accountability from the DHA in its efforts to combat corruption.
- Increase the resources directed at operating the asylum system to ensure adequate service delivery.

TO THE PUBLIC PROTECTOR AND THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION:

- Investigate and monitor corruption at the refugee reception offices.
- Engage with the DHA about its efforts to combat corruption.

TO THE SOUTH AFRICAN POLICE SERVICE AND THE NATIONAL PROSECUTING AUTHORITY:

- Develop a protocol for responding to corruption allegations, including guidelines for responding to asylum seekers who may be undocumented as a result of corruption.
- Investigate allegations of corruption and prosecute corrupt officials.
- Do not prosecute or otherwise punish asylum seekers and refugees who report corruption, regardless of their documentation status or complicity in the corrupt practices.
- Ensure that investigatory processes are sensitive to the situation of asylum seeker and refugee witnesses, who may be undocumented, may distrust authority, may suffer from post-traumatic stress disorder, or may face additional challenges that require particular sensitivity



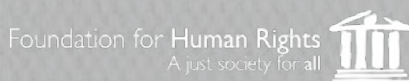
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