CHAPTER-III

REFUGEES IN SOUTH AFRICA
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With its transformation to democracy 20 years ago, South Africa began to serve as a destination point for asylum seekers from Africa and Asia. As part of its commitment to democracy and human rights, the ANC government adopted domestic legislation to give effect to its international obligations. These obligations are based on the 1951 United Nations Refugee Convention and the 1967 Protocol, as well as the OAU Refugee Convention. The Refugees Act (no. 130 of 1998) and accompanying Regulations (2000) instituted a progressive legal framework governing the reception, status determination, and treatment of asylum seekers. They outlined procedures that accord both with international standards and with domestic administrative justice guarantees.

The Refugees Act and accompanying regulations map out the application process and its procedural guarantees. Asylum seekers must approach one of the country’s five refugee reception offices to lodge their application. At the reception office, applicants have fingerprints taken, fill out their eligibility forms, and receive a Section 22 asylum seeker permit. They then have an interview with a refugee status determination officer (RSDO), who makes a decision regarding their status. If the decision is negative, asylum seekers are entitled to launch an appeal that is heard by the Refugee Appeal Board.

The Refugees Act requires the Director-General (DG) to set up as many refugee reception offices as deemed necessary for the purposes of the law. In line with these purposes, the laws and regulations require that
the status determination interview generally take place within 30 days (1 month) and a decision generally be issued within 180 days (6 months) of launching the application.\textsuperscript{2}

The Refugee Reception Officer

The Act and Regulations also lay out the duties of the refugee reception officer, which include:

- ensuring the provision of adequate interpretation;
- issuing an asylum seeker permit that includes written notice to appear before a refugee status determination officer on a specified date;
- renewing the permit every time the asylum seeker appears as scheduled (generally every three months); and
- assisting the applicant in completing the application form.

Section 3 of the Act requires that confidentiality be maintained at all times, while Section 24 demands that the constitutional right to administrative justice be observed.

Implementation Problems and Initiatives

Unfortunately, the Department of Home Affairs (DHA), as the implementing agency, has struggled to give effect to the guarantees outlined above. These problems have been well-documented,\textsuperscript{3} but never fully explored. This report represents the first empirical measurement of the scope and repercussions of the implementation deficiencies in the refugee reception and status determination system.
The DHA's failure to implement its legal obligations has a significant effect on the lives of asylum seekers, who must be in possession of a valid Section 22 asylum seeker permit in order to be free from arrest and deportation/refoulement, and to access work, study and other opportunities. This research identifies more concretely the extent to which problems in the refugee protection system leave many asylum seekers vulnerable as they struggle to get legal status in an overburdened and underperforming system.

The Turnaround Strategy and the Asylum System

In 2008, the DHA initiated an R800-million Turnaround Strategy to reform departmental practices in all areas, including the asylum application system. It is likely that these reforms will improve some elements of service delivery in the asylum system, particularly with respect to the processing of new applicants. However, it is essential to ensure that attempts to transform service delivery in the reception system do not have unexpected negative consequences.

The survey results discussed in this research highlight problem areas that the Turnaround Strategy was not designed to address. These require special attention to ensure that efficiency measures do not reduce quality and protection, and that resources remain fairly distributed between newcomers and those already enrolled in the system. The research also highlights communication failures, omissions in provision and illegal practices that predated the Turnaround Strategy and must be urgently addressed and continually monitored.
Demographics

Demographics of the RRO Stage Respondents

The respondents surveyed at refugee reception offices (RROs) were predominantly male.

73% MALE 27% FEMALE

Gender Distribution of RRO-Stage Respondents

In line with current trends, most were nationals of Zimbabwe or the Democratic Republic of Congo (DRC), as shown below.

<table>
<thead>
<tr>
<th>Nationality</th>
<th>% of Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Zimbabwe</td>
<td>42%</td>
</tr>
<tr>
<td>DRC</td>
<td>27%</td>
</tr>
<tr>
<td>Other</td>
<td>31%</td>
</tr>
</tbody>
</table>

Main Nationalities of RRO-Stage Respondents

The average age of respondents was 28. Most respondents were between the ages of 21 and 35, with the largest proportions falling into the following age groups:

<table>
<thead>
<tr>
<th>Age Group</th>
<th>% of Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-25 years old</td>
<td>26%</td>
</tr>
<tr>
<td>26-30 years old</td>
<td>33%</td>
</tr>
<tr>
<td>31-35 years old</td>
<td>20%</td>
</tr>
</tbody>
</table>
Respondents were asked to list up to three languages spoken. Those listed most frequently included English, Shona, French, Swahili, Ndebele and Lingala. Twenty-two percent of respondents did not list English as one of their languages.

Demographics of the RSDO-Stage Respondents

In the survey of the RSDO phase, the gap between female and male respondents was five percent greater, with males representing 78 percent of the sample.

78% MALE

22% FEMALE

Gender Distribution of RSDO-Stage Respondents

The same nationalities were represented in the RSDO-stage survey, but the proportion of DRC nationals increased to 44 percent while Zimbabweans decreased to 18 percent.

Zimbabwe 18%
DRC 44%
Other 38%

Main Nationalities of RSDO-Stage Respondents

One possible explanation for this change is that there is variation in treatment among nationalities. There arises the need to investigate whether those migrant populations viewed with alarm by South Africans, or
perceived (often incorrectly) to be economic rather than humanitarian migrants, confront greater obstacles in the application process.

The average age of respondents was 30 years old. The largest age groups were the same as those seen among RRO-stage respondents:

<table>
<thead>
<tr>
<th>Age Group</th>
<th>% of Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-25 years old</td>
<td>17%</td>
</tr>
<tr>
<td>26-30 years old</td>
<td>33%</td>
</tr>
<tr>
<td>31-35 years old</td>
<td>27%</td>
</tr>
</tbody>
</table>

The range of languages spoken resembled that of RRO-stage applicants, although Kirundi/Kinyarwanda also featured here. Nineteen percent of respondents did not list English among the three languages spoken, a decrease of three percent from the RRO stage. Considering the research findings on the limited availability of translation services within the asylum system, one possible explanation for this decrease is that applicants who do not speak English are unable to negotiate the system and simply drop out.

The data presented in the following sections examines multiple stages of the asylum seeker process, beginning with the route to refugee reception: respondents reasons for flight and their entry into South Africa. Following this, the research tracks asylum seekers experiences of accessing the reception offices and service delivery inside the offices. Finally, it looks at some of the effects of the problems with access and services, including inability to renew documentation and vulnerability to arrest.
Challenging assumptions about asylum seekers

The findings of the research challenge some of the common assumptions about asylum seekers, particularly the notion that the overwhelming majority of the individuals applying for asylum are in fact economic migrants seeking to legalise their stay in South Africa. The research revealed an alternative picture, in particular:

- The availability of asylum was not a major pull factor to South Africa.
- The majority of respondents did not cite economic circumstances among the reasons for their migration.

Reasons for Migration

The research revealed that people fleeing their home countries seldom know that they can formally seek asylum in South Africa. Only 32 percent of respondents in the RRO-stage survey knew about the possibility of seeking asylum before leaving their home country, while 68 percent were unaware of this option.

The majority of respondents indicated that they fled their countries for reasons that corresponded with the proper grounds for seeking asylum. Only 29 percent cited economic circumstances as the sole reason for migration, and 58 percent of respondents did not refer to economic circumstances at all.

Only 32 percent of respondents knew about the possibility of seeking asylum before leaving their home country.

Of those asylum seekers who did not refer to economic motivations, war and political conflict were the most common reasons for migration to
South Africa, followed by political circumstances and then ethnic persecution, discrimination or intolerance. These results are summarised below.  

![Pie chart showing reasons for flight]

- 54% War/conflict
- 26% Ethnic/tribal persecution/discrimination
- 14% Political reasons
- 5% Religious persecution/discrimination
- 1% Gender

A large proportion of asylum seekers (42 percent) listed economic circumstances in combination with the above reasons for flight. This shows a more complex casual picture of the factors leading people to leave their home countries, and the mere mention of economic factors, if cited together with other reasons, should not be a criterion for exclusion from refugee status. To say that these migrants are coming to South Africa for economic opportunities misrepresents their reasons for flight. Indeed, based on the above results, the majority of asylum seekers cannot be characterised primarily as economic migrants.

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**Border Crossings**

Most respondents (76 percent) entered South Africa by land through the border with Zimbabwe. Only 58 percent of those entering through that border, however, were Zimbabwean. The Mozambican border was the
second most common entry point, but it accounted for only 12 percent of entries. Half of respondents were not carrying any documents when they crossed the border, while 36 percent were carrying a passport. Entry was primarily by bus or truck, with smaller numbers entering by car, air or on foot.  

<table>
<thead>
<tr>
<th>Mode of Transport</th>
<th>Percentage of Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bus</td>
<td>47%</td>
</tr>
<tr>
<td>Truck</td>
<td>20%</td>
</tr>
<tr>
<td>Car</td>
<td>12%</td>
</tr>
<tr>
<td>Air</td>
<td>10%</td>
</tr>
<tr>
<td>On foot</td>
<td>8%</td>
</tr>
</tbody>
</table>

Most respondents failed to take advantage of asylum protection when they first entered South Africa, suggesting a lack of understanding of the system. Slightly more than half of respondents did not enter South Africa through a formal port of entry. Of those asylum seekers who did enter the country through a recognised border post or airport, only a quarter (24 percent) informed the border officials that they wished to claim asylum. The remainder presumably sought entry via alternative legal means.
The law requires that individuals who indicate an intention to seek asylum at the border be given a 14-day transit permit. However, 20 percent of respondents who declared this intention did not receive such a permit.

Other Rights Abuses at the Border

Seventeen percent of respondents reported that they had been hurt, robbed, or deceived while crossing the border. Of these, 97 percent were informal crossers. Only two asylum seekers in the survey reported being harmed during a formal border crossing, but it is a matter of concern that both incidents involved state employees.

The chart below illustrates the main perpetrators of abuses experienced during border crossing. A substantial number of these abuses were committed by state actors, including police, army and immigration officers.

![Chart showing the main perpetrators of abuses experienced during border crossing]

Main Perpetrators of Abuses Experienced during Border Crossing

Their lack of visibility to the state renders informal border crossers vulnerable to a variety of abuses; including:
exploitation by smugglers;

extortion by corrupt officials;

assault by criminal elements who specifically target border crossers (widely known as amagumaguma); and

deportation before being able to lodge an asylum application.

Although not all the rights abuses that occur during border crossings relate directly to the refugee reception and status determination system, they all relate to refugee protection, which is the central aim of the asylum system. The dangers faced by informal border crossers in particular expose as a myth the idea that undocumented migrants enjoy easy access to South Africa. Instead, these findings reveal that many of these immigrants face a variety of rights abuses and struggle considerably to reach South Africa.

Violations of Rights and the Law

This general approach is likely a contributing factor to the general failure to adhere to the law and respect the rights of asylum seekers, as uncovered by the survey. Key findings include:

- The refugee reception system often fails to fulfill its mandate to asylum seekers. Examples are under-provision of interpreters and failure to provide notice of applicants' interviews.

- Reception offices continued to engage in practices that had been previously challenged and ruled unconstitutional in court. These include the issuing of appointment slips and the application of work and study restrictions to asylum seekers' permits.
• Reception officers did not adequately communicate the details of the asylum application process or inform applicants of their rights, effectively denying administrative justice to asylum applicants.

• Interviews were often short and cursory, denying applicants an opportunity to fully explain their asylum claim.

• Respondents recounted a number of inappropriate questions asked and statements made during their status determination interviews, demonstrating anti-immigrant prejudice and a lack of professionalism among status determination officers.

Constitutional Issues and Human Rights Concerns

From all indications, the protection of refugees and asylum-seekers in South Africa encounters real challenges in the area of discriminatory practices against this class of persons within official and unofficial spheres, with questions of access to housing, access to education, access to jobs, and access to health care. Yet, it must be borne in mind that the emergence of a democratic South Africa from the ashes of apartheid occurred in tandem with the establishment of a constitution with numerous groundbreaking human rights provisions. The Bill of Rights entrenched in Chapter 2 of the South African Constitution, 1996 (RSA Constitution), contains wide-ranging provisions on the beneficiaries and duty-bearers of each right. In its unique character, the Constitution secures its guaranteed rights for "everyone"; a term already interpreted as including "every citizen and every alien in the national territory" of South Africa.

Extrapolating from the letters and spirit of the South African Constitution of 1996, therefore, it is submitted that refugees and asylum-seekers are as entitled to human rights protection as all other South
Africans, including equality before the law, human dignity, personal freedom and security, privacy, due process of law, freedom of expression and association, fair labour practices, adequate housing, health care, sufficient food and water, and social security;¹¹ except within justifiable limitations which must not exceed the limits "reasonable and justifiable in an open and democratic society".¹²

In particular regard to detentions, it is noteworthy that the Constitution vests in everyone who is detained, the right "to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment."¹³

Apart from the vital provisions in the Constitution that secure the rights of refugees and asylum-seekers, an elaborate web of international and regional human rights provisions exists to protect these categories of people, many of which are binding on South Africa as a state party.¹⁴ It is regrettable, however, that while South Africa enjoys worldwide acclaim as a country with a high human rights profile, our discussions thus far demonstrate that these rights have generally been more honoured in breach than in observance when they relate to refugees and asylum-seekers.¹⁵

It is submitted that human beings who migrate to foreign lands, whether voluntarily or involuntarily, whether with or without their families, do not cease to be human beings endowed with inalienable and fundamental human rights. Almost a decade after the international community adopted its "All Human Rights for All" slogan,¹⁶ it is only logical for all well-meaning states and peoples to assert the rights of migrant workers as human rights. The strategic parameters of asserting those rights are therefore worthy of

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exploration in both the broader and narrower contexts of this paper. It is to this that we now turn.

South Africa’s Refugee Challenges

Towards a Rights-Based Approach without doubt, every country faces its peculiar challenges in the implementation of legal standards relating to foreigners. South Africa is not and cannot be an exception; after all, this is just one of the difficulties indirectly engendered by the notion of state sovereignty.\(^{17}\) However, the international community encourages states to follow best practices in the implementation of these standards.

In assessing South Africa’s performances in the protection of refugees and asylum-seekers, this research has not ignored the dark legacy of the apartheid era whose consequences have remained till the present and casting shadows on the future.

In light of the critical challenges highlighted, therefore, this research canvasses the adoption of a rights-based approach in the formulation and implementation of laws and policies regarding these matters. A rights-based approach to migration laws and policies has the capacity to strengthen the normative agenda for labour migration policies in an objective way and will reflect universally acceptable tools and operational guidance which are pivotal in justifying policy measures and informing their design, implementation and evaluation.\(^{18}\) The other benefit in applying a rights-based approach to the question of refugees and asylum-seekers is that it subdues the impact of unscrupulous state officials and organized syndicates who would rather indulge in exploitative cross-border migration practices. Invariably, when this becomes a mutual approach among the generality of states, a veritable synergy emerges for more effective monitoring of the implementation of migration laws and policies in general.
Flowing from the above, therefore, the specific proposals in this research are that:

- Even though this recognizes the ongoing collaboration between the Government of South Africa and the UNHCR in the efforts to establish a policy culture that conforms to global best practices, to ensure that these efforts materialise in practice, one inter-departmental agency should be created to include the Departments of Justice, Foreign Affairs, the South African Police Services, Welfare, Education, Health, Labour, and of course, Home Affairs. The present approach where only the Department of Home Affairs represents the entire government machinery is inadequate if the issue of refugees and asylum-seekers is to be operated within the parameters of international human rights law.

- More civil society groups and other non-governmental organisations should take up the challenge of information gathering, documentation and monitoring of all matters pertaining to the implementation of international refugee law standards in South Africa. The current trend where only few notable groups are vigorously campaigning for refugee rights is undesirable.

- Commendable as the inclusion of human rights in the curricula of teaching at all levels of education in the country may appear, the virtual oblivion of the refugees and asylum-seekers component is undesirable and should be rectified at interdepartmental policy level.

- Similarly, there should a vigorous mass education about the need for ordinary South Africans to treat African foreigners, whether refugees, asylum seekers, expatriates and their families with respect and
dignity. In this regard, the police should begin to demonstrate efficiency, impartiality and objectivity in all matters relating to the maltreatment, harassment or violations of the human rights of these persons by South African citizens.

While this research recognizes that a human rights approach to the global challenges of refugees and asylum-seekers would be inadequate in itself alone, the rights-based thrust of this research is to outline the trajectory for democratic, people-oriented, inclusive and objective legal and policy planning on the subject in South Africa. The rights-based approach works in tandem with international human rights standards, international migration monitoring initiatives and other development targets, focusing on the twin issues of poverty alleviation and human development. With regard to refugees and asylum-seekers, all human rights are to be perceived as components of holistic response to the pressures of African states as well as platforms for managing their consequences.

As states of twenty-first century Africa experience more conflicts, natural disasters, political turmoil, repression and downward economic turn, so will the challenges of more stable and stronger neighbouring states be. South Africa's experience with the influx of refugees and asylum-seekers is neither one that can be wished away nor tackled by a rigid regime that concentrates on exclusion and expulsion. Such approach only breeds more clandestine culture of illegal ingress.

An effort has been made to show that dealing with refugees and asylum-seekers as hapless victims of circumstances needing humanitarian help as opposed to addressing the plight of solely through immigration mechanisms will be the appropriate path for South Africa to follow.
All the ideas, arguments and approaches that have been canvassed in this research are a modest intellectual response to President Thabo Mbeki’s summons to all and sundry to engage the critical issue of immigration in South Africa in continuous dialogue fashion. At the passage of the Immigration Bill in May 2002, the South African President had admonished that:

We have clearly to focus on the matter of what kind of immigrant we want in South Africa so that we are better able to address the challenges that we face. The Immigration Bill may not address all these matters that we wanted... We have to look carefully at what has been agreed... and if there are elements there which are contrary to what we said... then we should correct it.\textsuperscript{20}

This research is just one of such responses aimed at addressing the web of issues involved. Far from being an ex cathedra pronouncement on all the concerns that should guide the formulation of appropriate national legal and policy responses on this subject in South Africa.

South Africa’s pro-human rights constitution, stable government, democratic institutions, independent judiciary, and strong economy mean it has great potential to become a global human rights leader. However, government efforts to realize this potential at home have been inconsistent, and recent trends suggest possible constriction of civil and political rights. In addition, inadequate policies and poor implementation of good ones has slowed the realization of social and economic rights for many South Africans.

In the international arena, South Africa’s government has refrained in recent years from condemning abuses in China, Sri Lanka, Iran, Burma, Sudan, and the Democratic Republic of Congo, dashing hopes that it would
be a reliable partner in promoting human rights. South Africa’s foreign policy role will be in the international spotlight again following its assumption of a seat on the United Nations Security Council on January 1, 2011.

Freedom of Expression

Two separate but interrelated developments in 2010 led to widespread criticism and concern that the government is trying to limit freedom of expression. Ahead of its policy conference in September 2010 the ruling African National Congress party (ANC) resurrected a 2007 resolution pushing for the establishment of a Media Appeals Tribunal, arguing that media cannot be counted on to regulate themselves, and that “freedom of the press is not an absolute right and must be balanced against individuals’ rights to privacy and human dignity.” The ANC’s proposal seeks to establish a regulatory mechanism accountable to the ANC-dominated Parliament, which would constitute a back-door path to censorship and suppression of dissent.

On August 2010 Mzilikazi Wa-Africa, a prominent journalist with the Sunday Times who had exposed corruption by officials, was arrested without a warrant by 20 policemen in six vans. He was then taken to a secret location in Mpumalanga and interrogated at 2 a.m. without a lawyer. The police also searched his home and took notebooks without a search warrant. Wa-Africa was eventually released on R5,000 (US$725) bail after his newspaper went to the High Court; the charges cited upon his arrest have since been dropped. The incident heightened fears that such politically motivated intimidation of the press could become the norm if the ANC-proposed tribunal is established.

In April 2010 the Department of State Security tabled a draft of the Protection of Information Bill (PIB) for parliamentary consideration. In 2008
Parliament first tabled and rejected the bill which aims to replace the existing, expansive 1982 apartheid era law that prevents and penalizes disclosure of state secrets for being too draconian. Parliament instructed the Department of State Security to revise the bill in line with the constitution. But when it was re-presented in July 2010, offending elements of the bill had been retained and even made harsher.

The PIB currently gives the government sweeping powers to classify information and impose jail terms of up to 25 years for publishing classified information. It sets no limits on which officials or state bodies can classify information, and has no clear criteria for classifying information. The bill also extends the protection of secrecy to commercial entities, exempts intelligence agencies from scrutiny, and imposes serious punitive measures against those who disclose information.

If enacted as currently written, the bill would seriously impede the free flow of information, erode the right of access to information, and violate key constitutional provisions. The Right to Know Campaign, which represents a broad spectrum of civil society groups, has pressured to squash the bill in its current form. Parliament gave the adhoc committee tasked with finalizing the bill until January 28, 2011 to incorporate all inputs and present a final draft.

Refugees and Migrants

On May 2010 the Consortium for Refugees and Migrants in South Africa (CoRMSA) reported 10 incidents of xenophobic violence in Siyathemba, Atteridgeville, Mamelodi, Orange Farm, and Sasolburg, where large crowds looted foreign owned shops.
deaths per 1000 live births in 2007, up from 59 deaths in 1998, while the infant mortality rate was 53 deaths per 1,000 live births in 2007, compared to 54 in 2001.

South Africa also has one of the world’s largest populations affected by HIV/AIDS, with more than 5 million people living with HIV, and more than 1 million needing AIDS treatment. The country’s response to the epidemic has significantly improved under Health Minister Aaron Motsoaledi. On April 2011 the government launched the HIV Testing and Counseling campaign (HTC), which aims to see 15 million people accepting voluntary HIV testing and counseling by 2011, and 1.5 million receiving antiretroviral treatment by June 2011. However, weaknesses in South Africa’s public health system are already hampering the campaign’s success.

International Role

South Africa plays a significant role on the African continent, where it is one of the largest contributors to peacekeeping missions and a key player on regional bodies, such as the African Union and the Southern African Development Community.

South Africa continues to drive mediation efforts in Zimbabwe, which have taken a bolder approach toward President Robert Mugabe under President Jacob Zuma’s stewardship. Yet South Africa has not publicly pushed Zimbabwe’s coalition government on key rights reforms and the need to end ongoing violations. It failed to condemn the violence that erupted in Zimbabwe during September’s constitution outreach process, and neglected to speak out against abuses committed in the Marange diamond fields in eastern Zimbabwe, despite ample evidence that the Zimbabwean military is using forced adult and child labor.
At a high level meeting on Sudan, organized by UN Secretary General Ban Kimoon, International Relations Minister Maite Nkoane-Mashabane appealed for international support to guarantee a peaceful referendum outcome in January in South Sudan and Abyei. South Africa has also supported the work of the AU Panel on Sudan and contributed to the joint AU-UN operation in Darfur (UNAMID).

In 2010 South Africa lobbied aggressively and successfully to regain a non permanent seat at the UN Security Council, which will allow it to exert influence on key international issues. Its past performance in multilateral institutions has been disappointing from a human rights perspective. As a member of the Security Council in 2007-2008, South Africa opposed a resolution condemning abuses by the military junta in Burma, while at the UN Human Rights Council in 2007, South Africa attempted to block discussions of rights abuses in Zimbabwe and voted to end monitoring of abuses in Iran and Uzbekistan. South Africa’s seat on the UN Security Council beginning in 2011 affords the country an opportunity to translate its constitutional commitment to human rights into critical involvement on international issues where protecting human rights is a central concern.

Notification of Rights and Obligations

Section 24 of the Refugees Act requires that the constitutional guarantee of administrative justice be observed in the asylum application process. Specifically, DHA officials must ensure that an applicant fully understands the asylum procedures, the accompanying rights and obligations, and the evidence presented. The failure to observe these guarantees may have a serious effect on the fairness and subsequent outcome of an asylum seeker’s claim.
DHA practices suggest that the procedural rights of applicants are being sacrificed in exchange for the speed afforded by minimal service requirements. Accordingly, 68 percent of RRO-stage respondents report not having had the application process explained to them. Provision of information about the application process differed substantially across offices, as illustrated in the chart below. Although only half of respondents received an explanation at the Durban RRO, this performance outstripped that of the other offices.

![Bar chart showing percentage of respondents who received an explanation of the application process.]

**Percentage of Respondents who Received an Explanation of the Application Process**

Apart from contributing to the general confusion of applicants, failure to explain the asylum process leads to important omissions that can prejudice the outcome of status determination and lead to an increased burden at the appeal stage. For instance, 95 percent of applicants in the RRO-stage survey were not told that they were allowed to have a lawyer present at their RSDO interview.

Moreover, failure to understand the process may prevent asylum seekers from fully disclosing their reasons for flight. The overwhelming majority of respondents (69 percent) were not aware that the answers they gave during the application process would not be shared with any person or government official outside of the reception office. For asylum seekers
fleeing government persecution, fear that their answers will be reported back to their government may have a chilling effect, inhibiting them from sharing their real reasons for seeking asylum and resulting in a denial of their claims.

The lack of proper notification of rights and obligations thwarts the goals of the asylum system by preventing accurate identification of those genuinely in need of protection. Better communication of rights and procedures is needed in order to realize the protections envisioned in the asylum seeker system.
REFERENCES

1. Section 3 of the Regulations.

2. Section 3 of the Refugees Act and Section 4 of the Regulations.


6. Percentages do not total 100% because respondents were allowed to provide up to two reasons.

7. These results assume a single form of transport and do not account for those who used more than one mode of transport.


11. 9, 10, 12, 14, 16, 18, 23, 26, 27, 33, 34 and 35 RSA Constitution 1996.

13. Section 35 (2) RSA Constitution 1996.

14. We have examined these earlier on this work. However, for a very recent analytical discussion of the implication of South Africa's internal practices and its obligations under international law, see Human Rights Watch, Keep Your Head Down, Supra note 49.


16. This is the popular slogan adopted by the World Social Forum in 1998 in challenging the multifarious socio-economic issues that have been brought into focus by civil society groups in the advent of globalization. For an insight into the moral appeal and force of his slogan, see Press Release, Amnesty International, World Social and Economic For a: All Human Rights for All, Everyone's Responsibility (Jan. 23, 2003), AI Index: Act 79/002/2003.

17. Katz, supra note 2, ibid.

