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## **Constructing and Contesting State-Urban Borders: Litigation over Refugee Reception Offices in Post-apartheid South African Cities**

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### **Abstract**

The majority of asylum seeker and refugees around the world currently reside in cities, but continue to face issues of mobility, documentation, and rights. While research has looked at designated buildings and centres as a type of border excluding refugees and asylum seekers in cities, underlying contention over the location and presence of specific buildings and physical structures has not been fully examined. Therefore, I analyse how various state and non-state actors have challenged the location and presence of certain buildings and physical structures designated for refugees and asylum seekers in cities. Specifically, I review the past two decades of legal case records, supplemented by interviews and field observations, around legal and political contention over the relocations and closures of Refugee Reception Offices (RROs) in post-apartheid South African cities. I argue that RRO relocations and closures highlight the objectives of head state officials, though in relation to ambivalent interests and litigation by various actors over the jurisdiction of specific buildings, neighbourhoods, and cities. I develop the

concept of *state-urban borders* to highlight the constitutive process of RROs as contested state borders within urban spaces contributing to broader discussions on the multiplicity and contingency of borders within cities.

Key Words: refugees and asylum seekers; borders; litigation; cities; South Africa

## **Introduction**

The majority of asylum seekers and refugees currently live in cities (UNHCR 2019). However, states and other actors often seek to restrict the mobility, documentation, and rights of asylum seekers and refugees within and across cities. While the centrality of state borders and institutions for differentiating individuals and controlling mobility is widely recognized (cf. Torpey 2000), there is increasing attention to internal administrative and spatial borders within countries and cities (Mbembe 2000; Mezzadra and Neilson 2013; Agier 2016; Yuval-Davis et al. 2019). Internal borders located within designated urban spaces and specific buildings highlight the role of urban geographies, territories, and politics in structuring exclusion and participation among asylum seekers and refugees (McNevin 2010; Maestri and Hughes 2017). An emerging number of studies have focused on the implications of designated buildings and physical structures, such as accommodation centres, in excluding and marginalizing asylum seekers and refugees in cities (Fontanari 2015; Casati 2018; Mayer 2018; El-Kayed and Hamman 2018). However, there has been less attention to potential contention and litigation over the location and presence of designated buildings and physical structures for refugees and asylum seekers, especially concerning access to documentation and legal status.

Therefore, in this paper, I look at how various state and non-state actors have challenged the location and presence of buildings and physical structures designated for refugees and asylum seekers in cities. I look at legal and political contention over the past two decades of

openings, relocations, and closures of Refugee Reception Offices (RROs) in post-apartheid South African cities. RROs have been contentious urban spaces for the Department of Home Affairs (DHA), civil society organisations, local businesses, and asylum seekers and refugees resulting in litigation against the various relocations and closures of these offices. Building on Agier's (2016) concept of *borderlands*, I argue that RROs represent the temporal, spatial and social reproduction of contested borders within urban spaces. I develop the concept of *state-urban borders* to highlight the intersection of state institutions and contested urban spaces in relation to these offices. RROs represent state borders as administrative offices run by the Department of Home Affairs (DHA) to process and determine legal status of asylum seekers and refugees. These offices also represent urban borders situated within particular urban buildings, neighbourhoods, and municipalities with their own interests, institutions, and actors. Therefore, RROs represent *state-urban borders* that complicate binaries between national and local territories, state and urban institutions, and public and private actors (cf. McNevin 2010).

This paper contributes to broader discussions on the importance of local spaces, institutions, and actors in influencing administrative practices, contested policies, and state borders, often overlooked by political models on international migration focused on national interest groups (cf. Freeman and Tandler 2012). Additionally, local business litigation concerning the location of RROs presents an additional form of urban politics that differs from local actors and ordinances directly targeting undocumented migrants (cf. Varsanyi 2008). Therefore, I analyse RROs as state-urban borders to highlight the constitutive process of defining and contesting internal borders for refugees and asylum seekers across various actors, institutions, and spaces in relation to the objectives and interests of head bureaucratic officials. By focusing on litigation related to relocations and closures of RROs over the past two decades, I

show how competing claims over specific buildings, neighbourhoods, and municipalities have influenced the ambivalent and inconsistent management of RROs. RRO relocations and closures have important implications for refugees and asylum seekers and related policies, but also for broader issues of jurisdiction over internal borders and state institutions within urban spaces.

## **Background and Overview**

Post-apartheid South Africa has an ambivalent and contradictory combination of robust legal protections and restrictive policies for accessing asylum in cities (Fassin, Wilhelm-Solomon, and Segatti 2017). Under the 1998 Refugees Act, persons applying for asylum in the country are considered “asylum seekers” with Section 22 permits, until their applications are successfully adjudicated and they become “refugees” with Section 24 permits. Both asylum seekers and refugees have been provided the right to work, study, and access public institutions. In the general absence of refugee camps, Refugee Reception Offices (RROs) were set up in major cities to administer documents and process asylum applications. Because applicants were granted asylum seeker status while their asylum applications encountered significant delays, the country quickly built up some of the highest numbers of registered asylum seekers in the world, the majority of applicants coming from other countries in the region and continent, and to a lesser extent from Asia. In 2008-2010, new asylum seeker applications peaked over 200,000 applications each year, primarily from Zimbabwe during a period of political and economic crisis. By the end of 2015, the UNHCR listed over one million registered asylum seekers, the majority with pending asylum applications, compared to only 121,645 registered refugees.

Just as asylum applications were peaking, some of the busiest RROs in the country were being closed down. After the implementation of the Refugees Act in 2000, there were RROs in Johannesburg, Cape Town, Port Elizabeth, Durban, and Pretoria. By 2012, the Johannesburg

RRO had completely shut down and RROs in Cape Town and Port Elizabeth were no longer accepting new asylum applications. RROs open for new asylum seekers were now only in Pretoria, Durban, and since 2008 in Musina near the Zimbabwean border.<sup>1</sup> Combined with extensive corruption, high rejection rates over 90 percent, and restrictive policy and legislative reforms, RRO closures have made it increasingly difficult to access asylum permits and refugee status. By 2018, UNHCR numbers totalled 184,203 registered asylum seekers and DHA statistics listed around 24,000 new asylum applications in 2017.

RRO operations, relocations, and closures have faced resistance from legal organisations representing asylum seekers and refugees and civil society organisations, as well as local businesses contesting the location of RROs in their nearby vicinities. Legal organisations such as Legal Resources Centre (LRC) and Lawyers for Human Rights (LHR) have pressured the DHA on issues of access, rights, and capacity at RROs, including finding office locations to accommodate the numbers of applicants. Additionally, local businesses with no direct interest in migration politics have drawn on existing zoning and nuisance regulations to litigate against the existence of RROs in their neighbourhoods. While initially opposing local business litigation, the DHA subsequently co-opted court orders against urban RROs to close down these offices in support of broader policy shifts to move asylum management to land borders. Litigation by civil society and legal organisations has subsequently focused on the re-opening of RROs in specific cities where they were closed down. However, the DHA has shown significant autonomy from legal institutions through the non-compliance of court orders (cf. Landau and Amit 2014). For example, the department only opened a new RRO in Port Elizabeth in 2018, despite court orders in 2015, and has not yet to open a new RRO in Cape Town, in spite of court orders in 2017. In the rest of this paper, I further discuss the concept of state-urban borders, provide an overview of

asylum administration in South African cities, and analyse litigation over contested RRO buildings, neighbourhoods, and cities to illustrate the constitutive and ambivalent process of RROs as contested state-urban borders.

### **Towards a Conceptual Account of State-Urban Borders**

Concurrent with the urbanization, criminalization, and securitisation of asylum seekers and refugees globally (Dauvergne 2008; Fassin 2011; Sanyal 2012), has been a growing interest in the decentring and deconstructing the idea of borders (Mbembe 2000, Mezzadra and Neilson 2013, Agier 2016; Yuval-Davis et al. 2019). For example, Agier (2016: 18-19) defines various *borderlands* based on their temporality – they are subject to change, expand, or contract across time and space; sociality – they depend on mutual recognition and reproduction of social actors; and spatiality – they demarcate boundaries of not only exclusion and division, but also interaction and potential inclusion. Therefore, state borders not only exert violence against those who are formally excluded, but those who are partially included through persisting differentiation and corresponding legal, social, economic, and racial inequalities, hierarchies, and institutions within and across countries (Mezzadra and Neilson 2013; Yuval-Davis et al. 2019). Recognition of internal borders situated within urban spaces further highlights the role of urban geographies, territories, and politics in structuring exclusion and participation among asylum seekers and refugees (McNevin 2010; Maestri and Hughes 2017).

These studies highlight the existence of multiple state borders in addition to territorial border crossings, including externalised and privatised processing and detention centres (cf. Gammeltoft-Hansen 2011), official and de facto refugee camps and settlements, and local institutions such as schools and health facilities that increasingly determine the inclusion and exclusion of persons (cf. Yuval-Davis et al. 2019). These spaces and institutions are often

informed by racialised and politicised rhetoric and enforcement of internal borders designed to remove or limit the inclusion of asylum seekers and refugees from cities or certain urban spaces (Fabós and Kibreab 2007; Yacobi 2010; Sanyal 2017). In the U.S., local actors have used a variety of municipal ordinances and by-laws to exclude undocumented migrants from local housing and labour markets (Varsanyi 2008). Case studies have looked at official spaces designated for asylum seekers and refugees in cities, including accommodation centres in Western Europe (Fontanari 2015; Casati 2018; Mayer 2018; El-Kayed and Hamman 2018). These studies have highlighted how these spaces become sites of exclusion, differentiation, and discrimination, particularly under conditions of increasing anti-foreigner sentiment. Studies in the Global South have look at the role of municipal authorities in limiting freedom of movement through service provision based on local residence (Baban, Ilcan, and Rygiel 2017; Şimşek 2018), or local curfews (Janmyr 2016). These studies have shown how official institutions influence the livelihoods and subjectivities of refugees and asylum seekers in cities, but have not fully analysed local contention over the presence and location of designated buildings and offices (cf. Sandvik 2012).

An emphasis on official institutions may overlook other relevant actors and spaces that can play greater roles in the livelihoods and protection of asylum seekers and refugees and urban residents in general (Campbell 2006; Grabska 2006; Simone 2009; Landau and Amit 2014; Lyytinen 2015; Kihato and Landau 2016). In various African cities, personal networks, previous experience residing in urban contexts, and the length of time spent in a particular neighbourhood are often more important factors for protection and livelihoods than official legal status (Landau and Duphonchel 2011). The majority of persons regardless of legal status or nationality may be relative newcomers facing precarious and uncertain situations in increasingly diverse and



growing cities (Landau and Freemantle 2016). Consequently, rather than legal protections, formal rights, or official integration policies, a wide variety of local and non-state actors – e.g., local businesses, associations, and residents – and personal interactions and encounters with others have important implications for the uncertain and tenuous protection of asylum seekers and refugees (Landau and Amit 2014). These observations have often focused on implications for individual protections and various institutions in Global South cities (cf. Darling 2017), and provide important insights when thinking about RROs as contested state-urban borders located in specific buildings, neighbourhoods, and cities.

Building on these studies, I develop the concept of *state-urban borders* to highlight the intersection of state institutions and contested urban spaces and buildings. State-urban borders represent the temporal, spatial and social reproduction of borders, as specific urban buildings are transformed into official offices for refugees and asylum seekers. These urban physical structures represent state borders as refugees and asylum seekers attempt to access specific buildings and experience various degrees of exclusion and inclusion at these sites. Physical and administrative changes occur practically overnight at these locations for asylum applicants and neighbouring residents and actors. The sudden emergence of buildings and spaces designated for asylum seekers and refugees in urban areas has at times led to political and legal contention as various actors act to define and contest borders within urban spaces. Such contention may lead to relocations and closures of offices, leading to further disruptions and transformations for asylum seekers and refugees, state policies and operations, and urban spaces and localities.

### **Data and Methods**

The paper is based on archival and field research collected in South Africa in 2017-2018 with a particular focus on litigation. Litigation has become an increasingly important tactic in contesting

restrictive asylum policies globally and is a useful resource in looking at the relative autonomy between executive and judicial institutions (cf. Hamlin 2014). Securitised policies and human rights abuses by the DHA and police have led to various legal challenges from a robust network of civil society and legal organisations in South Africa, often resulting in adversarial relations between the department and these organisations (Segatti 2011). An analytical focus on litigation is also central to understanding local business resistance against RROs and non-compliance of court orders by the DHA. I have compiled an archive of litigation related to the relocations, closures, and re-openings of RROs from the early 2000s to 2019, consolidating case records from provincial high courts, the Supreme Court of Appeal (SCA), and the Constitutional Court.<sup>2</sup> Legal case records were obtained online or provided by provincial court archives, legal professionals, and civil society organisations. These publicly accessible records consisted of affidavits from involved parties, heads of arguments, supplementary documents and records, and final court judgments. Case records provided a robust and relatively understudied archive of historical materials central to understanding various legal challenges against RROs.

Legal records were supplemented by stakeholder interviews with representatives from international and domestic NGOs and refugee-based organisations, local businesses, legal professionals, and former RRO management. I also conducted field observations during legal proceedings and outside the current Cape Town RRO building, and I made additional visits to all RRO locations, either currently open or closed across the country. This research was supplemented by archival research from parliamentary portfolio meetings, official legislation and regulations, DHA press releases, and NGO records. Interviews, field observations, and archival research provided verification and clarification of material found in case records and on current issues concerning RROs. Data was organised across three analytical categories: a) civil society

litigation related to the relocation of RROs to improved locations; b) local business litigation related to the closure of specific RRO buildings; and c) civil society litigation related to the re-openings of previously closed down RROs. I developed a critical narrative based on these categories to highlight significant legal cases and turning points in the development and transformation of RRO administration and locations (cf. Abbott 1983; Sewell 1996).

The analysis in this paper foregrounds the legal narrative around the RRO relocations and closures in Cape Town. Litigation concerning the Cape Town RRO is both representative of broader patterns of legal contention over South African RROs, but also unique in the duration and number of legal challenges related to the RRO closure. Litigation and court orders over the Cape Town RRO have been very similar to similar action taken against RROs in Johannesburg and Port Elizabeth making it an important representative case. Additionally, Cape Town has had the most extensive case record over relocating, closing, and re-opening an RRO in comparison to other cities, making it an especially relevant case. While it is outside the scope of this paper to study negative cases of why RROs have not faced legal action from local businesses in Pretoria and Durban, the Cape Town RRO provides a salient case for illustrating tensions over RRO policies and locations and conceptualising RROs as contested state-urban borders more broadly.

### **RROs and State-Urban Borders in South African Cities**

RROs as contested state-urban borders relate to broader tensions around human rights and historical legacies of exclusion and limited inclusion for non-White persons in South African cities. The residence of black South Africans and foreign nationals in urban areas was heavily policed and limited under various colonial and apartheid-era regulations (Klotz 2013; Klaaren 2017). While white immigrants from former colonies in the region were largely welcomed, the apartheid state restricted and removed black Mozambican refugees from urban areas (Segatti

2011; cf. Polzer 2007). With the end of apartheid, the 1996 Constitution enshrined human rights and freedom of movement for South African citizens and foreign nationals. The 1998 Refugees Act, with substantial input by civil society organisations and experts, protected various rights of refugees and asylum seekers; incorporated protections under international, regional, and constitutional law; and established RROs in major cities (cf. Handmaker 1999; Handmaker, de la Hunt, and Klaaren 2008).

The legal protections and access to documents for asylum seekers and refugees in cities have stood in stark contrast to immigration legislation and policies that have focused on the policing and removal of undocumented and low-skilled, low-income African migrants, especially in urban areas.<sup>3</sup> The removal of foreign nationals has intensified since apartheid with large numbers of undocumented persons arrested by police and detained in local prisons or the Lindela “Repatriation Centre” outside of Johannesburg and deported to neighbouring countries (Vigneswaran 2008a). The removal of foreign nationals has resonated with widespread anti-foreigner sentiment and political rhetoric, institutional discrimination, and violence against black African foreign nationals, culminating in periodic large-scale outbreaks of xenophobic violence in urban areas (cf. Landau ed. 2011; Achiume 2014). Anti-foreigner sentiment has also been pervasive within the DHA and government more broadly, as the country has focused on nation-building mainly based on citizenship and territorial control and the exclusion of foreign nationals (cf. Peberdy 2001). Applying for asylum status has therefore been an appealing, though precarious and uncertain, strategy for many undocumented migrants to acquire work and study permits in the country, especially for those who entered the country clandestinely through neighbouring countries (Amit 2011a; Fassin, Wilhelm-Solomon, and Segatti 2017).

Increasing numbers of asylum applications have only heightened existing preoccupations

among DHA officials that the asylum system was being abused by fraudulent applications from economic migrants (cf. Hoag 2010). Internal regulations streamlined the rejection of asylum applications while making approvals more time consuming and complicated for officials to finalise (Amit 2012). The DHA has justified high rejection rates of asylum applications as proof of economic migrants abusing the asylum system (Belvedere 2007). There are significant backlogs for appealed applications and waiting times can last several years before decisions are finalised. The department has rejected asylum applications in contradiction of legal criteria under the Refugees Act and international law (Amit 2011a), and detained and deported persons despite legal documentation and court orders (Landau and Amit 2014). There is widespread corruption and production of fraudulent permits, often with the involvement of DHA officials (Amit 2015). These administrative practices and legal reforms challenge the idea that asylum restrictions and non-compliance with court orders are solely limited by a lack of capacity or resources, but highlight additional administrative, institutional, and personal incentives within the DHA (cf. Vigneswaran 2008b).

The closures of RROs have occurred within broader policy initiatives to limit access to asylum and move operations from cities to territorial borders (cf. Polzer Ngwato 2013). Policymakers have increasingly viewed the DHA as a national security agency.<sup>4</sup> The Border Management Authority Bill to consolidate law enforcement agencies at border crossings and ports of entry received parliamentary approval in March 2020.<sup>5</sup> Recent policy proposals to facilitate temporary work permits for regional low-skilled workers and permanent residence for high-skilled workers and investors, have come with greater restrictions on asylum. In 2010, the DHA initiated a “special dispensation permit” that provided temporary work and study permits for eligible Zimbabweans, but also further delegitimised asylum claims from the country.<sup>6</sup>

While mentioned by the DHA numerous times over the past decade, the 2017 White Paper on International Migration officially discussed “processing centres” at land borders where the majority of asylum seekers would be held until the adjudication of their applications. Legal amendments and regulations to the Refugees Act in effect since January 2020 place restrictions on asylum seekers to work and study and reduce the amount of time that rejected asylum seekers can appeal cases or acquire legal representation, while the DHA is proposing to de-link permanent residence eligibility from long-term refugee status (cf. Carciotto and Mavura 2016).<sup>7</sup> Civil society organisations continue to mobilise and challenge the DHA in light of recent policies and administrative practices setting the stage for future litigation and adversarial relations with the department.

### **RRO Buildings as Contested State-Urban Borders**

Preoccupied with fraudulent asylum seekers and increasing numbers of applicants, RROs implemented various internal policies and ad hoc measures to limit physical access to offices (Hoag 2010; Amit 2012). Initiatives have included appointment slips for initial applications with delays of at least six months or longer, pre-screenings by DHA officials, quotas of limited numbers of applicants each day, and requiring identification or transit permits to file for asylum (cf. Amit 2011a; Amit 2012). Furthermore, asylum permits are renewable every one to six months based on the discretion of the administering officer and DHA regulations have required asylum seekers to renew permits at the RRO where they originally submitted their application, irrespective of current residence. South African legal organisations such as Lawyers for Human Rights and Legal Resources Centre have constantly challenged such practices in courts for being in violation of the Refugees Act and the constitutional rights of asylum seekers. For example, in *Tafira and Others v Ngozwane and Others* in 2006, appointment slips and pre-screenings

administered by the DHA were considered unconstitutional. However, according to interviews, the department has continued to use appointment slips with significant delays as well as requiring identification at various RROs.<sup>8</sup>

RRO buildings have created temporary state-urban borders within cities. In Cape Town, the RRO was first located inside the Customs House building near the city centre until 2009. After a series of relocations, it was re-opened in the same location only for renewing asylum seeker permits filed before July 2012 or renewing or applying for refugee permits, IDs, or travel documents. The building situated in the Foreshore district in the city centre adjacent to the Central Business District (CBD) with a concentration of corporate headquarters, luxury hotels, and the city's main convention centre. Between the building and the city centre is a freeway overpass, which creates a large median space underneath the overpass in front of the building. This dirt median has served as the initial waiting area for crowds of asylum seekers and refugees who still line up early each morning with the hope of accessing the building. The space is blocked off from the rest of the building by barbed wire fencing, an elevated concrete platform that serves as a parking lot, and a few security guards. The space lacks basic facilities and applicants sit on the ground or lean against short concrete barriers. A handful of vendors sit or make rounds selling airtime, snacks, and drinks. Therefore, weekdays at the RRO transform a deserted freeway underpass in the city centre into a visible border with asylum seekers and refugees temporarily stranded between city and RRO.

This road median has been a contested and violent space for asylum seekers and refugees. In the mid-2000s, there were various protests and litigation against the exclusion and violence against potential asylum applicants trying to access these buildings. An important case during this time was *DeGaulle Kiliko and Others v Minister of Home Affairs and Others* filed in March

2005. A number of asylum seekers who were detained and denied access to the Cape Town RRO sought legal assistance from Legal Resources Centre. The case challenged the practice of only accepting 20 new asylum seekers per day, which prevented the vast majority of asylum seekers from accessing the office.<sup>9</sup> Court orders issued in 2006 by the provincial Western Cape High Court (WCHC) ordered the department to end the apparent use of quotas at the RRO and issued a structural interdict against the office. The interdict, active until 2009, ordered the DHA to submit updates to the court about reforms to improve service and capacity, including finding alternative premises. According to court papers, the DHA did identify alternative sites, including the top deck of the Cape Town railway station, but ostensibly faced issues with securing leases, zoning regulations, and resistance from neighbouring tenants.

### **Local Businesses and Neighbourhood-Level State Borders**

In face of court orders and part of a broader “Turnaround Project” to improve service delivery for the department as a whole, the DHA undertook a series of operational and management reforms. RROs were identified as an especially problematic and the DHA opened additional offices supported by the UNHCR to process significant numbers of backlogged asylum applications. Subsequently, RRO operations were consolidated into single buildings to further streamline operations, improve management, and increase capacity. For cities such as Cape Town and Johannesburg, the relocation of RROs meant moving from city centres to more peripheral and industrial locations. In Johannesburg, the RRO was moved from an office in the city centre, to a leased suite within a shopping mall, and eventually in June 2006 to the large government-owned warehouse being used as an asylum backlog office in Crown Mines. In Cape Town, the RRO was also relocated in February 2008 from Customs House in the city centre to a large, privately leased warehouse also being used as a backlog office. The building was located



in the Airport Industria industrial park several kilometres outside the city centre along the N2 freeway near the international airport. Across the freeway was the Nyanga township that experienced an outbreak of xenophobic violence in May 2008. While the backlog offices did not attract large numbers of applicants, the opening of a fully operational RRO brought large crowds of applicants to these buildings practically overnight. Therefore, RRO relocations within cities represented spatial changes in state-urban borders as certain buildings ceased functioning as RROs, while new buildings in different neighbourhoods became new RRO locations.

By consolidating operations within single buildings, RROs concentrated the perceived costs of these offices for certain neighbouring businesses. Relocation and operational reforms of RROs did not eliminate issues of overcrowding, mismanagement, and corruption intensified by spiking numbers of applicants, especially from Zimbabwe at this time. Certain neighbouring businesses in Cape Town, Johannesburg, and Port Elizabeth viewed the operations of these offices as problematic and sought out legal strategies to close down RROs. Litigating businesses were larger companies that did not provide any goods or services to asylum seekers and refugees, as opposed to stores or vendors that could profit from applicants. Filed complaints included (a) zoning and/or private lease violations; (b) public nuisance violations; (c) violations of the constitutional rights of employees and clients. Businesses did not challenge RROs in cities or national asylum policies more broadly, but sought to close down offices within their immediate vicinities. DHA officials and RRO management opposed litigation and defended the lawfulness of the operations and locations of these offices.

The first local business case against an RRO in Cape Town was *Intercape Ferreira Mainliner (Pty) Ltd and Others v Minister of Home Affairs and Others*, filed in December 2008 against the RRO in Cape Town.<sup>10</sup> The primary litigant, Intercape Ferreira Mainliner (Pty) Ltd,

ran a major bus company that had administrative offices and a bus depot across the street from the RRO. The company's CEO also had other properties and business ventures in the same area and neighbouring businesses submitted supporting affidavits. Affidavits portrayed a chaotic scene outside of the RRO with large crowds of applicants attempting to access the RRO and spilling over to neighbouring properties. Affidavits further described loitering with applicants sleeping outside at night; unlicensed parking and informal trading; incessant noise; violence, corruption, and criminality against refugees and asylum seekers; and a lack of general control and security in the area. The WCHC issued a judgement on the case on 24 June 2009 to close the RRO in Airport Industria due to zoning and public nuisance violations. Specifically, the office was ordered to close down in violation of zoning regulations for industrial areas and lack of required consent use exemptions in the private lease.<sup>11</sup> It was also determined to be a public nuisance due to a lack of public facilities and parking for applicants. The DHA filed for an extension to close the office, which eventually closed down on 23 October 2009. At the time of research, the space was being used to hold church services, with Intercape contemplating taking legal action against the church for potential zoning and public nuisance violations.

The closure of the Airport Industria RRO was followed by the opening of a new RRO location in Cape Town in October 2009. The new RRO was opened across various properties at 412-416 Voortrekker Road, which is a commercial road in the Maitland area, a neighbourhood outside the city centre but more central than Airport Industria. Legal papers filed by the DHA show that the location was selected to explicitly avoid previous zoning and public nuisance issues. However, almost immediately after opening at this location, the adjacent business launched an application in December 2009 against the RRO in *410 Voortrekker Road Property Holdings CC v Minister of Home Affairs and Others*.<sup>12</sup> On 3 May 2010, a WCHC judgement

ruled that an annexed structure used by the RRO as a waiting area and zoned for railroad activities was in violation of municipal by-laws and that the RRO was ruled a nuisance due to insufficient numbers of staff and ablution facilities.<sup>13</sup> The judge gave the DHA six months to address these zoning and nuisance issues or to close down the RRO and rejected the department's leave to appeal request. According to court papers, the RRO remained open until the end of June 2012, after the litigant, who took over the property at 412 Voortrekker Road in 2011, terminated the department's lease for the office's private access road. At the time of research, the storefront of 412 Voortrekker Road was occupied by the litigant's apparel company, while the litigant's previous building at 410 Voortrekker Road was vacant. RRO operations for pending applications and permit renewals were moved back to Customs House where they are still being processed and renewed at present.

### **Civil Society Litigation and Contested Municipalities**

RROs in Cape Town, Johannesburg, and Port Elizabeth were eventually closed down in face of local business pressure combined with policy shifts among head DHA officials. RRO management did take certain measures to abate the nuisances caused by these offices in an effort to placate businesses and court interdicts. RROs provided some facilities such as portable toilets and cleaning services to try to address business complaints, while the Zimbabwean special dispensation permits were credited for reducing the numbers of applicants and crowds. As a former RRO manager in Johannesburg said about neighbouring businesses, "As much as NGOs were saying to try to keep it open and we were saying look the numbers are reduced...we were trying to make sure there was access to roads and people weren't lingering on the street, but nonetheless they just didn't want us there." (Interview, 17 November 2017). Local businesses

persisted with litigation against RRO operations in these locations stating that such reforms were insufficient to abate nuisance and zoning issues as determined by the courts.

Ultimately, RRO closures were a result of head DHA officials who took advantage of legal proceedings to stop identifying new locations for RROs in these cities. Head DHA officials and policymakers were now in favour of moving asylum operations to “ports of entry” at major border crossings, including a proposed centre at Lebombo at the Mozambique border. Head DHA officials consistently referred to court orders and private lease issues in support of closing RROs and refusing to re-open in them in these cities. The DHA persisted with these claims despite that court orders in Port Elizabeth only called for the abatement of nuisance and not an office closure,<sup>14</sup> court orders in Johannesburg called for a new RRO to be opened in the city within 60 days of the Crown Mines closure,<sup>15</sup> and court orders gave the Voortrekker Road office several months to address nuisance and zoning issues, while property leases were only terminated years after court orders.

Civil society organisations immediately challenged the department’s decision to close RROs in these cities. Legal cases against RRO closures were first opened in Johannesburg and Port Elizabeth in 2011 by Lawyers for Human Rights on behalf of civil society organisations. In Cape Town, Legal Resources Centre with the civil society organisation Scalabrini Centre opened a case against the DHA in June 2012. Provincial high court judgments in all cases ruled that these RRO closures were unlawful due to procedural and administrative violations. Violations included the lack of consultation with the Standing Committee for Refugee Affairs (SCRA) – a statutory independent body designated by the Refugees Act to oversee certain administrative and status decisions.<sup>16</sup> Another concern was the lack of consultation with relevant stakeholders,

specifically civil society organisations representing refugees and asylum seekers, as interpreted under constitutional principles of legality and administrative justice.<sup>17</sup>

While provincial court judgements consistently ruled that the RRO closures were unlawful, court orders for the DHA to re-open these offices were more ambivalent. Court orders concerning the Johannesburg RRO in December 2011 required the Director General of the DHA to reconsider the decision to close the office, putting aside previous orders to open a new office in the city.<sup>18</sup> Civil society organisations did not pursue litigation against this office and there has not been a new RRO in the city. In contrast, the DHA was forced to appeal court orders concerning the Cape Town and Port Elizabeth RROs, which directly ordered the DHA to re-open fully operational offices in these cities without referring the decision back to the Director General.<sup>19</sup> In September 2013, the Supreme Court of Appeal (SCA) ruled that the RRO closure in Cape Town was unlawful, but did not ordering the re-opening of the office, instead requiring the Director General to further consult with civil society organisations reconsider his decision to close the office.<sup>20</sup> The Director General subsequently held a “stakeholders meeting” with civil society representatives in Cape Town, which participants largely characterised as a formality. On 31 January 2014, the Director General issued a statement that the RRO remained closed, with the exception of pending applications originally filed in Cape Town before July 2012. In contrast, in March 2015, the SCA ordered the DHA to re-open an RRO in Port Elizabeth to new asylum applicants by 1 July 2015 and did not refer this decision back to the Director General.<sup>21</sup>

In May 2014, Legal Resources Centre again with Scalabrini Centre opened a second case against the DHA’s decision to keep the Cape Town RRO closed to new applicants. The court judgement at the WCHC on 24 June 2014 upheld the decision, citing the DHA’s authority under the separation of powers between the executive and judicial branches outlined in the

constitution.<sup>22</sup> The judgement was appealed and heard at the SCA in September 2017. By this time, the DHA had still not complied with the SCA's previous order to re-open an RRO to new asylum applicants in Port Elizabeth. Furthermore, the judgement in *Ntumba Guella Nbaya and Others v The Director General of the Department of Home Affairs and Others* on 3 June 2016 ruled that the Cape Town RRO had to accept asylum applications transferred from other RROs.<sup>23</sup> During the court proceedings at the SCA, judges expressed frustration with the lack of compliance by the DHA with the previous Port Elizabeth court order and the closure of the Cape Town RRO. After declaring the DHA's decision to close the Cape Town RRO as unlawful and unreasonable according to the Refugees Act and constitutional principles, court orders ruled in favour of re-opening the Cape Town RRO to new asylum applicants by 31 March 2018.<sup>24</sup> According to the judgment, the DHA failed to show how closing one of the busiest RROs would benefit asylum seekers and refugees, or support the department's legal mandate in processing asylum and refugee documentation. The judgement also considered, in the absence of alternative arrangements, the importance of access to cities and corresponding economic opportunities, social networks, and public institutions for asylum seekers and refugees. The DHA filed a leave to appeal with the Constitutional Court in December 2017, but the court dismissed the appeal as having little prospect for success.<sup>25</sup>

SCA court orders did not translate into compliance by the DHA to re-open RROs in Cape Town and Port Elizabeth within the designated time periods. After several years of delays, a new RRO opened in Port Elizabeth in 2018, while a new RRO has yet to open in Cape Town. In response to these delays, frustrated lawyers and civil society representatives have acknowledged the limitations of litigation against the DHA and have organised media and protest campaigns against the department. In Cape Town, the Legal Resources Centre has launched further legal

action to pressure compliance and civil society organisations such as Sonke Gender Justice organised protests at Customs House and DHA parliamentary portfolio meetings, as well as social media campaigns to pressure the department to re-open the office. As one lawyer involved in court proceedings said, organisations were “basically trying other avenues to put pressure on them, because that’s the only way that Home Affairs actually kind of responds, sometimes, as when they are blasted in the media” (Interview, 24 January 2018). According to DHA officials, delays in opening an RRO have resulted from budgetary and logistical issues in finding suitable premises and refurbishments. At present, RRO operations remain in an ambivalent and partial state: there is no Cape Town RRO, the Lebombo centre has yet to be built, and access remains limited at existing RROs with waiting times of several months or longer for an initial asylum seeker appointment. In addition to recent amendments to the Refugees Act, civil society organisations continue to contest these administrative practices through proposed litigation and contentious politics.

### **Discussion and Conclusion**

RROs in South Africa represent a key institutional contradiction illustrated by the concept of state-urban borders: they are state institutions concerned with documentation and legal status administered by the DHA, but they are also confronted by a range of interests and institutions related to urban spaces. The instability and temporality of RROs within and between cities is not only a product of legal procedures and national policy objectives and political movements, but is further influenced by contention over property rights, zoning regulations, and the lawful use of space and administration of public offices. RROs not only represent contested buildings and locations within cities, but also represent contested state borders and relationships among state institutions and other societal actors. Ongoing contention and relocations of RROs highlights

important temporal, social, and spatial dynamics of state-urban borders as both state institutions and urban locations (cf. Agier 2016). The closures and openings of RROs run by the DHA have led to sudden transformations of spatial dynamics and social relations within cities. Industrial areas have transformed into temporary, concentrated, and contested sites of state borders as crowds of asylum applicants are caught between inaccessible RRO buildings, fenced-off private properties, and unregulated public spaces. Socially produced state borders have disappeared overnight with relocated or closed down RROs becoming commercial enterprises, church halls, or empty warehouses. Therefore, RROs challenge strict dichotomies between local and national policies, private and public buildings, and urban and state borders (cf. McNevin 2010).

Litigation and non-compliance have played key roles in understanding the DHA's authority over the location and administration of RROs. Local business litigants lacked a general interest in migration policies, but rather sought to close down specific RRO properties in their immediate vicinities, while the DHA officially opposed this litigation and defended the lawfulness of these offices. These businesses did not constitute broader national interest groups (cf. Freeman and Tandler 2012) or seek to remove migrants from cities (cf. Varsanyi 2008). Instead, sudden and contentious transformations of local spaces led neighbouring businesses to take action against the DHA and to close specific offices. However, these inherently local actions become co-opted and contested at the national level as the DHA supported removing RROs from cities and civil society organisations mobilised to keep urban RROs open to all potential applicants. Court orders over re-opening RROs oscillated between deferring to head DHA officials in determining the closure of RROs, or mandating the re-opening of RROs in specific cities. The DHA has delayed and evaded the implementation of court orders to re-open RROs within given time periods, highlighting the importance of the relationship between



executive and judicial branches in implementing policies (cf. Hamlin 2014).

This paper contributes to discussions on the multiplicity of state and internal borders (Mbembe 2000; Mezzadra and Neilson 2013; Agier 2016; Yuval-Davis et al. 2019) and the role of local actors and urban spaces from an institutional perspective. Studies have looked at designated buildings and spaces for refugees and asylum seekers as important sites of exclusion in cities and the importance of local institutions and interactions for the protection and livelihoods of refugees and asylum seekers. By focusing on RROs in South Africa, the analysis highlights an additional dynamic where state officials and local actors influence the location and presence of these offices in cities. Head DHA officials have shown partial accountability and relative autonomy to local business and civil society challenges to its jurisdiction over these offices. RROs as state-urban borders therefore highlight the constitutive process of defining and contesting internal borders for refugees and asylum seekers across various actors, institutions, and spaces in relation to the objectives and interests of head officials.

Contentious politics and urban administration of asylum seekers and refugees in South African cities have been ongoing for the past two decades, highlighting the tensions between asylum policies and urban contentious politics in cities around the world today. It is important to note that RROs did not necessarily trigger local antagonism and did not face litigation or complaints by local businesses in every city or neighbourhood. Additional research could look into why certain actors and spaces become antagonised, while others do not either in South Africa or across other countries. Conceptualising specific buildings as state-urban borders, while highlighting the securitisation of borders and criminalisation of asylum seekers and refugees, draws attention to the interaction of local dynamics and head officials in analysing potential variation in the administration and contestation of urban spaces and asylum policies.

## Notes

- <sup>1</sup> The additional Tshwane Interim RRO (TIRRO) was open in Pretoria from 2009-2016.
- <sup>2</sup> The high court system in post-apartheid South Africa is divided into provincial courts, a Supreme Court of Appeal (SCA), and the Constitutional Court at the highest level (cf. Klug 2010).
- <sup>3</sup> *Immigration Act of 2002* and subsequent amendments.
- <sup>4</sup> ANC Peace and Stability Policy Discussion Document, March 2012.
- <sup>5</sup> *Border Management Authority Bill of 2016*.
- <sup>6</sup> See Amit (2011b) regarding issues of access and administration of these permits.
- <sup>7</sup> See *Refugees Amendment Act 2017* and *Refugees Regulations*, 27 December 2019.
- <sup>8</sup> *Tafira and Others v Ngozwane and Others*, [2005] 12960/06, ZATHC.
- <sup>9</sup> *DeGaulle Kiliko and Others v Minister of Home Affairs and Others*, [2008] 2739/05, ZACGHPD.
- <sup>10</sup> *Intercape Ferreira Mainliner (Pty) Ltd and Others v Minister of Home Affairs and Others*, [2009] 20952/08, ZAWCHC.
- <sup>11</sup> The judgment cites zoning violations under the *Land Use Planning Ordinance of 1985 (LUPO)*.
- <sup>12</sup> *410 Voortrekker Road Property Holdings CC v Minister of Home Affairs and Others*, [2010] 26841/09, ZAWCHC.
- <sup>13</sup> The judgment cites zoning violations under the *Legal Succession to the South African Transport Service (SATS) Act 9 of 1989* amended in 1995.
- <sup>14</sup> *Spuddy Properties PPY LTD and 2 Others v the Minister of Home Affairs and 2 Others*, [2008] 38198/08, ZASGHC.
- <sup>15</sup> *Stuart James Graham and Others v Kapbro Industrial Complex (PTY) LTD and Others*, [2008] 2016/08, ZAECHC-PE.
- <sup>16</sup> *Scalabrino Centre Cape Town v Minister of Home Affairs and Others* [2012] 11681/12, ZAWCHC.
- <sup>17</sup> *Scalabrini Centre, Cape Town and Others v Minister of Home Affairs and Others*, [2013] 11681/12, ZAWCHC. The judgement cites the *Promotion of Justice Act 3 of 2002 (PAJA)*.
- <sup>18</sup> *Consortium for Refugees and Migrants in South Africa and Others v Minister of Home Affairs and Others* [2011] 573756/11, ZANGHC.
- <sup>19</sup> For Port Elizabeth, see *Somali Association for South Africa, Eastern Cape (SASA) EC and Another v Minister of Home Affairs and Others* [2011] 3759/2011 ZAECPEHC.
- <sup>20</sup> *Minister of Home Affairs and Others v Scalabrini Centre, Cape Town and Others*, [2013] 735/12, 360/13, ZASCA.
- <sup>21</sup> *Minister of Home Affairs and Others v Somali Association of South Africa and Another*, [2015] 831/13, ZASCA.
- <sup>22</sup> *Scalabrini Centre and Others v The Minister of Home Affairs and Others*, [2016] 8132/14, ZAWCHC.
- <sup>23</sup> *Ntumba Guella Nbaya and Others v The Director General of the Department of Home Affairs and Others* [2015] 6534/15, ZAWCHC. The DHA filed a leave to appeal to the SCA but later withdrew the file. Civil society organisations have reported that the office has not complied with this order.
- <sup>24</sup> *Scalabrini Centre, Cape Town and Others v Minister of Home Affairs and Others*, [2017] 1107/2016, ZASCA.
- <sup>25</sup> *The Minister of Home Affairs and Others v Scalabrini Centre, Cape Town and Others* [2017] 279/17, ZACCT. For Port Elizabeth, see *Minister of Home Affairs and Others v Somali Association of South Africa and Another* [2015] 67/2015, ZACCT.

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